

**JOINT ORGANIZATION INTERLOCAL OPERATING AGREEMENT**  
**OF**  
**PETRICHOR BROADBAND, LLC**

**a local government owned Washington limited liability company**

**Dated and Effective**

**as of**

**January 9, 2020**

**THE MEMBERSHIP INTERESTS REPRESENTED BY THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 NOR REGISTERED NOR QUALIFIED UNDER ANY STATE SECURITIES LAWS. SUCH MEMBERSHIP INTERESTS MAY NOT BE OFFERED FOR SALE, SOLD, DELIVERED AFTER SALE, TRANSFERRED, PLEDGED, OR HYPOTHECATED UNLESS QUALIFIED AND REGISTERED UNDER APPLICABLE STATE AND FEDERAL SECURITIES LAWS OR UNLESS, IN THE OPINION OF COUNSEL SATISFACTORY TO THE ORGANIZATION, SUCH QUALIFICATION AND REGISTRATION IS NOT REQUIRED. ANY TRANSFER OF THE MEMBERSHIP INTERESTS REPRESENTED BY THIS AGREEMENT IS FURTHER SUBJECT TO OTHER RESTRICTIONS, TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT.**

## **INTERLOCAL OPERATING AGREEMENT**

**OF**

### **PETRICHOR BROADBAND, LLC**

THIS INTERLOCAL OPERATING AGREEMENT (this “Agreement”) is made and entered into effective as of January 9, 2020, by and between the ports that participate as Members (each a “Port” or “Member” and collectively the “Ports” or “Members”), each Member is a Washington port district established pursuant to Title 53 RCW (collectively, the “Parties”).

#### **RECITALS**

A. The Parties are entering into this Agreement under the authority of the Interlocal Cooperation Act, specifically RCW 39.34.030, to jointly provide wholesale telecommunications facilities with the collective goals of: Enabling communication services to unserved or underserved areas within Member communities; creating economic opportunities, including sustainable community wage jobs; consolidating administrative and operating functions for efficiency; reducing administrative layering; and reducing administrative costs, to the extent consistent with the State of Washington’s legislative policy as set forth in RCW 53.08.370.

B. The Members recognize the value of state-wide, regional, and local open access dark fiber systems, a consistent approach to technologies and business models throughout the state, subject to local and regional conditions, and public-private partnerships that advance the goals and objectives of the ORGANIZATION and its Members.

C. This Agreement provides a means for each Port to share in the benefits, service, and financial interests of the delivery of Wholesale Telecommunication Services.

D. This Agreement also serves as a “Limited Liability Company Operating Agreement” as provided for in the LLC Act, as defined below, as well as an Interlocal Agreement, as authorized by RCW 39.34.030.

E. RCW 39.34.030 expressly authorizes local governmental entities, such as the Parties, to form limited liability companies to carry out such joint activities.

F. In adopting this Agreement, the Members hereby also adopt, and agree to, the Recitals and the facts set forth herein.

## ARTICLE 1 – DEFINITIONS

The following terms used in this Agreement shall have the following meanings (unless otherwise expressly provided herein):

1.1 “**Advisory Committee**” means a committee that consults with the Manager concerning strategic business and technical challenges and opportunities. The Advisory Committee will be comprised of a person designated by the Executive Director of each Member. The committee is prohibited from the exercise of powers or functions that would qualify it as a “Governing Body,” as that term is defined in RCW 42.30.020. No member of the Advisory Committee shall be allowed to serve on the Executive Council described below.

1.2 “**Capital Account**” means the capital account determined and maintained for each Member pursuant to Section 9.3.

1.3 “**Capital Contribution**” means any contribution to the capital of the ORGANIZATION in cash or property by a Member whenever made.

1.4 “**Certificate of Formation**” means the certificate of formation pursuant to which the ORGANIZATION was formed, as originally filed with the office of the Secretary of State on January 9, 2020, and as amended from time to time.

1.5 “**Distributable Cash**” means all cash received by the ORGANIZATION, less the sum of the following to the extent paid or set aside by the ORGANIZATION: (i) all principal and interest payments on indebtedness of the ORGANIZATION and other sums paid or payable to lenders; (ii) all cash expenditures incurred incident to the normal operation of the ORGANIZATION’s business; and (iii) Reserves.

1.6 “**Executive Council**” means the governing body of the ORGANIZATION as further specified in Article 8 of the Agreement. On behalf of the Members, the Executive Council shall govern the ORGANIZATION. The Executive Council shall be comprised of the Executive Director, or his or her designee, of each Member.

1.7 “**Fiscal Year**” means a calendar year commencing January 1 and ending December 31.

1.8 “**Initial Member**” means the following port districts: Port of Bellingham, Port of Kalama, Port of Pasco, Port of Ridgefield, Port of Skagit County, and Port of Whitman County. Each Initial Member is also a Member.

1.9 “**LLC Act**” means the Washington Limited Liability Company Act (Ch. 25.15 RCW).

1.10 “**Majority of Members**” means, at any time, more than fifty percent (50%) of the Members (notwithstanding the number of Units owned by each Member).

1.11 “**Manager**” means the person or entity designated by the Executive Council as the manager of the ORGANIZATION pursuant to Section 5.1 below and RCW 25.15.154. The Manager may

be a Member if it meets the requirements for membership stated in Section 1.11 and is otherwise in compliance with all the provisions of this Agreement.

1.12 “**Member**” or “**Members**” shall mean the Ports and any other public entity with the statutory authority to engage in certain telecommunications activities that are admitted to the ORGANIZATION as a Member. A governmental entity that signs a counterpart of this Agreement, is accepted as a member by the then-current Members and makes a minimum Capital Contribution equal to a prorated share of the Startup Capital or more as shall be established by the then-current members, shall be a "Member" of the LLC formed hereby as that term is defined in RCW 25.15.006(8) and as that term is used in RCW 25.15.154, as amended. Each Member of the ORGANIZATION must be a public agency as provided for in RCW 39.34.030(3)(b).

1.13 “**Membership Interest**” means all of a Member’s share based on each Member’s Percentage Interest in the Net Profits, Net Losses, and other tax items of the ORGANIZATION and distribution of the ORGANIZATION’s assets pursuant to this Agreement and the LLC Act and all of a Member’s rights to participate in the management or affairs of the ORGANIZATION, including the right to vote on, consent to or otherwise participate in any decision of the Members.

1.14 “**Net Book Value**” means capitalized cost less any accumulated depreciation.

1.15 “**Net Profits**” and “**Net Losses**” shall have the meaning ascribed to those terms in Section 10.3.

1.16 “**ORGANIZATION**” means PETRICHOR BROADBAND, LLC, governed by this Agreement of the Parties. The ORGANIZATION is a “company” as that term is used in the LLC Act.

1.17 “**ORGANIZATION Act**” means RCW 53.08.370 as now in effect or as hereafter amended.

1.18 “**Percentage Interest**” means with respect to any Member, the percentage determined based upon the ratio that the number of Units held by such Member bears to the total number of outstanding Units.

1.19 “**Person**” means any individual or entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such “Person” where the context so permits.

1.20 “**Plan of Operation**” means a detailed description of operational objectives and operational activities, including tentative schedules adopted by all Members. It also includes the ORGANIZATION’s then-current capital improvement plan and a description of those capital assets that will be added, maintained or disbursed over the ensuing twenty-four (24) months. The Plan of Operations shall also contain, or refer to, an agreement, if any, between the Members as to the ownership, use and maintenance of the Members’ respective internal telecommunications facilities and the ORGANIZATION’s telecommunication facilities. An initial Plan of Operations shall be adopted together with the initial capital improvement plan and capital and operating budgets of the ORGANIZATION as soon as practicable following the formation of the

ORGANIZATION and the Plan of Operations shall be evaluated and considered for modification commencing no later than July 1 of each year for completion and adoption during each Member's annual budgeting process and modified, if necessary, upon approval of the annual budgets by the Members.

1.21 **"Point of Presence"** or "PoP" means a physical location that serves as a demarcation point or interface point between communications entities. This location may also serve as a data center location and house servers, routers, switches, and other electronic accoutrements necessary to operate a fiber optic Organization with access to internet content.

1.22 **"Port"** Each Port is a Washington public port district organized and existing pursuant to Title 53 RCW.

1.23 **"Reserves"** means, with respect to any fiscal period, funds set aside or amounts allocated during such period to reserves which shall be maintained in the amounts set forth in the Plan of Operations for working capital and to pay taxes, insurance, debt service or other costs or expenses incident to the ownership or operation of the ORGANIZATION's business. The amount of Reserves and how they will be maintained shall be determined annually as part of the Plan of Operations.

1.24 **"Startup Capital"** means the initial Capital Contribution of each Initial Member equal to a minimum of Two Hundred Thousand and No/100 Dollars (\$200,000.00) or as established by the Initial Members to sufficiently fund organizational development. Startup Capital may be provided in non-cash assets as agreed to by the Initial Members.

1.25 **"Telecommunications" and "Telecommunications Facilities"** each have the meaning set forth in RCW 53.08.005 now and as hereafter amended.

1.26 **"Units"** means the Units issued to any Member under this Agreement as reflected in attached **Exhibit A**, as amended from time to time, subject to the provisions of Article 13 and Section 16.3 of this Agreement. The initial value of a Unit for purposes of **Exhibit A**, purchased from the ORGANIZATION by a new Member or issued pursuant to an additional Capital Contribution, shall be One Thousand and No/100 Dollars (\$1,000.00) unless, subject to Section 13.4.4, unanimously otherwise agreed by the Members.

1.27 **"Wholesale Telecommunications Services"** has the meaning set forth in RCW 53.08.005 now and as hereafter amended.

## ARTICLE 2 – FORMATION OF LLC

2.1 Formation. The ORGANIZATION was formed on January 9, 2020, when the Certificate of Formation was executed and filed with the office of the Secretary of State in accordance with and pursuant to the LLC Act. The Manager shall promptly execute all amendments to the Certificate of Formation and all other documents needed to enable the Manager to accomplish all

requirements for the formation and operation of the ORGANIZATION as an LLC under the LLC Act.

2.2 Name. The name of the ORGANIZATION is **PETRICHOR BROADBAND, LLC**.

2.3 Principal Place of Business. The principal place of business of the ORGANIZATION shall be the address of the Manager which, upon inception of this Agreement, is 302 N. Mill Street, Colfax, WA 99111. The ORGANIZATION may locate its places of business at any other place or places as the Manager may from time to time deem advisable.

2.4 Registered Office and Registered Agent. The ORGANIZATION's initial registered agent and the address of its initial registered office in the State of Washington are as follows:

Bradford E. Furlong, Port of Skagit County, 15400 Airport Drive, Burlington, WA 98233

The registered office and registered agent may be changed by the Manager from time to time by filing an amendment to the Certificate of Formation.

2.5 Term. The term of the ORGANIZATION shall be perpetual unless the ORGANIZATION is earlier dissolved in accordance with either Article 14 of this Agreement or the LLC Act.

### **ARTICLE 3—AUTHORITY, BUSINESS AND PURPOSE OF ORGANIZATION**

3.1 Authority. As provided for by law, it is the policy of the State of Washington to encourage the development of telecommunications facilities and the availability of telecommunications by port districts. To this end, the law provides to the Members authority to construct and operate local, regional and state-wide telecommunications systems, integrating planning, construction, financing, administration, maintenance/repairs and service delivery. This Agreement is a joint operating agreement among the Members to operate an open access wholesale telecommunications facilities and services entity by which the Members will exercise their full authority as allowed by law.

The Interlocal Cooperation Act, specifically RCW 39.34.030, provides, in part, that any two or more public agencies may enter into agreements with one another for joint cooperative action. RCW 39.34.030(3)(b) specifically provides that: 1) the Members may form a limited liability company under which each Member is a public agency, as provided for in Section I.12, and 2) the ORGANIZATION's funds are subject to audit, as provided for in Section 12.5 of this Agreement. The Members have exercised the authority granted to them under the law, the LLC Act and the Interlocal Cooperation Act to form this ORGANIZATION as an LLC to achieve maximum efficiency in the delivery of telecommunication services and so that their rights and liabilities as to each other and third parties are firmly established and clearly understood.

This Agreement serves as such an operating agreement among the Members to operate Telecommunication Facilities, to delegate the management functions of the entity to Manager, each as provided for by the law, with:

- (a) Each Member bearing a share of the cost of funding the ORGANIZATION;
- (b) The Treasurer of the Port of Whitman County (“Treasurer”) serving as the custodian of funds made available for the purposes of such Wholesale Telecommunications Services and that the Treasurer may make payments from ORGANIZATION funds in its possession upon approval of the Manager and audits by the appropriate auditing officer of the Port of Ridgefield; *provided*, that the funds held by the Treasurer shall not be co-mingled with the separate, non-NEWCO funds of any Member and shall be separately accounted for as owned exclusively by PETRICHOR BROADBAND, LLC;
- (c) All Members agreeing to act through the Executive Council to adopt annual capital and operating budgets, as well as an annual Plan of Operations for the ORGANIZATION. Such Plan of Operations shall provide overall direction for Capital development, operation procedures and goals, and financial policy for the ORGANIZATION. The Plan of Operations shall be reviewed by the Executive Council annually and modified no later than the date of adoption of the ORGANIZATION budget, unless emergent circumstances intervene to require earlier modification or deviation from an adopted Plan of Operations. The annual capital and operating budget, and the Plan of Operations, and any amendments thereto, require the unanimous consent of all Members;
- (d) The Auditor of the Port of Ridgefield serving as the auditing officer of the ORGANIZATION’s funds and accounts; *provided*, that the accounting and other activities of the ORGANIZATION is subject to audit by the Office of the State Auditor to the same extent as is each of the Members; and

The foregoing notwithstanding, the Members may, by majority vote, change the Treasurer and Auditor designee to another Treasurer and/or Auditor.

3.2. Business and Purpose. The purpose of the Members entering into this Agreement is to jointly own and operate the ORGANIZATION for the provision of open access Wholesale Telecommunication Facilities and to take such other and further actions as are required and/or authorized by the ORGANIZATION and by applicable law. The mutual goal of the Members, in entering into this Agreement, is to work together and with private and other public entities to facilitate the provision of telecommunication services to the residents, businesses, and public agencies within their respective districts in a sustainable, efficient, reliable, and stream-lined manner. The Members intend that the ORGANIZATION may plan, develop, and operate its own open access telecommunications facilities and that it may assist individual port districts in the planning, development, and operation of their own open access telecommunications facilities. Among the business and the purposes of the ORGANIZATION shall be to:

3.2.1 Provide open access, telecommunications facilities as allowed by law from the date of formation until dissolved pursuant to Article 14 hereof.

3.2.2 Carry out any lawful telecommunications services, business or activity that may be conducted by a port district as determined by the Members acting through the Manager;

3.2.3 Contract with individual port districts for the planning, development, and operation of local and regional telecommunications facilities;

3.2.4 Contract and/or cooperate with public entities and private entities and persons to facilitate the provision of local and regional telecommunications facilities; and

3.2.5 Exercise all other powers necessary to, or reasonably connected with, the ORGANIZATION's business and services it provides that may be legally exercised by limited liability companies and port districts under Washington law.

#### **ARTICLE 4 – ADMISSION OF MEMBERS/ NAMES AND ADDRESSES OF MEMBERS**

4.1 Initial Members. The names and addresses of the Initial Members and the Manager and each Initial Member's Startup Capital Account contribution are set forth on attached **Exhibit A**.

4.2 Additional Members. An entity that: (1) fully documents that it meets the requirements of Section 1.12, by providing an opinion of counsel satisfactory to the ORGANIZATION; and (2) is approved by at least two-thirds (2/3) of the Members present at a meeting of the Executive Council at which the ORGANIZATION would be otherwise authorized to act, shall be admitted as an additional Member ("Additional Member"). The foregoing notwithstanding, the Initial Members may, as a condition of admitting a new Member, adjust the required Capital Contribution of the new Member and/or may determine the disposition of the new Member's capital contribution to allow for the value of the ORGANIZATION and the diminished risk to new Members once the ORGANIZATION is beyond its initial commencement period.

4.3 Successor Member. Any entity that is a Purchaser under Section 13.3, shall be admitted as a Member only upon: (1) approval by at least two-thirds (2/3) of the then-current Members; and (2) execution of this Agreement, as may hereafter be amended (a "Successor Member").

4.4 Representation and Warranty; Indemnification. Each Member hereby represents and warrants to the ORGANIZATION that the execution and delivery of this Agreement and ownership of the Membership Interest will not violate or conflict with any statute, regulation, or rule to which the Member is subject. Each Member hereby agrees to indemnify, save, defend, hold harmless, discharge and release the ORGANIZATION, its Members (excluding the indemnifying Member), and its Manager, from any and against any and all payments, charges, judgments, assessments, liabilities, obligations, claims, demands, actions, losses, damages, penalties, interest or fines, and any and all costs and expenses paid or incurred, including attorneys' fees and costs (collectively the "Liabilities" and each a "Liability"), arising from, based upon, or associated with and to the extent caused by the breach of the representation or warranty of the indemnifying Member contained in this Section, including, but not limited to, Liabilities that arise following a Transfer pursuant to Section 13.3 below.

## ARTICLE 5 – MANAGEMENT

5.1 Management Subject to the Members' and Executive Council's reserved powers, the business and affairs of the ORGANIZATION shall be managed by the Manager. Except as otherwise expressly provided in this Agreement and subject to the Member-adopted capital and operating budgets and Plan of Operations, the Manager shall have full, complete and exclusive authority, power and discretion to manage and control the business, affairs and properties of the ORGANIZATION, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the ORGANIZATION's business. The Manager shall act in the best interest of the ORGANIZATION, taking into account, to the extent consistent therewith, the mutual goals, objectives and policies of the Members. The foregoing notwithstanding, the Executive Council may limit or withdraw the delegation of authority to the Manager when it determines such limitation or withdrawal is in the best interest of the ORGANIZATION. Without limiting the generality of the foregoing, the Manager shall have power and authority, on behalf of the ORGANIZATION, to do the following:

5.1.1 Work collaboratively with Members. Such collaboration shall include regular consultation with the Advisory Committee, the staff of each Member and regular reporting to all Members concerning the affairs of the ORGANIZATION, including, but not limited to, no later than March 31<sup>st</sup> of each year, an annual report for the previous Fiscal Year that includes: (1) a narrative summary of the ORGANIZATION's operations; (2) a balance sheet; and (3) an income statement.

5.1.2 No less than twice a year call and chair a meeting of the Advisory Committee and otherwise call such meetings when particular opportunities or challenges arise;

5.1.3 Spend the capital and revenues of the ORGANIZATION in the furtherance of the business of the ORGANIZATION, including the reimbursement of Members for preformation activities after consulting with the Advisory Committee;

5.1.4 Consistent with the then-current Plan of Operations and capital budget, acquire property from any Person or Member as the Manager may determine;

5.1.5 Consistent with the then-current Plan of Operations and capital and operating budgets, acquire, improve, manage, operate, sell, transfer, exchange, encumber, pledge and dispose of any real or personal or intangible or other property of the ORGANIZATION, including the Property;

5.1.6 Strictly subject to unanimous Executive Council approval: (i) to incur indebtedness in the manner consistent with the Members' statutory authority in order to finance or refinance ORGANIZATION assets, to meet other ORGANIZATION obligations, to provide the ORGANIZATION with working capital and for any other ORGANIZATION purposes; (ii) to execute promissory notes and such other security instruments as a lender of funds may require to secure repayment of such borrowing(s); (iii) to change, substitute or amend such borrowing, as, in

its judgment, is in the best interest of the ORGANIZATION; and (iv) to execute any and all documents that may be required by a bank or other financial institution or other source to establish an escrow, trust agreement, a trust account with a bank, institution or other sources for the receipt of funds, sale proceeds and other payments and disbursements thereof to service such loan(s);

5.1.7 Purchase at the expense of the ORGANIZATION, such liability, casualty, property and other insurance, or participate in a governmental risk pool, as the Manager deems reasonably advisable to protect the ORGANIZATION's assets against loss or claims of any nature, provided, however, the Manager shall not be liable to the ORGANIZATION or to others for failure to purchase any insurance if such coverage should prove inadequate;

5.1.8 Invest, in coordination with the Treasurer, ORGANIZATION funds temporarily in the manner as allowed under the law for investment of funds by the Members;

5.1.9 Consistent with the then-current Plan of Operations and capital and operating budget, execute instruments and documents for the acquisition or disposition of the ORGANIZATION's property, assignments, bills of sale, leases, and any other instruments or documents necessary, in the opinion of the Manager, to the business of the ORGANIZATION;

5.1.10 Hire employees and/or employ accountants, legal counsel, independent contractors, managing agents or other experts to perform services for the ORGANIZATION and to compensate them from ORGANIZATION funds;

5.1.11 Enter into any and all other agreements with any other Person for any purpose, in such form as the Manager may approve;

5.1.12 From time to time delegate to the Treasurer: (i) the authority to open bank accounts in the name of the ORGANIZATION and (ii) the authority, in accord with internal control procedures approved by the Treasurer, to be one of two (2) signatories on the bank accounts, unless a Majority of Members determines otherwise;

5.1.13 To do and perform all other acts as may be necessary or appropriate to the conduct of the ORGANIZATION's business;

5.1.14 Unless authorized to do so by this Agreement or by the Manager, no Member, employee or other agent of the ORGANIZATION shall have any power or authority to bind the ORGANIZATION in any way, to pledge its credit or to render it liable for any purpose; and

5.1.15 The Manager shall devote to the ORGANIZATION and apply to the accomplishment of the ORGANIZATION's purposes so much of its time and attention as is reasonably necessary to properly manage the affairs of the ORGANIZATION and as required by any agreement between the ORGANIZATION and the Manager.

5.1.16 Within ninety (90) days of the formation of the ORGANIZATION, the Manager shall, in cooperation with the Members, develop a recommended initial Plan of Operation, a recommended initial capital improvement plan and capital budget and a recommended initial

operating budget for adoption by the Members. Additionally, modifications thereto shall be completed in a timely fashion to allow the Members to thoroughly review and adopt each pursuant to the time lines set forth herein. Where the Members cannot agree to a Plan of Operation, a budget or a modification thereto, they shall promptly meet in joint session and work in good faith to reach a mutually agreeable outcome.

5.1.17 The Manager shall provide at least ninety (90) days' notice or notice as defined in its Management Agreement, whichever is greater, to all Members of its intent to withdraw as Manager.

5.2 Designation of Manager. The initial Manager shall be the Port of Whitman County. The Manager shall be compensated on such terms and conditions as the Executive Council shall determine. The Manager may be removed upon an affirmative vote of a Majority of the Executive Council voting on the question, which removal shall be effective and on such terms as determined by the Executive Council. Any future Manager shall be designated by an affirmative vote of a Majority of the Executive Council voting thereon.

5.3 Member-Owned Telecommunication Services. Members have the right to install and own telecommunications facilities and operate telecommunication services. Members may contract with the ORGANIZATION for the management of Member-owned telecommunication services. Any access huts or co-location facilities owned or operated by the ORGANIZATION Members' connections thereto will be installed to Manager's specification.

5.4 Member Compensation. Upon the formation of the ORGANIZATION, the Advisory Committee may recommend to the Executive Council that the Initial Members be reimbursed for pre-commencement costs incurred on behalf of the anticipated ORGANIZATION. Otherwise, the Members shall not receive any fees or other compensation for their services except as set forth in this Agreement or as otherwise stated in an agreement between the ORGANIZATION and a Member or Members. A Member may be compensated for acting as the Manager upon such terms and conditions as the Executive Council and the Member may agree in writing.

5.5 Limitation on Liability; Indemnification.

5.5.1 Neither the Manager nor any director, officer, partner, employee or agent thereof ("Manager Affiliates") of the Manager shall be liable, responsible or accountable in damages or otherwise to the ORGANIZATION for any act or omission by any such Manager or Manager Affiliates performed in good faith pursuant to the authority granted to such Manager or Manager Affiliates by this Agreement or in accordance with its provisions, and in a manner reasonably believed by such Manager or Manager Affiliates to be within the scope of the authority granted to them and in the best interest of the ORGANIZATION; *provided*, that such act or omission did not constitute bad faith, fraud, intentional misconduct, or gross negligence. The ORGANIZATION shall indemnify and hold harmless the Manager, against any liability, loss, damage, cost or expense incurred by them on behalf of the ORGANIZATION or in furtherance of the ORGANIZATION's interests without relieving any such Manager or Manager Affiliates of liability for fraud, intentional misconduct or gross negligence. The Manager shall not have any personal liability

with respect to the satisfaction of any required indemnification of the above-mentioned Manager Affiliates.

5.5.2 Any indemnification required to be made by the ORGANIZATION shall be made promptly following the fixing of the liability, loss, damage, cost or expense incurred or suffered by a final judgment of any court, settlement, contract or otherwise. In addition, the ORGANIZATION shall advance funds to a Manager or Manager Affiliates claiming indemnification under this Section 5.5 for legal expenses and other costs incurred as a result of a legal action brought against such Manager or Manager Affiliates if: (i) the legal action relates to the performance of duties or services by the Manager or Manager Affiliates on behalf of the ORGANIZATION; (ii) the legal action is initiated by a party other than a Member; and (iii) such Manager or Manager Affiliates agrees, in writing, to repay the advanced funds to the ORGANIZATION if it is determined that such Person is not entitled to indemnification pursuant to the terms of this Agreement.

5.6 Right to Rely on the Manager. Any Person dealing with the ORGANIZATION may rely (without duty of further inquiry) upon a certificate signed by the Manager as to the identity and authority of the Manager or Manager Affiliates to act on behalf of the ORGANIZATION.

## **ARTICLE 6 – ADVISORY COMMITTEE**

6.1 Committee Functions and Limitations. The Advisory Committee shall consult with the Manager concerning strategic opportunities, operational priorities, and the development of proposed operational and capital budgets and the annual Plan of Operations. The Advisory Committee shall have no powers that would qualify it as a “governing body” as that term is defined in RCW 42.30.020 (2) and/or is construed by the Courts of the state of Washington. The Advisory Committee shall not act on behalf of the Members, conduct hearings, or take testimony or public comment. The Advisory Committee may not require or prohibit any action by the Manager.

6.2 Advisory Committee Membership. Each Member shall appoint its one (1) representative and one (1) alternate to the Advisory Committee, only one of whom may participate in a meeting of the Advisory Committee. Such appointments and designations shall be effective upon written notice to all Members and the Manager, delivered by email, and shall remain effective until revoked or modified by the Member in like manner.

6.2.2 Non-Members. The Manager may appoint other persons to be members of the Advisory Committee whom the Manager judges to possess expertise of value to the Advisory Committee. Such appointments may be for limited duration and may be terminated by a majority vote of the Executive Council. The Manager may also invite persons to attend meetings of the Advisory Committee where such attendance will benefit the Advisory Committee.

6.3 Meetings of the Advisory Committee. The Advisory Committee shall meet at least once between January 15 and April 30 and once between July 1 and August 31 of each year and as otherwise requested by the Manager. Meetings shall be called and scheduled by the Manager on no less than sixty (60) days’ notice except where the Manager deems that exigent circumstances

exist that require the Manager to consult promptly with the Advisory Committee in the best interest of the ORGANIZATION, whereupon a meeting of the committee may be called on five (5) days' notice. The foregoing notwithstanding, any two Members may call a meeting of the Advisory Committee upon ten (10) days' notice. Notice of all meetings of the Advisory Committee shall be in writing and shall be transmitted via email to each Member's representative on the Committee. Committee Members may participate in any meeting by telephone or other electronic means that includes contemporaneous audio participation.

6.4 Conduct of Meetings. The Manager shall chair all meetings unless absent. The Manager shall provide an agenda and materials for the meetings of the Advisory Committee. The foregoing notwithstanding, the Members' representatives may raise non-agenda issues related to the best interest of the ORGANIZATION at a meeting of the Advisory Committee. The representatives shall conduct themselves in a business-like, respectful and collaborative manner, taking into account the interests of each Member and, ultimately, the best interest of the ORGANIZATION. The conduct of the meetings shall not be formal or tied to any code or rules.

6.5 Third Party Participation. The members of the Advisory Committee or the Manager may invite third parties to participate in portions of Advisory Committee meetings.

## **ARTICLE 7—RIGHTS AND OBLIGATIONS OF MEMBERS**

7.1 Obligations of Members. Each Member shall promptly, and in good faith, carry out its obligations under this Agreement. The Members shall act exclusively through the Executive Council and each Member hereby delegates to the Executive Council all authority to manage and operate the ORGANIZATION on the Members' behalf. No Member may act on the behalf of the ORGANIZATION. Each Member shall be allowed one (1) representative and one (1) vote on the Executive Council. In addition, each Member shall designate an Advisory Committee member and alternate and staff and resources to support the Manager and the development of telecommunications facilities and operations contemplated hereby. Each Member acknowledges that all Members are responsible to their constituents; nonetheless, the Members each hereby commit to recognize the reasonable competing interests of other Members and to, in good faith, balance their individual interests with the interests of other Members, always with the objective of acting in the best interest of the ORGANIZATION and its goals and objective.

7.2 Limitation of Members' Liability.

7.2.1 No Member will be personally liable, merely as a Member, for any debts, losses or liabilities of the ORGANIZATION beyond the Member's respective contributions and any obligation of the Member hereunder to make contributions, except as otherwise specifically provided by law. No Member shall have liability to the ORGANIZATION or its Members for monetary damages for conduct merely as a Member, except for acts or omissions that involve fraud, intentional misconduct or gross negligence, or for any transaction for which the Member has personally received a benefit in money, property or services to which the Member was not legally entitled. If the LLC Act is hereafter amended to authorize ORGANIZATION action further eliminating or limiting the personal liability of Members, then the liability of a Member shall be

eliminated or limited to the full extent permitted by the LLC Act, as so amended. Any repeal or modification of this Section by the LLC Act shall not adversely affect any right or protection of a Member of the ORGANIZATION existing at the time of such repeal or modification for or with respect to an act or omission of such Member occurring prior to such repeal or modification.

7.2.2 The ORGANIZATION shall defend, indemnify and hold harmless the Members and any of their respective representatives, officials, managers, employees or agents thereof, against any liability, loss, damage, cost or expense incurred by them on behalf of the ORGANIZATION or in furtherance of the ORGANIZATION's interests without relieving any such person of liability for bad faith, fraud, intentional misconduct or gross negligence. No Member shall have any personal liability with respect to the satisfaction of any required indemnification of the above-mentioned persons.

7.2.3 Any tender of defense by an indemnitee arising from any liability, loss, damage, cost or expense incurred that falls within the scope of matters subject to defense, indemnification and being held harmless by this Agreement, shall be promptly accepted by the ORGANIZATION. Any indemnification required to be made by the ORGANIZATION shall be made promptly following the fixing of the liability, loss, damage, cost or expense incurred or suffered by a final judgment of any court, settlement, contract or otherwise. In addition, the ORGANIZATION shall reimburse a person claiming indemnification under this Section 7.2 for legal expenses and other costs incurred as a result of a legal action brought against such person if: (i) the legal action relates to the performance of duties or services by the person on behalf of the ORGANIZATION; (ii) the legal action is initiated by a party other than a Member; and (iii) such person agrees, in writing, to repay the advanced funds to the ORGANIZATION if it is determined that such person is not entitled to indemnification pursuant to the terms of this Agreement.

7.3 Inspection of Records. Upon reasonable request, each Member shall have the right to inspect and copy at such Member's expense, during ordinary business hours, the records required to be maintained by the ORGANIZATION pursuant to Section 12.5.

7.4 No Priority and Return of Capital. Except as expressly provided in Article 13 or 14, no Member shall have priority over any other Member, either as to the return of Capital Contributions or as to Net Profits, Net Losses or distributions; provided, that this Section 7.4 shall not apply to loans made by a Member to the ORGANIZATION.

7.5 Withdrawal of Member. No Member shall voluntarily resign or otherwise withdraw as a Member within forty-eight (48) months of the final execution of this Agreement, and except as expressly set forth set forth in this Agreement. The ORGANIZATION's remedy for breach of this Section 7.5 shall be payment by such member of a forfeiture equal to Twenty percent (20%) of the Member's Initial Contribution (and not specific performance), which may be offset against distributions by the ORGANIZATION to which such Member would otherwise be entitled.

7.5.1 Subject to the foregoing, a Member desiring to voluntarily resign or otherwise withdraw as a Member must provide the Manager written notice at least one hundred eighty (180) days prior to the withdrawal. This notice must be in writing and include the nature of the withdrawal (whether by proposed transfer to a third party pursuant to Section 13.3 of this

Agreement or by voluntary resignation pursuant to Section 13.4 of this Agreement). Notwithstanding the foregoing, Members need not provide notice under this Section 7.5 prior to transferring its Membership Interests to another current Member in accordance with Section 13.2 of this Agreement.

## ARTICLE 8 – EXECUTIVE COUNCIL

8.1 Authority and Delegation. The services, business and affairs of the ORGANIZATION shall be managed by the Members acting through the Executive Council (“Executive Council”). The Executive Council in turn shall work with and delegate to the Manager the administration, services, business and affairs of the ORGANIZATION, as provided for in Section 5.2 of this Agreement. Each Member shall select and provide written notice of the appointment of its representative, who shall be its Executive Director, and its representative’s alternate, together with their name and contact information, by January 1, 2020, and by January 31<sup>st</sup> of each year thereafter; *provided*, that a Member may provide notice of changes or additions to its appointment of its representative(s) prior to an Executive Council meeting. Each representative serving on the Executive Council shall devote to the ORGANIZATION and apply to the accomplishment of the ORGANIZATION’s purposes so much of his or her time and attention as is reasonably necessary to manage the services and business of the ORGANIZATION. Each Executive Council Representative shall serve at the pleasure of the Member that appointed him or her and may be removed or replaced at any time by such Member upon written notice to the other Members and the Manager. The Members recognize that from time to time an Executive Council Representative(s) may not be able to attend Executive Council meetings. Each Member, in addition to appointing Executive Council Representatives may also appoint alternates that may attend Executive Council meetings on behalf of the Member and in lieu of the primary Executive Council Representative, provided the Manager is given written notice of the appointment of the alternate together with the delegate’s name and contact information, in advance of the meeting. For those Members that have Executive Council Representatives, the written notice must come from the Executive Director. The Executive Council shall be a “Governing Body” subject to the Washington Open Public Meetings Act and shall comply therewith.

8.2 Notice of Executive Council Representative. Each Member shall provide to the Manager written notice of the following, together with contact information, including email addresses: 1) Executive Council Representatives and delegates; 2) Advisory Committee representatives; and 3) a notice agent designated to receive notice on behalf of the Member as provided for in Section 16.1 of this Agreement. Such notice shall be promptly delivered to all Members by the Manager.

8.3 Scope of Members’ Authority. Except as otherwise expressly provided in this Agreement, including the delegation of authority to the Manager, the Executive Council shall have full, complete and exclusive authority, power and discretion to manage and control the affairs of the ORGANIZATION including the services and facilities provided, business, affairs and property of the ORGANIZATION, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the ORGANIZATION’s services and business. Only representatives of the Members, or their approved alternates as provided herein, shall have any voting rights on the Executive Council.

8.4 Budgets; Plan of Operations. The Executive Council shall approve the annual capital and operating budgets of the ORGANIZATION and the Plan of Operations. The Representatives on the Executive Council shall each work collaboratively to adopt, in a timely fashion, such Plan of Operations and capital and operating budgets for the ORGANIZATION and to otherwise exercise the Council's authority in the best interest of the ORGANIZATION.

8.5 Manager. The Executive Council shall hire, or contract for the services of, the Manager on such terms and conditions as it shall determine, so long as any such Manager may be dismissed without cause or for convenience. The Executive Council shall have the authority to remove or discipline the Manager. The Executive Council shall also establish by resolution the spending authority of the Manager and any other limitations of authority as the Executive Council deems advisable.

8.6 Executive Council Meetings.

8.6.1 Meetings of the Executive Council, for any purpose or purposes, may be called by the Manager or by any Member or Members constituting at least twenty-five percent (25%) of the Members. A meeting of the Executive Council shall include one Representative, or his or her designee, from each Member.

8.6.2 The Executive Council shall hold an Annual Meeting during the month of November of each year to be organized by the Manager, which shall be the only regular meeting per RCW 42.30.070 unless and until changed by a vote of a Majority of Members.

8.6.3 In the event that not all Members approve the capital and operating budgets for the ORGANIZATION and a Plan of Operations for the ORGANIZATION for an ensuing year at the Annual Meeting any year, a meeting of the Members shall occur no later than the tenth day of the following December and shall not be adjourned (but may be recessed) until such time as the Members in attendance adopt both a capital and operating budget and a plan of Operations for the next fiscal year.

8.7 Place of Meetings. The Member or the Manager calling the meeting may designate any place, within the State of Washington, as the place of meeting for any meeting of the Executive Council. If no designation is made, the place of meeting shall be the principal office of the ORGANIZATION specified in Section 2.3.

8.8 Meeting Compliance. Notice and the conduct of Executive Council meetings shall comply with the requirements of the Washington Open Public Meetings Act, Chapter 42.30 RCW ("OPMA"), now or as hereafter amended.

8.9 Record Date. For the purpose of determining notice, the date on which notice of the meeting is mailed or the date on which the resolution declaring such distribution is adopted, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of the Executive Council has been made as provided in this Section, such determination shall apply to any adjournment thereof.

8.10 Executive Council Meeting Quorum. A Majority of Members, represented in person or telephonically, shall constitute a quorum at any meeting of Executive Council. The Executive Council may adjourn any regular or special meeting to a time and place specified in the order of adjournment. Any Member attending a meeting by telephone or otherwise electronically must be able to hear all persons participating in the meeting by any means and must be able to be heard by all persons participating the meeting by any means. In the absence of a quorum at any such meeting, those attending may adjourn the meeting from time to time. If all members are absent from any regular or adjourned regular meeting, the clerk or secretary of the governing body may declare the meeting adjourned to a stated time and place. He or she shall cause a written notice of the adjournment to be given in the same manner as provided in RCW 42.30.080 for special meetings, unless such notice is waived as provided for special meetings. Whenever any meeting is adjourned a copy of the order or notice of adjournment shall be conspicuously posted immediately after the time of the adjournment on or near the door of the place where the regular, adjourned regular, special, or adjourned special meeting was held. When a regular or adjourned regular meeting is adjourned as provided in this Section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by resolution, bylaw, or other rule. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal during such meeting of that number of Members whose absence would cause less than a quorum.

8.11 Manner of Acting. If a quorum is present, the affirmative vote of a Majority of Members represented at the meeting of the Executive Council in person, including telephonically, shall be the act of the Members, unless the vote of a greater or lesser percentage is required by this Agreement or the LLC Act.

8.12 Proxies. No proxy shall be allowed at any meeting of the Executive Council.

8.13 Waiver of Notice. When any notice is required to be given to a Member, a waiver thereof in writing signed by the Member entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

8.14 Failure to Observe Formalities. Pursuant to RCW 25.15.061, notwithstanding anything herein to the contrary, to the extent allowed by law, this Agreement does not expressly require the Members to hold any meetings and the failure to observe any formalities requiring the calling or conduct of any meeting shall not be considered a factor tending to establish personal liability of the Members or any Member.

## **ARTICLE 9--CONTRIBUTIONS TO THE ORGANIZATION AND CAPITAL ACCOUNTS**

9.1 Members' Startup Capital Contributions. Each Initial Member shall contribute Start Up Capital in such amount as is set forth in the attached **Exhibit A** as such Member's share of the Member's Start Up Capital Contribution; *provided*, that the Members may defer the establishment

of the initial capital account balances and composition until such time as they agree to adopt the initial Plan of Operations, operating budget and capital budget.

Each Member's Startup Capital Contribution shall consist of cash and the Net Book Value of its real and personal property or the value of other assets contributed to the ORGANIZATION. All Capital Contributions, if any, shall be made prorata, based on each Member's respective Percentage Interest unless otherwise agreed by the Members.

9.2 Additional Capital Contributions. The Manager may, from time to time, to reasonably meet the expenses of the ORGANIZATION, recommend additional capital contributions. The Manager shall give written notice to each Member of the amount of any recommended additional Capital Contribution, and each Member shall within ninety (90) days thereof: (a) review such notice; (b) take action to approve or disapprove the contribution; and (c) take action to approve any required modification to the operating or capital budget and/or Plan of Operations. If the additional Capital Contribution is approved by all Members or a Majority of Members, then either all Members or such Majority of Members, as the case may be, shall make the additional Capital Contribution within ninety (90) days of its approval by the Member or within the first thirty (30) days of its next fiscal year, whichever is later. Nothing contained in this Section 9.2 is or shall be deemed to be for the benefit of any Person other than the Members and the ORGANIZATION, and no such Person shall under any circumstances have any right to compel any actions or payments by the Members.

9.2.1 Approval by All Members. If any such additional Capital Contribution is approved by all Members and pursuant to a then-current or a simultaneously modified Member-adopted capital budget or operating budget and the then-current Plan of Operations, then all Members shall make such additional Capital Contribution prorata based on each such Member's respective Percentage Interest, and the Percentage Interests of all Members shall remain the same.

9.2.2 Approval by a Majority of Members. In the event a majority of Members, but not all, take action to approve the recommended contribution as provided in Section 9.2, the Members so approving may elect to make the Capital Contributions recommended prorata, based on each such Member's respective Percentage Interest or as otherwise agreed by such Members, and subsequently the Percentage Interests of all Members shall be adjusted based on the then-current Unit value, as defined in Section 1.26.

### 9.3 Capital Accounts.

9.3.1 Establishment and Maintenance. A separate Capital Account will be maintained for each Member throughout the term of the ORGANIZATION. Each Member's Capital Account will be increased by: (1) the amount of money contributed by such Member to the ORGANIZATION; (2) the Net Book value of property or the value of other assets contributed by such Member to the ORGANIZATION; (3) allocations to such Member of Net Profits. Each Member's Capital Account will be decreased by: (i) the amount of money distributed to such Member by the ORGANIZATION; (ii) the Net Book value of property distributed to such Member by the ORGANIZATION; In the event of a permitted sale or exchange of a Membership Interest

in the ORGANIZATION, the Capital Account of the transferor shall become the Capital Account of the transferee to the extent it relates to the transferred Membership Interest.

9.4 Withdrawal or Reduction of Members' Contributions to Capital. Except pursuant to Article 14, no portion of a Member's Capital Account shall be disbursed back to such Member(s) without the unanimous approval of all Members. No Member shall receive out of the ORGANIZATION's property any part of its Capital Contribution until all liabilities of the ORGANIZATION – not including outstanding liabilities to Members based on their Capital Contributions – have been paid or there remains property of the ORGANIZATION sufficient to pay them. A Member, irrespective of the nature of its Capital Contribution, only has the right to demand and receive cash in return for his or her Capital Contribution; unless such return is made to affect a distribution of the ORGANIZATION's assets pursuant to a winding up of the ORGANIZATION.

## **ARTICLE 10–ALLOCATION OF NET PROFITS AND LOSSES**

### **10.1 Allocation of Net Profit and Loss - In General.**

10.1.1 Allocation of Net Profit or Loss. Net Profit or Net Loss for any fiscal year of the ORGANIZATION shall be allocated among the Initial Members in accordance with their respective Percentage Interests as long as the membership during that fiscal year consists only of the Initial Members. For any fiscal year in which the ORGANIZATION'S membership includes any Member who is not an Initial Member, Net Profit or Loss for that fiscal year shall be allocated as follows: ten percent (10%) to each Initial Member and the balance allocated among all Members in accordance with their respective Percentage Interests. The ORGANIZATION's Net Profit or Loss shall be calculated by June 1<sup>st</sup> of each year for the preceding Fiscal Year.

### **10.2 Other Allocation Rules.**

10.2.1 General. Except as otherwise provided in this Agreement, all items of ORGANIZATION income, gain, loss, deduction, and any other allocations not otherwise provided for shall be divided among the Members in the same proportions as they share Net Profits or Net Losses, as the case may be, for the year. Net Profits and Net Losses shall be determined on an accrual basis in conformance with applicable provisions of the Budgeting, Accounting, and Reporting Standards ("BARS") manual of the Office of the Washington State Auditor

### **10.3 Determination of Net Profit or Loss.**

10.3.1 Computation of Net Profit or Loss. The Net Profit or Net Loss of the ORGANIZATION, for each fiscal year or other period, shall be an amount equal to the ORGANIZATION's income or loss for such period.

## ARTICLE 11– DISTRIBUTIONS

11.1 Non-liquidation Distributions. Distributions of Distributable Cash, other than distributions in liquidation pursuant to Section 11.2, shall be made to all Initial Members in proportion to their respective percentage interests as set forth in **Exhibit A** so long as no additional Members have been admitted; thereafter such distributions of Distributable Cash shall be made as follows: ten percent (10%) to each Initial Member and the balance allocated to all Members based on their prorata interests.

**FOR ILLUSTRATION PURPOSES ONLY:** Assume there are six (6) Initial Members and four (4) additional members and, among the ten (10) total Members, each has a ten (10%) interest in the ORGANIZATION. If there is a \$100,000 Distribution of Distributable Cash, each Initial Member shall first receive 10% of the Distributable Cash, or \$10,000 each (\$60,000 total). The remaining \$40,000 in Distributable Cash shall be allocated to each Member based upon their prorata interest in the ORGANIZATION (10% each) which amounts to a \$4,000 Distribution to each of the 10 Members.

11.2 Distributions in Liquidation. Notwithstanding Section 11.1, distributions in liquidation of the ORGANIZATION shall be made to each Member in the manner set forth in Section 14.3.3.

11.3 Distributions in Kind. Non-cash assets, if any, shall be distributed at book value of such assets.

11.4 Withholding; Amounts Withheld Treated as Distributions. The Manager is authorized to withhold from distributions, or with respect to allocations or payment, to Members, to pay over to the appropriate federal, state or local governmental authority any amounts required to be withheld pursuant to provisions of applicable federal, state or local law. All amounts withheld pursuant to the preceding sentence in connection with any payment, distribution or allocation to any Member shall be treated as amounts distributed to such Member pursuant to this Article 11 for all purposes of this Agreement.

11.5 Limitation Upon Distributions. No distribution shall be declared and paid unless, after the distribution is made, the assets of the ORGANIZATION are in excess of all liabilities of the ORGANIZATION, except liabilities to Members on account of their contributions.

## ARTICLE 12 – ACCOUNTING, BOOKS, AND RECORDS

12.1 Accounting Methods. The ORGANIZATION's books and records shall be kept, and its income tax returns prepared, under such permissible methods of accounting, consistently applied, as the Manager determines is in the best interest of the ORGANIZATION and its Members consistent with this Agreement and applicable law.

12.2 Interest on and Return of Capital Contributions. No Member shall be entitled to interest on its Capital Contribution or to return of its Capital Contribution, except as otherwise specifically provided for herein.

12.3 Loans to ORGANIZATION. Nothing in this Agreement shall prevent any Member from making secured or unsecured loans to the ORGANIZATION.

12.4 Accounting Period. The ORGANIZATION's accounting period shall be the calendar year.

12.5 Records, Audits and Reports. At the expense of the ORGANIZATION, the Manager shall maintain records and accounts of all operations and expenditures of the ORGANIZATION. At a minimum, the ORGANIZATION shall keep at its principal place of business the following records:

- (a) A current list and past list, setting forth the full name and last known mailing address for each Manager and Member;
- (b) A copy of the Certificate of Formation and all amendments thereto;
- (c) Copies of this Agreement and all amendments hereto;
- (d) Copies of the ORGANIZATION's federal, state, and local tax returns and reports, if any, for the three most recent years;
- (e) Minutes of every meeting of the Members and any written consents obtained from Members for actions taken by the Manager without a meeting; and
- (f) Copies of the ORGANIZATION's financial statements for the three most recent years.

The books and records of the ORGANIZATION shall be subject to internal audit and audit by the Office of the Washington State Auditor.

### **ARTICLE 13 – TRANSFERABILITY**

13.1 General. Except as otherwise expressly provided in this Agreement, no Member shall have the right to:

13.1.1 Sell, assign, transfer, exchange or otherwise transfer for consideration, (collectively, "sell" or "sale") all or part of its Membership Interest; or

13.1.2 Gift, bequeath or otherwise transfer for no consideration, whether or not by operation of law, except in the case of bankruptcy (collectively "gift"), all or part of its Membership Interest.

Each Member hereby acknowledges the reasonableness of the restrictions on the sale and gift of Membership Interests imposed by this Agreement in view of the ORGANIZATION's purposes and the relationship of the Members. Accordingly, the restrictions on sale and gift

contained herein shall be specifically enforceable. No Member may pledge or otherwise encumber any of its Membership Interest as security for repayment of any liability. Any such pledge or hypothecation shall void *ab initio*.

13.2 Permitted Transfers. Subject to the forty-eight (48) month restriction on transfers in Section 7.5, a Member may Transfer all or any portion of the Member's Membership Interest as follows (a "Permitted Transfer"): (a) to one or more other Members; or (b) to a Purchaser in accordance with Section 13.3 of this Agreement. A Permitted Transfer to another Member is not subject to Section 13.3 of this Agreement.

13.3 Transfers to Non-Member Persons. Members may only Transfer a Membership Interest to a third-party Purchaser subject to the restrictions in this Section 13.3.

13.3.1 Limitation on Transfers. No Transfer may be made under this Section 13.3 unless: (a) the Seller has received a bona fide written, signed offer (the "Purchase Offer") from a person (the "Purchaser") to purchase all, but not less than all, of the Member's Interest (the "Offered Interest" or "Transferring Interest") for a purchase price (the "Offer Price") denominated and payable in U.S. dollars at the closing or according to specified terms, with or without interest, which offer shall be irrevocable for a period ending no sooner than the end of the notice period found in Section 7.5 (the "Offer Period"); (b) the Seller gives notice of such Purchase Offer to all other Members promptly after receipt of such Purchase Offer; (c) at least two-thirds (2/3) of the Members vote to, or otherwise, approve of the Purchaser's admission to the ORGANIZATION as a Member within the Offer Period; (d) the Purchaser has provided, at Purchaser's sole cost and expense, and a copy is provided to all Members at the Seller's cost and expense, an opinion of counsel satisfactory to the ORGANIZATION, that the Purchaser meets the qualifications of membership under Section 1.12 of this Agreement, and that the Transfer to Purchaser shall not be in violation of any applicable laws, rules, or regulations; and (e) the Purchaser executes a then-current version of this Operating Agreement.

13.3.2 Sale Pursuant to Purchase Offer. Provided the terms of Section 13.3.1 are satisfied, the Seller may sell the Offered Interest to the Purchaser at any time within sixty (60) days after the last day of the Offer Period; provided, however, that such sale must comply with all other terms, conditions, and restrictions of this Agreement that are applicable to Transfers of an Interest.

13.4 Member Withdrawal by Resignation.

13.4.1 Member Resignation. A Member ("Resigning Member") desiring to withdraw from the ORGANIZATION and accordingly sell, assign, or otherwise transfer all of the Member's Interest (the "Resigned Units") without a bona fide offer to purchase from a third party or another Member, shall provide written notice to the Manager as required under Section 7.5.1 of this Agreement (the "Resignation Notice"). Delivery of a Resignation Notice to the Manager shall constitute an offer by the Resigning Member on the date of such delivery (the "Resignation Offer Date") to sell the Resigned Units to the other Members and the ORGANIZATION at a purchase price per Unit (the "Purchase Price") equal to the Determined Price, as defined in Section 13.4.4.

13.4.2 Receipt of Resignation Notice. Upon receipt of a Resignation Notice, the Manager shall immediately give notice to all Members, which will include a copy of the Resignation Notice and will set a date for a special meeting of Members (other than the Resigning Member), which will be held not less than twenty (20) days or more than ninety (90) days after the date of the notice (“Exercise Meeting”). At the Exercise Meeting, the Members shall have the first option to purchase all or part of the Resigned Units (“First Option”), and if the First Option is not exercised by the Members to purchase all of the Resigned Units, the ORGANIZATION shall redeem the unpurchased Resigned Units in accordance with and subject to the provisions of this Section (“Redemption”). The First Option and Redemption will be exercised as follows:

13.4.2.1 The First Option will be exercisable by one or more Members in accordance with the Percentage Interest of each Member.

13.4.2.2 If the First Option is not exercised to purchase all of the Resigned Units, then the ORGANIZATION shall purchase, and the Resigning Member shall redeem, all remaining Resigned Units not exercised upon by the Members.

13.4.3 Each Transfer of Resigned Units pursuant to this Section 13.4 shall be made in accordance with the following terms and conditions:

13.4.3.1 The Transfer of all of the Resigned Units to the respective purchaser(s) shall be consummated within one hundred eighty (180) days after the date of the Resignation Notice, subject to any extensions as are necessary to accommodate the resolution of any disputes related to the Determined Price (as defined below).

13.4.3.2 Unless agreed otherwise between the Resigning Member and the purchasing Member or ORGANIZATION, whichever the case may be, payment for the Resigned Units shall be evidenced by an unsecured promissory note for the Purchase Price, in equal monthly payments of principal and interest, with the first installment due after the second month of the subsequent fiscal year from the date of purchase, with additional installments due on the same day of each month thereafter until the promissory note is paid in full. The note shall bear interest at the then-current interest rate on funds deposited in the Washington State Treasurer’s Local Government Investment Pool in effect at the time of purchase. The interest rate shall be adjusted annually on the anniversary of the date of the promissory note to the then-current interest rate on funds deposited in the Washington State Treasurer’s Local Government Investment Pool. The note shall be for a duration as follows:

<b>Purchase Price</b>	<b>Term</b>
\$0.00 – \$749,999.99	7 Years
\$750,000 - \$2,999,999.99	10 Years
\$3,000,000 or more	14 Years

Notwithstanding the requirements of this Section 13.4, the ORGANIZATION shall not purchase any Units of a Member if, after giving effect to such purchase, (a) the ORGANIZATION would not be able to pay its debts as they became due in the usual course of business, or (b) all liabilities of the ORGANIZATION, other than liabilities to Members on account of their Units

and liabilities for which the recourse of creditors is limited to specified property of the ORGANIZATION, exceed the fair market value of the assets of the ORGANIZATION, except that the fair market value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the ORGANIZATION only to the extent that the fair market value of that property exceeds that liability.

13.4.4 Determined Price. Prior to the Exercise Meeting, the Manager shall obtain from an independent appraiser, and provide to all Members, a valuation of the fair market value of the Resigned Units (the “Determined Price”). The Resigning Member may elect to appoint an independent appraiser and obtain an additional valuation of the fair market value of the Resigned Units, so long as it provides written notice of its election to do so to the Manager within five (5) days of its receipt of the initial valuation obtained by the Manager. If the Resigning Member does not provide this notice, it shall be deemed to have consented to the initial valuation and said valuation shall be final and binding as the Determined Price.

13.4.4.1 If the Resigning Member does elect to appoint an independent appraiser and obtain an additional valuation to set forth as the Determined Price, the Determined Price shall be calculated as follows:

13.4.4.1.1 If the two such valuations are the same, the valuations shall be final and binding as the Determined Price.

13.4.4.1.2 If the two such valuations are different but the lower valuation is no less than ninety percent (90%) of the higher valuation, an average of the two (2) shall be final and binding. In all other events, the two (2) appraisers shall promptly select a third independent appraiser who shall promptly select the valuation of one of the two (2) appraisers which it believes is more accurate and deliver a written summary of such determination to the Manager and the Resigning Member no more than thirty (30) days after the third appraisers selection, and such determination shall be final and binding on both parties as the Determined Price. The Resigning Member shall bear its costs and expenses with respect to the valuation it obtains if it elects to do so. The ORGANIZATION shall bear all costs and expenses with respect to its initial valuation. The ORGANIZATION and the Resigning Member shall share equally in costs and expenses with respect to the third appraiser.

13.5 Continuation of Agreement. This Agreement shall continue in full force and effect as to the remaining Member(s) upon the consummation of a sale of Units pursuant to this Article 13.

13.6 Eligibility. No Member who is in default of any of its obligations under this Agreement shall be entitled to initiate the Transfer processes provided in this Article 13.

13.7 ORGANIZATION Response. Only the Members may determine to alter any terms or conditions of this Article 13, and only at a duly called meeting of the Members. At the portion of any Member meeting during which a Resignation Notice and its response is acted upon, the Resigning Member shall have no vote on any action by the Members related thereto. Moreover, the Resigning Member shall be deemed to have irrevocably waived its right to attend any special meeting called to address its Resignation Notice.

**EACH MEMBER SIGNING THIS AGREEMENT, BEING FULLY AWARE OF ITS LEGAL RIGHTS UNDER WASHINGTON LAW AND AFTER CONSULTATION WITH ITS OWN, INDEPENDENT LEGAL COUNSEL, HEREBY IRREVOCABLY WAIVES ITS RIGHTS TO:**

- **VOTE AT ANY MEMBERSHIP MEETING ON ANY QUESTION PERTAINING TO ITS NOTICE TO RESIGN ITS MEMBERSHIP INTEREST; AND**
- **ATTEND A LEGALLY CONDUCTED MEETING OF THE MEMBERS TO DISCUSS THE RESIGNING MEMBER'S RESIGNATION NOTICE.**

#### **ARTICLE 14 – DISSOLUTION AND TERMINATION**

14.1 Dissolution. The ORGANIZATION shall be dissolved upon the occurrence of the written agreement of all Members.

14.1.1 The Members acknowledge that the operations and property of the ORGANIZATION comprise a valuable, essential public asset, the continuous operation of which is vital to the communities served thereby. The Members therefore further acknowledge that any dissolution of the ORGANIZATION shall be conducted to assure continuity of telecommunication services provided by the ORGANIZATION at the level and with the reliability of the ORGANIZATION's operations immediately prior to any dissolution.

14.2 Allocation of Net Profit and Loss in Liquidation. The allocation of Net Profit, Net Loss and other items of the ORGANIZATION following the date of dissolution, including but not limited to gain or loss upon the sale of all or substantially all of the ORGANIZATION's assets, shall be determined in accordance with the provisions of Articles 10 and 11 and shall be credited or charged to the Capital Accounts of the Members in the same manner as Net Profit, Net Loss, and other items of the ORGANIZATION would have been credited or charged if there were no dissolution and liquidation.

14.3 Winding Up, Liquidation and Distribution of Assets. Upon dissolution, the Manager shall immediately proceed to wind up the affairs of the ORGANIZATION. The Manager shall sell or otherwise liquidate all the ORGANIZATION's assets as promptly as practicable (except to the extent the Manager may determine to distribute any assets to the Members in kind) and shall apply the proceeds of such sale and the remaining ORGANIZATION assets in the following order of priority:

14.3.1 Payment of creditors, including Members who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the ORGANIZATION, other than liabilities for distributions to Members;

14.3.2 To establish any reserves that the Manager deems reasonably necessary for contingent or unforeseen obligations of the ORGANIZATION and, at the expiration of such period

as the Manager shall deem advisable, the balance then remaining in the manner provided in Section 14.3.3 below;

14.3.3 By the end of the fiscal year in which the liquidation occurs (or, if later, within ninety (90) days after the date of such liquidation), to the Members in proportion to the positive balances of the Initial Members' Capital Accounts then to all Members, as determined after taking into account all Capital Account adjustments for the fiscal year during which the liquidation occurs (other than those made pursuant to this Section 14.3.3); *provided*, that any real or personal property contributed by a Member that may be distributed to such Member shall be valued at its then book value unless such Member declines to accept the property or as otherwise agreed by the Members.

14.4 No Obligation to Restore Negative Capital Account Balance on Liquidation. Notwithstanding anything to the contrary in this Agreement, upon a liquidation, if any Member has a negative Capital Account balance (after giving effect to all contributions, distributions, allocations and other Capital Account adjustments for all taxable years, including the year during which such liquidation occurs), such Member shall have no obligation to make any Capital Contribution to the ORGANIZATION, and the negative balance of such Member's Capital Account shall not be considered a debt owed by such Member to the ORGANIZATION or to any other Person for any purpose whatsoever.

14.5 Termination. The Manager and the Members shall comply with any applicable requirements of applicable law pertaining to the winding up of affairs of the ORGANIZATION and the final distribution of its assets. Upon completion of the winding up, liquidation and distribution of the assets, the ORGANIZATION shall be deemed terminated.

14.6 Certificate of Cancellation. When all debts, liabilities and obligations have been paid and discharged or adequate provisions have been made therefor and all the remaining property and assets have been distributed to the Members, the Manager shall file a certificate of cancellation as required by RCW 25.15.080. Upon filing the certificate of cancellation, the existence of the ORGANIZATION shall cease, except as otherwise provided in the LLC Act.

14.7 Return of Contribution Nonrecourse to Other Members. Except as provided by law or as expressly provided in this Agreement, upon dissolution each Member shall look solely to the assets of the ORGANIZATION for the return of its Capital Contributions, if any. Return of Capital Contributions shall be made on a pro rata basis reflecting the Initial Members' then all Members' Percentage Interests; *provided*, that personal property (at then-current Net Book Value), and real property interests and real property (at then-current fair market value), contributed by a Member shall be distributed to that Member unless otherwise agreed by all Members. If the property remaining after the payment or discharge of liabilities of the ORGANIZATION is insufficient to return the contributions to the Members, no Member shall have recourse against any other Member, the ORGANIZATION or ORGANIZATION Manager.

## ARTICLE 15 – INDEPENDENT ACTIVITIES OF MEMBERS

Any Member, including the Manager, may engage in or possess an interest in other business ventures of every nature and description, independently or with others, including but not limited to, the ownership, financing, management, employment by, lending to or otherwise participation in other operations permitted by law even if similar to, but so long as not in direct competition with, the business of the ORGANIZATION.

## ARTICLE 16 – MISCELLANEOUS PROVISIONS

16.1 Notices. Any notice, demand, or communication required or permitted under this Agreement shall be deemed to have been duly given if delivered personally to the party to whom directed, or if delivered by courier with all fees paid by the sender, or if mailed by registered or certified mail, postage and charges paid by the sender, or by email, addressed (a) if to an Initial Member, to the Initial Member's address specified on attached **Exhibit A** and, if to an Additional Member, to the address provided in the Additional Member's request to become a Member, and (b) if to the ORGANIZATION, to the address specified in Section 2.3. Except as otherwise provided herein, any such notice shall be deemed to be given (i) when personally delivered; (ii) when received or refused by the addressee when sent by registered or certified mail or courier; or (iii) when receipt is confirmed by the addressee by means other than an automated confirmation or response when sent by e-mail. A Member or the ORGANIZATION may change its address for the purposes of notices hereunder by giving notice to the others specifying such changed address in the manner specified in this Section 16.1.

16.2 Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington.

16.3 Amendments. This Agreement may not be amended except by the unanimous written agreement of all the Members.

16.4 Construction. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

16.5 Headings. The headings in this Agreement are inserted for convenience only and shall not affect the interpretations of this Agreement.

16.6 Waivers. The failure of any Member to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

16.7 Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy shall not preclude or waive the right to use

any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

16.8 Severability. If any provision of this Agreement or the application thereof to any Person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

16.9 Successors and Assigns. Each of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Agreement, their respective legal representatives, successors and assigns.

16.10 Creditors and Other Third Parties. None of the provisions of this Agreement shall be for the benefit of or enforceable by any of the creditors of the ORGANIZATION. This Agreement is not for the benefit of the public or any Person other than the Members and shall not be enforceable thereby under any circumstances whatsoever.

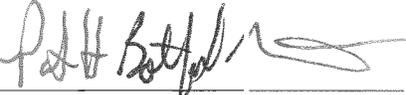
16.11 Investment Representations. The Units have not been registered under the Securities Act of 1933, the Securities Act of Washington or any other state securities laws (collectively, the "Securities Acts") because the ORGANIZATION is issuing the Units in reliance upon the exemptions from the registration requirements of the Securities Acts, and the ORGANIZATION is relying upon the fact that the Units are to be held by each Member for investment. Accordingly, each Member hereby confirms the Units have been acquired for such Member's own account, for investment and not with a view to the resale or distribution thereof and may not be offered or sold to anyone unless there is an effective registration or other qualification relating thereto under all applicable Securities Acts or unless such Member delivers to the ORGANIZATION an opinion of counsel, satisfactory to the ORGANIZATION, that such registration or other qualification is not required. The Members understand that the ORGANIZATION is under no obligation to register the Units or to assist any Member in complying with any exemption from registration under the Securities Acts.

16.12 Counterparts. This Agreement may be executed by the parties hereto in counterparts and, once so signed by all parties, shall have full force and effect. Such signatures will be effective when delivered by fax or email and shall be followed by original signatures.

[Remainder of page intentionally left blank; Signatures to follow]

Executed by the undersigned Members effective as of the date last below written.

**PORT OF SKAGIT**

  
By: Patricia H. Botsford-Martin  
Its: Executive Director  
Date: 12/17/19

**PORT OF RIDGEFIELD**

  
By: Brent Grening  
Its: CEO  
Date: 12-17-19

**PORT OF WHITMAN**

  
By: Joseph R. Poire  
Its: Executive Director  
Date: 12/17/19

**PORT OF BELLINGHAM**

  
By: Rob Fix  
Its: Executive Director  
Date: 1/6/20

**PORT OF KALAMA**

  
By: Mark Wilson  
Its: Executive Director  
Date: 17-Dec-19

**PORT OF PASCO**

  
By: Randy Hayden  
Its: Executive Director  
Date: 12/17/19

## EXHIBIT A

### MEMBER INFORMATION

<u>Names of Members</u>	<u>Startup Capital Contribution</u>	<u>Units</u>	<u>Percentage Interest</u>
Port of Skagit County 15400 Airport Drive Burlington, WA 98233	\$200,000.00	200	16.6%
Port of Ridgefield 111 W. Division Street, #1 Ridgefield, WA 98642	\$200,000.00	200	16.6%
Port of Whitman County 302 N. Mill Street Colfax, WA 99111	\$200,000.00 (in kind)	200	16.6%
Port of Bellingham 1801 Roeder Avenue Bellingham, WA 98225	\$200,000.00	200	16.6%
Port of Kalama 110 W. Marine Drive Kalama, WA 98625	\$200,000.00	200	16.6%
Port of Pasco 1110 Osprey Pointe Avenue Pasco, WA 99301	\$200,000.00	200	16.6%
<b>Totals</b>	<b>\$1,200,000.00</b> <b>(\$200,000.00</b> <b>in kind)</b>	<b>1,200</b>	<b>100%</b>

#### Manager

Port of Whitman County  
302 N. Mill Street  
Colfax, WA 99111