

**INTERLOCAL COOPERATION AGREEMENT  
FOR TELECOMMUNICATION SERVICES**

THIS INTERLOCAL COOPERATION 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 TOWN OF WASHTUCNA, a municipal corporation of the State of Washington, (hereinafter “TOWN”).

**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 TOWN owns and operates telecommunication infrastructure (“the Facilities”), within its district for its own use and to provide wholesale telecommunication services within the Town of Washtucna; and

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

WHEREAS, the TOWN invested in constructing the Facilities to support the connectivity needs of the community and key institutions;

WHEREAS, the population size/number of potential subscribers limits the utilization of and revenue generated by the Facilities;

WHEREAS, the TOWN and PETRICHOR recognize the importance of maintaining flexibility to adapt to the evolving landscape and the limited population base for utilization of the Facilities; and

WHEREAS, both parties agree that the primary objective is to manage and optimize the use of the Facilities in a manner that supports the TOWN's long-term strategic goals and the community's needs.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. Management, Services and Expenses:

a. PETRICHOR shall provide the following services for the Facilities which are subject to the revenue sharing provisions of this Agreement:

- (1) Fiber and facility mapping, including cut sheet documentation;
- (2) One-Call management services;
- (3) Emergency restoration management in accordance with standards in the industry;
- (4) Review of construction design; and
- (5) Oversight of Network Operations Center (NOC) contracted services if applicable.

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

b. The TOWN shall provide the following services for the Facilities which are subject to the revenue sharing provisions of this Agreement:

- (1) Administration of billing and collection;
- (2) Collection and remittance of applicable taxes as directed by the State of Washington and franchise fees; and
- (3) Provide financial reports displaying monthly invoiced amounts by customer.

c. Expenses for the Facilities subject to the Revenue Sharing provisions of this Agreement will be allocated as follows:

- (1) Fiber and facility mapping, including cut sheet documentation will be provided by PETRICHOR;
- (2) One-call and locate services expenses shall be paid by the TOWN;
- (3) Emergency restoration service charges and expenses shall be paid by the TOWN;
- (4) Administration, billing and collection will be provided by the TOWN; and
- (5) NOC contracted services will be overseen by PETRICHOR and expenses shall be paid by the TOWN.

## 2. Revenue Sharing and Fees:

All revenue derived from the TOWN Facilities shall belong to the TOWN and payment therefrom shall be as follows:

a. Commencing January 1, 2025, payment for services will be on a revenue share basis whereby PETRICHOR will receive fifteen percent (15%) of monthly revenue derived from the Facilities. The monthly revenue share is payable within thirty (30) days of month-end. Petrichor waives its minimum revenue share requirement of Ten Thousand and no/100ths Dollars (\$10,000.00) per year

because the population size/number of potential subscribers limits the utilization and revenue generated by the Facilities.

b. The term "Revenue" as used in the Revenue Sharing provisions of this Agreement shall mean the gross amount invoiced/derived from the wholesale lease or grant of use of fiber optic lines. Non-recurring fees, fees for power charges, co-location fees, leasehold taxes, and franchise fees, shall not be considered Revenue for purposes of Revenue Sharing.

3. Leases and Contracts:

a. This Agreement shall apply to the wholesale lease or grant of use of the TOWN's Facilities.

b. Lease, contracts, and agreements, to which this Agreement applies, shall be leases, contracts, and agreements of the TOWN. Said leases, contracts, and agreements shall conform to and be consistent with the Master Service Agreement attached as EXHIBIT "A," or such other agreement as mutually agreed upon by PETRICHOR and the TOWN.

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 parties. The Revenue from any leases, contracts, or agreements made during the term hereof and subject to this Agreement that have a termination date extending beyond the termination of this Agreement shall, belong to the TOWN.

d. All rates, fees and charges for the use of the Facilities shall be developed as needed and as mutually agreed upon with the goal of meeting each entity's revenue expectations.

e. Nothing herein shall be deemed to require the TOWN to enter any lease, contract, or agreement for the use of its telecommunication lines or facilities.

f. Nothing herein shall prohibit the TOWN from charging non-recurring fees for construction, relocation, or capital improvements to its Facilities, which fees shall not be considered Revenue, but will belong to the TOWN.

4. Taxes, Fees and Assessments: The collection and payment of all taxes, fees, and assessments shall remain the responsibility of the TOWN.

5. Term: The term of this Agreement shall begin November 1, 2024, and terminate on December 31, 2025 (the "Initial Term"). Upon expiration of the Initial Term, this Lease shall automatically

and successively renew for additional terms of one (1) year each, unless either party notifies the other in writing of its intent to terminate this Lease by giving one hundred eighty (180) days' notice prior to the end of the Initial Term, or any renewal thereof. Notwithstanding the foregoing, if either party requests consideration of a revised fee structure under Paragraph 2(b) and the parties are unable to reach agreement after sixty (60) days' negotiations, either party may terminate this agreement on thirty (30) days' additional written notice.

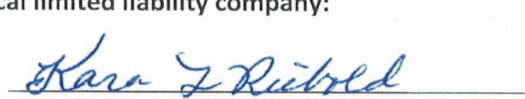
6. Development of Additional Facilities: It is understood and agreed that the TOWN may wish to add to or expand its telecommunication fiber system, and nothing herein shall be deemed or considered as a restriction or prohibition on future development. However, any subsequent Interlocal Agreements which result in the management of additional fiber not owned by the TOWN will require PETRICHOR's written consent.
7. Ownership on Termination: Upon termination of this Agreement and its non-renewal, all lines and facilities within the TOWN shall remain the sole property of the TOWN.
8. Relocation: In the event relocation of the Facilities which are subject to the Revenue Sharing provision of this Agreement is necessary, relocation costs and expenses shall be the sole responsibility of the TOWN.
9. Annual Meeting: the TOWN and PETRICHOR shall meet annually in the month of October at a date, time and location mutually agreeable to discuss financial reports, planning and budgeting.

IN WITNESS WHEREOF, the parties enter into this Agreement the 24th day of October, 2024, and the undersigned represent that he or she is authorized to sign this Agreement.

**TOWN OF WASHTUCNA, WASHINGTON**

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

By 

By 

Name: Brett Guske

Name: Kara Riebold

Its: Mayor

Its: Executive Director

**EXHIBIT A**  
**Master Service Agreement**

**MASTER OPTICAL FIBER AND FACILITIES LEASE  
TOWN OF WASHTUCNA**

This **MASTER OPTICAL FIBER AND FACILITIES LEASE** (the "Lease"), is effective as of the date it is fully executed (the "Effective Date"), by and between the **TOWN OF WASHTUCNA**, a Washington municipal corporation (the "Town"), and \_\_\_\_\_, a \_\_\_\_\_ (the "Company"). The Town and the Company are sometimes referred to collectively in this Lease as a "Party," or the "Parties".

**WHEREAS**, pursuant to and subject to the limitations in RCW 53.08.370, the Town owns, maintains, or otherwise has the rights to use an optical fiber system and facilities within and without Washtucna, Washington (the "System"), for the purposes of providing wholesale telecommunication services;

**WHEREAS** the Company is an internet service provider (an "ISP") that operates or intends to utilize the portion of the System leased herein to operate a telecommunication system to end users within and without Washtucna, Washington; and

**WHEREAS** the Town and the Company have or will execute one or more "Service Order Summary(ies)," which shall provide the specific details of the optical fiber, facilities, and services provided by the Town to the Company subject to the terms and conditions of this Lease.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements set forth in this Lease, the Parties hereby agree as follows:

1. **LEASED FACILITIES.** The Town leases the optical fibers (the "Leased Fibers") and facilities (the "Leased Facilities") to the Company identified in the last Service Order Summary executed by the Town and the Company. It is anticipated that the Service Order Summary may be updated or restated from time-to-time, and that the last such Service Order Summary shall control.

1.1. **Optical Fiber Specifications:** The Leased Fibers within the System will meet the specifications set forth below as measured by an optical time domain reflectometer ("OTDR"):

<b>Parameter</b>	<b>Specifications</b>	<b>Units</b>
Maximum Attenuation	1310nm (A1)	.50 dB/km
Maximum Attenuation	1550nm (A2)	.40 db/km
Cladding Diameter	125 +/- 3	nm
Cutoff Wavelength	1250 +/- 100	nm
Zero Dispersion Wavelength	1310 +/- 12	nm
Maximum Dispersion	1285-1330nm	3.5 ps/nm Km
Reference: EIA RS-455 test method		

1.2. **Leased Fiber Test and Notice:** The Company shall have the right (but not the obligation) to test the Leased Fiber, at the Company's expense, during the three (3)-day period prior to the planned commencement of use of the Leased Fiber for compliance with the technical specifications set forth above. Upon completion of testing, the Company shall send an acceptance notice to the Town either acknowledging the acceptance of the Leased Fibers as tested or notifying the Town that the Leased Fibers do not comply with the technical specifications. By sending an acceptance notice, the Company acknowledges that the Leased Fiber complies with the applicable technical specifications. If the Company fails to provide any notice with respect to the Leased Fiber within three (3) days prior to commencement of its use, then the Company will be deemed to have accepted such Leased Fibers.

1.3. **Failed Test for Leased Fibers:** In the event the result of any test performed pursuant to Section 1.2 shows that any portion of the Leased Fiber is not operating in accordance with the technical specifications set forth in Section 1.1, the Town will promptly take action that is reasonable to bring the nonconforming Leased Fiber(s) into compliance and will notify the Company when the Town believes that the Leased Fiber(s) are in compliance with the technical specifications. Thereafter, the Company will have (but will not be obligated to) ten (10) days following such notice to retest the Leased Fiber(s) and again notify the Town pursuant to the provisions of Sections 1.1 and 1.2. If following said notice, the Town is unable or elects not to bring the noncomplying Leased Fiber(s) into compliance, this Lease and the relevant Service Order Summary shall terminate as to such Leased Fiber(s).

1.4. **Operability of Company Equipment:** In no event shall the unavailability, incompatibility, delay in installation, malfunction, or any other impairment of any of the Company's interconnection equipment and/or the Company's suppliers (e.g., a local access telephone service provider) be the basis for an extension of any testing or notification periods, or for rejecting any Leased Fiber(s).

2. **USE OF LEASED FACILITIES.** Except for incidental use by the Company to monitor or maintain its own equipment, the Company shall use the Leased Facilities as an ISP, operating as a telecommunication system to end users within and without Washtucna, Washington, and for no other use (the "Authorized Use").

2.1. **Default – Unauthorized Use:** Company shall be in default under this Lease if it (i) ceases conducting the Authorized Use for any period exceeding thirty (30) days; or (ii) conducts any other use without first obtaining a validly executed lease modification. In conducting the Authorized Use, the Company shall properly and fairly serve the public, providing reasonable hours of operation and suitable service.

2.2. **Limits on Use by Company:** The Town reserves the right to limit the manner in which any portion of its System and Facilities are used by the Company to protect the technical integrity of the System. However, if the Town's limits materially deprive the Company of the benefits contemplated in this Lease and each Service Order Summary, then the Company may terminate this Lease and the applicable Service Order Summary as its sole and exclusive remedy.

2.3. **No Flammable or Dangerous Materials:** The Town's property, and the System therein, shall not be used by the Company to store, use, distribute, or otherwise handle flammable or dangerous materials, excepting only such uses which are necessary to conduct the Authorized Use. At the request of the Town, the Company shall provide a list of any and all flammable or dangerous materials stored or used within the Town's property.

2.4 **No Other Equipment:** Only equipment related to the Authorized Use shall be used or operated by the Company on Town property. Without limiting the foregoing, and by way of example, no cooking equipment or refrigerators shall be used on Town property.

3. **RENT PAYMENTS AND OTHER PAYMENTS.** The term "Rent" as used herein includes all applicable fees and charges, including, without limitation, power usage fees, rack fees, early disconnect charges, and other non-recurring charges, based on and commenced as specified in each Service Order Summary, plus applicable Washington State leasehold excise tax.

3.1. **Invoicing, Payment, Late Charge, and Interest:** The Town will bill the Company monthly, in advance, for all Rent owing to the Town, plus the customary and anticipated power charges. All amounts will be due within thirty (30) days of the date of mailing of the invoice to the address provided by the Company in the Service Order Summary. However, the failure of the Town to provide a monthly invoice shall not relieve the Company of the obligation to pay Rent. A late charge of one percent (1%) per month may be assessed against past due Rent from the date such Rent became due. Additionally, if Rent is not received when due, the Company shall pay the Town an additional fee of One Hundred Dollars (\$100) or five percent (5%) of the delinquent payment, whichever is greater, to defray costs of collecting and handling such late payment. The Town reserves the right to audit power usage and bill/refund accordingly.

3.2. **Rent Adjustment:** The Town may adjust or modify any rates, fees, and charges from time-to-time and as specified in each Service Order Summary by providing notice to the Company of such adjustment or modification.

4. **TAXES AND FEES PAID BY COMPANY.** In addition to Rent paid to the Town, the Company will pay on or before the date due all applicable taxes, franchise, license, and permit fees assessed against it for the conduct of its business (including as a telecommunications service provider) arising out of the use of the Leased Fibers or equipment pursuant to this Lease (the "Taxes"). Upon request of the Town, the Company will provide proof of payment to the Town of the Taxes paid. In the event of any refund, rebate, reduction, or abatement to the Company of any such Taxes, the Company will be entitled to receive the entire benefit of such refund, rebate, reduction, or abatement.

4.1. **Indemnification for Taxes:** The Company does hereby save, defend, and indemnify the Town from any claim, demand, or expense (including all penalties, interest, and costs, as well as reasonable attorneys' fees) occasioned by Company's failure to timely pay any such Taxes or resulting from any proceeding contesting the imposition of any such Taxes.

5. **SYSTEM MAINTENANCE.** All maintenance and repair to the Leased Fiber and the other portions of the System (other than equipment or facilities installed by the Company), including, but not limited to, conduit, inner-duct, poles, and equipment, shall be the responsibility of the Town. The Town (or its designated contractors, consultants, or subcontractors) shall provide the maintenance in accordance with standard industry practices, including standard industry timeframes.

5.1. **Routine Maintenance:** For routine and scheduled work affecting service on the System, the Town will make reasonable efforts to schedule maintenance that will result in as little disruption of service under this Lease as reasonably possible, during off peak hours, and at such times and dates as will provide the Company with not less than ten (10) business days' notice prior to the commencement of work. The Town will provide notice to the Company by the method



provided for in the applicable Service Order Summary, or by the method requested by the Company in writing superseding the method provided in the most recent Service Order Summary.

5.2. **Emergency Work:** Emergency work (as reasonably determined by the Town) arising from an unscheduled disruption of service, or the imminent threat of disruption of service, may be conducted by the Town at any time without prior notice.

5.3. **Company Notification of Unscheduled Disruption of Service:** In the event that the Company discovers an unscheduled disruption of service, or emergency, the Company may contact the Town using the emergency contact information that the Town will (and as may be updated from time-to-time) provide to the Company.

5.4. **Cooperation for Unscheduled Disruption of Service:** Each Party shall maintain the capability to accept, process, and dispatch personnel in response to trouble reports, without unreasonable delay, after the performance of appropriate tests and attempts to isolate the trouble remotely. If testing and remote trouble isolation procedures are ineffective, each Party will reasonably assist the other in efforts to isolate the trouble. If the trouble is isolated to a Party's facilities or equipment, such Party will take all reasonable and necessary steps to clear the trouble and restore the services as quickly as possible.

5.5. **Early Termination:** If the Town fails to comply with the maintenance obligations contained in this Lease, the Company shall have the right, upon thirty (30) days' written notice and opportunity to cure, to terminate this lease and all Service Order Summary(s) as its sole and exclusive remedy for such maintenance failure.

6. **TERM.** This Lease will become effective upon its mutual execution and shall continue on a month-to-month basis. Either Party hereto may terminate this Lease upon thirty (30) days' notice to the other Party.

6.1. **Renewal:** Unless otherwise provided therein, each Service Order Summary will automatically renew for successive terms of one (1) year each as to the Leased Fiber and Facilities specified therein, unless terminated by notice in writing and delivered by either Party to the other Party not less than thirty (30) days prior to the end of the term specified or any renewal term.

7. **INDEMNIFICATION AND HOLD HARMLESS.** The Company shall defend (with legal counsel acceptable to the Town), indemnify, and hold the Town, its officers, employees, and agents harmless from any and all demands, claims, judgments, or liability for loss or damage arising as a result of accidents, injuries, or other occurrences (i) occasioned by either the negligent or willful conduct of the Company or its agents; or (ii) made by any person or entity holding under the Company, or any person or entity on the Town's property as a result of Company's activities hereunder, regardless of who the injured party may be. This indemnification and hold harmless shall not apply to the extent the damages were caused by the negligence or willful misconduct of the Town.

8. **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 the Company by the Town under such indemnification provision, the Company specifically waives any immunity it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW, or any other similar workers' compensation schemes. The indemnification obligation under this Lease 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.

9. **CASUALTY LOSS.** The Town, its commissioners, employees, contractors, insurance carriers, and casualty insurance policies shall not be liable or responsible to the Company or any property loss or damage done to the Company's property, whether real, personal, or mixed, occasioned by reason of any fire, storm, or other casualty whatsoever. It shall be the Company'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 Town, the Company, any third party, or act of nature. It is noted that as between the Parties, the Company can best protect this risk with insurance. The Company hereby releases and discharges the Town, its commissioners, employees, insurance carriers, and casualty insurance policies from any claims for loss or damage to the Company's property.

10. **FORCE MAJEURE.** Neither Party will be liable to the other for any failure of performance under this Lease due to causes beyond its control which such Party was unable to avoid or overcome through the exercise of reasonable diligence (except for the fulfillment of payment obligations as set forth herein), including, but not limited to: acts of God, fire, flood, earthquake, or other catastrophes; material or facility shortages or unavailability not resulting from such Party's failure to timely place orders therefore; lack of transportation; the imposition of any governmental codes, ordinances, laws, rules, regulations, or restrictions; national emergencies; terrorism; insurrections; riots, wars; or third-party strikes, lockouts, work stoppages, or other labor difficulties (collectively, "Force Majeure Events"). The Company will not be obligated to pay for services not rendered during a Force Majeure Event which lasts for thirty (30) days or longer.

#### 11. **EVENTS OF TERMINATION.**

11.1. **Condemnation:** If at any time during the Term of this Lease, all or any significant portion of the System is taken for any public or quasi-public purpose by any lawful power or authority through the exercise of the right of condemnation or eminent domain, either Party may elect to terminate this Lease and all Service Order Summaries upon giving the other Party not less than sixty (60) days' prior written notice without incurring any liability therefor after the date of termination. In the event this Lease is terminated pursuant to this section, both Parties will be entitled to participate in any condemnation proceedings to seek and obtain compensation via separate awards for the economic value of their respective interests in the System.

11.2. **Damage or Destruction of System:** If at any time during the Term of this Lease all or any significant portion of the System is damaged or destroyed beyond feasible repair, both Parties will be entitled to seek and recover the economic value of their respective interests in the System (i) under any insurance policy carried by either Party or any third party; or (ii) seek recovery from any third party that may be legally responsible for causing such damage or destruction.

11.3. **Default:** Either Party may terminate this Lease upon the failure of the other Party to cure an event of Default ("Default Event") before the expiration of the applicable cure period, if any, as required in Section 21. In the event either Party fails to cure a Default Event within the applicable cure period, the aggrieved Party may pursue any legal or equitable remedy available to it at law or in equity.

12. **LIMITATION ON LIABILITY – BREACH OF AGREEMENT OR SERVICE ORDER SUMMARY.** Neither Party will be liable for any indirect, special, punitive, incidental, exemplary, or consequential damages (for example lost profits, refunds, liability of buyer to customers, loss of goodwill, and interest on money withheld by customers) arising (i) under this Lease or under any Service Order Summary; (ii) or from any breach, or partial breach, of the provisions of this Lease or any Service Order Summary.

13. **ASSIGNMENT.** No assignment hereof, nor any sublease, assignment, or licensing (hereinafter collectively referred to as a “Transfer”) of any rights or obligations hereunder by the Company will be valid for any purpose without the prior written consent of the Town, of which consent will not be unreasonably withheld; provided, however, that nothing herein will prohibit the Company from selling or offering telecommunication services over the Leased Fibers to customers in the ordinary course of business. Notwithstanding the foregoing, the Company may assign this Lease without the Town’s prior written consent on thirty (30) days’ prior notice to the Town when such assignment is (a) to any affiliate, successor in interest, or acquirer of substantially all of its assets that has the capacity to fulfill the requirements set forth in this Lease; or (b) necessary, to be in compliance with the rules and/or regulations of any regulatory agency, governmental agency, legislative body, or court of competent jurisdiction.

13.1. **Company Remains Liable After Assignment:** Unless the Town otherwise consents in writing, the Company shall remain liable for all obligations of this Lease and/or the Service Order Summary occurring on or before the date of the assignment, and in the event of any assignment or transfer without notification or the Town’s written consent (as the case may be).

13.2. **Remedy If Town Denies Assignment:** If the Town refuses to consent to an assignment, the Company’s sole remedy shall be the right to bring a declaratory judgment action to determine whether the Town was entitled to refuse such assignment under the terms of this Lease.

13.3. **No Waiver of Future Consents:** No consent by the Town to any assignment or sublease shall be a waiver of the requirement to obtain such consent with respect to any other or later assignment or sublease. Acceptance of Rent or other performance by the Town following an assignment or sublease, whether or not the Town has knowledge of such assignment or sublease, shall not constitute consent to the same nor a waiver of the requirement to obtain consent to the same.

14. **WAIVER OF TERMS OR CONSENT TO BREACH.** No term or provision of this Lease will be waived, and no breach excused, unless such waiver or consent will be in writing and signed by a duly authorized representative of the Party claimed to have waived or consented to such breach. Any consent by either Party to a breach, or waiver of the same, by the other Party will not constitute a waiver of or consent to any subsequent or different breach. If either Party fails to enforce a breach of this Lease by the other Party, such failure to enforce will not be considered to be a consent to or a waiver of said breach, or any subsequent breach for any purpose whatsoever.

15. **FREEDOM OF ACTON.** Nothing in this Lease will restrict the Town in utilizing the remainder of the System, without limitation, for any purpose whatsoever; provided, however, that no such conduct or use unreasonably interferes with the use of the Leased Fibers by the Company as provided for in this Lease and each Service Order Summary.

16. **COMPLIANCE WITH LAW.** Each Party agrees that it will perform its respective rights and obligations hereunder in accordance with all applicable local, state, and federal laws, rules, and regulations. Without limiting the generality of the foregoing, the Company shall comply with any and all Town-imposed rules and regulations relating to use of the System, as those rules and regulations may be adopted or amended from time-to-time.

17. **RELOCATION OF THE FACILITIES.** From time-to-time, the Town may elect, or be required by a third party providing underlying rights for the construction, operation, and use of the System, to relocate the System or a portion thereof. The Town will be solely responsible for all costs incurred in relocating the System and will use reasonable efforts to do so in a manner that will not cause any material interruption in the Company's use of the Leased Fibers. The Company will have no claims for direct damages against the Town for disruption of service arising out of such relocation. For routine and/or minor relocations ("Minor Relocation(s)"), no notice is required. For relocations where updated drawings or mapping will be provided ("Substantial Relocation(s)"), the Town will give the Company at least twenty-one (21) days' prior written notice of any Substantial Relocation. The Town will deliver to the Company updated drawings with respect to the relocated Leased Fibers, including route miles specified in the drawings, within ninety (90) days following the completion of such Substantial Relocation.

17.1. **Effect of Substantial Relocation on Lease:** A Substantial Relocation pursuant to this section will not affect the Term of the Lease related to the Leased Fibers and Facilities affected by such relocation; provided, however, that the Company may elect to terminate the applicable Service Order Summary as to the Leased Fiber and Facilities affected, without liability, by written notice provided to the Town no later than ten (10) days following the receipt by the Company of such notice.

18. **INSURANCE.** The Company will, at all times during the Term of this Lease, and at its own cost and expense, carry and maintain the insurance coverage listed below with insurers authorized to do business in the state(s) of operation. The Company will require its subcontractors and agents to maintain the same following insurance:

(a) Commercial General Liability Insurance covering claims for bodily injury, death, personal injury, or property damage (including loss of use) occurring or arising out of the license, use, or occupancy of any premises in connection with this Lease by the Company, including coverage for premises-operation, products/completed operations, and contractual liability with respect to the liability assumed by the Company hereunder. The limits of insurance will not be less than the following:

Each Occurrence	\$ 2,000,000
General Aggregate	\$ 3,000,000
Products/Completed Operations	\$ 2,000,000
Personal & Advertising Injury	\$ 2,000,000

(b) Workers' Compensation Insurance with statutory limits as required in the state(s) of operation; and provided coverage for any employee entering onto any premises in connection with this Lease, even if not required by statute. Additionally, Employer's Liability or "Stop Gap" insurance with limits of not less than One Hundred Thousand Dollars (\$100,000) per accident.

(c) Comprehensive Automobile Liability Insurance covering the ownership, operation, and maintenance of all owned, non-owned, and hired motor vehicles used in connection with this Lease, with limits of at least One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage.

(d) Other Insurance to the same extent such insurance coverage is required of the Town (the “Right of Way Owner”); provided, however, that the Company may elect to terminate without liability incurred after the date of termination of this Lease by providing written notice to the Town no later than ten (10) days following the receipt by the Company of such notice regarding the other insurance requirements.

18.1. **Policy Provisions:** The foregoing insurance policies (except Workers’ Compensation Insurance) shall name the Town (and the underlying Right of Way Owner, if required) as an additional insured by way of a policy endorsement. The Company shall provide certificates of insurance and, if requested, copies of any policy to the Town. Receipt of such certificate or policy by the Town does not constitute approval by the Town of the terms of such policy. Furthermore, the policy of insurance required herein shall (i) be written as a primary and non-contributory policy; (ii) expressly provide that such insurance may not be materially changed, amended, or canceled with respect to the Town except upon forty-five (45) days’ prior written notice from the insurance company to the Town; (iii) contain an express waiver of any right of subrogation by the insurance company against the Town and the Town’s elected officials, employees, or agents; (iv) expressly provide that the defense and indemnification of the Town as an “additional insured” will not be affected by any act or omission by the Company 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.

18.2. **Failure to Obtain and Maintain Insurance:** If the Company fails to procure and maintain the insurance described above, the Town shall have the right, but not the obligation, to procure and maintain substitute insurance and to pay the premiums. Upon demand, the Company shall pay to the Town the full amount paid by the Town.

18.3. **Prudent Business Insurance:** The Company believes and states that the insurance obligation herein does not exceed that which the Company would otherwise normally place upon itself and obtain in order to operate its business in a prudent manner.

18.4. **Increase in Insurance Limits:** During the Term hereof, or during any renewal Term, the Town may increase the required limits of coverage otherwise specified herein to amounts consistent with the limits of coverage required by the Town in subsequent or pending fiber optical leases. Following written notice by the Town to the Company, said increase will take effect on the termination or renewal date of the policies then in effect.

19. **WAIVER OF RENT SECURITY.** Pursuant to RCW 53.08.085, the commission of the Town has waived the Rent security requirement for this lease.

20. **AFFORDABLE CONNECTIVITY PROGRAM.** In the event that the portion of the Town’s System utilized by Company under any Service Order Summary was constructed with federal grant funding (each a “Federally Funded System”), then during the Term of this Agreement, the Company shall either:

20.1 Participate in the Federal Communications Commission's Affordable Connectivity Program ("ACP") through the lifetime of the ACP for those customers served through the Federally Funded System; or

20.2 Otherwise provide access to a broad-based affordability program to low-income customers to whom Company provides telecommunications services through the Federally Funded System, which such program provides benefits to households commensurate with those provided under the ACP through the lifetime of the ACP.

21. **DEFAULT.** If (i) the Company fails to make a timely payment of the Rent or any other amount it is obligated to pay, including interest due on all past due amounts, within ten (10) days after written notice from the Town; or (ii) if either Party (each hereinafter referred to as a "Defaulting Party") fails to perform a non-monetary obligation and such failure will continue for a period of twenty (20) days after the other Party has delivered written notice of such failure (unless, in the case of non-monetary default, such failure cannot be reasonably cured within such twenty (20)-day period, and the Defaulting Party is diligently pursuing such cure), then the Defaulting Party will be in default hereunder and the other Party as its sole option may (a) terminate this Lease upon written notice, in which event the other Party will have no future duties, liabilities, or obligations hereunder, or under any Service Order Summary, except those which necessarily survive termination of the Lease (including, but not limited to, indemnification obligations for events arising prior to the Lease termination; or (b) pursue all legal remedies it may have relating to such Default Event.

21.1. **Bankruptcy or Insolvency:** To the extent permitted by law, if either Party (i) files a petition in bankruptcy, for reorganization, or for an arrangement pursuant to any present or future federal or state bankruptcy law or under any similar federal or state law; (ii) will be adjudicated as bankrupt or insolvent; (iii) will make a general assignment for the benefit of its creditors; or (iv) will admit in writing its inability to pay its debts generally as they become due; or (a) if any involuntary petition proposing the adjudication of either Party as bankrupt or its reorganization under any present or future federal or state bankruptcy law or any similar federal or state law will be filed in any court and such petition will not be discharged or denied within ninety (90) days after the filing thereof; or (b) if a receiver, trustee, or liquidator of either Party of all (or substantially all) of the assets of either Party will be appointed in any proceeding brought by either Party, then the other Party, at its sole option, and upon written notice, may immediately terminate this Lease and all Service Order Summaries without liability.

22. **RELATIONSHIP NOT A PARTNERSHIP OR AN AGENCY.** The relationship between the Parties will not be that of partners or agents for one another, and nothing contained in this Lease will be deemed to constitute a partnership, joint venture, or agency agreement between the Parties hereto. In performing any of their respective obligations hereunder, the Parties will be independent contractors or independent parties and the Parties shall discharge their contractual obligations as such and at their own risk.

23. **NO THIRD-PARTY BENEFICIARIES.** This Lease is for the sole benefit of the Parties hereto and their respective permitted successors, assigns and indemnitees, and shall not be construed as granting rights to any person or entity, other than the Parties, including, but not limited to, any customer of the Company or imposing on either Party obligations to any person or entity other than a Party.

24. **SEVERABILITY.** In the event any term, covenant, or condition of this Lease, or the application of such term, covenant, or condition, is held invalid as to any person or circumstances by any court having jurisdiction, all other terms, covenants, and conditions of this Lease, and their application thereof, will not be affected thereby, but will remain in force and effect unless a court holds that the invalid term, covenant, or condition is not separable from all other terms, covenants, and conditions of this Lease.

25. **GOVERNING LAW, JURISDICTION, AND VENUE.** This Lease and the Service Order Summary(ies) will be interpreted in accordance with the laws of the State of Washington. The sole and exclusive jurisdiction and venue for any action arising from this Lease or any Service Order Summary shall be in Adams County Superior Court, and not in any federal court. In this regard, the parties irrevocably waive any right to removal to federal court.

26. **USE OF THE SYSTEM.** The Company will have exclusive control over its provisioning of telephone, telecommunications, or other services, including, without limitation, sales and marketing, electronics maintenance and monitoring, and billing and collection.

27. **COMPANY NOT END USER.** The Company hereby certifies that it will not be the “end user” (as the term is used in RCW 53.08.270) of the Leased Fiber and Facilities, is in the business of providing telecommunication services, that it is authorized to provide telecommunication services within the territory covered by the Service Order Summary, and that such services can be provided on fiber optic cable systems such as that owned by the Town.

28. **TITLE.** All right, title, and interest in the System provided by the Town hereunder and not conveyed under this Lease shall at all times remain exclusively with the Town.

29. **PUBLIC RECORDS AND CONFIDENTIALITY.** The Town is subject to and rigorously complies with the Washington Public Records Act codified at Chapter 42.56 RCW (the “Act”). Therefore, absent a specific exemption contained in the Act, all information provided to the Town becomes a public record subject to inspection and disclosure. The Company may identify information that the Company believes is non-disclosable by the Town under the Act. The Company will prominently mark any information for which it claims confidentiality with the mark “Confidential” prior to submitting such information to the Town. The Town will treat any information so marked as confidential and will not disclose such information to any third party except as required by the Act. Under the Act, if the Town receives a request for disclosure of confidential information so marked, the Town will provide the Company written notice of the request, including a copy of the request and the Town’s determination made in the Town’s sole discretion concerning whether all or a portion of the record will be disclosed. Thereafter, the Company will have ten (10) days to seek appropriate Court protection of its confidential information. The Town shall not be liable for any loss or damage from disclosure of the information made pursuant to the Act, and the Company expressly waives any claims against the Town for the same.

30. **NO PERSONAL LIABILITY.** Each action or claim against any Party arising under or relating to this Lease will be made only against such Party as a corporation, and any liability relating thereto will be enforceable only against the corporate or limited liability company assets of such Party. No Party shall seek to pierce the corporate or limited liability company veil, or otherwise seek to impose any liability relating to, or arising from, this Lease against any official, shareholder, employee, affiliate, officer, or director of the other Party.

31. **NOTICES.** Any written notice under this Lease will be deemed properly given if sent by registered or certified mail and postage prepaid, by nationally recognized overnight delivery service, by facsimile to the address specified below, or by electronic mail, with receipt confirmed, unless otherwise provided for in this Lease:

COMPANY: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
ATTN: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile Number: \_\_\_\_\_  
E-mail: \_\_\_\_\_

TOWN: Town of Washtucna  
165 S Main Street  
Washtucna, WA 98642  
509-646-3253  
E-mail: [clerk.washtucna@gmail.com](mailto:clerk.washtucna@gmail.com)

Or such address as may have been specified by notifying the other Party of the change of address. Notice shall be deemed served on (i) the date of actual delivery or the first (1<sup>st</sup>) attempted delivery as shown on the return receipt if mailed with the United States Postal Service by certified mail; (ii) the date of the confirmed facsimile; or (iii) the date of the confirmed e-mail.

32. **INTERPRETATION.** This Lease has been submitted to the scrutiny of the Parties hereto and their counsel, if desired. In any dispute between the Parties, the language of this Lease shall, in all cases, be construed as a whole according to its fair meaning, and not for or against either the Town or the Company. If any provision is found to be ambiguous, the language shall not be construed against either the Town or the Company solely on the basis of which Party drafted the provision. If any word, clause, sentence, or combination thereof, for any reason, is declared by a court of law or equity to be invalid or unenforceable against one Party or the other, then such finding shall in no way affect the remaining provisions of this Lease

33. **SURVIVAL.** All obligations of the Parties, as provided for in the Lease, shall not cease upon the termination of this Lease and shall continue as obligations until fully performed. All clauses of this Lease which require performance beyond the termination date shall survive the termination date of this Lease.

34. **ATTORNEYS' FEES – LEASE ENFORCEMENT.** The substantially prevailing party in any action to enforce any term or condition of this Lease shall be entitled to an award of their reasonable costs and attorneys' fees.

35. **COUNTERPARTS AND ELECTRONIC TRANSMISSION.** This Lease, and any subsequent Service Order Summary(ies), may be signed in counterparts. Electronic transmission of any signed original document, and retransmission of any signed electronic transmission, shall be the same as delivery of an original document.

36. **ENTIRE AGREEMENT.** This Lease and the Service Order Summary(s) constitutes the entire agreement between the Company and the Town with respect to the subject matter hereof; and all prior agreements, representations, statements, negotiations, and undertaking are hereby superseded.



**IN WITNESS WHEREOF**, the Parties have caused this Lease to be executed by their respective duly authorized representatives as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

**THIS LEASE CONTAINS INDEMNIFICATIONS FROM THE COMPANY TO THE PORT, RELEASES BY THE COMPANY, AND A LIMITED WAIVER OF IMMUNITY UNDER THE WASHINGTON STATE INDUSTRIAL INSURANCE ACT, TITLE 51 RCW, OR ANY OTHER SIMILAR WORKERS' COMPENSATION SCHEMES.**

**TOWN OF WASHTUCNA, WASHINGTON      **COMPANY NAME****

By \_\_\_\_\_

By \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Its: Mayor \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF ADAMS )

On this \_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_ of the **TOWN OF WASHTUCNA**, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute the said instrument on behalf of the corporation.

Given under my hand and official seal this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
NOTARY PUBLIC in and for the  
State of Washington, residing at \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_ of \_\_\_\_\_, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument on behalf of the corporation.

Given under my hand and official seal this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
NOTARY PUBLIC in and for the  
State of \_\_\_\_\_, residing at \_\_\_\_\_