**WALDO BROADBAND CORPORATION**

**INTERLOCAL AGREEMENT**

This Interlocal Agreement (the “Agreement”) is made by and among the following Municipalities: the Towns of Freedom, Liberty, Montville, Palermo, and Searsmont (the “Municipalities”).

WHEREAS, 30-A M.R.S. § 2201, *et seq*., permits political subdivisions, including municipalities, to enter into interlocal agreements for mutual advantage;

WHEREAS, 30-A M.R.S. § 2203(9), further permits any two or more parties to enter into an agreement to establish a regional municipal utility district to provide or, through public-private partnerships, to support or promote broadband services, internet services, and to issue revenue bonds in support of any of the activities undertaken therein;

WHEREAS, the Legislature has declared in 30-A M.R.S. § 5402 that access to affordable, reliable, high-speed broadband internet is necessary to the general welfare of the public, and the people of the State and its economy require connection to existing publicly built infrastructure as a means of cultivating entrepreneurial activity, attracting business, improving access to modernized methods of education and health care and encouraging people to move to the State; and

WHEREAS, the legislative bodies of the Municipalities have determined that it is in the best interest of each Municipality to participate in an agreement for the feasibility, investigation, financing, development, operation, and sharing of open-access fiber optic networks in the Municipalities.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the Municipalities agree as follows:

**1. Purposes**

The purposes of this Agreement are to provide a cooperative arrangement for the Municipalities to investigate and then work collaboratively, subject to each Municipality’s agreement to appropriate funds and participate in the construction phase, as follows:

 A. Phase 1. To jointly engage and contract with one or more providers selected by the Corporation (as that term is defined below) to conduct a detailed feasibility study and engineering/technical design for a collaborative, open- access, cooperatively-operated fiber optic network in the service area of the Waldo Broadband Corporation (as that service area is defined below).

 B Phase 2. To(i) jointly establish, construct and maintain a fiber optic network to provide Broadband Services, (ii) apply for all licenses and permits required for all services authorized under this Agreement; (iii) jointly own any land and facilities necessary for the services, including but not limited to one or more “head-end” facilities and/or offices necessary for the operation of the fiber optic network contemplated under this Agreement; (iv) own, construct, manage, operate, and maintain broadband facilities and to transfer properties and issue easements required for the facilities to support services authorized under this Agreement; (v) enter into any contracts associated with the design, construction, maintenance, replacement, and/or operation of the open-access fiber optic network or other associated broadband facilities to serve persons within the Municipalities, including with other regional broadband utility districts or corporations; and (vi) jointly incorporate and administer a regional municipal utility district authorized to make provisions for Broadband Services, including establishment of rates, collection of revenues, and undertaking all other actions necessary and appropriate for a regional municipal utility district of this nature consistent with this Agreement and the general law.

**2. Definitions**

As used in this Agreement, the following words and phrases have the following meanings:

1. “Members” shall mean the members of the Waldo Broadband Corporation established in § 3 of this Agreement.
2. “Charter Municipalities” shall mean the Towns of Freedom, Liberty, Montville, Palermo, and Searsmont.
3. “Governing Boards” shall mean the municipal officers of the Municipalities as that term is defined in 30-A M.R.S. § 2001(10).
4. “Parties” or “Municipalities” shall mean the Charter Municipalities and other Participating Municipalities as defined herein.
5. “Residents” shall mean any legal resident of, or other person actually residing in, any of the Municipalities on either a seasonal or year-round basis.
6. “Waldo Broadband Corporation” or “Corporation” shall be the body described in § 3.
7. “Open-access fiber optic network” or “network” shall mean an open-access dark fiber network that services the Municipalities.
8. “Users” shall include but not be limited to residents of the Municipalities as that term is defined herein.
9. “Budget Year” or “Fiscal Year” shall mean the period of July 1 through June 30 of the subsequent calendar year, or such other budget year as may be mutually adopted by the Municipalities.
10. “Broadband Services” shall include both broadband and internet services within the meaning of 30-A M.R.S. §§ 2203(9) and 5402.
11. “Participating Municipalities” shall mean those municipalities who adopt this Agreement subsequent to the Charter Municipalities.

**3. The Corporation**

A. Formation of Corporation. The Charter Municipalities hereto agree to form a non-profit corporation called the Waldo Broadband Corporation (the “Corporation”), organized under Title 13-B, M.R.S. §101 *et seq*., which shall be organized with the Charter Municipalities as the sole Members. The Corporation shall be a regional municipal utility district, pursuant to 30-A M.R.S. § 2203(9), created to support or promote the provision of Broadband Services and to carry out the purposes set forth in Section 1 of this Agreement.

B. Powers of Corporation. The Corporation shall have and exercise all powers necessary or convenient to effect the purposes for which the Corporation is organized, or to further the activities in which the Corporation may lawfully be engaged, including but not limited to those powers enumerated in Title 13-B, M.R.S.A. §101 *et seq*., Title 30-A M.R.S. § 2203(9)

C. Board of Directors. The affairs of the Corporation shall be governed by a Board of Directors consisting of at least five (5) Directors, selected in accordance with the Corporation’s bylaws. The Board of Directors shall only consist of one Director appointed by the Governing Board of each Charter Municipality.

(1) The Board of Directors shall have all necessary and incidental powers granted to directors of non-capital stock corporations under Title 13-B, M.R.S.A. §101 *et seq*.,

(2) The Board of Directors shall hold quarterly meetings at an established location and time; but the Corporation may, at its discretion, meet more frequently.

(3) Quorum and Voting. All decisions of the Board of Directors shall be made by a majority vote, with each member of the Board of Directors present having one vote. A quorum shall consist of a majority of members of the Board of Directors; provided however that it shall take three affirmative votes to take binding action . In the event of a tie vote, the motion shall fail for lack of a majority. Meetings of the Board may take place either in-person or through remote methods, including but not limited to by telephone or web conference, or a hybrid of in-person and remote methods. A member of the Board who participates in a meeting by remote methods is present for purposes of a quorum and voting.

D. Executive Committee. The day-to-day operations of the Corporation, subject to approval of the Directors as they deem appropriate, may be run by an Executive Director, as determined by the Board of Directors.

E. Fiscal Year and Budget. Each year, prior to the last meeting of the Board of Directors before the close of the Corporation’s Fiscal Year, the Treasurer shall develop and prepare a budget for the upcoming year. The budget shall be provided to the Municipalities and to the Board of Directors at least two weeks in advance of the meeting and shall be voted on by the Board of Directors.

**4. Development**

A. Initial Contributions for Phase 1. As of the effective date of this Agreement, the Municipalities have made contributions set forth in Exhibit A. Additional contributions made by the Municipalities shall be kept as part of the official records of the Corporation.

B. Broadband Services Provided Pursuant to Phase 2. After detailed engineering / technical design is completed, the Municipalities may decide to contract to establish or expand the fiber optic network and / or operate or provide Broadband Services to the Municipalities, or to any other municipalities, jurisdictions or locations that request such services and that the Board of Directors sees fit. Exhibit A shall be updated from time to time to reflect actual contributions made by the Municipalities. Prior to commencement of Phase 2, and after review of the findings and recommendations of Phase 1, any Charter Municipality may opt out of funding and participation in Phase 2, and shall provide notice of the same to the Corporation following a Town Meeting vote on that question.

**5. Property.**

All real property and improvements acquired or developed pursuant to this Agreement shall be owned or leased by the Corporation . Nothing in the foregoing shall prohibit the Municipalities from assigning, leasing or gifting property to the Corporation. The Corporation is authorized to own and encumber any property contributed to it, directly or indirectly, by the Municipalities or acquired pursuant to the Corporation’s bylaws.

**6. Operation and Costs.**

A. The costs of the design work, construction and operation of the open-access fiber optic network shall be paid by the Corporation from the funds provided for the development of the network; from any fees or charges assessed on Users of the network; from internet service providers for the lease of the dark fiber owned by the Corporation; or from such other funds of the Corporation as approved by the Board of Directors.

B. Funding. The Corporation shall not have the power of appropriation, taxation, or assessment of taxes of funds from any municipality. No municipality shall be obligated to pledge its full faith or credit for any debt, bond or borrowing made by the Corporation. Pursuant to the provisions of 30-A M.R.S. § 2203(9)(B), the Corporation shall be and hereby is authorized to issue revenue bonds in support of any of the activities undertaken pursuant to this Agreement, upon unanimous approval of each Charter Municipality that had not opted out of Phase pursuant to Paragraph 4B above. The Corporation is also hereby authorized to seek grants, contributions, and loans to fund its operations and capital expenditures, and to acquire, lease, encumber and sell property in furtherance of its purposes. Nothing in this Agreement shall be construed to limit the powers of the Corporation as provided by general law. Debt issued to the Corporation pursuant to any revenue bond shall be the sole responsibility of the Corporation and not the Municipalities.

**7. Assessment and Collection of Fees.** The Corporation shall be responsible for the assessment, collection, and payment associated with the open-access fiber optic network (the “Revenue”). The Corporation may contract such services with a third-party provider at the discretion of the Board.

**8. Distribution of Non-Tax Revenues; Reserves.** The Corporation shall determine the amount of Revenue to be retained as reserves to fund future expenditures for maintenance, improvements, and/or expansion of the open-access broadband fiber optic network. Any remaining Revenues not required for these purposes, in the sole determination of the Board of Directors, shall first be used for debt reduction off the Corporation, if any, and then shall be distributed to Municipalities in proportion to the amount of each Municipality’s contributions to the Corporation according to the records maintained by the Corporation.

**9. Defaults and Dispute Resolution.**

A. Default and Remedies. In the event that a Municipality that has opted into Phase 2 fails to pay any grant, payment, or other funds required to be paid on a timely basis, as outlined in Exhibit A or as required to be paid by a new Member under Section 11(A)(2), which failure to pay has not been cured within thirty (30) days after the Corporation delivers a written notice of default, the non-defaulting Member(s), at its option, may terminate this Agreement and / or pursue all of its remedies at law to recover damages associated with the Municipality’s failure to pay, including recovery of its costs of collection..

B. Municipal Resolution of Disputes. In the event of any dispute between the Parties hereto regarding the performance of either Party under this Agreement or as to the determination of any material rights or obligations or entitlements arising from or related to this Agreement, other than a dispute involving a failure to pay any payments required, the Parties shall refer the matter to their duly authorized Municipal Governing Board for resolution. Should such Governing Board fail to resolve the dispute within thirty (30) days from such referral, the Parties agree that any such dispute will be referred to binding arbitration in Waldo County, Maine.

C. Initiation of Arbitration. A Party may give notice in writing to the others of its desire to submit the dispute to arbitration and shall designate an arbitrator on its behalf. Within fifteen (15) days after the receipt of such notice, if any other Party(ies) objects to the designated arbitrator, each Party shall then designate a neutral Agent, and all Agents shall then choose a single Arbitrator from the American Arbitration Association, applying its commercial arbitration rules, to fully and finally resolve the matter, subject to the limited rights of appeal as provided by the Maine Revised Statutes.

D. Power and Authority of Arbitrator. No arbitrator, whether chosen by a Party hereto or appointed, shall have the power to amend or add to this Agreement. The arbitrator shall, thereupon, proceed promptly to hear and determine the controversy pursuant to the then current rules of the American Arbitration Association for the conduct of commercial arbitration proceedings, except that if such rules shall conflict with the then current provisions of the laws of the State of Maine relating to arbitration, such conflict shall be governed by the then current provisions of the laws of the State of Maine relating to arbitration. The decision of the single arbitrator, shall constitute the final arbitration decision. Such decision shall be made in writing and delivered to each of the Parties. The arbitrator’s decision shall determine the manner in which the expense of the arbitration shall be borne, except that each Party shall pay the costs of its own counsel. Each Party shall accept and abide by the decision.

**10. Amendment and Termination**

The Board of Directors may propose and may approve by a minimum of at least a four fifths’ vote, amendments to this Agreement, which shall also require a ratification vote by the legislative body of the Municipalities.

**11. Admission of New Members**

The Charter Municipalities contemplate that additional parties as defined by 30-A M.R.S. § 2202 may wish to become members. Any Maine municipality, public agency, or federal recognized Indian tribes or their political subdivisions are eligible to apply for membership.

A. In order to be accepted, an applying member shall:

(1) Have sought and received the approval of its legislative body to become a member and to be bound by this Interlocal Agreement and the Waldo Broadband Corporation by-laws; and

(2) Agree to assume, deliver to or make available to the Corporation any grant, payment, or other funding as required by the Board of Directors for admission to the Corporation.

(3) To have agreed to a starting date for membership which will enable the entering municipality or public agency to have either appropriated the funds to meet its assessment, or to have made other arrangements satisfactory to the Board to ensure that the assessments can and will be paid upon acceptance.

B. The Board of Directors may, by unanimous vote at a public meeting, accept the application of the applicant municipality or public agency outright or condition such acceptance upon fulfillment of one or more of the requirements set forth above. The Board shall, as part of its vote of acceptance, enter an assessment for the entering municipality for the ensuing year and the assessment for the new member shall be in the same fashion as for Charter Municipalities.

**12. Term of Agreement**

A. This Agreement shall continue in force for a period of 20 years from the effective date of this Agreement and shall automatically renew for additional 20-year terms unless all Member Municipalities vote to terminate or withdrawal from this Agreement prior to the renewal period. This Agreement may also be terminated or superseded by the affirmative votes by the appropriate municipal authority of all member Municipalities.

B. Upon notice of termination, the Board of Directors shall take all necessary and proper steps to wind-up the affairs of the Corporation, including without limitation, the disposal of property. Upon any dissolution of the Corporation, or the termination of its activities, the assets of the Corporation remaining after the payment of all its liabilities shall be distributed to its Members in the proportions stated in Exhibit A and based upon additional contributions of the Municipalities according to the records of the Corporation pursuant to § 4 above, unless the Municipalities have separately and unanimously agreed to another method of allocation.

**13. Withdrawal of Members.**

A Municipality may withdraw from this Agreement subject to each of the following conditions:

1. Withdrawal shall be authorized by the Legislative Board of the withdrawing Municipality;
2. The withdrawing Municipality shall give written notice of its intent to withdraw at least ninety (90) days prior to the commencement of the Board’s fiscal year; and

1. At or prior to the time of withdrawing, the withdrawing Municipality shall pay the entire amount of its outstanding obligations incurred pursuant to this Agreement, subject to any terms and conditions of grant or other funding. Contributions made pursuant to § 4 are not recoverable to the withdrawing Municipality.
2. If a Municipality votes to withdraw from this Agreement, the open-access fiber optic network in its geographical jurisdiction shall remain the property of the Corporation. Any “head-end” or other facility located in such Municipality, if not previously conveyed to the Corporation, shall remain available for the Corporation’s use pursuant to a lease upon reasonable terms, or the same terms, as existed prior to the termination, unless otherwise agreed by the Board of Directors.

**14. Filing of Agreement.** This Agreement shall take effect upon the filing of executed copies of this Agreement with the clerks of the Municipalities and the Secretary of State, which shall be filed after adoption by the appropriate legislative body of said Municipalities.

**15. Effective Date.** This Agreement shall be effective when fully approved by the Charter Municipalities as required by law and as set forth in this Agreement, provided however, that each Charter Member shall complete such approval no later than December 31, 2022. Notwithstanding the above, nothing herein shall be read to preclude any municipality, public agency, or federally recognized Indian tribes or their political subdivisions other than the Charter Municipalities, from participating in this Agreement at a date before or after December 31, 2022.

IN WITNESS WHEREOF this Agreement has been executed on behalf of the named Municipalities by their duly authorized representatives. Additional Parties admitted as Member Municipalities shall execute attested copies of the resolutions of their legislative body consistent with the format of Exhibit B, which resolutions shall be kept as part of the official records of the Corporation.

# WITNESS TOWN OF FREEDOM

By:

Its: , thereunto duly authorized

 , 2022

# WITNESS TOWN OF LIBERTY

By:

Its: , thereunto duly authorized

 , 2022

# WITNESS TOWN OF MONTVILLE

By:

Its: , thereunto duly authorized

 , 2022

# WITNESS TOWN OF PALERMO

By:

Its: , thereunto duly authorized

 , 2022

# WITNESS TOWN OF SEARSMONT

By:

Its: , thereunto duly authorized

 , 2022

**EXHIBIT A**

**The Charter Municipalities have contributed the following funds as of the date of this Agreement:**

**Freedom**

**$11,000 = 20%**

**Liberty**

**$11,000 = 20%**

**Montville**

**$11,000 = 20%**

**Palermo**

**$11,000 = 20%**

**Searsmont**

**$11,000 = 20%**

**EXHIBIT B
AUTHORITY OF TOWN OF XXX TO ENTER INTO AGREEMENT**

BE IT RESOLVED BY THE BOARD OF SELECTMEN OF THE TOWN OF XXX, MAINE (the “Municipality”) that:

WHEREAS, the XXX Town Meeting has determined that it is in the best interest of the Town of XXX to join the Waldo Broadband Corporation in order to design, construct and operate an open-access fiber optic network in the Municipality;

WHEREAS, there is a need in the Municipality for open-access fiber optic networks;

WHEREAS, Municipalities of Freedom, Liberty, Montville, Palermo and Searsmont have entered into an interlocal agreement pursuant to 30-A M.R.S. § 2201, *et seq*., for the purpose of establishing and operating an open-access fiber optic networks in the Municipalities, and the interlocal agreement anticipates that additional municipalities may join the agreement through a vote of the applicant’s legislative body and the Corporation’s Board of Directors; and

WHEREAS, the Board of Directors of the Corporation have approved the entry of XXXX into the Waldo Broadband Corporation Interlocal Agreement.

NOW THEREFORE BE IT RESOLVED:

1. That the Town of XXX shall enter into the Waldo Broadband Corporation Interlocal Agreement (the “Agreement”), a copy of which is attached hereto as Exhibit A, and further, that the Chairman of the Select Board shall be and is hereby authorized to execute said Agreement on behalf of the Town.
2. That the Town of XXX authorizes the Corporation formed pursuant to the Agreement to issue its revenue bonds in accordance with Title 30-A, section 2203(9) of the Maine Revised Statutes, and to acquire, lease and sell property in furtherance of its purposes.

ADOPTED this \_\_\_ day of \_\_\_\_\_\_\_\_\_, 202\_\_.

A true copy, Attest:

Town Clerk
Town of XXX

[Authorized signature]