

## INTERLOCAL COOPERATION AGREEMENT

This **INTERLOCAL COOPERATION AGREEMENT** (the “Agreement”) is made and entered into effective the 15th day of February, 2024, between **PETRICHOR BROADBAND, LLC**, a Washington interlocal limited liability company (“Petrichor”), and **THE PORT OF WHITMAN COUNTY**, a Washington Public Port District (the “Municipal Entity”) for Petrichor’s provision of Services, as defined herein, to the Municipal Entity related to expanding broadband internet access to unserved and underserved rural areas of Washington State. Petrichor and the Municipal Entity are sometimes referred to in this Agreement collectively as the “Parties” or individually as a “Party.”

### I. RECITALS

**WHEREAS**, the Washington Interlocal Cooperation Act RCW 39.34 (the “Act”) permits public entities to cooperate with one another on the basis of mutual advantage to make the most efficient use of their powers, thereby providing services in a manner that accords best with geographic, economic, population, and other factors influencing the needs and development of local communities;

**WHEREAS**, the Parties are public agencies as defined in RCW 39.34.020(1);

**WHEREAS**, several Washington public port districts formed Petrichor pursuant to RCW 39.34.030 to provide wholesale telecommunications facilities and services with the goal of creating economic opportunities, including sustainable community wage jobs, pursuant to authority granted to port districts under RCW 53.08.370;

**WHEREAS**, the Municipal Entity has authority to engage in telecommunications projects, including, but not limited to, extending and providing wholesale telecommunications facilities and services pursuant to RCW 53.08.370;

**WHEREAS**, Petrichor entered into an Economic Development Agreement (the “EDA”) with the Washington State Rural Development Council D/B/A Partners for Rural Washington, a Washington nonprofit corporation (the “PRWA”);

**WHEREAS**, under the EDA, Petrichor and the PRWA are engaged in a joint effort to expand broadband to unserved or underserved rural areas of Washington State, which efforts are funded by a grant from the Ballmer Group;

**WHEREAS**, pursuant to the EDA, Petrichor has funding to provide services at no cost to the Municipal Entity related to identifying broadband project areas, designing broadband projects, pursuing funding for the projects, and aiding with funding compliance; and

**WHEREAS**, the Municipal Entity desires to receive services from Petrichor related to potential projects to extend and provide wholesale telecommunications facilities and services in unserved and underserved rural areas in Whitman County (the “Service Area”).

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

## II. AGREEMENT

1. **SERVICES TO BE PROVIDED.** During the Term of this Agreement, as noted herein, and at no cost to the Municipal Entity, Petrichor shall provide the following services to the Municipal Entity (the "Services"):

a. Convene regional meetings with the Municipal Entity, other relevant municipal entities, and internet service providers ("ISPs") in the Service Area for project area development.

b. Develop maps for regional concurrence on unserved areas and existing open access broadband telecommunications infrastructure in the Service Area.

c. Compile lead entity qualifications for potential broadband project fundings (BEAD NOFO P. 71-76), including;

- I. Financial capability;
- II. Managerial capability;
- III. Technical capability;
- IV. Compliance with laws;
- V. Operation capability;
- VI. Ownership; and
- VII. Other available public funding;

d. Facilitate project area development elements, including:

- I. Project area definition (.shp file);
- II. High level mapping;
- III. Cost estimates and project budget;
- IV. Project feasibility; and
- V. Provide sufficient assistance to the Municipal Entity to complete and submit the final application for the necessary funding to complete the proposed broadband project.

e. Provide compliance assistance with federal and state grants for construction of any broadband projects.

2. **MUNICIPAL ENTITY COOPERATION.** The Municipal Entity shall reasonably cooperate with Petrichor as required for Petrichor to perform the Services.

3. **USE OF DELIVERABLES.** The information prepared by the Municipal Entity pursuant to this Agreement, and any other deliverables the Parties may agree to, shall be, and shall remain, the property of Petrichor and/or the PRWA; however, the Municipal Entity shall be granted a non-exclusive license to utilize the same for purposes of developing, constructing, and operating the telecommunications project for which they are prepared.

4. **TERM.** The "Term" of this Agreement shall be for a period commencing on its effective date and terminating upon the earlier of (i) completion of the Services; (ii) upon thirty (30) days prior written notice by one Party to the other Party; or (iii) upon termination of the EDA.

5. **MUTUAL INDEMNIFICATION.** To the extent permitted by law, each Party hereby agrees to indemnify the other, and 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 acts or omissions of the indemnifying Party, and/or its officers, employees, servants, affiliates, agents, or contractors.

**5.1. 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.**

**6. INSURANCE.** Petrichor and the Municipal Entity, 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

6.1. 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 affected 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.

7. **TAXES.** Petrichor shall be responsible for all taxes imposed against Petrichor resulting from the Services provided herein. The Municipal Entity shall be responsible for any taxes imposed against it as a result of the construction or operation of any telecommunications facilities or projects hereunder.

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

9. **INDEPENDENT ENTITIES.** The PRWA and Petrichor are independent entities and, in this regard, neither the PRWA nor Petrichor shall be liable for the acts or omissions of the other or their respective board members, public officials, employees, or agents.

10. **AMENDMENT.** No modification, termination, or amendment of this Agreement may be made except by written agreement signed by both Parties hereto.

11. **NOTICES.** All notices, which may be or are required to be given pursuant to this Agreement, shall be in writing and shall be delivered to the Parties at the following addresses:

To Petrichor: Petrichor Broadband, LLC  
ATTN: Kara Riebold  
302 N. Mill St.  
Colfax, Wa 99111

To Municipal Entity: The Port of Whitman County  
302 N Mill St \_\_\_\_\_  
Colfax, WA 99111 \_\_\_\_\_  
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Any such notices shall be either (i) sent by U.S. mail, in which case notice shall be deemed delivered three (3) days after deposit, postage prepaid in the U.S. mail; (ii) sent by a nationally recognized overnight courier, in which case notice shall be deemed delivered when actually delivered pursuant to the records of such courier; or (iii) hand delivered, in which case notice shall be deemed delivered when actually delivered.

12. **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.

13. **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.

14. **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.

