

## **RAPID FIBEROPTIC JOINT POWERS AGREEMENT**

### **FOR THE CONSTRUCTION, EXPANSION AND DEVELOPMENT OF A HIGH-SPEED DATA TRANSMISSION NETWORK WITHIN PARTIES RESPECTIVE JURISDICTIONS**

THIS JOINT POWERS AGREEMENT (“Agreement”), is made and entered into by and among the “Public Agencies” organized and existing under the laws of the State of Idaho, including Valley County, Adams County, the City of McCall, the City of New Meadows, the City of Cascade, and the City of Donnelly. The public agencies are hereinafter, referred to collectively as “Parties” and individually as “Party.”

#### **RECITALS**

WHEREAS, Idaho law allows for joint action by public agencies in order to promote efficient use of authorities thereby enabling cooperators to provide services and facilities that meet the needs of certain geographic, economic and population centers that would otherwise be limited. It is the intent and purpose of the Parties to exercise these powers and authorities jointly and cooperatively as enumerated in Idaho Code §§ 67-2326 through 2330; and

WHEREAS, Idaho Code § 63-805 authorizes the county commissioners to “levy annually upon all taxable property of said county, a property tax for general purposes . . . .” General purposes include the construction, expansion or reconstruction of public works improvements, including high-speed data-transmission systems; and

WHEREAS, Idaho Code § 50-328 provides that “[a]ll cities shall have power to permit, authorize, provide for and regulate the erection, maintenance and removal of utility transmission systems, . . . .”; and

WHEREAS, this joint effort in creating a high-speed data-transmission system and infrastructure utility makes use of the Parties’ authorities in a mutually advantageous way, including the benefit of economies of scale, which will facilitate services to residences and businesses; government administration; provide more functional buildings and grounds; support



educational opportunities, health care, and police and fire protection; and economic development; and

WHEREAS, the Parties shall utilize the Network including each Project as those terms are defined herein; and

WHEREAS, if other public agencies already have authority or are later granted authority similar to that possessed by the Parties, this Agreement can be amended to add them as a Party to this Agreement; and

WHEREAS, this Agreement is intended to provide for the mutual cooperation and understanding of the Parties so a Network Infrastructure may be constructed and the operation of the Network Infrastructure within the respective boundaries of the Parties may provide superior services that would not have otherwise been realized if the Parties could not enter into this Agreement; and

WHEREAS, the Parties have been or will be presented and have or will have accepted a final finance plan.

NOW, THEREFORE, be it mutually agreed between the Parties that the following requirements and procedures shall be utilized in coordinating the planning, development, construction and use of a high-speed data-transmission system throughout the Parties respective jurisdictions:

## **ARTICLE 1**

### **Definitions**

The following definitions shall apply to the provisions of this Agreement:

1.1 **“Agreement”** means this Agreement, which may also be referred to as the Joint Powers Agreement, establishing the structure and terms of the RAPID Fiberoptic Joint Powers Agreement.

1.2 **“Board of Directors”** means and refers to the Rapid Fiberoptic Board of Directors, as herein provided for in this Agreement.



1.3 **“Bonding”** means the issuance of Bonds.

1.4 **“Bonds”** means bonds, notes, certificates of participation or other evidences of indebtedness, except as provided herein.

1.5 **“Discretionary Revenues”** means funds remaining in RAPID’s account after RAPID has paid (i) all Operation and Maintenance Expenses, (ii) all debt service payment obligations with respect to any Bonds issued by RAPID, and (iii) all funding requirements for those funds and accounts as well as use of funds established with respect to the issuance of Bonds.

1.6 **“Excess Revenues”** means any remaining Revenues after Discretionary Revenues have been spent.

1.7 **“Fiscal Year”** means the twelve-month period beginning October 1 and ending September 30.

1.8 **“Network Infrastructure”** means and includes all physical facilities, wires, and equipment that is part of an open, carrier class, and scalable high-speed data-transmission system on which voice, video, and/or data are stored, accessed, and/or transmitted that makes available services for internal use by the Parties and for use by all homes, businesses, and other entities within the Parties’ boundaries on a basis and between the Parties as interconnected facilities.

1.9 **“Operation and Maintenance Expenses”** means all expenses reasonably incurred in connection with the operation and maintenance of the Network necessary to keep the Network in efficient operating condition, including cost of audits hereinafter required, payment of promotional and marketing expenses, payment of insurance premiums, and, generally all expenses, exclusive of depreciation and other non-cash items which under generally accepted accounting practices are properly allocable to operation and maintenance; however, only such expenses as are ordinary and necessary to the efficient operation and maintenance of the Network shall be included.

1.10 **“Operational Matter”** means any issue concerning the Network except as pertains to a project.

1.11 **“Project”** means the planning and financing necessary for the purchase, lease, construction or equipment of Network Infrastructure and related facilities.



## **ARTICLE 2**

### **Purposes**

2.1 General Statement of Purpose. This Agreement is entered into by the Parties for the following purposes:

2.1.1 Issue bonds with approval by the Parties as provided herein.

2.1.2 Construct, lease, operate (or cause the same to occur) and own the Network Infrastructure;

2.1.3 Enter into contracts with consultants, suppliers, contractors, providers, and others to facilitate the accomplishment of the foregoing purposes.

2.1.4 Undertake such actions as are necessary or advisable to effectuate the purposes in this **Section 2.1**.

2.1.5 Entering into contracts, bonding, constructing, and undertaking actions to effectuate the purposes in this **Section 2.1**, may be done in series or phases, all as determined by the Parties.

2.1.6 Upgrade and expand the Network as new development occurs within the boundaries of the Parties.

2.1.7 Engage in such other lawful activity in which the Parties are authorized to do and to conduct any and all transactions and activities related thereto.

2.2 Added Members. It is also the purpose of this Agreement to provide, to the extent permitted by law, for additional public agencies to become Parties to this Agreement as provided herein.

## **ARTICLE 3**

### **Agreement Provisions**

3.1 Duration. This Agreement is perpetual until there is only one Party to the Agreement or the Parties jointly agree to terminate this Agreement as herein provided.



3.2 Withdrawal. The permissible method for a Party to withdraw from this Agreement and for disposing of related property or funds are set forth below:

3.2.1 A Party may withdraw its participation and terminate its membership in this Agreement on or before December 1<sup>st</sup> by providing advance written notice to the other Parties. Such withdrawal is effective on October 1<sup>st</sup> of the following year, concluding with the expiration of the fiscal year.

3.2.2 At such time any Party gives notice of its intent to withdraw, additional Parties may elect on or before January 1<sup>st</sup> to provide written notice of their intent to terminate membership and withdraw its participation in this Agreement. Such withdrawal is effective on October 1<sup>st</sup> of the following year, concluding with the expiration of the fiscal year.

3.2.3 After a notice of withdrawal is received, the Secretary/Treasurer shall prepare an accounting of all assets and liabilities related to the withdrawal and a proposal for separation plan to be approved by the Parties. This proposed separation plan shall include a timeframe of any distribution of Discretionary Revenues, Excess Revenues, and other assets. Network Infrastructure within the jurisdiction of the withdrawing Party shall be received and maintained independently after the withdrawal. The separation plan shall distribute assets, liabilities, and revenue in an equitable manner to the parties to provide for the proportional ownership of Network Infrastructure after withdrawal. Notice and an opportunity to be heard shall be provided to the withdrawing Party prior to approval of the separation plan.

3.3 Immunity. By entering into this Agreement, the Parties do not waive, and are not waiving, any immunity provided to the Parties or their officials, employees, or agents by the Idaho Governmental Immunity Act or by other applicable law.

3.4 Obligation Imposed by Law. This Agreement shall not relieve any Party of any obligation or responsibility imposed upon it by law.



3.5 Current and Future Parties. Each Party agrees to use their best effort to accomplish the purposes set forth in Article 2 herein, and, in addition, with such other Added Parties as may later join and become signatories of this Agreement.

3.6 Right to Contract. Nothing in this agreement shall prohibit any Party from contracting with another Party with respect to services or development of infrastructure or Project development.

3.7 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and no understanding or agreement, oral or otherwise, exists with respect to the subject matter of this Agreement except as expressly set out in this Agreement. This Agreement may be amended only by the written consent of the Parties.

3.8 Additional Parties. By majority vote of the existing Parties, this Agreement may be amended to include additional Parties. Additional Parties shall be thereafter added by execution by addendum in Appendix B. So long as there are no amendments to the text of the Agreement, the existing Parties shall not be required to re-execute the Agreement.

## ARTICLE 4

### Powers of the Parties

4.1 Common Powers. The Parties shall have all powers granted by the Idaho Code §§ 67-2326 through 2333 and all other applicable laws and authorities and the Parties are hereby authorized to do all acts necessary to accomplish its stated purposes, including, without limitation, any or all of the following:

4.1.1. To make and enter into contracts.

4.1.2. To acquire, hold, or dispose of property, contributions, grants, and donations of property, funds, services, and other forms of assistance from persons, firms, corporations, and governmental entities.

4.1.3. To sue and be sued in its own name.

4.1.5. To exercise all powers necessary and proper to carry out the terms and provisions of this Agreement or otherwise authorized by law.



4.1.6. To borrow money or incur indebtedness, liabilities, or obligations; to issue Bonds for the purposes for which it was created; to assign, pledge, or otherwise convey as security for the payment of any such Bonds the revenues and receipts from or for the Network, which assignment, pledge, or other conveyance may rank prior in right to any other obligation except taxes or payments in lieu thereof payable to the State of Idaho or its political subdivisions.

4.2 Implementation. It is understood that each of the Parties to this Agreement may appoint an authorized representative to further the implementation and administration of this Agreement, and may act on behalf of the respective entity in any manner that is customarily delegated.

4.3 Exercise of Powers. All powers of the Parties shall be exercised pursuant to the terms of this Agreement, its bylaws, and any governing laws.

## ARTICLE 5

### Board of Directors

5.1 Creation of RAPID Fiberoptic Joint Powers Agreement and Board of Directors. Ratification of this Agreement hereby creates the RAPID Fiberoptic Joint Powers Agreement and its Board of Directors. The business and affairs of this Agreement, as well as the mutual operation and maintenance of the Network Infrastructure, shall be administered as herein provided by the Board of Directors.

5.2 Membership Voting. Each of the Parties shall have the right to appoint one member of the Board of Directors to preside at regular meetings and vote on any matters pertaining to the administration of this Agreement.

5.3 Budget and Finance. The manner of finance of a joint or cooperative undertaking and the establishment and maintenance of a budget therefore, are delegated to the Board of Directors.

5.4 Annual Meeting. The annual meeting of the Board of Directors shall be held on the first Friday in December of each year, beginning with the year 2022, at the hour of 1:30 p.m., or



at such other time within December as shall be fixed by the Board of Directors. A Chair and Secretary/Treasurer shall be elected each year at the Annual Meeting.

5.4.1. Annual Report by Valley County. At the annual meeting, Valley County, in coordination with other Parties, shall present and thereafter publish a report on the development trends in the surrounding area of the Network Infrastructure. This annual report, discussed further in Article 6, shall address the coordination of land use priorities, updates to Future Land Use Maps, and Network Infrastructure planning within the jurisdictions of the Parties. The annual report shall be published and made available to the public by January 31<sup>st</sup> of the next calendar year.

5.5 Regular Meetings. The Board of Directors shall conduct quarterly meetings at dates and times designated and approved during the Annual Meeting. A Quarterly Meeting may be combined with the Annual Meeting. At these meetings, the Board shall address issues pertinent to this agreement, the operation and maintenance of Network Infrastructure, coordination of land use and

5.6 Special Meetings. Any member of the Board of Directors may call a Special Meeting to conduct time-sensitive matters of the RAPID Fiberoptic Joint Powers Agreement when necessary to further the purposes of this Agreement. At least seventy-two (72) hours notice is required to call a meeting in the event of an emergency.

5.7 Notice of Meeting. Written notice stating the place, day, and hour of the meeting, as well as the purpose or purposes for which the meeting is called, shall be made in accordance with applicable laws including Idaho Open Meeting Law.

5.8 Quorum. A majority of the members of the Board of Directors shall constitute a quorum for any meeting by the Board of Directors.

5.9 Voting. As provided in Article 7, each of the Parties is entitled to one vote by the designated member of the Board of Directors.

5.10 Remote Attendance. For good cause, as determined by the chair, a member may attend any meeting remotely via telephone or video conference.



5.11 Vacancies. Any vacancy occurring in the Board of Directors shall be filled by the Party designating the member.

5.12 Duties of Chair. The member of the Board of Directors serving as Chair shall preside at all meetings of the Board of Directors. With authorization from the Board, the Chair may sign all contracts or other instruments on behalf of the Board of Directors and perform all other duties incidental or delegated by the Board of Directors.

5.13 Duties of Secretary-Treasurer. The Secretary-Treasurer shall:

5.13.1 The Secretary-Treasurer shall ensure the recording of all meetings and keep accurate minutes of the proceedings of the Board of Directors. After approval, the Secretary shall provide copies of the minutes to the parties.

5.13.2 The Secretary-Treasurer shall also ensure that notices are provided to all parties as required by the provisions of this Agreement and as required by law.

5.13.3 The Secretary-Treasurer shall act as the custodian of record for the Board of Directors and be responsible for all funds of the Board of Directors. The Secretary shall receive and give receipts for moneys due and payable to the Board of Directors and deposit all such moneys in the name of the Board of Directors with the State Treasurer or in such banks, trust companies, or other depositories as shall be selected by the Board of Directors.

5.13.4 The Secretary-Treasurer shall be bonded at all times in an amount set by the Board of Directors.

5.13.5 The Secretary-Treasurer shall act as a Vice Chair, should the Chair be absent during a meeting, and may perform other such duties as assigned by the Board of Directors.

## **ARTICLE 6**

### **Coordination and Reporting**

6.1 Annual Workshop. The effectiveness with which the Agreement is being implemented shall be considered at an annual joint workshop between the elected officials of the County and other parties. The staff representatives of each Party shall provide technical review



and recommendations regarding any need for change to the provisions of the Agreement. The workshop shall include an opportunity for public input and comment.

6.2 Quarterly Reporting. Each quarter, the Parties shall report the following to Valley County:

6.2.1 All land use permit approvals that include the installation of fiber to facilitate monitoring of progress.

6.2.2 The number of dwelling units which have received a certificate of occupancy, dwelling units projected to receive occupancy approval in the next three years, and the square footage of any approved non-residential space that will utilize the Network Infrastructure.

6.3 Annual Report by Valley County. Each year, Valley County shall compile the information from each Party and the annual workshop and publish that data into a report, in tabular, graphic, and textual formats. This report shall address the coordination of land use policies, Network Infrastructure planning, and provide the following information:

6.3.1 A breakdown of committed and existing demands for each city or county;

6.3.2 An analysis of the collective impacts of development approvals not subject to this Agreement;

6.3.3 An analysis of the impacts of committed demands on installed fiber;

6.3.4 An analysis of the projected impacts of any Future Land Use Map Amendments reported by the County or a municipality; and

6.3.5 A status report on efforts to refine modeling capabilities.

6.3.6 An Operational Plan that shall include a description of proposed amendments, projected demands, capacity, and levels of service provided.

6.4 The Parties will use the information received and reported to revise acceptable levels of service, as appropriate, to make the most efficient use of the Network Infrastructure.



## **ARTICLE 7**

### **Voting Rights of Parties**

7.1 Voting. Except as provided in Section 7.2, each Party shall be entitled to one vote for operational matters and changes to this agreement.

7.2 Voting Associated With Specific Projects. When a vote is required with respect to a Project, only those Parties participating in a given Project shall vote on matters pertaining to that Project. If a Project contains multiple Parties, each member voting with respect to that project shall have one vote. The City and County in which a Project is located shall always have the right to vote on Projects contained within their jurisdictions.

## **ARTICLE 8**

### **Responsibilities of Parties**

8.1 Right of Way and Easement Use Granted. Each Party hereby agrees to grant Right of Way and Easement Use approval to other Parties, any authorized service provider, any authorized service provider of a Party using the Network to provide services within that Party's boundary. By contract, each service provider shall be required to pay a Party any tax, franchise fee, or other charge that would be applicable to the provider if the provider had obtained a separate franchise and/or any Right of Way and Easement Use agreement from that Party and to abide by all requirements applicable to any existing franchise and Right of Way and Easement Use agreement providing the same high-speed data-transmission service.

8.2 Approval to Build Network. Each Party shall allow the construction and installation of the Network in its boundaries, including the granting of any necessary excavation permits. However, each Party agrees to abide by each Party's ordinances and shall require any contractor hired to install the Network to comply with applicable code and local ordinances. Each Party further agrees that it will not exercise its power of eminent domain against another Party's property in matters related to this Agreement without that Party's prior consent, which may be withheld in such Party's sole discretion.

8.3 Review by Attorney. Each Member warrants that this Agreement and subsequent agreements with subcontractors for services or facilities are approved by the Member's governing



body vested with executive power and reviewed by the attorney authorized to represent the Member.

8.4 Efficacy. The Parties agree and understand that the Agreement takes effect after the Agreement is executed by each respective Party.

## ARTICLE 9

### Financial Matters, Accounts and Records

9.1 Annual Budget. The Parties shall annually adopt an operating budget prepared by the Secretary-Treasurer.

9.2 Funds and Accounts. The Parties shall establish and maintain such funds and accounts as may be required by governmental accounting practices and the State's fiscal procedures laws. All financial records shall be open to inspection at all reasonable times by the Parties representatives and shall be open public records if so required by Idaho State law. The Secretary-Treasurer shall keep and maintain all financial records in cooperation with Valley County, which shall serve as the custodian of those records for any public records requests.

9.3 Financial Report. Within ninety (90) days after the close of each Fiscal Year, the Secretary-Treasurer shall provide the Parties with a written report of all financial activities for the immediate past Fiscal Year.

9.4 Annual Audit. The Parties shall provide for a certified annual audit of the accounts and records.

9.5 Disbursement of Funds. The Secretary/Treasurer shall have custody of and shall disburse funds. The Secretary/Treasurer shall have the authority to delegate the signatory function to such persons as are authorized and agreed upon by the Parties.

9.6 Bonds. A fidelity and treasurer's bond shall be required of all officers, agents, and personnel authorized to disburse funds. The cost of such bond shall be provided for in the annual budget.



## ARTICLE 10

### Dissolution

10.1 Outstanding Indebtedness. So long as there are any outstanding Bonds, the agreement cannot be terminated without the division of such bonds, *pro rata*, in an amount correlated to each Parties ownership of the Network Infrastructure.

10.2 Dissolution. If there are no outstanding Bonds, this Agreement may be terminated with two-thirds vote of the Parties.

10.3 Winding up. The Parties are vested with all powers necessary for the purpose of winding up and dissolving the business affairs.

10.4 Division of Assets. Upon dissolution and after payment in full of all outstanding Bonds and other obligations, the Parties shall equitably disburse the assets to the then current Parties. The disbursement shall be done according to the following principles:

10.4.1 Any outstanding agreements with service providers shall be honored.

10.4.2 To the extent possible, each municipal Party shall receive and maintain ownership of that portion of the Network Infrastructure located within its boundaries, at no additional cost to each Party. County Parties shall receive and maintain ownership of that portion of the Network Infrastructure located within the unincorporated county, at no additional cost to each Party.

10.4.3 After deducting costs, any cash or other assets jointly shared shall be disbursed, or interests deeded, *pro rata*, according to the revenue generated from each Party's jurisdiction.

## ARTICLE 11

### Miscellaneous Provisions

11.1 Confidentiality. The Parties shall take such steps as they deem necessary to protect and keep confidential appropriate information received or kept in accordance with law. Such information to be kept confidential includes personnel issues and matters handled by the Board of Directors within executive session in accordance with Idaho's Open Meeting Law.



11.2 Prohibition Against Assignment. No Party may assign any right, claim, or interest it may have under this Agreement; and no creditor, assignee, or third-party beneficiary of any Party shall have any right, claim, or title to any part of the Network Infrastructure share, interest, fund, or other asset.

11.3 Severability Clause. In the event that any article, provision, clause, or other part of this Agreement should be held invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability with respect to other articles, clauses, applications, or occurrences, and this Agreement is expressly declared to be severable.

11.4 Governing Law. This Agreement shall be governed according to the laws of the State of Idaho.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by authorized officials thereof on the date indicated on the signatory pages.



**Appendix A**

**Parties**



**Appendix B**

**Added Parties**



Appendix C

Authorized Signatories for Parties And Signatory Page

Valley County, by resolution of its legislative body adopted on  
3-21-22, 2021, approved the execution of the Joint Powers  
Agreement.

Elting G. Hasbrouck

Printed Name of Authorized Signatory

Elting G. Hasbrouck

Signature

Chairman

Title

ATTEST:

Gabrielle Knapp

Signature

Name: Gabrielle Knapp

Title: Chief Deputy Clerk

