

**AMENDED AND RESTATED INTERLOCAL AGREEMENT AMONG THE
CITY OF OLD TOWN, THE TOWN OF ORONO, AND THE UNIVERSITY OF MAINE SYSTEM,
REGARDING THE ESTABLISHMENT AND OPERATION OF A MUNICIPAL FIBER CORPORATION**

This Amended and Restated Interlocal Agreement (the “Amended Agreement”) is by and among the City of Old Town, Maine, a municipal corporation whose city hall is located at 265 Main Street, Old Town, Maine 04468 (“OLD TOWN”), the Town of Orono, Maine, a municipal corporation whose municipal building is located at 59 Main Street, Orono, Maine 04473 (“ORONO”), and the University of Maine System, an agency of State Government with a mailing address at 16 Central Street, Maine 04401-5106 (the “UNIVERSITY”), and amends that certain Interlocal Agreement between OLD TOWN and ORONO to Establish and Operate a Municipal Fiber Corporation, executed on or about March 13, 2014 (the “Agreement”).

WHEREAS:

- (1) OLD TOWN and ORONO are municipalities of the State of Maine and the UNIVERSITY is an agency of State Government, each with authority under Maine Revised Statutes, Title 30-A, Chapter 115, to enter into interlocal cooperation agreements for the joint exercise of their powers; and
- (2) OLD TOWN and ORONO are among the communities in Maine now served by the so-called “Three Ring Binder,” a high-capacity, open-access fiber optic network that serves as the so-called “middle mile” of the high speed Internet network; and
- (3) The Three Ring Binder is now available to Internet service providers, municipalities, and others for extension into communities and neighborhoods; and
- (4) In 2011, OLD TOWN and ORONO each joined with the UNIVERSITY as members of The University Community Next Generation Innovation Project, also known as Gig.U, a nationwide effort by a consortium of research universities and their host communities to accelerate the introduction of ultra-high-speed Internet services to the host communities; and
- (5) In 2012, in response to a Request for Information issued by Gig.U to Internet service providers nationally, GWI of Biddeford, in cooperation with the UNIVERSITY, OLD TOWN, and ORONO, announced its interest in launching “Gigabit Main Street,” a pilot project to connect businesses and homes in OLD TOWN and ORONO to the high-speed fiber optic network; and
- (6) Before such connections can be made to businesses and homes, the fiber optic network must first be extended to the streets and neighborhoods in which the businesses and homes are located – an extension known as the “last mile;” and
- (7) It has become clear that in small town and rural environments, in order to better enable Internet service providers (“ISPs”) such as GWI and others to connect fiber to businesses and homes, there is both a necessity and an advantage for municipalities to install the “last mile” of dark fiber, and to make this “last mile” available for lease and activation by the ISPs; and

(8) Networkmaine is a unit of the UNIVERSITY providing the state's research and development community with access to high-speed connectivity, was an initiator of the Three Ring Binder, and is a key resource in the implementation of the goals of Gig.U in Maine.

NOW, THEREFORE, OLD TOWN and ORONO agree to establish the Old Town-Orono Fiber Corporation (the "Corporation") under M.R.S. Title 30-A, Chapter 115, as follows:

Sec. 1. Purpose: The purpose of this Amended Agreement is to take all steps necessary to incorporate, establish, and provide start-up assistance to the Corporation, whose purpose, in turn, shall be to design, install, maintain, and make available on an open and competitive basis, telecommunications infrastructure, within OLD TOWN and ORONO, which enables high-speed Internet service in the two municipalities. "Open and competitive" means that any financially responsible entity, including any institutional customer, telecommunications carrier, or ISP, may lease fiber along the route with access at the same pricing and substantially similar terms and conditions relative to their use of the infrastructure. OLD TOWN, ORONO and the UNIVERSITY will cooperate in this endeavor in any way that is mutually beneficial.

Sec. 2. Duration: The initial duration of this Amended Agreement shall be five (5) years from the date of incorporation of the Corporation with the Secretary of State of the State of Maine. This Amended Agreement may be renewed for such additional term, as the City Council of OLD TOWN, the Town Council of ORONO and the UNIVERSITY may collectively decide, according to the procedures set forth in Section 7 of this Amended Agreement. Nothing herein shall limit the existence of the Corporation as an independent corporation after five (5) years if this Amended Agreement is not renewed.

Sec. 3. Organization:

A. Type of Organization. The Corporation shall be a Maine nonprofit corporation.

B. Authority. The Corporation shall have all of the authority, powers, and responsibilities granted to corporations of its type, provided that the Corporation shall not incur expenses or debt, enter into any agreements, or create any obligations that in any manner obligate OLD TOWN, ORONO, or the UNIVERSITY thereto, without prior formal, written approval of and supporting appropriations by OLD TOWN, ORONO and/or the UNIVERSITY, as applicable.

C. Board of Directors.

1. Composition: For the term of this Amended Agreement, the Board of Directors of the Corporation shall consist of nine (9) persons as follows:

- a. The City Manager of OLD TOWN, or his or her appointee;
- b. The Town Manager of ORONO, or his or her appointee;

- c. Two (2) persons appointed by the OLD TOWN City Council, such persons preferably having expertise in telecommunications, a related technology or engineering discipline, utilities, or business use of Internet services;
- d. Two (2) persons appointed by the ORONO Town Council, such persons preferably having expertise in telecommunications, a related technology or engineering discipline, utilities, or business use of Internet services; and
- e. Three (3) persons appointed by the UNIVERSITY, such persons preferably having expertise in telecommunications, a related technology or engineering discipline, utilities, or business use of Internet services.

2. Terms: The City Manager of OLD TOWN and the Town Manager of ORONO, or their respective appointees, shall serve for three (3) years or as long as they maintain their positions with OLD TOWN and ORONO, whichever is shorter. One appointee by the UNIVERSITY shall also serve for three (3) years. The other appointees shall have terms of two (2) years, except that three (3) of the other appointees, one (1) from each municipality and the UNIVERSITY, shall have initial terms of one (1) year. In the event that any Director dies, resigns, or is removed prior to the natural expiration of his or her term, his or her replacement shall only serve for the unexpired portion of such term.

D. Bylaws. The parties to this Amended Agreement shall be the members of the Corporation and shall adopt bylaws at its organizational meeting.

Sec. 4. Finance and Staffing: Within available resources, OLD TOWN, ORONO and the UNIVERSITY, will provide staffing assistance to the Corporation, as may be requested by the Corporation, and on terms as may be mutually agreed. Provided that the Corporation adopts a business plan and budget to carry out its mission, OLD TOWN, ORONO and the UNIVERSITY will reasonably cooperate in seeking grant opportunities, jointly and individually, for the funding of the Corporation's capital and operating costs.

It is intended that the Corporation will fund its capital and operating costs primarily out of a combination of grants and fees charged to lessees of its infrastructure. The Corporation may request, in writing, funds for specified purposes from OLD TOWN, including OLD TOWN's development company (Old Town Development, LLC) and ORONO, but such a request shall not constitute an obligation for OLD TOWN or ORONO to approve the request.

To the extent possible, OLD TOWN, ORONO and the Corporation shall work in partnership with Networkmaine of the UNIVERSITY, consistent with a Letter of Intent from Jeffrey Letourneau, Executive Director of Networkmaine, to Sophie Wilson of the Town of Orono and Bill Mayo of the City of Old Town, dated July 9, 2013, a copy of which is attached to this Amended Agreement.

Sec. 5. Amendment: This Amended Agreement may be modified by affirmative vote of each of the OLD TOWN City Council and the ORONO Town Council, together with the consent of the

UNIVERSITY. OLD TOWN and ORONO, by vote of each council, together with the UNIVERSITY, may invite other municipalities, public agencies, or governments, into this Amended Agreement, on terms that the two councils and the University deem appropriate and equitable.

Sec. 6. Organizational Costs and Preparations: OLD TOWN and ORONO will equally share the costs of organizing the Corporation. Such costs may include legal and other costs that the City Manager of OLD TOWN and the Town Manager of ORONO collectively agree are necessary and within the resources of the two municipalities to fund. UNIVERSITY will assist in the organization of the corporation, to the extent possible within its resources, through in-kind services and advice.

Sec. 7. Termination and Disposition of Property. This Amended Agreement will terminate:

- A. Upon its expiration under Section 2 of this Amended Agreement; or
- B. Upon the dissolution of the Corporation or the sale of substantially all of its assets, said dissolution, or sale, occurring prior to expiration of this Amended Agreement under Section 2, including any renewal or extension terms, agreed to by OLD TOWN, ORONO and the UNIVERSITY; or
- C. Upon affirmative vote of each of the City Council of OLD TOWN, the Town Council of ORONO and the UNIVERSITY. If any one of these members wishes to initiate the termination of this Amended Agreement, it shall provide at least ninety (90) days notice to the other parties that it is proposing to do so. The proposal shall include a description of the manner in which any outstanding financial obligations incurred, under or related to this Amended Agreement, will be fulfilled.

Subject to applicable law, nothing herein shall limit the existence of the Corporation as an independent corporation, provided that its bylaws are amended to provide for governance independent of OLD TOWN, ORONO and the UNIVERSITY and their respective appointments to the Board of Directors.



Maine's
Public
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UNIVERSITY OF MAINE SYSTEM

Information Technology Services
5752 Neville Hall
Orono, Maine 04469-5752
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July 9, 2013
Sophie Wilson
Orono, Maine

Bill Mayo
Old Town, Maine

Re: Letter of Intent

For more than a year, the University of Maine System (UMS), the Town of Orono, and the City of Old Town have been actively and collaboratively pursuing the creation of ultra-high speed broadband throughout the two communities. The collaborative submission by the two municipalities to the NBRC for funding to build last-mile fiber optic infrastructure throughout the two communities is fully supported and endorsed by the University. Based upon these past activities, UMS, Old Town, and Orono enter into this Non-Binding Letter of Intent (LOI) as of July 9, 2013 (effective date) from which any of the three parties may withdraw without cost, obligation or penalty in that party's sole discretion and will confirm UMS' Old Town's and Orono's understanding with respect to their preliminary discussions and summarizes the intent and initial scope of any future relationship as follows:

1. That Old Town and Orono will successfully secure funding through the NBRC to construct last-mile fiber infrastructure in the two municipalities.
2. That UMS will provide Old Town and Orono access to its middle-mile fiber assets and related apparatus needed for last mile connections as they currently exist in the two municipalities. The value of said assets is in excess of \$100,000.
3. That UMS will continue to provide technical assistance in the engineering, and planning of the last-mile fiber infrastructure. These services have a value in excess of \$25,000.

There are no other terms or conditions of the parties at this time but such can and may become items of discussion.

Sincerely,

Jeffrey Letourneau
Executive Director, Networkmaine
University of Maine System