

CONTRACT NO. 119-12

## INTERLOCAL COOPERATIVE AGREEMENT

*Between*

City of Richland and Benton Public Utility District

*For*

Construction of a Fiber Optic Cable

This **INTERLOCAL COOPERATIVE AGREEMENT** (the "Agreement") is made and entered into as of September 5, 2012 by the City of Richland, Washington, a municipal corporation and city of the first class in the State of Washington (the "City"), and the Public Utility District #1 of Benton PUD, Washington, a public body corporate of the State of Washington (the "PUD") and collectively referred to in this Agreement hereafter as the "Parties".

### RECITALS

**WHEREAS**, per Resolution 32-12, the Richland City Council authorized the construction of a City owned fiber optic backbone;

**WHEREAS**, the PUD has entered into an agreement with the United States Department of Energy to partially fund and manage the construction of fiber optic cable from the general area of the intersection of Mansfield Street and Northgate Drive, continuing north to the intersection of University Way and George Washington Way (the "Project");

**WHEREAS**, the City wishes to participate in the construction of the Project;

**WHEREAS**, the City and the PUD wish to evidence their respective agreements pertaining to the construction, funding and use of the Project;

**Now therefore**, in consideration of the mutual covenants contained herein, the Parties agree as follows:

**Section 1 – Purpose.** The purpose of this Agreement is to formalize a commitment by the Parties to fund the construction of the Project and to share in the use of the Project during the term of this agreement.

**Section 2 – Administration.** This Agreement will be administered by the PUD. The PUD will manage the construction of the Project and provide regular progress reports to the City. Within 90 days after completion of the Project, the PUD shall provide an invoice along with a complete accounting indicating how funds were expended and recapping the total project costs.

**Section 3 – Funding and Contributions.** The construction cost of the project is estimated at \$160,000 or less. The City commits to fund 25% of the construction costs, not to exceed \$40,000. The PUD commits to fund 75% of the construction costs, not to exceed \$120,000. The contribution from the PUD includes cost participation by other entities that are not parties to this agreement. In addition, the City will provide sufficient 360 strand fiber optic cable to complete the construction, in exchange for which the PUD will provide to the City 22,750' of 96 strand fiber optic cable.

**Section 4 – Fiber Optic Cable Use.** The City shall have unrestricted use of 276 strands of fiber optic cable for a period of twenty years, commencing at that time that the construction is complete and the fiber optic cable is available for the City's use. The fiber optic cable will be owned and maintained by the United States Department of Energy. The City's use of which will be governed by the agreement between the PUD and United States Department of Energy, incorporated and attached as Exhibit A.

**Section 5 – Modification.** This Agreement may only be amended or modified only by written consent of each Party signed hereto.

**Section 6 – Term of Agreement and Termination.**

- (a) The effective date of this Agreement shall be September 5, 2012. This Agreement expires twenty years after date at which the fiber optic cable is available for the City's use, which shall be no later than December 31, 2012. The City's financial contribution cited in this Agreement will not be available after the expiration date without written approval from the City.
- (b) If any portion of the initial contributions by the Parties remains unspent or uncommitted after the completion of the Project, the PUD will reimburse to the City a pro rata share of any monies remaining after the construction is completed.

**Section 7 – Filing.** This Agreement shall be effective upon filing with the Benton County Auditor after it is fully executed.

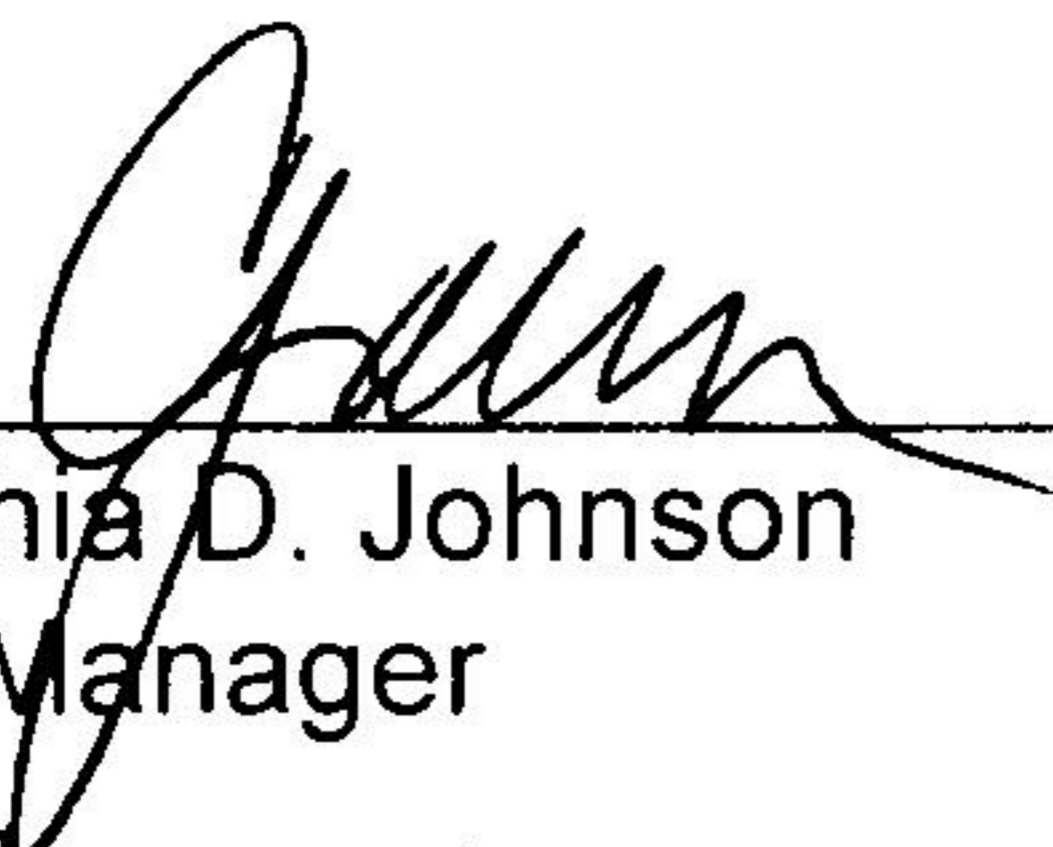
**Section 8 – Records.** The records and documents associated with all matters covered by this Agreement shall be owned by the PUD and all non-privileged records and documents shall be subject to inspection by any Party during the term of this Agreement.

**Section 9 – No Separate Legal Entity.** No new, separate administrative or legal entity is to be established in association with this Agreement or to conduct the cooperative undertaking described herein.

**Section 10 – Severability.** In the event that any term or condition of this Agreement or application thereof to any person, entity, or circumstance is held invalid; such invalidity shall not effect 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.

In Witness Whereof, the Parties have signed this Agreement as of the day and year written below.

**City of Richland**


  
\_\_\_\_\_  
Cynthia D. Johnson  
City Manager

date: 9/26/12

Approved as to Form:

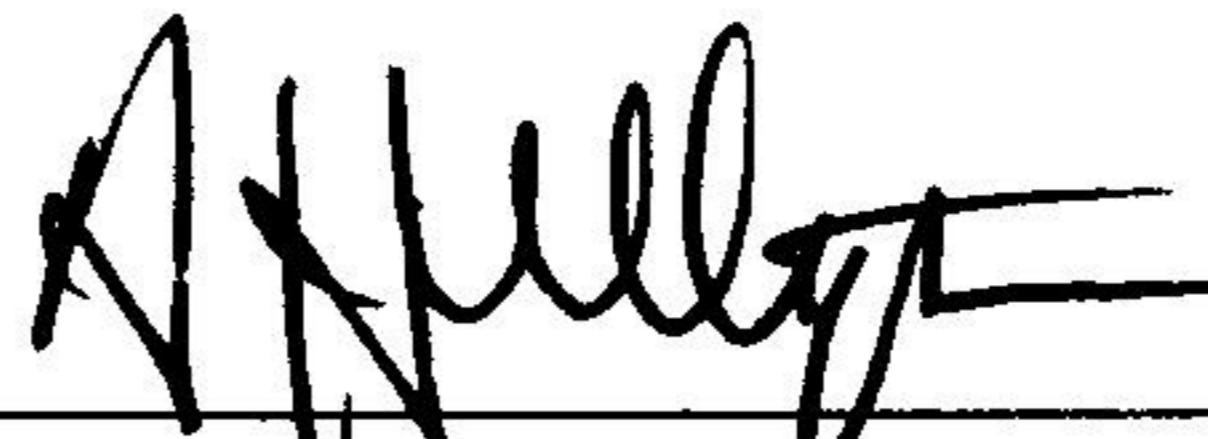
  
\_\_\_\_\_  
Thomas O. Lampson  
City Attorney

**Public Utility District No. 1 of Benton  
County**

  
\_\_\_\_\_  
Jim W. Sanders  
Manager

date: August 28, 2012

Approved as to Form:

  
\_\_\_\_\_  
Dan Hultgren  
Attorney