

INTERLOCAL COOPERATION AGREEMENT

BY AND BETWEEN

**PORT OF WHITMAN COUNTY
A WASHINGTON MUNICIPAL CORPORATION**

AND

**THE PORT OF LEWISTON
AN IDAHO MUNICIPAL CORPORATION**

**AMENDING AND SUPPLEMENTING THE
*INTERGOVERNMENTAL COOPERATION AGREEMENT
FOR TELECOMMUNICATIONS FACILITIES*
DATED MARCH 9, 2015**

**EFFECTIVE DATE OF
THIS AGREEMENT: MAY 1, 2021**

This Interlocal Cooperation Agreement (this “Agreement”) is made and entered effective as of May 1, 2021 (the “Effective Date”) between Port of Whitman County, a Washington municipal corporation, (“Whitman”), and Port of Lewiston, an Idaho municipal corporation, (“Lewiston”). Whitman and Lewiston are sometimes individually referred to herein as a “Party” or collectively as the “Parties.”

BACKGROUND

A. Pursuant to and subject to the limitations in RCW 53.08.370, Whitman owns and maintains an optical fiber system and facilities within and without Whitman County, Washington for the purposes of providing wholesale telecommunication services (the “Whitman System”). In addition, pursuant to chapter 39.34 RCW Whitman is authorized to enter into this Agreement with Lewiston.

B. Pursuant to the economic development authority granted it by Idaho Code §70-1501 *et seq.* (the “Idaho Act”), Lewiston owns, maintains and operates an optical fiber system and facilities within Nez Perce County, Idaho, as may be expanded from time-to-time, for the purposes of providing wholesale telecommunication services (the entire system is the “Lewiston System”);

C. More specifically, pursuant to the Idaho Act, Lewiston is authorized to, among other things, (i) finance, construct, condemn, purchase, acquire, add to, equip, maintain and operate any and all facilities and services reasonably incident to the operation of a modern, efficient and competitive port, together with industrial and economic development facilities of any kind or nature which maintain or increase employment opportunities in an Idaho port district (I.C. §70-1503), (ii) operate any and all property or facilities in any way acquired or owned by it within or without the boundaries of the port district (I.C. §70-1503), (iii) enter into any contract with the United States, or any state, county or municipal corporation, or any agency or instrumentality thereof, for carrying out any powers which each of the contracting parties may by law exercise separately (I.C. §70-1508), and (iv) in the exercise of all lawful port district powers, and for all lawful port district purposes, contract with, enter into joint leases and contracts of all types, enter into compacts, joint venture, incur indebtedness jointly, and in all lawful manner deal with other port districts and/or municipal corporations and/or political subdivisions of the state of Idaho and/or of sister states, and/or of the United States of America, including, but not limited to, the power to jointly own and operate port properties and/or facilities in one or more port districts, whether within or without the state of Idaho (I.C. 70-1605);

D. The Lewiston Commissioners, by adoption of Resolution No. 2015-1 on February 12, 2015, have determined that the development of the Lewiston System satisfies the economic development provisions of the Idaho Act;

E. The Parties have entered into that certain *Interlocal Cooperation Agreement for Telecommunication Facilities* dated March 9, 2015 (the “2015 Interlocal”). This Agreement amends and supplements the 2015 Interlocal in relevant part. A copy of the of the 2015 Interlocal is attached hereto as **Exhibit B**.

F. The Parties note the following regarding the 2015 Interlocal (all section references are to the 2015 Interlocal):

1. Pursuant to Section 1, Whitman constructed an addition to the Whitman System in Lewiston's geographic boundary (the "Downriver Segment") which Downriver Segment is depicted on **Exhibit A**.

2. Pursuant to Section 2, Lewiston has constructed the "North Lewiston Network" as that term is defined in the 2015 Interlocal. In addition, as referenced in Section 7(b), Lewiston owns the "South Lewiston Network" as that term is defined in the 2015 Interlocal. The North Lewiston Network and the South Lewiston Network are part of the Lewiston System.

3. Pursuant to Section 3, one buffer tube containing twelve (12) fiber optic strands within the Downriver Segment was reserved to serve the North Lewiston Network; however, the fiber optic strands used by Lewiston are contained in various buffer tubes.

4. Pursuant to Section 6(a), Lewiston paid \$30,000 to Whitman as a non-reoccurring share of the cost of construction of the Downriver Segment.

5. Pursuant to Section 6(b), Lewiston elected to increase its non-reoccurring share of the cost of construction of the Downriver Segment by paying an additional \$100,000. By virtue of said payment and pursuant to Section 7(b), Lewiston receives eighty-five percent (85%) and Whitman receives fifteen percent (15%) of the Revenue derived from the Lewiston Network as such term is defined in this Agreement (the "Whitman Revenue Share" as further defined herein).

6. Whitman provides certain management and administrative services as described in Section 16 in exchange for the Whitman Revenue Share.

G. The Downriver Segment is within a single conduit containing eighteen (18) buffer tubes. Each buffer tube contains twelve (12) individual fiber optic strands for a total of 216 strands of fiber.

H. Since the execution of the 2015 Interlocal, Lewiston's use of the Downriver Segment has grown to accommodate connectivity for the Lewiston System and now includes the use of approximately thirty-six (36) strands in various buffer tubes.

I. Lewiston now desires to acquire from Whitman an exclusive license for connectivity, and Whitman is willing to grant to Lewiston an exclusive license for connectivity on the Whitman System and associated property to utilize one-hundred and eighty (180) fiber optic strands in the Downriver Segment on the terms and conditions set forth below (the "Lewiston Connectivity"). The term "connectivity" means the use of those portions of the Whitman System which all allow Lewiston's customers access to the internet and related telecommunications service activities.

J. The Parties desire to amend and supplement the 2015 Interlocal as provided herein.

Accordingly, 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:

AGREEMENT

PART I - LICENSE

The provisions of this Part I set forth the Parties' agreement with respect to the License (as defined herein) granted hereunder.

ARTICLE 1 **GRANT OF EXCLUSIVE LICENSE**

1.1 **Grant of Exclusive License for Lewiston Connectivity.** Subject to the terms and conditions of this Agreement, Whitman hereby grants and conveys to Lewiston, and Lewiston hereby accepts and acquires from Whitman, an exclusive license (the "License") for access to and unrestricted use of the Lewiston Connectivity along with the nonexclusive right to use the tangible and intangible property needed for the use of Lewiston Connectivity (collectively, the "Associated Property"). The Lewiston Connectivity includes the twelve fiber optic strands envisioned in the 2015 Interlocal and additional fiber optic strands to the total of one-hundred and eighty (180) fiber optic strands within the Downriver Segment, which 180 fiber optic strands are more specifically identified on **Exhibit C** hereto. Whitman agrees and acknowledges that, subject to the terms and conditions of this Agreement, it has no right to use the Lewiston Connectivity during the Term hereof. The License is irrevocable except as set forth in Section 8.4.

1.2 **Exclusive License and Nonexclusive Associated Property.** The License is granted on the terms and subject to the covenants and conditions set forth in this Agreement. The License shall be exclusive as to Lewiston Connectivity, and nonexclusive as to the Associated Property. The License does not include the right of Lewiston to own, control, maintain, modify or revise the Lewiston Connectivity or the Associated Property, or the right to encumber in any manner, or otherwise use the Whitman System except as expressly set forth herein

1.3 **Term of License.** The term of the License shall begin on the Effective Date and shall extend for a period of twenty (20) years thereafter (the "Term"). Notwithstanding the Term, this Agreement shall remain in full force and effect until all obligations of the Parties hereunder are fully performed. Termination of the term of the 2015 Interlocal shall not affect the Term of the License.

1.4 **Additional Licenses.** From time to time additional licenses may be incorporated herein upon such terms and conditions that the Parties may agree.

ARTICLE 2
CONSIDERATION FOR GRANT

2.1 **Lump Sum License Fee and Costs.** In part consideration of the grant of the License and the rights of early termination granted herein, Lewiston shall pay to Whitman (i) a one-time License Fee of One-Hundred and Fifteen Thousand Dollars (\$115,000) (the “License Fee”) and (ii) during the Term of this License, Lewiston shall, from funds appropriated therefor as provided herein, pay eighty-three point three-three percent (83.33%) and Whitman shall pay sixteen point six-seven percent (16.67%) of the costs of performing any installation, maintenance, repair, replacement and/or relocation of the Downriver Segment (each a “Cost” and collectively, the “Costs”); which percentages are proportional to each Party’s fiber optic strands within the Downriver Segment. Replacement of the fiber optic strands within the Downriver Segment is governed by Section 3.5 hereof. The License Fee shall be due and payable within thirty (30) days after the date of mutual execution of this Agreement.

2.2 **Costs, Invoices, Late Charges, and Fees.** Whitman may, at its option, invoice Lewiston for Lewiston’s share of the Costs (or a particular Cost) as they are incurred or elect to provide only periodic invoicing provided that in no event shall Whitman invoice Lewiston more often than once per month. In this way Whitman can seek Lewiston’s share of a significant Cost or aggregate the various Costs into a periodic invoice. All invoices shall contain sufficient detail to allow Lewiston to adequately review and understand the Costs invoiced. All uncontested invoices shall be due and payable within thirty (30) days of receipt by Lewiston, subject to appropriation of funds by Lewiston for such purpose. Within thirty (30) days, Lewiston shall provide a detailed explanation of any contested portion. Lewiston and Whitman will promptly discuss and reasonably resolve any contested issues. Whitman reserves the right to apply a late charge equal to one and one-half percent (1.5%) per month (or the maximum legal rate allowed in the State of Washington, if less) on any unpaid uncontested balance; provided, however, no late charges shall be assessed on any amounts for which Lewiston has not made an appropriation of funds. Lewiston shall reimburse Whitman for all reasonable fees Whitman incurs collecting any past due uncontested charges from Lewiston for which Lewiston has appropriated funds to pay but has not timely paid including, but not limited to, reasonable attorneys’ fees and collection fees. Likewise, the timing and late charge provisions of this Section 2.2 shall apply to all invoices submitted to Whitman by Lewiston pursuant to Section 14.2 by reversing the Parties’ names as appropriate.

2.3 **No Interconnect and Cross Connect Charges.** In part consideration of the grant of the License hereunder by Whitman to Lewiston, there will be no associated fees or charges invoiced for interconnect or cross-connect fees on Whitman’s system.

2.4 **Limitation of Liability; Appropriation of Funds.** Notwithstanding any provision contained in this Agreement or the 2015 Interlocal, the Parties recognize and agree that any obligation of Lewiston to share Costs or otherwise make payment hereunder is subject to appropriation of funds by Lewiston for such purpose and that no covenant or agreement contained in this Agreement or the 2015 Interlocal shall be deemed to be a covenant or agreement of Lewiston, or otherwise obligate Lewiston, to make a future appropriation of funds. Any provision for payment by Lewiston made subject to appropriation of funds recognizes that the act of budgeting funds is solely within the discretion of the Commissioners of Lewiston and

that no claim may be had against Lewiston in excess of the amounts appropriated by Lewiston to make payments hereunder.

2.5 Annual and Special Appropriation – Budget. On or before April 1 of each year, Whitman will submit a budget to Lewiston for anticipated Costs, management expense reimbursements, Whitman Revenue Share and any other amount owed by Lewiston to Whitman hereunder (collectively, the “Lewiston Payments”) for the following fiscal year (July 1 – June 30). The proposed budget will contain sufficient detail for review by Lewiston and shall be based on the actual Lewiston Payments during the previous fiscal year taking into account any anticipated adjustments thereto. Whitman staff and Lewiston staff will confer and resolve any issues related to the budget to arrive at a final proposed budget. The final proposed budget will be presented in June for consideration and approval by the Commissioners of Lewiston and appropriation of 110% of the budget. Thereafter, submissions by Whitman for Lewiston Payments will be paid so long as there are funds within the budget. In the event that it reasonably appears that the budget will be exhausted or an unusual Cost is anticipated, Whitman and Lewiston will develop a supplemental budget which will be presented to the Commissioners of Lewiston before the budget is exhausted or the unusual Cost incurred. If the Commissioners of Lewiston, in their sole discretion, decline to appropriate the funds, this Agreement, at the option of Whitman, will terminate in accordance with Section 8.3. Whitman Revenue Share is further governed by Section 9.3.

ARTICLE 3 **LEWISTON CONNECTIVITY**

3.1 Ownership. The Downriver Segment and related facilities are part of the Whitman System and are owned, operated and maintained by Whitman. The Lewiston Network is part of the Lewiston System, is owned by Lewiston and, subject to Part II of this Agreement, is administered and managed by Whitman. The “Lewiston Network” as used in this Agreement means that portion of the Lewiston System generally situated in and around Lewiston, Idaho which is administered and managed by Whitman as of the Effective Date hereof and as may be expanded from time-to-time pursuant to Section 9.2. The term “Lewiston Network” amends and replaces the terms “North Lewiston Network” and “South Lewiston Network” as defined in Section 2 and Section 12(b), respectively, of the 2015 Interlocal.

3.2 Technical Information. Whitman agrees to share with Lewiston the electronic files maintained by Whitman in association with the Lewiston Connectivity, the Downriver Segment, and the Lewiston Network and from each end point (the “Technical Data”) in their native electronic format. It is noted that Lewiston will have to acquire the appropriate software licenses at its expense in order to utilize the data and may have to coordinate with the software provider to accomplish the download of the Technical Data.

3.3 Lewiston Connectivity Problems. A portion of the Lewiston Connectivity is being used to service Lewiston customers, and per the 2015 Interlocal, Whitman is providing connections and management relative to the same. In this regard, Lewiston will promptly notify Whitman of any connectivity problems with the Downriver Segment and Whitman will promptly undertake all commercially reasonable actions to repair to restore connectivity for any connectivity problem. The cost of such repair is a Cost.

3.4 **Physical Access.** Whitman shall provide Lewiston reasonable access to facilities or structures along the Downriver Segment for Lewiston's Connectivity within the Whitman System, including but not limited to existing vaults and other Whitman facilities. Access will be scheduled in advance, may require a description of the purpose of the access as may include the presence of a Whitman representative.

3.5 **Useful Life; Replacement.** The Parties acknowledge and agree that the useful life of the fiber optic strands within the Downriver Segment extends beyond the Term of this Agreement. Nonetheless, in the event such fiber optic strands require replacement during the Term, the Cost of such replacement shall be prorated over the remaining months of the Term, and Lewiston shall be responsible only for that portion of the Cost which is applicable to the Term. By way of example only, if replacement were required with 60 months remaining in the Term, Lewiston would be responsible for twenty point eight-three percent (20.83%) of such replacement Cost calculated as follows: (60 months remaining in Term / 240 month Term) x Lewiston Cost percentage of 83.33%.

ARTICLE 4 **UNDERLYING RIGHTS**

4.1 **Underlying Rights.** Whitman has obtained certain rights of way and related or similar rights for construction and operation of the Whitman System (the "Underlying Rights"). Whitman will use its commercially reasonable best efforts to maintain the Underlying Rights for the Term of this Agreement. The License is subject to the terms of the Underlying Rights, and subject to the terms under which the Underlying Rights are owned or held by the grantor of the Underlying Rights, including, but not limited to, covenants, conditions, restrictions, easements, reversionary interests, bonds, mortgages and indentures, and other matters, whether or not of record, and to the rights of tenants and licensees in possession. The License granted hereunder is further subject and subordinate to the prior right of the grantor of the Underlying Rights to use the right of way for telecommunications use. The rights granted herein are expressly made subject to each and every limitation, restriction or reservation affecting the Underlying Rights. Nothing herein shall be construed as to be a representation, warranty or covenant of Whitman's right, title or interest with respect to the Underlying Rights. Notwithstanding the foregoing, Whitman represents that, to the best of its knowledge, (a) the execution and delivery of this Agreement, the terms and provisions hereof, and Whitman's compliance with the terms and provisions hereof, under the circumstances contemplated hereby, do not and will not constitute a breach or violation or a default under or in any material respect conflict with the Underlying Rights, and (b) no litigation or other proceedings are pending, or to Whitman's knowledge threatened, in any way contesting or affecting the validity or enforceability of the Underlying Rights.

4.2 **Relocation.** If, after the Effective Date, Whitman is required (i) by any governmental authority under the power of eminent domain or otherwise, (ii) by the grantor or provider of any Underlying Rights, (iii) by any other person having the authority to so require (each a "Relocating Authority"), or (iv) by the occurrence of any force majeure event as set forth in Section 12.1, to relocate the Whitman System or any portion thereof, Whitman shall have the right to either proceed with such relocation, including, but not limited to, the right, in good faith,

to reasonably determine the extent and timing of, and methods to be used for, such relocation, or to pay such amounts to the Relocating Authority as are necessary to avoid the need for such relocation. The relocation costs shall be borne by Whitman except that relocation cost of the Downriver Segment shall be a Cost with the apportionment set forth in Section 2.1 of this Agreement subject to prior appropriation of funds by Lewiston therefor as set forth in Section 2.5.

4.3 ITD Rehab of Memorial Bridge. The Parties acknowledge that the Idaho Transportation Department is planning to rehab the super structure of the Memorial Bridge in or around 2022-2023 necessitating relocation of a portion of the Downriver Segment. The cost of such relocation will be a Cost and once a budget is determined for the budget be subject to a special appropriation as set forth in Section 2.5. Lewiston may desire to purchase, at its expense, a separate fiber optic cable for placement in a separate conduit. This will require splicing the new strands into the Whitman System which will be at the cost of the Lewiston. Whitman will reasonably cooperate, at no cost to Whitman, if Lewiston elects to install a separate fiber optic cable.

4.4 Lewiston Resolution of Underlying Rights. Notwithstanding anything herein to the contrary, in the event Whitman is unable to resolve any issue with respect to the continuation of the Underlying Rights for the Downriver Segment in a manner reasonably acceptable to Lewiston (which acceptance shall not unreasonably be withheld, delayed, or conditioned), Lewiston may, with Whitman's advance written approval, which approval shall not unreasonably be withheld, delayed, or conditioned (e.g., if not allowed under any Whitman third party agreement), attempt to resolve, at its sole cost and expense, the issue directly with the grantor of the Underlying Rights provided that any such resolution shall ensure that any other users of Whitman's System will be able to continue to use Whitman's System in compliance with the Underlying Rights.

ARTICLE 5 **USE OF THE WHITMAN SYSTEM**

5.1 Lewiston Compliance with All Applicable Laws and Regulations. Lewiston will use the Lewiston Connectivity and the Associated Property in compliance with and subject to all applicable government codes, ordinances, laws, rules and regulations as they now exist or are hereinafter amended.

5.2 Only Use of Lewiston Connectivity and Associated Property. Lewiston agrees and acknowledges that it has no right to use any of the connectivity of the Whitman System, other than the Lewiston Connectivity and the Associated Property.

5.3 Notice of Impending Damage. Lewiston and Whitman shall promptly notify each other of any known matters pertaining to, or the occurrence (or impending occurrence) of, any event which would be reasonably likely to give rise to any damage or impending damage to or loss of the Whitman System that are known to such Party.

5.4 No Interference with Connectivity. Lewiston shall not use its systems in a way that interferes in any way with or adversely affects the use of the connectivity of Whitman

or any other person using the Whitman System. Likewise, Whitman shall not use or permit the use of the Whitman System or the Associated Property in a way that interferes in any way with or adversely affects the Lewiston Connectivity.

ARTICLE 6 **GOVERNMENTAL IMPOSITIONS**

6.1 Impositions Defined. “Impositions” means all taxes, fees, levies, duties, charges or withholdings of any nature (other than franchise, license and permit fees), together with any penalties, fines or interest thereon, arising out of the transactions contemplated by this Agreement that are imposed upon the Whitman System by any federal, state or local government or other public taxing authority as a result of this Agreement or any right granted hereunder.

6.2 Minimize Impositions. The Parties acknowledge and agree that it is their mutual objective and intent to (a) minimize the aggregate Impositions payable with respect to the Whitman System, and (b) share such Impositions according to their respective interests in the Whitman System. They agree to cooperate with each other and coordinate their efforts to achieve such objectives in accordance with the provisions of this Article.

6.3 Lewiston’s Responsibility for Impositions.

(a) To the extent such Impositions are not separately assessed, allocated to or imposed on the Downriver Segment or the Lewiston Connectivity, Whitman will pay all such Impositions and provide notice of a reasonable allocation to Lewiston of Lewiston’s share and the basis of that allocation. Whitman shall notify Lewiston of such Imposition, and Lewiston shall, subject to appropriation of funds by Lewiston therefor, promptly reimburse Whitman for Lewiston’s share of all such Impositions.

(b) “Lewiston’s share” as used in this Section 6.3, shall mean Lewiston’s pro rata share of such Impositions based on the relative number of Lewiston Connectivity in the affected portion of the Whitman System compared with the total amount of utilized connectivity in the affected portion of the Whitman System during the relevant tax period. Lewiston is not presently subject to taxation for its activities within Lewiston’s Port District or within the State of Idaho.

6.4 Impositions Reporting. Whitman and Lewiston agree to cooperate fully in the preparation of any returns or reports relating to the Impositions. Whitman and Lewiston further acknowledge and agree that the provisions of this Article are intended to allocate the Impositions on procedures and methods of computation that are in effect on the date of this Agreement. Material changes in such procedures and methods could significantly alter the fundamental economic assumptions of the Parties underlying this Agreement. Accordingly, the Parties agree that, if such procedures or methods of computation change materially, the Parties will negotiate in good faith an amendment to this Article to preserve, to the extent reasonably practicable, the economic intent and effect of this Article.

6.5 **Other Taxes, Fees and Impositions.** Except as set forth herein, all taxes, fees and Impositions assessed against the Whitman System or Whitman shall be promptly paid by Whitman before due (unless validly contested).

ARTICLE 7 **DEVELOPMENT OF ADDITIONAL FACILITIES**

7.1 **Development of Additional Facilities.** It is understood and agreed that each Party may wish to add to or expand its telecommunication fiber network, and nothing herein shall be deemed or considered as a restriction or prohibition on such future development; provided Whitman shall not expand the Whitman System within Nez Perce County, Idaho except for service to the Nez Perce Tribe without the express written authorization of Lewiston which authorization shall not unreasonably be withheld, delayed, or conditioned. Provided however, that Whitman, without prior written approval of Lewiston, may construct backbone fiber optic systems necessary to connect the Whitman system to an interstate network of fiber optic systems.

7.2 **Other Grants of Rights.** Nothing contained in this Agreement shall be deemed or construed to prohibit Whitman from selling, transferring, leasing, licensing, granting indefeasible rights of use or entering into similar agreements or arrangements with other persons respecting any facilities constituting a part of the Whitman System so long as such action does not infringe on the License or interfere with the Lewiston Connectivity. Nothing contained in this Agreement shall be deemed or construed to prohibit Lewiston from selling, transferring, leasing, licensing, sublicensing, granting indefeasible rights of use or entering into similar agreements or arrangements with other persons respecting the Lewiston Connectivity, the Lewiston Network or the Lewiston System.

ARTICLE 8 **TERMINATION AND ABANDONMENT OF LICENSE**

8.1 **Removal of Lewiston's Property Upon Termination of License.** Except as otherwise set forth herein, upon the expiration of the Term or other termination of this Agreement, the License shall immediately terminate and all rights of Lewiston to use the Lewiston Connectivity and the Associated Property shall cease, and Whitman shall owe Lewiston no further duties or consideration. Lewiston shall promptly remove all of Lewiston's electronics, equipment, and other Lewiston property from the Whitman System at Lewiston's sole cost and under Whitman's supervision unless Whitman consents, in writing, to leaving such electronics, equipment, and other Lewiston property in which case it shall become the property of Whitman. In addition, upon termination Lewiston may, at its option, lease needed dark fiber at fair market value from Whitman using the then Whitman standard lease agreement. Absent such a lease, Whitman may, at its option, disconnect the Lewiston System. Termination of this Agreement shall not affect the rights or obligations of either Party that have arisen before the date of termination or expiration.

8.2 **Abandonment by Lewiston.** If at any time Lewiston determines that it does not want to retain the Lewiston Connectivity, or any portion of it, then Lewiston shall have the right to abandon the Lewiston Connectivity, or such portion(s) of it, by notice to Whitman. Upon total abandonment, Lewiston shall promptly remove all of Lewiston's electronics, equipment,

and other Lewiston property associated with the abandoned portions of the Lewiston Connectivity from the Whitman System at Lewiston's sole cost and under Whitman's supervision unless Whitman consents, in writing, to leaving such electronics, equipment, and other Lewiston property in which case it shall become the property of Whitman. Abandonment shall not affect the rights or obligations of either Party that have arisen before the effective date of abandonment.

8.3 Termination Following Nonappropriation. This Agreement obligates Lewiston to pay certain Costs, the Whitman Revenue Share and other amounts subject to an appropriation of funds by Lewiston for such purpose. In the event that the Lewiston Commissioners determine not to make an appropriation of funds for the amount of Lewiston's anticipated share of Costs as provided in Section 2.5, the amount of Lewiston's anticipated Whitman Revenue Share payment as provided in Section 9.3 or any other amount hereunder including Costs under Section 4.2 and Article 6 hereof, Lewiston shall have no obligation or liability with respect to the same and this Agreement shall thereafter terminate as set forth herein and subject to the provisions of Sections 8.1 and 9.6 hereof. Lewiston shall, within ten (10) days following a determination of nonappropriation, provide Whitman with notice of the same. This Agreement shall survive for a period of ninety (90) days following such notice of nonappropriation to provide Lewiston with time to relocate and or transfer services and to remove property from the Whitman System subject to the provisions of this Agreement.

8.4 No Early Termination of License for Default. Except in the limited circumstances where (i) it is determined by a court of competent jurisdiction that Lewiston is not obligated to pay its percentage share of the Costs and thereafter Lewiston does not pay its percentage share of Costs, or (ii) this Agreement terminates following a nonappropriation of funds by Lewiston pursuant to Section 8.3 hereof, once Lewiston has paid the License Fee to Whitman, the License is indefeasible and Whitman may not terminate the License or Lewiston's rights in the Lewiston Connectivity for any reason prior to the expiration of the Term.

PART II – MANAGEMENT

The provisions of this Part II set forth the Parties' agreement with respect to management of the Lewiston Network.

ARTICLE 9 **MANAGEMENT**

9.1 Management of the Lewiston Network. Whitman will continue to provide management and administrative services with respect to the Lewiston Network and the Lewiston Connectivity pursuant to this Part II and the 2015 Interlocal until the expiration date thereof (July 1, 2027). After such expiration date (unless the 2015 Interlocal is extended or a separate agreement for management is reached with Whitman), Lewiston will be responsible to manage and administer its fiber and make the appropriate connections.

9.2 Expansion of the Lewiston Network; Management. Whitman shall have no responsibility hereunder to provide management and administrative services to any portion of the Lewiston System not included within the Lewiston Network; provided, however, that

Lewiston may, at its option, request that Whitman do so and Whitman, following receipt of Lewiston's request, may so agree and, in such event, the Lewiston Network shall expand to include such connections and all provisions of this Agreement, including specifically those governing pricing and the Whitman Revenue Share, shall equally apply to such expansion. Without limiting the foregoing, if the Lewiston Network is expanded and Lewiston elects to manage the expanded area itself and if there will be a need for additional services from Whitman to assist in the management of the interface, then Lewiston and Whitman will agree on a reasonable fee to be paid to Whitman for such services. In the event that Lewiston and Whitman cannot agree then either Party may terminate all management and administrative services provided by Whitman pursuant to this Agreement and the 2015 Interlocal in accordance with Section 9.5 hereof. In such an event, Whitman shall provide the additional services during the one (1) year notice period reserving the right to assert a claim for a reasonable fee.

9.3 Revenue Sharing. The Lewiston Network, the Lewiston Connectivity and the Lewiston System shall be held by Lewiston for its own use, for wholesale use to others, and for other uses as authorized, and Revenue derived therefrom shall belong to Lewiston, except that, during the period of Whitman's management of the Lewiston Network and the Lewiston Connectivity, Lewiston shall share Revenue with Whitman as follows:

Commencing January 1, 2021, Lewiston shall receive eighty-five percent (85%) and Whitman shall receive fifteen percent (15%) of monthly Revenue for fiber optic lines within the Lewiston Network that utilize the Lewiston Connectivity (the "Whitman Revenue Share"), payable to Whitman within thirty (30) days of month end. Based upon historical data, it is anticipated that the annual Whitman Revenue Share will be approximately \$20,000 – \$30,000 per year. This figure may increase or decrease in any given year and is not a minimum or a maximum amount. On or before April 1 of each year, Whitman will submit a budget to Lewiston including the anticipated Whitman Revenue Share for the following fiscal year in accordance with Section 2.5 hereof.

9.4 Revenue Defined. The term "Revenue" as used in the Revenue sharing provisions of this Agreement and the 2015 Interlocal shall mean: the gross revenue derived from the wholesale lease or grant of use of fiber optic lines. Non-recurring fees, grant funds, revenue for services, products, fees, and other charges shall not be considered Revenue for purposes of Revenue sharing. This Section 9.4 expressly supersedes and replaces Section 8 of the 2015 Interlocal.

9.5 Termination of Whitman Management and Administration. Notwithstanding the term of Whitman's management of the Lewiston Network and the Lewiston Connectivity as described in Section 9.1 above, either Party may, at any time following one (1) year advance written notice to the other Party, terminate, without penalty, all management and administrative services provided by Whitman pursuant to this Agreement and the 2015 Interlocal. At such time as the management and administrative services provided by Whitman terminate—whether by expiration or early election of either Party—all provisions governing or dependent upon the sharing of Revenue between Lewiston and Whitman shall likewise terminate and Whitman shall thereafter no longer be entitled to receive a share of Revenue as provided in Section 9.3. The termination of Whitman's management and administrative services shall not act

as a termination of, or otherwise affect, the provisions of this Agreement contained in Part I and Part III hereof, including, but not limited to, the License or the Lewiston Connectivity.

9.6 Cooperation upon Management Termination. Upon termination of Whitman's management services, Whitman agrees to provide the Technical Data to Lewiston in conformity with Section 3.2, including the requirement that Lewiston obtain the needed software licenses. In the event that Lewiston elects to make an early termination of Whitman's management services pursuant to Section 9.5 hereof, Lewiston agrees to pay Whitman for its reasonable and actual costs of transferring the Technical Data. No such payments shall be owed by Lewiston to Whitman in the event of termination by Whitman or upon natural expiration Whitman's management services.

9.7 Modifications to Section 9 of 2015 Interlocal. In addition to the amendments and modifications contained elsewhere in this Agreement, Section 9 of the 2015 Interlocal is hereby specifically amended as follows:

a. Amendment to Section 9(a) of the 2015 Interlocal. Section 9(a) is amended to provide that this Agreement shall pertain only to contracts or leases of fiber that include both the Downriver Segment and the Lewiston Network.

b. Amendment to Section 9(c) of the 2015 Interlocal. Section 9(c) is amended to provide that twenty (20) year period contained therein is twenty (20) years from the Effective Date of this Agreement.

c. Amendment to Section 9(d) of the 2015 Interlocal; Pricing. Section 9(d) is amended and restated as follows:

Charges for use of fiber shall be determined by Lewiston provided that the Whitman Revenue Share shall be based upon the greater of Revenue or Revenue that would have been derived from commercially reasonable fair market value charges. Fair market value is defined as \$180 per strand per month except as otherwise set forth herein. It is recognized that Lewiston may elect to subsidize service using grants or other sources of funds; however, the Parties agree that any such subsidy should not result in a reduction of the Whitman Revenue Share. It is further recognized that \$180 per strand per month does not constitute fair market value in every situation, including, without limitation, with regard to fiber to the home and long-haul fiber programs and, in such situations, Lewiston may, in its sole discretion, set pricing for a program at other than \$180 per strand per month. If such program is offered to Whitman to manage and Whitman desires to do so pursuant to Section 9.2 hereof, the Parties will negotiate a reasonable management fee to be paid to Whitman for management of such program ("Whitman Revenue Share Deviations"). All agreed upon Whitman Revenue Share Deviations shall be reflected on **Exhibit D** hereto, as such exhibit may be

amended from time-to-time, and, by inclusion thereon, be incorporated in this Agreement.

PART III – COMMON TERMS

The provisions of this Part III apply to both Part I and Part II of this Agreement.

ARTICLE 10 **LIMITATION OF LIABILITY AND INDEMNIFICATION**

10.1 **Only Actual Damages.** Notwithstanding any provision 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.

10.2 **Casualty Loss.** The Parties hereto agree that the 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.

10.3 **Mutual Indemnification.** Section 21 of the 2015 Interlocal is deleted.

ARTICLE 11 **INSURANCE**

11.1 **Insurance.** Whitman and Lewiston, 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. Recognizing that the Term of this Agreement is twenty (20) years, Whitman may reasonably require, from time-to-time that the amount of the insurance be increased consistent with the then insurance requirements contained in Whitman's fiber master lease agreement.

<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	Combined Single Limit	\$2,000,000

any auto or scheduled autos
including hired auto and non-
owned autos

11.2 Also 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 thirty (30) 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; and (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.

ARTICLE 12 **FORCE MAJEURE**

12.1 Force Majeure. A Party shall not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to causes beyond its reasonable control, including but not limited to acts of God, war, strikes or labor disputes, embargoes, government order or any other force majeure event.

ARTICLE 13 **NOTICES**

13.1 Notices. All notices and other communications required or permitted under this Agreement shall be in writing and shall be given by United States first class mail, postage prepaid, registered or certified, return receipt requested, or by hand delivery (including by means of a professional messenger service or overnight mail) addressed as follows:

All notices and other communications shall be given to Whitman at:

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

All notices and other communications shall be given to Lewiston at:

Port of Lewiston
ATTN: General Manager
1626 6th Ave N
Lewiston, ID 83501
portdave@portoflewiston.com

Any such notice or other communication shall be deemed to be effective when actually received or refused. Either Party may, by similar notice given, change the address to which future notices or other communications shall be sent.

ARTICLE 14 **DEFAULT**

14.1 **Default Defined.** A default shall be deemed to have occurred under this Agreement if, in the case of a material breach of this Agreement, a Party fails to cure such material breach within thirty (30) days after notice specifying such breach, provided that if the breach is of a nature that cannot be cured within thirty (30) days, a default shall not have occurred so long as the breaching Party has commenced to cure within said time period and thereafter diligently pursues such cure to completion.

14.2 **Remedies Upon Default.** Upon the occurrence of a default, the non-defaulting Party shall have all remedies available at law or at equity including but not limited to, termination (subject to the limitations of Section 8.4), damages, specific performance and/or relief from further performance. Each such remedy shall be cumulative and not exclusive. Without limiting the foregoing, in the case of default by Whitman, Lewiston is granted permission to operate, maintain or repair the Whitman System to the extent necessary to maintain the Lewiston Connectivity and may, at its option and pursuant to Section 2.2 hereof, invoice Whitman for Whitman's share of Costs (or a particular Cost) as they are incurred, or otherwise set off such Costs against Costs owed by Lewiston.

14.3 **Lewiston's Cure of Service Default.** Notwithstanding any other provision of this Agreement, in the event, regardless of reason or Whitman's good faith attempts, Whitman does not or is unable to perform the services described in this Agreement, or does not or is unable perform services in compliance with the standards and specifications set forth in this Agreement, Lewiston may (but is not obligated), upon written notice to Whitman reasonable under the circumstances but without authorization from Whitman, perform such services or work and/or take such action that it deems necessary without subjecting itself to any liability to Whitman. In such instances, the costs incurred by Lewiston shall be credited against any Costs payable by Lewiston hereunder.

14.4 **Injunctive Relief.** The Parties acknowledge and agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms and agree that, due to the unique subject matter covered by this Agreement, each Party shall be entitled to specific performance of the obligations hereunder and/or injunctive relief, this being in addition to any other right or legal remedy available to such Party.

ARTICLE 15 **REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGMENTS**

15.1 **Representations and Warranties of Whitman.** Whitman represents and warrants that, for all purposes as follows:

a. Whitman is duly organized, valid existing and in good standing Washington municipal corporation organized pursuant to Title 53 RCW.

b. This Agreement is a valid and legally binding obligation of Whitman, enforceable against Whitman in accordance with its terms, except when enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to the enforcement of creditors rights, generally, and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

c. Neither the execution and delivery of this Agreement nor the grant of the License will violate, conflict with, or result in a breach of the terms, conditions, or provisions of, or constitute a default under (i) any contract, agreement, mortgage, deed of trust, or other instrument or obligation to which either Whitman is a party or by which Whitman is bound, or (ii) any applicable law or regulation or any order, decree, writ, or injunction of any court or governmental body.

d. No consent from, or other approval of, any governmental entity or agency or any other person or entity is necessary in connection with the execution, delivery or performance of this Agreement.

e. The undersigned on behalf of Whitman has full authority to execute this Agreement.

15.2 Representations and Warranties of Lewiston. Lewiston represents and warrants that, for all purposes as follows:

a. Lewiston is duly organized, valid existing and in good standing Idaho municipal corporation organized pursuant to Idaho Code 70-1101 *et seq.*

b. This Agreement is a valid and legally binding obligation of Lewiston, enforceable against Lewiston in accordance with its terms, except when enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to the enforcement of creditors rights, generally, and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

c. Neither the execution and delivery of this Agreement nor the grant of the License will violate, conflict with, or result in a breach of the terms, conditions, or provisions of, or constitute a default under (i) any contract, agreement, mortgage, deed of trust, or other instrument or obligation to which either Lewiston is a party or by which Lewiston is bound, or (ii) any applicable law or regulation or any order, decree, writ, or injunction of any court or governmental body.

d. No consent from, or other approval of, any governmental entity or agency or any other person or entity is necessary in connection with the execution, delivery or performance of this Agreement.

e. The undersigned on behalf of Lewiston has full authority to execute this Agreement.

ARTICLE 16
WAIVER OF JURY TRIAL

16.1 **Waiver of Jury Trials.** Each of the Parties hereto hereby irrevocably waives any and all right to trial by jury in any legal proceeding (whether based on contract, tort or otherwise) arising out of or relating to this agreement or the transactions contemplated hereby or the action of either Party in the negotiation, administration, performance and enforcement hereof.

ARTICLE 17
ASSIGNMENT

17.1 **No Assignment.** Except as specifically provided herein, neither Party may assign any rights or duties under this Agreement or this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably delayed, conditioned or withheld.

17.2 **Petrichor.** Whitman has contracted, and may continue to contract, with Petrichor Broadband, LLC (“Petrichor”) to fulfill the obligations of Whitman (and receive the Revenue due to Whitman); however, Whitman will remain responsible for all Whitman obligations hereunder. All fees charged by Petrichor, or any other third-party manager retained by Whitman, are the responsibility of Whitman and are not considered Costs.

ARTICLE 18
2015 INTERLOCAL

18.1 **Relation to 2015 Interlocal.** This Agreement amends and supplements the 2015 Interlocal. This Agreement shall control in the event of any inconsistencies between this Agreement and the 2015 Interlocal.

18.2 **Other Modifications to 2015 Interlocal.** In addition to the amendments and modifications contained elsewhere in this Agreement, the following Sections of the 2015 Interlocal are hereby amended, modified or deleted as follows:

a. Section 7(c) and (d) deleted. Section 7(c) and Section 7(d) are hereby deleted.

b. Amendment to Section 11. Section 11 is amended to provide that, except as to the provision of management and administrative services by Whitman, the terms of the 2015 Interlocal shall continue in full force and effect (as modified by this Agreement) for the Term of this Agreement and shall not terminate on July 1, 2027.

c. Modification to Section 13. This Agreement modifies Section 13 in that the License as provided in this Agreement shall survive the termination of the 2015 Interlocal.

- d. Modification to Section 16. Section 16 is modified as follows:
 - i. References to the North Lewiston Network are replaced with the Lewiston Network;
 - ii. Section 16.b.(8) is deleted; and
 - iii. Section 16.c.(7) is amended to provide that: “Administrative reporting for reconciliation of Revenue sharing will be provided by Whitman; billing and collection will be provided by Lewiston.”
- e. Section 17 deleted. Section 17 is deleted and relocation shall be governed by the terms of this Agreement.

ARTICLE 19
GENERAL

19.1 **Binding Effect.** This Agreement, and each of the Parties’ respective rights and obligations under this Agreement, shall be binding on and shall inure to the benefit of the Parties hereto and each of their respective permitted successors and assigns.

19.2 **Further Cooperation.** Lewiston and Whitman each agree to cooperate with and support the other in complying with any requirements applicable to their respective rights and obligations hereunder. To this end, the Parties acknowledge and agree that they will execute and deliver all such further documents and instruments, and do all such further actions and things as may be reasonably required to carry out the full intent and meaning of this Agreement and to effect the transactions contemplated hereby.

19.3 **Waiver.** The failure of either Party hereto to enforce any of the provisions of this Agreement, or the waiver thereof in any instance, shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall nevertheless be and remain in full force and effect.

19.4 **Governing Law, Jurisdiction and Venue.** This Agreement and the 2015 Interlocal and all disputes or claims arising therefrom shall be governed by and be construed in accordance with laws of the State of Washington. Exclusive jurisdiction and venue shall be in federal court for the Eastern District of Washington or the District of Idaho and not in any state court.

19.5 **Rules of Agreement Construction.** The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement or as amplifying or limiting any of its content. Words in this Agreement which import the singular connotation shall be interpreted as plural, and words which import the plural connotation shall be interpreted as singular, as the identity of the Parties or objects referred to may require.

(a) Unless expressly defined herein, words having well known technical or trade meanings shall be so construed. All listing of items shall not be taken to be exclusive, but

shall include other items, whether similar or dissimilar to those listed, as the context reasonably requires.

(b) Except as set forth to the contrary herein, any right or remedy of Lewiston or Whitman shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.

(c) Nothing in this Agreement is intended to provide any legal rights to anyone not an executing Party of this Agreement.

(d) This Agreement has been fully negotiated between and jointly drafted by the Parties.

(e) All actions, activities, consents, approvals and other undertakings of the Parties in this Agreement shall be performed in a reasonable and timely manner, it being expressly acknowledged and understood that time is of the essence in the performance of obligations required to be performed by a date expressly specified herein. Except as specifically set forth herein, for the purpose of this Agreement, the standards and practices of performance within the telecommunications industry in the relevant market shall be the measure of a Party's performance.

19.6 No Personal Liability. Each action or claim against any Party arising under or relating to this Agreement shall be made only against such Party as a corporation, and any liability relating thereto shall be enforceable only against the corporate assets of such Party. No Party shall seek to pierce the corporate veil or otherwise seek to impose any liability relating to, or arising from, this Agreement against any shareholder, employee, officer, director or commissioner of the other Party. Each of such persons is an intended beneficiary of the mutual promises set forth in this Section and shall be entitled to enforce the obligations of this Section.

19.7 Relationship of the Parties. The relationship between Lewiston and Whitman shall not be that of partners, agents, or joint venturers for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including, but not limited to federal income tax purposes. Lewiston and Whitman, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk subject, however, to the terms and conditions hereof.

19.8 Severability. If any term, covenant or condition contained herein is, to any extent, held invalid or unenforceable in any respect under the laws governing this Agreement, the remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

19.9 Survival. All obligations in this Agreement shall not cease upon the termination of this Agreement and shall continue as obligations until fully performed. All clauses of this Agreement which require performance beyond the termination date shall survive the termination date of this Agreement.

19.10 **Time.** It is mutually agreed and understood that time is of the essence in this Agreement.

19.11 **Attorney Fees.** The prevailing party in any action to enforce any term or condition of this Agreement shall be entitled to an award of their reasonable costs and attorney fees.

19.12 **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument. The counterparts of this Agreement may be executed and delivered by facsimile or other electronic signature by either Party and the receiving Party may rely on the receipt of such document so executed and delivered by facsimile or other electronic means as if the original had been received.

19.13 **No Third Party Beneficiaries.** There are no third party beneficiaries to this Agreement.

19.14 **Entire Agreement.** This Agreement and the 2015 Interlocal (as amended, modified and supplemented hereby) constitute the entire and final agreement and understanding between the Parties with respect to the subject matter hereof and supersede all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Background recitals and the Exhibits referred to herein are integral parts hereof and are hereby made a part of this Agreement. To the extent that any of the provisions of any Exhibit hereto are inconsistent with the express terms of this Agreement, the terms of the Agreement shall prevail. This Agreement may only be modified or supplemented by an instrument in writing executed by each Party and delivered to the Party relying on the writing.

[SIGNATURE PAGE FOLLOWS]

In confirmation of their consent and agreement to the terms and conditions contained in this Agreement and intending to be legally bound hereby, the Parties have executed this Agreement as of the Effective Date.

“Whitman”:

PORT OF WHITMAN COUNTY, A WASHINGTON MUNICIPAL CORPORATION

By: Joseph R. Poire
Name: Joseph R POIRE
Title: Exec Dir.
Date: 5.18.21

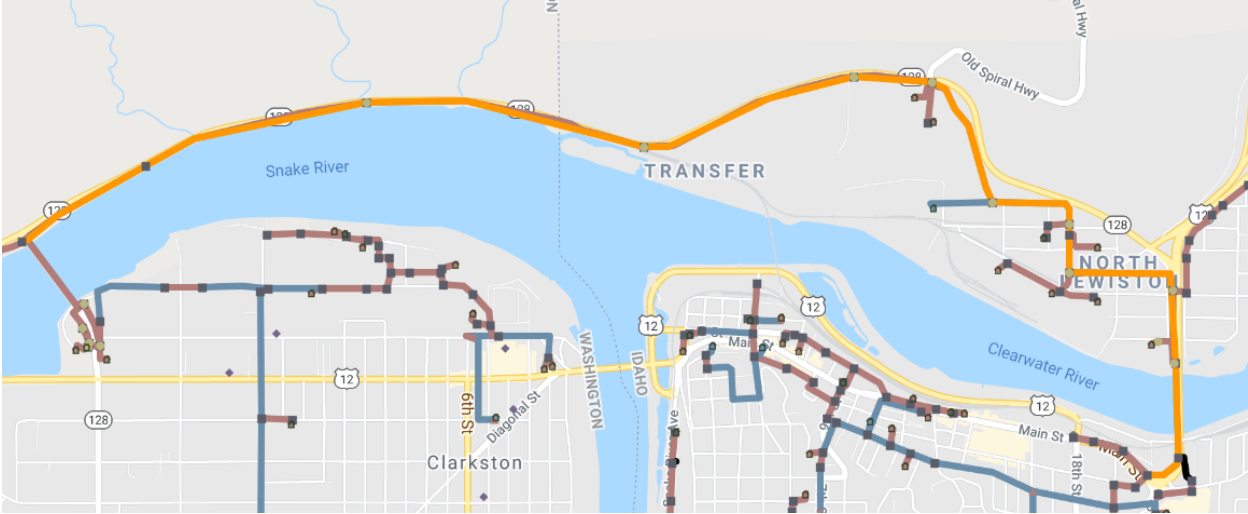
“Lewiston”:

PORT OF LEWISTON, AN IDAHO MUNICIPAL CORPORATION

By: Michael D. Thomason
Name: Michael D. Thomason
Title: President
Date: 5/12/2021

**EXHIBIT A
MAPS OF THE DOWNRIVER SEGMENT**

Downriver Segment:



The demarcation point of the Downriver Segment occurs at vault LEW011, located on the south side of Memorial Bridge, coordinates: 46.4165, -117.0003.

**EXHIBIT B
THE 2015 INTERLOCAL**

(attached)

INTERGOVERNMENTAL COOPERATION AGREEMENT FOR
TELECOMMUNICATION FACILITIES
(NORTH LEWISTON)

COPY

THIS AGREEMENT entered into by the PORT OF WHITMAN COUNTY, a municipal corporation of the State of Washington, hereinafter referred to as "WHITMAN", and the PORT OF LEWISTON, a municipal corporation of the State of Idaho, hereinafter referred to as "LEWISTON", and hereinafter jointly referred to as the "PORTS".

WHEREAS, WHITMAN owns and operates telecommunication facilities within and without its district for its own use and to provide wholesale telecommunication services within its district (RCW 53.08.370); and

WHEREAS, WHITMAN has a telecommunications vault and fiber optic line located in the vicinity of the intersection of Washington State Highway 128 and the Idaho state line; and

WHEREAS, LEWISTON has recognized the need to improve and expand fiber optic telecommunication services to its properties and facilities and has adopted as an economic development objective in its 2013-2018 Strategic Plan the expansion of fiber optic networks within its district; and

WHEREAS, LEWISTON is authorized to join with other Port Districts, to exercise jointly all powers granted to each individual Port District (Idaho Code 70-1508); and

WHEREAS, LEWISTON is authorized to establish industrial and economic development facilities of any kind or nature which maintain or increase employment opportunities in a port district.. (Idaho Code 70-1501); and

WHEREAS, LEWISTON is further authorized to finance, acquire, construct, install equip, own, lease and sell economic development facilities, located in port districts to be financed for, or to be sold, leased or otherwise disposed of to persons other than municipal corporations or other political subdivisions, to the end that port districts may be able to promote the health and welfare of the people of the state. (Idaho Code 70-2102); and

WHEREAS, WHITMAN is authorized to enter into cooperative agreements with municipal corporations of other states (RCW 39.34.030);

NOW, THEREFORE, IT IS AGREED BETWEEN THE PORTS AS FOLLOWS:

1. Development of Fiber Optic Line and Facilities:

WHITMAN shall construct a fiber optic line and facilities (herein the "Downriver Fiber Line Segment" or "Downriver Segment") running from its existing vault at the intersection of Highway 128 and the Idaho state line, easterly on the following route, more or less: adjacent to or within the right-of-way of the Downriver Road to the intersection of the Old Spiral Highway

(also known as the Old Lewiston Grade); thence southerly more or less parallel to the Downriver Road to 7th Avenue N; thence easterly along 7th Avenue N to the intersection with 18th Street N; thence southerly along 18th Street N to the intersection with 4th Avenue N; thence easterly along 4th Avenue N to the intersection with 22nd Street N; thence southerly along 22nd Street N to the intersection with 1st Avenue N; thence continuing southerly to the point of termination in a vault to be located on the west side of U.S. Highway 12 in the vicinity of the Clearwater River Memorial Bridge; all provided WHITMAN receives construction bids on terms and pricing satisfactory to WHITMAN, and is granted all permits and regulatory approvals necessary for use and construction.

2. North Lewiston Network: LEWISTON may construct a fiber optic system to serve its facilities in North Lewiston (herein the "North Lewiston Network") north of the Snake and Clearwater Rivers to be connected to the Downriver Segment. The full scope and extent of the North Lewiston Network has not been determined, and decisions on such matters are reserved to LEWISTON.

3. North Lewiston (Buffer Tube): During the term hereof, one buffer tube containing twelve (12) fiber optic lines within

the Downriver Segment shall be reserved to serve the North Lewiston Network (herein the "Buffer Tube Strands").

4. Ownership and Use of Fiber Line: The Downriver Segment and facilities shall be owned, operated and maintained by WHITMAN. The North Lewiston Network shall be owned by LEWISTON and administered and maintained by WHITMAN pursuant to this agreement.

5. Public Works Compliance: WHITMAN shall bid for and construct the Downriver Segment in compliance with applicable Idaho and Washington Public Works and Bid Laws.

6. Construction Costs:

a. Construction of the Downriver Segment and facilities shall be at the sole expense of WHITMAN, except LEWISTON shall pay WHITMAN \$30,000 as a non-reoccurring share in the cost of construction of the Downriver Segment, subject to LEWISTON'S option set forth in subparagraph (b). Said amount shall be paid within sixty (60) days following WHITMAN'S acceptance of a construction bid for said segment and notice to LEWISTON.

b. LEWISTON shall have the option to increase its share in the cost of the construction of the Downriver Segment by paying WHITMAN an additional \$100,000 within twelve (12) months following WHITMAN'S acceptance of a construction bid for

the Downriver Segment. In the event LEWISTON exercises this option, the revenue sharing provisions of paragraph 7(b) shall apply.

c. Construction by LEWISTON of the fiber lines and facilities which are subject to this agreement shall be in accordance with the standards set forth in the Port of Whitman Master Services Agreement and at the sole expense of LEWISTON, unless otherwise agreed in writing by the PORTS.

7. Revenue Sharing: The Downriver Segment shall be held by WHITMAN for its own use, for wholesale lease to others, and for other uses as authorized, and revenue derived therefrom shall belong to WHITMAN, and the North Lewiston Network shall be held by LEWISTON for its own use and for wholesale use to others and for other use as authorized, and revenue derived therefrom shall belong to LEWISTON, except as follows:

a. LEWISTON will receive seventy percent (70%) and WHITMAN thirty percent (30%) of the revenue derived from facilities and fiber optic lines within the North Lewiston Network and the Buffer Tube Strands which run to and are connected for service on the Downriver Segment.

b. Should LEWISTON exercise its option under paragraph 6(b) by paying WHITMAN an additional \$100,000, in lieu of the percentages for the division of revenue set forth in

subparagraph (a), LEWISTON shall receive eighty-five percent (85%) and WHITMAN shall receive fifteen percent (15%) of said revenue for the fiber optic lines within the North Lewiston Network and the buffer tube strands which run to and are connected for service on the Downriver Segment. Additionally, the division of revenue as described in paragraph 7(b) shall apply to the "South Lewiston Network".

c. LEWISTON shall additionally receive fifteen percent (15%) of revenue derived from new leases of other WHITMAN fiber lines (not including the Down River Segment) existing and in service at the inception of this cooperative agreement and which run to the Downriver Segment and are connected for service to the North Lewiston Network in the case of either of the two (2) following situations:

1. Situation No. 1:

i. The new Lease or contract is with a lessee or customer (herein "the Lessee") who is not a lessee of WHITMAN at the time the new Lease is made; and

ii. The new Lease includes fiber within the North Lewiston Network which is subject to the revenue sharing provisions of this agreement; and

iii. The new Lease is made to extend service from or to the North Lewiston Network; or

2. Situation No. 2:

i. The new Lease is with an existing WHITMAN Lessee, provided said Lessee's first Lease with WHITMAN was executed within six (6) months of the new Lease; and

ii. The new Lease with WHITMAN includes the lease of fiber within the North Lewiston Network subject to revenue sharing under this agreement; and

iii. The new Lease is for the extension of service from and to the North Lewiston Network.

d. The term Customer or Lessees in this Section 7 shall include all assignees, successors of Lessees or Customers, and all subsidiaries of Lessees or Customers, and all entities resulting from the merger, acquisition or spinoff of Lessees or Customers. (A list of all WHITMAN Lessees or customers at the inception of this agreement is attached as Exhibit A.)

8. Revenue Defined: The term "Revenue" as used in the Revenue Sharing provisions of this agreement shall mean: the gross revenue derived from the wholesale lease or grant of use of fiber optic lines within each line segment determined on a lineal base (e.g. by the foot; by the mile). Non-recurring

fees, revenue for services, products, fees, and other charges shall not be considered revenue for purposes of revenue sharing.

9. Leases and Contracts:

a. This agreement shall pertain only to contracts or leases of fiber that include both the Downriver Segment and the North Lewiston Network.

b. All leases or contracts made pursuant to this agreement shall be leases or contracts with WHITMAN and conform to and comply with WHITMAN'S Master Fiber Optic Lease, as currently in effect or hereafter amended.

c. No lease or contract subject to this agreement shall extend beyond a period of twenty (20) years from the date of execution, except as expressly authorized in writing by both PORTS. Leases and contracts subject to this agreement with termination dates extending beyond the termination of this agreement shall, for the balance of the lease or contract term, continue to be administered in accordance with the terms of this agreement.

d. Charges for the use of fiber line shall be determined on a lineal basis (e.g. by the foot; by the mile) and comply with the non-preferential and non-discriminatory provisions of RCW 53.08.370.

e. Nothing herein shall be deemed to require either PORT to enter any lease or contract of its telecommunication lines or facilities, or prohibit any such lease or contract with third parties.

f. Nothing herein shall prohibit either PORT from charging for non-reoccurring amounts to third parties for construction, relocation, or other improvements requiring capital outlays.

10. Taxes, Fees and Assessments: Each PORT shall be responsible for the administration of taxes, fees, assessments due or payable for their facilities or fiber runs within its own state or district; provided each PORT shall be responsible to reimburse the other PORT for any such taxes, fees and assessments in accordance in proportion to revenues received.

11. Duration: This agreement shall commence with the execution hereof and terminate, unless renewed by the parties, on the 1st day of July, 2027.

12. Development of Additional Facilities:

a. It is understood and agreed that each PORT may wish to add to or expand its telecommunication fiber network, and nothing herein shall be deemed or considered as a restriction or prohibition on future development; provided WHITMAN shall not expand its telecommunications fiber network

within Nez Perce County except for service to the Nez Perce Tribe without the express written authorization of LEWISTON.

b. Should LEWISTON exercise its option under paragraph 6(b) by paying WHITMAN an addition \$100,000 and when LEWISTON begins construction of a fiber optic system to serve the "South Lewiston Network" defined as an area in Nez Perce County, Idaho, limited to the City of Lewiston and an area extending two miles in any direction from the exterior boundary of the City of Lewiston, excepting that area North of the Snake and Clearwater Rivers, then the parties agree to lease, manage, maintain and divide expenses in the South Lewiston Network in accordance with the provisions of this agreement, specifically Paragraph 16. Further, in that event, LEWISTON will receive eighty-five percent (85%) and WHITMAN fifteen percent (15%) of the revenue derived from facilities and fiber optic line within "the South Lewiston Network", constructed by LEWISTON.

13. Ownership on Termination: Upon termination of this agreement and its non-renewal, all lines and facilities within the Downriver Segment shall remain or become the sole property of WHITMAN, and the North Lewiston Network shall remain and become the sole property of LEWISTON; provided, subject to the revenue sharing provisions of paragraph 7 herein, and provided WHITMAN continues in service the fiber optic line and facilities

within the Downriver Segment, LEWISTON shall have the right to continue use of the buffer tube and twelve (12) optic fiber lines described herein for the remainder of their useful life upon entering into a maintenance agreement with WHITMAN as to said lines. LEWISTON shall notify WHITMAN of its intent to keep and retain said facilities within sixty (60) days of termination hereof. In such event, WHITMAN shall offer LEWISTON a maintenance agreement consistent with other maintenance agreements offered by WHITMAN to its lessees of optic fiber lines.

14. Administration: This agreement shall be administered by the Executive Director of the Port of Whitman and the Manager of the Port of Lewiston, subject to the right of the Commission of each PORT to assign administrative responsibility to someone other than its Executive Director or Manager.

15. Consent of Lewiston: LEWISTON does hereby consent to the construction, maintenance, use and ownership by WHITMAN of the Downriver Segment, and said consent shall survive the termination of this agreement.

16. Management, Services and Expenses:

a. All leases and contracts which are subject to the revenue sharing provisions of this agreement shall be made by and administered by WHITMAN. All such leases and contracts

shall be consistent with the terms of WHITMAN'S Master Fiber Optic Lease as currently in effect, or as hereinafter amended.

b. WHITMAN shall provide the following services for the optical fiber runs within the North Lewiston Network which are subject to the revenue sharing provisions of this agreement:

- (1) GIS mapping;
 - (2) Fiber mapping for splicing, including cut sheets for system maintenance and outage repair;
 - (3) Quarterly route inspections;
 - (4) One-Call/Dig line management services;
 - (5) Contracting for locate services in accordance with standards in the industry;
 - (6) Estimates for non-recurring charges on proposed new builds or expansion of the Network;
 - (7) Emergency restoration services in accordance with standards in the industry;
 - (8) Administration of billing and collection;
- and
- (9) Network Operating Center (NOC) services.

WHITMAN may contract with third parties for the services to be provided.

c. Expenses (except for relocation expenses) for optical fiber runs within the North Lewiston Network and the

Downriver Segment which are subject to the revenue sharing provisions of this agreement will be allocated as follows:

- (1) GIS mapping will be provided by WHITMAN.
- (2) Fiber mapping for splicing and cut sheets will be provided by WHITMAN.
- (3) Quarterly route inspection shall be provided by WHITMAN.
- (4) One-call/dig line and locate services will be charged to and reimbursed by LEWISTON.
- (5) Non-recurring cost estimates for new construction shall be provided by WHITMAN.
- (6) Emergency restoration service charges and expenses on North Lewiston Network and if applicable the South Lewiston Network, shall be paid by LEWISTON and on the Downriver Segment shall be paid one-half by LEWISTON and one-half by WHITMAN.
- (7) Administration, billing and collection will be provided by WHITMAN.
- (8) NOC services will be provided by WHITMAN.

17. Relocation: In the event relocation of the optic fiber lines or facilities which are subject to the revenue sharing provision of this agreement is necessary, relocation

costs and expenses shall be shared in proportion to the revenue sharing applicable to the lines and facilities to be relocated.

18. Assignment: The rights and responsibilities of either PORT under this Agreement may not be assigned without the express written consent of the other PORT which consent shall not be unreasonably withheld.

19. Option to Divest: LEWISTON shall have the option to divest itself of its interest in the buffer tubes, the North Lewiston Network and any other fiber line and facilities appurtenant thereto by notice in writing to WHITMAN within eighteen (18) months following WHITMAN'S acceptance of a construction bid for the Downriver Segment. Upon LEWISTON'S exercise of said option, the parties agree as follows:

a. WHITMAN shall reimburse to LEWISTON all amounts paid to WHITMAN pursuant to paragraph 6 herein within ninety (90) days of said notice.

b. LEWISTON'S revenue share in contracts and leases made by WHITMAN, which are subject to the revenue sharing provisions of this agreement, shall terminate on the date of said notice.

c. LEWISTON shall have no obligations or any costs or expenses arising from said leases or contracts accruing after the date of said notice.

d. All lines and facilities within the Downriver Segment shall remain or become the sole property of WHITMAN, provided LEWISTON shall have the right to continue use of the buffer tube and twelve (12) fiber optic lines described herein for the remainder of their useful life subject to a maintenance agreement with WHITMAN as specified in paragraph 13 herein, and LEWISTON shall retain ownership of the North Lewiston Network and all additional fiber optic lines and facilities constructed and paid for by LEWISTON, and the right to assign and transfer the same subject to any leases or contracts made with third parties by WHITMAN in reliance upon this agreement and WHITMAN'S right to continue to maintain said lines and facilities in accordance with paragraph 16(b) of this agreement for the duration of said leases or contracts.

e. All taxes, expenses, and charges of any kind shall be prorated as of the date the notice to divest.

20. Notices: Any notices or demand to be given, served, or made shall be validly and sufficiently given, served, or made, if from the Lessor to the Lessee, if the same is deposited in the United States mail, by certified mail, return receipt, postage prepaid, addressed to WHITMAN at: 302 N. Mill Street, Colfax, WA 99111 and, if from WHITMAN to LEWISTON, if the same is deposited in the United States Mail, by certified

mail, return receipt, postage prepaid, addressed to LEWISTON at: 1626 6th Ave. North, Lewiston, Idaho 83501. The service of such notice shall be deemed complete by the said deposit thereof in the United States Mail as aforesaid. Either party may, by notice to the other in writing, designate a different place to which notices shall be sent.

21. Indemnification: LEWISTON and WHITMAN shall indemnify, defend and hold each other harmless, including their respective commissioners, officers, employees, agents, and affiliates from and against all claims, damages, losses, and expenses, including without limitation, litigation expenses and attorney fees arising out of or related to the performance of this Agreement that is caused in whole or in part by the negligence, willful or intentional misconduct, strict liability, breach or statutory or regulatory law or duty attributable to either LEWISTON or WHITMAN.

22. Force Majure: A party shall not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to causes beyond its reasonable control, including but not limited to acts of God, war, strikes or labor disputes, embargoes, government order or any other force majeure event.

23. Further Assurance: The parties hereto acknowledge and agree that they will execute and deliver all such further documents and instruments, and do all such further actions and things as may be reasonably required to carry out the full intent and meaning of this agreement and to effect the transactions contemplated hereby.

24. Severance: Should any provision or any part of any provision be adjudged unenforceable or contrary to law, that portion adjudged unenforceable shall be modified by tribunal with jurisdiction only insofar as to render the same enforceable, and regardless, the remaining portions of this agreement shall survive and be enforceable.

25. Binding Effect: It is further understood and agreed that terms, conditions and covenants contained in this agreement are to apply to and be binding upon successors and assigns of each of the parties.

26. Modification: This agreement may be modified or amended only by a written agreement signed by both parties hereto.

27. Counterparts: This agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one in the same instrument.

28. Entire Agreement: This agreement constitutes the entire agreement between the parties hereto and neither party shall be bound by any communication between them on the subject matter hereof.

IN WITNESS WHEREOF, the PORTS enter into this agreement the 9 day of March, 2015, and the undersigned represent that he or she is authorized to sign this agreement.

PORT OF WHITMAN, a municipal corporation of the State of Washington

By 
Executive Director

ATTEST:

By 

PORT OF LEWISTON, a municipal corporation of the State of Idaho


By 
Commissioner

Exhibit "A"

Dave Doeringsfeld

From: Kara Riebold <Kara@PortWhitman.com>
Sent: Tuesday, February 24, 2015 6:18 AM
To: Joe Poire; Dave Doeringsfeld
Subject: Port of Whitman Customers...

Telecommunications Company

CableOne

Cactus International

CenturyLink

FirstStep

Frontier Communications

NoaNet

Noel Communications

St. John Telephone

StarTouch

TMC Networks

University of Idaho

WBS

Washington State University

Zayo

EXHIBIT C DOWNRIVER SEGMENT STRAND ASSIGNMENT SPREADSHEET

SPLICE POINT ID Clarkston Hut (CLA-F2) 1561 Port Drive, Clarkston, WA 99403
 MAKE / BREAK End

Rack RR096
 Panel Port of Lewiston

Position A		Position B		Position C		Position D		Position E		Position F	
1 IRON	2 IRON	13 Noel	14 Inland	25 NoaNe	26 FirstSte	37	38 Whole	49	50	61	62
3	4	15 Inland	16 Inland	27 Noel	28 Inland	39 Syringa	40 Syringa	51	52	63	64
5 FirstStep	6	17	18	29 Inland	30 Inland	41 Noel	42 Inland	53	54	65	66
7 FirstStep	8 Inland	19	20	31	32	43	44	55	56	67	68
9	10	21	22	33	34	45 Inland	46	57	58	69	70
11	12	23	24	35	36	47	48	59	60	71	72

Position G		Position H		Position I		Position J		Position K		Position L	
73 FirstStep	74 FirstSte	85	86	97	98	109 Noel	110	121	122	133	134
75 Noel	76 FirstSte	87	88	99	100	111	112	123	124	135	136
77 Noel	78 Inland	89	90	101	102	113 Noel	114	125	126	137	138
79 Inland Ce	80 Inland	91	92	103	104	115	116	127	128	139	140
81	82	93	94	105	106	117	118	129	130	141	142
83	84	95	96	107	108	119	120	131	132	143	144

Rack RR096
 Panel Port of Lewiston

Position A		Position B		Position C		Position D		Position E		Position F	
145 FirstStep	146 FirstS	Port of Whitman		169	170	181	182	Port of Whitman		Port of Whitman	
147 FirstStep	148 Noel	157	158	171	172	183	184	193	194	205	206
149	150	159	160	173	174	185	186	195	196	207	208
151	152	161	162	175	176	187	188	197	198	209	210
153	154	163 Noel	164	177	178	189	190	199	200	211	212
155	156 Whole	165	166	179	180	191	192	201	202	213	214
		167	168					203	204	215	216

The License provides Lewiston with exclusive access to and unrestricted use of the one hundred and eighty (180) fiber optic strands located at Positions 1 – 156 and 169 – 192 within the Downriver Segment.

The thirty-six (36) fiber optic strands located at Positions 157 – 168 and 193 – 216 within the Downriver Segment remain with Whitman.

EXHIBIT D
WHITMAN REVENUE SHARE DEVIATIONS

(as may be amended from time-to-time)