

MIDCOAST INTERNET DEVELOPMENT CORPORATION INTERLOCAL AGREEMENT

This Interlocal Agreement (the “Agreement”) is made as of the _____ day of _____ 2021, by and among the following Municipalities: the Town of Camden and the Town of Rockport (the “Charter Municipalities”).

WHEREAS, 30-A M.R.S. § 2201, *et seq.*, permits political subdivisions, including municipalities and counties, 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 115, 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, financing, development, 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 establish and participate in some or all of the following: (1) jointly engage and contract with one or more providers 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 optic network in the service area of the Midcoast Internet Development Corporation (as that service area is defined below), (2) jointly establish, construct and maintain a fiber optic network to provide Broadband Services, (3) apply for all licenses and permits required for all services authorized under this Agreement; (4) 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; (5) own, construct, manage and maintain broadband facilities and to transfer properties and issue easements required for the facilities to support services authorized under this Agreement; (6) 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, and (7) 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:

- A. "Members" or "Member Municipalities" shall mean the members of the Midcoast Internet Development Corporation established in § 3 of this Agreement;
- B. "Charter Municipalities" shall mean the Towns of Camden and Rockport;
- C. "Governing Boards" shall mean the municipal officers of the Municipalities as that term is defined in 30-A M.R.S. § 2001(10);
- D. "Parties" or "Municipalities" shall mean the Charter Municipalities and other Participating Municipalities as defined herein;
- E. "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;
- F. "Midcoast Internet Development Corporation" or "Corporation" shall be the body described in § 3;
- G. "Open-access fiber optic network" or "network" shall mean an open-access dark fiber network that services the Municipalities;
- H. "Users" shall include but not be limited to residents of the Municipalities as that term is defined herein;
- I. "Budget Year" or "Fiscal Year" shall mean the period July 1st through June 30th of the subsequent calendar year, or such other budget year as may be mutually adopted by the Municipalities;
- J. "Broadband Services" shall include both broadband and internet services within the meaning of 30-A M.R.S. § 2203(9); and
- K. "Participating Municipalities" shall mean those municipalities or counties that 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 Midcoast Internet Development 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.* and 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 three (3) Directors, selected in accordance with the Corporation's bylaws. The Board of Directors shall consist of the Executive Director of the Corporation and one Director appointed by the Governing Board of each 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 vote, with each member of the Board of Directors present having one vote. There shall be no proxy voting. A quorum 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.

D. Executive Committee. The day-to-day operations of the Corporation may be run by an Executive Committee, as determined by the Board of Directors. If one is appointed, the Executive Committee shall consist of the Executive Director, the one Director appointed by each Charter Municipality, and any / or all Officers of the Corporation.

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, Expansion, Ownership

A. Initial Contributions. As of the effective date of this Agreement, the Charter 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. After detailed engineering / technical design is completed, the Corporation 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 non-participating municipality, jurisdictions or locations that request such services.

C. Ownership of Network. The open-access fiber optic network constructed by or through the Corporation shall be owned by the Corporation.

5. Property.

A. Real Property. All real property acquired or developed pursuant to this Agreement shall be owned by the Municipality in which it is located, subject to Lease or License rights provided to the Corporation. Nothing in the foregoing shall prohibit the Municipalities from conveying, by gift or valuable consideration, 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.

B. Improvements. All improvements upon real property that makes up a portion of the open-access fiber optic network shall be owned by the Corporation or the internet services providers, as the case may be, but not the Municipality. Upon withdrawal by a Municipality from the Corporation, the Corporation shall have the option to purchase, at market value, the land upon which improvements have been made.

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: funds provided for the development of the

network; fees or charges assessed on Users of the network; lease payments from internet service providers; or such other funds of the Corporation as approved by the Board of Directors.

B. Funding. 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, 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.

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”).

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 fiber optic network. Any remaining Revenues not required for these purposes, in the sole determination of the Board of Directors, 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 either Municipality fails to pay any grant, payment, or other funds required to be paid 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(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, including reasonable attorneys’ fees.

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 Knox County, Maine.

C. Initiation of Arbitration. Either Party may give notice in writing to the other 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, the other Party shall, 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 the required time, the Party invoking such arbitration may proceed with the single arbitrator or opt to designate an arbitrator to serve on behalf of the notified Party. In such event, the two arbitrators shall choose a third arbitrator in accordance with this paragraph.

D. Power and Authority of Arbitrators. No arbitrator, whether chosen by a Party hereto or appointed, shall have the power to amend or add to this Agreement. The arbitrator(s) 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.

E. Time Periods, Award and Costs. The arbitrator(s) shall fix a time within which the matter shall be submitted to the arbitrator(s) and shall issue a decision within ten (10) days after the final submission of the matter, unless for good reasons to be certified by the arbitrator(s) in writing, the arbitrator(s) shall extend such time. The decision of the single arbitrator, or two of the three arbitrators, shall constitute the final arbitration decision. Such decision shall be made in writing and delivered to each of the Parties. The arbitrator(s)' award 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.

F. Final Award. 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 Arbitrator(s).

10. Amendment and Termination

The Board of Directors 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 legislative body of such member municipality). Additional Municipalities may be admitted pursuant to § 11 below, and shall not be construed as an amendment to this Agreement

11. Admission of New Members

The Charter Municipalities contemplate that additional municipalities may wish to become members. Any Maine municipality, plantation or county is 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 Midcoast Internet Development 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.

B. The Board of Directors may, by unanimous vote at a public meeting, accept the application of the applicant municipality outright or condition such acceptance upon fulfillment of one or more of the requirements set forth above.

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 a Member Municipality or all Member Municipalities vote to terminate this Agreement with written notice to the Corporation, to be provided at least six (6) months prior to the expiration of the initial 20-year term..

B. If a Municipality votes to terminate 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.

C. 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 Municipalities in proportion to the amount of each Municipality’s contributions to the Corporation according to the records maintained by the Corporation, 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:

- A. Withdrawal shall be authorized by the Governing Board of the withdrawing Municipality;
- B. 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
- C. 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.

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 August 1, 2021. Notwithstanding the

above, nothing herein shall be read to preclude any municipality or county, other than the Charter Municipalities, from participating in this Agreement at a date subsequent to August 1, 2021.

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 legislative body of each Charter Municipality authorizing it to join in this Agreement is attached hereto as Exhibit B. Additional Municipalities admitted as Member Municipalities shall execute attested copies of the resolutions of their legislative body consistent with the format of Exhibit C, which resolutions shall be kept as part of the official records of the Corporation.

TOWN OF CAMDEN

_____ **Date:** _____
Select Board Chair

TOWN OF ROCKPORT

_____ **Date:** _____
Select Board Chair

Example

EXHIBIT A

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

Camden
\$35,000 = 50%

Rockport
\$35,000 =50%

Example

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 create the Midcoast Internet Development 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, the Municipalities of Camden and Rockport desire to enter 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.

NOW THEREFORE BE IT RESOLVED:

1. That the Town of XXX shall enter into the Midcoast Internet Development Corporation Interlocal Agreement (the “Agreement”), a copy of which is attached hereto as Exhibit 1, 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 _____, 2021.

A true copy, Attest:

Town Clerk
Town of XXX

[Authorized signature]

EXHIBIT C

AUTHORITY OF [NAME OF TOWN, CITY OR COUNTY] TO ENTER INTO AGREEMENT

BE IT RESOLVED BY THE [BOARD OF SELECTMEN OR OTHER GOVERNING BODY] OF THE [Name of Town, City or County] (the “Municipality”) that:

WHEREAS, the [Name of Town, City or County] [Town Meeting or City Council] has determined that it is in the best interest of the [Name of Town, City or County] to join the Midcoast Internet Development 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, the Municipalities of Camden and Rockport 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

WHEREAS, the Board of Directors of the Midcoast Internet Development Corporation [has approved or indicated that it will approve] the entry of [Name of Town, City or County] into the Midcoast Internet Development Corporation Interlocal Agreement.

NOW THEREFORE BE IT RESOLVED:

1. That the [Name of Town, City or County] shall enter into the Midcoast Internet Development Corporation Interlocal Agreement (the “Agreement”), a copy of which is attached hereto as Exhibit 1, and further, that the [Chairman of the Select Board or other authorized Municipal Official] shall be and is hereby authorized to execute said Agreement on behalf of the {Town, City of County}.
2. That the [Name of Town, City or County] 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 _____, 20__.

A true copy, Attest:

Town Clerk
[Name of Town, City or County]

[Authorized signature]