

**INTERLOCAL COOPERATIVE AGREEMENT FOR FIBER**

**OPTIC CABLE AND INFRASTRUCTURE**

**CONTRACT NO. 275-17**

**Contract #17-46-03**

This AGREEMENT is made and entered into this 24<sup>th</sup> day of October, 2017, between the CITY OF RICHLAND, a Washington municipal corporation (the "City") and Public Utility District No. 1 of Benton County, Washington ("Benton PUD").

**I. Recitals**

**WHEREAS**, the Jurisdictions are, pursuant to Revised Code of Washington State Chapter 39.34 (the Interlocal Cooperation Act) authorized to exercise their powers jointly, thereby maximizing their ability to provide services and facilities which will best fulfill common needs of the Jurisdictions; and

**WHEREAS**, the City requests that Benton PUD construct fiber optic telecommunications cable and infrastructure to connect the following location in the City of Richland;

295 Bradley Boulevard; and

**WHEREAS**, Benton PUD seeks to construct and provide the right to use the conduit and vault infrastructure with the city; and

**WHEREAS**, both parties receive mutual benefit by entering into a fiber and infrastructure sharing agreement, and therefore wish to memorialize the terms of their relationship.

**NOW THEREFORE**, it is mutually agreed as follows:

**II. Agreement**

**1. FIBER AND INFRASTRUCTURE SHARING**

1.1. Benton PUD will construct the necessary infrastructure for use of fiber optic telecommunications cable to the location in Section 1.2 of the agreement. The City will have the right to use the conduit and vault infrastructure during the term of this agreement. Two (2) strands of the fiber will be available for use by the City.

1.2 Location is; 295 Bradley Boulevard, Richland, WA.

**2. MAINTENANCE AND REPAIRS**

2.1. Benton PUD shall maintain the twelve fiber strands provided by Benton PUD to a best level of effort service standard.

2.2. In order to facilitate timely restoration of service, Benton PUD shall supply the City with an after-hours emergency contact number that the City can contact in case of an outage on the

provided fibers.

- 2.3. During normal operating conditions, Benton PUD shall acknowledge outage reports by the City on the provided fiber within two (2) hours.
- 2.4. During normal operating conditions, Benton PUD will mobilize crews with qualifications required to complete restoration or repairs within four (4) hours after receiving notification from the City of a confirmed fiber cable-related disruption in service on the provided fibers.
- 2.5. Damage to any of the provided fiber optic cables shall be repaired as soon as possible.
- 2.6. Neither Benton PUD nor the City shall be liable to the other for consequential damages suffered by the other party, or by any third party, as a result of damages or repairs to the provided cables, no matter what the cause of the interruption or damage.

### 3. PRINCIPAL CONTACTS

The following individuals have been identified by the City and Benton PUD as Principal Contacts for this Agreement:

#### For Benton PUD

Rick Dunn  
P.O. Box 6270  
Kennewick, WA 99336  
(509) 582-2175  
Email: [dunnr@bentonpud.org](mailto:dunnr@bentonpud.org)

#### For City of Richland

Jon Amundson  
P.O. Box 190  
Richland, WA 99352  
(509) 942-7380  
Email: [jadmundson@ci.richland.wa.us](mailto:jadmundson@ci.richland.wa.us)

### 4. TERM / CANCELLATION

- 4.1. This Agreement shall commence on the date listed above and shall continue, based on location, terminating at midnight on the tenth anniversary of the date the fiber was made available to City for use (see Appendix A).
- 4.2. Either party may cancel this Agreement prior to its scheduled termination date by providing the other party with one (1) year's written notice of termination.
- 4.3. This Agreement may be renewed upon expiration. Price shall be re-negotiated at the time of renewal.

### 5. INSTALLATION EXPENSE REIMBURSEMENT

- 5.1. As a non-recurring cost, the City shall pay Benton PUD the one half of the actual cost of initial installation incurred by Benton PUD. The cost that the City can expect to pay for the

installation is twenty one thousand dollars and zero cents (\$21,000.00).

5.2. In addition to the non-recurring costs identified in Section 5.1 above, no monthly re-occurring expenses will be incurred by the City.

5.3. Payment by the City shall be due within 30 days of invoice by Benton PUD.

## **6. MODIFICATION**

6.1. No modification of this Agreement, including any extensions, shall be valid unless evidenced in writing and signed by both parties. No verbal agreement may supersede, replace or amend this section or any other provision of this Agreement.

## **7. INTEGRATION**

7.1. This Agreement constitutes the final and complete integrated agreement between the parties concerning its subject matter. All other agreements or understandings, whether verbal or in writing, outside of this Agreement are hereby terminated.

## **8. ASSIGNMENT**

8.1. Neither party to this Agreement shall transfer or assign any right or obligation hereunder without prior written consent of the other party. Any such transfer or assignment made without the required consent shall be null and void.

## **9. SEVERABILITY**

9.1. Should any part, term or provision of this Agreement be determined to be invalid, the remainder of this Agreement shall not be affected, and it shall continue in full force and effect.

## **10. INDEMNIFICATION**

10.1. Each of the parties to this Agreement shall protect, indemnify, and save harmless the other party, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgment, and/or awards of damages, arising out of, or in any way resulting from the other party's negligent acts or omissions. Neither party will be required to indemnify, defend, or save harmless the other party if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the other party. Where such claims, suits, or actions result from concurrent negligence of the parties, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the party's own negligence. Each of the parties agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each of the parties, by mutual negotiation, hereby waives, with respect to each of the other party only, any immunity that

would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event that any of the parties or combination of the parties incurs any judgment, award, and/or cost arising therefrom, including attorneys' fees, to enforce the provisions of this Section, all such fees, expenses, and costs shall be recoverable from the responsible party or combination of the parties to the extent of that party's/those parties' culpability. This indemnification shall survive the termination of this Agreement.

**11. CONTROLLING LAW AND VENUE**

11.1. This Agreement is entered into under, and shall be controlled by, the laws of the State of Washington.

11.2. In the event that either party deems it necessary to institute legal action or proceeding to enforce any right or obligation under this Agreement, that action or proceeding shall be brought in the Superior Court for Benton County, Washington. All parties consent to personal jurisdiction in Benton County Superior Court.

**12. NO PARTNERSHIP OR THIRD PARTY RIGHTS**

12.1. This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the parties, or to impose any partnership obligations or liability upon either party.

12.2. This Agreement shall not be construed to create rights in or grant remedies to any third party as a beneficiary of this Agreement.

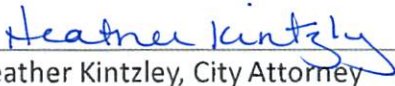
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**CITY OF RICHLAND**



By: Cindy Reents, ICMA-CM  
Title: City Manager

Approved as to Form:



Heather Kintzley, City Attorney

**PUBLIC UTILITY DISTRICT NO. 1 OF  
BENTON COUNTY**



By: Chad Bartram  
Title: General Manager

**APPENDIX A**

| <b>Right to Use</b> | <b>Address</b>        | <b>Build Costs</b> | <b>Build Costs + NRC*</b> | <b>MRC**</b>  | <b>Term</b> |
|---------------------|-----------------------|--------------------|---------------------------|---------------|-------------|
| Customer            | 295 Bradley Boulevard | \$21,000.00        | \$0.00                    | \$0.00        | 10 Yrs.     |
| <b>Totals</b>       |                       | <b>\$21,000.00</b> | <b>\$21,000.00</b>        | <b>\$0.00</b> |             |

\*NRC = Non-Recurring Cost

\*\*MRC = Monthly Recurring Cost

RESOLUTION NO. 186-17

A RESOLUTION of the City of Richland authorizing execution of an Interlocal Cooperative Agreement with Public Utility District No. 1 of Benton County for Fiber Optic Cable and Infrastructure.

WHEREAS, Chapter 39.34 RCW, the Interlocal Cooperation Act, allows public agencies to exercise their powers jointly, thereby maximizing their ability to provide services and facilities which will best fulfill common needs of the jurisdictions; and

WHEREAS, the City of Richland requests that Public Utility District No. 1 of Benton County (Benton PUD) construct fiber optic telecommunications cable and infrastructure to connect 295 Bradley Boulevard; and


WHEREAS, Benton PUD seeks to construct and provide the right to use the conduit and vault infrastructure with the City; and

WHEREAS, both parties will mutually benefit from entering into a fiber and infrastructure sharing agreement, and therefore wish to memorialize the terms of their relationship.

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 Benton PUD for fiber optic cable and infrastructure.

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 17<sup>th</sup> day of October, 2017.

  
ROBERT J. THOMPSON  
Mayor

ATTEST:

  
MARCIA HOPKINS  
City Clerk

APPROVED AS TO FORM:

  
HEATHER KINTZLEY  
City Attorney