

**INTERLOCAL AGREEMENT
BETWEEN CITY OF WEST RICHLAND
AND BENTON COUNTY DIKING DISTRICT NO.1
FOR OPERATION AND MAINTENANCE OF A PORTION
OF THE US ARMY CORPS OF ENGINEERS 1963 YAKIMA
RIVER WEST RICHLAND FLOOD CONTROL PROJECT**

THIS AGREEMENT IS ENTERED into by and between the CITY OF WEST RICHLAND, a municipal corporation of Benton County, Washington, hereinafter referred to as "West Richland" and BENTON COUNTY DIKING DISTRICT NO.1, a municipal corporation of Benton County, Washington, hereinafter referred to as "DIKING DISTRICT", for the operation and maintenance of a portion of the US Army Corps of Engineers 1963 Yakima River West Richland Flood Control Project, and is effective upon execution by both parties.

WHEREAS, the City of West Richland and the Benton County Diking District No.1 are authorized to enter into interlocal cooperation agreements as set forth in Chapter 39.34 RCW, and

WHEREAS, the proposed interlocal cooperation agreement meets the City of West Richland's Strategic Focus Area #3, Financial and Operational Effectiveness, Stability and Accountability, Goal #5, collaborate with other public and private entities to improve quality and efficiency of services and cost savings; and

NOW, THEREFORE, for mutual benefit, the receipt and adequacy of which is acknowledged, City of West Richland and Benton County Diking District No.1 agree to the following terms and conditions as follows:

Section 1. GENERAL AGREEMENT

West Richland shall be responsible for the operation and maintenance of and comply with the terms of this Agreement and US Army Corps of Engineers Operation and Maintenance Manual for the Yakima River West Richland Control Project and any amendments or regulations adopted by the Corps for levee projects, a copy of which is on file with the City of West Richland's City Clerk, for that portion of right of way, deeded to the City of West Richland, Benton County Auditor File No. 2015-612535, that was previously condemned by the Diking District in Benton County Superior Court Case No. 15959 of Tract A & Lot 1, Plat of Bridge Acres, according to the Plat thereof recorded in Volume 3 of Plats, Page 90, records of Benton County, State of Washington.

West Richland shall be responsible for the construction, operation, maintenance and repair of park and recreational facilities and amenities on that portion of the right of way deeded to the City of West Richland under Auditor File No. 2615-012535.

West Richland shall comply with and make any corrections noted during the US Army Corps of Engineers annual inspection for the portion of the dike with the right of way deeded to the City of West Richland. Any noted corrections shall be completed prior to the next Corps inspection.

West Richland shall as part of the associated work with Yakima River Gateway Project complete the following items of work; 1) safeguard the three existing pipes within the right of way deeded to the City of West Richland per Corps requirements, 2) removal of trees within the right of way deeded to the City of West Richland, 3) on-going maintenance of the current dike access roadway, 4) post remaining portion of Diking District right of way with no trespassing signs and 5) limit access to and on-going enforcement of other Diking District right-of-ways where public access is not allowed.

West Richland understands that Benton County Diking District No.1's granting of the right of way to the City of West Richland does not limit and or effect the District's existing perpetual easements and access rights to this property without exceptions.

Section 2. GENERAL TERMS

- A. This Agreement shall be effective when executed by both West Richland and Diking District and shall remain in effect in perpetuity conditioned on the right of way be used by the City of West Richland for park and recreational uses, and if at any time the City of West Richland shall cease to use said right of way for said purpose and or US Army Corps of Engineers approval for the Yakima River Gateway Project not be obtained, said right of way shall revert to Benton County Diking District No. 1 and this Inter Local Agreement shall be null and void.
- B. Per the Interlocal Cooperation Act provision, no separate legal or administrative entity is intended to be created pursuant to this Agreement. No special fund or budgets are anticipated, not shall be created as a result of this Agreement.
- C. A copy of this Agreement shall be filed with West Richland City Clerk, or posted on the website of the City of West Richland in compliance with RCW 39.34.040.

Section 3. NOTICES

- A. Written notice shall be directed to the parties as follows:

To Diking District:

Benton County Diking District No.1
1025 Riverside Drive
West Richland, WA. 99353
Attn: Chairman, Board of Commissioners

To West Richland:

City of West Richland
3801 W. Van Giesen
West Richland, WA. 99353
Attn: City Clerk

Section 4. DISPUTE RESOLUTIONS

- A. West Richland and Diking District desire to avoid and settle without litigation future disputes which may arise between them relative to this Agreement. Accordingly, the parties agree to engage in good faith negotiations to resolve any such disputes. Such negotiations shall first be conducted at the staff level and if unsuccessful, may then proceed to the level of management. Should settlement negotiations prove unsuccessful or not be resolved within one hundred twenty (120) days, either West Richland or Diking District may proceed with other legal remedies including, but not limited to litigation.
- B. Jurisdiction and venue for any action relating to the interpretation, enforcement, or any dispute arising from this agreement shall be in Benton County Superior Court.
- C. This Agreement shall be construed, and the legal relations between the parties hereto, shall be determined in accordance with the substantive law of the State of Washington.
- D. The substantially prevailing party in any litigation brought to enforce rights or obligations of either party under this Agreement or any appeal of judgment in such litigation shall be entitled to its costs and reasonable attorney fees.

Section 5. LIABILITY / HOLD HARMLESS

- A. West Richland shall indemnify, defend, and hold harmless the Diking District, its officers, agents and employees, from and against any and all claims, losses or liability, including attorney's fees, arising from injury or death to persons or damage to property occasioned by an act, omission or failure of the City of West Richland, its officers, agents and employees, in the performance of the Agreement. With respect to the performance of this Agreement and as to claims against Diking District, its officers, agents and employees, West Richland expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligation to indemnify, defend and hold harmless provided in this paragraph extends to any claim brought by or on behalf of any employee of West Richland. This paragraph shall not apply to any damage resulting from the negligence of Diking District, its agents, and employees. To the extent any of the damages referenced by this paragraph were caused by or resulted from the concurrent negligence of Diking District, its agents or employees, this obligation to indemnify, defend and hold harmless is valid and enforceable only to the extent of negligence of West Richland, its officers, agents, and employees.

Section 6. WAIVER AND ENTIRETY

- A. Waiver: No waiver by either party hereto of any terms or conditions of this Agreement shall be deemed or construed to be a waiver of any other term or conditions, nor shall the waiver of any breach be deemed to construed to constitute a waiver of any subsequent breach, whether of the same or any other term or condition of this Agreement.
- B. Entirety: All prior negotiations and agreements between the parties hereto relating to the subject matter hereof are merged into and superseded by this Agreement, and shall constitute the entire final and exclusive agreement between Diking District and West Richland as hereinbefore provided.
- C. This Agreement shall be executed in two duplicate counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument.

Section 6. AUTHORIZATION

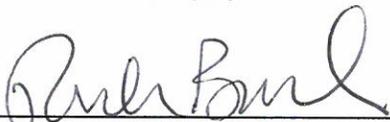
West Richland and Diking District shall each approve this Agreement by appropriate motion, resolution or ordinance. Each party represents to the other party that it has the power and authority to enter into this Agreement

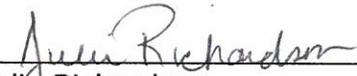
Dated this 21 day of April, 2015

Benton County Diking District No. 1

By: 
Chairman, Board of Commissioner

City of West Richland

By: 
~~Brent Gerry~~ Rich Bvel
Mayor Pro Tem

Attest: 
Julie Richardson
City Clerk

Approved As to Form: 
Bronson Brown
City Attorney