

**INTERLOCAL AGREEMENT
BETWEEN
WASHINGTON STATE UNIVERSITY VANCOUVER
AND
PORT OF RIDGEFIELD**

THIS INTERLOCAL AGREEMENT (the "Agreement") is made and entered into this 21st day of June, 2021 by and between Washington State University, an institution of higher education and agency of the State of Washington, by and through its Vancouver campus ("WSU"), and the Port of Ridgefield, a local government entity ("PORT"). WSU and PORT enter into this Agreement pursuant to RCW 39.34, the Inter-local Cooperation Act. WSU and PORT are collectively referred to herein as the "Parties", and individually as a "Party".

Whereas, PORT has the authority from RCW 53.08 and RCW 53.08.370 to acquire, construct and maintain telecommunications facilities;

Whereas, WSU has the authority to enter into contracts it deems essential to WSU purposes;

Whereas, the governing bodies of WSU and PORT or their authorized delegates have authorized their participation in this Agreement.

NOW, THEREFORE, the Parties enter into this Agreement for the uses and purposes and for the consideration set forth below.

THE PURPOSE OF THIS AGREEMENT is for PORT to install fiber optic cable on WSU's Property (defined below), and to lease fiber strands therefrom or capacity thereon to WSU and/or to other third parties, and to perform all other work described herein below, on WSU's Vancouver Campus generally located at 14204 NE Salmon Creek Avenue, Vancouver, WA 98686 (the "Property"). The plans and specifications for the PORT's work are outlined in the attached Exhibit "A" and are incorporated herein by this reference. As partial consideration for the PORT performing its work hereunder, WSU shall grant the PORT a non-exclusive right of access to the Property, in the form attached hereto in Exhibit "B", to allow the PORT to construct, repair and replace the improvements to be installed by PORT pursuant to its scope of work hereunder.

1. STATEMENT OF WORK

Each Party shall do all things necessary for or incidental to the performance of the duties set forth below. The routing of the fiber optic cable through the Property shall be completed by the PORT pursuant to the plans illustrated in Exhibit "A".

A. Duties of PORT

1. PORT will install fiber cable within the existing conduit located on the Property, beginning on NE 50th Avenue and terminating the cable into WSU's Undergraduate Classroom Building in the data center room (VUCB T11), in a rack provided by WSU, as further illustrated in the attached Exhibit "A".

2. Except as otherwise provided in Paragraph VI, with respect to damages to the fiber optic cable caused by the negligence or willful misconduct of WSU, PORT will be responsible for the maintenance, repair and replacement of the fiber optic cable, at PORT's sole cost and expense.
3. PORT will obtain any and all necessary permits and approvals before commencing with its work on the Property.
4. PORT shall notify WSU at least twenty-four (24) hours in advance of any routine or scheduled maintenance that will affect the fiber optic cable by calling Information Technology's Work Order Management Group at (360) 546-9770. Access to the Property for the PORT's routine or scheduled maintenance must be coordinated with WSU's Facility Operations Department, which can be reached at (360) 546-9000.
5. PORT shall begin emergency maintenance of the fiber optic cable within twenty-four (24) hours of written or oral notice of any outage by WSU and/or third parties leasing fiber optic strands from the PORT. The PORT will serve as the main point of contact for all maintenance and repair requests from WSU and/or from third parties.
6. PORT shall retain the ability to subcontract for construction and maintenance of its fiber optic cable. PORT shall consult with WSU regarding any subcontractors the PORT intends to use on the Property, and all subcontractors shall comply with the rules and regulations of WSU and all federal, state and local laws while on WSU's Property and the reasonable instructions of WSU personnel. Material failure of any subcontractors to comply with said rules, regulations and instructions shall entitle WSU to require PORT to remove the subcontractor from the Property and reimburse WSU for the cost to repair any damages. Prevailing wages will be applicable to all work done by or on behalf of the PORT, unless such work is done by employees of the PORT or WSU.

B. Duties of WSU

1. WSU will grant the PORT a non-exclusive Right of Access ("ROA") to the Property, as set forth in Exhibit "B", which shall commence on the Term (defined below) this Agreement. The term of the ROA shall coincide with the Term of this Agreement, and shall automatically terminate upon the expiration or earlier termination of this Agreement.
2. WSU will be responsible for the routine maintenance of all fiber optic cable, strands and electronics located before the demark in the Undergraduate Classroom Building data center (VUCB T11) and after the demark in the telecommunications closet on the Property.

II. TERM

Subject to its other provisions, this Term of this Agreement shall be twenty (20) years, commencing on July 1, 2021 and expiring on June 30, 2041 (the "Term"), unless terminated earlier as provided in this Agreement. After the initial set-up is successfully completed, this Agreement will also govern the maintenance of the cable as provided

herein. The Term of this Agreement can be renewed for additional periods of five (5) years each (individually and "Extension Term" and collectively the "Extension Terms") with prior written approval by the Parties.

III. LEASE

PORT will reserve, maintain and support a minimum of eight (8) strands of dark fiber for WSU to lease (the "Equipment Lease"), at its election, and in accordance with the terms of this Agreement. The term of the Equipment Lease shall be coincident with the Term of this Agreement and shall automatically terminate upon the expiration or earlier termination of this Agreement. The PORT shall have the right to lease additional fiber stands to third parties. Notwithstanding anything contained herein to the contrary, WSU shall have the right to pull its fiber through the PORT's conduit that will be installed by the PORT on WSU's Property.

IV. PAYMENT

A. Lease

WSU shall pay to the PORT for the Equipment Lease the sum of \$0.02 per strand per lineal foot per month, payable annually on August 1st of each year during the Term of this Agreement. The first annual payment will be due and payable upon WSU's election to lease the strands of dark fiber from the PORT, which will be determined by WSU after the PORT has successfully completed the initial set-up and connection under this Agreement as further provided in Paragraph V. below. The first annual payment will be prorated if the Equipment Lease does not commence on August 1st.

B. Maintenance

PORT shall maintain, replace and repair all damage to the fiber optic cable and shall defend all claims for damages to persons or property resulting from acts of God or from PORT's maintenance or repair activities, and shall pay any resulting damages or costs or fees assessed.

In the event PORT's fiber optic cables, including the strands leased by WSU, are destroyed or otherwise rendered permanently inoperable by any cause beyond the reasonable control of the Parties or either of them, the Parties shall confer in good faith on a mutually acceptable resolution for sharing the costs of the needed repair, replacement, or improvement. If the Parties are unable to agree on a resolution, this Agreement shall terminate thirty (30) days after the Parties agree they have reached an impasse.

V. BILLING PROCEDURE

Upon successful completion of the initial set-up and connection under this Agreement, and WSU's election to lease the strands of dark fiber from the PORT, PORT shall send the first annual invoice for the above referenced Equipment Lease payment. Each annual Equipment Lease payment shall not be due and payable until thirty (30) days after the date of the invoice. WSU shall make payments to the PORT by check.

VI. LIABILITY FOR DAMAGE

If any of the fiber optic cables covered by this Agreement are damaged solely as a result of negligent or intentional acts of one of the Parties, or by its officers, employees, or agents, that Party shall repair the damage at its sole cost and expense and within a reasonable time. This shall be the sole remedy for any such damage. In no event shall any Party be responsible or liable to any other Party or to any person or entity in privity with any party, for direct, indirect, or consequential damages, including interruption of services, suffered as a result of any damage to the fiber optic cables or their functionality. Notwithstanding anything in this Agreement to the contrary, the Parties expressly acknowledge and agree that WSU's liability and indemnification obligation hereunder shall not exceed WSU's coverage limits (as to type and amount) as described in the State of Washington Self-Insurance Liability Program and the Tort Claims Act (RCW 4.92 et seq.)

VII. INSURANCE AND HOLD HARMLESS

Except as otherwise provided in Paragraph VI. above, each Party shall indemnify, and hold harmless the other Party from any damages to persons or property resulting from its own negligent acts or omissions, or those of its officers, employees, or agents. Should any injury or damage be found to result from the negligence of both Parties, each Party shall be liable to the extent of and in the proportion to its own negligence.

- A. WSU and its officers, employees, agents, and registered volunteers, while acting in good faith within the scope of their official WSU duties, are covered by the State of Washington Self-Insurance Liability Program (RCW 43.19.766 et seq.) and the Tort Claims Act (RCW 4.92.060 et seq.). Successful claims to pay legal liabilities and defense costs of the state resulting from tortious conduct of WSU and its employees, officers, agents, and registered volunteers in the performance of their official WSU duties in good faith under this Agreement will be paid from the tort claims liability account as provided in RCW 4.92.130.
- B. The PORT maintains a Twenty Million Dollar (\$20,000,000) commercial general liability policy and an automobile policy in the amount of Twenty Million Dollars (\$20,000,000). WSU shall be named as an additional insured on the PORT's policies, and the PORT shall provide a certificate of insurance naming WSU as an additional insured prior to the commencement of any work under this Agreement.

VIII. INDEPENDENT CAPACITY: NONDISCRIMINATION

The employees or agents of each Party who are engaged in the performance of this Agreement shall continue to be employees or agents of that Party and shall not be considered for any purpose to be employees or agents of the other Party. The Parties agree not to discriminate against any employee or applicant for employment in the performance of this Agreement with respect to tenure, terms, conditions, or privileges of employment or any matter directly or indirectly related to employment because of race, sex, color, religion, age, national origin, ancestry, or status as a Vietnam veteran. Breach of this covenant may be regarded as a material breach.

IX. MODIFICATION

This Agreement may be modified or amended by mutual agreement of the Parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the Parties and attached to this Agreement.

X. TERMINATION

This Agreement, which includes the Equipment Lease and the ROA, may be terminated early for the convenience of the Parties upon a one (1) year notice by either Party. In addition, WSU, at the end of any state biennial fiscal period, may terminate any part of this Agreement that requires it to expend funds, if funds are not appropriated by the Washington legislature for such expenditure and such appropriations are necessary. No penalty shall accrue to WSU in the event this Agreement is terminated for lack of appropriation as provided herein. WSU will use its best efforts to obtain any appropriations that are necessary for its financial obligations under this Agreement. The ability of WSU to terminate for lack of appropriation shall not be construed to permit WSU to terminate this Agreement in order to acquire similar equipment or services from a third party.

XI. DISPUTE RESOLUTION

If for any cause, any Party does not fulfill in a timely and proper manner its obligations under this Agreement, or if any Party violates any of these terms and conditions, the aggrieved Party will give the other Party written notice of such failure or violation. The responsible Party will be given the opportunity to correct the violation or failure within fifteen (15) working days; provided, however, that where such failure cannot reasonably be cured within such fifteen (15) day period, if the Party failing to perform shall proceed promptly to cure the same and prosecute such cure with due diligence, the time for curing such breach shall be extended for such period of time as may be necessary to complete such cure; and provided further that if the responsible Party certifies in good faith to the complaining Party in writing that the breach has been cured, such breach shall be deemed to be cured unless the complaining Party notifies the responsible Party in writing within fifteen (15) days of receipt of such notice that such breach has not been cured. If the responsible Party denies responsibility or fails to diligently proceed in good faith to cure said breach, the matter shall be submitted to mediation. If mediation is unsuccessful, the

matter shall be submitted to final and binding arbitration through an arbitrator selected by all for the Parties. If the Parties are unable to agree to an arbitrator, the matter shall be submitted to arbitration through the American Arbitration Association. This dispute resolution process shall not apply to matters that are covered by the Insurance Clause of this Agreement unless otherwise agreed by the Parties.

XII. GOVERNANCE

This Agreement is entered into pursuant to and under the authority granted by the laws of the State of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws.

XIII. ASSIGNMENT

The rights and responsibilities of any Party under this Agreement may not be assigned without the prior, express written consent of the other Party, which consent shall not be unreasonable withheld.

XIV. WAIVER

A failure by any Party to exercise its rights under this Agreement shall not preclude that Party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the Party and attached to the Agreement.

XV. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

XVI. ENTIRE AGREEMENT

This Agreement and Exhibits "A" and "B" contain all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto.

XVII. CONTRACT ADMINISTRATION

The program manager for each of the Parties shall administer this Agreement and be responsible for and shall be the contact person for all communications and billings regarding the performance of this Agreement.

The Contract Administrator for Washington State University Vancouver is:

Name: Vice Chancellor
Address: Dengerink Administration Building
14204 NE Salmon Creek Avenue
Vancouver, WA 98686-9600
Telephone: (360)546-9590
Email: lvalente@wsu.edu

With copies of Notices to: Washington State University
Real Estate and Business Operations
P.O. Box 641045/2425 E. Grimes Way
Pullman, WA 99164-1045

The Contract Administrator for the Port of Ridgefield is:

Name: Brent A. Grening
Address: 111 West Division
PO Box 55 Ridgefield, WA 98642
Telephone: (360) 887-3873
Fax: (360) 887-3403
Email: bgrening@portridgefield.org

XVIII. SIGNATURES

The Parties affirm they have designated the persons below to have signature authority for the Parties. By their signatures on this Agreement the Parties agree to all of its terms and conditions. This Agreement may be signed in multiple counterparts, and by electronic signatures including scanned copies, all of which when taken together, shall constitute one original document.

WSU:
WASHINGTON STATE UNIVERSITY
Recommended by:

Lynn Valenter
Name: Lynn Valenter
Title: Vice Chancellor

Approved by:

Ryan H. Goodell
Name: Ryan H. Goodell
Title: AVP, Real Estate and Business Operations

PORT:
PORT OF RIDGEFIELD
Approved by:

Brent A. Grening
Name: Brent A. Grening
Title: CEO

Approved as to form:

William J. Elms
Name: William J. Elms
Title: General Counsel

EXHIBIT "B"

**RIGHT OF ACCESS AGREEMENT
BETWEEN
WASHINGTON STATE UNIVERSITY VANCOUVER
AND
PORT OF RIDGEFIELD**

I. PARTIES

This Right of Access Agreement ("ROA") is entered into this 21st day of June, 2021 by and between Washington State University, an institution of higher education and agency of the State of Washington, by and through its Vancouver Campus ("WSU"), and the Port of Ridgefield, a local government entity ("PORT"). In this ROA, the above entities are jointly referred to as PARTIES, and individually as a PARTY.

II. PURPOSE

The PARTIES have entered into that certain Interlocal Agreement of even date herewith (the "INTERLOCAL AGREEMENT") in which certain rights, duties and responsibilities have been agreed upon with respect to the PORT's installation and maintenance of fiber optic cables on Property owned by WSU in Vancouver, Washington, and further described

Name: *Michael Valente*
Chance
LOCAL AGREEMENT.

III. NON-EXCLUSIVE RIGHT-OF-ACCESS

A)

Ryan H. Goodell grants and conveys to PORT, subject to all terms and conditions contained in the INTERLOCAL AGREEMENT, a non-exclusive right to access the Property defined in the INTERLOCAL AGREEMENT for the purpose of implementing PORT's rights, duties, and responsibilities under the INTERLOCAL AGREEMENT. WSU, its successors, agents, assigns, and grantees shall have the right to use the above described Property for any and all purposes it deems necessary or desirable, so long as such purposes are permitted by federal, state, WSU, and local laws, regulations, rules and policies, and may convey any or all of such Property without permission of the PORT. This right-of-access does not convey a property interest to the PORT in the above described Property.

IV. CONDITION OF PROPERTY

PORT shall restore to its original condition any part of the above described Property that is disturbed or damaged as a result of, or in connection with, PORT's exercise of its right-of-access hereunder.

V. PERIOD OF PERFORMANCE

Subject to its other provisions, this ROA shall commence on July 1, 2021, and shall expire, unless terminated earlier, at the same time as the INTERLOCAL AGREEMENT.

VI. INDEMNIFICATION

PORT shall indemnify, defend, and save WSU, its successors, assigns, and agents harmless from any and all claims, liability, losses, costs, charges, or expenses which WSU may incur as a result of any act or omission of PORT in its use of the right-of-access under this ROA. If any action, claim, or demand is made against WSU for any act or omission of PORT, PORT agrees to assume the expense and shall pay all costs, charges, attorneys' fees, settlements, judgments, or other expenses incurred by or obtained against WSU.

VII. MODIFICATION

The PARTIES may modify this ROA only by mutual consent. Any modification shall be effective only if written, signed by the authorized representative of each PARTY, and attached to this ROA.

VIII. COMPLIANCE WITH ALL LAWS AND INDUSTRY STANDARDS

PORT agrees to comply in all respects with any and all federal, state, WSU, and local statutes, laws ordinances, codes, regulations, and rules in connection with the exercise of its rights and obligations under this ROA. In addition, with respect to the installation, operation, maintenance, repair, and replacement of the fiber optic cables, PORT agrees to comply with all applicable industry standards.

IX. UNDERGROUND UTILITIES AND DAMAGE

Before PORT digs on or otherwise disturbs WSU's Property, PORT shall determine, by using evidence satisfactory to WSU, the location of any underground utilities. PORT shall be responsible for any damage that it or its contractors do to the Property, the adjacent properties or operations as a result of such work. PORT shall return the Property involved in this ROA to its condition prior to this ROA upon expiration or earlier termination of this ROA.

X. NOTICE

Any notice or demand from or to the PARTIES shall be personally delivered or mailed by first class certified United States mail, return receipt requested, postage prepaid, addressed to the address set forth below or to such other address as the PARTIES hereto shall have last designated by notice in writing to the other PARTY as provided herein. Notice shall be deemed delivered on the date actually received.

WSU:
Washington State University Vancouver
Attn: Vice Chancellor
Dengerink Administration Building
14204 NE Salmon Creek Avenue

With copy to:
Washington State University
Real Estate and Business Operations
P.O. Box 641045/2425 E. Grimes Way
Pullman, WA 99164-1045

PORT:

Port of Ridgefield
Attn: Brent A. Grening
111 West Division
PO Box 55
Ridgefield, WA 98642

XI. SIGNATURES

The PARTIES affirm they have granted the individuals signing this ROA the authority to sign on their behalf. The PARTIES hereby affirm they will complete all the terms and conditions of this ROA. This ROA may be signed in multiple counterparts, and by electronic signatures including scanned copies, all of which when taken together, shall constitute one original document.

WSU:

WASHINGTON STATE UNIVERSITY

Recommended by:

Lynn Valente

Title: Vice Chancellor

Approved by:

Name: Ryan H. Goodell
Title: AVP, Real Estate and Business Operations

PORT:

PORT OF RIDGEFIELD

Approved by:

Brent A. Grening
Name: Brent A. Grening
Title: CEO

Approved as to form:

William J. Finney
Name: William J. Finney
Title: General Counsel