

CONTRACT NO. 145-11

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WHEN RECORDED RETURN TO:

City of Richland
P.O. Box 190 MS-07
Richland, WA 99352

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

THIS AMENDED AND RESTATED INTERLOCAL AGREEMENT is made and entered into by and between Benton County, Washington, the cities of Kennewick, Richland, West Richland, Prosser, Benton City, Benton County Fire District Nos. 1, 2, and 4, and the Public Utility District #1 of Benton County (Benton PUD), all municipal corporations. This Agreement shall be effective upon the date of signing by the last entity to the agreement.

WHEREAS, the Interlocal Cooperation Act, RCW 39.34, authorizes and allows municipal corporations to make the most efficient use of their powers by enabling them to cooperate with each other on the basis of mutual advantage through the execution of an interlocal cooperative agreement; and,

WHEREAS RCW 38.52.070 authorizes and directs each political subdivision of 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 political subdivisions 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 5 and the parties to this agreement wish to continue that organization under the terms of this new Amended and Restated Interlocal agreement; and,

WHEREAS, it is the intention of the existing partners, the cities of Kennewick, Richland, West Richland, Prosser, Benton City, Benton County and Benton County Fire Districts 1, 2 and 4 to continue to provide a county-wide operation of emergency

services under the terms of this agreement along with limited participation by a new member, the Benton County Public Utility District #1; and,

WHEREAS, the parties hereto except for the Benton PUD, operate BCES pursuant to an Interlocal Cooperation Agreement dated and approved by the Board of County Commissioners, Benton County, effective September 1, 2006 ("BCES Interlocal Agreement") and Amendment 1 to that agreement, dated May 11, 2009; and,

WHEREAS, the BCES Executive Board has identified that the public safety communications system replacement technology will be a digital 800MHz radio system that will provide viable public safety communications for many years in the future; and,

WHEREAS, Benton County, the cities of Kennewick and Richland and the Benton PUD provide a single microwave system; and

WHEREAS, effective upon the execution of this Amended and Restated Interlocal by all parties, the Benton PUD will be a limited voting member of the BCES Executive Board authorized to vote exclusively on the microwave system and funding issues; and

WHEREAS, the microwave system currently consists of state owned microwave equipment at the Badger Mountain, Rattlesnake, Umatilla Ridge, Joe Butte, Prosser and locally owned microwave equipment at Badger Mountain, Silusi Butte and Golgatha Butte and in return for the above referenced voting right, Benton PUD will not exercise its first right of refusal to acquire microwave equipment owned by the State at the above referenced sites and instead authorize the State of Washington to transfer ownership of such equipment to the parties to this Interlocal in the following percentages: Benton County-50%, City of Kennewick-25% and City of Richland-25% to collectively form a County-Wide Microwave System (MW).

NOW, THEREFORE, in consideration of the mutual covenants contained herein and in accordance with RCW 39.34.030, RCW 38.52 and Section 6 of this Interlocal Agreement, the parties agree to the following Amended and Restated Interlocal Agreement as follows:

1. PURPOSE

It is the purpose of this agreement to provide for the effective and economical operations of Benton County Emergency Services.

2. ORGANIZATION

- A. Benton County Emergency Services consists of two divisions, Benton County Emergency Management (BCEM) and Southeast Communications Center (SECOMM).
- B. Benton County Emergency Services shall continue its existence under the terms of this Amended and Restated Interlocal, provided this agreement is approved by the existing Benton County Emergency Services Executive Board and the respective jurisdictions that are parties hereto.
- C. The organization shall consist of an Executive Board, staff, Strategic Advisory Team, Customer Agency Groups and various committees as created by the Executive Board.
- D. An Administrative Jurisdiction shall be designated by the Executive Board. The City of Richland, as the current Administrative Jurisdiction, shall serve until March 12, 2012 unless terminated sooner as determined by the Executive Board. The Administrative Jurisdiction shall serve additional five (5) year periods unless it is terminated or withdraws after having provided a minimum of a six (6) month notice of intent to withdraw.

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 agreement with Benton County Emergency Services. The Administrative Jurisdiction shall also appoint the Director with the concurrence of the Executive Board.

- E. The Executive Board shall be the governing body of Benton County Emergency Services organization, and shall be responsible for overseeing policies, contracts, approval of the annual budget, and shall fulfill the legal requirements under RCW 38.52.

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 each of the cities of Kennewick, Richland, Prosser, West Richland and Benton City, a single representative collectively representing Benton County Fire Districts Nos. 1, 2, and 4 and one representative from Benton PUD.

For voting purposes, Benton County and the cities of Kennewick and Richland shall be allowed two votes each. The remaining participants shall have one vote each with the exception of: 1) the Fire Districts, which share a single vote; and 2) Benton PUD, with one vote that may only participate with respect to votes limited to the annual microwave system assessment, cost of MW operations, replacement of MW equipment, and MW 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. A majority of the number of members

of the Executive Board shall be a quorum, and a majority of votes shall prevail unless otherwise set forth herein. The Benton PUD representative's attendance or lack of attendance shall not be counted or considered with respect to quorum determination.

Only the Executive Board representatives for the cities of Kennewick, Richland, West Richland, and Benton County, and the single Benton County Fire District Representative will vote on items associated with Southeast Communications Center.

The representatives for Benton County, the cities of Kennewick and Richland and the Benton PUD will vote on matters associated with the operation and maintenance of the County Wide Microwave system and funding.

Only the representatives for Benton County and the cities of Kennewick, Richland, West Richland, Prosser, and Benton City will vote on other items associated with Benton County Emergency Management.

For all other items not specifically associated with Southeast Communications Center or Benton County Emergency Management, all representatives, except the Benton PUD representative, may vote.

- F. The Strategic Advisory Team shall consist of one representative each from Kennewick Fire Department, Kennewick Police Department, Richland Police Department, Richland Fire Department, West Richland Police Department, Benton County Sheriff's Office, Benton County Fire Protection Districts 1, 2, and 4, and Prosser. The SAT representative will be the agency Chief or Sheriff and a senior level executive from the City of Prosser.

Working directly with the BCES leadership, the 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.

- G. The Customer Agency Group (CAG), shall consist of one representative each from the City of Kennewick Police Department, the City of Richland Police Department, the West Richland Police Department, the City of Prosser Police Department, the Benton County Sheriff's Office, the City of Kennewick Fire Department, the City of Richland Fire Department, the City of Benton City, Benton County Fire Districts 1, 2, & 4 and Benton PUD.

The Customer Agency Group 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.

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 not majority support will require the use of the agency input process.

Should an issue be relevant to both divisions a meeting may be called by the BCES Director or either division chairperson. Attendees will be limited to the BCES Director, SECOMM Communications Manager and/or Emergency Management Manager, and both division chairpersons.

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, in order to expedite the development of recommendations that are sound and have the greatest likelihood of success, a senior subject matter expert dispatcher should be involved in all development discussions. The dispatcher would have no vote in the process of moving forward with an issue.

- H. The Director, under the direction of the Administrative Jurisdiction, shall maintain and operate Benton County Emergency Services and shall be responsible for the implementation of policies, procedures, and directives of the Executive Board. 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 County-Wide communication system, and shall have such other duties and responsibilities as the Administrative Jurisdiction designates from time to time.
- I. The Benton PUD shall receive notice and packet for all Executive Board Meetings. These 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 an issue on which the Benton PUD is entitled to vote on at the scheduled meeting, Benton PUD must have a representative present at that meeting. Absence during such meeting by the PUD representative entitled to vote will result in forfeiture of voting rights for that meeting. Benton PUD may vote only on matters on which Benton PUD is entitled to vote pursuant to Section 2(E) of this agreement. No voting will occur for any matters set forth in Section 2(E) without this advance notification to Benton PUD as noted above. If Benton PUD believes it is entitled to vote on an issue identified in an Executive Board Packet but such packet does not so indicate, Benton PUD must raise this issue at the upcoming Executive Board meeting or it will be deemed to have waived any voting rights not exercised at that meeting.

3. FINANCES

A. Benton County Emergency Services maintains three separate funds consisting of one fund for Benton County Emergency Management, one fund for Southeast Communications Center, and one fund for the acquisition, maintenance and operation of the 800MHz and Microwave System. These funds are maintained and administered by the Administrative Jurisdiction in lieu of the Treasurer of the City of Kennewick as the most populous entity. All monies received for the account of the Benton County Emergency Services organization, including financial contributions by the parties to this agreement in accordance herewith, shall be deposited in the appropriate fund.

B. Southeast Communications Center Fund

Southeast Communications Center shall be financed by the proceeds of the telephone excise tax, an annual levy upon the participating jurisdictions except for Benton PUD and Prosser, 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 normal operation and administration of the organization in such a manner as shall be determined by the Executive Board. Such contributions shall be determined by the Executive Board annually for inclusion with the parties' annual budgets and paid in periodic installments to be determined by the Executive Board. In the event of an emergency which results in costs to the organization in excess of the budgeted expenses for operation and administration, the Executive Board shall have the authority to proportionately levy (by percent of total budget responsibility), additional fees to cover the unexpected liability. If the cost overrun is the result of a single agency, the entire cost will be borne by that agency. Such excess costs shall be promptly remitted to Benton County Emergency Services.

C. Benton County Emergency Management Fund

Each party to this agreement except for Benton PUD 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 of the parties hereto to the costs of the organization, 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. Each party, except Benton PUD, shall pay its share of the cost 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. If the cost overrun or liability is the result of a single agency the entire cost will be borne by that agency.

D. 800MHz Fund

The 800MHz Fund has been and shall continue to be used for the maintenance and operation of any 800MHz radio system, whether analog or digital, by Emergency Services. The Executive Board is authorized to levy annual radio assessments upon the parties for the use of radios under an 800MHz system and to impose contract fees upon any contracting agencies. Such assessments shall be determined by the Executive Board annually for inclusion by the parties in their annual budgets and shall be paid in periodic installments to be set by the Executive Board.

In the event of an emergency which results in costs to the organization in excess of the budgeted expenses for operation and administration of the 800 MHz system, the Executive Board shall have the authority to proportionately levy (by percent of total budget responsibility), additional fees to cover the unexpected liability. If the cost overrun is the result of a single agency, the entire cost will be borne by that agency. Such excess costs shall be promptly remitted to Benton County Emergency Services.

Microwave System Sub-Element

Upon full execution of this Agreement, BCES shall establish a County-Wide Microwave System base sub-element within the 800 MHz fund. The County-Wide Microwave System base sub-element shall be used for the maintenance and operation of any County-Wide Microwave System by Emergency Services. The Executive Board is authorized to levy annual assessments upon the parties, including the Benton PUD, for the use of County-Wide Microwave System and to impose contract fees upon any contracting agencies. Such assessments shall be determined by the Executive Board annually for inclusion by the parties in their annual budgets and shall be paid in periodic installments to be set by the Executive Board.

- E. The Director, upon approval by the Executive Board, shall be authorized to make expenditures on behalf of the organization, in accordance with the policy and procedures of the Administrative Jurisdiction.
- F. An annual budget for the organization shall be prepared by the Director in accordance with the policy and procedure of the Administrative Jurisdiction, subject to the approval of the Executive Board.

4. PROPERTY AND EQUIPMENT

- A. Except as authorized by the Executive Board with respect to transfer by FEMA of ownership of assets acquired with CSEPP funds, and the digital 800 MHz radio system and the County-Wide Microwave System Fund, the ownership interests in property, equipment, or funds acquired by or through the 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 of acquisition of such property, equipment, or monies.

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 to it 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 the County and twenty-five percent (25%) each to the cities of Richland and Kennewick. Benton PUD will not have a right to or ownership in any BCES assets, including the County-Wide Microwave System, unless this agreement is amended so as to grant Benton PUD ownership interests in particular assets.

All parties hereby 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 800 MHz radio system, the real property and improvements located at 651 Truman Avenue, Richland, WA, the leasehold interest and 800 MHz equipment used by Benton County Emergency Services and the parties hereto at the several existing sites and the County-Wide Microwave System used by Benton County Emergency Services shall be owned exclusively by Benton County, the cities of Richland and Kennewick jointly as follows: fifty percent (50%) for Benton County, twenty-five percent (25%) for Kennewick and twenty-five percent (25%) for Richland.

- B. The ownership of property, equipment, or monies hereafter acquired through the Southeast Communications Center Fund shall be shared by Benton County and the cities of Kennewick and Richland equally. Benton County and the cities of Kennewick and Richland are responsible for capital expenditures in the budget process.
- C. The ownership of property, equipment, or monies acquired through the receipt of E911 taxes shall be the property of Benton County.

5. DURATION OF AGREEMENT

After signature by all the parties hereto, this agreement shall become effective and shall replace all prior oral agreements, contracts, Interlocals and amendments thereto including those agreements which 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, and the Interlocal Agreement for Benton County Emergency Services Interlocal Cooperation Agreement effective September 1, 2006 and Amendment 1 thereto dated May 11, 2009. This agreement shall have a duration of ten (10) years and shall be

extended for five (5) year periods unless one or more parties objects to extending the agreement no later than six (6) months prior to expiration.

6. AMENDMENTS

Amendments to this agreement shall only be made upon an affirmative vote of at least eight votes in favor of amendment, without any vote by the Benton PUD, which shall not have a vote on amendments. This section shall not affect how the Board operates and conducts its business.

7. WITHDRAWALS

Any party may withdraw from this agreement upon written request not less than six (6) months prior to withdrawal. Such 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 state law regarding its obligations to provide emergency management and dispatch services.

The withdrawing party will be deemed to have released ownership they may have under this agreement in property, equipment or monies otherwise eligible to them as part of this agreement.


8. LIABILITY


Each party shall be solely responsible for its own negligence, and shall indemnify and hold harmless each other party for its own negligence.

9. SEVERABILITY

If any part of this agreement is held to be illegal or unenforceable, to the extent possible and practicable, the remaining parts of the agreement shall remain in effect and binding upon all parties hereto.

BENTON COUNTY, WASHINGTON

Attest: 
Clerk of the Board


Chairman


Chairman, Pro Tem


Member

Constituting the Board of County
Commissioners of Benton County,
Washington.

DATE: 11-15-2011

CITY OF BENTON CITY

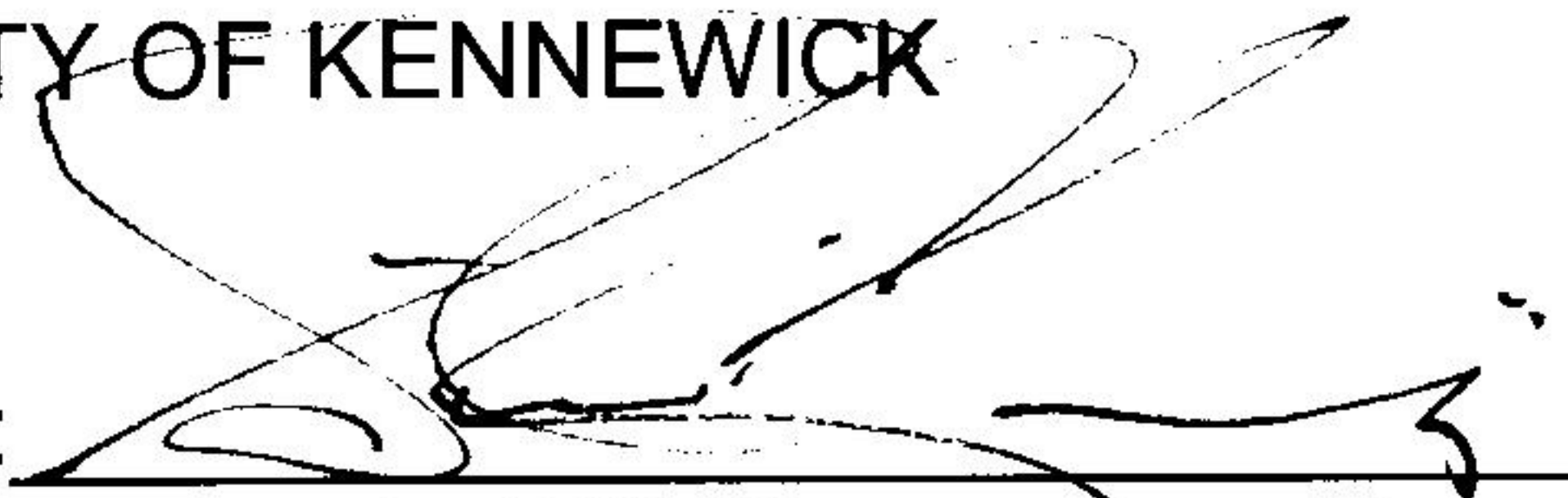
Attest: Stephanie Hana
City Clerk

By: Lloyd R. Casner
Mayor

DATE: November 16, 2011

CITY OF KENNEWICK

Attest: 
VALERIE J. LOFFLER City Clerk

By: 
STEVE C. YOUNG Mayor

DATE: 11/15/2011

CITY OF PROSSER

Attest: Rachel M. Shaw
City Clerk

By: Paul Warden
Mayor

DATE: 11-10-2011

CITY OF WEST RICHLAND

Attest: Julie Richardson
City Clerk

By: Monna Naski
Mayor

DATE: 12/7/11

CITY OF RICHLAND

Attest: Marcia Hopkins
City Clerk

By: [Signature]
City Manager


DATE: 12-14-11

Approved to form:


Thomas O. Sampson
City Attorney

BENTON COUNTY FIRE
DISTRICTS 1, 2, & 4

Attest: _____

By: 
BCFPD#1

DATE: 12-20-11

By: 
BCFPD#2

DATE: 11-7-11

By: 
BCFPD#4

DATE: 1-5-12

BENTON PUBLIC UTILITY DISTRICT NO. 1

Attest: Jessica A. Cole

By: Jan W. Seal
Benton Public Utility District No. 1

DATE: November 22, 2011