

APPENDIX C

RIC + WR AGREEMENT

**WHOLESALE WATER SERVICE AGREEMENT
BETWEEN
CITY OF RICHLAND
AND
CITY OF WEST RICHLAND**

THIS AGREEMENT IS ENTERED into by and between the CITY OF RICHLAND, a municipal corporation of Benton County, Washington, hereinafter referred to as "Richland" and CITY OF WEST RICHLAND, a municipal corporation of Benton County, Washington, hereinafter referred to as "West Richland", and is effective upon execution by both parties.

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

WHEREAS, the City of Richland, City of West Richland, City of Kennewick, and City of Pasco are co-owners of Surface Water Permit No. S4-30976, commonly known as and hereinafter referred to as the "Quad City Water Right"; and

WHEREAS, Surface Water Permit No. S4-30976 appropriates a maximum instantaneous quantity of 178 cubic feet per second with a maximum annual quantity of 96,619 acre-feet per year from the Columbia River; and

WHEREAS, in November 2005, the Cities of Richland, West Richland, Kennewick, and Pasco executed a Memorandum of Agreement for Management of Quad City Water Right and Related Programs hereinafter referred to as "MOA"; and

WHEREAS, the City of West Richland does not own or operate a water treatment facility and or intake facility on the Columbia River to utilize their portion of the Quad City Water Right as a water supply; and

WHEREAS, the City of West Richland desires to enter into an agreement for domestic water supply with Richland; and

WHEREAS, the City of Richland is willing to withdraw, treat, and pump West Richland's portion of the Quad City Water Right and deliver said domestic water to the City of West Richland; and

WHEREAS, it is proposed that a wholesale rate be established which fairly and reasonably compensates the City of Richland for the operation and maintenance costs associated with making a domestic water supply from the Columbia River available to the City of West Richland through metered delivery points on Richland's potable water distribution system as established in this agreement.

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

Section 1. GENERAL TERMS AND CONDITIONS

- 1.1 Richland agrees to sell potable water to West Richland and West Richland agrees to purchase from Richland, according to the terms of this Agreement.
- 1.2 Apart from the contract right to purchase water from Richland under the terms of this Agreement, Richland has no right or claim to West Richland's water system or to any water right, West Richland's portion of the Quad City Water Right, and or claim held by West Richland. Water supplied from Richland to West Richland, up to that portion of the Quad City Water Right allocated to West Richland, shall be credited to West Richland's portion of the Quad City Water Right Permit and once certificated by Washington State Department of Ecology shall be the property of West Richland.
- 1.3 Apart from the contract right to purchase water from Richland under the terms of this Agreement, West Richland has no right or claim to Richland's water system or to any water right, permit, or claim held by Richland.
- 1.4 The existing water inter-tie agreement dated April 18th, 1994 between Richland and West Richland shall be considered null and void.
- 1.5 In consideration of West Richland deeding over parcel # 1-3498-103-0003-012 located in the NE ¼ of Section 34, Township 9 North, Range 28 East, W.M. Plat of Crested Hills, No. 9, Block 3, Lot 12 commonly known as 884 Rand Drive, Richland, WA. 99352 along with the associated groundwater well located on said parcel to Richland, West Richland shall have no obligation to pay a connection fee to Richland.

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, 2051 unless earlier terminated as set forth below. This agreement may be extended upon terms mutually agreed upon by the parties.
- 2.2 At the expiration of the term of this Agreement or if earlier terminated as set forth below, West Richland shall have the right to continue to purchase the amount of water then purchased from Richland. Further, Richland agrees to offer to supply West Richland an amount of water equal to the amount of water supplied under this Agreement, subject to the terms and conditions to be negotiated consistent with Richland pricing policies in effect at the time.
- 2.3 This Agreement may be terminated earlier upon mutual agreement by the parties or upon one year written notice if:
 - a. Quad City Water Right becomes null and void

b. West Richland decides to no longer purchase domestic water from Richland.

c. Richland ceases to treat and distribute Columbia River water to its customers.

Section 3. DOMESTIC WATER SUPPLY AND LOCATION OF CONNECTION POINTS

3.1 From the effective date of this Agreement, Richland shall make available a peak day demand equal to that portion of the Quad City Water Right allocated to West Richland at the agreed connection point(s). Richland, at its sole discretion, may also make available any of their excess or surplus water to West Richland at the agreed connection point(s). The current connection point(s) are:

1) Duportail Drive and Keene Road – HGL = 654' (Pump Station with maximum capacity of 2,500 gpm)

2) Kennedy Road and Arena Road – HGL = 795' (Gravity Feed Connection with maximum capacity of 750 gpm)

3.1.1 The maximum capacity of the agreed connection point(s) shall be adjusted through the agreement amendments to accompany each City's Water System Plan Updates.

3.2 West Richland shall be obligated to purchase a minimum quantity of water annually under this agreement beginning in FY 2008 as specified below:

3.2.1 West Richland's initial minimum quantity of water shall be 133,333 ccf per year (approximately 100,000,000 million gallons per year).

3.2.2 The minimum quantity of water to be purchased shall be adjusted through the agreement amendments to accompany each City's Water System Plan Updates.

3.3 The Duportail Drive connection point shall be the primary connection point once constructed. The Kennedy Road connection point will serve as the connection point until completion of the Duportail connection point. After the Duportail connection point is operational the Kennedy Road connection point will serve as an emergency connection, to be used only when the Duportail connection point is out of service or when authorized by Richland

3.4 West Richland and Richland shall review their respective water demand forecasts every six years as part of the State required updates to their Water System Plans. Future increases in water supplied through this agreement shall be coordinated in each City's Water System Plan, and documented in an amendment to this agreement. If future increases in peak day demand require capital investments to increase Richland's treatment and distribution capacity West Richland and Richland agree that such capital investments shall be reflected in each Cities' Water System Plans and amendments to this agreement.

3.5 West Richland may desire, at a future date, additional connection points to Richland's water system. Richland agrees that such future connections maybe allowed and shall not be unreasonably withheld. West Richland shall be responsible for all costs to plan, engineer, permit, and construct

said additional connection point(s). Richland agrees to financially participate in future waterline extensions from Richland's existing water system to a new connection point(s) if said waterline extension can be tapped and utilized by other Richland customers. Nothing in this agreement shall obligate Richland to accept a proposed connection point that will result in Richland compromising service to its retail customers. Approval of a new connection point(s) will be subject to an amendment of this agreement between the parties prior to the time of connection.

- 3.6 The quantity of water delivered shall be measured by a "Master Meter" referred to in Section 5 herein.
- 3.7 This Agreement by Richland to make domestic water supply available to West Richland shall be subject to and limited by unavoidable accidents, acts of God, and any conditions beyond the reasonable control of Richland. West Richland agrees that Richland's existing facilities provide adequate redundancy and reliability to satisfy Richland's obligations under this agreement. Richland will treat any major interruption to the water supply to West Richland as an urgent matter and will attempt to restore or cause to be restored normal service to West Richland as expeditiously as reasonably possible. Accordingly, West Richland agrees to save and hold harmless Richland, its officers, agents, elected officials, and employees, from and against any and all liabilities, claims, actions, or damages (including costs of defense and reasonable attorney fees) by West Richland and customers thereof relating to or arising out of unavoidable accidents, acts of God, catastrophe, limitations by Richland either through contract or its own emergency, and any and all such conditions beyond the reasonable control of Richland. Any and all claims arising out of such circumstances by customers of West Richland shall be referred directly to West Richland and it shall review, adjust, and/or defend said claims at its own expense, as appropriate.
- 3.8 Any emergency water use restriction imposed by Richland, due to treatment plant capacity or water system capacity, shall be borne proportionately by Richland and West Richland.

Section 4. CONNECTION POINT AND ASSOCIATED PIPING

- 4.1 West Richland shall be responsible for and shall pay for the total cost of design and construction of the Duportail Drive / Keene Road connection point, associated piping, and pump station except that Richland shall reimburse West Richland \$15 per linear foot of 24" waterline installed from the intersection of Keene Road and Duportail Drive to the City Limits of West Richland as other Richland residents or businesses may connect to this waterline in the future.
- 4.2 Richland, at no cost, shall grant West Richland a permit to install a 24" waterline from the intersection of Duportail Drive and Keene Road to the City Limits of West Richland along Keene Road at a mutually agreeable location.
- 4.3 The engineering design of the connection point, associated piping and pump station shall be subject to review and approval by Richland prior to

construction. Construction shall be subject to inspection and approval by Richland.

- 4.4 As discussed in paragraph 1.5 above no water facility assessment charge or any other connection charge shall be required to be paid by West Richland to Richland in connection with this agreement.
- 4.5 Approval of this agreement and the connection point, associated piping, and pump station shall be subject to all other local, state, federal regulations, including but not limited to any requirements imposed by the Washington State Department of Ecology and Washington State Department of Health.
- 4.6 Richland shall be responsible for maintaining and repairing the waterline within its City limit and up to the downstream valve of the connection point meter vault.

Section 5. MASTER METER

- 5.1 All water delivered by Richland to West Richland through a connection point shall be metered by a master flow meter including any necessary control functions and shall meet all specifications and approval of Richland. The master meter installation shall include telemetry equipment complying with Richland specifications for remote monitoring of the connection point. The master meter installation shall include valving as specified by Richland, including a check valve as necessary to prevent backflow.
- 5.2 West Richland shall be responsible for furnishing, installing, and replacing the master flow meter and valves at its own cost.
- 5.3 Richland shall test accuracy of the master meter every two years as part of normal maintenance. Richland shall provide West Richland with notice of the biennial test of the master meter sufficient to provide West Richland with reasonable opportunity to observe the testing process. Richland shall provide West Richland a copy of the written biennial test results within ten days following completion of such testing. Either party, at its option, may request the master meter to be tested for accuracy at any time between the biennial checks, at the requesting parties cost. In the event the master meter is not performing within the manufacture's allowable accuracy limits, the master meter shall be promptly calibrated, repaired or replaced as needed.
- 5.4 Richland shall be responsible for and accomplish all maintenance, normal biennial accuracy tests, calibration and repair of the master water meter and check valve, West Richland shall pay the cost thereof.
- 5.5 The master meter installation shall include test ports for testing of the master meter with appropriate valving and bypass around said meter to facilitate testing. Richland will provide and insert a test meter for accuracy certification of the master meter.

Section 6. WATER QUALITY

- 6.1. Richland shall be responsible for water quality within the Richland water system and Richland shall supply water to West Richland that meets or exceeds federal and state drinking water quality standards, as those standards may change from time to time.
 - 6.1.1. Should state or federal water quality regulations require Richland to make improvements to its Columbia River water treatment facilities and/or distribution facilities prior to planning those improvements through a Water System Plan update Richland may initiate an amendment to this agreement to address the increased cost of delivering water to West Richland.
- 6.2. Richland shall share available water quality data with West Richland.
- 6.3. West Richland shall be responsible for compliance with all applicable Federal, State, and local water quality laws and regulations applicable to water in its distribution system including any water from supply sources that West Richland may own or operate. Water from West Richland's distribution system shall not enter Richland's water system at any time unless requested by Richland.
- 6.4. Water quality monitoring, sufficient to comply with all state and federal regulations, shall be performed by Richland in the Richland water system. Richland shall report the results of such monitoring to West Richland.
- 6.5. Each party shall prepare at its sole cost, periodic water quality notifications or Consumer Confidence Reports to its respective customers and regulatory agencies as required by law. Richland shall provide West Richland all water quality data from the previous year by March 1st regarding Richland water supply system that West Richland may be legally required to report in such notices.

Section 7. Water Rate & Billing

- 7.1. West Richland shall pay Richland for water delivered under this agreement at a rate of \$0.63 per 100 cubic feet from that date this agreement is executed through December 31, 2014 or until amended. The water rate shall be renegotiated and adjusted in coordination with each City's Water System Plan update and the associated water demand forecast or when Richland updates its water rates via a system-wide rate study and provides West Richland with a one-year written notice that the water rate is being amended.
 - 7.1.1. The above rate and future rates shall be based on a cost of service calculation of Richland's cost of providing West Richland's desired demand. The methodology for the current rate is documented in Appendix A of this agreement. The rate shall include:
 - 7.1.1.1. Operations costs for treatment and distribution of treated water to Richland's distribution system; and

- 7.1.1.2. A fraction of maintenance and engineering costs defined by the proportion of infrastructure used to supply water to the connection points divided by the total infrastructure inventory of Richland's potable water supply system; and
- 7.1.1.3. A fraction of water utility administration costs defined by the proportion of water supplied to West Richland divided by the total water supplied to Richland's customers
- 7.1.1.4. Depreciation costs for infrastructure utilized to deliver water to the approved connection points; and
- 7.1.1.5. A return on Richland's debt service costs equal to Richland's cost of debt plus 1.5%
- 7.1.2. Richland reserves the right to introduce charges or surcharges during future rate calculations to compensate it for the impacts of peak demands from West Richland.
- 7.2. Richland agrees to negotiate rate amendments and future agreement renewals in a good faith. The rate that West Richland pays shall not exceed Richland's actual cost to provide the water, as determined by a cost of service calculation. Richland shall bill West Richland on a monthly basis for water supplied through the inter-tie. West Richland shall pay said bill within thirty (30) days of Richland's billing.

Section 8. Notices

- 8.1 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 9. Dispute Resolutions

- 9.1 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.

- 9.2 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.
- 9.3 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.
- 9.4 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.
- 9.5 In no case, except for non-payment of charges for water served, shall the supply of water from Richland to West Richland as provided for in this agreement be interrupted, discontinued, or terminated because of a pending, current or proposed dispute, litigation, or negotiations.

Section 10. Liability / Hold Harmless

- 10.1 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.
- 10.2 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 10. Waiver and Entirety

- 10.1 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 construed to constitute a waiver of any subsequent breach, whether of the same or any other term or condition of this Agreement.
- 10.2 Entirety: Except as provided in the MOA between the parties, as specifically modified herein, all prior negotiations and agreements between the parties hereto relating to the subject matter hereof are merged into and superseded by this Agreement, and shall constitute the entire final and exclusive agreement between Richland and West Richland concerning the sale of water to West Richland for the use as hereinbefore provided.
- 10.3 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 11 day of February, 2008

City of Richland


By: Cynthia D. Johnson
CYNTHIA D. JOHNSON
City Manager


Attest: Debra C. Barham
DEBRA BARHAM
Deputy City Clerk


(Seal)

Approved As to Form: Thomas O. Lampson
THOMAS O. LAMPSON
City Attorney

City of West Richland

By: 
DALE E. JACKSON
Mayor

Attest: 
JULIE RICHARDSON
City Clerk

Approved As to Form: 
TERRY TANNER
City Attorney