

# WIREDWEST COOPERATIVE AGREEMENT

Revised 8/13/2011

This Cooperative Agreement (“Agreement”) is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2011 by and among the undersigned Municipal Lighting Plants (each a “Member” and collectively the “Members”).

WHEREAS, it is the intention of the Members to join together to form a municipal lighting plant cooperative pursuant to M.G.L. c. 164, §47C, to be known as the WiredWest Communications Cooperative Corporation (“WiredWest”); and

WHEREAS, it is the intention of the Members that the Cooperative shall function and conduct its business primarily for the mutual benefit of each of the Members of the Cooperative;

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the Members agree as follows:

## **SECTION 1. CORPORATE ORGANIZATION**

The Cooperative shall be formed when duly authorized Articles of Organization are filed as required by the laws of the Commonwealth of Massachusetts, and shall be further organized with Bylaws as determined by the Board of Directors. As used in this Agreement, the term “Board of Directors” shall mean the Board of Directors of the Cooperative as more particularly described in Section 3(B) of this Agreement.

## **SECTION 2. PURPOSES**

The purposes for which WiredWest is organized are for the transaction of any lawful business associated with municipal lighting plants under Massachusetts law including, without limitation, planning, building and operating a community-owned, fiber-optic network that enables the provision of comprehensive, affordable, reliable and high-quality Internet, telephone, and television services as well as many new and enhanced services to all the residents, businesses and institutions of WiredWest towns who are interested in participating. WiredWest’s charter area includes 47 towns in Berkshire, Franklin, Hampshire and Hampden Counties. WiredWest agrees not to use eminent domain powers to construct commercial wind turbines. To ensure financial viability, WiredWest may, in its discretion and subject to

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the provisions of the Bylaws, expand membership in WiredWest beyond the original charter area and may provide service to non-member towns.

## **SECTION 3. MEMBERSHIP AND BOARD OF DIRECTORS**

- (A) The Cooperative shall have no capital stock. Voting membership in the Cooperative shall be limited to the Members and such other municipalities that have established Municipal Lighting Plants as are authorized to join under the Bylaws. Non-voting members shall be limited to municipalities that have not established Municipal Lighting Plants but who satisfy all other requirements for membership as set forth in the Bylaws. No member shall terminate its membership except in accordance with procedures set forth in the Bylaws
- (B) The Board of Directors shall be comprised of one representative from each of the Members. Within 15 days of the execution of this Agreement, the Member shall appoint a primary representative and an alternative representative to the Board of Directors. The Directors shall serve in accordance with procedures set forth in the Bylaws.

## **SECTION 4. BYLAWS**

- (A) The Bylaws of the Cooperative shall provide, among other things, that:
- (1) The business of the Cooperative shall be managed by the Board of Directors;
  - (2) The powers of the Cooperative shall include the power:
    - (a) To sue and be sued, complain, and defend its corporate name;
    - (b) To have and use a corporate seal;
    - (c) To purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, and deal in and with real or personal property or any interest therein, wherever situated;
    - (d) To sell, convey, mortgage, pledge, lease, exchange, transfer, or otherwise dispose of all or any part of its property and assets;

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- (e) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, use, and deal in and with shares or other interest in, or obligations of, other domestic or foreign corporations, associations, partnerships, or individuals, or direct or indirect obligations of the United States or any other government, state, territory, governmental district, or municipality, or any instrumentality thereof;
- (f) To make contracts and incur liabilities, borrow money at rates of interest the cooperative may determine, issue notes, bonds, certificates of indebtedness, and other obligations, receive funds from members and pay interest thereon, issue capital stock and certificates representing equity interests in assets, allocate earnings and losses at the times and in the manner the articles of incorporation or bylaws or other contract specify, create book credits, capital funds, and reserves, and secure obligations by mortgage or pledge of any of its property, franchises, and income;
- (g) To lend money for corporate purposes, invest and reinvest funds, and take and hold real and personal property as security for the payment of funds loaned or invested;
- (h) To conduct business, carry on operations, have offices, and exercise the powers granted by this subsection, within or without this commonwealth;
- (i) To elect or appoint officers and agents of the corporation, define their duties, and fix their compensation;
- (j) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this Commonwealth, for the administration and regulation of the affairs of the cooperative;

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- (k) To make donations for the public welfare or for charitable, scientific, or educational purposes;
- (l) To pay pensions and establish pension plans, pension trusts, profit-sharing plans, stock bonus plans, stock option plans, and other incentive plans for any or all of its directors, officers, and employees;
- (m) To be a partner, member, associate, or manager of any partnership, joint venture, trust, or other enterprise;
- (n) To cease corporate activities and surrender its corporate franchise;
- (o) To construct, acquire, equip, own, lease and/or operate a telecommunications system (M.G.L. c. 164 § 47E).
- (p) To furnish energy related services (M.G.L. c. 164 § 47C);
- (q) To charge and collect fees from users of the systems and services offered by the Cooperative;
- (r) To contract with natural persons, firms, corporations, business trusts, partnerships, public and private agencies, non-profit organizations and corporations, other cooperatives, and local municipalities to accomplish any purposes of the cooperative;
- (s) To have and exercise all powers necessary or convenient to effect its purposes;
- (t) To exercise and perform all or part of its power and functions through one or more wholly-owned or partly-owned corporations or other business entities; and
- (u) To exercise all other powers not inconsistent with the state constitution or the United States Constitution, which may be reasonably necessary or appropriate for or incidental to the effectuation of its authorized purposes

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or to the exercise of any of the foregoing powers, and generally to exercise in connection with its property and affairs, and in connection with property within its control, any and all powers which might be exercised by a natural person or a private corporation in connection with similar property and affairs.

- (3) The Board of Directors shall hold regular meetings at least quarterly and shall hold special meetings when requested by the members and called by the Chairman of the Board of Directors;
- (4) Any person or entity made a party to any action, suit or proceeding by reason of being a director, officer, employee, agent or member of the Cooperative, shall be indemnified by the Cooperative against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him or her in connection with said action, suit or proceeding, including any appeal therein, except in relation to matters as to which it shall be adjudged in any such action, suit or proceeding that such director, officer employee, agent, or member was not acting in good faith;
- (5) The Executive Committee of the Board of Directors shall prepare a general administrative budget for each year and submit the budget to the members for their approval;
- (6) At the end of each fiscal year, the Board of Directors shall cause the books, accounts and records of the Cooperative to be reviewed by an independent, certified public accountant;
- (7) Upon termination or dissolution of the Cooperative, the title to all funds and other properties owned by it which remain after payment or the making of provision for payment of all obligations of the Cooperative shall vest in the

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Members, in a manner determined by the Board so as to approximate as closely as possible the pro rata membership in the Cooperative.

- (B) The provisions of M.G.L. c. 164, §47C and §47E, as hereafter amended, shall be incorporated into and made a part of the Bylaws.

### **SECTION 5. TERMINATION**

Each Member hereby applies for membership in the Cooperative when organized and expressly agrees that Termination of this Agreement shall be as provided in the Bylaws of the Cooperative.

### **SECTION 6. MISCELLANEOUS**

- (A) This Agreement reflects the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings among the Parties with respect to the subject matter hereof.
- (B) This Agreement, including this Section 6(B), may be amended only by a written instrument executed by the Parties prior to the filing of the Articles of Incorporation of the Cooperative.
- (C) The validity, construction, and interpretation of this Agreement shall be governed by the laws of the Commonwealth of Massachusetts.
- (D) If any section, paragraph, clause or provision of this Agreement shall be finally adjudicated by a court of competent jurisdiction to be invalid, the remainder of the Agreement shall remain in full force and effect as though such section, paragraph, clause or provision so adjudicated to be invalid had not been included therein.
- (E) The headings contained in this Agreement are for convenience only and shall not in any way affect the meaning or interpretation of this Agreement.
- (F) This Agreement shall be in full force and effect as of the date executed by the Parties hereto, and shall continue in full force and effect until organization of the Cooperative in

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accordance with the laws of the Commonwealth of Massachusetts and execution by the Parties of the agreements contemplated hereunder.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be duly executed.

**Participating Municipal Lighting Plant #1 Name:** \_\_\_\_\_

By \_\_\_\_\_  
Its Duly Appointed Representative

**Participating Municipal Lighting Plant #2 Name:** \_\_\_\_\_

By \_\_\_\_\_  
Its Duly Appointed Representative

**Participating Municipal Lighting Plant #3 Name:** \_\_\_\_\_

By \_\_\_\_\_  
Its Duly Appointed Representative

**Participating Municipal Lighting Plant #4 Name:** \_\_\_\_\_

By \_\_\_\_\_  
Its Duly Appointed Representative

**Participating Municipal Lighting Plant #5 Name:** \_\_\_\_\_

By \_\_\_\_\_  
Its Duly Appointed Representative

**Participating Municipal Lighting Plant #6 Name:** \_\_\_\_\_

By \_\_\_\_\_  
Its Duly Appointed Representative

**Participating Municipal Lighting Plant #7 Name:** \_\_\_\_\_

By \_\_\_\_\_  
Its Duly Appointed Representative

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**Participating Municipal Lighting Plant #8 Name:** \_\_\_\_\_

By \_\_\_\_\_  
Its Duly Appointed Representative

**Participating Municipal Lighting Plant #9 Name:** \_\_\_\_\_

By \_\_\_\_\_  
Its Duly Appointed Representative

**Participating Municipal Lighting Plant #10 Name:** \_\_\_\_\_

By \_\_\_\_\_  
Its Duly Appointed Representative

**Participating Municipal Lighting Plant #11 Name:** \_\_\_\_\_

By \_\_\_\_\_  
Its Duly Appointed Representative

**Participating Municipal Lighting Plant #12 Name:** \_\_\_\_\_

By \_\_\_\_\_  
Its Duly Appointed Representative

**Participating Municipal Lighting Plant #13 Name:** \_\_\_\_\_

By \_\_\_\_\_  
Its Duly Appointed Representative

**Participating Municipal Lighting Plant #14 Name:** \_\_\_\_\_

By \_\_\_\_\_  
Its Duly Appointed Representative

**Participating Municipal Lighting Plant #15 Name:** \_\_\_\_\_

By \_\_\_\_\_  
Its Duly Appointed Representative



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**Participating Municipal Lighting Plant #16 Name:** \_\_\_\_\_

By \_\_\_\_\_  
Its Duly Appointed Representative

**Participating Municipal Lighting Plant #17 Name:** \_\_\_\_\_

By \_\_\_\_\_  
Its Duly Appointed Representative

**Participating Municipal Lighting Plant #18 Name:** \_\_\_\_\_

By \_\_\_\_\_  
Its Duly Appointed Representative

**Participating Municipal Lighting Plant #19 Name:** \_\_\_\_\_

By \_\_\_\_\_  
Its Duly Appointed Representative

**Participating Municipal Lighting Plant #20 Name:** \_\_\_\_\_

By \_\_\_\_\_  
Its Duly Appointed Representative

**Participating Municipal Lighting Plant #21 Name:** \_\_\_\_\_

By \_\_\_\_\_  
Its Duly Appointed Representative

**Participating Municipal Lighting Plant #22 Name:** \_\_\_\_\_

By \_\_\_\_\_  
Its Duly Appointed Representative

**Participating Municipal Lighting Plant #23 Name:** \_\_\_\_\_

By \_\_\_\_\_  
Its Duly Appointed Representative

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## Appendix A – List of WiredWest participating towns

Alford	Monterey
Ashfield	Montgomery
Becket	Mount Washington
Blandford	New Marlborough
Buckland	New Ashford
Charlemont	New Salem
Chester	Northfield
Chesterfield	Otis
Colrain	Peru
Conway	Plainfield
Cummington	Rowe
Egremont	Sandisfield
Florida	Savoy
Goshen	Sheffield
Great Barrington	Shelburne
Hancock	Shutesbury
Hawley	Tyringham
Heath	Warwick
Hindsdale	Washington
Huntington	Wendell
Lanesborough	West Stockbridge
Leverett	Windsor
Leyden	Worthington
Middlefield	