

Contract No.

**AGREEMENT  
For 911 Fund Allocations to a Secondary PSAP**

THIS AGREEMENT (the Agreement) is made effective the \_\_\_\_\_ day of \_\_\_\_\_ 2014 by and between [\_\_\_\_\_], a unit of local government operating a Primary PSAP in [\_\_\_\_\_] County North Carolina, and the **North Carolina 911 Board** (hereinafter referred to as 911 Board), an agency of the State of North Carolina. [County] and the Board (together “the Parties”) hereby agree as follows:

**WITNESSETH:**

WHEREAS, the 911 Board was created by SL 2007-383 (N.C. Gen. Stat. §62A-40 *et seq.*) to collect and administer the 911 Fund; and

WHEREAS, the 911 Board adopted a policy allowing allocation of distributions from the 911 Fund for eligible expenditures of a Secondary PSAP; and

WHEREAS, [County] presently transfers 911 calls to [\_\_\_\_\_], a Secondary PSAP, which relieves the [County] from completing the call taking process and dispatching such 911 calls; and

WHEREAS, [County] and the Secondary PSAP operate within the same 911 System and desire distributions from the 911 Fund for further distribution to, or for the benefit of, a Secondary PSAP; and

WHEREAS, the Parties desire to contract in accordance with the Secondary PSAP funding policy of the Board;

NOW, THEREFORE, the Parties enter into this Agreement to implement the Board’s Secondary PSAP Funding Policy attached hereto as Exhibit A, the Parties hereto do mutually agree to the following terms and conditions:

1. Definitions:

- a. Definitions set forth in N.C. Gen. Stat. §62A-40 *et seq.* are incorporated herein.
- b. Back-up PSAP means a facility equipped to operate as part of the 911 System and all other features of its associated primary PSAP. A Backup PSAP receives 911 calls only when they are transferred from the primary PSAP or on an alternate routing basis when calls cannot be completed to the primary PSAP.
- c. **Interoperable:** Capability of the telephone systems of the Primary and Secondary PSAPs to ensure complete transfer of a 911 call.
- d. Secondary PSAP Funding Policy means Exhibit A to this Agreement and as the Policy may be amended.
- e. A secondary **PSAP** is able to receive the voice and data of an Enhanced 911 call transferred from a primary PSAP and to complete the call taking process dispatching law, medical, fire or other responder.

**Comment [RHB1]:** Seamless communications – meeting comment. “takes a seat out of the primary – Laura”. Call data must display fully. (Steve D – is the 2 PSAP a remote or a full PSAP?) What if 2 PSAP is a primary for wireline calls – e.g. Cabarrus / Merl Hamilton’s example?)

**Comment [RHB2]:** Meeting comment - a true extension of the primary PSAP; therefore they are relieving calls at the primary.

f. Receiving the voice and data of an Enhanced 911 call includes all identification and location data generated by the Subscriber.

g. Executive Director: the Executive Director of the 911 Board.

h. Allocated Funds: the amount authorized by the 911 Board for distribution to [County] for further allocation to the secondary PSAP in the amount of \$[\_\_\_\_\_] annually. These Allocated Funds shall not diminish the monthly base amount distribution to the Primary PSAP, **nor modify the Primary PSAP carryforward pursuant to N.C.G.S. §62A-46(b1).**

i. State Funds: Any funds appropriated by the N.C. General Assembly or collected by the State of North Carolina. The 911 Funds are State Funds. [County] recognizes that the expenditure of money deposited in the State treasury, including the 911 Fund, is subject to acts of appropriation by the General Assembly and actions of the Budget Director.

j. Unit of Local Government: As defined in N.C. Gen. Stat. §160A-460, means a county, city, consolidated city-county, local board of education, sanitary district, facility authority created under Article 20 of Chapter 160A of the General Statutes, special district created under Article 43 of Chapter 105 of the General Statutes, or other local political subdivision, authority, or agency of local government.

2. Secondary PSAP: The secondary PSAP to receive the Allocated Funds is operated by [\_\_\_\_\_] and receives 911 calls transferred from the primary PSAP to complete the call taking and dispatching processes. [County] agrees and acknowledges that the conditions set forth in Exhibit A, the Board's Secondary PSAP Funding Policy, have been satisfied, and

a. Allocated Funds shall be determined by the Board and utilize call data from a single Primary PSAP. Allocated Funds shall not be available for Back-up PSAPs.

b. [County] shall provide its interlocal agreement with the Secondary PSAP's governing body to the Executive Director prior to disbursement of the Allocated Funds from the 911 Fund.

c. **911 System equipment may be procured by the [County] and placed within either the Primary or Secondary PSAP; provided that such equipment used to complete the call taking and dispatch processes shall be interoperable if purchased by the Primary PSAP; e.g. Computer Aided Dispatch (CAD).**

d. To the greatest extent practicable, expenditures of the Allocated Funds shall be made to ensure greater interoperability in call taking, processing and dispatching appropriate responders.

e. [County] will collect and compile documents as directed by the 911 Board for the purpose of [County]'s verifying the requirements of the Secondary PSAP Funding Policy.

f. [County] shall assist the 911 Board in any audits of the 911 Fund by supplying required document(s) to satisfy the requests of an auditor.

3. [Changes in] Fund Distributions.

a. If changes are requested with respect to 911 Fund distributions or allocations, such changes must be authorized in writing by the Parties. The 911 Board will not

approve any changes that exceed its authority under N.C. Gen. Stat. §62A-40 *et seq.*, or subsequent modification thereof.

b. Carryforward limits of 62A-46 [shall][do not] apply to funds for secondary PSAPs; [however, unexpended funds that are not budgeted to a 911 System need will be capped based on historical expenses of the Secondary PSAP]. [Alternative: A secondary PSAP may carry forward allocated funds for eligible expenditures for capital outlay, capital improvements, or equipment replacement. Amounts carried forward to the next fiscal year from allocated funds made by the 911 Board may not be used to lower the allocated funds unless the amount is greater than twenty percent (20%) of the average yearly amount distributed to the PSAP in the prior two years. The 911 Board may allow a secondary PSAP to carry forward a greater amount without changing the PSAP's allocated funds.]

Comment [RHB3]: Meeting comment - (Neal, Jason – hold principles in the statute as applicable to 2 PSAP, don't want the 2 PSAP to build a "too large" fund balance,

c. Administrative expenses or costs of the [County], PSAP or Secondary PSAP are not eligible expenses for 911 Fund distributions.

d. Each Party shall immediately notify the other of any change in conditions or applicable law, or any other event, which may significantly affect its ability to perform its obligations under this Agreement.

e. The Parties agree that the 911 Board may assign this Agreement to its successor, if any; or continue the Agreement by amending the term if legislation is enacted that does, or may, affect the term of this agreement.

f. A request for change in the allocation of funds must be submitted to the 911 Board Executive Director in writing, stating the basis for the request, at the same times permitting a Primary PSAP to submit requests for additional funds. The [County] shall submit a revised budget and any other documentation or information requested by the 911 Board Executive Director indicating the planned use of such additional funds.

4. Term of Agreement. The term of this Agreement shall begin upon the date first written above (Effective Date) and extend through the end of the 2015-2016 Fiscal Year: 30 June 2016 (End Date). The Agreement shall terminate upon the End Date unless sooner terminated under Paragraph 8; or amended by written agreement to extend said date by the Parties or their successors in interest. Allocated Funds provided by the 911 Board may not be utilized for expenses incurred by [County] or Secondary PSAP prior to the Effective Date or subsequent to the End Date.

5. Distribution of Funds. Allocated Funds will be delivered to the Primary PSAP together with the monthly base amount distributed to the Primary PSAP.

a. Funds shall be distributed only for expenses that are eligible under N.C. Gen. Stat. §62A-40 *et seq.* and the policies of the 911 Board.

b. Administrative costs are not allowable expenses.

c. [County] will maintain full, accurate, and verifiable accounting records to support the preparation of financial statements in conformity with accounting practices applicable to N.C. local governments as approved by, or consistent with, standards of the Local Government Commission.

d. In the event [County] breaches any of the covenants or agreements contained in this Paragraph, or any of the representations and warranties of Paragraphs 6, 11, and 14 **Error! Reference source not found.** are untrue as to a material fact as of the date of this Agreement, [County] shall return any un-distributed Allocated Funds held by [County] and refund sums equal to any non-eligible expenses paid with Allocated Funds. [County's] obligations that are created by this subsection to return Allocated Funds and to refund sums, apply only to Allocated Funds held by [County]. Allocated Funds are "held" by [County] only to the extent they are in the actual, not constructive, possession of [County].

e. [County] must attend workshops or other instructional sessions relating to administration of the Grant or use of 911 Funds provided by the 911 Board during the term of this Agreement.

6. Independent Status of [County].

a. It is agreed between the Parties that neither this Agreement nor any provisions hereof shall be deemed to create a partnership or joint venture between [County] and any third party; nor with the 911 Board.

b. The Parties acknowledge that [County] is an independent entity. [County] shall not represent itself as an agent of the 911 Board; nor shall the Agreement be construed so as to make [County] an agent of the 911 Board. [County] shall not have the ability to bind the 911 Board to any agreement for payment of goods or services, nor shall it represent to any person or entity that it has such ability.

7. Records, Records Retention.

a. [County] shall maintain full, accurate and verifiable financial records, supporting documents, and all other pertinent data consistent with the Board's funding model and policies.

b. [County] shall retain all financial records, supporting documents, and all other pertinent records related to this Agreement for five (5) years from the End Date. In the event such records are audited, all such records shall be retained beyond the five-year period until any and all audit findings have been resolved.

c. Pursuant to N.C. Gen. Stat. §143C-6-23, and §147-64.7, [County] agrees to make available to the State Auditor, [County], or designated representatives of the foregoing, all of its records which relate to the Project, and agrees to allow the 911 Board or its representative to audit, examine and copy any and all data, documents, proceedings, records and notes of activity relating in any way to the Project. Access to these records shall be allowed upon request at any time during normal business hours and as often as the 911 Board or its representative may deem necessary.

d. [County] acknowledges and agrees that it will be subject to the audit and reporting requirements prescribed by N.C. Gen. Stat. § 143C-6-23 *et seq.*, Non-State Entities Receiving State Funds or N.C. Gen. Stat. §159-34, The Local Government and Fiscal Control Act - Annual Independent Audit, Rules, N.C. Gen. Stat. §62A-40 *et seq.* and the policies, procedures and rules of the 911 Board; as applicable.

8. Termination; Availability of Funds.

a. If [County] fails for any reason to fulfill in a timely and proper manner its obligations under this Agreement, the 911 Board shall thereupon have the right to terminate this Agreement by giving written notice to [County] of such termination and by specifying the effective date of termination. In such event, the 911 Board shall have no responsibility to make additional payments under this Agreement after the Termination Date. [County] shall return all undistributed Allocated Funds to the Board without the demand therefor. The [County] shall not be relieved of liability to the 911 Board for damages sustained by the 911 Board by virtue of any breach of this agreement, and the 911 Board may withhold payment to the [County] for the purpose of set off until such time as the exact amount of damages due the 911 Board from such breach can be determined.

b. The Board may terminate this Agreement immediately upon notice to [County] at any time if sufficient funds are not available to satisfy the Allocated Funds, or if the Secondary PSAP fails to meet the policies, procedures or rules of the Board.

c. Either party may terminate this Agreement upon sixty (60) days notice, or by mutual consent as may be agreed. Notice may be given by either party to the other at the addresses and to the attention of the Party's representative specified in Paragraph ~~15~~18 below.

d. Termination of this Agreement by the [County] shall not prohibit the 911 Board from seeking remedy for additional costs consequential to the termination, which are incurred by the 911 Board. The [County] shall repay to the 911 Board any Allocated Funds received in excess of such distributions due under this Agreement.

e. [County] recognizes that the expenditure of money deposited in the State treasury, including the 911 Fund, is subject to acts of appropriation by the General Assembly and actions of the Budget Director.

9. Liabilities and Loss. The 911 Board assumes no liability, nor shall it have any liability under this Agreement, with respect to accidents, bodily injury, illness, breach of contract or any other damages, claims, or losses arising out of any activities undertaken by [County] or Secondary PSAP, or its contractors.

10. Remedies. In the event of [County]'s non-compliance with any provision in this Agreement or the Secondary PSAP's failure to adhere to the policies, rules and statutes of the Board, or the provisions of this Agreement or the corresponding interlocal agreement, the Board may take any actions authorized by the policies, rules and statutes of the Board or by this Agreement. These remedies include, but are not limited to, reducing or suspending Allocated Funds or terminating such, including the withdrawal of all funds described in this Agreement except for funds already expended on otherwise eligible expenditures. **However, no termination of this Agreement or the corresponding interlocal agreement removes the reporting and records retention requirements of this Agreement.**

11. [County] Representation and Warranties. [County] hereby represents and warrants that:

a. [County] and the Secondary PSAP are duly organized and validly existing as a unit of local government under the laws of the State of North Carolina.

b. This Agreement constitutes a binding obligation of [County], enforceable against it in accordance with its terms. The execution and delivery of this Agreement have been

duly authorized by all necessary action on the part of [County], and does not violate any applicable organizational documents of [County], or any agreement or undertaking to which it is a party or by which it is bound.

c. There is no action, suit, proceeding, or investigation at law or in equity or before any court, public board or body pending, or to [County]'s knowledge, threatened against or affecting it, that could or might adversely affect the Project or any of the transactions contemplated by this Agreement or the validity or enforceability of this Agreement or [County]'s ability to discharge its obligations under this Agreement.

d. All consents or approvals necessary from any governmental authority as a condition to the execution and delivery of this Agreement have been obtained by [County]. [County] shall provide the 911 Board with evidence of the existence of all such contracts at the time of the execution of this Agreement.

e. The [County] will notify the 911 Board Executive Director of any significant problems relating to the administrative or financial aspects associated with the Allocated Funds, such as misappropriation of funds; use of 911 Funds for non-eligible expenses; placement or retaining 911 funds in any account other than the Emergency System Telephone Fund.

12. Excusable Delay (Force Majeure). Neither party shall be liable for any failure or delay in performing any of its obligations under this Agreement that is due to causes beyond its reasonable control, such as, but not limited to, acts of God, earthquakes and other natural catastrophes, governmental acts, shortages of supplies, riots, war, fire, epidemics, delays in common carriers, labor strikes or other difficulties or circumstances beyond its reasonable control. [County] shall notify the 911 Board promptly of any factor, occurrence or event that comes to its attention that may affect or delay [County]'s ability to perform any of its other obligations hereunder. The obligations and rights of the excused party shall be extended on a day to day basis for the time period equal to the period of the excusable delay.

13. Dispute Resolution. The Parties agree that it is in their mutual interest to resolve disputes informally. The Parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Agreement. If a dispute cannot be resolved between the Parties within thirty (30) days after delivery of notice, either Party may elect to exercise any other remedies available under this Agreement, or at law; or invite the other party to submit the matter to mediation. Provided, however, that this term shall not constitute an agreement by either Party to mediate or arbitrate any dispute; and that any agreement to mediate may be revoked or terminated without penalty therefore if so advised by either Party's legal counsel.

14. Confidential Information. The Parties acknowledge and agree that each is subject to the N.C. Public Records Act, which is set forth in N.C. General Statutes 132-1, *et seq.* Proprietary information may be subject to N.C. Gen. Stat. §62A-52. [County] shall ensure that any third party is encouraged to review the applicable laws prior to submitting any information or documentation believed to be proprietary, and that any proprietary information is properly identified at the time of receipt.

a. The Parties shall maintain the confidentiality of certain types of information described in N.C. Gen. Stat. §132-1, *et seq.* and N.C. Gen. Stat. §62A-52. Such information may include trade secrets defined by N.C. Gen. Stat. §66-152 and other information exempted from disclosures pursuant to the Public Records Act pursuant to N.C. Gen. Stat. §132-1.2.

b. The 911 Board may serve as custodian of confidential information and not as an arbiter of claims against an assertion of confidentiality. If an action is brought pursuant to N.C. Gen. Stat. §132-9 to compel disclosure information marked confidential, the disclosing each Party agrees that it will provide prompt notice of such action, intervene in the action through its counsel and participate in defending the Parties, including any public official(s) or public employee(s). The 911 Board shall have no liability to [County] or any third party with respect to the disclosure of confidential information ordered by a court of competent jurisdiction pursuant to N.C. Gen. Stat. §132-9 or other applicable law; nor by disclosure of unmarked information or information that is publicly known.

15. Notice. All notices required or permitted to be delivered hereunder and all communications in respect hereof shall be in writing and shall be deemed given when personally delivered by one or more of the following: when deposited in the United States mails, first class, postage prepaid and properly addressed, by facsimile, or by e-mail, as follows:

If to the 911 Board:      Attn: Richard Taylor, Executive Director  
   N.C. 911 Board  
   P.O. Box 17209  
   Raleigh, NC 27609  
  
   Fax: 919-981-2548  
   E-Mail: Richard.Taylor@nc.gov

If to [County]:      Attn:  
  
   , NC  
  
   Fax:  
   E-Mail :

or addressed to such other address or to the attention of such other individual as the 911 Board or [County] shall have specified in a notice delivered pursuant to this Subsection.

16. Construction. This Agreement shall be construed and governed by the laws of the State of North Carolina. The place of this Agreement, its situs and forum, shall be Wake [County], North Carolina, where all matters, whether sounding in contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. The Parties agree and submit,

solely for matters relating to this Contract, to the jurisdiction of the courts of the State of North Carolina, and stipulate that Wake County shall be the proper venue for all matters.

17. General Provisions and Conditions.

- a. The 911 Board may request from [County] certain information that will assist 911 Board with evaluation of the short and long-range impact of its programs. [County] recognizes that such requests may occur after termination of this Agreement and agrees, to the extent possible, to provide such information as requested.
- b. Nondiscrimination. [County] agrees not to discriminate by reason of age, race, religion, color, sex, national origin, or handicap related to the activities of this Agreement.
- c. Conflict of Interest. [County] certifies that to the best of its knowledge no employee or officer of [County] has any pecuniary interest in the business of the 911 Board or Allocated Funds, and that no person associated with [County] has any interest that would conflict in any manner with the performance of the Agreement.
- d. Compliance with Laws. [County] shall at all times observe and comply with all laws, ordinances, and regulation of the state, federal and local governments which may in any manner affect the performance of the Agreement.
- e. Non-Assignability. [County] shall not assign any interest in the Agreement and shall not transfer any interest in the same without prior written consent of the 911 Board.
- f. Future Cooperation. The Board and [County] agree to cooperate fully with one another, to execute any and all supplementary documents and/or agreements that may be necessary or helpful to give full force and effect to the terms of this Agreement and to the Parties' intentions in entering this Agreement.

18. Entire Agreement. This Agreement supersedes all prior agreements or discussions between the 911 Board and [County], and expresses the entire understanding of the Parties with respect to the transactions contemplated herein, and shall not be amended, modified or altered except pursuant to a writing signed by both Parties.

19. This Agreement will expire if not signed and returned to the 911 Board for countersignature no later than ninety (90) days from the date it was sent to [County].

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IN WITNESSETH WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

[County]

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

This instrument has been pre-audited in the Manner required by the Local Government Budget and Fiscal Control Act.

By: \_\_\_\_\_

Chief Finance Financial Officer

**N.C. 911 Board**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Exhibit A  
911 Board Secondary PSAP Funding Policy

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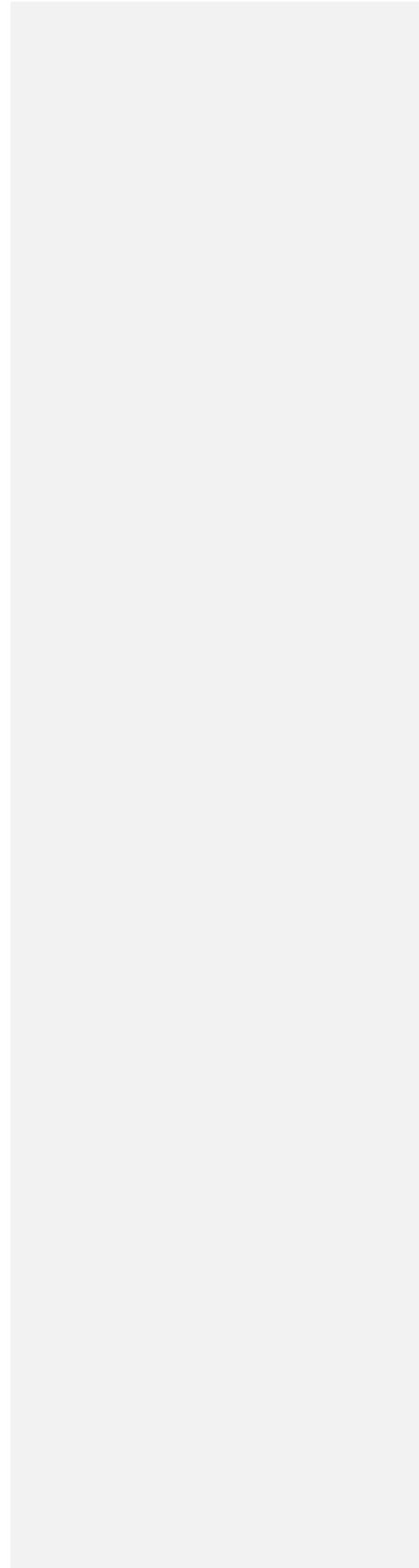


Exhibit B  
Interlocal Agreement

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