

INDEFEASIBLE RIGHT OF USE AGREEMENT

THIS INDEFEASIBLE RIGHT OF USE AGREEMENT (“Agreement”) is made and entered into as of November 10, 2021 (the “Effective Date”) between **SOUND INTERNET SERVICES, INC., D/B/A POGOZONE**, a Washington limited liability company having its principal offices at 114 W. Magnolia St Ste 400-147, Bellingham, WA 98225 (“PogoZone” or “Grantor”), and the **PORT OF BELLINGHAM**, a Washington municipal corporation having its principal offices at 1801 Roeder Avenue, Bellingham, WA 98225 (“Port” or “Grantee”). PogoZone and the Port are sometimes individually referred to herein as a “Party” or collectively as the “Parties”.

RECITALS

1. PogoZone owns, operates, and maintains fiber optic communication networks within the State of Washington.
2. PogoZone intends to extend its network by constructing new fiber optic communications facilities in certain areas in the region of Whatcom County, Washington, identified in Exhibit A.
3. Pursuant to RCW 53.08.370, the Port is authorized to construct, purchase, acquire, develop, finance, lease, license, handle, provide, add to, contract for, interconnect, alter, improve, repair, operate, and maintain any telecommunications facilities within or without the Port’s geographic limits for its own use and for the provision of wholesale telecommunications services.
4. The Port desires to facilitate the development of, and to administer, an open access communications network to enable the provision of Internet access service by multiple Port-approved providers to homes and businesses in the areas depicted in Exhibit A, Appendix 2.
5. In order to implement its open access network, the Port desires to obtain an indefeasible right of use (“IRU”) in certain fiber optic strands in the Grantor Network as it is constructed by PogoZone, with maintenance of IRU Fiber to be performed by PogoZone. In exchange for the compensation described in Exhibit B, PogoZone desires to grant such IRU to the Port, to maintain the IRU Fiber, and to otherwise support and cooperate with the Port in the use of IRU Fiber by the Port, Approved ISPs, and other entities, all in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, the Parties do hereby agree as follows:

1.0 TABLE OF EXHIBITS MADE PART OF THIS AGREEMENT

Exhibit A:	Construction Plan
	Appendix 1: Grantee Service Area
	Appendix 2: Construction Schedule
	Appendix 3: Description of IRU Fiber
Exhibit B:	Fees and Charges
Exhibit C:	Test Result Template

2.0 DEFINITIONS

- 2.1 “Agreement” means this Indefeasible Right of Use Agreement, and any and all Exhibits, Addenda, and Attachments to which the Parties may agree from time to time, and which reference this Indefeasible Right of Use Agreement.

- 2.2 “Applicable Standards” means all applicable rules and regulations, as well as engineering and safety standards, governing the installation, maintenance, and operation of Grantor Network facilities and the performance of all work in public and private rights of way, and includes the most current versions of National Electric Safety Code (“NESC”); the National Electrical Code (“NEC”); the regulations of the Federal Communications Commission (“FCC”); the Occupational Safety and Health Administration (“OSHA”), and other pertinent federal agencies; provisions of a city, county, or State of Washington building, construction, zoning, and safety codes; and rules and regulations relating to permits for occupation of public rights of way; each of which is incorporated by reference in to this Agreement, and/or other reasonable safety, engineering, architectural, or aesthetic requirements of a local, state, or federal authority having jurisdiction over such facilities.
- 2.3 “Approved ISP” means a provider of Internet access services that the Port has determined has the financial, technical, and managerial qualifications to provide Communication Services to Customers using IRU Fiber.
- 2.4 “Associated Property” means real and personal property owned by PogoZone that is attached to the Grantor Network and necessary for utilization of the Grantor Network (including IRU Fiber) to provide Communication Services.
- 2.5 “Authorizations” means the permissions a Party must have to perform its obligations under this Agreement, which may include franchises; licenses; permits; zoning approvals; variances; exemptions; grants of authority to use public rights of way or facilities; easements to private property; agreements to make attachments to poles, ducts, conduits, towers, buildings, rooftops, manholes, and the like; and any other approval of a governmental authority or third persons with respect to (i) the construction, installation, repair, maintenance, operation, or use of tangible or intangible public or private property, as the case may be; or (ii) any requirement by a governmental authority for the engagement in a business or enterprise.
- 2.6 “Authorization Fees” means all permit, right-of-way, easement, pole attachment, franchise, encroachment, or license fee, charge, or assessment of any kind applicable to the placement and maintenance of the Grantor Network and Associated Property, whether imposed by a governmental authority or a private entity.
- 2.7 “Communication Services” means the services provided by an Approved ISP to a Customer using the IRU Fiber, and may include, without limitation, broadband Internet access service, data transmission service, IP transport, VoIP service, telecommunications service, and video service, regardless of technology used, as set forth in service agreements between an Approved ISP and a Customer.
- 2.8 “Connectivity Service” means services provided by PogoZone to an Approved ISP to enable the ISP to utilize the IRU Fiber to provide retail Communication Service to a Customer over the PON System. Connectivity Service involves access by an Approved ISP to the Grantor Network via collocation at a suitable, mutually agreed facility.

- 2.9 “Construction Plan” means the documentation describing the Grantee Service Area, Construction Schedule, and other relevant information provided by PogoZone, included as Exhibit A to this Agreement.
- 2.10 “Customer” means a residence, business, or other entity that lawfully receives Communication Services from an Approved ISP via the IRU Fiber.
- 2.11 “Grantee Service Area” means the area in which the Port may utilize IRU Fiber to administer an open-access communication network for the provision of Communication Services by Approved ISPs. The initial Grantee Service Area is depicted in Exhibit A, Appendix 1.
- 2.12 “Grantor Network” means the fiber optic network and Associated Property constructed, owned, and controlled by PogoZone in the region of Whatcom County, Washington. The Grantor Network includes the IRU Fiber.
- 2.13 “IRU Fiber” means fiber optic strands within the Grantor Network located in the Grantee Service Area, in which an exclusive indefeasible right of use is granted by PogoZone to the Port pursuant to this Agreement. The number or percentage of fiber optic strands included in the IRU Fiber for each Grantee Service Area is set forth on Exhibit A, Appendix 3 hereto.
- 2.14 “Location” means a residence, entity, or business within the Grantee Service Area.
- 2.15 “Maintenance” or “Maintain” means work that must be performed upon, or to, the Grantor Network or IRU Fiber to ensure the continuity of acceptable signal transmission to and from a Customer, via an Approved ISP, for the purpose of delivering Communication Services by an Approved ISP in a manner consistent with industry standards, this Agreement, and any applicable service level agreements. Unless otherwise agreed, Maintenance shall not include any work associated with facilities or equipment owned by an entity other than PogoZone.
- 2.16 “PON System” means a passive optical network system on the IRU Fiber that is lit by PogoZone and available for use by Approved ISPs or PogoZone customers for Connectivity Services, so that Approved ISPs or PogoZone can provide Communication Services to retail customers.
- 2.17 “Section” means an identified subpart of the Grantor Network within a Grantee Service Area as specified in Exhibit B under the IRU Fee Payment Schedule, such as a “phase.”
- 2.18 “Service Drop” means the fiber optic cable that connects the Grantor Network to a Customer’s Location from the closest technically feasible point in the right of way.
- 2.19 “Traffic” means information or data transmitted through the use of activated or “lit” fiber optic cable.

3.0 GRANT OF IRU

3.1 IRU Grant.

3.1.1 Subject to the Port's payment of the IRU Fee, in accordance with Section 5.1 and Exhibit B, and the acceptance process described in Section 4.2, PogoZone grants to the Port, and the Port accepts and acquires from PogoZone, an exclusive IRU with respect to certain inactivated/unlit "dark" fiber optic strands contained within the Grantor Network in the Grantee Service Area, as depicted in Exhibit A.

3.1.1 PogoZone shall specifically identify IRU Fiber strands granted to the Port upon completion of construction and testing.

3.1.2 The IRU shall include the nonexclusive right to utilize Associated Property, and to indirectly benefit from Authorizations and Underlying Rights (as described in Section 3.4), to the extent necessary to use and enjoy the IRU Fiber.

3.2 **Effective Date of IRU.** The Port's rights in IRU Fiber shall be made effective upon the Port's acceptance of IRU Fiber following construction by PogoZone, pursuant to Paragraphs 4.1 and 4.2. The Parties anticipate that PogoZone will present IRU Fiber for acceptance by the Port as testing of each Section is complete, with payment of the IRU Fee by the Port to be made corresponding to each Section as set forth in Exhibit B.

3.3 **Rights Reserved to Grantor.** PogoZone shall have the right to grant and renew rights to any entity to use the Grantor Network or any other property of PogoZone; *provided*, however, that during the Term, PogoZone shall have no right to grant and renew any rights of use to any entity (other than the Port) with respect to IRU Fiber except for the rights reserved over the PON System, as further detailed in Paragraph 3.3.1 below. The IRU does not include the right of the Port to own, control, maintain, modify, or revise the Grantor Network or Associated Property, or the right of physical access to, the right to encumber in any manner, or other use of the Grantor Network except as expressly set forth herein. The IRU granted herein shall not cause a transfer to the Port of legal ownership or title in the Grantor Network and Associated Property, which will remain held by PogoZone. The Port shall not cause or permit to be caused any lien or encumbrance to be placed upon IRU Fiber by any entity.

3.3.1 PogoZone reserves the right to provide Connectivity Services to requesting Approved ISPs or any customer of PogoZone over the PON System on the IRU Fiber for the purpose of enabling an Approved ISP or PogoZone customer to connect to and utilize lit IRU Fiber from a reasonable, mutually agreed location ("Connecting Point") to deliver Communication Services (including retail Internet access service) to Customers. PogoZone and the Port will determine the number of IRU Fibers reserved for the PON System during the design phase for each Section.

3.3.1.1 Pogozone shall provide Connectivity Services over the PON System to Approved ISPs or Pogozone customer by entering into a separate agreement with the Approved ISP or Pogozone customer.

3.3.1.2 PogoZone shall have the right to charge Approved ISPs and PogoZone customers a Network Connection Fee, Wholesale Internet Service (Residential) Fees, and Wholesale Internet Service (Business) Fees for Connectivity Services over the PON System in accordance with Exhibit B.

3.3.1.3 PogoZone shall provide a monthly report to the Port detailing the number of Approved ISPs or PogoZone customers receiving Connectivity Services over the PON System.

3.3.1.4 In exchange for PogoZone's reservation of the right to provide Connectivity Services over the PON System on the IRU Fiber, PogoZone shall remit a reservation fee for use of the IRU Fiber for the PON System (the "Reservation Fee") in accordance with Exhibit B.

3.4 **Underlying Rights.** Grantor has obtained certain rights of way and related or similar rights for construction and operation of the Grantor Network (the "Underlying Rights"). Grantor will use its commercially reasonable best efforts to maintain the Underlying Rights for the Term of this Agreement. The IRU is subject to the terms of the Underlying Rights, and subject to the terms under which the right of way is owned or held by the grantor of the Underlying Rights, including, but not limited to, covenants, conditions, restrictions, easements, reversionary interests, bonds, mortgages and indentures, and other matters, whether or not of record, and to the rights of tenants and licensees in possession. The IRU granted hereunder is further subject and subordinate to the prior right of the grantor of the Underlying Rights to use the right of way for other business activities, including energy or railroad operations, telecommunications uses, pipeline operations, or any other purposes. The rights granted herein are expressly made subject to each and every limitation, restriction, or reservation affecting the Underlying Rights. Nothing herein shall be construed as to be a representation, warranty, or covenant of Grantor's right, title, or interest with respect to the right of way or the Underlying Rights.

3.5 **No Right of Physical Access to Grantor Network or IRU Fiber.** Unless otherwise expressly agreed by PogoZone in writing (such agreement not to be unreasonable withheld), neither the Port nor any Approved ISP shall have the right to physically access the Grantor Network, including IRU Fiber. All physical activities relating to the Grantor Network, including splicing, shall be undertaken solely by PogoZone or its authorized agent.

4.0 POGOZONE'S RESPONSIBILITIES

4.1 Extension of Grantor Network.

- 4.1.1** PogoZone will construct the Grantor Network within the designated Grantee Service Areas, including IRU Fiber, substantially in accordance with the Construction Plan included as Exhibit A (as amended from time to time as agreed). Prior to construction in a Grantee Service Area, or a portion thereof, PogoZone will provide a system design for each such Grantee Service Area for the approval of Grantee, which approval shall not be unreasonably denied, conditioned or delayed. At the Port's reasonable request, PogoZone shall provide additional detailed information relating to construction of a particular Section.
- 4.1.2** Notwithstanding the foregoing, PogoZone may elect to not construct the Grantor Network for all or a portion of a Section for a bona fide technical or commercial reason. In such case, PogoZone shall notify the Port in writing describing the change in detail, and the Port shall not be obligated to pay the IRU Fee corresponding to that Section, as amended. Other than the initial deposit, the Port will be obligated to pay an IRU Fee corresponding to a particular Section only upon completion and acceptance of such Section, as outlined in Exhibit B.
- 4.1.3** The Port acknowledges that the Construction Schedule described in Exhibit A is an estimate only, is presented on a "best efforts" basis, and depends, in part, upon PogoZone's acquisition of relevant Authorizations. PogoZone does not commit to complete construction of the Grantor Network into a Grantee Service Area, or completion of a particular Section, upon a date certain unless otherwise specified in writing by PogoZone.
- 4.1.4** PogoZone shall design, engineer, and construct the Grantor Network within the Grantee Service Area in a manner consistent with all requirements set forth in this Agreement relating to the use and capability of IRU Fiber. All engineering and design work performed by or on behalf of PogoZone requiring any certifications or licenses shall be so certified or licensed, and all design documents requiring stamping, or which are customarily stamped, shall be properly stamped by a professional engineer licensed in the State of Washington. PogoZone shall procure and install all Grantor Network facilities and equipment, shall supervise and coordinate work by PogoZone contractors, and shall obtain all necessary Authorizations, and pay all Authorization Fees, relating to Grantor Network construction. PogoZone shall perform, or supervise and direct, the construction work using PogoZone's best skill and attention, and shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the work, unless the Parties agree in writing to other specific instructions concerning these matters.
- 4.1.5** The Port acknowledges that PogoZone intends to construct and extend the Grantor Network for PogoZone's own business purposes, and that extension of the Grantor

Network into the Grantee Service Area is not undertaken at the direction of, or for the primary benefit of, the Port.

4.2 IRU Fiber Testing and Acceptance.

4.2.1 Testing. Upon completion of a Grantor Network Section that includes IRU Fiber, PogoZone shall test the IRU Fiber to identify end-to-end attenuation, end-to-end signature, and splice testing results for each strand of the IRU Fiber, and shall provide the results of such testing to the Port in a form containing substantially the same information as set forth in the Test Result Template included as Exhibit C. PogoZone shall notify the Port in writing (e-mail being sufficient) when IRU Fiber construction (or an identified Section thereof) is complete and when test results are available for verification. The written notification of completion shall specifically identify which fiber strands within the Grantor Network constitute IRU Fiber.

4.2.2 Notice of Completion to Grantee. Following written provision to the Port of test results described in subparagraph 4.2.1 above, the Port shall have thirty (30) calendar days to verify that IRU Fiber performance is consistent with industry standards. On or before the expiration of the thirty (30)-day period, the Port will provide notice to PogoZone that it accepts the IRU Fiber, or rejects it, by specifying the defect or failure in the test report that is the basis for such rejection. If the Port fails to notify PogoZone of its acceptance or rejection of the IRU Fiber within thirty (30) days following the Port's receipt of notice of availability, the Port shall be deemed to have accepted the IRU Fiber. In the event of any good faith rejection by Grantee, Grantor shall take such action as reasonably necessary, and as expeditiously as practicable, to correct or cure such defect or failure. Notwithstanding the foregoing, any tests performed on the IRU Fiber by the Port during the thirty (30) day period above shall not constitute Traffic and shall not be deemed acceptance of the IRU Fiber.

4.3 **Network Extensions.** The Parties may cooperate on future projects extending the Grantor Network and IRU Fiber to mutually agreed communities or locations only by addendums to this Agreement, including, but not limited to, the right of the Port to build at its cost and connect the extension to the Grantor Network. PogoZone, upon request, will share technical data necessary to build and connect such extension.

4.4 Maintenance.

4.4.1 IRU Fiber.

4.4.1.1 Routine Maintenance: In consideration of the IRU Fiber Maintenance Fee described in Exhibit B, PogoZone shall, during the Term of this Agreement, at its sole cost and expense, care for and maintain the IRU Fiber in a safe and serviceable condition, ensuring that the IRU Fiber meets or exceeds industry standards for performance. PogoZone shall schedule and perform periodic inspections (at a minimum annually), maintenance, and repair to identify and correct any failure, interruption, or

impairment in the operation of the IRU Fiber. PogoZone shall not permit the IRU Fiber to be damaged or depreciated in value by any negligent act or omission of PogoZone, its agents, or employees. PogoZone shall respond promptly to any reasonable complaints from the Port, Approved ISPs, Customers, or any property owners.

4.4.1.2 *Maintenance Events:* PogoZone shall respond to, and address, unforeseen events requiring maintenance or restoration of the Grantor Network involving IRU Fiber (“Maintenance Event”) as soon as practicable after PogoZone is made aware of the need for such action. Notwithstanding anything in this Agreement to the contrary, PogoZone shall use its best efforts to remedy any interruption of connectivity within twenty-four (24) hours of report to PogoZone.

4.4.1.3 *Catastrophic Loss (Trunk Lines):*

4.4.1.3.1 PogoZone will use commercially reasonable efforts to insure Grantor Network fiber optic trunk lines (including IRU Fiber contained therein) against catastrophic loss, including, for example, loss due to an extreme weather event. PogoZone shall inform the Port in writing within ten (10) days after PogoZone either (i) obtains casualty insurance covering the Grantor Network fiber optic trunk lines (including the IRU Fiber contained therein); or (ii) determines that commercially reasonable insurance coverage cannot be obtained.

4.4.1.3.2 PogoZone shall provide written notice of any such catastrophic loss to the Port as soon as practicable. PogoZone and the Port shall negotiate, in good faith, to identify an equitable arrangement for the repair or replacement of the affected network, taking into account insurance proceeds (if any) and the respective investments of the Port and PogoZone in the Grantor Network, IRU Fiber, and the PON System. Upon full restoration of the affected portion by PogoZone, the Port, or the joint action of the Parties, the affected portion of the Network shall be deemed subject to the terms of this Agreement to the same extent as if the catastrophic loss had not occurred

4.4.1.3.3 If the Parties fail to agree to repair or replace the affected portion of the Grantor Network, PogoZone may in its sole discretion choose to abandon it without regard to any effect such abandonment may have upon IRU Fiber, generally or services delivered thereby. In the event of such abandonment, during the first year of the Term, the Port shall be entitled to forty-nine percent (49%) of any insurance proceeds received by PogoZone as a result of the catastrophic loss to the Grantor

Network fiber optic trunk lines (including IRU Fiber contained therein), with the Port's insurance proceeds entitlement to be reduced by four percent (4%) each year of the Term. Except for distribution of any insurance proceeds set forth herein, the Port shall not have any claim against PogoZone arising from any such catastrophic loss, or subsequent abandonment by PogoZone.

4.4.1.4 Maintenance Reporting: At the Port's reasonable request, PogoZone will provide maintenance reports, including periodic/routine maintenance reports and reports in response to a maintenance event.

4.4.2 Maintenance of Service Drops. PogoZone will maintain Service Drops that are in active use by Approved ISPs to provide Communication Services to Customers, in accordance with Paragraph 4.6

4.4.3 Relocation. If, after the Effective Date, PogoZone is required (i) by any governmental authority under the power of eminent domain or otherwise; (ii) by the grantor or provider of any Underlying Rights; (iii) by any other person having the authority to so require (each a "Relocating Authority"); or (iv) by the occurrence of any Force Majeure Event as set forth in Paragraph 15.0, to relocate the Grantor Network or any portion thereof, PogoZone shall have the right to either proceed with such relocation, including, but not limited to, the right, in good faith, to reasonably determine the extent and timing of, and methods to be used for, such relocation, or to pay such amounts to the Relocating Authority as are necessary to avoid the need for such relocation. If, and to the extent that, a relocation is not the result of a failure by the Port to observe and perform its obligations under this Agreement, the costs of relocations of the Grantor Network are included in the IRU Fee (except in the case of catastrophic loss, which shall be treated as described in Paragraph 4.5.1.3). The Port shall reimburse PogoZone for PogoZone's costs (including, but not limited to, connectivity testing and amounts paid to a Relocating Authority to avoid relocation) if the relocation is entirely caused by the Port's failure to observe and perform its obligations under this Agreement.

4.5 Installation and Maintenance of Service Drops. PogoZone shall install and maintain all Service Drops required to connect a Customer Location to IRU Fiber or to PogoZone Connectivity Services for the purpose of receiving Communication Service from an Approved ISP. PogoZone agrees to repair any damage to customers' yards and any real or personal property, and to take reasonable and prompt action to restore the customer's property to the condition that it existed when the customer signed up for service from an Approved ISP, normal wear and tear excepted.

4.5.1 Process. PogoZone will construct a Service Drop only when directed to do so by the Port, which shall occur only upon a Customer order for Communication Services by an Approved ISP. Nothing in this Agreement shall preclude PogoZone from constructing a service drop connecting a customer to the Grantor Network at its own cost.

4.5.2 Customer Connection Fee. PogoZone may charge an Approved ISP a nonrecurring fee for construction of a Service Drop and connection of a Customer Location to IRU Fiber ("Customer Connection Fee"). Such fee shall be set at competitive market-based rates, reflecting PogoZone's actual cost, plus reasonable profit and overhead. The initial Customer Connection Fee is set forth in Exhibit B. The standard Customer Connection Fee shall apply so long as the Service Drop length is aerial and does not exceed two hundred feet (200') from the IRU Fiber passing the location. In the event a Service Drop requires an installation exceeding two hundred feet (200'), or is otherwise unusually costly, PogoZone may charge an additional reasonable amount not to exceed the market rate for comparable work.

4.5.3 Maintenance of Service Drops.

4.5.3.1 PogoZone will promptly respond to required service calls involving the Service Drop following notification by an Approved ISP or the Port that service or remediation is necessary at no cost to the Port or the Approved ISP, except as set forth in Paragraph 4.6.3.1 below. The cost of maintenance or repair of a Service Drop that is necessitated by the actions the Port or by an Approved ISP shall be payable by the Port, for which PogoZone will bill the Port at PogoZone's actual cost, plus reasonable markup, not to exceed the market rate for comparable work.

4.6 **Retail Communication Services by PogoZone.** Nothing in this Agreement shall limit the ability of PogoZone to provide retail ISP or other communication services to households and businesses within the Grantee Service Area using the Grantor Network.

5.0 THE PORT'S RESPONSIBILITIES

5.1 **Compensation to PogoZone.**

5.1.1 IRU Fee. In consideration of the grant of the IRU hereunder by Grantor to Grantee, Grantee agrees to pay to Grantor an IRU Fee in the amount and according to the schedule set forth in Exhibit B ("IRU Fee"). The IRU Fee shall be due and payable as set forth in Exhibit B and paid within thirty (30) days of Grantee's receipt of Grantor's invoice, with the first such invoice accompanied by Grantor's W-9.

5.1.2 IRU Fiber Maintenance Fee. In consideration of PogoZone's obligation to Maintain IRU Fiber that is in use during the Term, the Port shall pay to PogoZone a periodic per-strand, per-mile maintenance fee in the amount and according to the schedule set forth in Exhibit B ("IRU Fiber Maintenance Fee"). The IRU Fiber Maintenance Fee shall only accrue for IRU Fiber strands upon (a) the lease of IRU Fiber strands by the Port for use by another entity, including but not limited to Approved ISPs; or (b) the active use of the IRU Fiber strands by the Port itself for the Port's internal purposes. The Maintenance Fee shall not apply to any IRU Fibers used by PogoZone for the PON System.

5.1.3 *Charges for Additional Services.* Any other activities relating to IRU Fiber that are undertaken by PogoZone at the Port's direction, and that are not specifically addressed in this Agreement, will be charged to the Port at PogoZone's actual cost, plus reasonable markup, not to exceed the market rate for comparable work.

5.2 **Approved ISPs.** The Port will qualify and administer Approved ISPs. The Port will require all Approved ISPs to undertake certain commitments with respect to their use of the Grantor Network, IRU Fiber, and Associated Property, as described below.

5.2.1 *Qualification by Port.* The Port shall be responsible for determining that an ISP possesses the requisite financial, technical, and managerial qualifications to be an Approved ISP. The Port may adopt standards for qualification in its sole discretion, subject to the requirements of this subparagraph.

5.2.1.1 A service provider seeking designation as an Approved ISP shall demonstrate, or warrant to the satisfaction of the Port, that it:

1. Is currently in full compliance with all applicable local, state, and federal regulation, including, without limitation, submission of FCC Form 477 (if applicable);
2. Is not the subject of an ongoing forfeiture or other enforcement action by any federal or state agency, and is not in "red light" status before the Federal Communications Commission; and
3. Is not debarred from receiving funding support from a federal or state agency.

5.2.2 *Compliance With All Applicable Laws and Regulations.* The Port shall require Approved ISPs to affirm that they will use the Grantor Network, IRU Fiber, and Associated Property in compliance with, and subject to, all applicable government codes, ordinances, laws, rules, and regulations as they now exist or are hereinafter amended.

5.2.3 *Noninterference.* The Port shall require all Approved ISPs to each warrant that it will not interfere in any way with, or adversely affect the use of, the Grantor Network by any other person.

5.3 **Port operation as an ISP.** In the event that the Port is granted statutory authority to operate as a retail ISP and desires to utilize Connectivity Services to do so, the Port will execute a Master Service Agreement (MSA) or Service Agreement with PogoZone addressing such activity.

5.4 **Assignment Clause.** The Port shall ensure that all agreements between the Port and users of IRU Fiber include provision readily enabling assignment of such agreement to PogoZone.

- 5.5 Reporting.** The Port shall promptly respond and cooperate with reasonable requests by PogoZone for information relating to matters germane to this Agreement, including, but not limited to, users of IRU Fiber, activities of Approved ISPs, and other information. PogoZone shall promptly respond and cooperate with reasonable requests by the Port for information relating to matters germane to this Agreement, including, but not limited to, users of the PON System and other information.

6.0 SERVICE BY POGOZONE

Nothing in this Agreement shall limit the ability of PogoZone to provide communication services to any customer within the Grantor Network service area. Service drops installed by PogoZone for provision of Communication Services by an Approved ISP or the Port shall remain under the ownership and control of PogoZone.

7.0 TERM

- 7.1 Term.** This Agreement shall begin on the Effective Date and shall extend for a period of twenty-five (25) years thereafter. Any interest in IRU Fiber held by the Port shall expire upon the natural termination date of this Agreement, and shall not be affected by a prior termination of this Agreement for any reason. The Parties may agree in writing to extend this Agreement with such modifications as mutually agreed by the Parties.

7.2 Ongoing Service to Approved ISPs.

7.2.1 *Notification by PogoZone.* On or about the commencement of the 24th year of the Term, unless the Parties have agreed to extend or renew the Agreement beyond the initial Term, PogoZone shall provide written notice to all Approved ISPs explaining the pending expiration of the Agreement and describing multiple options for consideration, to include (a) executing an agreement for ongoing services with PogoZone (in accordance with subparagraph 7.2.2) to commence upon the natural expiration of this Agreement; (b) finding alternative means of serving customers; or (c) notifying customers of likely termination of service.

7.2.2 *Guaranteed Rate.* PogoZone agrees to continue offering Connectivity Services to Approved ISPs following the expiration of this Agreement. Approved ISPs desiring Connectivity Services following expiration shall execute a separate agreement with PogoZone if no existing agreement between PogoZone and such Approved ISP will remain in effect following expiration of this Agreement. PogoZone's rate for Connectivity Services in new agreements with Approved ISPs following expiration of this Agreement shall not exceed an amount five percent (5%) below the then-standard end-user market rate for comparable services in a comparable market. PogoZone's obligations under this subparagraph shall apply so long as PogoZone provides any facilities-based wireline service within the Grantee Service Area.

7.2.3 *Dark Fiber Customers of the Port.* Following expiration of the Agreement, PogoZone shall be entitled to directly invoice and collect revenue from users of IRU Fiber that were invoiced by the Port during the term of the Agreement ("Dark

Fiber Users”), at the Port’s then-current rate. Agreements between the Port and Dark Fiber Users shall be assignable to PogoZone, with such modification as may be necessary to enable PogoZone to effectively invoice and manage the relationship after expiration of the Agreement. Any Dark Fiber User that does not consent to such general assignment or invoicing by PogoZone, as described in this subparagraph, may be subject to removal from the Grantor Network and any other remedy available to PogoZone.

8.0 DEFAULT

- 8.1 Default Defined.** A default shall be deemed to have occurred under this Agreement if, in the case of a material breach of this Agreement, a Party fails to cure such material breach within thirty (30) days after written notice specifying such breach; provided, that if the breach is of a nature that cannot be cured within thirty (30) days, a default shall not have occurred so long as the breaching Party has commenced to cure within said time period and thereafter diligently pursues such cure to completion.
- 8.2 Remedies Upon Default.** Upon the occurrence of a default, the non-defaulting party shall have all remedies available at law or at equity including, but not limited to, termination, damages, specific performance, and/or relief from further performance. Each such remedy shall be cumulative and not exclusive. Without limiting the foregoing, in the case of uncured default by Grantor, the Grantee may be granted permission to operate, maintain, or repair the Grantor Network to the extent necessary to maintain IRU Fiber, reserving the cost as damages against the Grantor.
- 8.3 No Early Termination of IRU for Grantee Default.** Notwithstanding anything to the contrary in this Agreement, once Grantee has paid the IRU Fee, Grantor may not terminate Grantee’s rights in the IRU Fiber for any reason.
- 8.4 Grantee’s Cure of Service Default.** Notwithstanding any other provision of this Agreement, in the event, regardless of reason or Grantor’s good faith attempts, Grantor does not or is unable to perform the services described in this Agreement, or does not or is unable to perform services in compliance with the standards and specifications set forth in this Agreement, Grantee may (but is not obligated to), upon written notice to Grantor reasonable under the circumstances, but without authorization from Grantor, perform such services or work and/or take such action that it deems necessary without subjecting itself to any liability to Grantor. In such instances, Grantee may request Grantor to pay Grantee an amount equal to the actual costs of services performed by Grantee less Grantee’s proportionate share (based on fiber count). If Grantee requests payment, Grantor will remit payment to Grantee within thirty (30) days from the date of Grantee’s invoice.
- 8.5 Injunctive Relief.** The Parties acknowledge and agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms and agree that, due to the unique subject matter covered by this Agreement, each Party shall be entitled to specific performance of the obligations hereunder and/or injunctive relief, this being in addition to any other right or legal remedy available to such Party.

9.0 BANKRUPTCY

- 9.1 This IRU Agreement is not intended as an executory contract or unexpired lease subject to assumption, rejection, or assignment by the trustee in bankruptcy of any party to this Agreement, including, without limitation, assumption, rejection, or assignment under Section 365 of the Bankruptcy Code.
- 9.2 Upon the occurrence of a bankruptcy or insolvency condition described below, the Port may terminate this Agreement, or may proceed under the default and remedy procedures described in Section 8:
- 9.2.1 PogoZone commences a voluntary case under Title 11 of the United States Code or the corresponding provisions of any successor laws;
- 9.2.2 Any person commences an involuntary case against PogoZone under Title 11 of the United States Code or the corresponding provisions of any successor laws and either (a) the case is not dismissed by midnight at the end of the 60th day after commencement; or (b) the court before which the case is pending issues an order for relief or similar order approving the case;
- 9.2.3 A court of competent jurisdiction appoints, or PogoZone makes an assignment of all or substantially all of its assets to, a custodian (as that term is defined in Title 11 of the United States Code or the corresponding provisions of any successor laws) for PogoZone or all or substantially all of its assets; or
- 9.2.4 PogoZone fails generally to pay its debts as they become due (unless those debts are subject to a good-faith dispute as to liability or amount) or acknowledges in writing that it is unable to do so.

10.0 NO LIENS, RIGHTS OR CLAIMS

The Port shall not attempt to subject any portion of the Grantor Network to any liens, rights, or claims of any third party attributable to the Port. If such a lien, right, or claim is asserted, the Port will promptly and diligently undertake its removal at the sole cost of the Port. Likewise, PogoZone will keep any and all of that portion of Grantor Network used for IRU Fiber free from any liens, rights, or claims of any third party. If such a lien, right, or claim is asserted, PogoZone will promptly and diligently undertake its removal at the sole cost of PogoZone.

11.0 TAXES

Each Party shall be responsible for collecting and paying its own federal, state, or local sales, use, excise, value-added, personal property, income, or other taxes or charges, assessed on or levied against any transaction or event arising from the performance of this Agreement (to include franchise fees and payments to state and federal universal service programs), imposed by any authority having the power to assess such taxes or charges, including any city, county, state, or federal government or quasi-governmental agency or taxing authority. PogoZone shall have the right, but not the obligation, to pass through and collect from an Approved ISP any taxes or charges

assessed against PogoZone as a direct consequence of PogoZone's performance under this Agreement. PogoZone shall have the right, but not the obligation, to pass through and collect from the Port taxes or charges accruing from rights in IRU Fiber granted to the Port by PogoZone. Any such pass-through of taxes or charges shall be included as a separate line item and clearly described on the invoice.

12.0 ASSIGNMENT

- 12.1** Except as specifically provided herein, neither Party may assign any rights or duties under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably delayed, conditioned, or withheld, not to exceed 60 days.
- 12.2** The Port may assign any rights or duties under this Agreement to another municipal corporation or an entity wholly owned by municipal corporations without the prior written consent of the Grantor.
- 12.3** PogoZone (referred to in this Paragraph 12 as the "Assigning Party") may, without the prior consent of, but on notice to the Port, assign this Agreement to (i) an affiliate of the Assigning Party, (ii) the parent of the Assigning Party, (iii) any company into which the Assigning Party may be merged or consolidated, (iv) or any company that acquires substantially all of the assets or stock of Assigning Party; provided, the assignee shall be subject to all the provisions of this Agreement. An "affiliate" of the Assigning Party shall mean any corporation which, directly or indirectly, controls or is controlled by, or is under common control with, the Assigning Party, or a successor corporation to the Assigning Party by merger, consolidation, or non-bankruptcy reorganization.

13.0 LIMITATION OF LIABILITY AND INDEMNIFICATION

- 13.1 Only Actual Damages.** Notwithstanding any provision 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.
- 13.2 Casualty Loss.** The parties hereto agree that neither party, their respective managers, members, officers, commissioners, employees insurance carriers, and casualty policies shall be responsible to the other party for any property loss or damage done to the other party's property, whether real, personal, or mixed, occasioned by reason of any fire, storm, or other casualty whatsoever. It shall be each party'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 other party, third party, or act of nature. In this regard, each party hereby releases and discharges the other party and their respective managers, members, officers, commissioners, and employees from any claims for loss or damage to property.
- 13.3 Mutual Indemnification.** To the extent permitted by law, each party hereby agrees to defend and 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 acts of the indemnifying party, its officers, employees, servants, affiliates, agents, contractors, licensees, invitees, or vendors.

- 13.4 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 each other under such indemnification provision, 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.

14.0 INSURANCE

- 14.1** Grantor, at its expense, shall, throughout the Term, maintain insurance coverages of the types and in the minimum amounts set forth below, as applicable:

Type of Insurance Limit

General Liability (including General Aggregate \$2,000,000
contractual liability) written Prod./Comp. Op. Agg. \$2,000,000
on an occurrence basis Personal & Adv. Injury \$2,000,000
Each Occurrence \$2,000,000

Automobile Liability, including Combined Single Limit \$1,000,000
any auto, hired auto, and non
owned autos

Excess Liability, Umbrella Form Each Occurrence \$2,000,000
Aggregate \$2,000,000

- 14.2 Also Insured Status and Other Provisions.** The foregoing insurance policy shall name the Port as an additional insured by way of a policy endorsement. PogoZone shall provide certificates of insurance and, if requested, copies of any policy to the Port. Receipt of such certificate or policy by a party does not constitute approval by the Port of the terms of such policy. Furthermore, the policy of insurance required herein shall (i) be written as a primary policy; (ii) expressly provide that such insurance may not be materially changed, amended, or canceled with respect to the Port except upon forty-five (45) days' prior written notice from the insurance company to the Port; (iii) contain an express waiver of any right

of subrogation by the insurance company against the Port; (iv) expressly provide that the defense and indemnification of the Port as an "additional insured" will not be affected by any act or omission by PogoZone, 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.

15.0 FORCE MAJEURE

Neither Party shall be in default under this Agreement if, and to the extent that, any failure or delay in such Party's performance of one or more of its obligations hereunder is caused by any of the following conditions, and such Party's performance of such obligation or obligations shall be excused and extended for and during the period of any such delay: act of God; fire; wind; flood; fiber cut, cable cut, or other material failures which cannot be remedied as provided in Paragraph 8.4 and then, only during such periods as may be required to reasonably repair the fiber cut, cable cut, or other material failures shortages or unavailability, or other delay in delivery not resulting from the responsible Party's failure; failure of third-party power or system failures; lack of or delay in transportation not resulting from the responsible Party's failure; government codes, ordinances, laws, rules, regulations, or restrictions (collectively, "Regulations"); war or civil disorder; strikes or other labor disputes; failure of a third party to grant or recognize an Underlying Right; inability of Grantor to obtain access to the Grantor System not resulting from the Grantor's failure; or any other cause beyond the reasonable control of such Party.

16.0 NOTICES

All notices and other communications required or permitted under this Agreement shall be in writing and shall be given by United States first class mail, postage prepaid, registered or certified, and return receipt requested, or by hand delivery (including by means of a professional messenger service or overnight mail) addressed as follows:

All notices and other communications shall be given to Grantor at:

POGOZONE
ATTN: President
PO Box 974
Lynden, WA 98264
E-mail: support@pogozone.com

All notices and other communications shall be given to Grantee at:

Port of Bellingham
ATTN: Executive Director
1801 Roeder Ave
Bellingham, WA 98225
E-mail: Robf@portofbellingham.com

A copy of any notice shall also be provided via e-mail to the e-mail addresses above.

Any such notice or other communication shall be deemed to be effective when actually received or refused. Either Party may, by similar notice given, change the address to which future notices or other communications shall be sent.

17.0 CONFIDENTIAL INFORMATION

- 17.1 Background.** The Port is a Washington municipal government and therefore governed by the Washington Public Records Act, chapter 42.56 RCW, and the rules promulgated thereunder (the "PRA"), and the Washington Open Public Meetings Act, 42.30 RCW, (the "OPMA"). PogoZone has made itself familiar with the PRA and the OPMA. The Port follows both the spirit and the letter of the PRA and the OPMA in all its affairs. Except as required (in the determination of the Port made in good faith) by the PRA and the OPMA, the Port covenants that it will protect the confidentiality of any Proprietary Information (defined below) provided to it by PogoZone. Once Proprietary Information is received by the Port, it must be retained by the Port in accordance with law. By law, the terms of this Paragraph 17.0 are subordinate to the provisions of the PRA and the OPMA.
- 17.2 In General.** Subject to the exceptions set forth below, each of the Parties shall hold in confidence any information obtained by it pursuant to the performance of the obligations required or the transactions contemplated by this Agreement, unless the information is subject to disclosure pursuant to legal requirement. Proprietary Information includes proprietary or confidential information disclosed by either Party to the other for the purposes hereunder that is clearly identified in writing as being such ("Proprietary Information"). Proprietary Information shall be safeguarded and protected in the same manner as the recipient's procedures require to ensure protection and nondisclosure of recipient's proprietary and confidential information. The recipient's obligation to safeguard and not disclose such Proprietary Information shall not apply to information in the public domain, lawfully in the recipient's possession prior to receipt hereunder, lawfully obtained from third parties, or that is required to be disclosed under applicable laws including, but not limited to, the PRA and/or the OPMA. The Parties acknowledge that Proprietary Information may be disclosed as part of any normal reporting and review procedure with auditors and attorneys, or with any outside lender, or any proposed or actual successor in interest; provided, however, that prior to such disclosure, the third party to receive such disclosure shall agree to maintain the confidentiality of the Proprietary Information.
- 17.3 Disclosure.** If required by law, including, but not limited to, the PRA, recipient may release the Proprietary Information; provided, however, recipient agrees that prior to such release it shall promptly notify the other Party of the impending disclosure and allow the other Party to contest any release of the Proprietary Information.
- 17.4 Survival.** The confidentiality provisions in this Paragraph shall survive expiration or termination of this Agreement.

18.0 INTELLECTUAL PROPERTY

Nothing in this Agreement shall be construed as a grant of any right or license under any copyrights, inventions, or patents now or later owned or controlled by either Party, and nothing in this Agreement shall be construed as granting any right, title, or interest in the other Party's trademarks, trade names, service marks, or other intellectual property rights. The Parties agree not to use the trademarks, trade names, or service marks of the other Party without prior written permission.

19.0 RELATIONSHIP OF THE PARTIES

The relationship between Grantee and Grantor shall not be that of partners, agents, or joint venturers for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including, but not limited to, federal income tax purposes. Grantee and Grantor, in performing any of their obligations hereunder, shall be independent contractors or independent parties, and shall discharge their contractual obligations at their own risk subject, however, to the terms and conditions hereof.

20.0 REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGEMENTS

By execution of this Agreement, each Party represents and warrants to the other that (a) the Party is duly organized, validly existing, and in good standing under the Laws of the jurisdiction of its organization; (b) the Party has full right and authority to enter into and perform this Agreement in accordance with the terms hereof and thereof; (c) the Party's execution, delivery, and performance of this Agreement will not conflict with, violate, or result in a breach of (i) any law, regulation, order, writ, injunction, decree, determination or award of any governmental authority or any arbitrator, applicable to such Party, (ii) any of the terms, conditions or provisions of its charter, bylaws, or other governing documents of such Party, (iii) any material agreement to which it is a Party, or (iv) any instrument to which such Party is or may be bound onto which any of its material properties or assets is subject; (d) the Party's execution, delivery, and performance of this Agreement has been duly authorized by all requisite corporate action; (e) that the signatories for such Party are authorized to sign this Agreement; (f) there are no actions, suits, proceedings, or investigations pending, or to the knowledge of the Party, threatened against or affecting the Party of any of its properties, assets, or businesses in any court or before or by any governmental authority that could, if adversely determined, reasonably be expected to have a material adverse effect on the Party's ability to perform its obligations under this Agreement; and (g) the Party has not previously been and is not currently, debarred, suspended, or proposed for debarment, declared ineligible, voluntarily excluded from transactions by any federal or state department or agency, or subject to any inquiry, investigation, or proceeding regarding the foregoing.

21.0 GOVERNING LAW AND VENUE

This Agreement will be governed and construed in accordance with the laws of the State of Washington without regard to any conflicts of law provisions that would affix jurisdiction in another State. Venue for all actions arising from this Agreement shall be held exclusively in the Superior Court for the State of Washington in Whatcom County. The parties (i) waive any objection which either may have based on lack of jurisdiction or improper venue or forum not convenient to any suit or proceeding instituted by either party under this Agreement in the Superior Court for the State of Washington in Whatcom County; (ii) expressly and unequivocally waive their rights to a trial in federal court, and (iii) consent to granting such legal or equitable relief as deemed appropriate by such court. The substantially prevailing party in any dispute related to or arising hereunder shall be entitled to an award of its attorneys' fees and costs.

22.0 **CHANGE IN LAW**

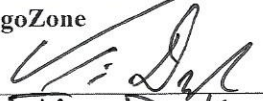
If changes in applicable laws, regulations, rules or orders materially affect either Party's ability to lawfully fulfill any of its obligations under this Agreement, the Parties agree to negotiate and execute appropriate changes to this Agreement. If changes in applicable laws, regulations, rules or orders make either Party's continued fulfillment of its obligations under this Agreement commercially impracticable, either Party may propose an appropriate amendment to this Agreement.

23.0 **MISCELLANEOUS**

- 23.1** **Headings.** Headings and captions of this Agreement's paragraphs are only for convenience and reference. These headings and captions shall not affect or modify this Agreement's terms, or be used to interpret or assist in the construction of this Agreement.
- 23.2** **Severability.** If any provision of this Agreement is illegal or unenforceable, the Agreement's unaffected provisions will remain in effect.
- 23.3** **Grammar.** As used throughout this Agreement, language in the singular shall be understood to include the plural, and vice versa. Similarly, language in the masculine shall be understood to include the feminine, and vice versa.
- 23.4** **Waiver.** Any right or remedy provided for in this Agreement shall not preclude the exercise of any other right or remedy under this Agreement or under any provision of law, nor shall any action taken, or failure to take action, in the exercise of any right or remedy be deemed a waiver of any other rights or remedies at the time.
- 23.5** **Entire Agreement; Amendments.** This Agreement constitutes the entire and final agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits referred to herein are integral parts hereof and are hereby made a part of this Agreement. To the extent that any of the provisions of any Exhibit hereto are inconsistent with the express terms of this Agreement, the terms of the Exhibit shall prevail. This Agreement may only be modified or supplemented by an instrument in writing, executed by each Party, and delivered to the Party relying on the writing. Exhibits may be amended by a mutually agreed writing referencing this Agreement.
- 23.6** **Counterparts.** This Agreement may be signed in counterparts, each of which will be deemed an original and all of which taken together will constitute one and the same instrument. The Parties intend that fax or e-mailed .pdf signatures constitute original signatures, and that a faxed or emailed agreement containing the signatures (original, .pdf, or faxed) of all the Parties is binding on the parties.

POGOZONE

**Sound Internet Services, INC .
d/b/a PogoZone**

By: 
Name: Tim Dyck
Title: Treasurer

PORT

Port of Bellingham

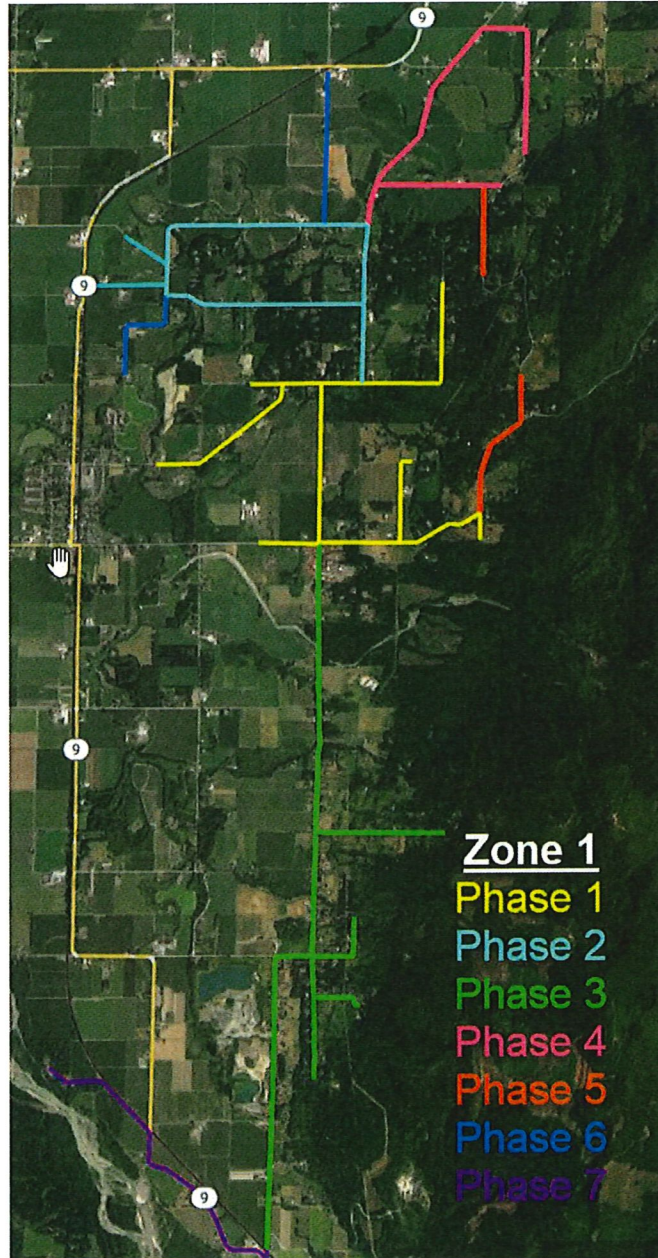
By: 
Name: Rob Fix
Title: Executive Director

EXHIBIT A

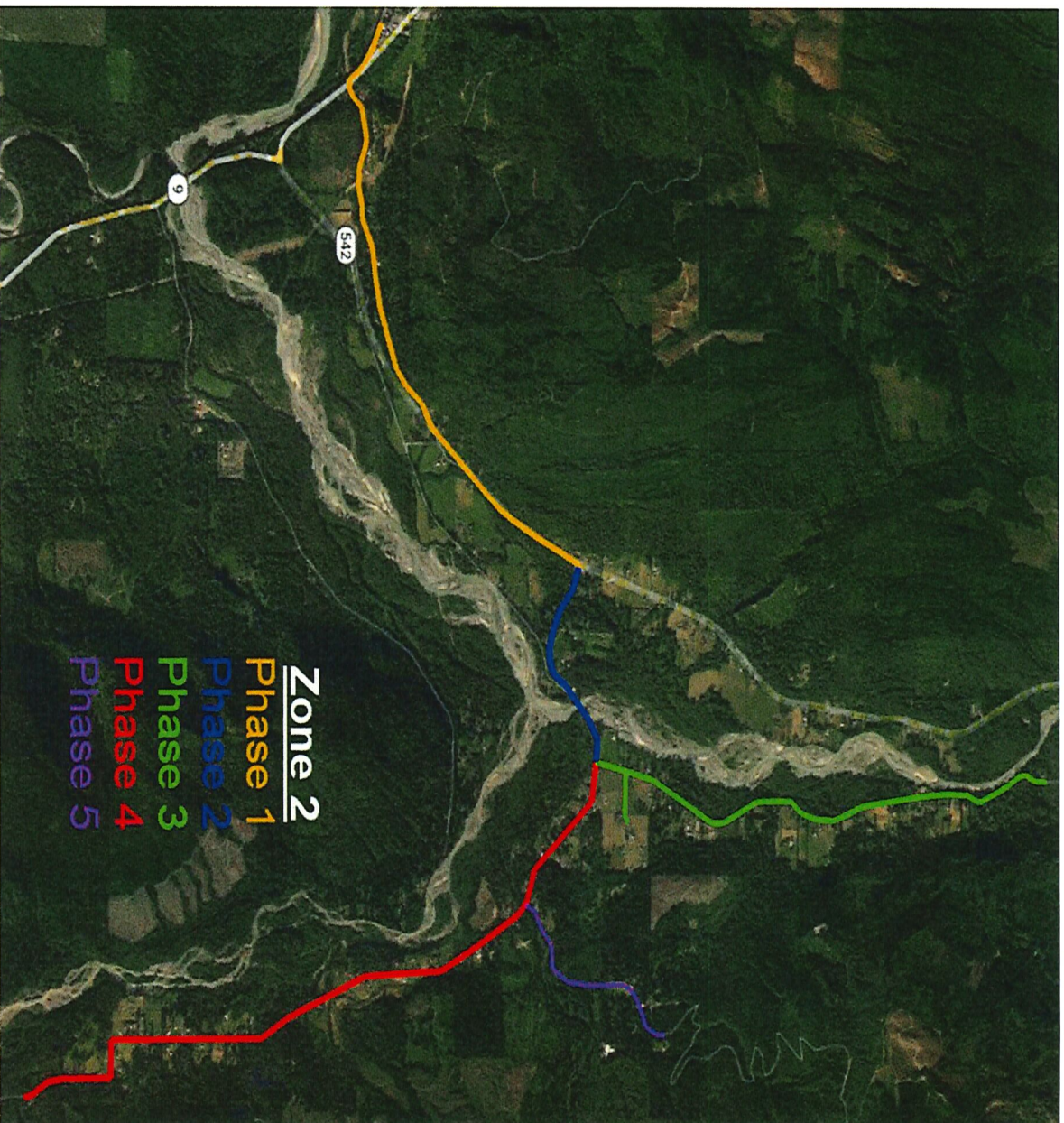
CONSTRUCTION PLAN

Appendix 1: Grantee Service Area

ZONE 1: Nooksack Service Area



ZONE 2: Mosquito Lake Road



Appendix 2: Construction Schedule

Phase	Estimated Completion Date
Zone 1	
Phase 1 and 2	4/15/2022
Phase 3	5/30/2022
Phase 4, 5	6/30/2022
Phase 6, 7	7/30/2022
Zone 2	
Phase 1	4/30/2022
Phase 3, 5	6/30/2022
Phase 4, 2	7/30/2022

Appendix 3: Description of IRU Fiber

- The IRU Fiber consists of forty-nine percent (49%) of total fiber strands along the Grantor Network within the Grantee Service Area.
- Identification of specific IRU Fiber strands will be provided as part of the testing and acceptance phase described in Paragraph 4.2 of the Agreement.
- The number of IRU Fibers reserved for the PogoZone PON System will be determined by PogoZone and the Port during the design phase of each Section.

EXHIBIT B
FEEES AND CHARGES

1.0 FEEES AND CHARGES PAYABLE BY THE PORT. In accordance with the Agreement and the terms of payment set forth in this Exhibit, the Port shall pay to PogoZone compensation as follows:

1.1 IRU Fee (Agreement Paragraph 5.1.1). For the IRU granted to the Port pursuant to Section 3 of the Agreement, as further described in Exhibit A, the Port will pay to PogoZone a total IRU Fee in the amount of Two Million Thirty-Two Thousand Seven Hundred and Eighty-Two Dollars (\$2,032,782.00), in accordance with the following schedule:

IRU FEE PAYMENT SCHEDULE			
NOOKSACK (ZONE 1)			
Nooksack Service Area Phase 1	\$305,278.48		Invoiced upon completion and acceptance of Phase 1
Nooksack service Area Phase 2	\$287,120.93		Invoiced upon completion and acceptance of Phase 2
Nooksack Service Area Phase 3	\$257,120.93		Invoiced upon completion and acceptance of Phase 3
Nooksack Service Area Phase 4	\$187,120.93		Invoiced upon completion and acceptance of Phase 4
Nooksack Service Area Phase 5	\$145,120.63		Invoiced upon completion and acceptance of Phase 5
Nooksack Service Area Phase 6	\$100,000.00		Invoiced upon completion and acceptance of Phase 6
Nooksack Service Area Phase 7	\$100,000.00		Invoiced upon completion and acceptance of Phase 7
Total Fee Nooksack	\$1,381,761.90		
MOSQUITO LAKE (ZONE 2)			
Mt. Baker Hwy to Mosquito Phase 1	\$200,006.70		Invoiced upon completion and acceptance of Phase 1
Mosquito Lake drive Phase 2	\$105,000.00		Invoiced upon completion and acceptance of Phase 2
Mosquito Lake Drive Phase 4	\$207,006.70		Invoiced upon completion and acceptance of Phase 4

N. Fork Rd Phase 3	\$107,006.70	Invoiced upon completion and acceptance and Phase 3
Canyon Lake Road Phase 5	\$37,000.00	Invoiced upon completion and acceptance of Phase 5
Total Fee Mosquito Lake	\$651,020.10	

1.2 IRU Fiber Maintenance Fee (Agreement Paragraph 5.1.2).

1.2.1 Utilized IRU Fiber Only. PogoZone will charge a monthly IRU Fiber Maintenance Fee corresponding to IRU Fiber strands (i) leased by the Port to another entity, including, but not limited to, Approved ISPs; or (ii) being actively used by the Port for its internal purposes. If no IRU Fiber is leased by the Port to an Approved ISP or other entity, or is being actively used by the Port for its internal purposes, then no IRU Fiber Maintenance Fee will be assessed. The IRU Fiber Maintenance Fee does not apply to IRU Fiber strands that are part of the PON System utilized to provide PogoZone Connectivity Services.

1.2.2 Fee Calculation. For utilized IRU Fiber, as described in the previous subsection, the Port shall pay to PogoZone an IRU Fiber Maintenance Fee in the amount of Twelve Dollars and Fifty Cents (\$12.50) per mile, per strand, per month.

2.0 POGOZONE CONNECTIVITY SERVICES

2.1 Connectivity Services offered by PogoZone to Approved ISPs shall be provided in accordance with rates set forth in this Section, as may be amended by the Parties in accordance with Paragraph 6 of this Exhibit B. Fees for Connectivity Services shall be payable by the Approved ISP (not the Port) in accordance with terms set forth in a separate agreement between PogoZone and such Approved ISP.

2.1.1 Network Connection Fee (Agreement Paragraph 3.3.1.2). Includes a single connection at a PogoZone data center to an Approved ISP.

- Monthly rate between One Hundred Fifty Dollars (\$150) to Three Hundred Dollars (\$300) per month, depending on selected data center.

2.1.2 Wholesale Internet Service (Residential) Fee (Agreement Paragraph 3.3.1.2). (Additional services may be offered by PogoZone for additional charge.)

- 100x100 Mbps Access: Thirty Dollars per month (\$30)/month)
- 250x250 Mbps Access: Forty Dollars per month (\$40/month)
- 1Gigx1Gig Access: Fifty Dollars per month (\$50/month)

2.1.3 Wholesale Internet Service (Business) Fee (Agreement Paragraph 3.3.1.2). (Additional services may be offered by PogoZone for additional charge.)

- 100x100 Mbps Access: Forty Dollars per month (\$40/month)
- 250x250 Mbps Access: Fifty Dollars per month (\$50/month)

- 1Gigx1Gig Access: Sixty Dollars per month (\$50/month)

2.1.4 Monthly Minimum Charge. Notwithstanding the number of Customer connections, an Approved ISP that uses Connectivity Services shall pay a minimum Connectivity Service Charge as follows:

- 1-6 months following activation of Approved ISP: No minimum.
- 7-12 months: Five Hundred Dollars per month (\$500/month)
- 12+ months: One Thousand Dollars per month (\$1,000/month)

3.0 CHARGES PAYABLE BY POGOZONE TO THE PORT

Reservation Fee (Agreement Paragraph 3.3.1.4). PogoZone will pay to the Port a monthly fee for PogoZone's reserved right to provide Connectivity Services over the PON System on the IRU Fiber in the amount of eight dollars (\$8) for each residential or business end-user connection over the PON System within the Grantee Service Area that was active and in good standing for any portion of the previous month, whether that end-user was connected through an Approved ISP or directly by PogoZone. The Parties agree that this fee is paid in consideration of the Port allowing PogoZone to reserve its rights to provide Connectivity Services over the PON System on the IRU Fiber, and is not in exchange for any services by the Port involving the transmission of information.

4.0 POGOZONE CHARGE FOR SERVICE DROP CONSTRUCTION.

4.1 Customer Connection Fee (Agreement Paragraph 4.5.2). PogoZone shall be entitled to charge an Approved ISP a one-time Customer Connection Fee of Four Hundred Dollars (\$400.00) for construction of all aerial Service Drops of two hundred feet (200') or less in length. This Customer Connection Fee shall only be charged to the first Approved ISP providing Communication Services over a Service Drop to offset PogoZone's cost in physically constructing and installing the Service Drop. In the event a Service Drop requires an installation exceeding two hundred feet (200'), or is otherwise unusually costly, PogoZone may charge an additional reasonable amount, not to exceed the market rate for comparable work, which additional charges shall be disclosed to the Port before PogoZone charges the Approved ISP.

5.0 TERMS OF PAYMENT

5.1 Invoices, Late Charges, and Fees. Invoices shall be issued for all amounts due and payable by either the Port or PogoZone under this Agreement. All uncontested invoices shall be due and payable within thirty (30) days of receipt. Within thirty (30) days, the receiving Party shall pay all uncontested portions of the invoice and provide a detailed explanation of any contested portion. The Parties will promptly discuss and reasonably resolve any contested issues. The billing Party reserves the right to apply a late charge equal to one and one-half percent (1.5%) per month (or the maximum legal rate, if less) on any unpaid uncontested balance. The invoiced Party shall reimburse the billing Party for all reasonable fees the billing Part incurs collecting any past due uncontested charges from the invoiced Party including, but not limited to, reasonable attorneys' fees and collection fees.

6.0 ADJUSTMENT TO FEES AND CHARGES

- 6.1** No more often than once every two (2) years, either Party may request adjustment of fees and charges set forth in this Exhibit on the basis that the current fee no longer reflects a market rate. The Parties shall negotiate, in good faith, to reach agreement on the proposed adjustment. If the Parties are unable to agree within a reasonable time, not to exceed sixty (60) days, the Parties shall refer the matter to binding arbitration for the purpose of identifying the market rate corresponding to the fee in question. The Parties shall abide by the decision of the arbitrator and shall adjust this Agreement accordingly. The arbitration shall occur within Whatcom County, and the cost shall be borne equally between the Parties.

EXHIBIT C

CUSTOMER CIRCUIT TESTING ACCEPTANCE STANDARDS

If testing a xxx customer circuit, OTDR traces will be taken in both directions at 1310 nm and 1550 nm for all circuits less than 50 Km. For circuits over 50 Km, take OTDR traces at 1550 nm. All circuits will be shot with a launch cable with a minimum length of .5 Km. The trace files will be reviewed before the circuit is released and each circuit must comply with the specifications for splice, reflectance, and span attenuation as documented here.

Any customer MSA requirements such as launch cable, splice loss, reflectance, total loss for the circuit, or total re-burn attempts other than what is written below will be provided in writing prior to testing.

Accepted Trace File Formats

EXFO native file format (.trc file extension) is the only format accepted for customer circuits.

Splice Loss Specifications

Pig Tail - < .5 per connector or 1.0 per jumper

For values greater than this, the splice will be broken and re-spliced until an acceptable loss value is achieved. If, after three attempts is not able to produce a loss value less than 0.50 dB, the splice will be marked as Out-of-Spec (“OOS”) on the OTDR report. All re-burn attempts must be recorded and submitted.

Splice Point - Bi-directional average loss of 0.15 dB or less.

The objective for each splice is a loss of 0.15 dB or less. If, after three attempts, you are not able to produce a loss value of less than 0.15 dB, then 0.25 dB will be acceptable. If, after two additional attempts, a value of less than 0.25 dB is not achievable, then the splice will be marked as OOS.

Splice Point - Uni-directional OTDR testing, the objective for each splice is a loss of 0.15 dB or less. If, after three attempts, you are not able to produce a loss value of less than 0.15 dB, then 0.25 dB will be acceptable.

Connector Reflectance

Reflectance at jumper – will be less than -46dB, you will work to achieve less than -46dB by cleaning and polishing fiber tips and/or fiber jumpers or provide alternative fiber strands that achieve results less than -46dB. If you are unable to do so after 3 attempts, the port will be marked as OOS. All attempts to bring the connector into spec must be recorded and submitted.

Total loss for a circuit

Attenuation due to distance

At 1310nm: (0.40 dB/km x km of cable)

At 1550nm: (0.30 dB/km x km of cable)

Average Splice Loss per circuit

The standard for each fiber within a span shall be an average bi-directional loss of 0.10 dB or less for each splice. For example, if a given span has 10 splices, each flow shall have total bi-directional loss (due to the 10 splices) of 1.0 dB or less. Each individual splice may have a bi-directional loss of 0.15 dB or less, but the average bi-directional splice loss across the span must be 0.10 dB or less.

Acceptable Total loss per circuit will be calculated with the following formula:

At 1310nm: $(0.40 \text{ dB/km} \times \text{km of cable}) + (\text{number of connectors} \times 0.5 \text{ dB}) + (0.10 \text{ dB} \times \text{number of splices})$.

At 1550nm: $(0.30 \text{ dB/km} \times \text{km of cable}) + (\text{number of connectors} \times 0.5 \text{ dB}) + (0.10 \text{ dB} \times \text{number of splices})$.

Trace File Naming Convention

OTDR traces are to be submitted using the following naming convention.

aaaa_xxx_yyyymmdd(bbbccc)_z

aaaa = demarc name

xxx = port number

yyyy = year

mm = month

dd = day

bbb = pulse width at 1550 *optional if submitting multiples

ccc = pulse width at 1310 *optional if submitting multiples

z = incremental number for the trace starting at 1

If you are taking traces from a customer TP port 1 today, the trace file name would be:

CA.TP-2072_001_20170503_1

If you go back and reshoot port #1 a second time today:

CA.TP-2072_001_20170503_2

If you are submitting 2 different pulse widths:

CA.TP-2072_001_20170503 (10ns30ns)_1

CA.TP-2072_001_20170503 (30ns30ns)_1

SPRAY TESTING & BULK REEL TESTING

OTDR traces will be taken at 1310 nm and 1550 nm for all fiber less than 50 Km. For fiber over 50 Km OTDR traces at 1550 nm only will be accepted. All fiber will be tested using a bare fiber test adapter.

Accepted Trace File Formats

EXFO native (.trc file extension) or Bellcore compatible (.sor file extension) are the only formats accepted.

Connector Reflectance

Reflectance at bare fiber test adapter will be -46dB or better.

OTDR Settings

The OTDR setting for 1310 and 1550 are as follows:

- Splice loss detection threshold: 0.020 dB
- Reflectance detection threshold: -72.0 dB
- End-of-fiber detection threshold: 3.500 dB
- Splice loss threshold: 0.15 dB
- Connector loss threshold: 1.0 dB
- Reflectance threshold: -46.0 dB
- Fiber section attenuation threshold: 0.400 dB/km at 1310nm and 0.300 dB/km at 1550nm
- IOR (index of refraction): 1.467700
- Backscatter: -79.44 dB
- Helix factor: 0.00

Pulse Widths & Acquisition Times

Use the pulse width as a reference; acquisition time is based on the final distance		
Distance tested in km (kft)	Pulse Width	Acquisition Time
Less than 1.5 km (less than 4.9kft)	10 ns	15 s
1.5 to 5 km (4.9 to 16.4kft)	30 ns	30 s
5 to 10 km (16.4 to 32.8kft)	30 ns	30 s
10 to 20 km (32.8 to 65.6kft)	100 ns	30 s
20 to 40 km (65.6 to 131.2kft)	275 ns	45 s
40 to 80 km (131.2 to 262.4kft)	1 us	60 s
80 to 120 km (262.4 to 393.7kft)	2.5 us	60 s
120 to 160 km (393.7 to 524.9kft)	10 us	90 s
160 to 200 km (524.9 to 656.1kft)	20 us	90 s
200 to 260 km (656.1 to 853.0kft)	20 us	120 s

Trace File Naming Convention

OTDR traces are to be submitted using the following naming convention.

SP-aaaaa_bbb_xxx_yyyymmdd

aaaaa = splice case number

bbb = is the total fiber count and direction

xxx = fiber number

yyyy = year

mm = month

dd = day

If you are taking traces from splice enclosure CA.SP-03130 fiber 1 on a 432 count heading North, the trace file name would be:

CA.SP-03130_432N_001_20170101

If testing reel fiber use the following naming convention:

bbb_xxx_yyyymmdd

bbb = is the fiber count followed by "R"

xxx = fiber number

yyyy = year

mm = month

dd = day

If you are taking traces for a 432 count fiber 1 the trace file name would be:

432R_001_20170101

MASS FUSION SPLICING

Ribbon Fiber Bi-directional Splice Loss Standards

In the event that the splice loss values listed cannot be achieved by at least 66% (8 out of the 12) of the fibers in the ribbon, the ribbon containing the OOS fiber(s) will be broken and re-spliced. The re-splice procedure and acceptable values are listed in the table below. Ribbons containing any splices above a 1.0 dB loss will be broken and re-spliced.

Mass Fusion Re-splice Acceptance

Ribbon Fiber	Standard Single Mode	Non-zero Dispersion Shifted
Acceptance Criteria	0.20 dB	0.25 dB
After 3 attempts	0.30 dB	0.35 dB
After 2 additional attempts	0.40 dB	0.50 dB

Note:

Five (5) attempts are to be performed and all non-successful splices will be recorded and marked as OSS.