

**INTERLOCAL AGREEMENT BETWEEN
WASHINGTON STATE UNIVERSITY
AND
PORT OF WHITMAN COUNTY
FOR INSTALLATION, LEASE AND SERVICE OF FIBER OPTIC STRANDS**

THIS agreement is made and entered into by and between Washington State University, an institution of higher education of the State of Washington (WSU), and the Port of Whitman County, a local government entity (PORT). WSU and PORT enter into this agreement pursuant to RCW 39.34, the Inter-local Cooperation Act.

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, in or about 2003, WSU requested that PORT install a run of fiber optic cable from the WSU campus to the Town Centre Building located at 225 E Main Street in Pullman, WA, where the WSU Foundation (WSUF) offices are located. This request was made in conjunction with WSU's agreement with WSUF that WSU would contract with the PORT for the installation of the fiber optic cable and WSUF would pay the costs of its fiber optic cable usage;

Whereas, the PORT constructed the fiber optic run to the Town Centre Building and the parties discussed a draft agreement regarding the same, but the parties unintentionally failed to complete the process of entering a written agreement. Notwithstanding, WSUF did pay, and has continued to pay, PORT for its use of the installed fiber optic cable (and has done so by erroneous reference to WSU Contract #14631, which is an Inter-local Agreement between the parties regarding fiber optic cable but which was not an agreement pertaining to this particular installation and usage);

Whereas, the parties have at all times performed as if the draft agreement regarding this fiber optic cable installation and usage had been entered, and desire at this time to memorialize their relationship as it pertains to the run of fiber optic cable to the Town Centre Building, and thus the parties enter this Inter-local Cooperation Agreement; and

Whereas, the governing bodies of WSU and PORT or their authorized delegates have authorized their participation in this Inter-local Cooperation Agreement (AGREEMENT).

NOW, therefore, the parties enter into this AGREEMENT for the uses and purposes and for the consideration set forth herein.

IT IS THE PURPOSE OF THIS AGREEMENT for PORT to lease to WSU six (6) fiber optic cable strands and to provide the service and maintenance for the same, in exchange for funds as provided in this AGREEMENT. WSU shall use the fiber optic cable strands acquired hereunder for providing services to the WSUF offices located in the Town Centre Building, or such other offices in that location as WSU shall deem, from time to time, appropriate and desirable.

I. STATEMENT OF WORK

Each party shall do all things necessary for or incidental to the performance of the duties set forth below.

A. Recitation of Installation of Fiber Optic Cable by PORT: In order to install the fiber optic cable, the PORT did the following:

1. PORT arranged for the necessary permits to install conduit from the Town Centre Building to a location adjacent to the Palouse River using direct boring technology and attached the fiber optic cable overhead on an existing messenger hung on utility poles owned by Avista Utilities.
2. PORT arranged to have the innerduct installed using direct boring technology and to restore all roads, sidewalks, and landscaping that it disturbed by the boring activities.
3. PORT installed 48 strands of fiber from the Town Centre Building to WSU's Neill Hall main communication facility (MCF) as shown in Attachment A. The fiber was run through the pathways described above up to the point that it entered WSU's conduit after crossing the Palouse River. PORT pulled the fiber cable through an existing innerduct to the point that the conduit entered WSU's steam tunnel system. From that point on PORT tied the cable to WSU's communications messenger in the steam tunnel.

B. Ongoing Duties of PORT

1. PORT will be responsible for the maintenance of the fiber optic cable from the point that it exits the Town Centre Building to the point that it enters WSU's conduit.
2. 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 Service's (IS) Voice and Data Systems Manager at 335-0690 and the IS Network Operations that is staffed 24/7 at 335-4949.

3. 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.
4. As applicable, 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 their respective property, and all subcontractors shall comply with the rules and regulations of WSU while on its 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.
5. PORT will lease six (6) strands of its fiber optic cable between Neill Hall and the Town Centre to WSU.

B. Duties of WSU

1. WSU shall pay the PORT its portion of the maintenance costs as set forth in the Payment Clause below for maintenance of the fiber optic cable between the point it leaves the Town Centre Building to the point that it enters WSU steam tunnel system near the AT&T point of presence (POP).
2. WSU will be responsible for the routine maintenance of all fiber optic cable and electronics in WSU's steam tunnels and pathways up to the point that the cable leaves the WSU owned conduit.

II. PERIOD OF PERFORMANCE

Subject to its other provisions, the period of performance of this AGREEMENT shall commence on September 9, 2013. This AGREEMENT shall extend for twenty (20) years from its commencement date unless terminated earlier as provided in this AGREEMENT. Given the installation and splicing of the fiber optic cable has been successfully completed, this AGREEMENT shall be for the lease of the cable as provided in this AGREEMENT. This AGREEMENT can be renewed for additional five (5) year increments with written approval by both parties.

III. LEASE

PORT hereby leases to WSU use of six (6) of the strands of its fiber optic cable, running from Neill Hall to the Town Centre Building for a total length for all six (6) strands of 5,229 lineal feet.

IV. PAYMENT

WSU shall pay to the PORT for the lease of six (6) strands of fiber optic cable the sum of Two Thousand Thirty dollars (\$2,030.00) per year, payable in two (2) semi-annual installments which will be invoiced in January and July and due thirty (30) days thereafter.

V. MAINTENANCE

Except as expressly provided herein, PORT shall perform all routine maintenance of the fiber optic cable, and PORT shall repair all damage to the fiber optic cable.

VI. BILLING PROCEDURE

PORT shall send invoices to WSU at the end of each six-month period for the lease payments due. These lease payments shall not be due and payable until thirty (30) days after the date of each invoice. WSU shall make payments to the PORT by check or wire transfer.

VII. LIABILITY FOR DAMAGE

PORT shall defend all claims for damages to persons or property arising 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 cable, including the strands leased by WSU, is destroyed or otherwise rendered permanently inoperable by any cause beyond the reasonable control of the parties or any of them, or if extraordinary maintenance or capital improvements are needed to either cable, the parties shall confer in good faith on a mutually acceptable resolution for sharing the costs of the needed repair, replacement, or improvement based on a pro rata share of the number of strands in the fiber run. 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.

If any of the fiber optic cable covered by this AGREEMENT is damaged solely as a result of negligent or intentional acts of one of the parties to this AGREEMENT, 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.)

VIII. INSURANCE AND HOLD HARMLESS

Except as otherwise provided in Paragraph VII above, each party shall indemnify, and hold harmless the other party or parties 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 ten million dollar (\$10,000,000) commercial general liability policy and an automobile policy in the amount of ten million dollars (\$10,000,000). WSU shall be named as an additional insured on the PORT's policies.

IX. INDEPENDENT CAPACITY

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.

X. NONDISCRIMINATION

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 on the basis of race, religion, creed, color, national origin, families with children, sex, marital status, sexual orientation (including gender identity), age, genetic history, honorably discharged veteran or military status, or the presence of any sensory, mental,

or physical disability, or the use of a trained dog guide or service animal by a person with a disability, in compliance with (a) Presidential Executive Order 11246, as amended, including the Equal Opportunity Clause contained therein; (b) Section 503 of the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans Readjustment Act of 1974, as amended, and the Affirmative Action Clauses contained therein; (c) the Americans with Disabilities Act of 1990, as amended; and (d) applicable non-discrimination laws of the state of Washington. Breach of this covenant may be regarded as a material breach.

XI. 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.

XII. TERMINATION

This AGREEMENT may be terminated early for the convenience of the parties upon a one (1) year notice by either party. Any unearned lease payments shall be refunded by the PORT to WSU.

XIII. 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.

XIV. 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.

XV. ASSIGNMENT

The rights and responsibilities of any party under this AGREEMENT may not be assigned without the express written consent of the other party, which consent shall not be unreasonably withheld.

XVI. 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 original AGREEMENT.

XVII. 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.

XVIII. ENTIRE AGREEMENT

This AGREEMENT contains 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.

XIX. 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 is:

Name:	Mel Taylor
College or Department:	Real Estate Office
Address:	PO Box 641045, Pullman, WA 99164-1045
Telephone:	(509) 335-2447
Fax:	(509) 335-4050

Email: mhtaylor@wsu.edu

The Contract Administrator for the Port of Whitman is:

Name Joseph R. Poire
Address: 302 N Mill Street, Colfax, WA 99111
Telephone: (509) 397-3791
Fax: (509) 397-4758
Email: joepoire@portwhitman.com

XX. 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.

WASHINGTON STATE UNIVERSITY PORT OF WHITMAN COUNTY

Recommended by:

Approved by:

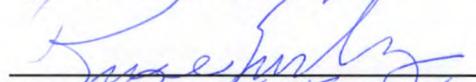

Name: Mel Taylor
Title: Exe Director of Real Estate
Date: 1-29-14


Name: Joseph R. Poire
Title: Executive Director
Date: 01-28-14

Approved by:

Approved as to form:


Name: Amanda Owen
Title: Contracts Manager
Date: 1/29/14


Name: BRUCE EUSEBY
Title: Port Attorney
Date: 01/28/2014

Attachment A

Map Exhibit A : Pullman Vault 37 (WSU Foundation) to Pullman Vault 69 (Neill Hall)

