



INTERLOCAL AGREEMENT NO. 8628
Between
PUBLIC UTILITY DISTRICT NO. 1 OF FRANKLIN COUNTY
And
PORT OF PASCO

THIS AGREEMENT is made and entered into this 26 day of September, 2014, by and between the Public Utility District No. 1 of Franklin County, a Municipal Corporation, hereinafter referred to as "District" and Port of Pasco, a Municipal Corporation, hereinafter referred to as "The Port." "Party" means a party to this Agreement and "Parties" means, collectively, both Parties to this Agreement, unless the context clearly requires a different construction.

RECITALS

WHEREAS RCW 53.08.370 authorizes port districts to contract for, interconnect, purchase, acquire, and maintain telecommunications facilities within or without the district's limits for the district's own use; and

WHEREAS RCW 54.16.330 authorizes public utility districts to lease, license, provide, contract for, operate and maintain telecommunications facilities within or without the district's; and

WHEREAS, RCW 39.34 et seq. authorizes District and The Port to enter into interlocal agreements for the purpose of providing municipal services, and

WHEREAS, The Parties wish to develop a business relationship concerning the use and placement of fiber cable and associated equipment in accordance with their identical authority to operate and maintain telecommunication facilities;

NOW, THEREFORE, the Parties agree as follows:

1. **Dark Fiber**
There will be times where either Party will want to acquire the right to use dark fiber of the other Party, and per this Agreement the Party with excess dark fiber will, if sufficient excess dark fiber exists, allow use of such dark fiber following a written application for such use and execution of a separate written agreement containing terms and conditions for use of such dark fiber. The determination of whether sufficient excess dark fiber exists will be at the dark fiber owner's sole discretion. The terms and conditions of such dark fiber use will be included in the Service Order Summary Agreement – Dark Fiber (the "SOS-DK") which must be executed by the Parties.

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2. **Indemnification**
The Party acquiring the right to use the other Party's excess dark fiber (the "Using Party") shall defend, indemnify, and hold harmless the other Party, its officers, employees, and agents from any and all costs, claims, judgments or awards of damages arising out of or in any way resulting from the negligent acts, omissions, or use of dark fiber by the Using Party or its agents, employees, or officers in the use of the other Party's excess dark fiber.
3. **Consideration**
Either Party acquiring the right to use the other Party's excess dark fiber will provide fair consideration for such use to the dark fiber's owner.
4. **Amendment**
This Agreement may only be amended by mutual, written agreement of the signatories to this Agreement.
5. **Interlocal Cooperation Act Provision**
Subject to Sections 1, 2, and 3 each Party shall be solely responsible for all costs, materials, supplies and services necessary for their performance under the terms of this Agreement; all property and materials secured by each Party in the performance of this Agreement shall remain the sole property of that Party; and, all funding incident to the fulfillment of this Interlocal Agreement, shall be borne by each Party necessary for the fulfillment of their responsibilities under the terms of this Agreement. No special budgets or funds are anticipated, nor shall be created incident to this Interlocal Agreement. It is not the intention that a separate legal entity be established to conduct the cooperative undertakings, nor is the acquisition, holding, or disposing of any real or personal property anticipated under the terms of this Agreement. The Parties will jointly administer the cooperative undertaking set out in this Agreement.
- This Agreement shall be filed with the Franklin County Auditors, or alternatively, posted on the Parties' respective websites as required by RCW 39.34.
6. **Term/Termination**
This Agreement shall have an initial term of five (5) years commencing on the effective date provided above, and may be renewed for additional (5) year terms with ninety (90) days notice prior to the end of the current term. For the one (5) year renewal to be effective The Port must provide District with a ninety (90) day written request to renew, and District must issue its written concurrence to renew this Agreement. If the ninety (90) day notice is not given, the Agreement shall renew automatically for one-year terms until either party provides notice of cancellation at least sixty (60) days before a new one-year term begins.

However, if a SOS-DK remains open that has not yet expired as of the expiration of this Agreement, then such SOS-DK and all terms in this Agreement will remain in effect until the SOS-DK has expired or the SOS-DK is otherwise terminated.

7. **Entire Agreement**

The Parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are hereby expressly excluded.

8. **Nonwaiver**

Waiver of any default or breach under this Agreement shall not be deemed to be a waiver of any other prior or subsequent default or breach and shall not be construed to be a modification of the terms of this Agreement unless stated to be such through written agreement of the Parties hereto.

9. **Invalid Provisions**

If any provision of this Agreement shall be held invalid, the remainder of this Agreement shall not be affected if such remainder would then continue to serve the purposes and objectives of the Parties.

10. **Applicable Law**

Should any dispute arise concerning the enforcement, breach, or interpretation of this Agreement, resolution shall be by presentation to the General Manager of the District and the Executive Director of the Port, and in the event the dispute is not then able to be resolved, it shall be resolved by submitting the dispute to binding arbitration. The binding arbitration shall proceed according to the Washington State Superior Court Mandatory Arbitration Rules (MAR) for a case assigned for arbitration in Franklin County Superior Courts, and the prevailing Party shall be entitled to its reasonable attorney fees and costs. If the Parties cannot agree on an arbitrator to decide the dispute within 15 days following a Party's written demand for arbitration is received by the other Party, the arbitrator shall be appointed by the presiding judge of the Superior Court of Franklin County, Washington.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized officers and/or agents on the day and year first written above.

THE PORT OF PASCO

PUBLIC UTILITY DISTRICT NO. 1 OF
FRANKLIN COUNTY

BY: 

BY: 

TITLE: President, Board of Commissioners

TITLE: GENERAL MANAGER

PRINT NAME: James T. Klindworth

PRINT NAME: EDWARD J. PROST

DATE: September 25, 2014

DATE: OCTOBER 29, 2014

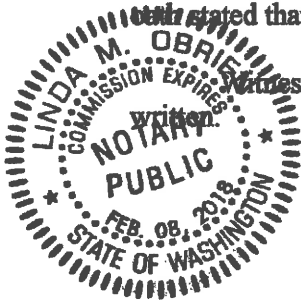
STATE OF WASHINGTON)

: ss.

County of Franklin)

On this 25th day of September, 2014, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared JAMES T. KLINDWORTH to me known to be the President of the Board of Commissioners of Port of Pasco, the municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

Witness my hand and official seal hereto affixed the day and year first above



Linda M. O'Brien

NOTARY PUBLIC in and for the State of Washington

Residing at: Kennewick

My Commission Expires: 2/8/2018

STATE OF WASHINGTON)

: ss.

County of Franklin)

On this ___ day of _____, 2012, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____ to me known to be the _____ of Public Utility District No. 1 of Franklin County, the municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

Witness my hand and official seal hereto affixed the day and year first above written.

NOTARY PUBLIC in and for the State of Washington

Residing at: _____

My Commission Expires: _____



BROADBAND SERVICE ORDER SUMMARY AGREEMENT FOR DARK FIBER TO INTERLOCAL AGREEMENT NO. 8628

This Service Order Summary Agreement for Dark Fiber, hereinafter called "SOS-DK", made and entered into effective the 29 day of October, 2014, by and between The Port of Pasco, a Washington Municipal Corporation, hereinafter called "The Port" and Public Utility District #1 of Franklin County, a Washington Public Utilities District, hereinafter called "District". Services provided in this SOS-DK are subject to the terms and conditions described herein and in the associated Interlocal Agreement No. 8628 dated 9.28, 2014, hereinafter called "ILA".

RECITALS

WHEREAS, The Port desires to lease two dark fiber strands ("FIBER") on District's communications network; and District is agreeable to provide FIBER and allow The Port to connect its signal cable to the District's communications network, and

WHEREAS, District has determined, in its sole opinion, that excess FIBER capacity exists between the locations requested by The Port, which is described in Exhibit A.

NOW, THEREFORE, The Port and District agree as follows:

1. FIBER Lease and Service Conditions.

The Port's lease of FIBER does not authorize and shall not be construed to authorize The Port to have exclusive use of District's communications network.

The Port's lease of FIBER under this SOS-DK is limited to the facilities and locations described in Exhibit A. Additional FIBER leases (if any) will be governed by a separate written agreement. District is and shall remain the sole authority for determining excess capacity within its communications network.

2. In-Kind Payment.

As consideration for the FIBER to be provided by District to The Port, The Port will provide the District with access to 2100' of 2" conduit during the term of this SOS-DK for as long as this SOS-DK is in effect.

3. Term.

This SOS-DK shall have an initial term of five (5) years commencing on the effective date provided above, and may be renewed for additional (5) year terms with ninety (90) days notice prior to the end of the current term. For the one (5) year renewal to be effective The Port must provide District with a ninety (90) day written request to renew, and District must issue its written concurrence to renew this SOS-DK. If the ninety (90) day notice is not given, the SOS-DK shall renew automatically for one-year terms until either party provides notice of cancellation at least sixty (60) days before a new one-year term begins..

If a Court of competent jurisdiction shall determine that either the District or The Port does not have authority to perform under this SOS-DK and such court ruling becomes final, this SOS-DK shall be void.

If The Port chooses to discontinue fixed period service prior to completion of the initial term of this SOS-DK, discontinuance charges will apply. The Port will pay discontinuance charges equal to 100% of the District's actual construction costs for all work completed at time of discontinuance by The Port, with such payment becoming due thirty (30) days following The Port discontinuance of service.

4. Facilities and Ownership

District will pay for and own all of its communication system local loop backbone infrastructure and related dark fiber. The ownership of dark fiber leased in connection with this SOS-DK shall not be deemed to change as a result of this SOS-DK.

The Port shall purchase and own all additional communications infrastructure necessary to utilize the dark fiber for their business purposes.

Dark fiber route and points of interconnectivity and demarcation shall be as described more fully in Exhibit A. Should the FIBER fail necessitating repair services, the District and its agents shall have the right and privilege of reasonable ingress, egress, and regress to the FIBER facilities during the duration of this SOS-DK, subject to reasonable Port access control requirements set out in Section 6 below.

On termination of this SOS-DK, District and The Port shall each be responsible for maintaining or dismantling, as the case may be, the network infrastructure that each owns.

5. Service Level Agreement

District does not guarantee uninterrupted availability. The District shall not be liable to The Port or any other person, for any temporary failure, to provide dark fiber excess capacity.

In the event it is necessary (in the sole discretion of District) to temporarily suspend the availability of FIBER for the purpose of preventive maintenance, repairs, or improvements to the District communication systems, the District shall have the right to suspend delivery temporarily. For non-emergencies, the District shall provide 48 hours of notification to The Port prior to the suspension of FIBER services delivery.

Following scheduled maintenance or unscheduled failures in District communications infrastructure, the District will make needed repairs to restore capacity with diligence and complete such repairs as soon as is reasonable and practical.

Where repair service is required due to negligence on the part of The Port or its contractors, said repairs will be performed by District and will be billed to The Port on a time and material basis; otherwise, there shall be no charge to the The Port for any maintenance or repair service, other than the monthly lease charge as set forth in section 2.

6. Use of the Fiber

General Provisions. All work performed on the FIBER by The Port, its contractors or assignees, shall be done in accordance with applicable federal, state and local codes. The Port shall comply with all laws, rules and regulations relating to fire prevention, control and suppression, and all safety rules and regulations

Any modification by The Port to District communication infrastructure or interface equipment shall be performed only with the prior knowledge and written consent of District.

All work by The Port shall be done in a professional workmanlike manner and shall be maintained so as not to be hazardous to life or property. If any damage to District facilities is caused by The Port, the District shall be immediately notified of such damage and repairs shall be performed by District or under strict District supervision as determined solely by the District; further, all costs to repair or replace damage to District property caused by The Port, will be the responsibility of The Port.

All equipment to be installed by The Port shall be FCC type approved, where applicable. However, any such FCC approval shall not relieve The Port of responsibility to correct incompatibility or interference problems.

The Port agrees to exercise care and caution to preserve the integrity of all operation systems, equipment and facilities located on the Port's business premises covered by this SOS-DK.

The Port will allocate 2100' of existing conduit for the Districts sole use at the Tri-Cities Airport. This conduit will be used for the placement of District fiber which includes the FIBER. The location of the 2100' of conduit is described in Exhibit A.

Interference to District's Communications Network. In the event that radio frequency interference to the District's FIBER and/or its communications network should result from The Port's equipment, installations, or connections, The Port shall be responsible for immediately ceasing operation and eliminating such interference to the satisfaction of the District before resuming operations and use of the FIBER.

If interference results from The Port's operations, District may order corrective measures be taken immediately and that the interference be eliminated within five (5) working days from receipt of notice. In the event operation of equipment or other actions by The Port render District's equipment unusable, The Port, upon notification by District, shall immediately cease such operation or actions. The Port will be responsible and will assume the cost of the corrective measures needed to eliminate the interference or modify it to the satisfaction of District.

Elimination of interference shall be accomplished first by modification of The Port's equipment and then, if not corrected, by modification of District equipment, if such can be done reasonably after District's written consent, at the expense of The Port.

Facility Access Conditions. The Port shall have no access rights to District property, equipment or communications infrastructure other than the District's Collocation facility on an as-needed basis which is subject to reasonable notification requirements.

The Port shall allow District personnel and agents to work on District owned fiber optic lines and equipment located on The Port's premises , subject to reasonable notification requirements. Provided, however, any optic lines and equipment in the secured area of the Tri Cities Airport requires an escort by Port personnel..

Description of FIBER Service and Rates, Interconnectivity and Demarcation. The FIBER shall route from the The Port's interconnection point at the Tri-Cities Airport, located at 3601 N. 20th Ave, to the Port's Osprey Pointe facility, located at 1100 Osprey Pointe Blvd. The FIBER shall be patched through the District's POP at 1411 W. Clark and Ruby Street. The FIBER's use is limited to the support of The Port's fiber-optic internal network.

District will be responsible for maintaining the integrity of the FIBER. Any testing beyond the District's equipment will be the responsibility of The Port.

The Port shall own and be responsible for all internal communications infrastructure necessary to utilize the FIBER.

There will be no laterals or drops of the FIBER between the Tri-Cities Airport and Osprey Pointe

The Port shall only use FIBER for purposes specified in this SOS-DK. No other assignment or sublease of the FIBER is authorized.

Exhibit B sets out the relative values of the 2100' of conduit and the use of 2 strands of dark fiber, which are essentially equal and form the basis of Section 2.

7. Warranties, Limitation of Liability and Assumption of Risk

Nothing in this SOS-DK or the provision of services shall create or impose liability on the District or The Port for the acts of the other. However, as noted in Section 5 herein, the District does not guarantee uninterrupted availability. No liability shall attach to the District for failure of FIBER, communication facilities, or failure to have FIBER capacity available as set forth in Exhibit A of this SOS-DK. As such, the District shall not be liable for any damages, including consequential damages, suffered by The Port or any other person or entity due to any failure of the FIBER, communications facilities or dark fiber capacity, and The Port further agrees to indemnify and hold the District harmless, including any costs and attorney fees incurred by the District, as to any claims made against the District resulting from the negligence of The Port or the breach of this contract by The Port.

District warrants that its communications network meets applicable federally mandated technical standards, and that it has the ability to enter into this SOS-DK and to perform in accordance with its terms.

8. Authority.

Each party warrants to the other that it has ability to enter into and perform this SOS-DK, it has taken all action required to authorize execution of this SOS-DK, and this SOS-DK is binding upon and enforceable against it.

9. Entire SOS-DK.

This SOS-DK, together with the ILA referred to above and incorporated herein by reference, contain the entire agreement and understanding of the parties with respect to the entire subject matter hereof, and there are no representations, inducements, promises or other agreements, oral or otherwise, not embodied herein. Any and all prior discussions, negotiations, commitments and understandings relating to the subject matters hereof are merged herein. There are no conditions precedent to the effectiveness of this SOS-DK other than as stated herein, and there are no related collateral agreements existing among any of the parties that are not referenced herein.

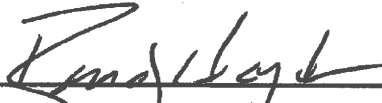
10. Amendments And/Or Modification.

Neither this SOS-DK nor any term or provision hereof, may be changed, waived, discharged, amended, modified or terminated orally, or in any manner other than by an instrument in writing signed by the parties.

IN WITNESS WHEREOF, each of the representatives executing this SOS-DK on behalf of the District and The Port warrant he/she is an authorized signatory of the entity for which he/she is signing, and has sufficient authority to execute this SOS-DK.

THE PORT OF PASCO

PUBLIC UTILITY DISTRICT NO. 1 OF
FRANKLIN COUNTY

BY: 

BY: 

TITLE: EXEC. DIR

TITLE: GENERAL MANAGER

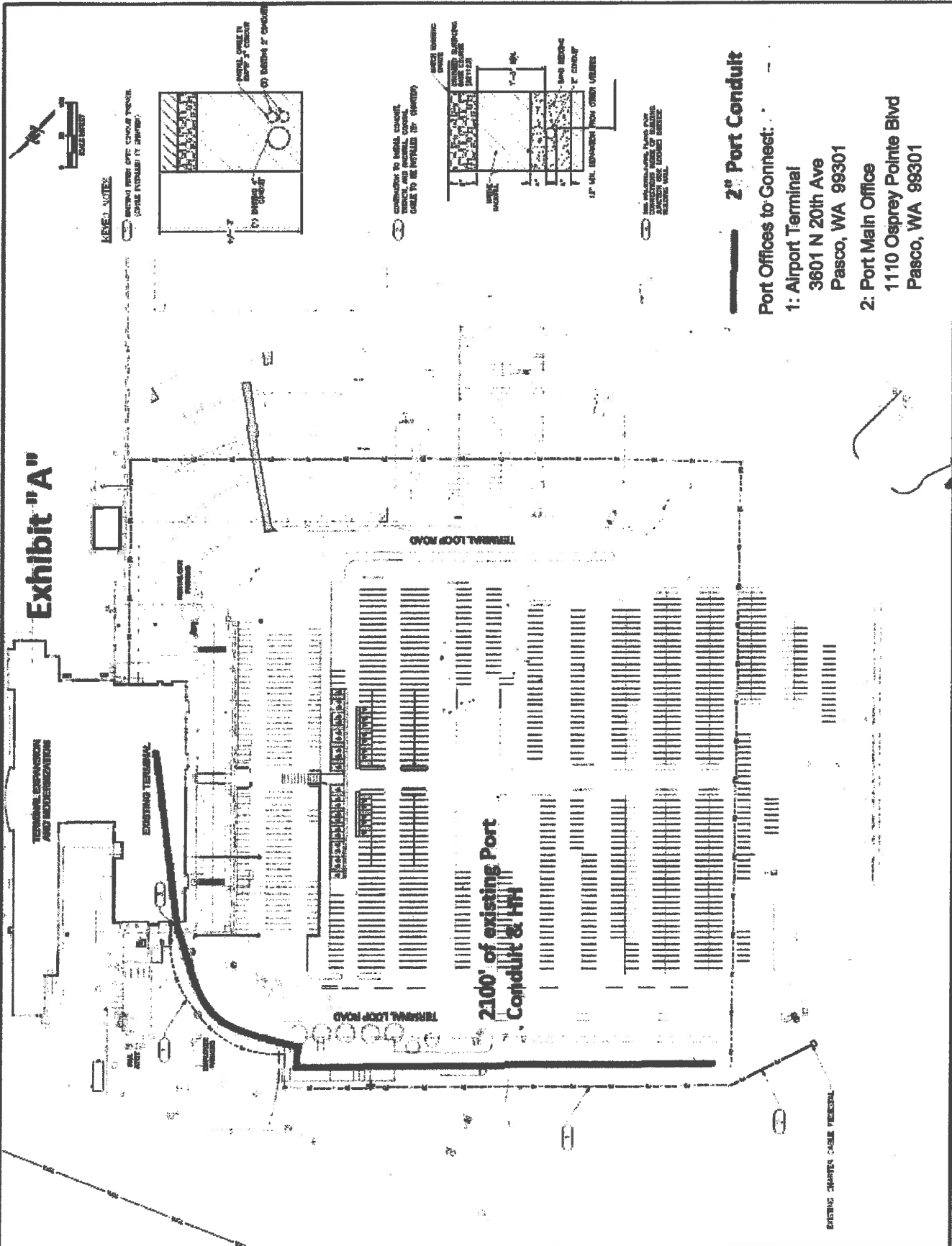
PRINT NAME: RANDY HAYDEN

PRINT NAME: EDWARD J. BROST

DATE: SEPT 25, 2014

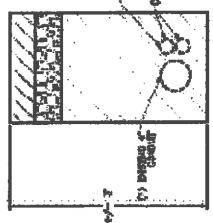
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Exhibit "A"

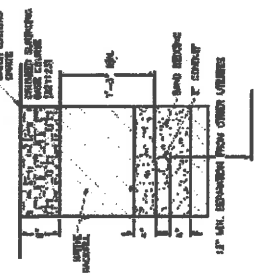


GENERAL NOTES:

1. EXISTING PORT OFFICE CONDUIT WORK (AS SHOWN) SHALL BE MAINTAINED.



2. CONDUIT TO BE INSTALLED TO PORT OFFICE SHALL BE INSTALLED TO PORT OFFICE.



3. ALL CONDUIT SHALL BE INSTALLED TO PORT OFFICE SHALL BE INSTALLED TO PORT OFFICE.

2" Port Conduit

Port Offices to Connect:

- 1: Airport Terminal
3601 N 20th Ave
Pasco, WA 99301
- 2: Port Main Office
1110 Osprey Pointe Blvd
Pasco, WA 99301

**EXHIBIT B
VALUES**

All pricing is based on an estimate provided by both Parties.

	<u>Number of Strands</u>	<u>Miles per Strand</u>	<u>Standard Rate per Mile</u>
Osprey Pointe to Tri-Cities Airport	2	7	\$50.00
Standard Total Recurring Monthly Charge			\$700.00
Standard Total for MRC for 5 yr Term			\$42,000
Estimated District Construction Cost (if District had to build-out 2100' of conduit)			\$44,700

Fibers to be assigned to The Port:

OFC Location:

1) OFC4-FRK1:37-38 x-connect to OFC2-RUB1: 81-82

RUB Location

2) OFC2-RUB1:81-82 x-connect to RUB2-OPR4:35-36

