

Agendum
Oakland University
Board of Trustees Formal Session
March 30, 2011

**AUTHORIZATION TO ENTER INTO AN ASSESSMENT AGREEMENT REGARDING
MERIT NETWORK, INC.**

1. **Division and Department:** Academic Affairs, University Technology Services.
2. **Introduction:** Merit Network, Inc. ("Merit") is a Michigan nonprofit and nonstock membership corporation that is owned by Michigan's four-year public universities ("University Members") and governed by a Board of Directors comprised of University Member representatives. Oakland University is one of the University Members.

The University Members established Merit in 1966 to design, implement and maintain a computer network between public universities in Michigan. Merit also provides high-performance networking and computer services to various non-profit research and education organizations throughout Michigan.

Merit is funded by (i) annual membership fees established and paid by the University Members; (ii) annual service fees established by Merit and paid by the non-profit and education organizations using Merit's network and services; and (iii) grant awards.

Merit has received a \$102.9 million grant ("Grant") through the Federal Broadband Technology Opportunities Program to build approximately 2,300 miles of additional advanced fiber optic networks throughout Michigan. The Grant requires Merit to provide \$8.2 million in matching funds for the project.

The Michigan Strategic Fund ("MSF") has agreed to issue tax-exempt bonds in the amount of \$8,000,000 and loan the bond proceeds to Merit to be used for the required matching funds ("MSF Loan"). JP Morgan Chase ("Chase") has agreed to purchase the bonds; provided, however, that the University Members sign an Assessment Agreement providing in part that:

- Each University Member will pay a percentage of the principal and interest due on the MSF Loan based upon the schedule attached as Exhibit A. Oakland University's percentage will be 4.24% or approximately \$394,036.
- Each University Member will remain responsible for their assigned percentage even if they are removed or withdraw from Merit.
- If a University Member defaults on its obligation, the remaining University Members will assume the defaulted obligations on a pro rata basis up to a maximum of 125% of its initial obligation; in Oakland University's case, approximately an additional \$98,509.

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- The total membership fees established and paid by the University Members to Merit each year must: (i) be set in an amount that will equal or exceed the principal and interest due on the MSF loan; (ii) include an amount that will be deposited into a sinking fund that Merit will use to pay the principal and interest due on the MSF Loan in accordance with the Bond Amortization Schedule attached as Exhibit B; and (iii) be paid solely from the general revenues of the University Members.

A copy of the Assessment Agreement is attached as Exhibit C. The Assessment Agreements are being submitted to the University Members' governing boards for approval based upon the recommendation of Miller, Canfield, which drafted the Assessment Agreement as legal counsel for Michigan State University and the University of Michigan, because the funds paid by the University Members will be used to guarantee the indebtedness of Merit.

The Assessment Agreement has been approved by the governing boards of the following eight (8) University Members: Central Michigan University, Lake Superior State University, Michigan State University, Michigan Technological University, Northern Michigan University, University of Michigan, Western Michigan University and Wayne State University. The Assessment Agreement will be considered by the governing boards of the following three (3) University Members in their upcoming business: Eastern Michigan University, Ferris State University and Grand Valley State University.

The Assessment Agreement has also been reviewed and approved by the Office of the Vice President for Legal Affairs and General Counsel, complies with the law and University policies and regulations, and conforms to the legal standards and policies of the Vice President for Legal Affairs and General Counsel.

3. Previous Board Action: None.

4. Budget Implications: Oakland University's current annual membership fee is \$123,894. A portion of Oakland University's annual membership fee for fiscal years 2011 through 2017, representing 4.3% of the principal and interest due on the MSF Loan, will be deposited into the sinking fund and used by Merit to repay the MSF Loan. Merit has estimated that Oakland University's total obligation with respect to the MSF Loan will be \$394,036. Merit has represented that the University Members' annual membership fees will not be increased in order to repay the MSF Loan; in fact, Merit believes that the project will result in long-term cost savings and fee reductions for the University Members. Merit has prepared a "7 Year Summary" for Oakland University, a copy of which is attached as Exhibit D, reflecting the University's anticipated share of the MSF Loan obligation as well as the University's share of the anticipated cost savings.

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5. **Educational Implications:** Merit provides the internet connectivity and services that Oakland University's faculty, staff and students rely upon for their on-campus and distance education programs, research, administration and communications. The project funded by the Grant and the MSF Loan should allow Oakland University to expand and improve upon these internet uses because the project will provide expanded internet connectivity throughout the State of Michigan, greater internet capacity, a more reliable internet infrastructure and additional financial resources (either through cost savings or use fees paid by new non-profit/educational organizations who will use the expanded network) to fund future network improvements.

6. **Personnel Implications:** None.

7. **University Reviews/Approvals:** This recommendation was formulated by the Chief Information Officer, University Technology Services, and reviewed by the Senior Vice President for Academic Affairs and Provost, the President and the Board's Finance, Audit and Investment Committee at their March 15, 2011 meeting.

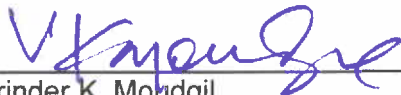
8. **Recommended:**

RESOLVED, that the Senior Vice President for Academic Affairs and Provost be authorized to execute the Assessment Agreement, as attached hereto as Exhibit C, on Oakland University's behalf.

9. **Attachments:**

- Exhibit A: Member Percentages Schedule
- Exhibit B: Bond Amortization Schedule
- Exhibit C: Assessment Agreement
- Exhibit D: Oakland University – 7 Year Summary

Submitted to the President
on 3/17, 2011 by



Virinder K. Moudgil
Senior Vice President for Academic Affairs and
Provost

Recommended on 3/21, 2011
to the Board for approval by



Gary D. Russi, President

EXHIBIT A

MEMBER PERCENTAGES

Central Michigan University Board of Trustees	4.23%
Board of Regents of Eastern Michigan University	4.23%
Board of Trustees of Ferris State University	1.99%
Board of Trustees of Grand Valley State University	4.23%
Board of Trustees of Lake Superior State University	1.99%
Board of Trustees of Michigan State University	26.68%
Board of Control of Michigan Technological University	4.23%
Board of Trustees of Northern Michigan University	4.23%
Board of Trustees of Oakland University	4.23%
Regents of the University of Michigan	26.96%
Board of Governors of Wayne State University	8.50%
Board of Trustees of Western Michigan University	8.50%

EXHIBIT B
BOND AMORTIZATION SCHEDULE

	<u>Payment Date</u>	<u>Interest Rate</u>	<u>Days in</u> <u>Period</u>	<u>Principle</u>	<u>Balance</u>	<u>Interest</u> <u>Payment</u>
2011	03/01/11	3.285%	70		\$ 8,000,000	\$ 58,394
	06/01/11	3.285%	90		\$ 8,000,000	\$ 65,700
	09/01/11	3.285%	90		\$ 8,000,000	\$ 65,700
	12/01/11	3.285%	90		\$ 8,000,000	\$ 65,700
2012	03/01/12	3.285%	90		\$ 8,000,000	\$ 65,700
	06/01/12	3.285%	90		\$ 8,000,000	\$ 65,700
	09/01/12	3.285%	90		\$ 8,000,000	\$ 65,700
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	12/01/15	3.285%	90	\$ 1,600,000	\$ 4,800,000	\$ 39,420
2016	03/01/16	3.285%	90		\$ 3,200,000	\$ 26,280
	06/01/16	3.285%	90		\$ 3,200,000	\$ 26,280
	09/01/16	3.285%	90		\$ 3,200,000	\$ 26,280
	12/01/16	3.285%	90	\$ 1,600,000	\$ 3,200,000	\$ 26,280
2017	03/01/17	3.285%	90		\$ 1,600,000	\$ 13,140
	06/01/17	3.285%	90		\$ 1,600,000	\$ 13,140
	09/01/17	3.285%	90		\$ 1,600,000	\$ 13,140
	12/01/17	3.285%	90	\$ 1,600,000	\$ 1,600,000	\$ 13,140

EXHIBIT C

ASSESSMENT AGREEMENT

THIS ASSESSMENT AGREEMENT, dated as of December 1, 2010 (the "Assessment Agreement") between **MERIT NETWORK, INC.**, a Michigan nonprofit corporation ("Merit") and each of its undersigned members (each individually a "Member" and collectively, the "Members").

RECITALS:

WHEREAS, Merit has been awarded \$102.9M through the Federal Broadband Technology Opportunities Program ("BTOP") initiatives grant program to build approximately 2,300 miles of an advanced fiber optic network throughout the Lower and Upper Peninsulas in Michigan which will serve Anchor Institutions, as defined in the BTOP (the "REACH Michigan Middle Mile Collaborative" or "REACH 3MC Project"); and,

WHEREAS, Merit is responsible for \$8,200,000 in cost share toward total project expenditures which are approximately \$128.9M; and,

WHEREAS, the Michigan Strategic Fund (the "Issuer") has issued an inducement Resolution pursuant to which the Issuer has proposed to issue its limited obligation revenue bond in the principal amount not to exceed \$8,000,000 (the "Bond") pursuant to a Loan Agreement (the "Loan Agreement") among the Issuer, JPMorgan Chase Bank, as Lender, and Merit, as Borrower, in order to finance Merit's share of the costs of the REACH 3MC Project; and

WHEREAS, Merit has received and approved a term sheet from JPMorgan Chase Bank (the "Purchaser") with respect to its direct purchase of the Bond and the terms of the financing, and Merit and each of the Members recognize and acknowledge that the primary source of funds from which Merit will be able to repay its loan under the Loan Agreement, which will be used to pay principal of and interest on the Bond, will be amounts to be paid by the Members as provided in this Assessment Agreement; and

WHEREAS, Merit and each of the Members understand and agree that the Purchaser is willing to advance funds to purchase the Bond in reliance upon the obligation of each of the Members pursuant to this Agreement, for so long as any portion of the Bond is outstanding and unpaid, to budget and appropriate on an annual basis, but only from General Revenues (as hereinafter defined) the funds necessary to deposit into the Sinking Fund (hereinafter created), as membership fees for its participation in Merit, its Member Debt Service Amount (as hereinafter defined) so that the sum of all Member Debt Service Amounts paid by all Members each year shall equal the amount, and be paid at such times, necessary to pay the Annual Debt Service on the Bond (as hereinafter defined) when due; and

WHEREAS, Merit's rights and interests under this Assessment Agreement, including its right to receive the aforesaid payment by each of the Members of its respective Member Debt Service Amount, will be collaterally assigned to the Purchaser as security for the prompt payment of the principal of and interest on the Bond when due; and

WHEREAS, Merit and each Member recognize and acknowledge that the Purchaser would not be willing to purchase the Bond but for the agreement of Merit and each Member contained in this Assessment Agreement;

NOW, THEREFORE, in consideration of the Purchaser's purchase of the Bond and the other promises and mutual covenants hereinafter contained, the parties hereto agree as follows:

1. Each Member of Merit hereby covenants and agrees, for the benefit of Merit and the owners of the Bond that for so long as any portion of the Bond is outstanding and unpaid, such Member shall budget and appropriate each year, commencing the fiscal year starting July 1, 2011, but only from the sources of funds specified herein, on an annual basis an amount equal to the percentage (the "Percentage") for that Member set forth on Exhibit A attached hereto, multiplied by the total Annual Debt Service on the Bond for that year (the "Member Debt Service Amount"), such that the aggregate of the Member Debt Service Amounts for all Members shall equal one hundred percent (100%) of the Annual Debt Service on the Bond. Each Member's Percentage shall be recalculated on any day on which a Member is added to Merit as provided in Paragraph 11 below. Whenever a Member is added, Merit shall promptly notify the Purchaser in writing of the applicable Percentage of each Member to be thereafter used in calculating the Member Debt Service Amount as herein provided. The aggregate Member Debt Service Amount shall equal Annual Debt Service on the Bond, so long as any portion of the Bond remains outstanding under the Loan Agreement. Each Member Debt Service Amount shall be paid on or before August 1 of each year and immediately deposited into the Sinking Fund. Each Member's obligation to pay its Member Debt Service Amount, but only from the sources of funds specified herein, in accordance with the terms of this Assessment Agreement shall be absolute and unconditional and shall continue without set-off, deduction, counterclaim, abatement, recoupment of reduction and regardless of any failure of the REACH 3MC Project to be installed and operational, any defect in its installation or operation or the failure of the REACH 3MC Project to perform to any Member's or Merit's satisfaction or any inability for whatever reason of any such Member of Merit to exercise its rights with respect to such Project.

2. Notwithstanding anything herein to the contrary, the obligations of each Member hereunder shall be limited and not general obligations, payable solely from the General Revenues of that Member.

3. Upon original issuance of the Bond and so long as any portion of the Bond remains outstanding, the Annual Debt Service on the Bond shall be included and approved as a separate line item in the annual budget of Merit and approved by the Members at each mid-year meeting of Merit.

4. Merit hereby covenants and agrees that the aggregate amount of annual fees collected from the Members, allocated for payment of Member Debt Service Amounts under this Assessment Agreement and deposited into the Sinking Fund shall equal one hundred percent (100%) of the Annual Debt Service on the Bond so long as any portion of the Bond remains outstanding under the Loan Agreement.

5. Merit shall take all steps necessary to cause the Issuer to establish with the Purchaser a segregated debt service sinking fund (the "Sinking Fund"), which together with Merit's rights and interests under this Assessment Agreement shall be irrevocably assigned to the Purchaser as additional security for the payment of the principal of and interest on the Bond when due. Upon receipt of all or any portion of the Member Debt Service Amount from any Member as herein provided, Merit shall cause such amount to be deposited into the Sinking Fund and shall take all actions necessary or advisable to assure that on or before September 1 of each year an amount equal to one hundred percent (100%) of Annual Debt Service on the Bond shall be so deposited into the Sinking Fund.

6. The funds in the Sinking Fund shall be invested in a depository account or other account acceptable to Merit and the Purchaser.

7. The Sinking Fund shall be drawn upon by the Purchaser for payment of the principal of and interest on the Bond when due, and Merit and the Members authorize the Purchaser to apply all funds therein for that purpose.

8. The balance remaining in the Sinking Fund after July 1 of each year shall be depleted except for a reasonable carryover not to exceed the greater of one year's earnings on the amounts in the Sinking Fund or 1/12 of the Annual Debt Service on the Bond. Each Member shall receive a credit against its payment due on the succeeding August 1 for its share of any balance remaining in the Sinking Fund on each July 1. Each Member's credit shall be proportionate to the total amounts paid by that Member in fulfillment of its obligations under this Agreement during the prior fiscal year.

9. Each Member covenants and agrees that in the event a Member withdraws from or is removed as a Member of Merit during the term of this Assessment Agreement, in accordance with the Bylaws of Merit, the withdrawing or removed Member shall remain liable for the payment each year, from the sources of funds specified herein, of its Member Debt Service Amount until the Bond is paid in full.

10. Each Member covenants and agrees that in the event any Member fails to pay any portion of its Member Debt Service Amount when due in any year, and such failure continues for the period of ten (10) days after the due date of such payment, each of the remaining Members shall pay, within ten (10) business days after receipt by that Member of notice of the default, but not later than August 31, its pro rata share (based on the relative Percentage of each non-defaulting Member) of the amount not paid by the defaulting Member, provided, however, that in no event shall a Member's required payment at any time be increased by more than twenty five percent (25%) of the amount it would have to pay if no default by any other Member occurred. Merit shall provide notice to each non-defaulting Member of any non-cured payment default by any Member and the amount to be paid by each non-defaulting Member as a result of the default within fifteen (15) days of the date the defaulted payment was due. Any Member who pays any increased amount hereunder shall be entitled to

reimbursement from the defaulting Member of the amount paid, with interest at the rate of interest equal to the Prime Rate published from time to time by the Wall Street Journal.

11. In the event of admission of additional Members to Merit during the term of this Assessment Agreement, each new Member shall be bound by this Assessment Agreement and the terms hereof. As a condition of becoming a new Member, such new Member shall agree to pay its Member Debt Service Amount calculated in the same manner as such amount is calculated and adjusted for the current Members. Merit shall calculate the revised Percentage and Member Debt Service Amount for each Member that will be a Member after the addition of such new Member and shall provide written notice to the Members and the Purchaser of the revised Percentage of Each Member. Any overpayment by Members resulting from the admission of a new Member during the course of a fiscal year shall be returned to the Members which made the overpayment, proportionately to the total amount each Member originally paid in fulfillment of its obligations under this Assessment Agreement during that fiscal year.

12. Merit and each of the Members expressly agree and acknowledge that this Assessment Agreement is provided to the Purchaser as security for the prompt payment of principal of and interest on the Bond as and when the same becomes due and agree that the Purchaser shall be a third party beneficiary of this Assessment Agreement while any portion of the Bond remains outstanding. Merit agrees to notify the Purchaser of the failure of any Member to make payment of its Member's Debt Service Amount on or before September 1 of each year; however, Merit shall have the right to deposit such defaulting Member's Debt Service Amount in the Sinking Fund from other available funds and to pursue its remedies against the defaulting Member, and such default shall not constitute an Event of Default under the Loan Agreement so long as Merit has deposited one hundred percent (100%) of the Annual Debt Service on the Bond in the Sinking Fund on or prior to September 1 of each year.

13. At the written request of the Purchaser, Merit shall deliver within ten (10) days to the Purchaser a schedule of the Member Debt Service Amounts for each Member as of the last Fiscal Year. This Assessment Agreement shall continue in full force and effect so long as any portion of the Bond is outstanding under the Loan Agreement.

14. In order to permit the Bond to be delivered on or before December 31, 2010, and recognizing that not all of the Members will be able to receive required authorizations from their governing boards, UM and MSU have each agreed that its initial Percentage will be fifty percent (50%), but notwithstanding Section 10 hereof, the Percentage of liability of each of UM and MSU shall not exceed fifty percent (50%) of the total liabilities hereunder. As each other Member executes this Agreement, that Member will assume its Percentage of the collective liability hereunder as set forth on Exhibit A, and the Percentage of UM and MSU will be proportionately reduced, subject in each case to the provisions of Section 10. Upon execution by all Members, the Percentage of each Member shall be that shown on Exhibit A.

15. Notwithstanding anything herein or in the Loan Agreement, the obligations of the Members to pay the Annual Debt Service on the Bond shall apply, and shall continue to apply until the Bond is paid in full, to the principal and interest (including interest at a default rate, if any) due on the Bond under the originally established amortization schedule as shown on Exhibit B, but shall not be subject to acceleration even if the Bond has been accelerated due to the occurrence of an event of default by the Borrower under the Loan Agreement. In the event the Bond is accelerated or otherwise restructured, the obligation of the Members to pay the Annual Debt Service into the Sinking Fund shall continue in accordance with the amortization schedule shown in Exhibit B until the indebtedness of the Borrower to Lender under the Loan Agreement has been satisfied.

16. The following terms as used herein shall have the meanings set forth below:

“Annual Debt Service on the Bond” as used herein shall mean the sum necessary to fund the payment of all principal of and interest on the Bond during each Fiscal Year of Merit; *provided that* for the Fiscal Year ending June 30, 2011, such period shall be calculated from the date of original issuance of the Bond through and including June 30, 2011.

“Fiscal Year” as used herein shall mean each twelve (12) month period from July 1 to and including June 30 thereafter, commencing on July 1, 2011.

“General Revenues” as used herein shall mean for each Member, the General Revenues of that Member, as defined in the most recent trust indenture or agreement entered into prior to the date hereof, pursuant to which debt obligations of that Member were issued.

(SIGNATURE PAGES FOLLOW)

In witness whereof, the parties to this Assessment Agreement have executed the same as of the date first above written.

MERIT NETWORK, INC.,
A Michigan non-profit organization

By _____
Its _____

MEMBERS

CENTRAL MICHIGAN UNIVERSITY BOARD OF TRUSTEES By: _____ Its: _____	BOARD OF REGENTS OF EASTERN MICHIGAN UNIVERSITY By: _____ Its: _____
BOARD OF TRUSTEES OF FERRIS STATE UNIVERSITY By: _____ Its: _____	BOARD OF TRUSTEES OF GRAND VALLEY STATE UNIVERSITY By: _____ Its: _____
BOARD OF TRUSTEES OF LAKE SUPERIOR STATE UNIVERSITY By: _____ Its: _____	BOARD OF TRUSTEES OF MICHIGAN STATE UNIVERSITY By: _____ Its: _____
BOARD OF CONTROL OF MICHIGAN TECHNOLOGICAL UNIVERSITY By: _____ Its: _____	BOARD OF TRUSTEES OF NORTHERN MICHIGAN UNIVERSITY By: _____ Its: _____

<p>BOARD OF TRUSTEES OF OAKLAND UNIVERSITY</p> <p>By: _____</p> <p>Its: _____</p>	<p>REGENTS OF THE UNIVERSITY OF MICHIGAN</p> <p>By: _____</p> <p>Its: _____</p>
<p>BOARD OF GOVERNORS OF WAYNE STATE UNIVERSITY</p> <p>By: _____</p> <p>Its: _____</p>	<p>BOARD OF TRUSTEES OF WESTERN MICHIGAN UNIVERSITY</p> <p>By: _____</p> <p>Its: _____</p>

EXHIBIT A

MEMBER PERCENTAGES


Central Michigan University Board of Trustees	4.23%
Board of Regents of Eastern Michigan University	4.23%
Board of Trustees of Ferris State University	1.99%
Board of Trustees of Grand Valley State University	4.23%
Board of Trustees of Lake Superior State University	1.99%
Board of Trustees of Michigan State University	26.68%
Board of Control of Michigan Technological University	4.23%
Board of Trustees of Northern Michigan University	4.23%
Board of Trustees of Oakland University	4.23%
Regents of the University of Michigan	26.96%
Board of Governors of Wayne State University	8.50%
Board of Trustees of Western Michigan University	8.50%

EXHIBIT B
BOND AMORTIZATION SCHEDULE

	<u>Payment Date</u>	<u>Interest Rate</u>	<u>Days in Period</u>	<u>Principle</u>	<u>Balance</u>	<u>Interest Payment</u>
2011	03/01/11	3.285%	70		\$ 8,000,000	\$ 58,394
	06/01/11	3.285%	90		\$ 8,000,000	\$ 65,700
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EXHIBIT D

Oakland Univeristy
7 Year Summary
Member Fee Payment Compared To
Pro Rata Share of Expense Increase/Decrease/Avoidance
(Based upon OU's 4.23% share of total Member Fees)

	<u>FY 11</u>	<u>FY12</u>	<u>FY 13</u>	<u>FY 14</u>	<u>FY 15</u>	<u>FY 16</u>	<u>FY 17</u>	<u>Total</u>
Annual Member Fee ⁽¹⁾	\$ 123,894	\$ 123,894	\$ 123,894	\$ 123,894	\$ 123,894	\$ 123,894	\$ 123,894	\$ 867,258
<u>Merit's Tax-Exempt Bond Financing Outcomes</u>								
Expense Increase								
Interest and Principle Payment ⁽²⁾	\$ 10,817	\$ 11,127	\$ 78,869	\$ 76,644	\$ 74,418	\$ 72,193	\$ 69,968	\$ 394,036
Expense (Decrease)								
Circuit Expense Reduction ⁽³⁾	(\$4,657)	(\$27,944)	(\$39,587)	(\$46,573)	(\$46,573)	(\$46,573)	(\$46,573)	\$ (258,479)
Expense (Decrease)								
Other Debt Reduction ⁽⁴⁾	(\$59,436)	(\$101,070)	(\$103,898)	(\$103,898)	(\$103,898)	(\$103,898)	(\$103,898)	\$ (679,995)
Expense (Avoidance)								
Total Interest Rate Differential ⁽⁵⁾	(\$14,586)	(\$14,277)	(\$12,310)	(\$10,032)	(\$7,404)	(\$4,399)	(\$989)	\$ (63,996)
 Total Expense Increase/Avoidance/(Decrease) and Long-Term Potential for Member Fee Decrease ⁽⁶⁾	(\$67,862)	(\$132,163)	(\$76,925)	(\$83,859)	(\$83,456)	(\$82,677)	(\$81,492)	\$ (608,435)
Annual Member Fee Increase	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

(1) Current FY11 member fee with no anticipated increase

(2) Tax-exempt bonds through the Michigan Economic Development Corporation (Michigan Strategic Fund) at 3.285%, 2 years interest only, 5 years interest & principle. this is paid utilizing the annual Member Fee, no increase in Member fee is required

(3) Circuit expense reduction begins with the fiber build in early April, 2011 with full reduction by October, 2013. Additional circuit expense has been accounted for in overall expense reduction

(4) Based upon projections from audited financials ending June 30, 2010

(5) Rate differential between offered standard rate of 7.5% compared to 3.285% of tax-exempt bond financing

(6) These amounts do not represent actual project decrease but rather demonstrate the potential for actual Member Fee decreases over the next six years.