

## INTERLOCAL COOPERATION AGREEMENT

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

### I. RECITALS

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

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

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

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

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

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

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

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

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

## II. AGREEMENT

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

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

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

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

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

d. Facilitate project area development elements, including:

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

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

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

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

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

5. **MUTUAL INDEMNIFICATION.** To the extent permitted by law, each Party hereby agrees to indemnify the other, and their respective managers, members, officers,

commissioners, and employees, from and against, and assume liability for, any injury, loss, damage to, or claim by any third party for personal injury or damage to tangible property (collectively the "Claims") to the extent and in proportion that Claims arise from the acts or omissions of the indemnifying Party, and/or its officers, employees, servants, affiliates, agents, or contractors.

**5.1. FOR PURPOSES OF THE FOREGOING INDEMNIFICATION PROVISION, AND ONLY TO THE EXTENT OF CLAIMS AGAINST A PARTY BY AN EMPLOYEE OF THE OTHER PARTY, EACH PARTY SPECIFICALLY WAIVES ANY IMMUNITY IT MAY BE GRANTED UNDER THE WASHINGTON STATE INDUSTRIAL INSURANCE ACT, TITLE 51 RCW, THE UNITED STATES LONGSHORE AND HARBOR WORKERS COMPENSATION ACT, 33 USC §901-950, OR ANY OTHER SIMILAR WORKERS' COMPENSATION SCHEMES. THE INDEMNIFICATION OBLIGATION UNDER THIS AGREEMENT SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE TO OR FOR ANY THIRD PARTY UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS. THE FOREGOING PROVISION WAS SPECIFICALLY NEGOTIATED AND AGREED UPON BY THE PARTIES HERETO.**

**6. INSURANCE.** Petrichor and the Municipal Entity, at each Party's respective expense, shall, throughout the Term, maintain insurance coverages of the types and in the minimum amounts set forth below, as applicable:

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

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



15. **COUNTERPARTS.** This Agreement may be executed in any number of identical counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

16. **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.

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

18. **GOVERNING LAW.** This Agreement, and the rights 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 exclusively in Whitman County, Washington.

19. **RECORDING OR POSTING.** This Agreement shall be recorded with the Parties' respective County Auditors or, alternatively, posted by subject on the Parties' respective websites or other electronically retrievable public source.

20. **SEVERABILITY.** In case any one (1) or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

21. **ENTIRE AGREEMENT.** This Agreement constitutes the final and complete expression of the Parties with respect to the transactions contemplated herein, and may not be modified, amended, altered, or superseded except by an amendment in writing and signed by both Parties to this Agreement.

**IN WITNESS WHEREOF,** the Parties have executed this Agreement as of the last date set forth below.


**PETRICHOR:**

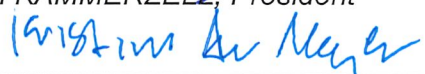
**PETRICHOR BROADBAND, LLC**

By:   
Its: Executive Director  
Dated: 2/15/2024

**MUNICIPAL ENTITY:**

**PORT OF WHITMAN COUNTY**

  
TOM KAMMERZELL, *President*

  
KRISTINE A.K. MEYER, *Vice President*

  
KARL WEBBER, *Secretary*

Its: Board of Commissioners  
Dated: 2/15/2024