

CITY OF ROCK SPRINGS, WYOMING

CITY OF GREEN RIVER, WYOMING

THIRD AMENDED AND RESTATED JOINT POWERS AGREEMENT

THIS THIRD AMENDED AND RESTATED JOINT POWERS AGREEMENT (herein, the "Agreement") is entered into on the \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the City of Rock Springs, Wyoming, a municipal corporation (hereinafter referred to as "Rock Springs"), and the City of Green River, Wyoming, a municipal corporation (hereinafter referred to as "Green River"), and Sweetwater County, Wyoming, a body corporate and politic of the State of Wyoming (hereinafter referred to as "Sweetwater County").

WITNESSETH

WHEREAS, pursuant to W.S. § 15-7-101 and W.S. § 1-26-805 and 806, the cities of Rock Springs, Wyoming and Green River, Wyoming, are authorized to own and operate a telecommunications system; and

WHEREAS, the parties hereto are "agencies" as defined in the Wyoming Joint Powers Act, W.S. § 16-1-101 et. seq. (hereinafter referred to as the "Act"). These entities are sometimes referred to herein as "participating agencies"; and

WHEREAS, Section 16-1-104(a) of the Act provides that any power, privilege or authority exercised or capable of being exercised by an agency may be exercised and jointly enjoyed with any other agency having a similar power, privilege or authority; and

WHEREAS, the Act authorizes Rock Springs,-Green River, and Sweetwater County to enter into an agreement to jointly plan, create, expand, finance and operate a fiber optics telecommunication system; and

WHEREAS, Rock Springs,-Green River, and Sweetwater County have agreed that the purchase, constructing, financing and operation of a fiber optics telecommunications system serving Rock Springs, Green River, and other areas in Sweetwater County, Wyoming, including fiber optics conduit, fiber optics lines or cables, fiber optics technical facilities, related real and personal property and associated rights, permits, certificates, and licenses (hereinafter referred to as the "System") would be of service to and be for the benefit of Rock Springs ,-Green River, and Sweetwater County and their respective residents; and

WHEREAS, each of the participating agencies realizes that a joint and cooperative effort in the financing of such System will result in substantial economic savings and may provide methods of financing unavailable to each participating agency operating independently; and

WHEREAS, to facilitate the financing, construction, and operation of such System, Rock Springs and Green River have previously entered into an Amended Joint Powers Agreement

dated June 22, 2001 (the "Original Agreement"). Rock Springs and Green River entered into the Second Amended and Restated Joint Powers Agreement on May 4, 2004; and

WHEREAS, Section 16-1-104(b) provides that a county may enter into and operate under a joint powers agreement with one (1) or more cities for the performance of any function that the cities are authorized to perform.

WHEREAS, Rock Springs, Green River, and Sweetwater County desire to reaffirm the creation and organization of the Joint Powers Board hereinafter described as provided in the Act and to amend and restate the Original Agreement to clarify the powers, responsibilities and administration of the Joint Powers Board:

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreement contained herein, Rock Springs, Green River, and Sweetwater County enter into this Agreement as follows:

## SECTION ONE

### PURPOSE

The purpose of this Agreement is to amend and restate the Original Agreement to provide an efficient, orderly, and economically feasible method of purchasing, constructing, financing and operating the System which will be of service to and be for the benefit of Rock Springs, Green River, Sweetwater County and their respective residents.

## SECTION TWO

### DURATION OF THE AGREEMENT

This Agreement and the Joint Powers Board shall be of perpetual duration; however, this Agreement and the Joint Powers Board may be terminated and dissolved by action of all participating agencies.

## SECTION THREE

### CREATION, ORGANIZATION AND COMPOSITION OF JOINT POWERS BOARD

There is hereby created, pursuant to W.S. § 16-1-106 of the Act, the City of Rock Springs, Wyoming - the City of Green River, Wyoming - Sweetwater County - Fiber Optics Telecommunication Cooperative Joint Powers Board, (hereinafter referred to as "Joint Powers Board"), which is a separate legal entity, a separate body corporate and politic and a public corporation.

1. The Joint Powers Board shall consist of nine (9) members, all of whom shall be qualified electors of Sweetwater County: three (3) members of the Board shall be residents of

Rock Springs, three (3) members shall be residents of Green River, and three (3) members shall be residents of Sweetwater County.

2. The governing body of Rock Springs shall appoint three (3) members to the Joint Powers Board, at least one (1) of whom shall be a member of the governing body of Rock Springs. The governing body of Green River shall appoint three (3) members to the Joint Powers Board, at least one (1) of whom shall be a member of the governing body of Green River. The Board of County Commissioners shall appoint three (3) members to the Joint Powers Board, at least one (1) of whom shall be a member of the Board of County Commissioners. A member of the Joint Powers Board may be removed at any time at the discretion of and by the governing body of the participating agency that appointed such member. Joint Powers Board appointments shall be limited to no more than two (2) consecutive terms. The initial appointments made by the governing body of the participating agencies shall be for staggered terms with each appointing one (1) member for a three (3) year term, one (1) member for a two (2) year term and one (1) member for a one (1) year term. Thereafter all appointments made by the governing body of each participating agency respectively shall be for a period of three (3) years or until the termination of this Agreement.

All vacancy appointments shall be made by the governing body of the participating agency which made the appointment of the retiring member. In the event a vacancy occurs prior to the expiration of the retiring member's term, the successor shall be appointed for the unexpired portion of the retiring member's term.

3. Members of the governing bodies of the participating agencies shall be permitted to serve as ex officio non-voting members of the Joint Powers Board.

4. Each participating agency may appoint an administrative official to attend the Joint Powers Board meetings.

5. Each voting member of the Board shall have one vote. Board business of a routine nature shall be conducted by simple majority vote of those members present, provided; each participating agency is represented by at least one voting member, and further provided that there is a quorum of the Joint Powers Board. A quorum constitutes not less than five (5) voting members of the Joint Powers Board.

6. At the organization meeting the Board shall elect from its membership a Chairman, Vice-Chairman, Secretary, and Treasurer. The Secretary of the Joint Powers Board shall notify the participating agencies of the Joint Powers Board's organization and shall file a certificate showing its organization with the County Clerk of Sweetwater County and the Secretary of State of Wyoming.

7. The Joint Powers Board shall meet no less than once every three months.

8. No individual member of the Joint Powers Board shall be personally liable for any action or procedure of the Joint Powers Board.

9. The Joint Powers Board shall meet as follows: at the call of the chairman, upon oral or written request of a majority of the Joint Powers Board voting members, or upon the

request of a participating agency. If a participating agency requests a meeting of the Joint Powers Board, the meeting shall be set within five (5) business days of the request.

10. Meetings are to be advertised and open to the public, unless closure is authorized under pertinent Wyoming statutes.

## SECTION FOUR

### POWERS AND DUTIES OF THE JOINT POWERS BOARD

1. The Joint Powers Board may employ technical, legal, administrative and clerical assistance as necessary, and engage the services of research and consulting agencies within the limits of its authorized and available funds, as may be agreed upon from time to time.

2. The Joint Powers Board shall adopt such policies, by-laws, and regulations, not inconsistent with this Agreement or the Act as it deems necessary to carry out the business of the Joint Powers Board.

3. The Joint Powers Board shall:

(a) Keep minutes of all meetings during which official action is taken, and shall maintain financial records. Such minutes and records shall be public records. Copies of all minutes will be forwarded to the governing bodies of the participating agencies.

(b) Fix the time and place of regular meetings; provided, that a regular meeting shall be held at least once each three (3) months.

(c) Cooperate with and solicit the advice, counsel, and recommendations of the governing body of Rock Springs, the governing body of Green River, and the governing body of Sweetwater County.

(d) Report in writing annually to each participating agency.

(e) Promulgate rules in accordance with the Wyoming Administrative Procedure Act, W.S. § 16-3-101 et. seq.

4. The Joint Powers Board may:

(a) Sue and be sued in the name in which the Joint Powers Board is designated.

~~(b) — Exercise its power of eminent domain as provided in Section Five to accomplish the purposes for which the Joint Powers Board has been created.~~

(b) Incur expenses suitable for the operation of the System including, but not limited to, personnel salaries and benefits, operating and maintenance expenses, insurance, litigation expenses and professional services, as well as fees for the establishment of a capital contingency or fiber optics line modification fund.

(c) Acquire, hold, convey, lease, rent, and manage property, real and personal, for its benefit and the benefit of the participating agencies, either alone or jointly with public or private agencies, institutions, persons, or corporations.

(d) Enter into agreements with any public or private agency, institution, person, or corporation for the performance of acts or furnishing of services or facilities for the Joint Powers Board or participating agencies.

(e) Employ legal counsel and bear the cost of litigation.

(f) Accept or reject any federal, state or private gift, grant, bequest or devise, money, property or services.

(g) Utilize the services of any officer or employee of the participating agencies, with the approval of the governing bodies of the said agencies.

(h) Insure against loss of property, and obtain and hold liability insurance as necessary to protect the capital plant, employees and Board.

(i) Employ administrative personnel and the necessary workforce to operate the System in an appropriate, professional manner and assure continued training and adequate staffing levels. Salaries, wages and/or benefits of personnel employed by the Board shall be maintained comparable to the compensation and benefit received by similarly-skilled employee classifications in Rock Springs, Green River, and Sweetwater County.

(j) Employ such other persons as may be necessary to carry out the purposes of this Agreement.

(k) Additionally, the Joint Powers Board shall have all other powers and duties enumerated in or reasonably implied from the Joint Powers Act and other statutes of the State of Wyoming.

## SECTION FIVE

### FINANCING

The Joint Powers Board may formulate any plan or plans for the financing, purchase and maintenance of the System as it may deem appropriate. The Board may solicit and obtain funds from any of the following sources:

(a) the contribution of funds from one (1) or more of the participating agencies, which would be available to each agency if proceeding individually;

(b) gifts, donations or grants of private and federal money;

(c) loans and/or grants from the State of Wyoming; and

(d) by facilities privately owned and leased to two or more agencies or a joint powers board if the lease agreement provides that upon termination of the lease agreement title to the facilities vests in the participating agencies (W.S. §16-1-107(a)iv); and

(e) the issuance by the Board of its revenue bonds under the authority of W.S. § 16-1-107(a)(iii) of the Act, to be repaid solely from the foregoing sources of funds or any revenue received by the Board from the ownership, lease or operation of property or an interest in property owned, leased or controlled by the Joint Powers Board. The resolution authorizing the issuance of said revenue bonds and each revenue bond issued thereunder shall contain a recital that the bonds do not constitute a general obligation of the Joint Powers Board or of any of the participating agencies, but shall be payable solely from a special fund to contain the revenues to be derived from the ownership, operation, renting or leasing of the System, and, further, that the lien of the pledge of the revenues constitutes a first lien, but not necessarily an exclusive first lien, on said revenues, and further that the System to be funded by the proceeds of the bonds will be pledged, if necessary, as additional security for the payment of the bonds. Any bonds issued by the Joint Powers Board on behalf of the participating agencies shall be issued for the public purpose generally described in Section One.

(f) Each participating agency will be entitled to 33 and 1/3% of the services or product of the Joint Powers Board, unless otherwise agreed to by an amendment to this Agreement.

## SECTION SIX

### LEASE OR OWNERSHIP OF SYSTEM

The Joint Powers Board may finance all or a portion of the System by entering into a lease/purchase agreement or agreements with the owner of the System, wherein title to the System will be transferred to the Joint Powers Board upon completion of the lease term. If the owners of the system are the participating agencies, then in the event of termination of the lease, title to the facilities shall vest in the participating agencies. In the alternative, ownership of the System, and all property, whether real or personal, tangible or intangible, including all contract rights in connection therewith, and any improvements to be made thereto may be held by the Joint Powers Board and will not be further set over or alienated in any manner while bonds or any other obligations of the Joint Powers Board issued in connection therewith are outstanding, except as security for the payment of the principal of, premium (if any), and interest on, such revenue bonds.

The participating agencies shall transfer their respective interest in the System —to the Joint Powers Board. Such transfer shall be subject to the terms of this Agreement.

## SECTION SEVEN

### OPERATION AND MAINTENANCE AND BUDGET OF PROJECT

The Joint Powers Board shall be solely responsible for the complete and full operation and maintenance of the System, including but not limited to the payment of all, if any, required taxes, payments in lieu of taxes, assessments, insurance premiums and utilities. The Board shall be responsible for establishing and maintaining an annual budget for the. Such budget shall be made and approved by the Board prior to May 1st of each year. Such budget shall reflect the overall operational costs of the System and the expected revenues to be derived from the System. It is specifically understood and agreed that any revenues derived from the System which exceed the total operational costs of the System including financing and operating reserves, may be committed and paid to the participating agencies in equal amounts as part of the budgeting process.

## SECTION EIGHT

### GENERAL REPRESENTATIONS, WARRANTIES AND COVENANTS

(a) Each participating agency covenants that this Agreement shall be filed with its keeper of records.

(b) Each participating agency represents and warrants that it is a political subdivision of the State of Wyoming and is authorized to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder.

(c) Each participating agency represents and warrants that there is no litigation or legal or governmental action, proceeding, inquiry or investigation pending or threatened to which said participating agency, as applicable, is a party or to which any of its property is subject which if determined adversely to said participating agency, would individually or in the aggregate (i) affect the validity or the enforceability of this Agreement, or (ii) otherwise materially adversely affect the ability of the said participating agency to comply with its obligations under this Agreement or the transactions contemplated by this Agreement.

## SECTION NINE

### COMMITMENTS BY PARTICIPATING AGENCIES

To facilitate the financing of the System, each participating agency may enter into a lease or other financing arrangement with the Joint Powers Board with respect to the operation and utilization of said System. Although a participating agency shall not be legally bound beyond its current fiscal year for payments to be made to the Joint Powers Board with respect to the operation and utilization of physical facilities, it nonetheless may fund its annually renewable obligations to the Joint Powers Board from any legally available moneys. In addition, each participating agency may enter into such contracts and agreements

as shall be required to provide for the operation, maintenance, and repair of the System and may secure any bonds issued by the Joint Powers Board by its interest in such physical facilities.

## SECTION TEN

### TERMINATION, DISSOLUTION AND DISTRIBUTION

1. Membership Termination: In the event one of the entities wishes to terminate its membership on the Joint Powers Board, it may do so with the following provisions:

a. The terminating entity may choose to be reimbursed their initial contribution less any reimbursement received and one third of the financial obligations or:

b. The terminating entity may, in recognition of the importance of continuation of the system, forego reimbursement and maintain its claim on the total assets and after payment of all outstanding financial obligations at the time of complete dissolution of the Joint Powers Board.

c. The terminating entity upon termination is no longer considered a participating entity and therefore loses all privileges of membership.

2. Agreement Termination: The Joint Powers Board shall be in existence for a perpetual period from the date hereof unless terminated by action of the Governing Bodies of the participating agencies in accordance with Section Two.

a. Upon notice of termination of this Agreement, the Joint Powers Board shall provide for the payment of all outstanding financial obligations of the Board and shall take the steps it deems appropriate for its orderly dissolution. Should termination take place within ten (10) years of the execution of this agreement the Board shall distribute to Rock Springs and Green River, in equal proportions the ownership of all property held by it whether real or personal, tangible or intangible If Sweetwater County contributes \$300,000.00 in actual or grant funds within ten (10) years and termination takes place within ten (10) years, distribution will be equal for all participating agencies. If termination takes place after ten (10) years, the Board shall distribute to all participating agencies regardless of past contributions. Upon termination each participating agency retains an equal right to purchase the assets of the other agencies.

3. This Agreement may be executed in several counterparts, any one of which shall be regarded for all purposes as one original. Each participating agency agrees that it will execute any and all deeds, instruments, documents and resolutions or ordinances necessary to give effect to the terms of this Agreement.

4. This Agreement merges and supersedes all prior negotiations, representations and agreements between the participating agencies relating to the subject matter hereof and constitutes the entire contract between the participating agencies concerning the



formation and powers of the Joint Powers Board. It is the intent and purpose of this Agreement to memorialize and reaffirm the formation and powers exercised by the Joint Powers Board.

5. This Agreement shall not be modified or amended except in writing, which shall be signed by the duly authorized representative of the participating agencies after the adoption of a resolution by the governing board of each participating agency approving the modification or amendment, provided, however, that if the Joint Powers Board has bonds outstanding, no amendment to this Agreement may be made which would have a material adverse impact on the bondholders without the prior consent of said bondholders.

~~(e) — The prevailing party in any litigation to interpret and/or enforce the provisions of this Agreement shall be entitled to an award of reasonable attorney's fees and costs, in addition to other available relief. Other than is expressly provided in this Agreement, no breach of this Agreement shall entitle any party to unilaterally cancel, rescind or terminate this Agreement; but such limitations shall not affect in any manner any other rights or remedies which either party may have by reason of any such breach.~~

## SECTION ELEVEN

### SEVERABILITY

The terms, provisions and conditions of this Agreement are severable. If any term or provision of this Agreement or its application to any person or circumstance is determined by a court of proper jurisdiction to be invalid, such invalidity shall be limited to such person, circumstance, term or provision and shall not affect other persons, circumstances, terms or provisions which can be given effect without the invalid provisions or application.

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*Signature page to follow*

This Agreement was duly adopted and authorized by the governing body of Rock Springs on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by the governing body of Green River on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, and by the governing body of Sweetwater County on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(S E A L)

ATTESTED:

CITY OF ROCK SPRINGS, WYOMING

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

(S E A L)

ATTESTED:

CITY OF GREEN RIVER, WYOMING

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

(S E A L)

ATTESTED:

BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
County Clerk

\_\_\_\_\_  
Chairman

This Amended Joint Powers Agreement has been approved because it is compatible with the laws and constitution of Wyoming, as is required by W.S. § S16-1-104(a)(ii). In approving this Second Amended and Restated Joint Powers Agreement, the Attorney General does not approve nor disapprove of any specific plan for financing of the program.

Approved this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

STATE OF WYOMING

\_\_\_\_\_  
Attorney General