

**INTERLOCAL CONTRACT
ADOPTION INSTRUCTIONS**

- (1) Convene a regular or special Board meeting.
- (2) Enter name of Town in spaces provided on Page 1 and Page 8.
- (3) Motion made as follows: “Moved, that the Selectboard, on behalf of the Town of _____, approve the form and content of the Interlocal Contract Definitive Version as of September 8, 2008 presented to this meeting, and that the Chair be authorized to execute and deliver the same”.
- (4) Chair signs on Page 8.
- (5) Executed Interlocal Contract and copy of minutes (approved or unapproved) of the Board meeting sent for delivery no later than September 8 by mail, fax or pdf attachment to:

East Central Vermont Community Fiber
58 North Main Street
P. O. Box 8
White River Junction, VT 05001
FAX: 802-359-5164
leslie.nulty@valleyfiber.net

INTERLOCAL CONTRACT
DEFINITIVE VERSION AS OF SEPTEMBER 8, 2008

THIS AGREEMENT is entered into as of the 8th day of September, 2008, by and among the TOWN OF _____ and the Vermont municipal corporations identified on Exhibit A, (collectively, the “Participants”), and such other Vermont municipalities that may subscribe to these presents as Participants, under the provisions of 24 V.S.A. §§4901-4902, and as provided herein.

WHEREAS, the Participants have conducted and concluded a preliminary investigation and analysis relating to the delivery of telecommunications services to the inhabitants, governments and businesses of their respective communities; and

WHEREAS, the Participants have made a preliminary finding and determination that the public good will benefit from having available in their communities reliable, affordable and universally accessible telecommunications services; and

WHEREAS, the Participants have made a preliminary finding and determination that it is economically and technically feasible to provide a telecommunications system among and within their respective communities; and

WHEREAS, the Participants have entered into discussions relating to the advisability and feasibility of one or more commercial and non-profit enterprises (the “Providers”) furnishing telecommunications and support services to the Participants and their inhabitants; and

WHEREAS, as provided in 24 V.S.A. §§1912(a) and 1913, each Participant is authorized and empowered to operate “communications plants” for the delivery of “communication services”; and

WHEREAS, the parties desire to use this Interlocal Contract in order to memorialize their mutual understandings with respect to these presents, and to provide a vehicle for participation in this undertaking by additional municipalities; and

WHEREAS, the Participants desire to implement this Interlocal Contract and the several initiatives and undertakings set forth herein under the name of “East Central Vermont Community Fiber”, d/b/a “ECVC Fiber”, “ECFiberNet” and “ECFiber” (herein “ECF”); and

WHEREAS, it is the goal of the Participants ultimately to own and control unified

communications plants dedicated to the delivery of telephonic, electronic and broadband communication services to their respective inhabitants (hereafter the “Proposed Undertaking,” the scope, nature and terms of which will be the subject of the collaborative efforts embodied herein).

NOW THEREFORE, in consideration of One Dollar and other good and valuable consideration, payment, receipt and sufficiency of which is mutually and severally acknowledged, and in consideration of the several representations, inducements, covenants, agreements and undertakings set forth herein, the parties agree as follows:

- (1) The Participants contemplate that each will proceed in conjunction with all other Participants, as well as with private and public entities, to design, engineer, acquire, finance, permit, construct and operate one or more communications plants within each of the Participants, by which reliable and affordable broadband, data, telephone, cable, television, Internet access, and other communication services will be made available to individual residential, commercial and governmental subscribers.
- (2) The Participants further contemplate that ECF, with the full cooperation, and on the behalf, and for the benefit of all Participants, will enter into one or more contractual agreements with one or more Providers, or with one or more third parties, for the design, construction, financing, maintenance and operation of the communications plants identified in Section (1), and to secure such regulatory approvals, permits and licenses, including a certificate of public good as provided in 24 V.S.A. §1912(b), as may be necessary to construct, finance and operate the communications plants identified in Section (1) hereof. The Participants grant to each other, and to all Participants a beneficial interest in each actual or inchoate contractual agreement, regulatory approval, permit and license, and in each communications plant, in direct proportion to its share of total population covered by the Proposed Undertaking as established by U.S. Census 2006 estimates, regardless of whether any such approval, permit or license is obtained by an individual Participant or by ECF, or by a Provider or by another entity acting on behalf of and for the benefit of the Participants or ECF.
- (3) The ECF Governing Board will negotiate in good faith one or more contracts with one or more Providers to design, locate, acquire, construct and manage the operations of the specific telecommunications systems required to implement the Proposed Undertaking.

- (4) Prior to the commencement of construction or acquisition of any part of the communications plants identified in Section (1) hereof, the parties will enter into one or more definitive capital financing lease agreements, under 24 V.S.A. §1789, as well as one or more operating, management and fiscal agreements, with respect to the ownership, financing, operation and maintenance of the subject telecommunications systems, which agreements will not supercede or replace this Interlocal Contract.
- (5) Any Participant who fails to sign a capital lease financing agreement with respect to the Proposed Undertaking, or any other agreement contemplated in Sections (2), (4), (9) or (12), or who shall fail to appropriate those sums required under Section (6) no more than sixty (60) days past the due date, shall be deemed to have withdrawn from the Proposed Undertaking and this Interlocal Contract without penalty, cost, damages, or other liability, both in law and in equity, to the withdrawing Participant. Upon such withdrawal, the entitlement of the withdrawing Participant in revenues and benefits accrued and accruing hereunder, and the obligations of the withdrawing Participant under the capital lease financing agreement, shall be allocated among and assumed by the remaining Participants, in accordance with the formulation set forth in Section (26).
- (6) (a) Each agreement contemplated in Section (4) will contain an explicit provision limiting the undertaking and responsibility of the individual and collective Participants to appropriating annually any necessary capital financing lease agreement charges, if and when coming due. No such appropriation shall be made from any source under the control or owned by the Participants or in which the Participant has an interest, other than: (i) the revenues generated by the communications system identified in Section (1) hereof; (ii) the proceeds of capital lease financing agreements identified in Section (4) hereof; and (iii) interest derived from the investment of such revenues and proceeds.
- (b) The parties acknowledge that each capital financing lease agreement entered into hereunder shall contain a so-called “non-appropriation clause”, whereby charges accruing and paid under the capital lease financing agreement are classified as current expenses of the Participants, and are not classified as debt, nor as a pledge of revenue, except as may be required for disclosure purposes under generally accepted accounting principles or the requirements of the Government Accounting Standards Board. Consistent with the provisions of 24 V.S.A. §§1789 and 1913, the Participants acknowledge that, regardless of operating expenses and

losses exceeding revenues in any calendar year, in no year in which payments are due under any capital lease financing agreement or operating agreement, shall the individual appropriation of any Participant exceed the annual capital lease financing and operating agreement obligations of that Participant. The annual appropriation allocated to each Participant shall be equal to the full amount of system resources attributable to such Participant, as provided in this Section (6)(b) or in Section (5).

(c) It is intended that all obligations of the “Proposed Undertaking” shall be covered by the sum of the proceeds of the capital lease, and the revenues of the Proposed Undertaking, and the net investment income thereof. Hence, no Participant will have a net financial obligation from sources other than those identified in Section (6)(b) in any year during the life of the Proposed Undertaking. In the event that the proceeds of the capital lease and the revenues of the Proposed Undertaking are not sufficient to make the capital lease payment referenced above, the decision whether or not to budget and appropriate funds from sources other than general taxes is within the sole discretion of the Participant.

(d) No re-allocation under Section (5) or Section (6) shall cause any remaining Participant’s capital lease financing, lease agreement appropriation or operating agreement appropriation to increase in proportion beyond the commensurate re-allocation of revenues and benefits.

- (7) To the extent necessary to secure financing for the construction and acquisition of any part of the communications plant identified in Section (1) hereof, and the operation thereof, each Participant shall have the right, and hereby commits itself, to pledge, hypothecate or grant a security interest of its interest in this Interlocal Contract, in the agreements referred to in Sections (2), (4) and (9), and in the tangible and intangible property described therein.
- (8) Nothing in this Interlocal Agreement, or in any other document envisioned hereunder, shall be construed as creating an agency or delegation between or among the Participants, or as a contract of surety, cross-default, cross-collateralization, deficiency assessment, indemnity or guaranty for any purpose whatsoever. Nor shall any contract entered into under Sections (2) and (4) hereof be deemed a contract of statutory, common law or at will employment with any person or party. The undertakings of the Participants hereunder are individual and several.

- (9) While subject to ultimate resolution of the definitive agreements referred to in Sections (2), (4) and this Section (9), or in separate agreements among the Participants, it is the contemplation of the Participants that the Provider, on behalf of and with the cooperation of ECF, will be responsible for all aspects of the communications plants identified in Section (1), including design, funding, financing, construction, permitting, installation, service connections, repair, maintenance, billing, subscriber relations, and record-keeping. Each Participant, pursuant to 19 V.S.A. §1111, upon review of appropriate application, and subject to reasonable conditions, consents to the Provider, its agents, contractors and employees, entering upon public highways for the purposes of complying with its undertakings set forth in this Section (9).
- (10) The books and records of the Participants relating to this Interlocal Contract and any documents contemplated herein are deemed public records, except for those elements thereof which contain proprietary or confidential information. The Governing Board created under Section (12) hereof shall adopt standards and protocols to ensure that confidential information over which ECF has exclusive control shall not be compromised nor be the subject of unauthorized or inadvertent disclosure. All meetings of the Governing Board and its committees are open meetings, except for such matters as are discussed in executive session.
- (11) Other than as provided in Section (7), neither this Interlocal Contract nor the benefits hereunder may be assigned or encumbered without the express written consent of all Participants. Nevertheless, on their own initiative, the Participants and the Provider shall be entitled to extend trunk line service beyond the geographical limits of the Participants if such extension results in no degradation of telecommunications services then being furnished to Participant subscribers, or increased cost to such Participant subscribers.
- (12) The Participants shall create an ECF Governing Board hereunder, consisting of one member and an alternate from each Participant, each member to be appointed by the respective legislative bodies of the Participants. Such Governing Board shall:
- (a) Organize itself, adopt rules of procedure, establish a schedule of regular meetings, and approve the process whereby public notice of regular and special meetings of the Board and its committees shall be promulgated;
 - (b) Report and make recommendations to the Participants' legislative bodies;
 - (c) Oversee the submission and processing of applications for certificates of public good from the Vermont Public Service Board;

(d) Oversee the reporting and financial management of telecommunication systems serving the Participants, including continuing disclosure requirements with respect to any securities issued by the Participants in connection with the construction and operation of the Project;

(e) Exercise financial control over the system revenue accruing to the Participants individually or to ECF;

(f) Negotiate with one or more Providers a uniform and universal telecommunications system design-build and operating agreement for the purpose of making available to Participants' inhabitants a common selection of telecommunications services;

(g) Negotiate with one or more Providers and financing institutions a uniform and universal capital lease financing agreement for use by all Participants;

(h) Operate as the representative of the Participants and ECF with respect to any relevant regulatory matters; and

(i) Conduct itself in accordance with its By-Laws, attached hereto as Exhibit B.

(13) Within the Governing Board created under Section (12) there shall be an Executive Committee consisting of five voting members selected by the Governing Board, together with the non-voting Secretary and Treasurer ex officio. The terms of the Executive Committee shall be staggered so as to provide continuity. Between regular meetings of the Governing Board, the Executive Committee shall be empowered by the Governing Board to exercise responsibility for the oversight, performance and discharge of all the functions set out in Section (12)(c) - (h), including in particular, the negotiation, execution and implementation of all aspects of a design-build operating agreement and capital lease financing agreement, at all times subject to the concurrence and approval of the Governing Board.

(14) To the fullest extent permitted by law, the Governing Board and the Executive Committee may act informally, by written consent, electronically and by other means of telecommunications, provided that a written record of such proceedings be prepared and ratified at the next meeting of the Governing Board or the Executive Committee.

(15) The Participants, through their respective legislative bodies, shall endeavor to facilitate the construction of the systems identified in Section (1), to the extent the

same are located upon or within public property under the control of the Participants, including public highways.

- (16) The Participants acknowledge that some elements of the communications plants to be acquired, constructed and operated hereunder, and under the agreements referred to in Sections (4), (9) and (12)(f) and (g) may contain confidential information, proprietary material, trade secrets or other information protected by patent or copyright. Accordingly, no Participant shall intentionally disclose any such information, except as may be required by law.
- (17) It is the intent of Participants that until they shall acquire control of the communications plants identified in Section (1), the Participants, individually and collectively as ECF, shall not take any action that would result in ECF being deemed a “regulated company” within the meaning of 30 V.S.A. §201(a).
- (18) (a) The Participants agree that sharing net positive cash flow accruing to ECF among the Participants shall be computed on the basis of their respective system subscribers, the timing and extent of such distribution to be determined by the Governing Board.

(b) No Participant shall be entitled to a legal or beneficial interest in any distribution calculated under Section (18)(a), or to any payment in lieu of taxes accrued or accruing under Section (21), unless and until all current payments contemplated under Sections (6)(b), (12)(f), and (12)(g) have been made.
- (19) In addition to withdrawal under Section (5), any Participant may withdraw voluntarily from this Interlocal Contract prior to the execution of a capital financing lease agreement contemplated in Section (4), and upon thirty (30) days advance written notice, without penalty, cost, damages, or other liability, both in law and in equity, to the other Participants.
- (20) A municipality may join in this Interlocal Contract upon request of its legislative body, following approval of and upon such terms and conditions established by the Governing Board, which terms and conditions may include a contribution for capitalized start up costs, construction costs and initial operating losses. A Participant shall not be liable for any expenses relating to this Interlocal Contract or its involvement in the Proposed Undertaking without its express consent.
- (21) To the extent any property comprising the telecommunications plants described in Section (1) is deemed exempt from local taxation, the Participants agree that such plants shall be appraised as a unitary enterprise, in the amount of total capital expenditures less depreciation, and that ECF shall make an annual payment in lieu

of taxes attributable to each jurisdiction in which the property of such plants is located. Such payment shall be deemed an operating expense and shall be allocated among each jurisdiction in direct proportion to its share of population at the date of the capital lease financing agreement, as established by U.S. Census 2006 estimates. ECF may sequester and dedicate temporarily such payments in lieu of taxes due to Participants as a reserve or operational subsidy fund.

- (22) If at some subsequent time a majority of the Participants agree to create a union municipal district for the purpose of owning and operating one or more telecommunications plants, including the telecommunications plants contemplated in Section (1) hereof, each Participant, including any Participant which declines to enter into a union municipal district, or has withdrawn or been deemed to have withdrawn, shall assign and transfer to such union municipal district all of its right, title, claim and interest in and to any communications plants created and operated hereunder. Each contract under Sections (2), (4), (9) and (12) hereunder shall provide for such assignment and transfer. No such municipal union district conversion shall occur without the express prior approval of all persons possessing a security interest under Section (7) hereof, as well as the express approval of all parties to those agreements entered into under Sections (12)(f) and (12)(g).
- (23) It is the intention of the Participants that this Interlocal Contract be liberally construed in light of its purpose to effect the economic and efficient delivery of modern communications service to their inhabitants.
- (24) If any part of this Interlocal Contract shall be deemed invalid or unenforceable, such finding shall not effect the balance hereof.
- (25) This Interlocal Contract may be amended by instrument subscribed to by all active Participants.
- (26) For determining population herein or in any related agreement, following the effective date of the capital lease financing agreement contemplated in Section (4), the most current decennial census conducted by the United States of America shall control initially, to be substituted by the 2010 census and each decennial census thereafter.
- (27) By approving, accepting and executing this Interlocal Contract, the Participant cancels and nullifies all previous Interlocal Contracts to which it is a party relative to the Proposed Undertaking.

IN WITNESS WHEREOF, the parties have caused these presents to be executed by its respective duly authorized officers, as of the date first set forth above.

TOWN OF _____

By: _____

**EXHIBIT A TO INTERLOCAL
CONTRACT DEFINITIVE VERSION
AS OF SEPTEMBER 8, 2008**

Municipality

Barnard
Bethel
Brookfield
Chelsea
Granville
Hartford
Hancock
Montpelier
Norwich
Pomfret
Randolph
Reading
Rochester
Royalton
Sharon
Strafford
Stockbridge
Thetford
Tunbridge
Vershire
West Windsor
Williamstown
Woodstock

**EXHIBIT B TO INTERLOCAL
CONTRACT DEFINITIVE VERSION
AS OF SEPTEMBER 8, 2008**

APPROVED BY-LAWS FOR EAST CENTRAL VERMONT COMMUNITY FIBER GOVERNING BOARD

April 8, 2008

SECTION 1. PURPOSE

THE ECF Governing Board is created and shall exist for the purpose of carrying out the roles and responsibilities established in the ECF Interlocal Contract, and the Design/Build/Operate/Transfer contract with the Provider.

SECTION 2. ORGANIZATIONAL MEETINGS

On April 8, 2008, the ECF Governing Board shall hold its initial organizational meeting. At such meeting, the Board shall elect from among its membership an interim Chair and Interim Vice Chair, each of whom shall hold until his or her successor is duly elected and qualified.

Individual town delegates shall be seated and have full voting rights, at this April 8 meeting, if they have a letter of appointment from their town Select Board, a resolution of the Select Board agreeing to the signing of the Interlocal Contract, and a signed copy of that contract. Delegates from towns whose Select Boards have not yet completed this process, but who do have a letter of appointment, will be seated with provisional voting rights, which rights will convert to full voting rights at such time as the additional documentation has been provided, but no later than the second organization meeting on April 21.

On April 21, the second and final organization meeting of the ECF Governing Board will be convened. At that meeting, there shall be elected from among the fully-documented Governing Board members, an Executive Committee consisting of a total of five members, a Chair and Vice-Chair plus 3 non-officer members. The Chair and Vice-Chair shall be elected for an initial 2-year term and are eligible to be reelected to successive terms without limit. Non-officer members of the Executive Committee shall be elected for initial one-year terms and are eligible to be reelected to successive terms without limit. The responsibilities of the Executive Committee shall be as set out in the ECF Interlocal Contract, and as may be further assigned by the Governing Board. The Executive Committee shall be representative of the diverse interests of the member towns and their contributions to the effective implementation of the Proposed Undertaking

SECTION 3. REGULAR MEETING

A schedule of regular meetings of the Governing Board shall be established at the organizational meetings.

SECTION 4. SPECIAL MEETINGS

Special Meetings of the Governing Board may be called at any time by the Chair or shall be called by the Secretary upon written request of a majority of the members of the Governing Board. Except in case of emergency, each member of the Governing Board shall be given at least 24

hours notice of any special meeting by notice in person, by telephone, facsimile, electronically or by written notice delivered personally, mailed, or left at such member's usual place of residence.

SECTION 5. QUORUM

For the purpose of transacting business, the presence of members or his or her alternate, representing more than 50 percent of the votes then eligible to be cast, shall constitute a quorum.

SECTION 6. RULES OF PROCEDURE

Except as otherwise provided in the Interlocal Contract or statute, Robert's Rules of Order shall govern at all meetings.

SECTION 7. VOTING

Each member of the Governing Board shall be entitled to cast one vote. Except as otherwise provided herein or in the Interlocal Agreement, a majority of the votes cast shall be required to approve any action.

SECTION 8. TERMS OF OFFICE

With the exception of members elected as Officers at the April 21, 2007 organizational meeting, each member and alternate member of the Governing Board shall serve for a term of one year ending March 31 and until his or her successor is duly appointed. All members of the Governing Board are eligible to be reelected to successive terms without limit.

SECTION 9. ELECTION OF OFFICERS

The Board annually shall elect from among its members a Chair and Vice Chair and such other officers as it deems appropriate for the conduct of its business, except that the Chair and Vice-Chair elected at the April 21, 2008 organizational meeting shall be elected for a 2-year term. Upon majority vote of the Board, the treasurer and the secretary may be non-Board members.

SECTION 10. CHAIR

The Chair shall preside at all meetings of the Board. The Chair shall also perform the entire duties incident to the position and office.

SECTION 11. VICE CHAIR

During the absence of or inability of the chair to perform his or her duties, the Vice Chair shall perform such duties.

SECTION 12. VACANCY

During the absence or inability of the chair or vice chair to render or perform his or her duties or exercise his or her powers, the Board shall elect from among its Membership and acting chair or vice chair.

SECTION 13. SECRETARY

The Executive Committee, at its first meeting, shall appoint a Secretary who shall be an ex-officio non-voting member of the Executive Committee. The Secretary shall have the custody of the public records of the ILC and shall record all votes and proceedings of the ILC including meetings of the ILC and meetings of the Governing Board. The Secretary shall also prepare and warn all meetings of the Governing Board in accordance with Vermont law and shall cause the annual report approved by the Governing Board to be distributed to the legislative bodies of the member municipalities. The Secretary shall also perform all the duties and functions incident to the office of a Secretary or clerk of a Municipal

Corporation.

SECTION 14. TREASURER

The Executive Committee, at its first meeting, shall appoint a Treasurer who shall be an ex-officio non-voting member of the Executive Committee. The Treasurer shall have the custody of the funds of the ILC and shall be the disbursing officer of the ILC. When authorized by the Governing Board, the Treasurer shall sign, make or endorse in the name of the ILC all checks and orders for the payment of monies as may be required to carry out the provision of the ILC and the DBOT contract and pay out and disburse the same. The Governing Board shall adopt a uniform chart of accounts and procedures for the authorization of payments and disbursements of funds over which ECF exercises control.

SECTION 15. RECORDS

The conduct of all meetings and public access thereto, and the maintaining of all records, books and accounts of the ILC shall be governed by the laws of this State relating to open meetings and accessibility of public records.

SECTION 16. AUDIT

The Governing Board shall cause an audit of all ECF accounts to be Performed annually by an independent professional accounting firm or a certified public accountant.

SECTION 17. OTHER COMMITTEES

The Board shall establish a Citizens Advisory Committee to be comprised of subscribers, to provide guidance to the Board regarding the implementation of the Proposed Undertaking. The Board shall also establish an Institutional Stakeholders Advisory Committee to be comprised of significant public and private sector institutions in the service area of the Proposed Undertaking, to provide guidance to the Board regarding the implementation of the Proposed Undertaking. Members of these committees shall not be members or alternate members of the Governing Board.

SECTION 18. REIMBURSEMENT OF OFFICERS

Officers and Members of the Executive Committee shall be reimbursed for such expenses incurred in the discharge of their duties hereunder, as may be determined by the Governing Body.

SECTION 19. RECALL OF OFFICERS

An officer may be removed by a two-thirds vote of the Governing Board whenever, in their judgment, the best interest of ECF will be served thereby.

SECTION 20. CONDUCT OF MEETINGS

To the fullest extent permitted by law, the Governing Board and all committees shall be allowed to meet, transact business, provide notice and communicate by electronic and telephonic means.

SECTION 21. AMENDMENT

Amendments to these by-laws must be adopted by two-thirds of members present and eligible to vote, following at least thirty days advance written notice to all members.