

**INTERMUNICIPAL AGREEMENT FOR
A CONSORTIUM OF THE MUNICIPALITIES OF
ALTON, BELMONT, DEERFIELD, FRANKLIN, GILFORD, GILMANTON,
LACONIA, NEW DURHAM, AND NORTHWOOD
FOR A CABLE FRANCHISE WITH ATLANTIC BROADBAND (NH-ME), LLC**

This Intermunicipal Agreement (hereinafter “Agreement”) is entered into by the Governing Bodies of the Municipalities of Alton, Belmont, Deerfield, Franklin, Gilford, Gilmanton, Laconia, New Durham, and Northwood, New Hampshire (the “Municipalities”), and each Governing Body adopting the same, and understands and agrees to the commitments, terms, and conditions contained in it.

WHEREAS, the Municipalities seek to more effectively and efficiently negotiate either renewals or initial cable franchise agreements between their communities and Atlantic Broadband (NH-ME), LLC (hereinafter “Atlantic Broadband”); and

WHEREAS the Municipalities have determined that working together to hire counsel and gain understanding of the cable franchise renewal process under federal and state law, and their options and opportunities, as well as limitations in that process, will be more efficient together, than each community undertaking such effort on its own; and

WHEREAS, the Municipalities believe that they will be able to negotiate more advantageous cable franchise agreements by pursuing common goals than by working independently, thus delivering better benefits and cable TV services to their residents, schools and businesses, and enhancing the region’s economic development; and

WHEREAS, Chapter 53-A of the New Hampshire Revised Statutes Annotated permits “municipalities and counties to make the most efficient use of their powers by enabling them to cooperate with other municipalities and counties on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities,” RSA 53-A:1; and

WHEREAS, the Municipalities believe that forming a Consortium and working together to hire counsel and to learn about their options for cable franchise negotiations is an appropriate municipal undertaking; and

WHEREAS, the Governing Bodies of each of the Municipalities have voted at their respective Meetings to enter into this Agreement; and

THEREFORE, pursuant to RSA Chapter 53-A, in consideration of the mutual covenants and promises set forth herein, the Municipalities enter into this Agreement to create a Consortium to hire legal counsel to

begin the process of learning about legal and strategic options in cable franchise negotiations with Atlantic Broadband, and to engage in such negotiations, as appropriate for the public benefit of the Municipalities.

I. DEFINITIONS

The following definitions will apply to the terms appearing in this Agreement.

A. "Agreement" shall mean this document, the Intermunicipal Agreement for a Consortium to hire legal counsel, to learn about and discuss legal and strategic options, and, as

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appropriate, negotiate with Atlantic Broadband, executed by the Governing Bodies of the Municipalities.

B. "Board" or "Joint Board" shall mean the Joint Board required by RSA 53-A:3,III(a) and described more fully in Section VI, below. This Joint Board shall not be confused with Boards of Selectmen or other Governing Bodies serving the individual Municipalities.

C. "Cable Franchise Negotiations" shall mean the discussions between representatives of the Municipalities, with the support and assistance of legal counsel, and representatives of Atlantic Broadband for renewal of a cable TV franchise agreement, to allow Atlantic Broadband to provide cable TV services in the Municipalities.

D. "Consortium" shall mean the group of Municipalities working together for the purposes of this Agreement.

E. "Governing Bodies" shall mean either the Select Boards / Boards of Selectmen or the City or Town Councils for the Member Municipalities.

F. "Member Municipalities" or "Municipalities" shall mean the Municipalities of Alton, Belmont, Deerfield, Franklin, Gilford, Gilmanton, Laconia, New Durham, and Northwood, New Hampshire, and any other municipalities that join in the Consortium through amendment of this Agreement.

II. PURPOSE OF AGREEMENT

The purpose of this Agreement is to allow the Municipalities to create a consortium to retain legal counsel, Donahue, Tucker & Ciandella, PLLC (hereinafter "DTC Lawyers"), to learn about legal and strategic opportunities and options for the Municipalities in their Cable Franchise Negotiations

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with Atlantic Broadband. DTC Lawyers will provide legal and strategic advice to the Municipalities, including, but not limited to:

- Responding to Atlantic Broadband's letters requesting renewal of cable TV franchises in the Municipalities and advising the Municipalities of legal options around extensions of their current cable TV franchises;

- Advising the Municipalities on the benefits and risks of both the “formal” and “informal” processes for renewal of their cable TV franchise;
- Advising the Municipalities on legal, technological and competitive changes since they last negotiated renewal of their cable TV franchises, and considerations to include in the forthcoming negotiations;
- Advising the Municipalities on legal deadlines, public notice requirements, and other requirements of federal and state law to be complied with in the franchise renewal process;
- Providing legal advice on cable system line extensions, franchise fees, public, educational and governmental access channels, taxation of cable company facilities and use of rights-of-way, customer service standards and courtesy cable services to municipal and school locations, as well as other technical matters; and
- Offering à la carte services on individual legal matters of unique concerns to particular Municipal Members, based on their legal, technical or competitive circumstances.

This approach will result in more efficient use of public resources and more effective negotiations by the Member Municipalities with Atlantic Broadband. Each Member shall be a client of DTC Lawyers, pursuant to the engagement letter executed by each Municipality. Each Municipality will be responsible for its equal share of DTC Lawyers’ legal fees and expenses. Subject to law,

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communications between DTC Lawyers and authorized representatives of the Members and their Governing Bodies shall be protected by the attorney-client privilege. DTC Lawyers’ bills will go directly to each Member Municipality. The Members shall pay their individual shares of fees to DTC Lawyers directly. Each Governing Body shall determine the appropriate source of funds for payment of DTC Lawyers’ bills.

III. ADOPTION

This Agreement shall become effective upon the affirmative vote of the governing bodies of the Member Municipalities at their meetings in 2021.

IV. ADDITIONAL MUNICIPALITIES

If additional municipalities wish to join the Consortium after this Agreement becomes effective, their Governing Bodies shall take appropriate action and notify the Joint Board of Directors. After such notification, the Consortium may admit additional municipalities upon an affirmative vote of the Governing Bodies of a majority of the Member Municipalities. Any additional Municipality must adopt this Agreement, execute an engagement letter with DTC Lawyers, and agree to any applicable bylaws.

In addition, if additional municipalities join the Consortium after the original Member Municipalities have paid fees and expenses incurred by DTC Lawyers, the new municipality or municipalities shall pay to DTC Lawyers a pro rata share of the fees and expenses incurred and paid up to the date of joining. In return the new municipality or municipalities shall receive copies of the work product already produced

by DTC Lawyers for the Consortium. DTC Lawyers shall deposit that joining payment into its client trust account and apply it to future Consortium invoices

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for legal services, to help defray those costs before the bill is divided among the Member Municipalities.

V. DURATION OF AGREEMENT

This Agreement shall be in effect from May 19, 2021 through December 31, 2023, and the Joint Board of Directors may vote to renew it for another term of up to two (2) years, unless terminated under the provisions of Section VIII, below.

VI. JOINT BOARD OF DIRECTORS

Pursuant to RSA 53-A:3 III (a), a Joint Board of Directors shall be created by appointment by the Governing Bodies of the Member Municipalities.

A. **Make Up of the Joint Board.** The Joint Board shall consist of one representative from each of the nine (9) Municipalities, selected by the Governing Body of that Municipality. If any additional municipality joins the Consortium, that new municipality shall likewise be entitled to a representative on the Joint Board. The representatives shall be known hereafter as "Directors."

B. **Terms for Directors.** The Directors shall serve for three (3) year terms subject to the will of the Governing Bodies. Directors may be appointed to successive terms. If a vacancy occurs during a term, the Governing Body for that Municipality shall appoint a replacement. Directors shall serve until their successors are seated.

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C. **Role of the Joint Board of Directors.** The role of the Joint Board of Directors is to make decisions on behalf of the Members solely related to carrying out the Purpose of this Agreement.

The Joint Board of Directors will not have the authority to make any decision on behalf of the legislative bodies of the Municipalities on matters reserved to them.

The Joint Board of Directors will not replace the Governing Bodies in any of the Municipalities. The Joint Board of Directors will not have the authority to make any decision on behalf of the Governing Bodies, unless it is to carry out the Purpose of this Agreement.

The Joint Board of Directors may carry out the Purpose of this Agreement, as described in Section II, above, by negotiating and executing a contract or contracts with appropriate vendors or individuals, under the same powers of the Governing Bodies of Municipalities to make contracts that are necessary and convenient for the transaction of the public business of the Municipalities, including planning for and carrying out negotiations with Atlantic Broadband.

D. **Officers.** Beginning with its first meeting and then annually thereafter, the Joint Board of Directors shall elect a Chair, Vice Chair, and a Secretary from the members of the Joint Board of Directors. The Chair shall preside over all meetings of the Joint Board and perform such duties as the Joint Board prescribes. In the Chair's absence, the Vice Chair shall perform those duties. The Secretary shall provide

notice of all meetings of the Joint Board to the Municipal Clerks for posting, pursuant to law, shall take minutes of each meeting, and shall timely forward the minutes to each Municipal Clerk for recording. In

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the absence of the Secretary at a meeting, the Chair shall appoint another Director to carry out the duties of the Secretary.

E. **Meetings.** The Joint Board of Directors shall meet at least quarterly and shall rotate the location of the meeting among the Municipalities or hold the meetings in a central location. All meetings will be subject to RSA Chapter 91-A. The Municipal Clerks shall post proper notice of Joint Board of Directors meetings in each of the Member Municipalities and shall record minutes pursuant to RSA 91-A:2. A majority of the appointed Joint Board members shall constitute a quorum.

F. **Voting.** In all votes regarding the affairs of the Consortium, each Director shall be entitled to cast one vote. Decisions shall be by majority vote unless otherwise required.

VII. FINANCIAL AGREEMENT

Apportionment. Funds donated or appropriated by the Member Municipalities, provided by grants to the Member Municipalities or otherwise contributed to the Consortium, shall be expended to benefit the Consortium and the Member Municipalities overall. The Joint Board of Directors is not required to apportion specific funds to the benefit of specific Municipalities, as the work at this stage is preliminary and will benefit all Municipalities equally. It is not anticipated that this type of Agreement will result in any jointly owned property. The Joint Board may use any personal property and services donated to it by the Member Municipalities.

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VIII. TERMINATION

A. **Mutual Agreement.** This Agreement will terminate at the end of calendar year 2023 unless extended by the Joint board of Directors, pursuant to Section V or terminated at the end of an earlier calendar year, upon the vote of two-thirds of the Governing Bodies of the Municipalities. The Governing Bodies shall make the decision to terminate, and shall notify the Joint Board of Directors and the other Governing Bodies, at least six (6) months before the end of the calendar year.

B. **Withdrawal.** A Municipality wishing to withdraw from the Agreement shall give notice not later than one (1) year before the end of an initial or any subsequent term and shall be responsible for its share of the fees and costs until the completion of that term. Notice shall be in writing from the Governing Body of that Municipality to the other Governing Bodies and the Joint Board of Directors. Since it is contemplated that there will be no jointly owned property, there are no provisions for disposal of any such property, if a Municipality withdraws.

C. **Effective Date of Termination.** Termination of this Agreement shall be effective upon a vote by a majority of the Joint Board of Directors, verifying that all matters have been wound up.

D. **Insurance and Hold Harmless.** The Directors shall serve as part of the regular appointed or elected officials or their regular job responsibilities as employees or as volunteers of the Municipalities, and as such, are covered by the insurance provided by the Municipalities. No Director shall be liable to claims

because of participation in, or as the result of any action or omission by the Consortium. Without waiving the protections, rights and

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limitation of New Hampshire laws on governmental immunity, and any other applicable laws, where appropriate, the individual Municipalities shall defend and indemnify Directors against any and all claims, judgments, losses, demands and costs in any way arising out of this Agreement to the extent such claims, judgments, losses, demands and costs are not barred by the New Hampshire governmental immunity laws and any other applicable laws. The Consortium shall be responsible for any insurance necessary for its operation relating to assets owned, liabilities incurred and/or employees retained by the Consortium, independent of the individual Municipalities. In so doing, the Consortium does not waive the protections, rights and limitation of the New Hampshire governmental immunity law and any other applicable laws.

IX. SEVERABILITY

Should any part, term or provision of this Agreement be declared to be illegal or in conflict with any law whatsoever, or otherwise rendered unenforceable or ineffectual, by any agency or court of competent jurisdiction, the remaining portions of this Agreement shall nonetheless remain in effect and the Municipalities each agree that they would have entered into each provision of this Agreement separately even if none of the other provisions had been included.

X. OTHER

A. Performance of Joint Board. Pursuant to RSA 53-A:3 IV, this Agreement does not relieve any of the Municipalities of any obligation or responsibility imposed upon them by law except to the extent of actual and timely performance thereof by the Joint Board of

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Directors. Said performance may be offered in satisfaction of the obligation or responsibility.

B. Review/Approval of Attorney General. Pursuant to RSA 53-A:3 V, this Agreement was submitted to the Attorney General, who determined that the Agreement is in proper form and compatible with the laws of this State.

C. Filing with Town Clerk and Secretary of State. Pursuant to RSA 53-A:4, this Agreement shall be filed with the Clerk of each City or Town and with the Secretary of State.

D. No Separate Legal Entity. This Agreement is not intended, nor shall it be construed, to create a separate legal entity, but is merely a mechanism to allow the Municipalities to associate for their mutual advantage. Nothing in this Agreement shall authorize the Joint Board of Directors to create an operating reserve fund, to sue or be sued, to borrow money, or acquire, hold or dispose of real property.

XI. AMENDMENT

This Agreement may only be amended by written consent of the governing body of two-thirds (2/3) of the Member Municipalities. Any such amendments shall be duly filed with the appropriate offices, pursuant to Section X, B and C.