

RESOLUTION 2024 0228

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF APPROVING THE THIRD AMENDED AND RESTATED INTERLOCAL AGREEMENT FOR BENTON COUNTY EMERGENCY SERVICES

WHEREAS, Benton County Emergency Services (BCES) is a local organization, formed under the Interlocal Cooperation Act to provide public safety communication and dispatching services in Benton and Franklin Counties; and

WHEREAS, each of the member organizations contributes funding to provide for operation and maintenance of facilities needed to complete the mission of BCES; and

WHEREAS, contributions of the members, so far, had not contemplated large scale capital projects to upgrade or replace antiquated infrastructure; and

WHEREAS, the microwave radio system, which provides interconnectivity between all radio towers in the communications system, was constructed in 1997 and is in a state of failure; and

WHEREAS, failure of the system would result in regional public safety communications blackouts; and

WHEREAS, the BCES member organizations desire to replace the aging components of the microwave communications system before such a failure occurs; and

WHEREAS, in order to provide the necessary funding changes to the current interlocal agreement governing BCES are necessary; and

WHEREAS, the Third Amended and Restated Interlocal Agreement provides that each of the five largest BCES agencies will provide one-fifth of the funding to replace the microwave system and has other updates to reflect the current operational status of BCES. NOW, THEREFORE

BE IT RESOLVED, that the Board of County Commissioners approves the Third Amended and Restated Interlocal Agreement for Benton County Emergency Services; and

BE IT FURTHER RESOLVED that the Board of County Commissioner hereby authorizes the use of Public Safety Sales Tax funds to pay Benton County’s proportional share of the project costs.

Dated this 19th day of March, 2024.


Chair Pro Tem

JEROME DELVIN - ABSENT

Chair


Commissioner

Attest: 
Clerk of the Board

Constituting the Board of
County Commissioners of Benton
County, Washington

WHEN RECORDED RETURN TO:

City of Richland
Attn: City Attorney
625 Swift Boulevard MS-07
Richland, WA 99352

**THIRD AMENDED AND RESTATED
INTERLOCAL AGREEMENT FOR BENTON COUNTY EMERGENCY SERVICES**

THIS THIRD AMENDED AND RESTATED INTERLOCAL AGREEMENT is made and entered into by and between the following entities (collectively, the “Parties”):

- Benton County, a political subdivision of the State of Washington;
- Franklin County, a political subdivision of the State of Washington;
- City of Kennewick, a Washington municipal corporation;
- City of Richland, a Washington municipal corporation;
- City of West Richland, a Washington municipal corporation;
- City of Prosser, a Washington municipal corporation
- City of Benton City, a Washington municipal corporation;
- City of Pasco, a Washington municipal corporation; and
- Benton County Fire Protection District Nos. 1, 2, and 4, all of which are Washington special purpose districts.

I. RECITALS

WHEREAS, the Interlocal Cooperation Act, Chapter 39.34 RCW, authorizes public agencies to make the most efficient use of their powers by enabling them to cooperate with each other based on mutual advantage, and to collectively exercise the rights and powers they hold individually through the execution of an interlocal cooperative agreement; and

WHEREAS, RCW 38.52.070 authorizes and directs each county, city and town within the State of Washington to establish a local organization for emergency management in accordance with the State Emergency Management Plan and Program, and permits the State Director of

Emergency Management to authorize two or more counties, cities and towns to join in the establishment and operation of a local organization for emergency management; and

WHEREAS, Benton County Emergency Services (“BCES”) is such a local organization created in 1996 pursuant to the Interlocal referenced in Section 7, and the Parties to this Agreement wish to continue that organization under the terms of this Third Amended and Restated Interlocal Agreement; and

WHEREAS, in addition to emergency management services, Benton County Emergency Services, through establishment of the Southeast Communications Center, has also provided communication and dispatching for public safety and emergencies for some jurisdictions located in incorporated and unincorporated Benton County, and for any agencies contracting for such services; and

WHEREAS, the cities of Kennewick, Richland, West Richland, Prosser, Benton City, Benton County and Benton County Fire District Nos. 1, 2 and 4, and with limited participation by Benton County Public Utility District #1 (“Benton PUD”) (collectively, the “Existing Partners”) provided county-wide operation of emergency dispatch services under the terms of the First Amended and Restated Interlocal Agreement until 2017; and

WHEREAS, in 2017, Franklin County and the city of Pasco transitioned their dispatch services to Benton County Emergency Services and became member agencies of BCES (the “New Partners”); and

WHEREAS, the Existing and New Parties have operated BCES pursuant to the Second Amended and Restated Interlocal Cooperation Agreement for Benton County Emergency Services recorded with the Benton County Auditor on July 2, 2018 (“2018 BCES Interlocal Agreement”); and

WHEREAS, Benton PUD no longer desires to be a member agency of BCES and has submitted written notice of its immediate withdrawal, to which the parties hereto consent through execution of this Third Amended and Restated Interlocal Agreement; and

WHEREAS, the remaining BCES member agencies intend to continue the provision of dispatch services under this Agreement, and now intend to provide bi-county operation of emergency dispatch services, with each Party participating to the extent identified herein; and

WHEREAS, BCES has established a digital 800MHz radio system that provides and will continue to provide viable public safety communications for many years into the future; and

WHEREAS, Benton County, the cities of Kennewick and Richland, and Benton PUD have historically provided a single microwave system exclusively located in Benton County (hereinafter the “Former (pre-2024) Benton County Microwave System”); and

WHEREAS, Franklin County and public safety agencies within that county have historically operated under a separate microwave system exclusively located in Franklin County (hereinafter “Franklin County Microwave System”); and

WHEREAS, the cities of Kennewick, Richland and Pasco, and the counties of Benton and Franklin desire to acquire a bi-county microwave system equally owned and funded by the five (5) member agencies.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and in accordance with RCW 39.34, RCW 38.52 and Section 8 of the 2018 BCES Interlocal Agreement, the Parties hereto agree to this Third Amended and Restated Interlocal Agreement as follows:

II. AGREEMENT

1. INCORPORATION OF RECITALS

The recitals set forth above are hereby incorporated into this Agreement by reference.

2. PURPOSE

The purpose of this Agreement is to provide for the effective and economical operations of Benton County Emergency Services (BCES), a local administrative entity and joint venture between the above-referenced Parties (also referred to as the “Organization”).

3. ORGANIZATIONAL STRUCTURE

Benton County Emergency Services consists of two (2) divisions: Benton County Emergency Management (BCEM) and Southeast Communications Center (SECOMM).

A. General. The Organization shall consist of an Executive Board, Strategic Advisory Team, Customer Agency Groups and various committees as created by the Executive Board.

1. Appointment of Administrative Jurisdiction; Duration. An Administrative Jurisdiction shall be designated by the Executive Board. The Administrative Jurisdiction shall serve unless or until such service is terminated by the Executive Board, or until the Administrative Jurisdiction withdraws after having provided a minimum of nine (9) months’ written notice of intent to withdraw. The City of Richland is currently designated as the Administrative Jurisdiction. All employees staffing BCES shall be employees of the Administrative Jurisdiction.
2. Duties of Administrative Jurisdiction. The Administrative Jurisdiction shall have full responsibility for the operation of the Organization, and shall provide all necessary administrative support for the Organization. The Administrative Jurisdiction shall perform

its duties pursuant to a contractual agreement with Benton County Emergency Services that shall automatically renew every five (5) years, subject to any renegotiations between the Administrative Jurisdiction and the Executive Board. The Administrative Jurisdiction shall appoint a BCES Director, which appointment shall be subject to confirmation by the Executive Board. The BCES Director shall be removed only at the direction of the Administrative Jurisdiction.

3. Governing Policies. BCES shall follow the policies established by the Administrative Jurisdiction for all efforts related to Finance, Human Resources, Legal, Risk & Safety, and Purchasing. To ease future transition between Administrative Jurisdictions, BCES shall operate and maintain an independent email system.

B. Executive Board Duties; Membership; Voting. The Executive Board shall be the governing body of the administrative entity known as Benton County Emergency Services, and shall be responsible for approving BCES-specific policies, contracts, the annual budget, and confirmation of the Administrative Jurisdiction's appointment of the BCES Director. The Executive Board shall also be responsible for ensuring the Parties' compliance with the legal requirements of Ch. 38.52 RCW.

1. Subject to the voting procedures and restrictions set forth herein, the Executive Board shall consist of one representative from the Benton County Commissioner's Office, one representative from the Franklin County Commissioner's Office, one representative from each of the cities of Kennewick, Richland, Prosser, West Richland, Benton City, and Pasco, and a single representative collectively representing Benton County Fire Protection District Nos. 1, 2 and 4.
2. Whenever they are entitled to vote, Benton County, Franklin County and the cities of Kennewick, Pasco and Richland shall be allowed two (2) votes each. Whenever they are entitled to vote, West Richland, Prosser and Benton City shall have one (1) vote each. Whenever they are entitled to vote, Benton County Fire Protection District Nos. 1, 2 and 4 shall collectively share a single vote.
3. A simple majority of the number of members of the Executive Board shall be a quorum, and a simple majority of votes shall prevail unless otherwise set forth herein.
4. The following are the only representatives authorized to vote on matters associated with Southeast Communications Center (SECOMM):
 - Representatives for the cities of Kennewick, Richland, Pasco, West Richland* and Prosser*;
 - Representatives for the counties of Benton and Franklin;
 - The representative for Benton County Fire Protection District Nos. 1, 2 and 4 casting a single vote for the three (3) entities.*

*Note: No future contracted subscribers to SECOMM shall be entitled to vote.

5. The following are the only representatives authorized to vote on matters associated with the 800MHz system:
 - Representatives for the cities of Kennewick and Richland;
 - The representative for the county of Benton.
 6. The following are the only representatives authorized to vote on matters associated with operation and maintenance of the Former (pre-2024) Benton County Microwave System and related funding:
 - Representatives for the cities of Kennewick and Richland;
 - The representative for the county of Benton;
 7. The following are the only representatives authorized to vote on matters associated with the future operation and maintenance of the new Benton-Franklin County Microwave System and related funding (acquired after the execution hereof):
 - Representatives for the cities of Kennewick, Pasco and Richland;
 - The representatives for the counties of Benton and Franklin.
 8. The following are the only representatives authorized to vote on items associated with Benton County Emergency Management (BCEM):
 - Representatives for the cities of Kennewick, Richland, West Richland, Prosser and Benton City;
 - The representative for the county of Benton.
 9. For items not specifically associated with the Former (pre-2024) Benton County Microwave System, the new Benton-Franklin Microwave System, the 800 MHz system, Southeast Communications Center, or Benton County Emergency Management, all representatives may vote.
 10. A representative may send a delegate to vote by proxy in his or her absence..
- C. Strategic Advisory Team. Working directly with BCES leadership, the Strategic Advisory Team (SAT) will assist in developing strategies for addressing issues such as establishing standardized procedures and incorporating changes in technology. To facilitate the policy-making role of the Executive Board, it may assign to the SAT certain policy reviews, projects, and tasks. The Strategic Advisory Team may consist of one (1) representative from each of the following:
- Kennewick Fire Department
 - Kennewick Police Department
 - Richland Police Department
 - Richland Fire Department
 - West Richland Police Department
 - Benton County Sheriff's Office
 - Connell Police Department
 - Connell Fire Department
 - Pasco Police Department
 - Pasco Fire Department
 - West Benton Fire and Rescue
 - North Franklin County Hospital District

- Franklin County Sheriff's Office
- Franklin County Fire Protection Districts 1, 2, 3, 4 & 5 (1 Rep)
- City of Prosser
- Benton County Fire Protection Districts 1, 2, 4, 5 & 6 (1 Rep)

The SAT representative will be the agency Chief or Sheriff and a senior level executive from the City of Prosser.

D. Customer Agency Group. The Customer Agency Group (CAG) is established to allow customers of BCES to communicate suggestions, ideas, or concerns regarding service, operational policies, and/or procedural issues. The CAG will be comprised of two divisions: Law Enforcement and Fire/EMS. Each division will elect a chairperson to represent the concerns of their division to the BCES Director or at joint CAG meetings. The Customer Agency Group may consist of one (1) representative from each of the following:

- Kennewick Police Department
- Kennewick Fire Department
- Richland Police Department
- Richland Fire Department
- West Richland Police Department
- Benton County Sheriff's Office
- Franklin County Sheriff's Office
- City of Benton City
- Franklin County Fire Protection Districts 1, 2, 3, 4 & 5 (1 Rep)
- Walla Walla Fire Protection District 5
- Connell Police Department
- Connell Fire Department
- Pasco Police Department
- Pasco Fire Department
- West Benton Fire and Rescue
- North Franklin County Hospital District
- City of Prosser Police Department
- Benton PUD
- Benton County Fire Protection Districts 1, 2, 4, 5, & 6 (1 Rep)

1. Issues that impact only one division will be communicated to the BCES Director from the chair of the division. Any recommendations made by either division must be approved by a majority of the agencies before they can be submitted to the Director for consideration. Items for which there is no majority support will require the use of the agency input process.
2. Should an issue be relevant to both divisions, a meeting may be called by the BCES Director or either division chairperson. Attendees to such meeting will be limited to the BCES Director, the SECOMM Communications Managers and/or Emergency Management Manager, and both division chairpersons.
3. Working groups or sub-committees may be created by either division to address operational issues for which operational-level employees or subject matter experts should be involved. These groups and/or sub-committees will report directly to their division chairperson. Additionally, to expedite the development of recommendations that are sound and have the greatest likelihood of success, recommendations will be vetted with a senior subject matter expert dispatcher for additional input. The dispatcher would have no vote in the process of moving forward with an issue.

- E. BCES Director. The Director, under direction of the Administrative Jurisdiction, shall maintain and operate Benton County Emergency Services, and shall be responsible for the implementation of the directives of the Executive Board and the policies and procedures of the Executive Board or the Administrative Jurisdiction, as the case may be. The Director shall be responsible for developing, organizing, and coordinating emergency preparedness planning, training and implementation. The Director shall be responsible for organizing, developing and coordination of E-911 and bi-county communication systems, and shall have such other duties and responsibilities as the Administrative Jurisdiction designates from time to time.

4. FINANCES

Benton County Emergency Services maintains separate funds consisting of:

- One (1) fund for Benton County Emergency Management;
- One (1) fund for Southeast Communications Center;
- One (1) fund for the acquisition, maintenance and operation of the 800MHz; and
- One (1) fund for the acquisition, maintenance and operation of the Benton-Franklin County Microwave System.
- One (1) fund for maintenance and operation of the Former (pre-2024) Benton County Microwave System (to be retired when the system is fully decommissioned).

These funds are maintained and administered by the Administrative Jurisdiction in lieu of the Treasurer of the City of Kennewick, the most populous entity. All monies received for the benefit and use of Benton County Emergency Services, including financial contributions by the Parties to this Agreement in accordance herewith, shall be deposited into the appropriate fund.

- A. Benton County Emergency Management (EM Operations) Fund. Except for, Pasco, and Franklin County, each Party to this Agreement shall contribute to the cost of emergency management operations upon such fair and equitable basis as shall be determined by the Executive Board. If, in any case, the Executive Board is unable to agree upon the proper contributions by the Parties hereto, the decisions shall be referred to the State Emergency Management Council for arbitration, and the Council's decision shall be final and binding upon the Parties hereto. Except for Franklin County and Pasco, each party shall pay its share of the cost of emergency management into the Benton County Emergency Management Fund which is maintained and administered by the Administrative Jurisdiction. The Executive Board shall have the authority to proportionately levy, by percentage of total operating budget responsibility, additional fees to cover unexpected liabilities, including uninsured civil judgments. If the cost overrun or liability is the result of a single agency, the entire cost will be borne by that agency.
- B. Southeast Communications Center (SECOMM Operations) Fund. SECOMM shall be financed by the proceeds of a telephone excise tax that shall be imposed at the same rate by both Benton and Franklin counties, an annual levy upon the Parties, except City of Benton City, and by

contract fees paid by contracting agencies as determined by the Executive Board. Each Party hereto shall contribute its share of the costs of the typical and customary operation and administration of SECOMM as established by the Executive Board. Such contributions shall be determined annually by the Executive Board for inclusion in the Parties' annual budgets. The assessment for any user or member entering SECOMM mid-budget year shall be determined by the Executive Board and pro-rated relative to the months of service remaining in the existing budget year. Funding models for SECOMM budgets shall be determined by the Executive Board. Assessments shall be paid in periodic installments on a schedule determined by the Executive Board. In the event an unforeseen exigent circumstance or uninsured civil judgment results in costs to the Organization in excess of the budgeted expenses for operation and administration, the Executive Board is authorized to proportionately levy, by percentage of total operating budget responsibility, additional fees to cover the unexpected liability. Such excess costs shall be promptly remitted, upon demand, to Benton County Emergency Services. If the cost overrun is solely attributable to a single agency's action or inaction, the entire cost overrun shall be borne by that agency.

- C. 800MHz Fund. The 800MHz Fund shall be used for the maintenance and operation of any 800MHz radio system, whether analog or digital, utilized by BCES. The Executive Board is authorized to levy annual radio assessments upon all Parties who use radios under the 800MHz system, and to impose contract fees upon any contracting agencies for use of the same. Assessments shall be determined annually by the Executive Board for inclusion in the Parties' annual budgets. Assessments shall be paid in periodic installments on a schedule determined by the Executive Board. In the event an unforeseen exigent circumstance or uninsured civil judgment results in costs to the Organization in excess of the budgeted expenses for operation and administration of the 800MHz system, the Executive Board is authorized to proportionately levy, by percentage of the Parties' total 800MHz operating budget responsibility, additional fees to cover the unexpected liability. Such excess costs shall be promptly remitted, upon demand, to Benton County Emergency Services. If the cost overrun is attributable solely to a single agency's action or inaction, the entire cost overrun shall be borne by that agency.

In order to improve coverage of the 800MHz radio system maintained and operated by BCES in certain areas of unincorporated Benton County, one (1) communication site on Red Mountain will be constructed consisting of a trunked simulcast repeater; one (1) microwave; an equipment shelter; a tower; a generator; a fuel tank; and batteries (the "Communication Site"). To integrate the new Communication Site into the existing system, the Golgotha ASTRO 25 Repeater Site must be upgraded with certain hardware, software and services (the "Golgotha Upgrade"). To facilitate construction of the Communication Site and the Golgotha Upgrade, Benton County has satisfied its commitment to provide BCES, by and through its Administrative Jurisdiction, Three Million Dollars (\$3,000,000) for BCES to purchase and install the Communication Site and Golgotha Upgrade Benton County further agrees to directly pay the costs of easement acquisition, design, and construction of a means of ingress and egress, along with provision of utilities (specifically electric) to a parcel agreed upon by Benton

County on which the Communication Site will be located. All operational costs of the Communication Site shall be paid by the Parties hereto in the same manner as other operational costs paid from the 800MHz fund.

The Administrative Jurisdiction is responsible for compliance with applicable procurement laws respecting the purchase and installation of the Communication Site and Golgotha Upgrade. Benton County is responsible for compliance with applicable procurement laws respecting the access easement to the Communication Site.

The Administrative Jurisdiction agrees to maintain the deposits from Benton County in an interest bearing account, and interest will accrue to the benefit of BCES and may be expended on the Communication Site. The Administrative Jurisdiction will continue send to Benton County a written summary of the expenses incurred for the purchase and installation of the Communication Site every thirty (30) days until the Communications Site is completed. Within thirty (30) days of release of retainage to the contractor for the Communication Site work, the Administrative Jurisdiction will return to Benton County the balance of all deposits made by Benton County for the Communication Site that were not expended.

Parties to this Agreement who use the 800MHz system will continue to contribute to its operation and maintenance costs, including costs for operation and maintenance of the Communication Site, through annual radio assessments.

- D. Benton County Microwave System Fund. The Former (pre-2024) Benton County Microwave System Fund shall be used for the maintenance and operation of the Benton County Microwave System utilized by BCES until such time as the new Benton-Franklin Microwave System is constructed and operational. At such time, any funds remaining in the Former (pre-2024) Benton County Microwave Fund shall be transferred to the new Benton-Franklin Microwave System Fund. The Executive Board is authorized to levy annual assessments upon all Parties who use the Benton County Microwave System, and to impose contract fees upon any contracting agencies. Such assessments shall be determined annually by the Executive Board for inclusion in the Parties' annual budgets. Assessments shall be paid in periodic installments on a schedule determined by the Executive Board. In the event an unforeseen exigent circumstance or uninsured civil judgment results in costs to the Organization in excess of the budgeted expenses for maintenance and operation of the Benton County Microwave System, the Executive Board is authorized to proportionately levy, by percentage of the Parties' total Benton County Microwave System budget responsibility, additional fees to cover the unexpected liability. Such excess costs shall be promptly remitted, upon demand, to Benton County Emergency Services. If the cost overrun is solely attributable to a single agency's action or inaction, the entire cost overrun shall be borne by that agency. Neither Franklin County nor any of the Parties to this Agreement located therein shall acquire or be deemed to have acquired any ownership interest whatsoever in any property or equipment that comprises the Benton County Microwave System.

1. Franklin County Microwave System. Although the Former (pre-2024) Benton County Microwave System and the Former (pre-2024) Franklin County Microwave System are technically interconnected and create a Bi-County Microwave System utilized by BCES, Benton County and those Parties to this Agreement who are located therein are the only Parties obligated to contribute to the Former (pre-2024) Benton County Microwave System as provided under Section 4.D above. Franklin County shall be solely responsible for all costs associated with maintenance, operation and improvements to the Former (pre-2024) Franklin County Microwave System. Neither Benton County nor any of those Parties to this Agreement located therein shall acquire any ownership interest whatsoever in any property or equipment that comprises the Former (pre-2024) Franklin County Microwave System. Franklin County shall defend, indemnify and hold harmless Benton County and those Parties to this Agreement who are located therein for all claims related in any way to, Franklin County's maintenance or operation of the Former (pre-2024) Franklin County Microwave System as it presently exists or is modified in the future. "Claim" means any loss, claim, suit, action, liability, damage or expense of any kind or nature whatsoever, including but not limited to attorneys' fees and costs, attributable to personal or bodily injury, sickness, disease or death, or injury to or destruction of property, including the loss of uses resulting therefrom.

- E. Benton-Franklin County Microwave System Fund. The new Benton-Franklin County Microwave System Fund shall be used for the maintenance and operation of the Benton-Franklin County Microwave System utilized by BCES upon completion of its construction. The Executive Board is authorized to levy annual assessments upon all Parties who use the Benton-Franklin County Microwave System, and to impose contract fees upon any contracting agencies. Such assessments shall be determined annually by the Executive Board for inclusion in the Parties' annual budgets. Assessments shall be paid in periodic installments on a schedule determined by the Executive Board. In the event an unforeseen exigent circumstance or uninsured civil judgment results in costs to the Organization in excess of the budgeted expenses for maintenance and operation of the Benton-Franklin County Microwave System, the Executive Board is authorized to proportionately levy, by percentage of the Parties' total Benton-Franklin County Microwave System budget responsibility, additional fees to cover the unexpected liability. Such excess costs shall be promptly remitted, upon demand, to Benton County Emergency Services. If the cost overrun is solely attributable to a single agency's action or inaction, the entire cost overrun shall be borne by that agency.

- F. The BCES Director, upon approval by the Executive Board, is authorized to make expenditures on behalf of the Organization in accordance with the policies and procedures of the Administrative Jurisdiction.

- G. An annual budget for the Organization shall be prepared by the BCES Director in accordance with the policies and procedure of the Administrative Jurisdiction. The annual operating budget requires Executive Board approval.

- H. Contribution to SECOMM Fund. The Parties acknowledge that Franklin County and Pasco each made irrevocable contributions of Five Hundred Thousand Dollars (\$500,000) to the SECOMM Fund as their buy-in for BCES membership pursuant to the 2017 BCES Transition and Buy-In Agreement. These contributions are non-refundable should Franklin County or Pasco withdraw from BCES.
- I. Radio System Upgrade (SUA). In each BCES budget, the allocation of costs to support the trunked radio system shall be equally divided between Benton County, Franklin County, and the cities of Kennewick, Pasco and Richland. Contributions made by Franklin County and Pasco shall not create, nor be construed to create, any ownership interest in the trunked radio system.
- J. Capital Investment - 2024 Benton-Franklin Microwave System. The counties of Benton and Franklin and the cities of Kennewick, Richland and Pasco will jointly fund and acquire a bi-county microwave system to be owned by the five (5) member agencies as follows: twenty percent (20%) ownership by Benton County; twenty percent (20%) ownership by Franklin County; twenty percent (20%) ownership by Kennewick; twenty percent (20%) ownership by Richland; and twenty percent (20%) ownership by Pasco (the "Owner Entities"). The bi-county microwave system will be constructed/installed by and through the Administrative Jurisdiction and operated by Benton County Emergency Services. The Owner Entities shall pay their respective financial contribution of one-fifth (20%) of the actual total capital project cost to the Administrative Jurisdiction, on behalf of BCES, within thirty (30) calendar days of receipt of a detailed invoice. The capital project cost shall be determined based on the actual project cost reflected in the Motorola Project No. WA-21P120A_Richland agreement. Failure of any of the Owner Entities to remit payment as required herein shall result in suspension of services to the non-compliant Owner Entity by BCES.

5. PROPERTY AND EQUIPMENT

- A. Ownership Interests Maintained. Except as authorized by the Executive Board with respect to transfer by FEMA of ownership of assets acquired with Chemical Stockpile Emergency Preparedness Program ("CSEPP") funds, the digital 800MHz radio system, and the Former (pre-2024) Benton County Microwave System Fund, the ownership interests in property, equipment, or funds acquired by or through Benton County Emergency Management shall continue to be shared by Benton County and the cities of Kennewick, Richland, West Richland, Prosser, and Benton City in proportion to the financial and in-kind contribution of each party in the year such property, equipment, or monies was acquired, unless provided otherwise herein. Franklin County and Pasco shall take no ownership interest whatsoever in any property, equipment or monies belonging to BCES unless said ownership interest is expressly identified herein.
- B. Benton PUD Property Interests. Buildings and towers owned by Benton PUD, and site or ground leasehold interests held by Benton PUD at the Prosser site, the Joe Butte Site, and the

Umatilla Ridge site will remain in Benton PUD's ownership or leasehold interest. State-owned microwave system or parts to which Benton PUD previously enjoyed a right of first refusal have been transferred to the joint ownership of Benton County and the cities of Kennewick and Richland in the following percentages: fifty percent (50%) to Benton County; twenty-five percent (25%) to Kennewick; twenty-five percent (25%) to Richland.

- C. Specific Properties Owned Solely By Benton County, Richland and Kennewick. All Parties hereto acknowledge that the federal government may have ownership interests or rights with respect to equipment purchased with funds provided by the federal government. All Parties further acknowledge and agree that the Communication Site on Red Mountain as referenced in Section 4.C above shall be owned exclusively by Benton County. All Parties further acknowledge and agree that the remainder of the existing digital 800MHz radio system, the real property and improvements located at 651 Truman Avenue in Richland, Washington, the leasehold interests and other 800MHz equipment used by Benton County Emergency Services and the Parties hereto at the several existing sites and the Former (pre-2024) Benton County Microwave System used by Benton County Emergency Services shall be owned exclusively by Benton County and the cities of Richland and Kennewick as follows: fifty percent (50%) ownership by Benton County; twenty-five percent (25%) ownership by Kennewick; twenty-five percent (25%) ownership by Richland. The contributions by Pasco and Franklin County required pursuant to Section 4.H above do not create any ownership interests in the above assets by those entities.
- D. Ownership Interests – SECOMM Fund. Property, equipment and funds acquired through the Southeast Communications Center Fund prior to June 26, 2018, shall be owned as follows: fifty percent (50%) ownership by Benton County; twenty-five percent (25%) ownership by Kennewick; twenty-five percent (25%) ownership by Richland. Property, equipment, or monies acquired through the Southeast Communications Center Fund on and after June 26, 2018, shall be owned in equal shares by Benton County, Franklin County and the cities of Kennewick, Richland and Pasco, except to the extent acquired through revenue of E911 taxes as set forth below. Benton County, Franklin County and the cities of Kennewick, Pasco and Richland are the only Parties to this Agreement responsible for contributing toward capital expenditures in the budget process.
- E. Ownership Interests – E911 Taxes. Property, equipment, or monies acquired through the receipt of E911 taxes shall be the property of Benton and Franklin Counties based on the percentage of E911 tax funds contributed by each county toward said property, equipment or monies.
- F. Ownership Interests – New Bi-County Microwave System. The Benton-Franklin Microwave System shall be owned in equal shares of one-fifth (20%) by the following member agencies: Benton County, Franklin County, and the cities of Kennewick, Richland and Pasco. No other member agencies shall have an ownership interest in the Benton-Franklin Microwave System.

6. PUBLIC RECORDS REQUESTS

- A. To comply with BCES's obligation to respond to public records requests, and to minimize legal risk to the Parties, the Parties agree that all original records prepared, owned, used, or retained by BCES shall be provided to and maintained by the Administrative Jurisdiction.
- B. When a public records request is received by BCES under the Washington State Public Records Act, Chapter 42.56 RCW, staff assigned to support BCES will complete a search for responsive records and respond to the request pursuant to the Public Records policy established by the Administrative Jurisdiction. To the extent legal review is needed to respond to a request, the City Attorney for the Administrative Jurisdiction will provide the review. The Parties acknowledge that the Administrative Jurisdiction has ultimate authority to release or withhold records pursuant to the Washington State Public Records Act.

7. DURATION OF AGREEMENT; TERMINATION

This Agreement shall become effective only upon execution by all Parties and filing with each County Auditor in compliance with RCW 39.34.040. Upon the effective date, this Agreement shall replace all prior oral agreements, contracts, interlocals and amendments thereto, including those agreements that have been recorded with the Benton County Auditor, and shall specifically, but without limitation, supersede the Interlocal Agreement for Benton County Emergency Services recorded with the Benton County Auditor on October 1, 1996, the Interlocal Agreement for Benton County Emergency Services Interlocal Cooperation Agreement effective September 1, 2006, Amendment 1 thereto dated May 11, 2009, the 2012 BCES Interlocal Agreement recorded with the Benton County Auditor on January 23, 2012, the Second Amended and Restated Interlocal Agreement for Benton County Emergency Services recorded with the Benton County Auditor on July 2, 2018, and Amendment No. 1 thereto recorded on August 27, 2020. The initial term of this Agreement shall be ten (10) years, after which this Agreement shall automatically extend for successive five (5) year terms unless one or more Parties objects to extending the Agreement no later than six (6) months prior to expiration. Objections to extension of this Agreement shall be submitted in writing to the Executive Board.

8. AMENDMENTS

Amendments to this Agreement shall only be made upon an affirmative vote of all eleven (11) member agencies voting in favor of amendment. This section shall not affect how the Board operates and conducts its business.

9. WITHDRAWALS

Any Party may withdraw from this Agreement upon providing six (6) months' advanced written notice to the Executive Board. A withdrawing Party shall remain liable for obligated payments, and shall be refunded any payments made but not obligated prior to the date of actual withdrawal.

Any Party so withdrawing shall be responsible for complying with Washington State law regarding its obligations to provide emergency management and dispatch services. Upon the act of withdrawing from this Agreement, the withdrawing Party shall be deemed to have forfeited and released all ownership interest it may have in any property, equipment or monies it may have or otherwise been eligible to receive under this Agreement.

10. ALLOCATION OF LIABILITY; INDEMNIFICATION

A. Each party shall be solely responsible for its own wrongful or negligent conduct. Each party promises to indemnify and hold harmless and release all other Parties from any loss, claim or liability arising from or out of the negligent tortious actions or inactions of its employees, officers and officials. Such liability shall be apportioned among the Parties or other at-fault persons or entities in accordance with the laws of the State of Washington. Nothing herein shall be interpreted to:

1. Waive any defense arising out of RCW Title 51.
2. Limit the ability of a Party to exercise any right, defense, or remedy which a Party may have with respect to third parties or the employee(s) whose action or inaction gave rise to loss, claim or liability, including, but not limited to, an assertion that the employee(s) acted beyond the scope of employment.
3. Cover or require indemnification or payment of any judgment against any individual or agency for intentionally wrongful conduct outside the scope of employment of any individual, or for judgment for punitive damages against any individual or agency. Payment of punitive damage awards, fines or sanctions shall be the sole responsibility of the individual against whom said judgment is rendered and/or his or her agency employer, should that employer voluntarily elect to make said payment. This Agreement does not require indemnification of any punitive damage awards or for any order imposing fines or sanctions.

11. SEVERABILITY

If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, to the extent possible and practicable, the remaining parts of the Agreement shall remain in effect and be binding upon all Parties hereto.

12. NO SEPARATE LEGAL ENTITY

No separate legal entity is created upon execution of this Interlocal Agreement.

13. GOVERNING LAW; VENUE

Jurisdiction and venue for any action relating to the interpretation, enforcement, or any dispute arising from this Agreement shall be in Yakima County Superior Court. This Agreement shall be construed in accordance with the laws of the State of Washington.

14. WAIVER

No waiver by any Party hereto of any terms or conditions of this Agreement shall be deemed or construed to be a waiver of any other term or condition, nor shall the waiver of any breach be deemed or construed to constitute a waiver of any subsequent breach, whether of the same or any other term or condition of this Agreement.

15. NO THIRD PARTY RIGHTS


Nothing in this Agreement shall create or be deemed to create any rights in any person or entity not a party to this Agreement.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates identified next to their signatures below.


BENTON COUNTY, WASHINGTON

FRANKLIN COUNTY, WASHINGTON


By: Michael Alvarez Date 3/19/24
Pro Tem, Benton County Commission

By: Rocky Mullen Date
Chairman, Franklin County Commission

JEROME DELVIN - ABSENT


By: Jerome Delvin Date 3/19/24
Benton County, Chair

By: Steve Bauman Date
Franklin County Commissioner


By: William McKay Date 3/19/24
Benton County Commissioner

By: Clint Didier Date
Franklin County Commissioner

Attest:


Attest:


Clerk of the Board

Clerk of the Board

Approved as to Form:

Approved as to Form:


Ryan Brown
Chief Deputy Prosecuting Attorney, Civil

By: Jeff Briggs
Franklin County Deputy Prosecutor

[Signatures Continue Below]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates identified next to their signatures below.


BENTON COUNTY, WASHINGTON

FRANKLIN COUNTY, WASHINGTON

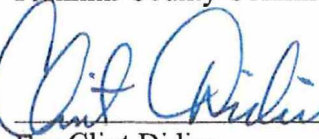
By: Michael Alvarez Date
Chairman, Benton County Commission

 _____ **03/20/2024**
By: Rocky Mullen Date
Chairman, Franklin County Commission

By: Jerome Delvin Date
Benton County Commissioner

 _____ **3-20-2024**
By: Steve Bauman Date
Franklin County Commissioner

By: William McKay Date
Benton County Commissioner

 _____ **3-20-24**
By: Clint Didier Date
Franklin County Commissioner

Attest:

Attest:

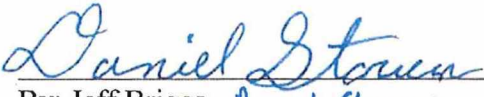
Clerk of the Board

 _____
Clerk of the Board

Approved as to Form:

Approved as to Form:

Ryan Brown
Chief Deputy Prosecuting Attorney, Civil

 _____
By: ~~Jeff Briggs~~ Daniel Stover
Franklin County Deputy Prosecutor

[Signatures Continue Below]

CITY OF PASCO

Adam R. Lincoln March 27, 2024
By: Adam Lincoln Date
Pasco City Manager

Attest:

Debby C. Barham
Debby Barham, City Clerk

Approved as to Form:

Eric Ferguson
Eric Ferguson, Pasco City Attorney

CITY OF RICHLAND

[Signature] March 27, 2024
By: Jon Amundson, ICMA-CM Date
Richland City Manager

Attest:

Jennifer Rogers
Jennifer Rogers, City Clerk

Approved as to Form:

Heather Kintzley
Heather Kintzley, Richland City Attorney

CITY OF KENNEWICK

Lisa Beaton March 31, 2024
By: Lisa Beaton Date
Interim Kennewick City Manager

Attest:

Krystal Townsend
Krystal Townsend, City Clerk

Approved as to Form:

Laurencio Sanguino
Laurencio Sanguino
Acting Kennewick City Attorney

CITY OF WEST RICHLAND

[Signature]
By: Brent Gerry Date
Mayor

Attest:

Stephanie Haug
Stephanie Haug, City Clerk

Approved as to Form:

Jessica Foltz
Jessica Foltz
West Richland City Attorney

[Signatures Continue Below]

CITY OF PROSSER

Gary Vegas April 1, 2024
By: Gary Vegas Date
Mayor

Attest:

Rachel Shaw
Rachel Shaw, City Clerk

Approved as to Form:

Howard Saxton
Howard Saxton, Prosser City Attorney

CITY OF BENTON CITY

Len Burton April 2, 2024
By: Len Burton Date
Mayor

Attest:

Carla Meyer
Stephanie Haug, City Clerk Carol Meyer

Approved as to Form:

Eric Ferguson
Eric Ferguson, City Attorney for Benton City

BENTON COUNTY FIRE PROTECTION DISTRICTS 1, 2, AND 4

Scott Carpenter
By: Scott Carpenter, Commission Chair
BCFPD #1

Date: April 3, 2024

Attest: Lonnie Click

[Signature]
By: BARRY ORTH Commission Chair
BCFPD #2

Date: 3-21-24

Attest: Caren [Signature]

By: _____, Commission Chair
BCFPD #4

Date: _____

Attest: _____

CITY OF PROSSER

CITY OF BENTON CITY

By: Gary Vegar _____ Date
Mayor

By: Len Burton _____ Date
Mayor

Attest:

Attest:

Rachel Shaw, City Clerk

Stephanie Haug, City Clerk

Approved as to Form:

Approved as to Form:

Howard Saxton, Prosser City Attorney

Eric Ferguson, City Attorney for Benton City

BENTON COUNTY FIRE PROTECTION DISTRICTS 1, 2, AND 4

By: _____, Commission Chair
BCFPD #1

Attest: _____

Date: _____

By: _____ Commission Chair
BCFPD #2

Attest: _____

Date: _____

By: Curtis Goodwin, Commission Chair
BCFPD #4

Attest: _____
Paul Goff
Fire Chief

Date: 02/21/2021