

# Imagine Idaho Playbook

## Purpose of Playbook and Opportunity

### Foreward

Imagine Idaho Foundation is a 501(c)(3) non-profit organization established in August 2020 to serve Idaho communities and citizens with education and assistance to *deploy broadband-communications infrastructure in a pro-competitive way for rural Idaho*. Since its formal launch in 2020, a coalition of over 50 Idaho business, community, philanthropic and policy leaders have been working to fix Idaho's broadband infrastructure issue and prepare the way for federal and state broadband infrastructure funding to be accessible and flexible for communities in need. Please visit our [WEBSITE](#) to learn more.

Today, Idaho's rural areas are experiencing a huge internet access problem. Our State stands 39<sup>th</sup> among all states for internet connectivity, access and affordability. 379,000 of the 1.75 million Idahoans who live in our state have no access to cable service. Only 297,500 Idahoans have access to fiber optic networks. Worse yet, 107,000 Idahoans don't have any wired internet providers where they live.

The COVID-19 pandemic has magnified the connectivity gap and underscores the need for affordable, high-speed broadband throughout our state, particularly in our rural areas for families, businesses and public entities. Distance learning, telemedicine, precision agriculture, and commercial activity in our small towns all require the benefits of high-speed broadband. In order for Idaho residents to learn, work, and live in a 21<sup>st</sup> century world, all Idahoans need reliable internet access. This Playbook for Idaho Broadband is designed to be your first step into thinking through how to best meet the needs of your own community. We will continue to add case studies and other helpful information as Idaho builds out projects throughout the state.

### Opportunity

On March 11, 2021, President Biden signed into law the American Rescue Plan (ARP), a \$1.88 trillion package that includes enormous investments in broadband connectivity. There are many categories of funding that our state can utilize for broadband infrastructure, but the largest program category for Idaho is the **State and Local Coronavirus Fiscal Recovery Fund**. This fund will arrive in Idaho as early as May 2021 and be direct grants to Idaho cities and counties.

Idaho's share:

- State receives: \$1.19 billion total
- Of that:
  - Counties receive: \$346,590,252 for 44 Counties
  - Cities receive: \$233,088,607
    - includes entitlement cities (\$125,147,799)
    - non-entitlement (\$107,940,808)

Further, Congress is considering an unprecedented scale of broadband funding with as much as \$100 billion for inclusion in forthcoming infrastructure legislation in 2021 – a portion for which Idaho will qualify and provide for additional resources to modernize our communities small and large.

On the state level, Governor Little signed into law a new Idaho Broadband Advisory Board (IBAB) and a state broadband fund including \$45 million in one-time state funding to the Department of Commerce, \$10 million which is held over resources from federal CARES Act funding and will be competed for in June 2021.

The board and this fund will be focused on the high-need projects in the state. This funding is on top of the federal funding coming to Idaho and will be managed by a Governor-appointed board. Imagine Idaho will be working closely with the IBAB to ensure projects are as flexible as possible and meet the highest need communities first.

**IBAB Membership includes:**

Board Chairmen Representative John Vander Woude

Board Vice Chairman Senator Carl Crabtree

Representative Megan Blanksma

Representative Barbara Ehardt

Senator David Nelson

Senator Doug Ricks

Margie Watson - JC Watson & Company

Andy Emerson - MH Solutions

Mitch Watkins - Watkins Distributing

For more information on the Board click [HERE](#).

**Imagine Idaho Playbook**

The Imagine Idaho Playbook is a framework for local governmental entities to begin and work through their planning and design process. With the enormous amount of federal funding coming for broadband, Idaho municipalities, counties, school districts and other government entities have the responsibility to begin a formalized planning process to build and improve their connectivity infrastructure. Fortunately for Idaho, there have been many cities, economic development regions, and other state organizations that have developed and executed their own broadband plans and have the experience to support others in this effort.

Imagine Idaho has developed a playbook of the key options for planning, funding and executing your infrastructure. Further, we have a network of experts, engineers and internet providers who are eager and willing to get the job done.

This playbook is intentionally electronic as we will be adding new options and resources on a regular basis. We are calling on leaders throughout the state to contribute to the Playbook so that we have the best experts, ideas and lessons learned.

We will start with covering the following four areas of importance: (draft list)

- Publicly owned broadband for municipal-owned services
- Public – Private partnerships – partnering with companies to get the job done
- Judicial Confirmation - necessary to go beyond public services
- Local Improvement Districts

To seek support and potential financial assistance to build your broadband plan, contact Christina Culver, Team Lead for Imagine Idaho Foundation, [christina@ednexusadvisors.com](mailto:christina@ednexusadvisors.com)

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## American Rescue Plan – COVID Relief Federal Infrastructure Funding

### What are COVID relief and federal infrastructure funding and how can it be used?

**American Rescue Plan Act of 2021:** The Act provides \$220 billion to states, territories and Tribal governments, \$130 billion to local governments. Subsection (D) states that the funds may be used “to make necessary investments in water, sewer, or **broadband infrastructure.**” How those funds are to be allocated among the various states and units of local governments is prescribed in detail in the Act. Importantly, while distributed funds may only be used for certain purposes, ***this is not a grant program where a state or local government must describe and apply for funds to support a particular project.*** In general, ***distribution will be of a prescribed amount and is essentially automatic.*** The funds need to be expended by December 31, 2024. The Act also specifically ***allows the funds to be transferred to a private nonprofit organization or special-purpose unit of state or local government.*** These funds represent the easiest and most direct path for local governments to allocate funds for broadband infrastructure capital improvement projects.

### Other funding opportunities included in the ACT

**Coronavirus Capital Projects Fund:** \$10 billion to states, territories, and Tribal governments (not local governments) “to carry out critical capital projects directly enabling work, education, and health monitoring, including remote options, in response to the public health emergency” could include broadband-related projects.

**Economic Development Administration Appropriation:** Provides \$3 billion to EDA making broadband projects in economically distressed communities eligible for funding under the Public Works and Economic Adjustment Assistance programs.

**Homeowners Assistance Fund:** \$10 billion for a “Homeowners Assistance Fund” that states can use for payment assistance including “internet service” until September 30, 2025.

### Additional funding opportunities

**Consolidated Appropriations Act:** Intended to alleviate the economic and other challenges created by the pandemic, funds will be distributed quickly once the rules are released.

**Emergency Broadband Benefit Program:** FCC to administer \$3.2 billion in broadband service subsidies for eligible households.

**Connecting Minority Communities Pilot Program:** NTIA to administer a \$285 million grant program to fund broadband services and equipment for minority-serving institutions and their surrounding communities.

**Promote Broadband Expansion Grant Program:** NTIA to administer this \$300 million grant program for broadband infrastructure, with a focus on public-private partnerships and rural project proposals. (Only unserved or underserved areas are eligible. Some match typically required.)

**Tribal Broadband Connectivity Program:** NTIA to administer this \$1 billion program for tribal broadband infrastructure and expanded access to remote learning, telework, and telehealth resources.

**Secure and Trusted Communications Network Reimbursement Program:** Allocates \$1.9 billion for the removal and replacement of communications equipment obtained from a company that poses a national security threat to the country.

### **Advantages, disadvantages, and benefits of ARPA**

**Advantages:** Virtually direct, automatic funding for broadband infrastructure with almost 4 years to complete a project.

**Disadvantages:** None with a sustainability plan.

**Benefits:** Funds to create local broadband local governmental use, anchor institutions and potentially service providers, businesses and residential properties. (Local broadband or fiber optic utility creation)

### **Legal considerations**

There is no prohibition against any unit of government financing, construction or operating broadband or fiber optic infrastructure for its own use.

Dark fiber leasing represents the lowest legal risk, but also represents the lowest benefit to the community and will not scale well.

Joint Powers Agreements provide a legal tool to allow public entities or anchor institutions to share in the infrastructure and operational costs. This is strongly encouraged, particularly for rural or smaller units of government.

Public Private Partnerships can provide a legally acceptable tool to extend infrastructure and provide services to private properties.

Judicial confirmation can be used to mitigate legal risks for specific models.

### **Financial considerations**

Establishing a sustainable operational framework is critical in order to maintain and operate the infrastructure.

Regional strategies created through JPAs will result in superior economic performance. The highest cost for broadband improvement is the capital improvement cost associated with the labor to install the infrastructure. Infrastructure lifespan and operational costs should drive media selection and design remembering that these funds are likely a one-time opportunity.

### **Technical considerations**

The ability to separate infrastructure from service both economically and technically is essential.

Priority should be given to technologies that provide clear separation and simplify operations.

**Lesson Learned**

The internet has already separated infrastructure from service, public entities should follow models that maintain operational sustainability without relying on specific services or providers.

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## **Dark Fiber Lease Option to Leverage Your Infrastructure Investment**

### **What is a dark fiber lease?**

Dark fiber describes an operational model where fiber cables are installed and maintained by one entity, while a separate entity provides the electronics required to light the fiber and actually activate the networks. In this model, the fiber infrastructure owner will 'lease' individual unlit fiber strands to a commercial operator or service provider. This effectively shifts the active component and operational costs, and responsibilities to the commercial provider leasing the strands. Using this model, public entities can maintain ownership of the actual fiber infrastructure without the burden of service maintenance and operation.

### **Advantages, disadvantages, and benefits**

The dark fiber model is a low-risk, low-reward solution for public entities that only want to install the core fiber infrastructure. The primary advantage of this approach is reduced costs and minimal risk. The public entity that owns the fiber infrastructure is not actually able to directly influence services, costs or competition, but can offer competitive lease rates to providers in an effort to improve services, costs and competition.

The dark fiber model does not scale well. Although less costly to communities, dark networks still require fiber strands from end to end for each competing provider, requiring multiple redundant fibers throughout the system to support competition. Once the fiber capacity has been reached additional providers may not be introduced into the system. The most successful public dark fiber models have only successfully created duopolies. Huntsville, Alabama represents the most well-known dark fiber model in the US and has only been able to attract a single provider since its inception. That provider is Google and since their partnership with the city, no other providers have entered the market.

### **Legal considerations**

There is virtually no legal risk for a public entity leasing dark fiber assuming that the leased infrastructure is excess and not funded or financially supported inappropriately through an enterprise fund.

### **Financial considerations**

Historically, dark fiber being offered to commercial operators through a lease have been strands in excess of what was required for the entity's internal operations. However, direct funding through grants or other programs could be used to create the necessary infrastructure. Operational costs are lower as the owner is only responsible for maintaining the physical infrastructure.

### **Technical considerations**

The technical requirements for a dark fiber model are the lowest of any ownership model as the skillsets required would only include fiber cable locating and repair, which can often be outsourced.

### **Lesson learned**

A dark fiber model represents a low-risk, low-reward option for public entities. However, public entities who started with a dark fiber model have found that changing to an open access lit transport model can be challenging and disruptive to their current dark fiber providers. Public entities who desire to start with a dark fiber model and move to a lit transport model over time should create a strategic plan to accommodate this shift.

It should be noted as well that all of the electronic components that actually create the network and provide the services are not just owned by the commercial providers, but also typically located in private properties scattered throughout the serving area. This requires that a large percentage of the dark fiber asset owned by the public entity be run and terminated in private properties. For this reason, redirecting these fibers to serve an open access lit model often requires a redesign and forklift upgrade of the infrastructure.

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## Local Improvement District Option: Bringing Broadband Infrastructure to the Home

### What is a Local Improvement District?

A local improvement district (“LID”) is a financing model that allows a set group of property owners to pay for construction costs of upgrading or improving utilities or infrastructure in their neighborhood, such as broadband. The legal authority for an LID comes from Idaho Code Sec. 50-1701 *et seq.* (the “LID Act”).

Under the LID Act, an LID is created when the “governing body of a municipality” creates an improvement district “within the municipality” for “purposes of making and paying for all or a part of the cost of any such improvements.” Idaho Code § 50-1703(b). Once created, the municipality may levy assessments on the property within such LID which is benefited by the making of the improvements and finance the improvements through warrants or local improvement bonds. Idaho Code § 50-1703(b). Assessments may be prepaid or paid in annual installments over time, and, if paid over time, shall bear interest—typically at relatively low rates.

An example of a city that has used an LID to fund broadband infrastructure is Ammon, Idaho. Ammon utilizes what is called an “opt-in LID” for broadband deployment to residences. Typically, an LID may be used for infrastructure that affects all neighbors in a set area, such as for the installation of sidewalks. But with the opt-in model used by Ammon, residents in a subdivision could “opt-in” to receive broadband infrastructure to their home. This means that those residents who requested the broadband would help to pay for the cost of the LID, while those who declined the broadband connection would not be required to pay.

Due to the complexities involved in creating an LID, it is highly recommended that municipalities seeking to do so engage competent legal and financial advice to assist in the planning and preparation process. A detailed description of the LID formation, assessment and bonding processes are provided below.

### Formation of an LID

A “municipality” is defined by the LID Act as counties, water and/or sewer districts, highway districts, and cities. Idaho Code § 50-1702(a). A “council” is defined as the board of county commissioners, board of directors of water and/or sewer districts, the board of highway commissioners of any highway district, the mayor and council of all incorporated municipalities. Idaho Code § 50-1702(c). Any of these entities can create an LID.

Organization of an LID is initiated upon either (i) the submission of a petition describing the boundaries of a proposed district, the properties to be assessed, and the improvements to be made, signed by not less than sixty percent (60%) of the resident owners<sup>1</sup> or two-thirds (2/3)

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<sup>1</sup> “Resident owner” includes the owner of property within, and who resides in a dwelling house situated in whole or in part within the limits of an LID, or a proposed LID; as well as a corporation,

of the owners of property subject to assessment within such proposed improvement district, or (ii) by resolution adopted by the affirmative vote of a majority of the members of the council where the LID is located. Idaho Code § 50-1706. Where the LID is initiated by petition, the petitioners may also authorize the council to charge the petitioners a reasonable fee for the council to retain outside advisors to assist the council in assessing the proposed LID. *Idaho Code* § 50-1706A.

Upon initiation of the LID by council action, the council must adopt a resolution giving notice of its intention to create the LID, its intention to make the improvements, and its intention to levy assessments to pay all or a part of such improvements. Idaho Code § 50-1707. This notice must contain (i) a description of the boundaries of the LID and the property to be assessed, sufficient to inform the property owners that their property is to be assessed; (ii) a general description of the improvements contemplated, together with an estimate of the total cost and expenses of the same, and a statement of the percentage or other calculation of the total cost and expenses of the improvements which will be paid from a levy of assessments on property benefited and the percentage or calculation of the total costs and expenses which will be paid from the general funds of the municipality or from such other source specified in the notice; (iii) a description of the assessment method, including a statement that the costs and expenses of the improvements will be assessed against the lots and lands specially benefited by such improvements (except as provided in a modified LID), and included in the district to be created according to a front foot method, or a square foot method, or a combination thereof, in proportion to the benefits derived to such property by said improvements, or by another method agreed to by all property owners to be assessed, and the council shall state the method so determined in said notice; (iv) if a modified LID, a statement that the district is to be a modified LID and the boundaries of the modified LID; and finally (v) a statement of the time within which and place at which protests shall be filed, and the time and place where the council will conduct a public hearing to consider such protests. Idaho Code § 50-1707.

The notice of hearing must be published in the official newspaper of the municipality in three consecutive issues if a daily newspaper or two consecutive issues if a weekly newspaper. Idaho Code § 50-1708. A copy of such notice must also be mailed to each owner of property, if known, within the limits of the proposed LID. *Id.* Ownership of the property is determined as of the date of the adoption of the resolution of intent to create the LID. *Id.* The public hearing shall take place not less than 10 days from the date of the first publication or posting date of the first mailing, whichever is later. *Id.* Any owner of property to be assessed in the proposed LID has the right to file a written protest to the LID's creation or make any other objections relating to the proposed LID. Idaho Code § 50-1709. The council must consider all protests which have been filed in writing in an open and public hearing at the time and place set forth in

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joint stock association, partnership, individual proprietor or other form of business enterprise owning real property, and having its principal place of business, within any such district or proposed district. Idaho Code § 50-1702(g). Thus, "resident owner" includes both residential and commercial property owners.

the notice. If owners of more than two-thirds (2/3) of the property to be assessed protest any of the proposed improvements which affect their property, the council shall not proceed further with the work unless a majority of the full council votes to proceed. Idaho Code § 50-1709.

After the hearing, the council may pass an ordinance allowing for the improvements and creating the LID if the council finds that (i) the LID will be for the best interest of the municipality and of the property affected, (ii) there is reasonable probability that the obligations of such district will be paid, and (iii) that the value of the property within the proposed district, including the proposed improvements, is sufficient (the "LID Ordinance"). Idaho Code § 50-1710. The ordinance should be titled "Local Improvement District No. \_\_\_ for \_\_\_\_\_, Idaho." *Id.* The LID Ordinance shall include all of the property within the LID in accordance with the findings of the council, shall set forth the boundaries of the LID, provide the improvements which shall be made, and state that the total cost and expenses which shall be assessed on all benefited property in the district by using the method of assessment contemplated in the notice, subject to variation as a result of the council's determination that the benefits to be derived by certain lots or parcels of property warrant such variations. *Id.*

When the council enacts the LID Ordinance, the council must then engage in a public bidding process for construction of the Project in accordance with Idaho Code Section 50-1710. Accordingly, the council shall authorize the advertisement for bids and give notice calling for sealed bids for the construction of the project. This notice shall be published for three consecutive weekly issues and contain a general description of the kind and amount of work to be done, state that the plans and specifications for said Project are on file in the office of the engineer or clerk for inspection, and state the date, hour, time and place of the bid opening. Idaho Code § 50-1710. The council must award the Project to the lowest responsible bidder fulfilling the requirements outlined in Section 50-1710. The council must contract for any acquisition, purchase, or construction in the name of the municipality upon such terms of payment fixed by the council. *Id.* The council may authorize such a contract by resolution empowering the authorized officer of the municipality to execute the contract. *Id.* If the municipality elects to exercise these powers jointly with any other public agency or agencies as authorized by the provisions of Section 67-2328, Idaho Code, the improvements as contemplated within the LID may be constructed jointly and as part of a larger project with such other agency or agencies upon the letting of a single contract after compliance with the required bidding procedure for any public agency jointly participating in the work. *Id. See also* Idaho Code § 67-2328.

### **Procedure for Making Assessments**

After the contract is awarded and at such time as the council may determine, the engineer shall prepare a duly certified report to the council showing the total costs and expenses of the improvement in detail, along with the dollar amounts payable from assessments and other sources. Idaho Code § 50-1712. The report shall also contain a form of assessment roll showing the amount chargeable to each lot or parcel according to the method

of assessment originally contemplated by the council. The method of assessment may be varied as a result of the engineer's recommendation that benefits to be received by any lot or parcel warrant such deviation. *Id.* The engineer must draw the council's attention to any such variations and provide reasons for the variations in the report. *Id.* Once the council receives this report, it shall file the assessment roll in the clerk's office, where it is available for public inspection. *Id.* The council must consider the assessment roll at a public hearing, and shall provide notice of the time and place where it will meet in open session to consider the report and assessment roll and hear all objections. The first notice must be at least fifteen days before the date fixed for hearing objections on the assessment roll. Idaho Code § 50-1713. The clerk must also mail a copy of the notice to property owners within the LID no fewer than fifteen days before the date fixed for the hearing. This mailed notice must state the amount of the individual assessment, the time and place of the hearing, and the amount levied on the particular lots or parcels in relation to the benefits accruing thereon and in relation to the proper proportionate share of the total cost of the improvements in the project. *Id.* It shall further state that the council may increase any assessment up to twenty percent (20%) of the original amount without further notice and without holding a new hearing. *Id.*

The council shall then hold the hearing, considering the engineer's report, the assessment roll, and all objections which have been filed by any party interested as to the regularity of the proceedings in making the assessment, the correctness of such assessment, and the amount levied on any particular piece of property or parcel of land, including the benefits accruing thereon and the property's proportionate share of the total cost of the improvements and to the inclusion of any lot or parcel within the LID. Idaho Code § 50-1714. The council has the power to correct or set aside the assessment, or to exclude any lot or parcel of land which, in its judgment, will not be benefited by improvements. *Id.* After the hearing, the council shall pass an ordinance confirming the assessment roll as corrected by them in relation to the benefits accruing on the lots or parcels as a result of the improvements (the "Assessment Ordinance"). Idaho Code § 50-1715. The Assessment Ordinance is the final determination of the regularity, validity, and correctness of the assessment roll, each assessment contained therein, and the amount levied on each lot and parcel of land. *Id.* The Assessment Ordinance must contain a finding that each lot or parcel of land is benefited to the amount of assessment levied thereon subject to appeal as provided in the LID Act. *Id.*

Upon passage of the Assessment Ordinance, the clerk of the municipality shall certify and file the confirmed assessment roll and shall file with the county recorder a notice which contains the date of the Assessment Ordinance and a description of the area or boundaries of the LID. The confirmed assessment roll and the assessments made thereby are a lien upon the property assessed from and after the date the notice of the confirmed assessment roll is recorded with the county recorder. Idaho Code § 50-1715. The treasurer of the municipality must also mail a postcard or letter to each property owner assessed. Idaho Code § 50-1716. If local improvement bonds or warrants are issued, the treasurer must also create an installment docket, showing which assessments have been paid, with the date of each payment. Idaho Code § 50-1717.

Any person who has filed an objection to the assessment roll or any other person who feels aggrieved by a decision of the council in confirming the same shall have the right to appeal to the district court, which appeal must be made within 30 days from the date the Assessment Ordinance is published. Idaho Code § 50-1718. After 30 days, no one shall have a right of action to contest the legality, formality, or regularity of the assessment for any reason whatsoever, and the assessments and liens thereon are valid and incontestable without limitation. Idaho Code § 50-1718.

The assessments shall be due and payable within 30 days from the date of the adoption of the Assessment Ordinance. Idaho Code § 50-1715. Alternatively, the council may elect to make such unpaid assessments payable in installments and issue and sell registered warrants or installment bonds payable from such unpaid installments. *Id.* The council may provide in the Assessment Ordinance that any assessments unpaid at the end of said 30 day period will be conclusively presumed to have chosen to pay in installments, and the Assessment Ordinance shall then establish the number of years said installments shall run, the date of payment, and the rate of interest the unpaid assessments shall bear. *Id.* Any such installments shall be due and payable in 30 years or less to the treasurer or other proper officer as provided by the council. *Id.* The Assessment Ordinance shall establish the due date of the first installment payment and that the local or special assessments may be carried on the rolls of the municipality and collected as provided in the LID Act. *Id.* If any installment is not paid within 20 days from the due date, the same shall become delinquent and the treasurer shall add a penalty of two percent (2%) thereto. The council may also certify delinquent installments to the tax collector. When so certified, they shall be extended on the tax rolls and collected as property taxes, pursuant to the provisions of chapter 10, title 63, Idaho Code. *Id.*

### **Local Improvement Bonds**

If the council decides to make assessments payable in installments pursuant to the Assessment Ordinance, it may issue local improvement bonds (the "Bonds") payable from assessments levied against the property within the LID. Idaho Code § 50-1722. When Bonds are issued, the treasurer must also create an installment docket, showing which assessments have been paid, and the date of each payment. Idaho Code § 50-1717. The Bonds shall be payable each year from and after the date of the Bonds and shall be of such denomination and bear interest, payable annually, at a rate determined by the council. Idaho Code § 50-1722. In no event shall the interest rate be greater than the interest rate borne by unpaid assessments. *Id.* The Bonds shall mature serially over a period not exceeding 30 years, and the council may reserve the right to redeem the Bonds at its option on any interest payment date at such price determined by the council. *Id.* Each Bond shall provide that the principal thereof and the interest thereon are payable solely from the principal of and interest on the unpaid assessments levied in the district to pay the total cost and expenses of the project concerned. *Id.* If the council determines to issue and sell Bonds, it may for the purpose of meeting any cost and expenses of making the improvements, as the same are installed prior to the sale of the Bonds, issue interim warrants of the district payable to the contractor, or another proper person, upon estimates of the engineer, bearing interest at a rate provided by the council. These interim warrants, together with the interest due thereon at the date of the issue of the

Bonds, shall be redeemed and retired from the proceeds of the sale of the Bonds or prepayment of the assessments. Idaho Code § 50-1722. Such interim warrants would likely need to be refinanced with Bonds upon completion of the Project. Once Bonds or warrants are issued, any funds paid in installment payments pledged to the payment of the Bonds must be kept in a fund known as the “bond fund” of the district, and any funds paid as interest on said installment payments shall be kept in a fund known as the “interest fund” of the district. Idaho Code § 50-1724. Further requirements regarding the bond fund, interest fund, and bond payments are set forth in Idaho Code Section 50-1724.

The owner of a Bond has no claim against the municipality, except to the extent of the funds created and received by the assessments against the property and to the extent of the local improvement Guarantee Fund which may be established under the LID Act. Idaho Code § 50-1723. The municipality shall be held responsible, however, for the lawful levy of all special taxes or assessments provided for in the LID Act and for the faithful accounting of settlements and payments of the special taxes and assessments levied for the payment of the bonds as provided in the LID Act. The owners and holders of the Bonds shall be entitled to complete enforcement of all assessments made for the payment of such Bonds. *Id.* A copy of Section 50-1723 must be plainly written, printed, or engraved on the face of each bond issued. *Id.*

The issuance of the Bonds transfers to the owner or holder of the Bonds all the municipality’s rights and interest in and with respect to every assessment and the lien created against the property of each owner assessed, and authorizes the holders of the Bonds to receive and have collected the assessment embraced in any such Bonds through any of the methods provided by law for the collection of assessments for local improvements. Idaho Code § 50-1726.

- a. Advantages, disadvantages, and benefits
  - i. Advantages: For most communities, the LID may be the only financing model available to them under state law for installing municipal broadband. In addition, LID Bonds may be issued without a vote and through use of an “opt-in” model the costs of the broadband improvements can be assessed to only those who elect to receive the benefit of the improvements.
  - ii. Disadvantages: The costs and fees behind establishing the LID (financial institution costs, legal fees, etc.) can prove to be high. Interest rates would vary, depending on matters such as the size of the LID in dollars and the proposed length of the loan. LID bonds may be sold to private banking institutions or within the public bond market. LIDs can be cumbersome to create and manage. In addition, the LID process is time intensive—the judicial confirmation process described below can be expected to take at least 6 months, if not longer. Further, the LID creation and interim warrant process takes 2-3 months and the LID assessment and bond process takes 5-6 months. Other, more efficient means of

financing broadband build-out should be explored by the Idaho legislature.

b. Legal considerations

- i. Because there is no Idaho law that explicitly grants municipalities the authority to construct, operate and maintain broadband improvements, a municipality seeking to build broadband infrastructure by way of the LID financing model will first need to seek what is called judicial confirmation, in order to firmly establish its authority. This judicial confirmation is necessary in order for bond counsel to provide the requisite legal opinions for financing. It is also recommended that municipalities wishing to start the judicial confirmation process engage a skilled attorney. A change to Idaho law providing explicit broadband authority would remove the need to obtain a judicial confirmation.

c. Financial considerations

- i. Establishing a local improvement district can be costly. Costs of a district should be wrapped into the cost to each end user for obtaining fiber. Consequently, the cost to the end users will often be less depending on the number of users in the LID. Furthermore, as discussed in subsection c. above, prior to establishing an LID for broadband, a municipality will need to obtain judicial confirmation of its authority relative to broadband improvements. The judicial confirmation process has its own associated legal costs. Municipalities can save on cost by following the process used by other LID municipalities, which may be used as valuable resources. It is advisable to obtain an experienced financial advisor to assist with cost planning for each LID. A good financial advisor may also be able to assist the municipality with finding financing options for the LID.

d. Lesson Learned

- i. As has been stated, the LID process is probably the most available process to Idaho municipalities. But it is cumbersome, time consuming, and municipalities should plan ahead with good legal counsel and financial advice. Find out where other municipalities have succeeded and do not be afraid to copy where it makes sense. Advance planning will help you to have a successful experience with the LID process.

## How a Power City Can Build Broadband Infrastructure

For a community that has the history and experience like Idaho Falls in operating a power utility, the transition into also providing broadband infrastructure was not a big leap. We started providing electricity to our community in 1900 out of a need for a service that no other company or entity was willing to provide at the time. We started small with wanting to replace the gas lamps with electric street lights and a few downtown businesses that were open after dark. In 1998 the city had need for high-speed, reliable and secure connections between various city and county facilities to better serve our citizens. The initial limited 1998 fiber build was expanded in 2002 to enable better service for various other government facilities and to also offer leased un-lit fiber to private businesses and various local service providers. This was a low-cost, highly reliable fiber network that quickly met the needs of local businesses and large not-for-profit entities like the INL and local school districts.

Expansion of the network again in 2018 after an initial pilot project that tested the financial and functional feasibility of running a fiber connection to every residential home in the city was another logical step forward. There was a growing concern in the 2012-2015 timeline that we were at risk of developing a “digital divide” in our community where this newly emerging essential service in the digital age might develop in our community. The city leadership has a strong belief that every resident in the community should have access to the services a person would require to live. Access to adequate and affordable broadband was quickly being viewed as being as essential as access to clean water, sanitation services, safe streets and electricity. What we didn’t want to develop was affluent areas were the only areas that could afford access in our community and lower-income areas or “higher cost to service areas” would lack access because the profit margins were not sufficient for private internet service providers.

If a city already owns and operates an electrical utility it is already in the poles and wires infrastructure business. A lot of the back office, middle office and front office support staff can be leveraged to support a broadband network and/or infrastructure build. This includes everything from customer accounts and billing, customer service, field crews/construction, management and accounting. Power utilities have a major advantage in the areas of already owning a majority of the overhead and even underground infrastructure that will be used to build a network. This includes pole attachments, rights of way, easements, underground conduits and service entrances.

It is very cost effective when new infrastructure is built and/or upgraded for the electric utility to build the lines to easily accommodate fiber optic line attachments. This includes hanging stand wire and installing additional conduits underground. Other considerations are the repair and maintenance synergies on which the two infrastructures collaborate for example the same crew that repairs the broken pole or tree that falls into a line can attach back the communications infrastructure that also does the power lines. There is no need to roll out different bucket trucks. Maintenance activities also include vegetation management. When you do proper trimming for electric and communication space the overall costs are lower in total.

Typically traditional communications companies do not focus on vegetation management like electric utilities.

Another technical advantage is the communications needs of the power utility. Today's modern electric utilities require extensive fiber optics networks to perform the advanced digital relays, SCADA communications, distribution automation and demand response programs. Connectivity is increasingly the necessary piece of the puzzle for a modern "smart" electric system. It is also imperative that it is a secure network for cyber security concerns, so outsourcing this brings in additional risk points for the power utility.

### **Legal Considerations**

In Idaho, there is statutory authority for municipalities to own and operate an electric utility. Building a broadband network that fulfills the needs of the electric utility and also has surplus capacity/bandwidth within the network to lease out either unused dark fiber or give private ISP's access to provide their services over this surplus capacity is within the authority of the electric utility.

### **Financial Considerations**

Building fiber optic networks is not an inexpensive proposition but if it is already needed for basic functions of the electric utility it becomes very affordable to scale it up. The cost to install and maintain additional pairs of fiber starts to become lower and lower as you increase your pair counts. If one takes into consideration the point that some is needed infrastructure anyway, to reach better economies of scale a larger build out or overbuild of the network is financially possible for an electric utility. Typically an electric utility has access to finances and capital dollars that a non-power city would not likely have.

### **Technical Considerations**

There are a number of different options to look at between dark fiber leasing to operating an open access lit network. Dark fiber is certainly less technical in nature to operate but has limitations on deploying in a fiber to the home situation city wide. Moving to a lit network that is open access creates different technical considerations because one will need to find a software solution to manage the routing of network traffic between customers and providers. This includes also more complex billing systems, network gear and even customer in-home network equipment that must be maintained and troubleshot. There are various entities that provide different network management solutions with varying pro's and con's between them based upon the individual desires of the city and its unique characteristics.

### **Lessons Learned**

1. Lead times and material availability can become a major hurdle so be flexible on the delivery dates and expectations you make to customers and the public.
2. Building broadband networks can run into unforeseen construction and material supply issues, therefore build some slack into your projections.

3. Staffing is also something to be prepared to manage because like a lot of areas this is a technical field where qualified and competent workers are in high demand.
4. Similar to operating an electric utility one will need to focus on recruiting and maintaining a competent workforce to keep the network in proper operating condition. Building in your own workforce training program may be worth considering for longevity.

### **One Step At A Time**

Taking things one step at a time has also proven to be a successful proposition for us. We found ourselves from time to time locked into the feeling of a binary decision of do it all now or do nothing. When we broke out of this mindset and focused on taking things one step at a time, like doing a pilot project or smaller build for certain facilities the task became manageable and understandable. It was also a lot more manageable and understandable for the city council and greater community. By bringing them along on the walk, step by step, they were able to see and understand the needs and opportunities that can be met with a not-for-profit fiber optic network. Local service providers could now understand we were there to support and augment their business not compete with them.

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