

RESOLUTION 2019 327

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AN INTERLOCAL COOPERATIVE AGREEMENT BETWEEN BENTON COUNTY AND CITY OF WEST RICHLAND FOR EQUIPMENT AND/OR SERVICES THROUGH THEIR DEPARTMENT OF PUBLIC WORKS

WHEREAS, pursuant to RCW 39.34, local government units are permitted to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, Benton County and City of West Richland desire to provide equipment and/or services through their Department of Public Works; and

WHEREAS, pursuant to RCW 36.01.010 and RCW 36.32.120, the legislative authority of each county is authorized to enter into contracts on behalf of the County and have the care of County property and management of County funds and business; and

WHEREAS, the Board of Benton County Commissioners constitutes the legislative authority of Benton County and desires to enter into the attached agreement as being in the best interest of Benton County;
NOW, THEREFORE,

BE IT RESOVLED the Benton County Board of Commissioners hereby approves the attached Interlocal Cooperative Agreement between Benton County and City of West Richland for equipment and/or services through their Department of Public Works; and

BE IT FURTHER RESOLVED this Agreement shall be effective when executed by both parties and shall continue through December 31, 2021.

Dated this 23rd day of April, 2019.

Attest:


Clerk of the Board


Chairman


Chairman Pro-Tem

JEROME DELVIN - ABSENT
Member

Constituting the Board of County
Commissioners of Benton County,
Washington

**INTERLOCAL COOPERATIVE AGREEMENT
BETWEEN CITY OF WEST RICHLAND AND BENTON COUNTY
FOR GENERAL EQUIPMENT AND/OR SERVICES
THROUGH THE PUBLIC WORKS DEPARTMENT**

This agreement is made and entered into by and between City of West Richland (hereinafter "West Richland") and Benton County (hereinafter "Benton"), pursuant to the authority granted by Chapter 39.34 RCW, INTERLOCAL COOPERATION ACT.

**ARTICLE I
PURPOSE**

- 1.01 **PURPOSE.** The purpose of this Agreement is to set forth the terms and conditions under which Benton, through its Public Works Department, and West Richland will temporarily provide equipment and/or services to the other party. Neither Benton nor West Richland are required under this Agreement to provide equipment or services to the other party in the event that the party from whom the equipment or services are sought does not have the equipment or services available, or determines, in its sole discretion, that providing the requested equipment or services would not be in its best interest. No new or separate legal or administrative entity is created by this Agreement.

**ARTICLE II
ADMINISTRATION**

- 2.01 **ADMINISTRATOR.** The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for administration of this Agreement and for coordinating and monitoring performance under this Agreement. In the event such representatives are changed, the party making the change shall notify the other party.
- 2.02 West Richland's representative shall be the Public Works Director of West Richland.
- 2.03 Benton's representative shall be the Public Works Administrator.
- 2.04 Requests for rental of equipment or performance of work shall be submitted by the requesting agency to the agency providing the equipment or work in writing. Written requests shall be submitted prior to rental of equipment or performance of work. In the event that circumstances do not permit a written request to be submitted, the representative for the agency providing equipment or work may waive this requirement, providing that a written request, along with an explanation of the circumstances for the waiver, be provided as soon as is practical.

**ARTICLE III
DURATION AND RENEWAL OF AGREEMENT**

- 3.01 **DURATION AND RENEWAL.** This Agreement shall be effective when executed by both parties and shall continue through December 31, 2021. The obligation to provide compensation for the use

of equipment or service provided during the term of this Agreement shall survive this Agreement's termination or expiration.

ARTICLE IV COMPENSATION

- 4.01 **COMPENSATION.** Both parties hereby agree to reimburse the other for the costs of the work performed or equipment rented, as requested by one agency herein to the other agency herein and shall be based on the actual cost of labor, equipment, plus all costs for fringe benefits to labor, including but not limited to, Social Security, retirement, industrial and medical aid costs, prorated sick leave, holidays and vacation time, and group medical insurance. Also, an additional five percent (5%) of the total costs shall be added for overhead expenses for accounting, billing, and administrative services, after a certified statement of the costs is provided within thirty (30) days of the service or equipment rental. The amount shall be paid within thirty (30) days after billing.

ARTICLE V PERFORMANCE OF AGREEMENT

- 5.01 **COMPLIANCE WITH ALL LAWS.** Each party shall comply with all federal, state, and local laws, rules, regulations, and ordinances applicable to the performance of this Agreement, including without limitation, all those pertaining to wages and hours, confidentiality, disabilities, and discrimination.
- 5.02 **MAINTENANCE AND AUDIT OF RECORDS.** Each party shall maintain books, records, documents, and other materials relevant to its performance under this Agreement. These records shall be subject to inspection, review, and audit by either party or its designee, and the Washington State Auditor's Office. Each party shall retain all such books, records documents, and other material for the applicable retention period under federal and Washington law.
- 5.03 **ON-SITE INSPECTIONS.** Either party or its designee may evaluate the performance of this Agreement through on-site inspection to determine whether performance is in compliance with the standards set forth in this Agreement and in compliance with federal, state, and local laws, rules, regulations, and ordinances.
- 5.04 **TREATMENT OF ASSETS AND PROPERTY.** No fixed assets or personal or real property will be jointly or cooperatively acquired, held, used, or disposed of pursuant to this Agreement.
- 5.05 **IMPROPER INFLUENCE.** Each party agrees, warrants, and represents that it did not and will not employ, retain, or contract with any person or entity on a contingent compensation basis for the purpose of seeking, obtaining, maintaining, or extending this Agreement. Each party agrees, warrants, and represents that no gratuity whatsoever has been or will be offered or conferred with a view towards obtaining, maintaining, or extending this Agreement.
- 5.06 **CONFLICT OF INTEREST.** The elected and appointed officials and employees of the parties shall not have any personal interest, direct or indirect, which gives rise to a conflict of interest.

5.07 **ASSIGNMENT AND SUBCONTRACTING.** No portion of this Agreement may be assigned or subcontracted to any other individual, firm, or entity without the express and prior written approval of both parties authorized representatives.

5.08 **NOTICE.** Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, notice to Benton shall be to the Public Works Administrator, P.O. Box 1001, Prosser, Washington 99350; and to the Benton County Commissioners, P.O. Box 190, Prosser, Washington 99350. Notice to West Richland for all purposes under this Agreement shall be to the Public Works Director of the City of West Richland, 3100 Belmont Blvd, Suite 102, West Richland, Washington 99353, and the West Richland City Council, 3801 W Van Giesen St, West Richland, WA 99353.

ARTICLE VI INDEMNIFICATION

6.01 **MUTUAL INDEMNITY.** To the extent of its comparative liability, each party agrees to indemnify, defend and hold the other party, its elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which are alleged or proven to be caused by an act or omission, negligent or otherwise, of its elected and appointed officials, employees, agents or volunteers.

A Party shall not be required to indemnify, defend, or hold the other Party harmless if the claim, damage, loss or expense for personal injury, for any bodily injury, sickness, disease or death or for any damage to or destruction of any property (including the loss of use resulting therefrom) is caused by the sole act or omission of the other Party.

In the event of any concurrent act or omission of the parties, negligent or otherwise, each party shall pay its proportionate share of any damages awarded based upon comparative liability. The parties agree to maintain a consolidated defense to claims made against them and to reserve all indemnity claims against each other until after liability to the claimant and damages, if any, are adjudicated. If any claim is resolved by voluntary settlement and the parties cannot agree upon apportionment of damages and defense costs, they shall submit apportionment to binding arbitration.

In any and all claims against West Richland or its officers, officials, employees, or agents by any employee of Benton, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under Section 6.01 of this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Benton or subcontractor under workers compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that Benton expressly waives any immunity Benton might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington.

In any and all claims against Benton or its officers, officials, employees, or agents by any employee of West Richland, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under Section 6.01 of this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for West Richland or subcontractor under workers compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that West Richland expressly waives any immunity West Richland might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington.

- 6.02 **SURVIVAL OF INDEMNITY OBLIGATIONS.** The parties agree all indemnity obligations shall survive the completion, expiration or termination of this Agreement.

ARTICLE VII DISPUTES

- 7.01 **DISPUTE RESOLUTION; GOVERNING LAW; VENUE.** In the event of a dispute regarding the enforcement, breach or interpretation of this Agreement, the parties shall first meet in a good faith effort to resolve such dispute. Any judicial proceeding arising out of this contract shall be governed by the laws of the State of Washington, and suit may be instituted and maintained only in the courts of competent jurisdiction in Benton County, Washington.

ARTICLE VIII TERMINATION

- 8.01 **TERMINATION.** Any party hereto may terminate this Agreement upon thirty (30) days' notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the party's last known address for the purposes of giving notice under this paragraph. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

ARTICLE IX GENERAL PROVISIONS

- 9.01 **CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS.** The Agreement may be changed, modified, amended or waived only by written agreement signed by the parties' authorized representatives and adopted by resolution of each party's legislative authority. Any waiver of a term or condition of this Agreement shall apply only to the specific act, occurrence or omission and shall not constitute a waiver as to any other term or condition or future act, occurrence or omission. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.

- 9.02 **ASSIGNMENT.** Neither party may assign its rights or delegate its duties under this Agreement, whether by assignment, further subcontract or other means. Any such attempted assignment or delegation shall be void and shall constitute a material breach of this Agreement.
- 9.03 **SEVERABILITY.** In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions or application of this Agreement which can be given effect without the invalid term, condition or application. To this end the terms and conditions of this Agreement are declared severable.
- 9.04 **ENTIRE AGREEMENT.** This Agreement contains all the terms and conditions agreed upon by the parties. All items incorporated herein by reference are attached. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.
- 9.05 **INTERLOCAL COOPERATION ACT PROVISIONS.** All vehicles, equipment, inventory and any improvement thereon or fixtures purchased by West Richland, shall remain the sole property of West Richland. All vehicles, equipment, inventory and any improvements thereon or fixtures purchased by Benton, shall remain the sole property of Benton.

No independent special budget or funds are anticipated, nor shall be created without the prior written agreement of the parties. It is not intended that a separate legal entity be established to conduct this cooperative undertaking, nor is the acquiring, holding, or disposing of real or personal property other than as specifically provided within the terms of this Agreement.

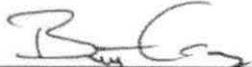
A copy of this Agreement shall be filed with the Benton County Auditor's office or posted on West Richland's or Benton's website as required by RCW 39.34.040.

- 9.06 **EVIDENCE OF AUTHORITY.** Upon execution of this Agreement, West Richland shall provide Benton and Benton shall provide West Richland with a copy of the resolution, ordinance, or other authority to execute this Agreement pursuant to RCW 39.34.030(2), and said documents shall be attached hereto and incorporated herein as Exhibit A (West Richland) and Exhibit B (Benton).

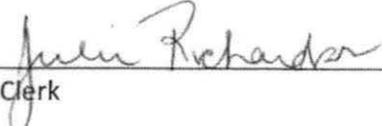
IN WITNESS WHEREOF said parties have caused this Agreement to be signed by the duly authorized officials on the day and year first written above.

This section intentionally left blank.

CITY OF WEST RICHLAND, WASHINGTON

By: 
Brent Gerry, Mayor

Attest:


City Clerk

Date: 4-10-19

Approved as to form:


Attorney

Date: 4/9/19

BENTON COUNTY, WASHINGTON

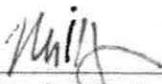
By: 
Chairman
Board of County Commissioners

Attest:


Clerk of the Board

Date: 4-23-2019

Approved as to form:


Benton County Deputy Prosecuting Attorney

Date: 2/22/19

EXHIBIT A

**CITY OF WEST RICHLAND
RESOLUTION NO. 15- 19**

**A RESOLUTION OF THE CITY OF WEST RICHLAND,
WASHINGTON, AUTHORIZING AN INTERLOCAL AGREEMENT
BETWEEN THE CITY OF WEST RICHLAND AND BENTON
COUNTY FOR GENERAL EQUIPMENT AND/OR SERVICES
THROUGH THE PUBLIC WORKS DEPARTMENT**

WHEREAS, the previous Inter-local Agreement for general equipment use executed in November 2011 has expired; and

WHEREAS, an Interlocal Agreement defining the responsibilities of the County and the City has been prepared and has been approved as to form by the City Attorney and has been approved by Benton County; and

WHEREAS, the Public Works Director has recommended approval of said Interlocal Agreement;

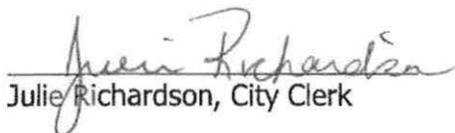
NOW, THEREFORE, be it resolved that the Interlocal Agreement by and between the City of West Richland and Benton County for general equipment and/or services through the Public Works Department is hereby approved and the Mayor is authorized to sign said agreement.

**PASSED BY THE CITY COUNCIL OF THE CITY OF WEST RICHLAND,
WASHINGTON**, this 9th day of April, 2019.



Brent Gerry, Mayor

ATTEST:



Julie Richardson, City Clerk

APPROVED AS TO FORM:



Bronson Brown, City Attorney