

**INTERLOCAL AGREEMENT
FOR TELECOMMUNICATION SERVICES**

THIS INTERLOCAL AGREEMENT ("this AGREEMENT") entered into by PETRICHOR BROADBAND, LLC, a Washington interlocal limited liability company permitted by RCW 39.34.030, (hereinafter "PETRICHOR"), and the PORT OF COLUMBIA, a municipal corporation of the State of Washington, (hereinafter the "PORT").

RECITALS

WHEREAS, PETRICHOR is a Washington interlocal limited liability company consisting of the following Ports as members: Port of Bellingham, Port of Kalama, Port of Pasco, Port of Ridgefield, Port of Skagit County, and Port of Whitman County; and

WHEREAS, the Port of Whitman County is the named Manager for PETRICHOR; and

WHEREAS, PETRICHOR contracts with public and private entities for the planning, development and operation of local and regional telecommunication facilities; and

WHEREAS, the PORT has a plan for a fiber optic telecommunication network, which is the subject matter of this agreement (herein the "COLUMBIA Network");

WHEREAS, the PORT plans to construct, own and operate telecommunication infrastructure ("the Facilities") for the COLUMBIA Network, within and without its district for its own use and to provide wholesale telecommunication services within Columbia County; and

and

WHEREAS, this Agreement provides for certain services to be provided by PETRICHOR to the PORT in exchange for fees as set forth below and the mutual benefits to be derived;

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. MANAGEMENT SERVICES:

a. Petrichor shall provide the following services for the Project (collectively, the "Services"):

- (1) Design process overview and recommendations;
- (2) Assistance with permitting, pole contact agreements, and franchise acquisition;
- (3) Invitation to bid documents and bid process management;
- (4) Review and oversight of the design and construction of the Facilities;
- (5) Mapping of the project as-built plans;
- (6) Guidance and advice regarding public outreach, as needed; and
- (7) An annual average of 6 on-site meetings or visits by PETRICHOR managers.

b. Project Expenses. All Project expenses shall be paid by the Port. All reasonable travel expenses incurred by Petrichor related to its Project Services will be reimbursed by the Port.

2. FEES.

a. Compensation. The Port will make two (2) payments of thirty-seven thousand five hundred and no/100 dollars (\$37,500.00) to Petrichor, upon invoice, for performance of the Services in accordance with the schedule set forth below. Petrichor shall invoice the Port in

December 2022 and December 2023 and, upon receipt of Petrichor's invoices, the Port shall make payment within thirty (30) days.

b. No Benefits. Port will not provide any employee benefits to Petrichor, Petrichor's employees or any independent contractor retained by Petrichor. Petrichor will be solely responsible for obtaining Petrichor's own benefits, including but not limited to insurance, medical reimbursement, and retirement plans, and shall maintain all workers' compensation insurance required under applicable law with respect to the activities of its employees hereunder.

3. TERM.

a. Term of Agreement. The term of this Agreement shall begin January 28, 2022, and terminate upon completion of the Services to be provided, but no later than the 31st day of December 2024, unless terminated earlier pursuant to the terms of this Agreement.

b. Termination:

i. For Non-Performance. This Agreement may be terminated by either party for non-performance by the other party upon sixty (60) days written notice to the non-performing party. The non-performing party shall have the opportunity to cure the non-performance within that sixty (60) day period. If this Agreement is terminated for non-performance, then within thirty (30) days after termination the Port shall pay Petrichor a pro-rated amount of the annual compensation including the month in which this Agreement is terminated, the same being the month in which the notice of non-performance was given. For the

purposes of illustration, if this Agreement is terminated in July 2022, the Port shall pay Petrichor \$3,750 (\$625 x 6 months).

ii. Without Cause. This Agreement may be terminated by either party, without cause, by the terminating party giving sixty (60) days written notice to the other party. Within thirty (30) days after termination the Port shall pay Petrichor a pro-rated amount of the annual compensation including the month in which this Agreement is terminated. For the purposes of illustration, if this Agreement is terminated in July 2022, the Port shall pay Petrichor \$3,750 (\$625 x 6 months).

4. OWNERSHIP. Petrichor shall acquire no ownership or property interest in the real property associated with the Project or the tangible property associated with the Project, including the Project lines or facilities.

5. REPRESENTATION, WARRANTIES, AND COVENANTS. Petrichor represents, warrants, and covenants to Port as follows:

(a) Petrichor has complied with all applicable laws, rules and regulations in entering into this Agreement and completing its Services, including its statutory obligations under RCW 39.34.

6. MUTUAL INDEMNIFICATION. To the extent permitted by law, each party hereby agrees to indemnify the other, their respective managers, members, officers, commissioners and employees from and against, and assume liability for any injury, loss, damage to, or claim by any third party for personal injury or damage to tangible property (collectively the "Claims") to the extent and in proportion that Claims arise from the

negligent, grossly negligent or willful act of the indemnifying party, its officers, employees, servants, affiliates, agents or contractors but not from any Claim arising from another licensee.

6.1 LIMITED WAIVER OF IMMUNITY UNDER WASHINGTON STATE INDUSTRIAL INSURANCE ACT, TITLE 51 RCW AND OTHER SIMILAR INDUSTRIAL INSURANCE SCHEMES. For purposes of the foregoing indemnification provision, and only to the extent of claims against a party by an employee of the other party, each party specifically waives any immunity it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW, The United States Longshore and Harbor Workers Compensation Act, 33 USC §901-950, or any other similar workers' compensation schemes. The indemnification obligation under this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers' compensation acts, disability benefit acts, or other employee benefit acts. The foregoing provision was specifically negotiated and agreed upon by the parties hereto.

7. LIMITATION ON DAMAGES. Notwithstanding any provisions of this Agreement to the contrary, neither party shall be liable to the other party or any third party for any special, incidental, indirect, punitive, or consequential costs, liabilities, or damages, whether foreseeable or not, arising out of, or in connection with, such party's performance of its obligations under this Agreement. In part consideration for Petrichor's performance under this Agreement, the

damages for breach of this Agreement by Petrichor shall be limited to the total fee (exclusive of payments to subcontractors or subconsultants) paid by the Port to Petrichor. It is understood that this represents the allocation of economic loss for breach of this Agreement and is not merely a recital but a negotiated part of the economics of this Agreement.

8. 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.

9. ATTORNEY FEES. The prevailing party in any action concerning this Agreement shall be awarded their reasonable attorney fees and costs.

10. GOVERNING LAW, JURISDICTION, AND VENUE. This Agreement, and the right of the parties hereto, shall be governed by and construed in accordance with the laws of the State of Washington, and the parties agree that in any such action, jurisdiction and venue shall lie solely and exclusively in Benton County, Washington and not in the federal courts of any jurisdiction.

11. TIME OF PERFORMANCE. Time is specifically declared to be of the essence of this Agreement and of all acts required to be done and performed by the parties hereto.

12. NO THIRD-PARTY BENEFICIARIES. There are no third-party beneficiaries to this Agreement.

13. COUNTERPARTS AND AUTHORITY. This Agreement may be signed in counterparts. Each person signing below represents and warrants that they have complete authority to execute this Agreement.

14. ASSIGNMENT. This Agreement cannot be assigned, transferred or any portion subcontracted by either Party hereto without the prior written consent of the other Party, which shall not unreasonably be withheld.

15. WAIVER. The consent by Port or Petrichor to any act by the other shall not be deemed to imply consent or to constitute the waiver of a breach of any provision hereof or continuing waiver of any subsequent breach of the same or any other provision, nor shall any custom or practice which may arise between the Parties in the administration of any part of the provisions hereof be construed to waive or lessen the right of a Party to insist upon the performance by the other Party in strict accordance with the provisions hereof.

16. NOTICES. Except as may otherwise be provided herein, any notices, except service of process and notice of emergency which may be given personally, telephonically, by e-mail or facsimile, shall be effective if personally served upon the other Party or if mailed by registered or certified mail, return receipt requested, to the following addresses:

If to Port: 1 Port Way, Dayton WA 99328

If to Petrichor: 302 N Mill Street, Colfax WA 99111

Notices mailed shall be deemed given on the date of mailing. The Parties shall notify each other in writing of any change of address.

17. NO THIRD-PARTY RIGHTS. This Agreement shall not be construed to create rights in or grant remedies to any third Party as a beneficiary of this Agreement.

18. TAXES. Each Party shall be responsible for its own federal, state and local taxes, assessments, fees, surcharges and other financial impositions, if any.

19. RELATIONSHIP OF THE PARTIES. This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligations or liability upon either Party. No agent, employee or representative of the Port shall be deemed to be an agent, employee, or representative of Petrichor for any purpose. No agent, employee or representative for Petrichor shall be deemed to be an agent, employee or representative of the Port for any purpose.

20. FILING. This Agreement shall be filed with the County Auditor or, alternatively, listed by subject in the Parties' respective websites or other electronically retrievable public source.

21. AMENDMENT. No amendment or modification of this Agreement or condition hereof shall be valid or effective unless in writing and executed by Port and Petrichor.

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

IN WITNESS WHEREOF, the parties enter into this Agreement the 28th day of January, 2022, and the undersigned represent that he or she is authorized to sign this Agreement.

PETRICHOR BROADBAND, LLC, a Washington interlocal limited liability company:

By 
Port of Whitman County, Manager

PORT OF COLUMBIA, a municipal corporation of Washington

By 
Jennie Dickinson,
Executive Director