

**BOOSTER PUMP STATION CO-LOCATION AGREEMENT
BETWEEN
CITY OF WEST RICHLAND
AND
CITY OF RICHLAND**

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 CITY OF RICHLAND, a municipal corporation of Benton County, Washington, hereinafter referred to as "Richland", and is effective upon execution by both parties.

WHEREAS, the City of West Richland and the City of Richland are authorized to enter into interlocal cooperation agreements as set forth in Chapter 39.34 RCW, and

WHEREAS, the City of West Richland is in the process of constructing a booster pump station at the corner of Kennedy Road and East Mountain Road within the existing road right-of-way; and

WHEREAS, the City of Richland desires to enter into an agreement with West Richland for co-locating a Richland booster pump station with West Richland's booster pump station; and

WHEREAS, it is proposed that the City of Richland fairly and reasonably compensates the City of West Richland for engineering revisions associated with relocating West Richland's booster pump station on the site to accommodate Richland's booster pump station, common site improvements such as security fencing, paved access, landscaping and storm drainage facilities, and allowing the co-location of Richland's booster pump station on said site as established in this agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is acknowledged, West Richland and Richland agree to the following terms and conditions as follows:

Section 1. GENERAL TERMS AND CONDITIONS

- 1.1 West Richland agrees to allow Richland to co-locate a booster pump station at the corner of Kennedy Road and East Mountain Road within the existing road right-of-way and Richland agrees to compensate West Richland, according to the terms of this Agreement.
- 1.2 West Richland and Richland agrees to share a common access point off of East Mountain Road.
- 1.3 Richland's booster pump station shall match the color and type of construction of West Richland's booster pump station. Only recessed lighting that is fully shielded shall be allowed on the exterior of Richland's booster pump station building.

- 1.4 Richland's booster pump station to be serviced with electrical power from Benton Rural Electric Association.
- 1.5 Richland agrees not to have or utilize a backup power generator on the site, unless said generator is located and fully enclosed within Richland's booster pump station building. This provision will not apply if state or federal regulations require Richland to provide a backup power generator to the pump station. If such regulations are imposed Richland will obtain West Richland's approval for the design of the generator installation.
- 1.6 Richland agrees to obtain a West Richland building permit for the construction of their booster pump station. No mitigation fees or utility connection fees will be levied against Richland's pump station.
- 1.7 Richland's booster pump station building to be set back a minimum of 10 feet from the sites northern boundary and have a minimum of 10 feet of separation from West Richland's booster pump station building.
- 1.8 Richland agrees to be responsible for reimbursing West Richland for 50 percent of the annual site maintenance and repair costs including but not limited to landscaping, fencing, paved access, and storm drainage facilities. West Richland shall invoice Richland annually in February for said previous year's site maintenance and repair costs. Richland shall make payment to West Richland within 30 days of receipt of said invoice.
- 1.9 Richland staff will be allowed unlimited access to the pump station site and Richland's pump station building for all operational and maintenance needs.

Section 2. TERM OF AGREEMENT.

- 2.1 This Agreement shall take effect upon the signature of both parties and shall remain in effect until January 1, 2052 unless earlier terminated as set forth below. After expiration of the initial agreement term and any subsequent renewals or extensions this agreement will automatically renew for a term of ten (10) years.
- 2.2 At the termination of this Agreement , at West Richland's option, Richland shall remove Richland's booster pump station building and return said site to it's original condition or the booster pump station building shall become the property of West Richland.
- 2.3 This Agreement may be terminated earlier by either party upon six month written notice if:
 - a. Richland ceases to utilize Richland's booster pump station for a period of five (5) consecutive years.

Section 3. COMPENSATION

- 3.1 Richland shall remit the following compensation to West Richland as consideration for West Richland granting use of the pump station site:
 - 1) \$125,000 for allowing co-location of Richland's booster pump station at the corner of Kennedy Road and East Mountain Road. Payment shall be made within 30 days of the effective date of this agreement.

2) 100% of West Richland's design modifications related to Richland's co-locating request. These costs shall include engineering drawing revisions associated with relocating West Richland's booster pump station building to accommodate Richland's proposed booster pump station building, review of water modeling information and re-evaluation of West Richland's pump selection. This item does not include coordination between West Richland's consultant, JUB, and Richland and or Richland's developer. Richland and or Richland's developer shall be responsible for contracting directly with JUB as needed. Richland shall reimburse these costs based on actual costs billed by JUB to West Richland, up to the maximum amount of \$17,800. Payment shall be due within 30 days of invoice.

3) Fifty-percent of the cost of common site improvements items such as security fencing, paved site access, landscaping and storm drainage facilities. Richland shall reimburse these costs based on actual costs billed to West Richland, up to the maximum amount of \$60,000. Payment shall be due within 30 days of invoice.

Section 4. Notices

4.1 Written notice shall be directed to the parties as follows:

To Richland:

City of Richland
505 Swift Boulevard, MS#26
Richland, WA. 99352
Attn: Public Works Director

To West Richland:

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

Section 5. Dispute Resolutions

5.1 The parties 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 water utility staff level and if unsuccessful, may then proceed to the level of water utility management (Public Works Directors), then to the City's City Manager, Mayor or City Administrator. Should settlement negotiations prove unsuccessful or not be resolved within ninety (90) days, either

party may proceed with other legal remedies including, but not limited to litigation.

- 5.2 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.
- 5.3 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.
- 5.4 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 6. Liability / Hold Harmless

- 6.1 West Richland shall indemnify, defend, and hold harmless the City of Richland, 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 Richland, 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 Richland, 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 Richland, 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.
- 6.2 Richland shall indemnify, defend, and hold harmless the City of West Richland, 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 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 West Richland, its officers, agents and employees, 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 Richland. This paragraph shall not apply to any damage resulting from the negligence of West Richland, 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 West Richland, its agents or employees, this obligation to indemnify, defend and hold harmless is valid and enforceable only to the extent of negligence of Richland, its officers, agents, and employees.


Section 7. Waiver and Entirety


- 7.1 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 constitute a waiver of any subsequent breach, whether of the same or any other term or condition of this Agreement.
- 7.2 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.

Dated this 29 day of June, 2011

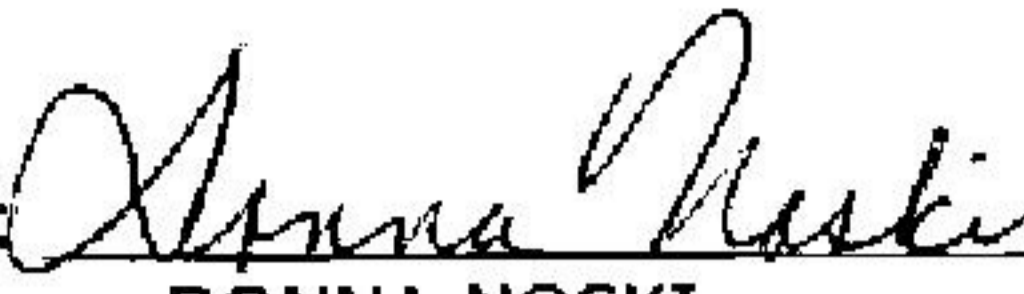
City of Richland

By: 
CYNTHIA D. JOHNSON
City Manager


Attest: 
MARCIA HOPKINS
City Clerk

Approved As to Form: 
THOMAS O. LAMPSON
City Attorney

City of West Richland

By: 
DONNA NOSKI
Mayor

Attest: 
JULIE RICHARDSON
City Clerk

Approved As to Form: 
BRONSON BROWN
City Attorney