



**WHEN RECORDED RETURN TO:**

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

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

2012-002051

THIS SECOND 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;
- Benton County Fire Protection District Nos. 1, 2, and 4, all of which are Washington special purpose districts; and
- Public Utility District #1 of Benton County, a Washington special purpose district.

**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 Second 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") intend to continue to provide county-wide operation of emergency dispatch services under the terms of this Agreement, and, along with the city of Pasco and Franklin County (the "New Partners"), all Parties to this Agreement now intend to provide bi-county operation of emergency dispatch services, with each Party participating to the extent identified herein; and

WHEREAS, the Existing Parties have operated BCES pursuant to the Amended and Restated Interlocal Cooperation Agreement for Benton County Emergency Services effective January 23, 2012 ("2012 BCES Interlocal Agreement"); 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 provide a single microwave system exclusively located in Benton County (hereinafter "Benton County Microwave System"); and

WHEREAS, Benton PUD is a limited voting member of the BCES Executive Board authorized to vote exclusively on the Benton County Microwave System and related funding issues and in return for such rights it agreed in the 2012 BCES Interlocal Agreement not to exercise its right of first refusal to acquire ownership of microwave equipment from the State of Washington that are part of the Benton County Microwave System; and

WHEREAS, Franklin County and public safety agencies within that county operate under a separate microwave system exclusively located in Franklin County (hereinafter "Franklin County Microwave System").

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and in accordance with RCW 39.34, RCW 38.52 and Section 6 of the 2012 BCES Interlocal Agreement, the Parties hereto agree to this Second 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) month's 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 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. This contractual agreement shall be fully executed by December 1, 2017. 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 RCW 38.52.

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, a single representative collectively representing Benton County Fire Protection District Nos. 1, 2 and 4, and one representative from Benton PUD.
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, Benton City and Benton PUD 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. Benton PUD is only entitled to vote on the annual Benton County Microwave System assessment, the cost of Benton County Microwave System operations, replacement of Benton County Microwave System equipment, and Benton County Microwave System expansion or reduction. Specifically, but without limitation, the Benton PUD representative shall not have voting rights for matters relating to the BCES organizational structure and operations.
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. Attendance or non-attendance of the Benton PUD's representative shall not be counted or considered with respect to quorum determination.
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, and 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 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 related to 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 Benton County Microwave System and related funding:
    - Representatives for the cities of Kennewick and Richland;
    - The representative for the county of Benton;
    - The representative for Benton PUD.
  7. 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.
  8. For items not specifically associated with the Benton County Microwave System, the 800 MHz system, Southeast Communications Center, or Benton County Emergency Management, all representatives, except the Benton PUD representative, may vote.
  9. Absence of a representative at a meeting where such a representative is entitled to vote on an issue will result in forfeiture of voting rights for that meeting.
- 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  | • Connell Police Department                                      |
| • Kennewick Police Department                                      | • Connell Fire Department  |
| • Richland Police Department                                       | • Pasco Police Department  |
| • Richland Fire Department   | • Pasco Fire Department  |
| • West Richland Police Department                                  | • West Benton Fire and Rescue                                    |
| • Benton County Sheriff's Office                                   | • North Franklin County Hospital District                        |
| • Franklin County Sheriff's Office                                 | • City of Prosser  |
| • Franklin County Fire Protection Districts 1, 2, 3, 4 & 5 (1 Rep) | • 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 Manager 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.

F. **Notice to Benton PUD.** Benton PUD shall receive notice and an informational packet for all Executive Board Meetings. Packets will be provided electronically the week prior to a

scheduled Executive Board Meeting, and will identify the issues that Benton PUD may vote upon. Should there be a matter upon which Benton PUD is entitled to vote at the scheduled meeting, Benton PUD must have a representative present at that meeting. Benton PUD may vote only on matters upon which Benton PUD is entitled to vote pursuant to section 3(B)(6) of this Agreement. No voting will occur for any matters set forth in Section 3(B)(6) without advance notice to Benton PUD as provided herein. If Benton PUD believes it is entitled to vote on a matter identified in an Executive Board packet, but such packet does not so indicate, Benton PUD must raise the issue at the upcoming Executive Board meeting, or it will be deemed to have waived any voting rights not exercised at that meeting.

#### 4. FINANCES

Benton County Emergency Services maintains four 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 maintenance and operation of the Benton County Microwave System.

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 Benton PUD, Pasco, and Franklin County, each Party to this Agreement shall contribute to the cost of emergency management 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 Benton PUD, 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 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 for Benton PUD and 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. In the first annual budget developed after BCES begins providing Franklin County and Pasco with communication and dispatching for public safety and emergencies, the SECOMM budget funding model will substitute population data for calls for service data wherever calls for service data has been used to allocate agency assessments. Funding models for subsequent 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 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 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 800 MHz 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 to a single agency's action or inaction, the entire cost overrun shall be borne by that agency.
- D. **Benton County Microwave System Fund**. The Benton County Microwave System Fund shall be used for the maintenance and operation of the Benton County Microwave System utilized by BCES. 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 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 Benton County Microwave System and the 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 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 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 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 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. 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.
- F. 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 budget requires Executive Board approval.
- G. **Contribution to SECOMM Fund.** Within thirty (30) calendar days of the date of execution of this Agreement by all Parties, Franklin County and Pasco shall each make an irrevocable contribution of Five Hundred Thousand Dollars (\$500,000) to the SECOMM Fund. Failure to make the contributions as provided herein shall result in suspension of services to the non-compliant Party by BCES.
- H. **Radio System Upgrade (SUA).** Beginning with the first annual BCES budget developed after BCES begins providing Franklin County and Pasco with communication and dispatching for public safety and emergencies, and continuing with each successive BCES budget thereafter, 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.

## **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 CSEPP funds, the digital 800MHz radio system, and the 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 as of the effective date of this Agreement. Any ownership interest acquired thereafter by Franklin County and/or city of Pasco shall be only as provided 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 their ownership or leasehold interests. Benton PUD agrees that, in return for the rights granted under this Agreement, it will not exercise its right of first refusal to acquire any microwave system or parts thereof from the State, and agrees to allow the State to transfer such assets 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. Benton PUD will not have a right to or ownership in any BCES assets, including the Benton County Microwave System, unless this Agreement is amended so as to grant Benton PUD ownership interests in particular assets.
- 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 digital 800MHz radio system, the real property and improvements located at 651 Truman Avenue in Richland, Washington, the leasehold interest and 800 MHz equipment used by Benton County Emergency Services and the Parties hereto at the several existing sites and the 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.G above do not create any ownership interests in the above assets by those entities.

- D. Ownership Interests – SECOMM Fund. Property, equipment, or monies acquired through the Southeast Communications Center Fund on and after the day following the effective date of this Agreement 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 prior to and after the effective date of this Agreement 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.

## 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, and the 2012 BCES Interlocal Agreement. 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 at least twelve (12) votes in favor of amendment, without any vote by Benton PUD, which shall not have a vote on amendments. 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) month's 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 Benton 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: James Beaver Date 6/12/18  
Benton County Commission

  
By: Brad Peck Date 6-5-18  
Chairman, Franklin County  
Commission

  
By: Jerome Delvin Date 6/12/18  
Benton County Commissioner  
Chairman

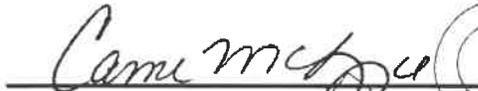
  
By: Rick Miller Date 6-5-18  
Franklin County Commissioner

  
By: Shon Small Date 6/12/18  
Benton County Commissioner

  
By: Robert Koch Date 6-5-18  
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:  
Franklin County Deputy Prosecutor

[Signatures Continue Below]

**CITY OF PASCO**

*Dave Zabell* 6-19-18  
By: Dave Zabell Date  
Pasco City Manager

Attest:  
*Daniela Erickson*  
Daniela Erickson, City Clerk 6/19/18

Approved as to Form:  
*Lee Kerr*  
Lee Kerr, Pasco City Attorney

**CITY OF RICHLAND**

*Cynthia D. Reents*  
By: Cynthia D. Reents, ICMA/CM Date 6/26/18  
Richland City Manager

Attest:  
*Marcia Hopkins*  
Marcia Hopkins, City Clerk

Approved as to Form:  
*Heather Kintzley*  
Heather Kintzley, Richland City Attorney

**CITY OF KENNEWICK**

*Marie E. Mosley* 6/6/18  
By: Marie E. Mosley Date  
Kennewick City Manager

Attest:  
*Terri L. Wright*  
Terri L. Wright, City Clerk

Approved as to Form:  
*Lisa Beaton*  
Lisa Beaton, Kennewick City Attorney

**CITY OF WEST RICHLAND**

*Brent Gerry* 6/13/2018  
By: Brent Gerry Date  
Mayor

Attest:  
*Julie Richardson*  
City Clerk Julie Richardson

Approved as to Form:  
*Bronson Brown*  
Bronson Brown  
West Richland City Attorney

[Signatures Continue Below]

**CITY OF PROSSER**

Randy Taylor 5/22/2018  
By: Randy Taylor Date  
Mayor

Attest:

Rachel Shaw  
Rachel Shaw, City Clerk

Approved as to Form:

Howard Saxton  
Howard Saxton, Prosser City Attorney

**CITY OF BENTON CITY**

L. Lehman 6/19/18  
By: Linda Lehman Date  
Mayor

Attest:

Stephanie Haug  
Stephanie Haug, City Clerk

Approved as to Form:

Lee Kerr  
Lee Kerr, City Attorney for Benton City

**BENTON COUNTY FIRE PROTECTION DISTRICTS 1, 2, AND 4**

Jerry F. Morris  
By: Jerry F. Morris, Commission Chair  
BCFPD #1

Date: 6/19/2018

Attest: Barry Orth

Barry Orth  
By: Barry Orth, Commission Chair  
BCFPD #2

Date: 6/18/18

Attest: Carol Russell

Woody Russell  
By: A. J. Hill, Commission Chair  
BCFPD #4 Woody Russell

Date: 6/20/2018

Attest: Shirley Bradwell

[Signatures Continue Below]

**PUBLIC UTILITY DISTRICT #1 OF BENTON COUNTY (BENTON PUD)**

Chad Bartram  
By: Chad Bartram  
General Manager

Attest: [Signature]

Date: 6/26/18

"Unofficial Copy"