

INTERLOCAL AGREEMENT
FOR THE 911 EMERGENCY COMMUNICATIONS CENTER AND
THE CITY/COUNTY DEPARTMENT OF EMERGENCY COMMUNICATIONS

This Interlocal Agreement for the 911 Emergency Communications Center and the City/County Department of Emergency Communications is made between the City of Durham, a North Carolina municipal corporation (hereinafter “City”), and the County of Durham, a political subdivision of the State of North Carolina (hereinafter “County”). This Agreement is dated, made, and entered into as of _____, 2014.

BACKGROUND. The City and County entered into the Interlocal Cooperation Agreement 911 Communications, dated July 1, 2005, and amended it with the First Amendment to Interlocal Cooperation Agreement 911 Communications, dated January 1, 2008. This Agreement is made pursuant to Article 20 of Chapter 160A of the North Carolina General Statutes.

CONTENTS

Section I	Purpose
Section II	Definitions
Section III	Administration
Section IV	Financial
Section V	Operations Board
Section VI	Property
Section VII	General Terms of Agreement

NOW THEREFORE, for and in consideration for the mutual covenants and agreements made herein, the parties agree as follows:

Section I. Purpose.

The purpose of this Agreement is to provide for (i) the coordination of public safety emergency dispatch operations by the City and County, and (ii) the efficient delivery of emergency services to the citizens of the City and County.

Section II. Definitions.

The words defined in this Section shall have the meanings indicated when used in this Agreement, unless the context requires otherwise.

- A. “Act” means Article 3 (titled “Emergency Telephone Service”) of Chapter 62A of the General Statutes of North Carolina.
- B. “Annual Operating Budget” means the listing of anticipated annual revenues and expenditures of the City/County Department of Emergency Communications submitted to and approved by the Governing Bodies pursuant to Section IV.C.

- C. “Apportionment Ratio” means the ratio prescribed in Section III.D, for allocating the cost between the City and the County of carrying out this Agreement. This ratio may be changed from time to time by use of the procedures provided for in Section IV.D.
- D. “Board” means the Board of County Commissioners of Durham County.
- E. “City” means the City of Durham.
- F. “Council” means the City Council of the City of Durham.
- G. “County” means the County of Durham.
- H. “Department” means the Durham City/County Department of Emergency Communications created under Section III.A.
- I. “Director” means the Director of Emergency Communications, to whom reference is made in Section III.B.
- J. “Durham City/County Emergency Communications Center” (DECC) means the PSAP dispatch operations center located on the third floor of the City Police Headquarters Building, the purpose of which is to handle emergency 9-1-1 telephone calls and to dispatch appropriate service providers.
- K. “Governing Bodies” means the Council and Board.
- L. “Managers” means the City Manager and the County Manager acting jointly.
- M. “Operations Board” means the Durham Emergency Services Operations Board established pursuant to Section V.
- N. “9-1-1 Service Charge Funds” means all 9-1-1 service charges collected by the State of North Carolina pursuant to Chapter 62A of the North Carolina General Statutes and provided to the City for designated emergency communications purposes.
- O. “PSAP” means “Public Safety Answering Point.” which means the public safety agency that receives an incoming 911 call and dispatches the appropriate public safety agencies to respond to the call.
- P. “Unanticipated Expenses” means any expense arising under this Agreement for which funds have not been provided in the Annual Operating Budget. By way of illustration and not limitation, an

Unanticipated Expense may be a casualty or liability loss for which there is no applicable insurance, or any expense related to an emergency or unanticipated event. The transfer of additional personnel from the City to the Department during the normal Department operations, for the convenience of the City, is not an unanticipated expense.

Section III. Administration.

- A.** Creation of Department. Sheriff's communications facility. MOU between IT departments and Operations Board.

There is hereby established a City-County Emergency Communications Department, which shall consist of the Director and such subordinate employees as the Governing Bodies may provide in the Annual Operating Budget. The Department shall receive information from emergency callers and dispatch appropriate personnel and equipment in response to such calls throughout the City and County. The City shall serve as the Primary PSAP, as that term is defined in G. S. 62A-40, for the City and County. The Office of the Sheriff maintains a separate communications facility. The Sheriff's communication facility will have the capacity to serve as a temporary back-up facility for the DECC. In order for the Office of the Sheriff to properly execute its duties related to emergency communications, necessary and appropriate materials and services shall be provided for these purposes in the Annual Operations Budget of the DECC. Details of the necessary and appropriate materials and services shall be set forth in a separate Memorandum of Understanding between the Department and the Office of the Sheriff. A separate Memorandum of Understanding shall be set forth between the IT Departments of all members of the Operations Board, which is defined in Section V, so that duties and responsibilities are clearly defined.

- B.** There shall be a Director of the Department, who shall be appointed by the Managers, and who shall act as the administrative head of the Department and supervise the operations of the Department.
- C.** The personnel policies and procedures of the City, administered by the City Manager, shall govern the Department.
- D.** There shall be such additional personnel employed for operation of the Department as the Governing Bodies may provide in the Annual Operating Budget.
- E.** The Director shall perform the duties of the Department as per the City job description not inconsistent with this Agreement.

Section IV. Financial

- A. The budget and financial procedures of the City shall be followed in carrying out this Agreement.
- B. All revenues received by the City as 9-1-1 Service Charge Funds shall be maintained in a special revenue fund as prescribed by NCGS §62A—46(d).
- C. The Managers shall annually consider and decide upon the Annual Operating Budget. The Managers shall designate, within the Annual Operating Budget, those expenses which shall be paid from the 9-1-1 Service Charge Funds, subject to NCGS §62A-46(c) and other applicable laws. The Managers shall submit the Annual Operating Budget to the Council and Board. The Council and Board shall then each consider the proposed Annual Operating Budget and take such action as each shall deem appropriate. The failure of the Council and Board to agree upon the Annual Operating Budget shall be grounds for terminating this Agreement pursuant to Section VII.B (2).
- D. An Apportionment Ratio is hereby established for the purpose of allocating the costs of carrying out this Agreement between the City and County from revenues other than the 9-1-1 Service Charge Funds. The Apportionment Ratio shall be 79% to the City and 21% to the County. At the time the City Manager and the County Manager consider the Annual Operating Budget, they shall also review the Apportionment Ratio and jointly recommend to the Governing Bodies any modification of the Apportionment Ratio that they find to be fair and equitable. To the extent practical, the recommended Apportionment Ratio shall reflect the costs of emergency communications dispatch services. The Council and Board shall take such action as each shall deem appropriate. The failure of the Council and Board to agree upon the Apportionment Ratio shall be grounds for terminating this Agreement pursuant to Section VII.B (2). Any modification of the Apportionment Ratio approved by the Council and Board shall be applicable during the next fiscal year.
- E. The expenses of the Annual Operating Budget shall be apportioned between the City and County according to the Apportionment Ratio. All Unanticipated Expenses shall be apportioned between the City and County according to the Apportionment Ratio, and be approved by the Board prior to expenditure by the City. In the event of emergency repairs, the City and the County will determine if the Apportionment Ratio needs to be modified. If the Council and Board do not agree to change the Apportionment Ratio, the Apportionment Ratio in effect shall be applied with respect to payment for emergency repairs.
- F. The City shall initially pay all expenses arising under this Agreement subject, however, to reconciliation by the designated City and County staff in the manner prescribed under this Section.

- G. The amount due from the County to the City, as the County's share of expenses of the Annual Operating Budget, shall be divided into twelve equal monthly payments. The County shall make each payment on the first day of each month of the applicable fiscal year.
- H. Between August 15 and August 31 of each year, the Finance Director of the City or designee and the Chief Financial Officer (CFO) of the County or designee (hereafter "Finance Directors") shall determine how much, if any, the County has overpaid or underpaid the amounts due to the City under this Agreement for the preceding fiscal year. Within 30 days after their determination of the amount, they shall report that determination to the Managers, and the City or County shall make the payment to the other party that the determination found to be proper. If the Managers do not agree, the party that considers itself to be owed money may use any applicable procedures for redress.
- I. Either the City or County may request that the DECC perform services over and above those approved in the Annual Operating Budget. When such additional services are requested by the City or County but not both, and are performed solely because of the request, the requesting government shall pay the full expense associated with such service(s) within 30 days of receiving an invoice, and such amounts shall *not* be included in the reconciliation described in this Section. Services over and above those approved in the Annual Operating Budget shall be reported to the Managers.

Section V. Operations Board

- A. There is hereby established an administrative body to be known as the Durham Emergency Services Operations Board (hereafter "Operations Board"). The Managers shall establish, and may amend from time to time, the Operations Board's bylaws and rules of procedures Managers. The Operations Board shall consist of 14 persons selected as follows:
 - 1. Three members shall be appointed by the City Manager. One shall hold a high-ranking command position in the City Police Department, one shall hold a high-ranking command position in the City Fire Department, and one shall hold a high-ranking position in the City Manager's Office.
 - 2. Three members shall be appointed by the Durham County Manager. One shall hold a high-ranking command position in the County Emergency Medical Services Department, one shall hold a high-ranking command position in the Office of the Durham County EMS Medical Director, and one shall hold a high-ranking position in the County Manager's Office.
 - 3. One member shall be the president of the Durham County Fire Chief's Association.

4. One member shall be the Director of Emergency Communications.
5. One member shall be the Director of the City/County Department of Emergency Management.
6. Two members shall be appointed by the Sheriff of Durham County, one of whom shall hold a high-ranking command position and one of whom hold a management position in the Communications section of the Sheriff's office.
7. One member shall be appointed by the Duke University Police Department and shall hold a high ranking position in that department.
8. One member shall be appointed by N.C.C.U Police Department and shall hold a high ranking position in that department.
9. One member shall be the manager of the City's Communication Maintenance Division.
10. An individual who ceases to hold the position required for selection for the membership that he or she holds shall immediately lose his or her membership on the Operations Board.

B. Duties of Operations Board:

1. To review and comment on activities and policies concerning the delivery of public safety operations for the City or the County, or both.
2. To provide analysis of system changes, acquisition of new or replacement equipment, operational and administrative policies, formulation of a five-year comprehensive plan for infrastructure, and all matters deemed, by a majority vote of the Operations Board, to be necessary in order to coordinate efficient and effective public safety operations for the people of the City or the County, or for the responding law enforcement, fire, or emergency medical services; members
3. To explore options, evaluate, and make recommendations on governance and cost sharing for public safety and public service communications interoperability; and
4. To recommend models that can ensure that individual initiatives are consistent with and improve responses within the City, within the County, and within the region.
5. In all its recommendations, the Operations Board shall consider compatibility with the State's Communications Interoperability Plan and strategies.

C. Operations Board Organization.

1. A Chairperson and Vice Chairperson shall be selected by its members and shall have such responsibilities as may be conferred by the rules of procedure or bylaws.
2. The Operations Board shall meet at least once every three months and provide for the keeping of minutes of its meetings. A quorum shall mean a majority of the members, excluding vacancies.

D. Open Meetings and Public Records. The Operations Board will comply with applicable requirements of Chapter 132 and Article 33C of Chapter 143 of the General Statutes of North Carolina.

Section VI. Property

- A. Property, which includes real and personal property purchased or owned by the City prior to January 1, 2008 and used by the Department shall remain the property of the City and shall not be subject to the provisions of Paragraphs B and C of this Section. Any property acquired pursuant to this Agreement that shall be owned by the City. Property acquired by the County for use by the Sheriff's Office for the separate communications facility as provided by III.A is not considered to be acquired pursuant to this Agreement and shall be owned by the County and not subject to Subsections B and C.
- B. In the event this Agreement is terminated, the City shall purchase the County's interest in property acquired pursuant to this Agreement and held by the City by making payment to the County an amount equal to the County's percentage part of the Apportionment Ratio in place at the time of termination times the net depreciated value of such property (unless such property is sold under Subsection C.)
- C. As an alternative to Subsection B, in the event this Agreement is terminated, the City may sell any property acquired pursuant to this Agreement and held by the City. The choice of which property will be sold is in the City discretion. The proceeds of any such sales, after expenses of sale, shall be divided by the City and County in accordance with the Apportionment Ratio in place at the time of termination.

Section VII. General Terms of Agreement.

- A. Amendment and Periodic Review of Agreement. This Agreement may be amended upon mutual agreement of the Governing Bodies expressed in writing. At least once every three years the County Manager and the City Manager shall

- review this Agreement and each shall bring his or her conclusions and recommendations to change this Agreement to the Board and Council, respectively.
- B. Termination. The City or the County may terminate this Agreement pursuant to Subsection 1 or 2:
1. This Agreement may be terminated as of the end of any fiscal year, except as provided by Subsection 2. Notice to terminate must be given in writing to the other party on or before January 1st immediately preceding the proposed June 30th termination date.
 2. This Agreement may also be terminated by either party upon 30 days written notice to the other party in the event (i) the City and County are unable to agree upon an Annual Operating Budget, (ii) the City and County are unable to agree upon the Apportionment Ratio, or (iii) the Managers are unable to agree with respect to any of the matters prescribed in Section IV.C.
- C. Unless terminated pursuant to Section B or otherwise as allowed by law, the term of this Agreement is perpetual. The governing body of each party hereto has determined that duration to be reasonable.
- D. Survival. Subsections (E), (G), (H), and I of Section IV shall survive termination for the purposes of resolving the apportionment and payment of any Unanticipated Expense which may become due after termination or any amount due and unpaid at the time of termination. All obligations that are still executory on both sides are discharged but any right based on prior breach or performance survives. The making of this Agreement shall not affect the validity of the "Survival" clause (contained in section VII.D) of the First Amendment to Interlocal Cooperation Agreement 911 Communications.
- E. Governing Law. This Agreement shall be governed by and in accordance with the laws of the State of North Carolina. All actions relating in any way to this Agreement shall be brought in the North Carolina General Court of Justice in the County of Durham and not removed to federal court.
- F. Entire Agreement. This Agreement shall constitute the entire understanding between the City and the County relating to the subject matter hereof and shall supersede all prior understandings and agreements relating to the subject matter hereof.
- G. E-Verify Compliance. Each of the parties covenants that if it enters into any subcontracts in order to perform any of its obligations under this contract, it shall require that the contractors and their subcontractors comply with the requirements of NC Gen. Stat. Article 2 of Chapter 64. In this E-Verify Compliance section,

- the words contractors, subcontractors, and comply shall have the meanings intended by applicable provisions of NC Gen. Stat. Chapters 153A and 160A.
- H. Appointment of Personnel. The City Manager shall designate persons to carry out the City's obligations under this Agreement. The County Manager shall designate persons to carry out the County's obligations under this Agreement.
- I. Principles of Interpretation and Definitions. Unless the context requires otherwise -- (1) The singular includes the plural and the plural the singular. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument.
- J. No Third Party Rights Created. This Agreement is intended for the benefit of only the City and the County.
- K. Notice. (a) All notices and other communications required or permitted by this Agreement shall be in writing and shall be given either by personal delivery, fax, UPS, Federal Express, or certified United States mail, return receipt requested, addressed as follows. The parties are requested to send a copy by email.

To the City:

[Insert name and department]

City of Durham

101 City Hall Plaza

Durham, NC 27701-3329

The fax number is (919)_____.

Email:

To the County:

[Insert name and address]

The fax number is _____.

Email:

- (b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this contract shall be deemed given and sent at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

*Interlocal Agreement for the 911 Emergency Communications Center and the City/County Department of
Emergency Communications, between the City of Durham and the County of Durham*

IN WITNESS WHEREOF, the City and County have executed this instrument pursuant to authority duly made by the City Council and the Board of County Commissioners, respectively.

ATTEST:

CITY OF DURHAM

_____ By: _____

COUNTY OF DURHAM

BY _____
Wendell M. Davis, County Manager

ATTEST:

_____ (SEAL)
Michelle Parker-Evans, Clerk to the Board

CITY OF DURHAM

BY _____
Thomas J. Bonfield, City Manager

ATTEST:

_____ (SEAL)
D. Ann Gray, City Clerk