

BOARD OF COUNTY COMMISSIONERS
COUNTY OF KITTITAS
STATE OF WASHINGTON

RESOLUTION

NO. 2022-078

Authorizing the Execution of an Interlocal Agreement with Petrichor.

WHEREAS: Currently significant funding and assistance is available to enhance broadband internet service in the United States as an aspect of infrastructure enhancement; and

WHEREAS: Kittitas County desire to enhance the County's broadband infrastructure as a piece of economic development; and

WHEREAS: Kittitas County requires assistance in the effort to develop, manage, and maintain such broadband internet infrastructure; and

WHEREAS: Petrichor has the needed expertise to assist the County in such endeavor.

NOW, THEREFORE BE IT RESOLVED: The Board of County Commissioners, after due consideration, does hereby authorize the execution of the attached Interlocal Agreement with Petrichor for the provision of assistance in enhancing the County's broadband internet infrastructure.

DATED this 15th day of March 2022, at Ellensburg, Washington.



Clerk of the Board- Julie Kjorsvik

Deputy Clerk of the Board- Mandy Buchholz

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BOARD OF COUNTY COMMISSIONERS
KITTITAS COUNTY, WASHINGTON

Laura Osiadacz, Chairman

Cory Wright, Vice-Chairman

Brett Wachsmith, Commissioner

**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 KITTITAS COUNTY (hereinafter the "COUNTY").

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

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

WHEREAS, this Agreement provides for certain services to be provided by PETRICHOR to the COUNTY 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;
- (7) An annual average of nine (9) on-site meetings or visits by PETRICHOR managers; and

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

2. FEES.

a. Compensation. The COUNTY will pay PETRICHOR three percent (3%) (the "Fee") of the Public Works Board Grant (the "Grant") the COUNTY received for the Project in exchange for the Services set forth herein in two (2) equal payments of \$50,084.19. Petrichor shall invoice the

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

b. No Benefits. The COUNTY 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 March 1, 2022 and terminate upon completion of the Services to be provided, but no later than the 31st day of December 2024 (the "Term"), 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 COUNTY shall pay Petrichor a pro-rated amount of the Fee based on the number of months the Agreement was in effect compared to the Term. The same

being the month in which the notice of non-performance was given shall be deemed to be the month in which the Agreement was terminated. For the purposes of illustration, if this Agreement is terminated in the sixth month of a 24-month term (i.e. the Agreement was in effect for 25% of the Term), the COUNTY shall pay Petrichor according to the following formula (Total Grant Amount X Fee Percentage) X (25%) = Termination Fee.

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 COUNTY shall pay PETRICHOR a termination fee calculated by the same formula as used in Subsection (i) above.

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 COUNTY 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 COUNTY 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 Whitman 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 COUNTY 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 COUNTY: Kittitas County Auditor
205 West 5th Avenue, Suite 105
Ellensburg, WA 98926

If to Petrichor: Kara Riebold
Port of Whitman County
302 North 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 COUNTY 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 COUNTY 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 COUNTY 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 1st day of March, 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

KITTITAS COUNTY

By  _____
Its: Chair, Board of County
Commissioners *MARCH 15, 2022*