

**DOWNEAST BROADBAND UTILITY  
AMENDED AND RESTATED INTERLOCAL AGREEMENT  
(MANAGED BY THE DEVELOPMENT CORPORATION)**

This Amended and Restated Interlocal Agreement (the “Agreement”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_ 2020, by and among the City of Calais and the Towns of Baileyville and Alexander (the “Municipalities”), and supersedes an Interlocal Agreement between the City of Calais and the Town of Baileyville entered into in June, 2017 (the “Original Agreement”).

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), permits, without limiting the powers, privileges or authority that may be jointly or cooperatively exercised pursuant to Chapter 223, 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 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 and financing, development, and sharing of open-access fiber optic networks in the Towns of Baileyville and Alexander and the City of Calais.

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

**1. Purpose.** The purposes of this Agreement are to provide a cooperative arrangement for the Municipalities: (1) to jointly engage and contract with Pioneer Wireless Inc., d/b/a Pioneer Broadband, or another provider selected by the Corporation (as that term is defined below) to conduct a detailed engineering/technical design for a collaborative, open-access, cooperatively-operated fiber network in the service area of the Downeast Broadband Utility, (2) to jointly establish, construct and maintain a fiber network to provide broadband service and/or internet service, (3) to apply for all licenses and permits required for all services authorized under this Agreement; (4) to jointly own any land and facilities necessary for the services, including but not limited to a “head-end” facility and/or office necessary for the operation of the fiber network contemplated under this Agreement; (5) to own, construct, manage and maintain broadband and/or internet facilities and to transfer properties and issue easements required for the facilities to support services authorized under this Agreement; (6) to enter into any contracts associated with the design, construction, maintenance, replacement, and/or operation of the open-access fiber network or other associated broadband facilities and/or for internet service to serve persons within the Municipalities, and (7) to jointly incorporate and administer a regional municipal utility district authorized to make provisions for broadband and/or internet 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:

- A. "Members" shall mean the members of the Downeast Broadband Utility established in § 3 of this Agreement.
- B. "Charter Municipalities" shall mean the Town of Baileyville and the City of Calais.
- C. "Parties" or "Municipalities" shall mean the Town of Baileyville, the Town of Alexander, and the City of Calais.
- D. "Residents" shall mean any legal resident of, or other person actually residing in, either the Towns of Baileyville or Alexander or the City of Calais on either a seasonal or year-round basis.
- E. "Downeast Broadband Utility" or "Corporation" shall be the body described in § 3.
- F. "Open-access fiber optic network" or "network" shall mean an open access dark fiber network that services the Municipalities.
- G. "Users" shall include but not be limited to residents of the Town of Baileyville and the City of Calais.
- H. "Budget Year" shall mean the period of July 1<sup>st</sup> through June 30<sup>th</sup> of the subsequent calendar year, or such other budget year as may be mutually adopted by the Parties.
- I. "Broadband services" shall include both broadband and internet services within the meaning of under 30-A M.R.S. 2203(9)

**3. The Corporation.** The Charter Municipalities have formed a non-profit corporation (the "Corporation"), organized under Title 13-B, M.R.S. §901 *et seq.*, which was organized with the Charter Municipalities as the sole Members. The day-to-day activities of the Corporation are governed by a Board of Directors selected in accordance with the Corporation's bylaws. The Corporation is a regional municipal utility district created to support or promote the provision of broadband and/or internet services and to carry out the purposes set forth in Section 1 of this Agreement. Pursuant to this Agreement, the Town of Alexander has been and hereby is admitted as a Party to the Agreement and as a Member of the Corporation.

The Corporation shall hold quarterly meetings at an established location and time; but the Corporation may, at its discretion, meet more frequently if circumstances require. Two weeks prior to each quarterly meeting, the Chair will prepare, post and circulate to the Board of Directors and the Municipalities, an agenda. Items may be added to the agenda by majority vote of the Board of Directors present at each meeting. Minutes will be taken and posted for every meeting. Special meetings of this Corporation may also be called by the governing board of any Municipality or by the Board of Directors of the Corporation upon at least ten (10) calendar days advance written or personally telephoned notice to each member of the Board of Directors. Emergency meetings may be called by the chair or by the Council or the representatives of any Municipality by making a bona fide effort to give telephone notice to each Director, and by giving notice to local representatives of the media as provided in 1 M.R.S. § 406. A quorum of two Directors must be present at any meeting.

All decisions of the Corporation shall be made by vote, with each member of the Board of Directors present having one vote. There shall be no proxy voting. A quorum for the Corporation shall consist of a majority of members of the Board of Directors. In the event of a tie vote, the motion shall fail for lack of a majority. For votes to amend this Agreement pursuant to § 10 where an affirmative vote at both town/city meetings is required, a tie vote shall fail for lack of a majority.

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 at that meeting.

**4. Development Costs.** As of the effective date of this Agreement, the Municipalities have made contributions set forth in Exhibit A, including contributions made by the Municipalities through the Downeast Economic Development Corporation (DECD).

After detailed engineering/technical design is completed, the Municipalities may decide to contract to establish or expand the fiber 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.

**5. Property.** All real property and improvements acquired or developed pursuant to this Agreement shall be held by the municipality in which it is located. Nothing in the foregoing shall prohibit the Municipalities from assigning 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.** The costs of the design work, construction and operation of the open-access fiber optic networks shall be paid by the Corporation from the funds provided for the development of the network, and from any fees or charges, assessed on users of the network.

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. The Corporation is also hereby authorized to seek grants and contributions to fund its operations and capital expenditures, and to acquire, lease, encumber and sell property in furtherance of its purposes.

**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 Revenue shall be shared between the Municipalities in accordance with this Agreement and 30-A M.R.S. § 5751, *et seq.*, as such may be amended.

**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 network. Any remaining revenues shall be distributed first to DECD in the amount of its contributions as stated on Exhibit A, with the balance distributed to the Municipalities in the proportions stated on Exhibit A, as amended from time to time.

## **9. Defaults and Dispute Resolution.**

A. In the event either Municipality fails to pay any payment required on a timely basis, 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, 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, including reasonable attorneys fees.

B. 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 Town/City Council for resolution. Should such Council 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 Machias, Maine. Either Party may give notice in writing to the other of its desire to submit the dispute to arbitration, and may designate an arbitrator. Within fifteen (15) days after the receipt of such notice, the other Party may, in writing, serve upon the Party invoking such arbitration, a notice designating an arbitrator on its behalf. The two arbitrators so chosen shall within fifteen (15) days after the appointment of the second arbitrator, in writing, designate a third arbitrator. Upon the failure of the Party notified to appoint the second arbitrator within such time, the Party invoking such arbitration may proceed with the single arbitrator. No arbitrator, whether chosen by a Party hereto or appointed, shall have the power to amend or add to this Agreement. The arbitrator or arbitrators 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. Such arbitrator or arbitrators shall fix a time within which the matter shall be submitted to him or them by either or both of the Parties, and shall make his or their decision, within ten (10) days after the final submission to him or them unless, for good reasons to be certified by him or them in writing, he or they shall extend such time. The decision of the single arbitrator, or two of the three arbitrators, shall be taken as the arbitration decision. Such decision shall be made in writing and in duplicate, and one copy shall be delivered to each of the Parties. The arbitrator or arbitrators by his or their award shall determine 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. The award of the arbitral tribunal shall be final except as otherwise provided by applicable law. Judgment upon such award may be entered by the prevailing Party in any court with jurisdiction, or application may be made by such Party to any such court for judicial acceptance of such award and an order of enforcement. No dispute shall interfere with the Parties'

continued fulfillment of their obligations under this Agreement pending the decision of the Arbitrators.

**10. Amendment and Termination.** The Board may propose and shall approve by a majority vote amendments to this Agreement, which shall also require an affirmative vote by the appropriate municipal authority of the member municipalities (e.g., by the municipal officers or, where required, by the town meeting of such member municipality).

#### **11. Admission of New Members**

The Charter Municipalities contemplate that additional municipalities may wish to become members. Any Maine municipality or plantation is eligible to apply for membership. In order to be accepted:

- (1) An applying member must have sought and received the approval of its legislative body to become a member and to be bound by this Interlocal Agreement and the by-laws;
- (2) Agreed to make an initial contribution, consisting of an amount equal to one hundred ten percent (110%) of the cost of extending the broadband network to and constructing a broadband network in such municipality such amount to be determined by the Board of Directors in advance of membership;
- (3) To have agreed to a starting date for membership which will enable the entering municipality 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.
- (4) The Board of Directors may, by unanimous vote at a public meeting, accept the application of the applicant municipality outright or conditional 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 town for the ensuing year the assessment for the new member shall be in the same fashion as for Charter Municipalities.

This Agreement shall continue in force for a period of 20 years from the effective date of this Agreement and shall automatically terminate. Prior to this automatic termination date, however, this Agreement may be renewed by the collective affirmative votes by the appropriate municipal authority of all member Municipalities. This Agreement may also be terminated or superseded, at any time, by the collective affirmative votes by the appropriate municipal authority of all member Municipalities.

The Board shall take all necessary and proper steps to wind-up affairs of the Board upon termination of this Agreement including, without limitation, the disposal of property, provided, however, that 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 unless the members have separately agreed to another method of allocation..

**12. Withdrawal of Members.**

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

1. Withdrawal shall be authorized by the appropriate municipal authority of the withdrawing member municipality.
2. The withdrawing member municipality shall give written notice of its intent to withdraw at least ninety (90) days prior to the commencement of the Board's budgetary year.
3. At or prior to the time of withdrawing, the withdrawing member municipality shall pay the entire amount of its outstanding obligations incurred pursuant to this Agreement.

**13. Filing of Agreement.** This Agreement shall take effect upon the filing of executed copies of this Agreement with the clerks of Baileyville and Calais and the Secretary of State, which shall be filed after adoption by the appropriate municipal authorities of said municipalities.

**14. Effective Date.** This agreement shall be effective when fully approved by the participating Municipalities as required by law and as set forth in this Agreement, provided however, that each Member must complete such approval no later than November 1, 2020. Notwithstanding the above, nothing herein shall be read to preclude any municipality, municipal corporation or quasi-municipal corporation other than the City of Calais and the Towns of Baileyville and Alexander from participating in this Agreement at a date subsequent to November 1, 2020.

IN WITNESS WHEREOF this Agreement has been executed on behalf of the named Municipalities by their duly authorized representatives. Attested copies of the resolutions of the Board of Selectmen of the Town of Alexander authorizing it to join in this Agreement is attached hereto as Exhibit B.

**WITNESS**

\_\_\_\_\_

**TOWN OF BAILEYVILLE**

\_\_\_\_\_

By:  
Its: \_\_\_\_\_, thereunto duly authorized  
\_\_\_\_\_, 2020

**WITNESS**

\_\_\_\_\_

**TOWN OF ALEXANDER**

\_\_\_\_\_

By:  
Its: \_\_\_\_\_, thereunto duly authorized  
\_\_\_\_\_, 2020

**WITNESS**

\_\_\_\_\_

**CITY OF CALAIS**

\_\_\_\_\_

Its: \_\_\_\_\_, thereunto duly authorized  
\_\_\_\_\_, 2020

Example Only

**EXHIBIT A**

**PROJECT COST, DEDC CONTRIBUTIONS, MUNICIPAL CONTRIBUTIONS  
TO THE CORPORATION FROM EACH COMMUNITY**

**PROJECT COST: \$**

**DEDC Contribution: \$**

<b>COMMUNITY</b>	<b>CONTRIBUTION</b>	<b>DISTRIBUTIVE SHARE OF REVENUES</b>
<b>Baileyville</b>	<u>      </u> % \$	%
<b>Calais</b>	<u>      </u> %	%
<b>Alexander</b>	<u>      </u> % \$	

Example Only



**EXHIBIT B**

**AUTHORITY OF TOWN OF ALEXANDER TO ENTER INTO AGREEMENT**

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

WHEREAS, the Alexander Town Meeting has determined that it is in the best interest of the Town of Alexander to join the Downeast Broadband Utility in order to design, construct and operate an open-access fiber optic networks in the Municipality.

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

WHEREAS, the municipalities of Baileyville and Calais have entered into an interlocal agreement pursuant 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

WHEREAS, the municipalities of Baileyville and Calais have approved the entry of Alexander into the Downeast Broadband Utility’s Interlocal Agreement.

NOW THEREFORE BE IT RESOLVED:

1. That the Town of Alexander shall enter into the Downeast Broadband Utility Interlocal Agreement (the “Agreement”), a copy of which is attached hereto as Exhibit A, and further, that [NTD], in his capacity as Chairman of the Select Board of the Town shall be and hereby is authorized to execute said Agreement on behalf of the Town.
2. That the Town of Alexander 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 \_\_\_\_\_, 2020.

\_\_\_\_\_  
[Authorized signature]

A true copy, Attest:

\_\_\_\_\_  
Town Clerk  
Town of Alexander