

INTERLOCAL AGREEMENT FOR DARK FIBER USE

This **INTERLOCAL AGREEMENT FOR DARK FIBER USE** (the "Agreement") is made and entered into this 27th day of March, 2023, by and between the **PORT OF WHITMAN COUNTY** (the "Port"), and **WHITMAN COUNTY** (the "County"). The Port and the County are referred to collectively as the "Parties," and individually as a "Party."

I. RECITALS

WHEREAS, the Port owns certain dark (i.e., unlit) fiber-optic strands running from the Whitman County IT building to the corner of the Whitman County Fairgrounds (the "Fairgrounds") property;

WHEREAS, having high-speed fiber-optic telecommunications services at the Fairgrounds will improve the ability to host events at the Fairgrounds which will help increase trade and tourism and generate economic development in Whitman County;

WHEREAS, the Port has, and plans to in the future, host meetings and events at the Fairgrounds, and the Port would benefit from having high-speed fiber-optic telecommunications services available for such meetings and events; and

WHEREAS, the Parties are authorized, pursuant to Chapter 39.34 RCW, to enter into interlocal agreements which allow the Parties to cooperate with each other to their mutual advantage.

II. TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. **PURPOSE.** The purpose of this Agreement is to establish a contractual arrangement under which the Port will allow the County use of one (1) strand of dark fiber so that the County can obtain high-speed fiber-optic telecommunications services at the Fairgrounds.

2. **LOANED FIBER-OPTIC STRAND.** During the Term of this Agreement, as defined herein, the Port shall designate one (1) strand of dark fiber-optic cable (the "Strand") running from the Port office building at 302 North Mill Street, Colfax, WA 99111, to a vault at the Fairgrounds, as generally depicted on **Exhibit A** hereto. The County shall be entitled to use the Strand without paying any rental or use fees for the same for the purposes set forth below during the Term of this Agreement.

2.1 **Permitted Use of Strand.** The County shall be entitled to light (either directly or through a third-party internet service provider) the Strand to provide high-speed fiber-optic telecommunications services to the Fairgrounds (the "Permitted Use").

2.2 **Prohibited Uses of Strand.** The County shall not utilize the Strand for any use other than the Permitted Use without the Port's prior written approval, which approval may be

withheld at the Port's sole discretion. Without limiting the generality of the foregoing, the County shall not lease, sublet, or assign the right to use the Strand to any other party.

3. **MAINTENANCE, REPAIR, AND REPLACEMENT.** The Port shall perform all routine maintenance, repair, and replacement of the Strand during the Term of this Agreement at no cost to the County, including performing locates; however, if the County, its employees, or agents damage the Strand, the Port shall be entitled to invoice the County for the costs of such resulting maintenance, repair, or replacement. The Port will undertake such maintenance, repair, and replacement as soon as reasonably practical after learning of the need for the same; however, in no case shall the Port be liable to the County for any damages of any kind or nature incurred by the County relating to or arising out of the Port's delay or failure to perform any maintenance, repair, or replacement to the Fiber. The County expressly waives any and all claims against the Port related to or arising out of the Port's delay or failure to perform any maintenance, repair, or replacement of the Fiber.

3.1 **No Obligation to Maintain, Repair, or Replace the Strand.** The Port has sole and exclusive authority to determine if any maintenance, repair, or replacement of the Strand should or will be made. If the Port determines that it is not in the Port's best interest to perform any maintenance, repair, or replacement of the Strand, the Port shall provide written notice to the County of the same and this Agreement shall automatically terminate upon the County's receipt of such notice.

4. **FAIRGROUND EVENT SPACE.** During the Term of this Agreement, the Port shall be entitled to utilize event and meeting space at the Fairgrounds without paying any rental or use fees up to two (2) times per calendar year. The Port's right to utilize Fairground event and meeting space is dependent on availability. The Parties shall reasonably cooperate in scheduling the Port's use under this provision. The County shall be entitled to charge the Port reasonable cleaning fees after each such use.

5. **TERM.** This Agreement shall commence on mutual execution hereof and continue until one of the following termination events occur: (i) the County provides sixty (60) days' prior written notice of termination to the Port; (ii) the Port provides written notice pursuant to Paragraph 3.1 that the Port will not maintain, repair, or replace the Strand after it is damaged or destroyed; or (iii) the Port sells or otherwise transfers ownership or control of the Strand to another third-party.

6. **DEFENSE AND INDEMNIFICATION.** To the extent permitted by law, each Party shall defend, indemnify, and hold harmless the other Party, and its officials, employees, agents, successors, designees, and assigns, from and against any and all claims, penalties, demands, causes of action, damages, losses, liabilities, costs, expenses, including attorneys' fees, arising out of or in connection with the Party's performance of this Agreement; provided, however, that this defense and indemnification shall not apply to any claims or causes of action to the extent that the damages were caused by the negligent or wrongful conduct of the indemnified Party. In the event of joint liability, this defense and indemnification shall only apply to the percentage fault of the indemnifying Party.

7. **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 a nationally recognized overnight

delivery service, or if deposited in the United States mail and sent by registered or certified mail, return receipt requested and postage prepaid, to:

Port: Port of Whitman County
Attn: Kara Riebold
302 N. Mill Street
Colfax, WA 99111

County: Whitman County
Attn: Corey Mitzimberg
400 N Main St
Colfax, WA 99111

Or to such other address as any Party 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.

8. **RECORDING.** A copy of this Agreement shall be filed with the Whitman County Auditor or posted on the website of any Party upon execution.

9. **INDEPENDENT MUNICIPAL GOVERNMENTS.** The Parties hereto are independent municipal corporations. Except for the specific terms herein, nothing herein shall be construed to limit the discretion of the governing bodies of each Party. Nothing in this Agreement shall be construed to create a joint entity between the Parties.

10. **NEUTRAL AUTHORSHIP.** Each Party represents and warrants that it has retained legal counsel to assist them in the preparation of this Agreement, and the exhibits attached hereto. Each of the provisions of this Agreement, and the exhibits attached hereto, has been reviewed and negotiated, and represents the combined work-product of the Parties. 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.

11. **DISPUTE RESOLUTION.** The Parties will first submit any dispute to mediation as a condition precedent to litigation. Each Party expressly waives the right to a trial by jury.

12. **NO 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. Either Party hereto, by notice, and only by notice as provided herein, may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation, or covenant of the other Party hereto. No waiver shall affect or alter this Agreement, and each and every covenant, agreement, term, and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

13. **SEVERABILITY.** In case any one (1) 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.


14. **SURVIVABILITY.** All covenants, promises, provisions, and performances of this Agreement which are not fully performed as of the date of termination shall survive termination of this Agreement as binding obligations.

15. **ENTIRE AGREEMENT.** The entire agreement between the Parties is contained in this Agreement, and this Agreement supersedes all of the Parties' previous understandings and agreements, written or oral, with respect to this transaction. This Agreement may only be amended by a written modification signed by all Parties.

16. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts and each such executed counterpart shall be deemed to be an original instrument, but all such executed counterparts together shall constitute one (1) and the same instrument. Any signature page delivered by facsimile or electronic image transmission shall be binding to the same extent as an original signature page. Any Party that delivers a signature page by facsimile or electronic image transmission shall deliver an original counterpart to any other Party that requests such original counterpart.

IN WITNESS WHEREOF, the Parties have executed and entered into this Agreement on the dates set forth below.

PORT OF WHITMAN COUNTY


By: Kara Riebold
Its: Executive Director
Date: 3/27/2023

WHITMAN COUNTY


By: Michael Largent
Its: Commissioner Chair
Date: 04/03/2023

EXHIBIT A
DEPICTION OF STRAND RUN

