

WHEN RECORDED RETURN TO:

Richland City Clerk
625 Swift Boulevard, MS-07
Richland, WA 99352

INTERLOCAL COOPERATIVE AGREEMENT
Between
THE CITY OF RICHLAND AND THE PORT OF BENTON
Re: Railroad Maintenance

THIS INTERLOCAL COOPERATIVE AGREEMENT is entered into this 11th day of October, 2022 (the “Effective Date”), by and between the **City of Richland**, a Washington municipal corporation, (hereafter “Richland” or “City”), and the **Port of Benton**, a political subdivision of the state of Washington (hereafter “the Port”). Richland and the Port are also herein referred to individually as a “Jurisdiction” and collectively as “the Jurisdictions.”

I. RECITALS

WHEREAS, RCW 39.34.010 permits local governmental units 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, pursuant to RCW 39.34.080, each Jurisdiction is authorized to contract with any one or more public agencies to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform; provided that such contract shall be authorized by the governing body of each Jurisdiction to the contract and shall set forth its purposes, powers, rights, objectives and responsibilities of the contracting parties; and

WHEREAS, the City and the Port own and maintain railroad track and at-grade crossing systems; and

WHEREAS, the Port’s railroad system is larger than the City’s railroad system; and

WHEREAS, both agencies occasionally issue contracts to accomplish necessary railroad maintenance and repairs; and

WHEREAS, the City employs staff qualified to conduct railroad maintenance work; and

WHEREAS, the Jurisdictions, by their respective governing bodies, have determined that railroad maintenance work may be best implemented on a shared basis in a manner deemed most efficient and effective for the Jurisdictions.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Jurisdictions agree as follows:

II. AGREEMENT

Section 1. Purpose and Scope of Work: The purpose of this Agreement is intended to: 1) enable the City and Port to combine railroad maintenance work into combined projects when Port or City staff determine this approach to be in each Jurisdiction's best interest; and 2) enable dispatching of the City's qualified railroad maintenance staff to accomplish limited short-duration railroad maintenance and repair work on the Port's track facilities.

Section 2. Administration: The Richland City Manager or designee and the Port Executive Director or designee will administer this Agreement on behalf of each Party, and will be responsible for:

- a. Establishing policies for implementing this Agreement;
- b. Providing periodic progress reports to the elected officials of each Jurisdiction; and
- c. Monitoring progress of the Jurisdictions and other agencies in the fulfillment of their respective responsibilities.

Section 3. Funding: For each project, one jurisdiction shall be designated as the lead agency and assume the role of issuing a contract for the work consistent with the lead agency's procurement processes or performing work with its own labor force and equipment. Generally, the lead agency will be the agency in which the larger amount of work is being completed, but particular instances may arise due to timeliness, expertise, emergency availability, etc. in which the lead agency is the agency in which a smaller or nonexistent amount of work is being completed. In these instances, approval by both the City Manager and Port Executive Director will be required.

The other jurisdiction shall be designated the "participating jurisdiction." Each party shall be responsible for fully funding the work performed on its own facilities. In addition, the participating jurisdiction shall pay reasonable costs for project development and construction management when those functions are performed by the lead agency. Reasonable project development and construction management costs shall be based on documented actual costs or estimates based on similar projects conducted by the lead agency.

Section 4. Development and Bid Award Requirements: Each Jurisdiction hereby commits to the following with respect to work to be completed by contract:

- a. At least ninety (90) calendar days before advertising for bids for a railroad maintenance project, the jurisdiction issuing the project will notify the other agency to offer participation in the project.
- b. The participating agency shall notify the lead agency no later than forty-five (45) calendar days after the lead agency notification of its intention to participate.
- c. The participating agency shall identify its proposed scope of work and funding capacity no later than sixty (60) calendar days after the lead agency's notification.
- d. The lead agency shall include the participating agency's scope of work in its bid documents. The participating agency's scope of work may be presented as a bid alternate to preserve the jurisdiction's decision-making flexibility with regard to executing the work.
- e. The lead agency shall share the bid results with the participating agency within two (2) business days of the bid opening.
- f. Based on review of the bid results, the participating agency shall, within two (2) business days, provide written correspondence directing the lead agency to either award the contract to include their scope of work, or to exclude their scope of work from the contract award. Written direction to award the participating agency's scope of work shall constitute a firm commitment to pay the lead agency for all associated costs for the participating agency's work.
- g. The lead agency shall issue regular invoices and supporting documentation to the participating agency, but no more frequently than once per month.
- h. The participating agency shall promptly pay invoices for its scope of work and supporting project development and construction management costs.
- i. The lead agency shall notify the participating agency of significant project meetings, such as pre-construction meetings and any meetings to negotiate significant project changes involving the participating agency's scope of work.
- j. The lead agency shall notify the participating agency when the participating agency's scope of work is complete to enable a final inspection by the participating agency.
- k. The participating agency shall notify the lead agency of its acceptance of the work or of any required corrections to the work within ten (10) business days of the lead agency's notification.
- l. The jurisdictions shall cooperate to achieve successful resolution of any deficiencies identified in the work. In the event of a dispute about the compliance of the work with the contract terms, the lead agency shall retain full authority to administer the close out process of its contract.

Section 5. Additional Provisions Regarding Work Performed by the City of Richland: Each jurisdiction hereby commits to the following with respect to work completed by City of Richland staff and equipment:

- a. Upon receiving a request from the Port for City services, the City Public Works Department will determine its availability after considering the potential impact to City needs. If the City determines that its staff and equipment can support the Port's requested work, the City will notify the Port of that determination within thirty (30) calendar days.
- b. The Port shall be responsible for planning, scheduling, and provision of necessary site safety and logistical support needed by the City's staff.
- c. The City will prepare an invoice for the work performed using its standard labor, equipment and overhead rates.
- d. The Port shall pay the City's invoice in a timely manner.

Section 6. Temporary Immediate Response for Emergency Work or Minor Repairs:

For work that is considered minor (e.g. not "capital" work projects), or emergent, the Port may contact the City for immediate repair work on rail issues of any nature. In an instance of minor or emergency work, the City will determine its ability to meet the Port's needs based on staff availability and expertise. The City's determination of its staff's availability and suitability for the requested work shall be at its sole discretion. If the City determines its staff is both available and suitable, the City will complete the requested work and thereafter prepare an invoice for the work that was performed using its standard labor, equipment and overhead rates. The Port shall pay the City's invoice in a timely manner.

Section 7. Modification: Amendments to this Agreement must be in writing and executed by the duly authorized representative for each Jurisdiction. Said amendments may be executed by the Richland City Manager and Port of Benton Executive Director without further legislative body action.

Section 8. Term of Agreement and Termination:

- a. The term of this Agreement, commencing on the Effective Date, shall become effective on full execution hereof, and upon posting on at least one Jurisdiction's website as provided in RCW 39.34.040. Either Jurisdiction may choose to record this Agreement at its own expense, but recordation is not required.
- b. This Agreement may be terminated upon thirty (30) calendar days' written notice of either party. Termination of this Agreement shall not void or alleviate the terminating party's obligations for work in progress or under executed contract at the time notice of termination is given.

Section 9. Disclaimer/No Liability: Neither party shall be liable to the other for the quality or timeliness of work performed by any contractor procured under this Agreement.

Section 10. Inspection of Records: The records and documents with respect to all matters covered by this Agreement shall be subject to inspection by any Jurisdiction during the term of this Agreement, and shall be maintained thereafter in accordance with the retention schedule established by the State of Washington for municipal records.

Section 11. No Separate Legal Entity: By this Agreement, the Jurisdictions do not intend to form a separate legal entity to conduct the cooperative undertaking. Further, no acquiring, holding or disposing of real or personal property will occur under this Agreement.

Section 12. Severability: In the event any term or condition of this Agreement or application thereof to any person, entity or circumstance is held invalid, such invalidity shall not affect any other terms, conditions or applications 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.

Section 13. Venue, Applicable Law and Personal Jurisdiction: All questions related to this Agreement shall be resolved under the laws of the State of Washington. In the event that either Jurisdiction deems it necessary to institute legal action arising from this Agreement, such action shall be instituted in Benton County Superior Court.

Section 14. Authority To Execute: Each person executing this Agreement on behalf of another person, corporation, partnership, company, or other organization or entity represents and warrants that he or she is fully authorized to so execute and deliver this Agreement on behalf of the entity for which he or she is signing. The Jurisdictions hereby warrant to each other that each has full power and authority to enter into this Agreement and to undertake the actions contemplated herein, and that this Agreement is enforceable in accordance with its terms.

Section 15. Counterpart Originals: Execution of this Agreement and any amendment or other document related to this Agreement may be by electronic signature and in any number of counterpart originals, including portable document format (.pdf), each of which shall be deemed to constitute an original agreement, and all of which shall constitute one whole agreement.

[Signature Page to Follow]

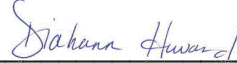
IN WITNESS WHEREOF, the Jurisdictions have entered into this Agreement as of the day and year first written above.

CITY OF RICHLAND



Jon Amundson, City Manager

PORT OF BENTON



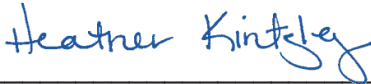
Diahann Howard, Executive Director

Attest:



Jennifer Rogers, City Clerk

Approved as to form:



Heather Kintzley, City Attorney

Approved as to form:



David Billetdeaux, Port Counsel

RESOLUTION NO. 2022-125

**A RESOLUTION OF THE CITY OF RICHLAND, WASHINGTON,
AUTHORIZING AN INTERLOCAL AGREEMENT WITH THE
PORT OF BENTON FOR RAILROAD MAINTENANCE**

WHEREAS, RCW 39.34.010 permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage, thereby providing 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, pursuant to RCW 39.34.080, each Jurisdiction is authorized to contract with any one or more public agencies to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform; provided that such contract shall be authorized by the governing body of each Jurisdiction to the contract and shall set forth its purposes, powers, rights, objectives and responsibilities of the contracting parties; and

WHEREAS, the City and the Port of Benton each own and maintain railroad track assets, and have individual maintenance obligations associated with such ownership; and

WHEREAS, the City and the Port of Benton will benefit through sharing of processes and resources to fulfill their independent obligations regarding railroad maintenance.


NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Richland that the City Manager is authorized to sign and execute an interlocal agreement with the Port of Benton for shared railroad maintenance activities as provided therein.

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately.

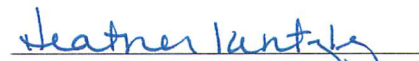
ADOPTED by the City Council of the City of Richland, Washington, at a regular meeting on the 4th day of October, 2022.


Michael Alvarez, Mayor

Attest:


Jennifer Rogers, City Clerk

Approved as to Form:


Heather Kintzley, City Attorney

RESOLUTION 22-35

**A RESOLUTION OF THE BOARD OF COMMISSIONERS
OF THE PORT OF BENTON APPROVING THE INTERLOCAL AGREEMENT
WITH THE CITY OF RICHLAND FOR RAILROAD MAINTENANCE**

WHEREAS, RCW 39.34.010 permits local governmental units 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

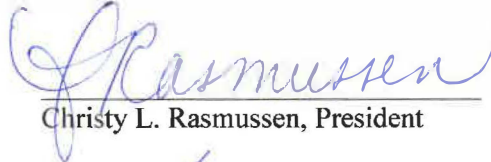
WHEREAS, pursuant to RCW 39.34.080, each Jurisdiction is authorized to contract with any one or more public agencies to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform; provided that such contract shall be authorized by the governing body of each Jurisdiction to the contract and shall set forth its purposes, powers, rights, objectives and responsibilities of the contracting parties; and

WHEREAS, the Port Commission finds that the Interlocal Agreement will formalize a commitment to (1) enable the City and Port to combine railroad maintenance work into combined projects when Port or City staff determine this approach to be in each Jurisdiction's best interest; and, (2) enable dispatching of the City's qualified railroad maintenance staff to accomplish limited short-duration railroad maintenance and repair work on the Port's track facilities; and

WHEREAS, the Port Commission finds that approval of the Interlocal Agreement will save costs and be to the mutual advantage of the Port of Benton and City of Richland;

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE BOARD OF COMMISSIONERS OF THE PORT OF BENTON AS FOLLOWS: that the Port Commission hereby approves the Interlocal Agreement with the City of Richland for Railroad Maintenance as attached, and further authorizes the Port's Executive Director and General Counsel to take all action necessary to implement the agreement within his/her delegation of authority.

DATED AND SIGNED at Richland, Washington by the Port Commission of the Port of Benton at a regular commission meeting held this 11th day of October, 2022.



Christy L. Rasmussen, President



Roy D. Keck, Vice President



Lori Stevens, Secretary