

INTERLOCAL COOPERATION AGREEMENT
FOR TRANSFER OF THE LORAYNE J WATER SYSTEM AND SERVICE AREA
TO THE CITY OF RICHLAND

This Interlocal Cooperation Agreement for the Transfer of the Lorayne J Water System to the City of Richland is entered into this 11th day of February, 2019, by and between the KENNEWICK IRRIGATION DISTRICT (“KID”), a Washington special purpose district, and the CITY OF RICHLAND (“City”), a Washington municipal corporation. KID and the City are referred to collectively as the “Parties.”

RECITALS

WHEREAS, KID owns, manages and operates that certain water system (“System”) known as Lorayne J, PWD ID # 532204, which System is located within the City of Richland in Benton County, Washington; and

WHEREAS, the System includes deep wells as its water sources; and

WHEREAS, the City has historically cooperated with KID regarding the operation of said System through an emergency intertie, which supplemented the System’s water sources during equipment failures or planned maintenance; and

WHEREAS, since 2016, the System’s wells have been out of service due to the presence of contaminants that result in non-compliance with state and federal drinking water standards; and

WHEREAS, since taking the wells out of service, the emergency intertie has been in continuous service; and

WHEREAS, KID, in consultation with the Washington State Department of Health, has determined that consolidation of the System with the City’s potable water system is the preferred solution to the System’s water source contamination; and

WHEREAS, KID desires to transfer the System to the City, and acknowledges the infrastructure for the System is at or near the end of its useful life and will require significant repair or replacement to bring the System up to City standards in order to complete transfer of the System to the City; and

WHEREAS, the City has acquired loan financing from the Washington State Department of Health to support upgrading the System’s infrastructure to City standards; and

WHEREAS, Richland Municipal Code Section 18.16.080 prohibits the use of the City’s potable water system for automated landscape irrigation uses in most areas of Richland south of the Yakima River; and

WHEREAS, the City requires new customers located south of the Yakima River to use a separate non-potable source for automated landscape irrigation use, and intends to apply this requirement to the Lorayne J customers; and

WHEREAS, KID's System is capable of providing landscape irrigation service to the Lorayne J customers, and KID intends to continue this service; and

WHEREAS, the City is willing to take ownership of the System's service area and customer accounts in order to resolve the water quality concerns of Richland residents, subject to the System infrastructure being improved to meet City standards and the KID maintaining non-potable landscape irrigation service to the customers; and

WHEREAS, KID and the City recognize their mutual interests will be served through the completion of these transactions, and recognize the need to work collaboratively toward that end.

NOW, THEREFORE, in consideration of the mutual agreements set forth herein, the Parties agree as follows:

I. PURPOSE

This agreement is entered into pursuant to RCW 39.34 as an Interlocal Cooperative Agreement between the Parties. The purpose of this Agreement is to provide a framework for the transfer of the Lorayne J Water System and service area from the KID to the City for the purposes of potable water service and for the termination of the System as a potable water system subject to Washington State Department of Health regulation.

II. ADMINISTRATION

The individuals identified herein are designated as representatives of the respective parties. The representatives shall be responsible for administration of this Agreement and for coordinating and monitoring performance under this Agreement. In the event such representatives are changed, the party making the change shall notify the other party in writing. The City's representative shall be the Public Works Director or authorized designee. KID's representative shall be the District Manager or authorized designee.

III. TERM

This Agreement shall be effective upon executed by the last signing party after approval is granted by each party's legislative body. The Agreement shall continue in effect until final payment by KID of the financial obligations identified herein. A copy of this Interlocal Agreement shall be filed with the Benton County Auditor as provided by Chapter 39.34 RCW.

IV. LORAYNE J WATER SYSTEM TRANSFER

1. Transfer of the Lorayne J Water System. The System being transferred by KID to the City includes the following:

- a. The City acknowledges that real property transferred from KID to the City is subject to easements, reservations, covenants, restrictions and other encumbrances of record;
 - b. Appurtenances associated with Lorayne J PWS # to include customer service components incorporated into the City's potable water delivery system such as meter boxes and valves;
 - c. 118 customer accounts being served.
2. Property and Obligations Excluded from Transfer of Lorayne J. The following assets, property, lien rights and obligations are excluded from the transfer:
- a. LORAYNE J RANCH #1 DECLARATION OF COVENANT A#90-16271 9/27/90. BLOCK 2, LOT 10. And associated Lorayne J wells, storage reservoir and pump house and appurtenant infrastructure;
 - b. All assets/personal property associated with the Lorayne J Irrigation System including pipelines, valves and customer service connections.
3. Infrastructure Improvements. The City intends to construct a new potable water distribution system to enable potable water service to each platted lot within the Lorayne J service area. The new distribution system will consist of water distribution pipelines, valves, fire hydrants, service lines, meter boxes and meters. All of these elements will become the property and responsibility of the City. The City's construction contract will modify the water service connection to each served lot such that the potable service provided by the City will be physically separate from the non-potable service connection to be served by KID. The newly established service connections between the KID's Lorayne J Irrigation System and each customer's landscape irrigation system shall become the property and responsibility of the KID, once any contractual warranty period included in the City's construction contract expires. The City's construction contract will also modify KID's System to remove fire hydrants from the KID's Lorayne J Irrigation System and establish such new flushing capabilities as required by the KID. The modified Lorayne J Irrigation System will be owned and maintained by the KID. The City's construction contract is not intended to make improvements to the remaining KID System, but only to effectively separate the System from the City's new water distribution system. Should the City's design require replacement of KID System components, replacement components shall conform to KID specifications. The City will provide KID with a reasonable opportunity to review and comment on the City's engineering plans. KID will provide written comments to the City no later than thirty (30) calendar days after receipt of plans from the City, or KID's right to comment will be deemed waived.
4. Infrastructure Financing. The City has secured a loan from the Washington State Department of Health (DOH) to fund the infrastructure improvements. The total eligible

cost covered by the loan is \$1,842,130. The loan terms include a 50% principle forgiveness.

- a. Utilizing DOH loan proceeds, the City will design, bid and award a construction contract for the improvements to the Lorayne J Water System and modifications to the Lorayne J Irrigation System.
 - b. The Parties estimate that the total project costs to improve the water system will be approximately \$1,842,130 as stated in the DOH loan awarded to the City. The Parties acknowledge that the final loan amount may be more or less than the actual project costs. Project costs in excess of those covered by the DOH loan are the responsibility of the Lorayne J water users, and reimbursement for those costs shall be collected by KID and remitted to the City.
 - c. In the event construction pricing is higher than the estimated amount, the City will consult with KID to select the path forward to complete the consolidation. The path forward may include: 1) rejecting all bids and rebidding the project; or 2) assembling additional funding from the Washington State Department of Health and/or the Lorayne J water users.
 - d. KID shall be responsible for funding all project costs, including Department of Health loan costs and project cost overruns not eligible for coverage under the loan. No City funds will be expended to cover any project costs.
 - i. KID will pay the City \$921,065 to retire 50% of the DOH loan. KID agrees to release these funds in a lump sum to the City of Richland within 90 days of the City's execution of a construction contract or thirty (30) calendar days before the City's first required debt service payment, whichever occurs first. KID agrees to release the funds noted herein within ten (10) calendar days of receiving notice from the City that payment is due.
 - ii. Within thirty (30) calendar days after closeout of the City's construction contract, the City will provide KID with an accounting of the project costs. If the total project costs are less than the full amount of the DOH loan, the City will refund the amount of KID's funds left unused, after accounting for the 50% loan forgiveness and any project costs deemed necessary but ineligible for DOH loan coverage. If the total project costs are more than the full amount available through the DOH loan, the City will invoice KID for the full amount of the project costs not covered by the DOH loan.
5. Closing. The Parties agree the closing for the transfer of the Lorayne J Water System and service area to the City will take place no later than thirty (30) calendar days after completion of the required infrastructure improvements to upgrade the System to City standards. Closing will be considered complete when the City notifies KID in writing that the new potable water distribution system has been accepted by the City. The KID shall be responsible for any modifications to, or termination of, DOH operating permits and

regulatory reporting for the Lorayne J Water System. This obligation on the KID shall survive termination of this Agreement.

6. Non-Potable Landscape Irrigation Service to Lorayne J properties. KID agrees to provide non-potable landscape irrigation water to the 118 served properties after the new drinking water system is constructed and in operation. KID shall preserve this service indefinitely at service levels equivalent to or greater than that available to other KID irrigation customers. This Section 6 shall survive termination of this Agreement.
7. Interim Operation of Lorayne J System Pending Closing. The Parties agree that during the interim period, until transfer under this Interlocal Agreement is completed, KID will continue its management and operation of the Lorayne J Water System, and the City agrees to extend its existing Water Delivery Agreement during that interim period.
8. Customer Communication and Billing.
 - a. The City and KID will work cooperatively to inform and educate the Lorayne J customers on the construction schedule timing.
 - b. The City and KID will work together to transition the billing of customers to the City of Richland.

V. INDEMNIFICATION

1. City Indemnification. The City agrees to and shall defend, indemnify, and hold harmless the KID, its appointed and elective officials, officers, agents, and employees, from and against all loss or expense, including, but not limited to: judgments, settlements, attorney's fees, and costs by reason of any and all claims and demands upon the KID, its elected or appointed officials, officers, agents, or employees for damages because of personal or bodily injury, including death, at any time resulting therefrom, sustained by any person or persons and on account of damage to property, including loss of use thereof, when such injury to persons or damage to property is due to the negligence of the City, its elected officials, officers, employees, or their agents, except when such injury or damage shall have been occasioned by the sole negligence of the KID, its appointed or elected officials, officers, agents, or employees. It is further provided that no liability shall attach to the City by reason of entering into this Agreement, except as expressly provided herein.
2. KID Indemnification. The KID agrees to and shall defend, indemnify, and hold harmless the City, its appointed and elective officials, officers, agents, and employees, from and against all loss or expense, including, but not limited to: judgments, settlements, attorney's fees, and costs by reason of any and all claims and demands upon the City, its elected or appointed officials, officers, agents, or employees for damages because of personal or bodily injury, including death, at any time resulting therefrom, sustained by any person or persons and on account of damage to property, including loss of use thereof, when such injury to persons or damage to property is due to the negligence of the KID, its elected officials, officers, employees, or their agents, except when such injury or damage shall have been occasioned by the sole negligence of the City, its appointed or elected officials, officers, agents, or employees. It is further provided that no

liability shall attach to the KID by reason of entering into this Agreement, except as expressly provided herein.

VI. DISPUTES

1. Governing Law and Venue. This Agreement shall be governed exclusively by the laws of the State of Washington with venue being placed in Benton County, Washington.
2. Dispute Resolution. In the event of a dispute regarding enforcement, breach or interpretation of this Agreement, the City Manager and District Manager shall first meet in a good faith attempt to resolve such dispute. If after ten (10) business days the Parties are unable to reach a resolution, then the arbitration provisions herein shall apply. In the event of any claims or disputes over this Interlocal Agreement, and as a condition precedent to the commencing of any legal action on said Agreement, the Parties do hereby agree that they will first submit said dispute to arbitration in one of the Tri-Cities, Washington. A single arbitrator shall be selected by agreement of the Parties or, in the alternative, by the presiding judge of Benton County Superior Court. Each party shall be responsible for one-half (1/2) of the fees and expenses of the arbitrator. The mandatory arbitration rules of the Benton/Franklin County Superior Courts shall be binding as to procedure, except as to the unique right of appeal which is not applicable herein. Within fifteen (15) business days of notice of arbitration by a party, an arbitrator shall be designated and the hearing held within sixty (60) days thereof, and a decision made within fifteen (15) business days of such hearing. The right of appeal under the general arbitration laws of the State of Washington shall apply.

VII. TERMINATION

1. Termination. Until such time as the City executes a construction contract for the System improvements, this Interlocal Agreement may be terminated by either party upon 10 calendar days' written notice. After execution of the City's construction contract, this Agreement shall remain in effect until the transactions contemplated herein have been completed.

VIII. GENERAL PROVISIONS

1. Changes, Modifications, Amendments and Waivers. This Agreement may be changed, modified, amended, or waived only by written agreement signed by the parties' authorized representatives and adopted by resolution of each party's legislative authority. Any waiver of a term or condition of this Agreement shall apply only to the specific act, occurrence, or omission, and shall not constitute a waiver as to any other term or condition, or future act, occurrence, or omission. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.
2. Assignment. Neither party may assign its rights or delegate its duties under this Agreement, whether by assignment, subcontract, or other means. Any such attempted assignment or delegation shall be void and shall constitute a material breach of this Agreement.

3. Severability. In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect 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.
4. Scrutiny. This Agreement has been submitted to the scrutiny of the Parties and their respective legal counsel, and shall be given a fair and reasonable interpretation in accordance with the words hereof without consideration or weight being given to its being drafted by or for one of the Parties.
5. Cooperation. The Parties hereto agree to fully cooperate in all matters related to or arising out of this Agreement.
6. Entire Agreement. This Agreement contains all the terms and conditions agreed upon by the Parties. All items incorporated herein by reference will be attached. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

IN WITNESS WHEREOF, the Parties have executed this Agreement this 11th day of February, 2019.

APPROVED:

CITY OF RICHLAND



 Cynthia D. Reents, City Manager

Attest:



 Marcia Hopkins, City Clerk


Approved as to Form:




 Heather Kintzley, City Attorney

APPROVED:

KENNEWICK IRRIGATION DISTRICT



 Dean Dennis, President



 Charles Freeman, District Manager

Approved as to Form:

NA

 , Attorney for KID