

**INTERLOCAL AGREEMENT BETWEEN
WASHINGTON STATE UNIVERSITY
AND
PORT OF WHITMAN COUNTY
FOR LEASE AND SERVICE OF FIBER OPTIC STRANDS**

THIS agreement is made and entered into by and between Washington State University, an institution of higher education of the State of Washington (WSU), and the Port of Whitman County, a local government entity (PORT). WSU and PORT enter into this agreement pursuant to RCW 39.34, the Inter-local Cooperation Act.

Whereas, PORT has the authority from RCW 53.08 and RCW 53.08.370 to acquire, construct and maintain telecommunications facilities;

Whereas, WSU has the authority to enter into contracts it deems essential to WSU purposes;

Whereas, PORT had entered into an AGREEMENT with WSU Research Foundation to provide telecommunication services to the WSU Research and Technology Park, notwithstanding the foregoing the PORT acknowledges and agrees that WSU has assumed the responsibilities under the AGREEMENT with WSU Research Foundation;

Whereas, pursuant to a Right of Access granted by WSU to PORT (WSU Contract #20565), PORT installed fiber optic cable into the telecommunications closet on the east end of the WSU's Research and Technology Park Building 2 in Pullman, WA; and

Whereas, the governing bodies of WSU and PORT or their authorized delegates have authorized their participation in this Inter-local Cooperation Agreement (AGREEMENT).

NOW, therefore, the parties enter into this AGREEMENT for the uses and purposes and for the consideration set forth below.

IT IS THE PURPOSE OF THIS AGREEMENT for PORT to lease to WSU two (2) fiber optic cable strands and to provide the service and maintenance for the same, in exchange for funds as provided in this AGREEMENT. WSU shall use the fiber optic cable strands acquired hereunder for providing services to the WSU Research and Technology Park;

1. STATEMENT OF WORK

Each party shall do all things necessary for or incidental to the performance of the duties set forth below. The routing of the fiber optic cable through the WSU Campus is as marked on the plan document that is attached to this AGREEMENT, marked Attachment A, and made apart hereof by reference.

A. Duties of PORT: In addition to other duties as set forth herein, the PORT shall do the following:

1. PORT shall be responsible for the maintenance of the fiber optic cable at all times.
2. PORT shall notify WSU at least twenty-four (24) hours in advance of any routine or scheduled maintenance that will affect the fiber optic cable by calling Information Technology's Network Operations at (509) 335-9779.
3. PORT shall begin emergency maintenance of the fiber optic cable within twenty-four (24) hours of written or oral notice of any outage either by WSU or WSU Research Foundation.
4. PORT shall retain the ability to subcontract for construction and maintenance of its fiber optic cable. PORT shall consult with WSU regarding any subcontractors the PORT intends to use on their respective property, and all subcontractors shall comply with the rules and regulations of WSU while on its property and the reasonable instructions of WSU personnel. Material failure of any subcontractors to comply with said rules, regulations and instructions shall entitle WSU to require PORT to remove the subcontractor from the property and reimburse WSU for the cost to repair any damages.

B. Duties of WSU

1. WSU shall pay the Port annual lease payments, as provided below, for lease of two strands of fiber optic cable.
2. WSU will be responsible for the routine maintenance of all fiber optic cable and electronics located before the demark in CEV and after the demark in the telecommunications closet in building number two.

II. PERIOD OF PERFORMANCE

Subject to its other provisions, the period of performance of this AGREEMENT shall commence on February 1, 2018. This AGREEMENT shall extend for five (5) years from its commencement date unless terminated earlier as provided in this AGREEMENT. This agreement can be renewed for additional five (5) year increments with written approval by both parties.

III. LEASE

PORT hereby leases to WSU use of two (2) of the strands of its fiber optic cable, running from the CEV Building to the WSU Research and Technology Park, Building 2 for a total length for both strands of 6,570 feet. The term of this lease shall be coincident with the term of this AGREEMENT.

IV. PAYMENT**A. Lease**

WSU shall pay to the PORT for the lease of two (2) strands of fiber optic cable the sum of Two Hundred Ten dollars (\$210) per month, payable annually on the execution date of this agreement.

B. Maintenance

Except as expressly provided herein, PORT shall perform all routine maintenance of the fiber optic cable, and PORT shall repair all damage to the fiber optic cable.

V. BILLING PROCEDURE

PORT shall send the annual invoice for the lease of the two (2) strands. These payments shall not be due and payable until thirty (30) days after the date of the invoice. WSU shall make payments to the PORT by check or wire transfer.

VI. LIABILITY FOR DAMAGE

PORT shall defend all claims for damages to persons or property resulting from acts of God or from PORT's maintenance or repair activities, and shall pay any resulting damages or costs or fees assessed.

In the event PORT's fiber optic cable, including the strands leased by WSU, is destroyed or otherwise rendered permanently inoperable by any cause beyond the reasonable control of the parties or any of them, or if extraordinary maintenance or capital improvements are needed to either cable, the parties shall confer in good faith on a mutually acceptable resolution for sharing the costs of the needed repair, replacement, or improvement based on a pro rata share of the number of strands in the fiber run. If the parties are unable to agree on a resolution, this AGREEMENT shall terminate thirty (30) days after the parties agree they have reached an impasse.

If any of the fiber optic cable covered by this AGREEMENT is damaged solely as a result of negligent or intentional acts of one of the parties to this AGREEMENT, or by its officers, employees, or agents, that party shall repair the damage at its sole cost and expense and within a reasonable time. This shall be the sole remedy for any such damage. In no event shall any party be responsible or liable to any other party or to any person or entity in privity with any party, for direct, indirect, or consequential damages, including interruption of services, suffered as a result of any damage to the fiber optic

cables or their functionality. Notwithstanding anything in this AGREEMENT to the contrary, the parties expressly acknowledge and agree that WSU's liability and indemnification obligation hereunder shall not exceed WSU's coverage limits (as to type and amount) as described in the State of Washington Self-Insurance Liability Program and the Tort Claims Act (RCW 4.92 et seq.).

VII. INSURANCE AND HOLD HARMLESS

Except as otherwise provided in Paragraph VI above, each party shall indemnify, and hold harmless the other party or parties from any damages to persons or property resulting from its own negligent acts or omissions, or those of its officers, employees, or agents. Should any injury or damage be found to result from the negligence of both parties, each party shall be liable to the extent of and in the proportion to its own negligence.

- A. WSU and its officers, employees, agents, and registered volunteers, while acting in good faith within the scope of their official WSU duties, are covered by the State of Washington Self-Insurance Liability Program (RCW 43.19.766 et seq.) and the Tort Claims Act (RCW 4.92.060 et seq.). Successful claims to pay legal liabilities and defense costs of the state resulting from tortious conduct of WSU and its employees, officers, agents, and registered volunteers in the performance of their official WSU duties in good faith under this Agreement will be paid from the tort claims liability account as provided in RCW 4.92.130.
- B. The PORT maintains a ten million dollar (\$10,000,000) commercial general liability policy and an automobile policy in the amount of one million dollars (\$1,000,000). WSU shall be named as an additional insured on the PORT's policies.

VIII. INDEPENDENT CAPACITY: NONDISCRIMINATION

The employees or agents of each party who are engaged in the performance of this AGREEMENT shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party. Parties agree not to discriminate against any employee or applicant for employment in the performance of this AGREEMENT with respect to tenure, terms, conditions, or privileges of employment or any matter directly or indirectly related to employment because of race, sex, color, religion, age, national origin, ancestry, or status as a Vietnam veteran. Breach of this covenant may be regarded as a material breach.

IX. MODIFICATION

This AGREEMENT may be modified or amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties and attached to this AGREEMENT.

X. TERMINATION

This AGREEMENT may be terminated early for the convenience of the parties upon a one year notice by either party. Any earned lease payments shall be refunded by the PORT to WSU.

XI. DISPUTE RESOLUTION

If for any cause, any party does not fulfill in a timely and proper manner its obligations under this AGREEMENT, or if any party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within fifteen (15) working days; provided, however, that where such failure cannot reasonably be cured within such fifteen (15) day period, if the party failing to perform shall proceed promptly to cure the same and prosecute such cure with due diligence, the time for curing such breach shall be extended for such period of time as may be necessary to complete such cure; and provided further that if the responsible party certifies in good faith to the complaining party in writing that the breach has been cured, such breach shall be deemed to be cured unless the complaining party notifies the responsible party in writing within fifteen (15) days of receipt of such notice that such breach has not been cured. If the responsible party denies responsibility or fails to diligently proceed in good faith to cure said breach, the matter shall be submitted to mediation. If mediation is unsuccessful, the matter shall be submitted to final and binding arbitration through an arbitrator selected by all for the parties. If the parties are unable to agree to an arbitrator, the matter shall be submitted to arbitration through the American Arbitration Association. This dispute resolution process shall not apply to matters that are covered by the Insurance Clause of this AGREEMENT unless otherwise agreed by the parties.

XII. GOVERNANCE

This AGREEMENT is entered into pursuant to and under the authority granted by the laws of the State of Washington and any applicable federal laws. The provisions of this AGREEMENT shall be construed to conform to those laws.

XIII. ASSIGNMENT

The rights and responsibilities of any party under this AGREEMENT may not be assigned without the express written consent of the other parties, which consent shall not be unreasonable withheld.

XIV. WAIVER

A failure by any party to exercise its rights under this AGREEMENT shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this AGREEMENT unless stated to be such in a writing signed by an authorized representative of the party and attached to the original AGREEMENT.

XV. SEVERABILITY

If any provision of this AGREEMENT or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this AGREEMENT which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this AGREEMENT, and to this end the provisions of this AGREEMENT are declared to be severable.

XVI. ENTIRE AGREEMENT

This AGREEMENT and Attachment A contain all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this AGREEMENT shall be deemed to exist or to bind any of the parties hereto.

XVII. CONTRACT ADMINISTRATION

The program manager for each of the parties shall administer this AGREEMENT and be responsible for and shall be the contact person for all communications and billings regarding the performance of this AGREEMENT.

The Contract Administrator for Washington State University is:

Name:	Dawn M Barnard
College or Department:	Information Technology Services
Address:	PO Box 641222
Telephone:	509-335-8643
Fax:	509-335-0540
Email:	dawn.barnard@wsu.edu


The Contract Administrator for the Port of Whitman is:

Name	Joseph R. Poire
Address:	302 N Mill Street, Colfax, WA 99111
Telephone:	(509) 397-3791
Fax:	(509) 397-4758
Email:	joepoire@portwhitman.com

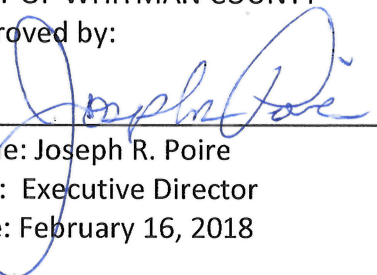
XVIII. SIGNATURES

The parties affirm they have designated the persons below to have signature authority for the parties. By their signatures on this AGREEMENT the parties agree to all of its terms and conditions.

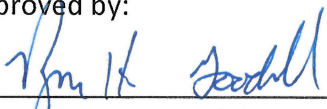
WASHINGTON STATE UNIVERSITY
Recommended by:


Name: Sasi K. Pillay
Title: VP ITS & CIO
Date: 2/23/2018

PORT OF WHITMAN COUNTY
Approved by:


Name: Joseph R. Poire
Title: Executive Director
Date: February 16, 2018

Approved by:


Name: Ryan H. Goodell
Title: Exec Director Real Estate Services
Date: 2/28/18

Approved as to form:

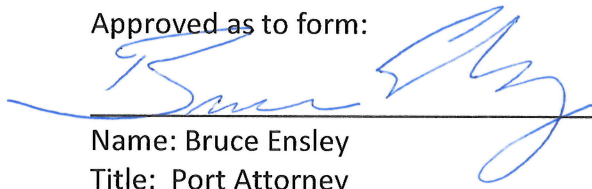
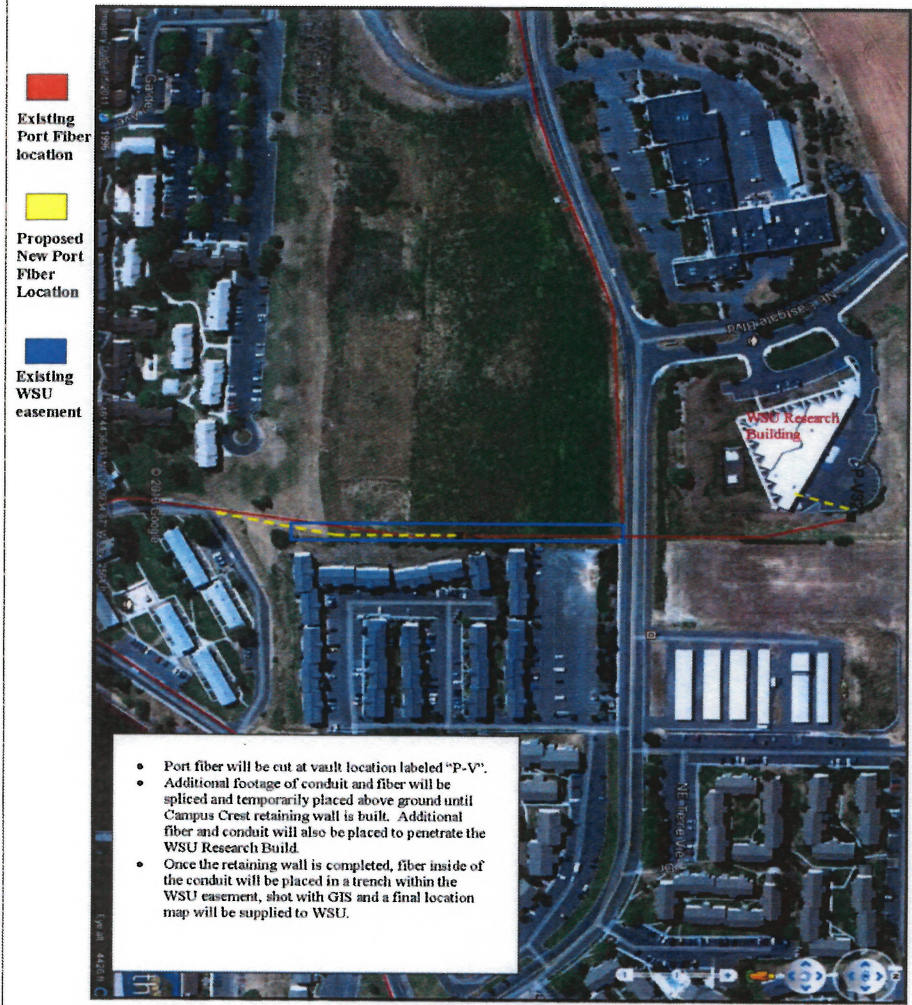

Name: Bruce Ensley
Title: Port Attorney
Date: February 16, 2018

Exhibit A

EXHIBIT "A" Preliminary



PREMISES

RIGHT OF ACCESS

**AMENDMENT 1 TO
INTERLOCAL AGREEMENT
BETWEEN
WASHINGTON STATE UNIVERSITY
AND
PORT OF WHITMAN COUNTY**

THIS AMENDMENT NO. 1 TO INTERLOCAL AGREEMENT (the “Agreement”) is made and entered into this 1st day of February, 2023 (the “Effective Date”) by and between Washington State University, an institution of higher education and agency of the State of Washington (“WSU”), and the Port of Whitman County, a local government entity (“PORT”). WSU and PORT are collectively referred to herein as the “Parties”, and individually as a “Party”.

WHEREAS, WSU and PORT entered into that certain Interlocal Agreement with a commencement date of February 1, 2018;

WHEREAS, the Agreement is set to expire on January 31, 2023;

WHEREAS, the Parties now desire to renew the Agreement for the second Renewal Term;

WHEREAS, Section XVII, Contract Administration has changed;

NOW, THEREFORE, the Parties enter into this Amendment for the uses and purposes and for the consideration set forth below.

1. Pursuant to Section II. Period of Performance, the Parties herein agree to renew the Agreement for a second Renewal Term, which shall commence on February 1, 2023 and expire on January 31, 2028.
2. Section XVII. Contract Administration is hereby amended as follows:

The Contract Administrator for Washington State University is:

Name:	Shawna Thompson
College or Department:	Real Estate & Business Operations
Address:	PO Box 641045
Telephone:	509-335-7049
Email:	shawna.thompson@wsu.edu

3. Other terms and conditions unchanged. Apart from the modifications set forth above, the Agreement shall remain unchanged and in full force and effect. In the event of any conflict between the terms of the Agreement and this Amendment No. 1, the terms of this Amendment No. 1 shall control.
4. Capitalized Terms. All capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Agreement.

5. Electronic Signatures. This Amendment No. 1 may be executed in two or more counterparts, and by electronic signature including scanned copies, all of which when taken together, shall constitute one original document.

WASHINGTON STATE UNIVERSITY

Approved by:

Shawna Thompson

Name: Shawna Thompson

Title: Manager, Real Estate & Bus Ops

Date: 12/14/2022

PORT OF WHITMAN COUNTY

Approved by:

Kara Z. Riebold

Name: Kara Riebold

Title: Executive Director

Date: 12/14/2022

Approved as to form:

St

Name: Seth Woolson

Title: Attorney

Date: 12/12/22