

**INTERLOCAL COOPERATION AGREEMENT  
FOR  
FIBER OPTIC SYSTEM DESIGN AND CONSTRUCTION SERVICES**

This Interlocal Cooperation Agreement (this "Agreement") is made and entered effective as of December 21, 2021 (the "Effective Date") between Petrichor Broadband, LLC, a Washington limited liability company, ("Petrichor"), and the Port of Whitman, a Washington municipal corporation, ("Whitman"). Petrichor and Whitman are sometimes individually referred to herein as a "party" or collectively as the "parties".

**WHEREAS**, pursuant to and subject to the limitations in RCW 53.08.370, Whitman is authorized to own and maintain fiber optical systems and facilities within and without its districts for the purposes of providing wholesale telecommunication services.

**WHEREAS**, Whitman desires to develop a fiber optic system in the Pine City/Malden area (the "Whitman System").

**WHEREAS**, Petrichor was formed by several Washington public port districts, pursuant RCW 39.34.030 as a Washington limited liability company, to facilitate each member's port and other ports' efforts to provide wholesale telecommunications services.

**WHEREAS**, Petrichor has developed expertise in designing and constructing fiber optic systems.

**WHEREAS**, pursuant to chapter 25.15 RCW, chapter 39.34 RCW and chapter 53.08 RCW, Petrichor and Whitman are authorized to enter into this Agreement.

**WHEREAS**, Petrichor has been selected in accordance with the requirements of chapter 53.19 RCW to provide design and construction supervision services to Whitman to assist in the development of the Whitman System.

**NOW THEREFORE**, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Design Services. Petrichor shall design the fiber optic and ancillary facilities needed for the Whitman System (the "Design Services"). The Design Services are described in Exhibit "A" attached hereto. The Design Services shall be provided in accordance with generally accepted industry standards for the design of fiber optic systems. The timing of and deliverable documents for the design are also set forth in Exhibit "A"; however, the timeline will be reasonably extended by the parties for good cause. Subject to applicable law, the parties reserve the right revise Exhibit "A" in an amendment signed and dated by both parties. Once signed the revised Exhibit "A" will be incorporated herein.

1.1. Input into Design by Whitman. It is recognized that the Whitman System will be designed as an "open access system" as the term is general understood in the fiber optic industry. Representatives of Petrichor will routinely keep Whitman apprised of the progress of the fiber optic system design and provide opportunities for reasonable input from Whitman.

1.2. Final Design and Approval by Whitman. Prior to finalizing the design, Petrichor will present the draft design to Whitman for final approval.

2. Construction Management Services. Following approval of the design of the Whitman System, Petrichor will provide construction management services as specifically set forth in Exhibit "A" which may include but not limited to:

- a. Preparation of bidding documents, including requests for bids, bidding forms and contracts (the "Construction Documents").
- b. Evaluation of the qualifications of the bidders.
- c. Acquisition of necessary permissions and permits to construct the design approved by Whitman.
- d. Supervision of construction.

As noted above, subject to applicable law, the parties reserve the right revise Exhibit "A" in an amendment signed and dated by both parties. Once signed the revised Exhibit "A" will be incorporated herein.

2.1. Use of Construction Documents. Prior to finalizing the Construction Documents Petrichor will present the Construction Documents to Whitman for final approval. Whitman will, in its sole discretion, issue the construction documents and receive the bids. Whitman, in its sole discretion, shall determine the bidder that will receive the contract award or decline to award the contract to any bidder.

2.2. Permits and Licenses. Whitman will reasonably cooperate with Petrichor in applying for and executing all permits and licenses necessary to construct the Whitman System.

3. Payment. In consideration of the design and construction management services set forth in this Agreement, Whitman will pay Petrichor its fees and costs (without markup) as provided and upon the terms and conditions as set forth in Exhibit "B". Subject to applicable law, the parties reserve the right to revise Exhibit "B" in an amendment signed and dated by both parties. Once signed the revised Exhibit "B" will be incorporated herein.

3.1. Invoicing and Progress Payments. Petrichor will bill Whitman monthly for the services performed and any unpaid previous balance to the date of the invoice. All amounts will be due within thirty (30) days of the date of mailing of the invoice to the address provided herein unless Whitman provides a written objection to any charges and then only the portion of the invoice related to those charges may be withheld pending resolution.

4. Term. This Agreement shall commence upon the Effective Date and will continue in full force and effect until the services described herein have been provided. However, either party may terminate this Agreement, at its sole discretion, upon thirty (30) days written notice to the other party. Provided, Whitman will pay for services rendered through the date of termination.

5. Subcontractors and Subconsultants. Petrichor, in its sole discretion, may subcontract work required under this Agreement or retain subconsultants to perform work required hereunder. Any

such subcontractors or subconsultants contract will be subject to the terms and conditions of this Agreement and Petrichor will remain responsible for the performance required of Petrichor herein. Without limiting the foregoing, if Petrichor retains a subcontractor or subconsultant their fees shall (i) be paid by Petrichor and (ii) included in the billing to Whitman without markup by Petrichor.

6. Limitation on Damages. Notwithstanding any provisions of this Agreement to the contrary, neither party shall be liable to the other party or any third party for any special, incidental, indirect, punitive, or consequential costs, liabilities, or damages, whether foreseeable or not, arising out of, or in connection with, such party's performance of its obligations under this Agreement. In part consideration for Petrichor's performance under this Agreement, the damages for breach of this Agreement by Petrichor shall be limited to the total fee (exclusive of payments to subcontractors or subconsultants) paid by Whitman to Petrichor. It is understood that this represents the allocation of economic loss for breach of this Agreement and is not merely a recital but a negotiated part of the economics of this Agreement.

7. Casualty Loss. The parties hereto agree that neither party, their respective managers, members, officers, commissioners, employees, insurance carriers and casualty policies shall be responsible to the other party for any property loss or damage done to the other party's property, whether real, personal, or mixed, occasioned by reason of any fire, storm, or other casualty whatsoever. It shall be each party's sole responsibility to provide its own protection against casualty losses of whatsoever kind or nature, regardless of whether or not such loss is occasioned by the acts or omissions of the other party, third party, or act of nature. In this regard, each party hereby releases and discharges the other party and their respective managers, members, officers, commissioners, and employees from any claims for loss or damage to property.

8. Mutual Indemnification. To the extent permitted by law, each party hereby agrees to indemnify the other, their respective managers, members, officers, commissioners and employees from and against, and assume liability for any injury, loss, damage to, or claim by any third party for personal injury or damage to tangible property (collectively the "Claims") to the extent and in proportion that Claims arise from the negligent, grossly negligent or willful act of the indemnifying party, its officers, employees, servants, affiliates, agents or contractors but not from any Claim arising from another licensee.

8.1. Limited Waiver of Immunity Under Washington State Industrial Insurance Act, Title 51 RCW and Other Similar Industrial Insurance Schemes. For purposes of the foregoing indemnification provision, and only to the extent of claims against a party by an employee of the other party, each party specifically waives any immunity it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW, The United States Longshore and Harbor Workers Compensation Act, 33 USC §901-950, or any other similar workers' compensation schemes. The indemnification obligation under this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers' compensation acts, disability benefit acts, or other employee benefit acts. The foregoing provision was specifically negotiated and agreed upon by the parties hereto.

9. Insurance. Petrichor and Whitman, at each party's respective expense, shall, throughout the Term, maintain insurance coverages of the types and in the minimum amounts set forth

below, as applicable:

<u>Type of Insurance</u>		<u>Limit</u>
General Liability (including contractual liability) written on an occurrence basis	General Aggregate	\$3,000,000
	Prod./Comp. Op. Agg.	\$2,000,000
	Personal & Adv. Injury	\$2,000,000
	Each Occurrence	\$2,000,000
Automobile Liability, including any auto, hired auto and non-owned autos	Combined Single Limit	\$2,000,000

9.1. Additional Insured Status and Other Provisions. The foregoing insurance policy shall name each other as an additional insured by way of a policy endorsement. Each party shall provide certificates of insurance and, if requested, copies of any policy to the other. Receipt of such certificate or policy by a party does not constitute approval by the party of the terms of such policy. Furthermore, the policy of insurance required herein shall: (i) be written as a primary policy; (ii) expressly provide that such insurance may not be materially changed, amended or canceled with respect to other party except upon forty-five (45) days' prior written notice from the insurance company to other party; (iii) contain an express waiver of any right of subrogation by the insurance company against each other; (iv) expressly provide that the defense and indemnification of the other party as an "additional insured" will not be effected by any act or omission by other party which might otherwise result in a forfeiture of said insurance; (v) contain a separation of insureds provision such that the policy applies separately to each insured that is subject of a claim or suit; and (vi) not contain a cross-claim, cross-suit, or other exclusion that eliminates coverage by one insured against another.

10. Taxes. Petrichor shall be responsible for all taxes imposed against Petrichor resulting from the services provided herein. Whitman shall be responsible for any taxes imposed against Whitman as a result of the construction or operation of the Whitman System.

11. Force Majeure. Neither party will be liable to the other for any failure of performance under this Lease due to causes beyond its control which such Party was unable to avoid or overcome through the exercise of reasonable diligence (except for the fulfillment of payment obligations as set forth herein), including, but not limited to: acts of God, fire, flood, earthquake or other catastrophes; material or facility shortages or unavailability not resulting from such Party's failure to timely place orders therefore; lack of transportation; the imposition of any governmental codes, ordinances, laws, rules, regulations or restrictions; national emergencies; terrorism; insurrections; riots, wars; or third party strikes, lockouts, work stoppages or other labor difficulties (collectively, "Force Majeure Events"). The Company will not be obligated to pay for services not rendered during a Force Majeure Event and after thirty (30) days of that Force Majeure Event until its conclusion.

12. Survivability. All covenants, promises and performance which are not fully performed as of the date of termination shall survive termination as binding obligations.

13. Notices. All notices, demands, requests, consents and approvals which may, or are required to be given by any party to any other party hereunder, shall be in writing and shall be deemed

to have been duly given if delivered personally, sent by electronic mail with receipt confirmed in a reply email, sent by facsimile, sent by a nationally recognized overnight delivery service, or if deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to:

Petrichor:                      Petrichor Broadband, LLC  
   ATTN: Manager  
   302 N. Mill Street  
   Colfax, WA 99111  
   Email: joepoire@petrichorbroadband.com

Whitman:                        Port of Whitman  
   ATTN: Executive Director  
   302 N Mill Street  
   Colfax, WA 99111  
   Email: executivedirector@portwhitman.com

or to such other address as the foregoing parties hereto may from time-to-time designate in writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt or refusal to accept delivery.

14.     Amendment. No modification, termination or amendment of this Agreement may be made except by written agreement signed by all parties, except as provided herein.

15.     Waiver. No failure by either party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or any other covenant, agreement, term or condition.

16.     Captions. The captions of this Agreement are for convenience and reference only and in no way, define, limit, or describe the scope or intent of this Agreement.

17.     Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

18.     Neutral Authorship. Each of the provisions of this Agreement has been reviewed and negotiated and represents the combined work product of all parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.

19.     Attorney Fees. The prevailing party in any action concerning this Agreement shall be awarded their reasonable attorney fees and costs.

20.     Governing Law, Jurisdiction and Venue. This Agreement, and the right of the parties

hereto, shall be governed by and construed in accordance with the laws of the State of Washington, and the parties agree that in any such action, jurisdiction and venue shall lie solely and exclusively in Whitman County, Washington and not in the federal courts of any jurisdiction.

21. Time of Performance. Time is specifically declared to be of the essence of this Agreement and of all acts required to be done and performed by the parties hereto.

22. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

23. Counterparts and Authority. This Agreement may be signed in counterparts. Each person signing below represents and warrants that they have complete authority to execute this Agreement.

24. Public Records. The parties are subject to and comply with the Washington Public Records Act codified at chapter 42.56 RCW (the "Act"). Therefore, absent a specific exemption contained in the Act all information provided by either party becomes a public record subject to inspection and disclosure.

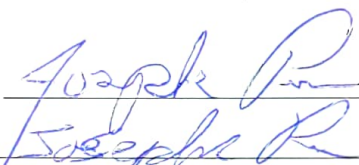
25. Facsimile or Electronic PDF File Transmission. This Agreement and all subsequent notices or modifications may be executed by the parties and transmitted by facsimile or electronic transmission of a PDF file and, if so executed and transmitted this and all subsequent notices or modifications will be for all purposes as effective as if the parties had delivered an executed original.

26. Entire Agreement. The entire agreement between the parties hereto is contained in this Agreement (including the predicate clauses), and this Agreement supersedes all their previous understandings and agreements, written and oral, with respect to this transaction. This Agreement may be amended only by written instrument executed by the parties after the date hereof.

IN WITNESS, WHEREOF, the parties have executed this Agreement as of the day and year first above written.

PETRICHOR BROADBAND, LLC

By:

  
\_\_\_\_\_  
Print name and Title

Date signed: 12-21-2021

PORT OF WHITMAN

By:

  
\_\_\_\_\_  
Joseph R. Poiré, Executive Director  
Print name and Title

Date signed: 12-21-2021

**EXHIBIT A**  
**DETAIL OF DESIGN SERVICES AND TIMELINE**

Design Services: Petrichor will provide the following Design Services according to the timeline contained herein:

	Task	Time
1	Assist with right-of-way acquisition, as required	4/2022
2	Aerial/underground design for construction	2/2022
3	Prepare applications for permitting	4/2022
4	Electronic survey of poles	NA
5	Prepare construction bid documents, including splice documents	2/2022
6	Pre-bid meeting	2/2022
7	Participate in pre-construction meeting	NA
8	Oversight of construction	NA
9	Review all as-builts for conformity	NA
10	Map as-builts	Upon project completion

**EXHIBIT B**  
**PAYMENT**

Design Services Fee	\$100,000.00
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