

**AGREEMENT FOR 911 FUND
ALLOCATIONS TO SECONDARY PSAP**

THIS AGREEMENT ("Agreement") is made effective the 1st day of July 2017 by and between the **CITY OF CHARLOTTE**, a municipal corporation ("City") specifically, the **CHARLOTTE-MECKLENBURG POLICE DEPARTMENT** ("CMPD"), a unit of local government operating a Primary Public Safety Answering Point ("PSAP") and the **NORTH CAROLINA 911 BOARD** ("911 Board"), an agency of the State of North Carolina. The CMPD and 911 Board (the "Parties") hereby agree as follows:

W I T N E S S E T H:

WHEREAS, the 911 Board was created by SL 2007-383 (N.C.G.S. § 62A-40, *et seq.*) and recodified by SL 2015-241 as N.C.G.S. § 143B-1400, *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 that 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; and

WHEREAS, the CMPD presently transfers 911 calls to the Charlotte Mecklenburg Fire Department and the Mecklenburg Medical Services Agency and they serve as Secondary PSAP(S), which relieves the CMPD from completing the call taking process and dispatching such 911 calls; and

WHEREAS, the CMPD and the aforementioned Secondary PSAP(S) operate within the same 911 System and the CMPD desires distributions from the 911 Fund to further distribute for the benefit of the Secondary PSAP(S); and

WHEREAS, the Parties desire to contract in accordance with the Secondary PSAP funding policies, rules, and regulations of the 911 Board;

NOW, THEREFORE, the Parties enter into this Agreement to implement the 911 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.** The following terms shall have the following meanings for purposes of this Contract (including all Exhibits). Definitions not defined below which are set forth in N.C.G.S. § 143B-1400, *et seq.* are incorporated herein.
 - 1.1. "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.
 - 1.2. "Interoperable": Capability of the telephone systems of the Primary and Secondary PSAPs to ensure complete transfer of a 911 call.
 - 1.3. "Secondary PSAP Funding Policy": means Exhibit A to this Agreement and as the Policy may be amended.

- 1.4. "Secondary PSAP": is able to receive the voice and data of an Enhanced 911 call transferred from a Primary PSAP and complete the call taking process dispatching law, medical, fire or other responder. Receiving the voice and data of an Enhanced 911 call includes all identification and location data generated by the Subscriber.
- 1.5. "Executive Director": the Executive Director of the 911 Board.
- 1.6. "Allocated Funds": the amount authorized by the 911 Board for distribution to the CMPD for further allocation to a Secondary PSAP determined annually based on a "per 911 call basis" as measured by the Electronic Call Analysis Tracking System. These Allocated Funds shall not diminish the monthly base amount distribution to the CMPD, nor modify the CMPD's carry-forward pursuant to N.C.G.S. § 143B-1406(c).
- 1.7. "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. The Parties 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.
- 1.8. "Unit of Local Government": As defined in N.C.G.S. § 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.

- 2.1. The Secondary PSAP(S) to receive the Allocated Funds are operated by the Charlotte Mecklenburg Fire Department and the Mecklenburg Emergency Medical Services Agency and each receive 911 calls transferred from CMPD, the Primary PSAP, to complete the call taking and dispatching process. The Parties agree and acknowledge that the conditions set forth in Exhibit A, the 911 Board's Secondary PSAP Funding Policy, must be satisfied.
- 2.2. Allocated Funds shall be determined by the 911 Board and utilize call data from the CMPD. Allocated Funds shall not be available for a Back-up PSAP.
- 2.3. This Agreement and the Agreements with the Secondary PSAP(S) (Exhibit B) will be provided to the Executive Director prior to disbursement of the Allocated Funds from the 911 Fund.
- 2.4. 911 System equipment may be procured by the CMPD and placed within either the CMPD or the Secondary PSAP by consent of the parties, 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).
- 2.5. 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.
- 2.6. The CMPD will collect and compile documents required to be provided by the Secondary PSAP(S) as directed by the 911 Board for the purpose of verifying the requirements of the Secondary PSAP Funding Policy.

- 2.7. The CMPD shall assist the 911 Board in any audits of the Allocated Funds by supplying required document(s) to satisfy the requests of an auditor.

3. CHANGES IN FUND DISTRIBUTIONS.

- 3.1. The Parties acknowledge that if changes are requested with respect to the Allocated Fund distributions or allocations, such changes must be authorized in writing by the 911 Board. The Parties understand the 911 Board will not approve any changes that exceed its authority under N.C.G.S. § 143B-1400, *et seq.*, or subsequent modification thereof.
 - 3.2. 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 Secondary PSAP in the prior two years. The 911 Board may allow a Secondary PSAP to carry forward a greater amount without changing the Secondary PSAP's Allocated Funds.
 - 3.3. Administrative expenses or costs of a Primary or Secondary PSAP are not eligible expenses for 911 Fund distributions.
 - 3.4. 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.
 - 3.5. The Parties agree that the 911 Board may assign this Agreement to its successor or continue the Agreement by amending the term if legislation is enacted that does, or may, affect the terms of this Agreement.
 - 3.6. A request for change in the allocation of funds by a Secondary PSAP must be submitted to the 911 Board Executive Director stating the basis for the request. The Request must be submitted at the same time that CMPD as a Primary PSAP would submit its requests for additional funds. The CMPD shall submit a revised budget received from the Secondary PSAP and forward and any other documentation or information requested by the Executive Director indicating the planned use of such additional funds.
4. TERM. This Agreement shall commence on July 1, 2017 (the "Effective Date"), continue in effect for one (1) year, and automatically renew for an additional one (1) year term, unless otherwise terminated or amended as provided herein. Allocated Funds provided by the 911 Board may not be utilized for expenses incurred by the Parties prior to the Effective Date or subsequent to the termination of this Agreement.
- ### 5. DISTRIBUTION OF FUNDS.
- Allocated Funds will be delivered to the CMPD together with the monthly base amount distributed to the CMPD as the Primary PSAP.
- 5.1. Allocated Funds shall be distributed only for expenses that are eligible under N.C.G.S. § 143B-1400, *et seq.* and the policies of the 911 Board.
 - 5.2. Administrative costs are not allowable expenses.

- 5.3 The CMPD and Secondary PSAP 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.
- 5.4. In the event the CMPD or a Secondary PSAP breaches any of the terms contained in this Agreement including the agreements between the CMPD and a Secondary PSAP (Exhibit B) to this Agreement, or the 911 Board determines that a Secondary PSAP has made material misrepresentations in any document received by the 911 Board, the CMPD shall return any un-distributed Allocated Funds held by the CMPD. The CMPD's obligations that are created by this subsection to return Allocated Funds and to refund sums, apply only to Allocated Funds held by the CMPD. Allocated Funds are "held" by the CMPD only to the extent they are in the actual, not constructive, possession of the CMPD.
- 5.5 The CMPD is required to attend workshops or other instructional sessions relating to administration of the Grant or use of the 911 Funds provided by the 911 Board during the term of this Agreement.

6. INDEPENDENT STATUS OF PARTIES.

- 6.1. 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 or among the CMPD, the 911 Board, or a Secondary PSAP.
- 6.2. The Parties acknowledge that they are each independent entities. Neither Party shall represent itself as an agent of the other Party. Nor shall this Agreement be construed so as to make either party an agent of the other Party. Neither Party shall have the ability to bind the other Party 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.

- 7.1. The CMPD shall maintain full, accurate and verifiable financial records, supporting documents, and all other pertinent data that are provided to the CMPD by a Secondary PSAP consistent with the 911 Board's funding model and policies.
- 7.2. The CMPD shall retain all financial records, supporting documents, and all other pertinent records provided by a Secondary PSAP related to this Agreement for five (5) years from the termination of this Agreement. 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.
- 7.3. Pursuant to N.C.G.S. § 143C-6-23, and § 147-64.7, the CMPD agrees to make available to the State Auditor or designated representatives of the foregoing, requested records provided by a Secondary PSAP, and agrees to allow the 911 Board or its representative to audit, examine and copy any and all requested data, documents, proceedings, records and notes of activity provided to the CMPD by a Secondary PSAP. 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.
- 7.4. The CMPD acknowledges and agrees that it will be subject to the audit and reporting requirements prescribed by N.C.G.S. § 143C-6-23, *et seq.*, and The Local Government and

Fiscal Control Act-Annual Independent Audit, Rules, N.C.G.S. § 143B-1400, *et seq.* and the policies, procedures and rules of the 911 Board, as applicable.

8. TERMINATION; AVAILABILITY OF FUNDS.

- 8.1. If the CMPD 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 the CMPD 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. The CMPD shall return all “held” Allocated Funds to the 911 Board without the demand therefor. The CMPD shall not be relieved of liability to the 911 Board for damages sustained by the 911 Board by virtue of breach related to Allocated Funds contained in this Agreement. The 911 Board may withhold Allocated Funds payment to the CMPD 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.
- 8.2. The 911 Board may terminate this Agreement immediately upon notice to the CMPD at any time if sufficient funds are not available to satisfy the Allocated Funds, or if a Secondary PSAP fails to meet the policies, procedures or rules of the 911 Board.
- 8.3. 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 below.
- 8.4. Termination of this Agreement by the CMPD shall not prohibit the 911 Board from seeking remedy for additional costs consequential to the termination, which are incurred by the 911 Board relating to Allocated Funds.
- 8.5. The Parties 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. Neither Party assumes liability, nor shall it have any liability under this Agreement, with respect to accidents, bodily injury, illness, or any other related damages, claims, or losses arising out of any activities undertaken by the 911 Board, the CMPD, a Secondary PSAP, or any contractors.

10. REMEDIES. In the event of the CMPD’s non-compliance with any provision in this Agreement or a Secondary PSAP’s failure to adhere to the policies, rules and statutes of the 911 Board, the 911 Board may take any actions authorized by the policies, rules and statutes of the 911 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 CMPD “held” Allocated Funds described in this Agreement. However, no termination of this Agreement removes the reporting and records retention requirements of this Agreement.

11. CMPD’S REPRESENTATION AND WARRANTIES. The CMPD hereby represents and warrants that:

- 11.1. The CMPD is duly organized and validly existing as a unit of local government under the laws of the State of North Carolina.

- 11.2. This Agreement constitutes a binding obligation of the City through the CMPD, and is enforceable in accordance with its terms. The execution and delivery of this Agreement has been duly authorized by all necessary action on the part of the City, and does not violate any applicable organizational documents of the CMPD or any agreement or undertaking to which it is a party or by which it is bound.
 - 11.3. There is no action, suit, proceeding, or investigation at law or in equity or before any court, public board or body pending, or to the CMPD's knowledge, threatened against or affecting it, that could or might adversely affect any of the transactions contemplated by this Agreement or the validity or enforceability of this Agreement or the CMPD's ability to discharge its obligations under this Agreement.
 - 11.4. All consents or approvals necessary from any governmental authority as a condition to the execution and delivery of this Agreement have been obtained by the CMPD.
 - 11.5. The parties will notify the 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. The CMPD shall notify the 911 Board promptly of any factor, occurrence or event that comes to its attention that may affect or delay the CMPD'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.G.S. § 132-1, *et seq.* Proprietary information may be subject to N.C.G.S. § 143B-1412. The CMPD 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.
- 14.1. The Parties shall maintain the confidentiality of certain types of information described in N.C.G.S. § 132-1, *et seq.* and N.C.G.S. § 143B-1412. Such information may include trade secrets defined by N.C.G.S. § 66-152 and other information exempted from disclosures pursuant to the Public Records Act pursuant to N.C.G.S. § 132-1.2.

- 14.2. 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.G.S. § 132-9 to compel disclosure information marked confidential, the disclosing 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). Neither Party shall have liability to the other Party or any third party with respect to the disclosure of confidential information ordered by a court of competent jurisdiction pursuant to N.C.G.S. § 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:
- 911 BOARD: N.C. 911 Board
ATTN: Richard Taylor, Executive Director
P.O. Box 17209
Raleigh, NC 27609
E-MAIL: Richard.Taylor@nc.gov
- CMPD: Charlotte-Mecklenburg Police Department
ATTN: Kellie High-Foster
601 East Trade Street
Charlotte, NC 28202
E-MAIL: khighfoster@cmpd.org
- w/copy to: Charlotte-Mecklenburg Police Department
ATTN: Richard Perlungher
Police Attorney's Office
601 East Trade Street
Charlotte, NC 28202
E-MAIL: rperlungher@cmpd.org
- or addressed to such other address or to the attention of such other individual as the 911 Board or the CMPD 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 Mecklenburg 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 Mecklenburg County shall be the proper venue for all matters.
17. GENERAL PROVISIONS AND CONDITIONS.
- 17.1 The 911 Board may request from CMPD certain information that will assist the 911 Board with evaluation of the short and long-range impact of its Secondary PSAP program. The CMPD recognizes that such requests may occur after termination of this Agreement and agrees, to the extent possible, to provide to the 911 Board such information as requested.

Contract # _____

- 17.2 Nondiscrimination. The Parties agree not to discriminate by reason of age, race, religion, color, sex, national origin, or handicap related to the activities of this Agreement.
- 17.3 Conflict of Interest. The CMPD certifies that to the best of its knowledge no employee or officer of the CMPD has any pecuniary interest in the business of the 911 Board or Allocated Funds, and that no person associated with the CMPD has any interest that would conflict in any manner with the performance of this Agreement.
- 17.4 Compliance with Laws. The Parties shall at all times observe and comply with all laws, ordinances, and regulation of the state, federal and local governments which may affect the performance of the Agreement.
- 17.5 Non-Assignability. The CMPD 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.
- 17.6 Future Cooperation. The 911 Board and the CMPD 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 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.

IN WITNESS WHEREOF, the undersigned parties, through their duly authorized representatives, have caused this Agreement to be executed as of the Effective Date set forth above.

**CITY OF CHARLOTTE/CHARLOTTE-MECKLENBURG
POLICE DEPARTMENT**

By: _____

Printed Name: _____

Title: _____

NORTH CAROLINA 911 BOARD

By: _____

Printed Name: _____

Title: _____

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

Finance Manager, City of Charlotte

Contract # _____

Exhibit A
911 Board Secondary PSAP Funding Policy

Contract # _____

Exhibit B
Secondary PSAP Agreements