

BROADBAND INFRASTRUCTURE AGREEMENT

This Broadband Infrastructure Agreement (the “Agreement”) is entered into by and between the Town of Westport Island, Maine (hereinafter referred to as the “Town”) and Spectrum Northeast, LLC by Charter Communications, Inc. (hereinafter referred to as “Charter”), hereinafter also referred to individually as a “Party” or together as the “Parties,” on _____ “Effective Date.”

WHEREAS, Charter has decided that it would prefer to construct the Broadband Project that is the subject of the successful ConnectMaine grant application by the Town and Charter (the "Broadband Project) without accepting the ConnectMaine grant funds; and

WHEREAS the Town is willing to contribute \$62,651 towards Charter's construction of the Broadband Project as previously approved at a special town meeting, and to obtain any necessary voter ratification to authorize proceeding with the Broadband Project without the ConnectMaine grant; and

WHEREAS, the Town has determined that the broadband infrastructure buildout project described in the Scope of Work provided in Exhibit A of this Agreement ("Broadband Project") is an authorized use of payments from the Town’s funding sources under applicable state and federal laws.

- 1) **PURPOSE.** The purpose of this Broadband Infrastructure Grant Agreement (“Agreement”) is to implement the broadband infrastructure buildout project described in the ConnectMaine broadband grant application and the Scope of Work at Exhibit A. The Parties agree to promptly meet to discuss in good faith appropriate modifications to the Scope upon the request of either Party.
- 2) **TERM.** This Agreement shall automatically expire on the second anniversary of the date on which Charter notifies the Town that the Broadband Project is complete.
- 3) **FUNDING.** To fund the Broadband Project, the Town agrees it will remit two (2) milestone payments (the “Milestone Payments”) totaling Sixty Two Thousand, Six Hundred and Fifty One Dollars (\$62,651) to Charter in accordance with the payment schedule and other terms and conditions set forth in Exhibit A. The Town represents that the Broadband Project falls within an appropriate use of Federal American Rescue Plan Act of 2021 funding and bears any and all risks associated with that determination.
- 4) **BROADBAND PROJECT DURATION.** Charter shall commence performance of this Agreement as soon as practicable and shall complete the Broadband Project no later than one (1) year from the Effective Date of this Agreement, subject to Excusable Delay. Excusable Delay means a delay to the construction of the Broadband Project that affects completion and is directly caused by (1) make-ready work that is not received by Charter within 45 days of Charter submission of a completed application for utility pole attachments; or (2) any delay in receiving governmental, regulatory and third party permits, licenses and approvals, despite Charter’s good faith efforts to secure timely approvals; (3) any delay caused by the Town’s action or inaction, including, but not limited to, any failure to timely remit a Milestone Payment; or (4) pursuant to Section 9.

- 5) **OWNERSHIP OF BROADBAND PROJECT INFRASTRUCTURE AND PRICING.** Charter shall retain all ownership interests and rights in the network, materials, equipment, supplies and facilities constructed and deployed in connection with the Scope of Work. Charter reserves the right to modify the terms and conditions, data usage, speeds and pricing for any of Charter's services.
- 6) **NOTICE OF VIOLATION OR DEFAULT.**
 - a) In the event the Town believes that the Charter has not complied with the material terms of the Agreement, it shall notify the Charter in writing with specific details regarding the exact nature of the alleged noncompliance or default.
 - b) **Charter's Right to Cure or Respond.** The Charter shall have forty-five (45) days from the receipt of the Town's written notice: (A) to respond to the Town, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within the forty-five (45) day period, initiate reasonable steps to remedy such default and notify the Town of the steps being taken and the projected date that the cure will be completed.
- 7) **INDEMNIFICATION.** Unless prohibited under applicable law, the Town and the Charter agree to defend, indemnify and hold each other, and each other's lenders, parent companies, affiliates, officers, directors, agents and employees, harmless from and against any and all claims, losses, damages and liabilities (including, but not limited to, reasonable attorneys' fees and court costs) on account of any claim by a third party for bodily injury or property damage against the indemnified Party to the extent caused by the negligent act or omission, or willful misconduct of, or breach of this Agreement by, the indemnifying Party or the indemnifying party's employees, contractors, subcontractors or agents, in connection with the performance of their respective obligations under this Agreement, provided, however, that nothing in this Agreement is intended, or shall be construed, to constitute a waiver of any defense, immunity or limitation of liability that may be available to the Town, or any of its officers, agents or employees, pursuant to the Eleventh Amendment to the Constitution of the United States of America, the Maine Constitution, the Maine Tort Claims Act (14 M.R.S.A. § 8101 et seq.), any state or federal statute, the common law or any privileges or immunities as may be provided by law.
- 8) **ENTIRE AGREEMENT.** This Agreement, and any attachments hereto, embodies the entire understanding and agreement of the Town and the Charter with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral. All ordinances or parts of ordinances that are in conflict with or otherwise impose obligations different from the provisions of this Agreement are superseded by this Agreement.
- 9) **COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS.** In its operations under this Agreement, the Town and Charter shall comply with all applicable tribal, state and federal laws.
- 10) **FORCE MAJEURE.** Neither the Town or Charter shall be liable to the other, or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control. Such causes may include, but are not limited to, acts of God or of a public enemy, fires, floods, epidemics, quarantine restrictions, pandemics, strikes, freight embargoes, or unusually severe weather.

- 11) NO THIRD-PARTY BENEFICIARIES. This Agreement is intended for the benefit of the Parties only and nothing contained herein will be deemed to give any third party any intended or incidental claim or right of action that does not otherwise exist without regard to this Agreement, against either Party.
- 12) GOVERNING LAW. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of Maine, without regard to the rules of conflict of laws thereof. The Parties agree that any dispute involving this Agreement shall be heard only in the courts of Lincoln County, Maine or the Federal District Court for the District of Maine.
- 13) NOTICE. Any notice required under this Agreement shall be provided via US Mail and Email to the following addresses:

CHARTER:

Charter Communications
Director, Government Affairs
400 Old County Road
Rockland, ME 04841

Charter Communications
RVP, Field Operations
6005 Fair Lakes Rd
East Syracuse, NY 13057

TOWN:

Board of Selectmen
Town of Westport Island
6 Fowles Point Rd.
Westport Island, ME 04578

- 14) SEVERABILITY. If any section, subsection, sentence, clause, phrase, or other portion of this Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.
- 15) MODIFICATION. No provision of this Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Town and the Charter, which amendment shall be authorized on behalf of the Town through the adoption of an appropriate resolution or order by the Town, as required by applicable law.

- 16) TERMINATION. Either Party may terminate this Agreement for material breach by the other Party that such other Party fails to cure within thirty (30) days of receipt of notice of such breach from the terminating Party.
- 17) NO WAIVER OF RIGHTS. Nothing in this Agreement shall be construed as a waiver of any rights, substantive or procedural, the Town or Charter may have under federal or state law unless such waiver is expressly stated herein.

IN WITNESS WHEREOF, this Broadband Infrastructure Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the date set forth below:

For the Town:
By its Board of Selectmen, Town of Westport Island, Maine

By: _____

George Richardson

Title: First Selectman

Date: _____

By: _____

Jeffrey Tarbox

Title: Second Selectman _____

Date: _____

By: _____

Ross Norton

Title: _ Third Selectman _____

Date: _____

For Charter: Spectrum Northeast LLC
By: Charter Communications, Inc., its Manager

By: _____

Title: _____

Date: _____

**Exhibit A
Scope of Work**

I. BROADBAND PROJECT AREA

The following Broadband Project description defines the scope of work to be completed in accordance with the Agreement: Charter will install a broadband network capable of providing residential speeds starting at 100 Mbps download and 10 Mbps upload, up to 940 Mbps download and 35 Mbps upload to the following Broadband Project Area:

Addresses attached. Broadband Project includes, 27.3 miles passing 205 homes and businesses as listed on the attached.

II. MILESTONE PAYMENTS:

As Charter achieves each of the following project milestones (the “Milestones”), Charter shall become entitled to receive the applicable Milestone Payment as follows:

PAYMENT SCHEDULE		
Milestone	Percentage (%)	Amount
Contract Execution	50%	\$31,235.50
Project Completion	50%	\$31,235.50
Total The Town Payment	100%	\$62,651.00

In the event a Milestone Payment is not timely paid, Charter shall not be obligated to make any further progress on the Broadband Project until it receives payment subject to Excusable Delay under the Agreement. The Town’s obligations under this contract do not depend on the cost to construct the project.

Exhibit B Payment

To transfer funds:

Bank Address for ACH

US Bank

7th and Washington

St. Louis, MO 63101

Account Title: Charter Communications Operations LLC

Account Number: 152319781067

Routing Number: 081000210

SWIFT: USBKUS44STL

To send a check, mail to:

Attn: Sundry Billing, Grants

Charter Communications

12405 Powerscourt Drive

St. Louis, MO 63131

Exhibit C
Addresses Attached