

January 20, 2016

Return address:  
Richland Energy Services  
City of Richland  
840 Northgate Drive  
Richland, WA 99352

Please print or type information

<b>Document Title(s)</b> (or transactions contained therein): INTERLOCAL COOPERATAIVE AGREEMENT FOR SE RICHLAND SUBSTATION CITY OF RICHLAND CONTRACT NO. 251-15; BENTON PUD CONTRACT #15-21-45
<b>Reference Number(s)</b> of Documents assigned or released: (on page <u>  1  </u> of document(s))
<b>Grantor(s)</b> (Last name first, then first name and initials) 1. <u>  N/A  </u> 2. <u>  CITY OF RICHLAND  </u> 3. 4. 5. <input type="checkbox"/> Additional names on page _____ of document.
<b>Grantee(s)</b> (Last name first, then first name and initials) 1. <u>  N/A  </u> 2. <u>  BENTON PUD #1  </u> 3. 4. 5. <input type="checkbox"/> Additional names on page _____ of document.
<b>Legal description</b> (abbreviated: i.e. lot, block, plata or section, townships, range) <u>  N/A  </u> <input type="checkbox"/> Additional legal is on page _____ of document.
<b>Assessor's Property Tax Parcel/Account Number</b> <u>  N/A  </u> <input type="checkbox"/> Additional legal is on page _____ of document.
The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

**INTERLOCAL COOPERATIVE AGREEMENT  
For SE Richland Substation**

**I. PARTIES**

**THE CITY OF RICHLAND**, a municipal corporation of the State of Washington, hereafter referred to as "City."

**PUBLIC UTILITY DISTRICT NO 1 OF BENTON COUNTY**, a public utility district of the State of Washington, hereafter referred to as "PUD."

The Parties may hereafter be jointly referred to as the "Parties."

**II. RECITALS**

**WHEREAS**, the Parties are each authorized by statute to design, construct and operate electric distribution facilities for the purpose of providing retail electric service to their respective customers; and

**WHEREAS**, the Parties have adjacent retail electric service territories; and

**WHEREAS**, the Parties each have the need for an electrical substation in the SE Richland area to interconnect to their respective distribution systems and to the Bonneville Power Administration ("BPA") transmission system; and

**WHEREAS**, the Parties want to provide for the coordinated design, construction and operation of an electrical substation, with collocated and individually-owned equipment, in the SE Richland area ("Substation").

**NOW, THEREFORE**, in consideration of the foregoing recitals and the mutual covenants contained herein, the Parties do hereby mutually agree as follows:

**III. AGREEMENT**

- 1. Interlocal Cooperation.** RCW Chapter 39.34 (the Interlocal Cooperation Act hereafter referred to as the "Act") authorizes public entities to jointly exercise those powers which have been granted by statute to each party individually. The Parties have entered into this Agreement to provide for the coordinated and cooperative design, construction and operation of the Substation. Nothing contained in this Agreement shall be deemed to allow either Party to exercise any powers which it has not been granted by law.
- 2. Purpose.** The purpose of the Substation will be to provide retail electric service to existing and future customers of the Parties, including new customers arising from population growth; Increase distribution reliability for both Parties' customers by offloading electric load from existing substations and providing additional connection points for other customers, and; provide mutual benefits for both Parties through the sharing of certain costs as described herein. This Agreement shall not

change the intent or implementation of the current service area agreement signed by the Parties on May 24, 2005, and titled "Electrical Service Area and Facilities Purchase Agreement."

3. **Project Description.** The Parties will design, construct and operate the Substation with collocated equipment and facilities individually owned by the City and PUD as described herein. The City will purchase and own the real property necessary for the entire Substation. The PUD will lease the real property underlying its equipment and facilities located in the Substation from the City. The Substation will have a single 115KV connection to the BPA transmission system for use by the City and PUD. Each Party will have separate BPA metering points. The Parties will cooperate in the design and installation of Shared Property (as defined in Section 7.a.ii) and will share equally in the Shared Costs (as defined in Section 7).
4. **City Rights and Responsibilities.** The City shall have the following rights and responsibilities in the development and ownership of the Substation:
  - a. The City shall acquire the Substation real property with terms and conditions of purchase subject to the sole discretion of the City, except that the condition and location of the real property shall be subject to the PUD's prior approval. The City will seek to acquire the Substation real property from a willing seller to avoid condemnation.
    - i. The Substation real property shall have minimum dimensions of 250 feet by 250 feet and shall be of sufficient size to support two bays for two power transformers, two switchgears, and two control houses in total.
  - b. The City shall be responsible for obtaining authorization for and completing the interconnection of the Substation to the BPA transmission system.
    - i. The interconnection shall be a tapped connection to the Badger-Reata 115 kV transmission line with up to one new span.
    - ii. The City will use best efforts to accelerate the interconnection by managing the interconnection process instead of waiting for BPA's schedule. The City will seek to complete the interconnection no later than 2018.
  - c. The City shall contribute equally to Shared Costs that are incurred first by the PUD for Shared Property, provided that the PUD issues an appropriate invoice to the City documenting such Shared Costs.
  - d. The City shall cooperate with the PUD to negotiate and execute a long-term lease of Substation real property underlying the PUD's equipment located in the Substation.

- e. The City shall retain sole ownership of all Substation real property and the interconnection to the BPA transmission system.
  - f. The City shall coordinate with the PUD on the PUD's design and construction of its separate equipment for optimal functioning and efficient construction of the Substation.
5. **PUD Rights and Responsibilities.** The PUD will have the following rights and responsibilities in the development and ownership of the Substation:
- a. The PUD shall cooperate with the City in the City's management of the design, construction and operation of the Substation, including but not limited to providing information and cooperation necessary for the City to obtain permits and authorizations.
  - b. The PUD shall cooperate with the City to negotiate and execute a long-term lease of Substation real property underlying the PUD's equipment located in the Substation.
  - c. The PUD shall contribute equally to Shared Costs that are incurred first by the City for Shared Property, provided that the City issues an appropriate invoice to the PUD documenting such Shared Costs.
  - d. The PUD shall coordinate with the City on the City's design and construction of its separate equipment for optimal functioning and efficient construction of the Substation.
6. **Rights and Responsibilities of Both Parties.** Each Party will have the following rights and responsibilities, at their own cost, in the development and ownership of the Substation:
- a. Each Party shall have the right to use one (1) transformer bay in the Substation.
  - b. Each Party shall have the right to install one (1) power transformer in its designated transformer bay in the Substation.
  - c. Each Party shall have the right to install not more than five (5) distribution feeders from its switchgear in the Substation.
  - d. Each Party shall retain ownership of its separate equipment in the Substation, including but not limited to its power transformer, switchgear, control house and batteries.
  - e. Each Party shall be responsible for installing, operating and maintaining its separate equipment in the Substation.
  - f. Each Party will be responsible for obtaining, at their own cost, those easements and rights-of-way necessary for access to their respective equipment in the Substation and for their distribution feeder corridors.

- g. Each Party will install grounding grids at their own cost for their respective power transformer and 12.47 kV switchgear areas (bays) located in the Substation. The Parties will interconnect all ground grid elements of the Substation to function as one.
  - h. Each Party shall retain ownership of its distribution system beyond its switchgear in the Substation.
  - i. Each Party shall maintain insurance on its equipment and facilities located in the Substation. The insurance shall be consistent, in coverage types and amounts, with insurance maintained on similar equipment and facilities owned by the Party and consistent with prudent utility practices.
  - j. Neither Party shall have the right to use the Substation or its separate equipment in the Substation in a manner that would result in greater government regulation of the other Party, including but not limited to use or operation that would cause the Substation to become a critical asset or additional registered entity function under the regulations of the Western Electricity Coordinating Council.
  - k. Each Party shall be responsible for the design and construction of a spill prevention control and countermeasure containment system for its separate equipment in the Substation, or such Party shall participate in the design and construction of a shared spill prevention control and countermeasure containment system for all equipment in the Substation.
  - l. Each Party shall be responsible for participating in the design and construction of mutually agreed and shared Substation fencing to satisfy safety and durability requirements, and of mutually agreed and shared landscaping to help minimize the aesthetic impacts of the Substation.
- 7. Allocation of Costs.** The Parties shall share equally those mutually agreed costs for the Substation that directly benefit and are necessary for both Parties ("Shared Costs").
- a. The Shared Costs shall include, but are not limited to:
    - i. Costs incurred by the City to obtain authorization from BPA to interconnect the Substation to the BPA transmission system.
    - ii. Design and installation costs for Shared Property. The "Shared Property" shall be mutually agreed Substation equipment or improvements that directly benefit and are necessary for both Parties and may include, but are not limited to fencing grounding and bonding; transmission line and switching structures and associated foundations, footings and grounding grid; access road; and irrigation lines and landscaping.
  - b. The Shared Costs shall not include the fees and costs incurred by either Party

in the negotiation of this Agreement or the resulting lease between the Parties.

8. **Budget.** The Parties shall cooperate to establish a mutually agreed budget and schedule for Shared Costs, and shall cooperate to identify which Substation equipment and improvements will be Shared Property and which Substation expenses will be Shared Costs.
9. **Administration.** This Agreement shall not require formation of any new governance entity. The City shall be responsible for appointing an administrator pursuant to RCW 39.34.030(4). The administrator shall be an employee of the City and shall oversee the operations, maintenance, and management of Shared Property during term of this Agreement.
10. **Further Agreements and Lease.** For each collaborative undertaking pursuant to this Agreement, the Parties will enter into a Memorandum of Understanding ("MOU") or separate agreement to set forth the undertaking of each Party for the particular collaborative effort. Each of the Parties must approve and authorize the execution of each MOU or separate agreement before the undertaking will be binding upon the Parties.
  - a. The Parties shall enter into a mutually agreed long-term lease with the following general terms and conditions:
    - i. The PUD will lease from the City the real property underlying its equipment and facilities located in the Substation.
    - ii. The City will operate and maintain all Shared Property.
    - iii. The Parties will share equally the Shared Costs.
    - iv. The PUD may terminate the lease upon the following conditions:
      - 1) The PUD shall pay for any Shared Costs incurred, or contracted for, that are outstanding at time of withdrawal.
      - 2) Ownership of all Shared Property will revert to the City.
      - 3) All PUD equipment and facilities shall be removed from the Substation so that the City may use the PUD designated bay.
      - 4) The PUD will have no right to reimbursement of past expenditures on Shared Costs or on the value of its equipment and facilities.
    - v. The City shall have no right to terminate the lease, except upon default of the PUD.

- vi. If the City abandons its equipment and facilities in the Substation, then the PUD shall become responsible for operations and maintenance of the Shared Property and the City shall have no contribution requirement for Shared Costs.
  - vii. Neither Party shall have the right to assign its interest in the lease unless such Party transfers its service territory, and as a result of the transfer, the substation will no longer distribute to the Party's service territory. In such event, the Party transferring its service territory may assign its interest in the lease to the transferee of the service territory.
  - viii. The Parties will retain separate ownership of their equipment and facilities located in the Substation. The costs for operating and maintaining such equipment and facilities will be the sole responsibility of the owner.
- 11. Exchange of Information/Confidentiality.** The Parties may exchange information as needed to facilitate the collaborative efforts. To the extent either Party has access to sensitive and confidential materials, including, but not limited to, attorney-client privileged documents, e-mails, and social security numbers, a Party shall not exchange that information if it would become a public record subject to disclosure. Employees of the Parties shall not disclose this information to any person without the prior written permission of the Party who maintains the information. Nothing in this Section is intended to modify or limit the obligations of either Party under the Public Records Act, Chapter 42.56 RCW, and neither Party shall be liable to the other under this Section, or under any other legal theory, for actions taken in conformance with the Public Records Act.
- 12. Allocation of Liability/Indemnification.** The Parties agree that:
- a. Each of the Parties to this Agreement shall be solely responsible for the acts or omissions of its employees, agents and contractors.
  - b. Each of the Parties to this Agreement shall indemnify and hold the other Party harmless from liability, obligation or claims arising solely from the actions or omissions of the indemnifying Party, to the extent permitted by law. In the event the liability, obligation or claim arises from the joint action or inaction of the Parties, then each Party shall be responsible to the extent that its action or inaction contributed to the liability, obligation or claim.
  - c. Each of the Parties to this Agreement shall indemnify and hold the other Party harmless from any environmental claims and liabilities that derive from transport, installation, maintenance, use, ownership or decommissioning of the Parties' separate equipment and facilities, and will also indemnify each other for any such claims deriving from the Parties' individual transport, installation, maintenance, use, or decommissioning of Shared Property, to the extent otherwise allowed by law. The Parties shall defend and share equally in

environmental claims or liability deriving from Shared Property for which neither Party has greater responsibility.

13. **Non-Delegation/Non-assignment.** No Party may delegate the performance of any contractual obligation to a third Party unless mutually agreed in writing. No Party may assign this Agreement without the written consent of the other Party.
14. **No Third Party Rights.** Except as expressly provided herein, nothing in this Agreement shall be construed to permit anyone other than the Parties hereto and their successors and assigns to rely upon the covenants and agreements herein, nor to give any such third party a cause of action (as a third-party beneficiary or otherwise) on account of nonperformance hereunder.
15. **Term and Termination.** This Agreement shall commence on the date it is signed by the Parties and unless terminated earlier as provided in this Section 15, shall continue in effect until such time as the Parties execute a lease as provided in Section 10 and such other agreements or MOUs consistent with this Agreement for the construction, operation, maintenance and cost sharing for the Substation.
  - a. The PUD may terminate its participation in this Agreement by giving written notice to the City of the termination date at least 60 days prior to the date of termination.
    - i. If the PUD terminates its participation in this Agreement, it shall have no right to reimbursement of Shared Costs that it has paid.
    - ii. If the PUD terminates its participation in this Agreement, it shall remove all separate facilities and equipment it owns that have been installed in the Substation.
  - b. The City may terminate its participation in this Agreement by giving written notice to the PUD of the termination date at least 60 days prior to the date of termination, but only if the City determines in its sole discretion that it will not construct a Substation on the chosen site.
    - i. If the City terminates its participation in this Agreement, it shall have no right to reimbursement of Shared Costs that it has paid.
    - ii. If the City terminates its participation in this Agreement, it shall provide the PUD with a right of first refusal to purchase any real property that the Parties have chosen for the Substation site and that has been purchased by the City for the Substation. The purchase price shall be the appraised value of the real property at the time the right of first refusal is exercised.
  - c. Upon withdrawal of a Party, the Shared Property, excluding any real property, shall become the property of the non-withdrawing Party without reimbursement to the withdrawing Party. The withdrawing Party shall be responsible for any



reasonably foreseeable direct damages suffered by the non-withdrawing Party that result from the withdrawal and termination of this Agreement.

- d. Any agreements regarding title to property and all obligations to pay outstanding Shared Costs that have been incurred or contracted for shall survive the termination of this Agreement. The Parties will continue to perform their respective duties and obligations which may be contained in any agreements or MOUs entered into between the Parties as part of this Agreement, and the agreements or MOUs may be terminated as provided by their terms.
16. **Compliance with Law.** The Parties to this Agreement shall comply with all applicable federal, state and local laws, rules and regulations in carrying out the terms and conditions of this Agreement.
17. **Complete Agreement.** This Agreement contains all the terms and conditions agreed upon. No other understanding, oral or otherwise, regarding this Agreement shall be deemed to exist or bind the Parties. There shall be no modification of this Agreement except in writing and referencing this Agreement.
18. **Dispute Resolution/Venue.** It is the Parties' intent to resolve any disputes relating to the interpretation or application of this Agreement informally through discussions at the staff level. In the event disputes cannot be resolved informally at the staff level, then the Parties agree to first submit the dispute to non-binding mediation/dispute resolution before resorting to litigation. In the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties hereto agree that any such action shall be initiated in the Superior Court of the State of Washington, situated in Benton County. The Parties hereto agree that all questions shall be resolved by application of Washington law.
19. **Severability.** If any provision of this Agreement or its application is held invalid, the remainder of the Agreement or the applications of the remainder of the Agreement shall not be affected.
20. **Notices.** All notices required by this Agreement shall be considered given when delivered in person, by confirmed electronic transmission (facsimile or email), or sent by first class U.S. mail, postage prepaid, duly placed in the U.S. mail, or by overnight delivery service, directed to the attention of the following:

To City:

Robert R. Hammond,  
Energy Services Director  
P.O. Box 190 – MS-21  
840 Northgate Drive  
Richland, WA 99352  
Phone (509) 942-7403  
Email: rhammond@ci.richland.wa.us

To PUD:

Chad B. Bartram, General Manager  
P.O. Box 6270  
2721 W. 10th Avenue  
Kennewick, WA 99336  
Phone (509) 582-1202  
Fax (509) 582-1285  
Email: bartramc@bentonpud.org

21. **Evidence of Authority.** This Agreement shall be executed in originals. Upon execution of this Agreement, each party shall provide the other with a certified copy of the resolution, ordinance, or other authority given to execute this Agreement pursuant to RCW 39.34.030(2), and said document will be attached hereto and incorporated herein as Exhibit A (City) and Exhibit B (PUD). A copy of the executed Agreement shall be filed with the Benton County auditor as provided in RCW 39.34.040.

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

CITY OF RICHLAND

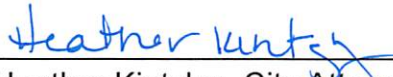
PUBLIC UTILITY DISTRICT NO. 1 OF  
BENTON COUNTY, WA



Cynthia D. Reents, ICMA-CM  
City Manager

Date: 12/19/2015

Approved as to Form:



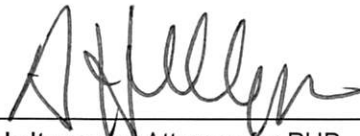
Heather Kintzley, City Attorney



Chad Bartram  
General Manager

Date: 1/7/16

Approved as to Form:



Dan Hultgren, Attorney for PUD

RESOLUTION NO. 130-15

A RESOLUTION of the City of Richland authorizing the execution of an Interlocal Cooperation Agreement with Benton PUD for SE Richland Substation Collocation Purposes.

WHEREAS, Chapter 39.34, RCW (Interlocal Cooperation Act) permits local government units to make the most efficient use of their powers by enabling them to cooperate with other localities and thereby to provide services and facilities in a manner that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities; and

WHEREAS, the City of Richland ("City") and Benton PUD ("PUD") have adjacent retail electric service territories; and

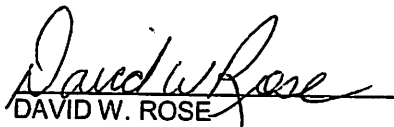
WHEREAS, the City and PUD each have the need for an electrical substation in the SE Richland area to interconnect to their respective distribution systems and to the Bonneville Power Administration transmission system; and

WHEREAS, the Parties want to provide for the coordinated design, construction and operation of a collocated electrical substation in the SE Richland area.

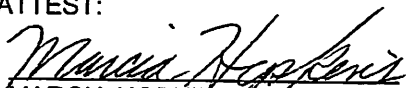
NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Richland authorizes the City Manager to sign and execute the Interlocal Cooperation Agreement with Benton PUD for SE Richland Substation Collocation purposes.

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

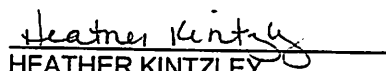
ADOPTED by the City Council of the City of Richland at a regular meeting on the 15<sup>th</sup> day of December, 2015.

  
DAVID W. ROSE  
Mayor

ATTEST:

  
MARCIA HOPKINS  
City Clerk

APPROVED AS TO FORM:

  
HEATHER KINTZLEY  
City Attorney

**RESOLUTION NO. 2337  
December 8, 2015**

**A RESOLUTION OF THE COMMISSION OF PUBLIC  
UTILITY DISTRICT NO. 1 OF BENTON COUNTY, AUTHORIZING THE EXECUTION OF AN  
INTERLOCAL COOPERATION AGREEMENT WITH THE CITY OF RICHLAND FOR  
ELECTRICAL SUBSTATION COLLOCATION PURPOSES AS ALLOWED BY RCW 39.34  
(INTERLOCAL COOPERATION ACT).**

WHEREAS, Chapter 39.34, RCW (Interlocal Cooperation Act) permits local government units to make the most efficient use of their powers by enabling them to cooperate with other localities and thereby to provide services and facilities in a manner that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities; AND

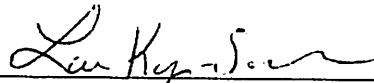
WHEREAS, the District and the City of Richland ("City") have adjacent retail electric service territories; AND

WHEREAS, the District has identified the need for an electrical substation in the West Kennewick area and the City has the need for an electrical substation in the Southeast (SE) Richland area to interconnect to their respective distribution systems and to the Bonneville Power Administration transmission system; AND

WHEREAS, the District and City have identified potential properties in the SE Richland area that could meet each parties' needs and want to provide for the coordinated design, construction and operation of a collocated electrical substation.

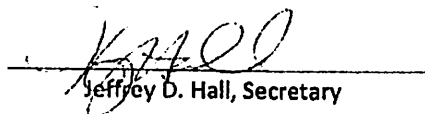
NOW THEREFORE BE IT RESOLVED By the Commission of Public Utility District NO. 1 of Benton County that the General Manager is authorized to sign and execute the Interlocal Cooperation Agreement for SE Richland Substation Collocation in substantially the form presented.

APPROVED AND ADOPTED By the Commission of Public Utility District No.1 of Benton County at an open public meeting, of which notice was given as provided by law, this 8th day of December 2015.



Lori Kays-Sanders, President

ATTEST:



Jeffrey D. Hall, Secretary