

2-1-08 cc: *Chuj Chatter*
Chuj Batten
Mike Smith

North Carolina

Durham County

FIRST AMENDMENT TO
Interlocal Cooperation Agreement
911 Communications

This is an amendment to the 911 Interlocal Cooperation Agreement (henceforth, as modified by this instrument, "Agreement") between City of Durham, a North Carolina municipal corporation (hereinafter "City"), and County of Durham, a political subdivision of the State of North Carolina (hereinafter "County"). This Agreement is made pursuant to Article 20 of Chapter 160A of the North Carolina General Statutes. This First Amendment is dated, made, and entered into as of January 1, 2008.

THAT WHEREAS, the City and County entered into a "911 Interlocal Cooperation Agreement 911 Communications," dated July 1, 2005, (hereinafter the "Original Interlocal"); and

WHEREAS, the City and County desire to amend the Original Interlocal to reflect changes in legislation and for other purposes, while keeping in effect all terms and conditions of the Original Agreement not inconsistent with the terms and conditions set forth below.

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.

- A. "Act" means the Public Safety Telephone Act, as set forth in Chapter 62A of the General Statutes of North Carolina.
- B. "Advisory Board" means the Durham Emergency Communications Advisory Board established pursuant to Section III of this Agreement.
- C. "Annual Operating Budget" means the listing of anticipated annual revenues and expenditures of the Department of Emergency Communications submitted to and approved by the Governing Bodies pursuant to Section VI of this Agreement.

- D. "Apportionment Ratio" means the ratio prescribed in Section VI, Paragraph D herein, for allocating the cost between the City and the County of carrying out this Agreement.
- E. "Board" means the Board of County Commissioners of Durham County.
- F. "City" means the City of Durham.
- G. "Council" means the City Council of the City of Durham.
- H. "County" means the County of Durham.
- I. "Department" means Durham City/County Department of Emergency Communications created under Section IV, Paragraph A of this Agreement.
- J. "Director" means the Director of Emergency Communications, to whom reference is made in Section IV, Paragraph B of this Agreement.
- K. "Durham 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.
- L. "Governing Bodies" means collectively the Council and Board.
- M. "Managers" means the City Manager and the County Manager acting jointly.
- N. "Modified Apportionment Ratio" means the comparative contributions (expressed as percentages) of the City and of the County to the Annual Operating Budget, except revenues payable from the 9-1-1 Service Charge Funds.
- O. "**Public Safety Answering Point or "PSAP"**" means the public safety agency that receives an incoming 911 call and dispatches the appropriate public safety agencies to respond to the call.
- P. "Rules of Procedure" means the rules of procedure adopted by the Advisory Board pursuant to Section III.B (3).
- Q. "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.

- R. "9-1-1 Service Charge Funds" means all 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.

Section III. Advisory Board

- A. There is hereby established an Emergency Communications Advisory Board (hereafter "Advisory Board") which shall consist of twelve (12) members selected as follows:
1. Three (3) members shall be appointed by the City Manager to represent the Durham City Police Department, Durham City Fire Department, and City Manager's Office.
 2. Three (3) members shall be appointed by the Durham County Manager to represent the Durham County Emergency Medical Services Department, Durham Emergency Medical Services Council, and County Manager's Office.
 3. One (1) member shall be appointed by the Durham County Volunteer Fire Departments.
 4. One (1) member shall be appointed by the City Manager and County Manager jointly to represent the Durham City-County Emergency Management Department.
 5. One (1) member shall be appointed by the Sheriff of Durham County.
 6. The following members will serve as ex-officio members without voting privileges:
 - a. One (1) ex-officio member shall be a Communication Officer selected by the staff of the Department.
 - b. One (1) ex-officio member shall be the Director of Emergency Communications.
 - c. One (1) ex-officio member shall represent Communications Maintenance and shall be appointed by the City Manager.

B. Duties of Advisory Board:

1. To review and comment on activities and policies concerning emergency communications services and the operation of the Department.
2. To establish subcommittees to provide analysis on such matters including but not limited to, system changes, acquisition of new or replacement equipment, operational and administrative policies, and annual budget review.
3. To adopt Rules of Procedure consistent with this Agreement for the efficient organization and operation of the Advisory Board. Such Rules of Procedure shall be subject to the approval of the Managers.

C. Advisory Board Organization.

1. A Chairperson and Vice Chairperson shall be selected by its members and shall have such responsibilities as may be conferred upon him or her by the Rules of Procedure.
2. Consistent with applicable laws and the Rules of Procedure, the Advisory Board shall:
 - a. Meet regularly at such time and place as the Advisory Board may determine.
 - b. Hold special or emergency meetings when deemed necessary and in accordance with the Rules of Procedure.
 - c. Provide for the keeping of minutes of its meetings.

D. Open Meetings and Public Records.

The Advisory Board is a public body, and as such, shall be subject to the requirements of Chapter 132 and Article 33C of Chapter 143 of the General Statutes of North Carolina.

Section IV. Administration.

- A. 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.

B. There shall be a Director of Emergency Communications, appointed by the Managers, who shall act as the administrative head of the Department and supervise the operations of the Department.

1. Appointment of the Director of Emergency Communications.

a. The Director of Emergency Communications shall be appointed by the Managers, acting in concert.

2. Evaluation and Supervision of the Director of Emergency Communications.

a. The Managers or their designees shall meet at least annually with the Director of Emergency Communications to evaluate his/her performance and such evaluation shall be reduced to writing.

3. Termination of the Director of Emergency Communications.

a. The Director of Emergency Communications may be terminated by the Managers, acting in concert.

C. There shall be such additional personnel employed for operation of the Department as the Governing Bodies may provide in the Annual Operating Budget.

D. Pursuant to this Agreement, the Director shall perform the following duties:

1. Plan, organize, direct and evaluate the work of the Department.

2. Supervise directly or through subordinate supervisors, the work of assigned operational personnel.

3. Consult with the Advisory Board regularly concerning activities and policies of the Department.

4. Prepare an Annual Operating Budget and submit such Annual Operating Budget to the Managers in such form as the Managers may prescribe.
5. Perform such other duties as may be prescribed by the Managers or which may be required to carry out the terms of this Agreement.
6. Prepare an Annual Report of Emergency Communications activities for the Governing Bodies in such form and by such date as the Managers may prescribe.
7. Regularly advise, no less than quarterly, the Managers or designees concerning the activities of the Department.
8. Provide an annual presentation to the Board of County Commissioners regarding the 911 5-Year Capital Plan. The presentation should be made to the Board on or about each July 1 during the term of this Agreement.

E. The personnel policies and procedures of the City, administered by the City Manager, shall govern the Department. Such policies and procedures include, but are not limited to, the following:

1. Recruitment, selection, advancement, discipline, and dismissal of employees.
2. Compensation and expenses.
3. Equal Opportunity/Equity Assurance.

However, nothing in this subsection IV(E) shall be interpreted to negate the method of appointment, supervision, or termination of the Director of Emergency Communications as set forth in Section IV(B) above.

Section V. Property

- A. Property purchased by the City prior to the effective date of this Agreement 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 (real or personal) acquired pursuant to this Agreement shall be owned by the City and title to such property shall be held by the City.

- B. In the event this Agreement is terminated, the City shall pay to the County an amount equal to the County's percentage part of the Modified Apportionment Ratio times the net depreciated value of such property (unless such property is sold under Paragraph C of this Section, in which case the provisions of said Paragraph C shall control.).
- C. The City may sell any such property. The proceeds of any such sale shall be divided by the City and County in accordance with the Modified Apportionment Ratio.

Section VI. Financial

- A. The budget and financial procedures of the City shall be followed in carrying out this Agreement.
- B. The City agrees that all revenues received by the City as 9-1-1 Service Charge Funds under the Act shall be maintained in a special revenue fund as prescribed by NCGS §62A-46(d). City agrees to provide monthly statements to the County showing both fund balances including interest earned.
- C. The Managers shall meet annually to 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). The Managers shall submit the Annual Operating Budget to the Council and Board respectively. The Council and Board shall then each consider such 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 Appointment 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 meet each year to consider the Annual Operating Budget of the Department, they shall also review the Apportionment Ratio and jointly recommend any modification of the Apportionment Ratio that they find to be fair and equitable. To the extent practical, the Apportionment Ratio shall reflect the costs of ensuring the availability of emergency communications dispatch services, under this Agreement, within the respective jurisdictions of the City and County. The City Manager and County Manager shall jointly submit their recommendations with respect to the Apportionment Ratio to the Council and Board respectively, and 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 Modified Apportionment Ratio and approved by the Board of County Commissioners prior to expenditure by the City.
- F. The City shall initially pay all expenses arising under this Agreement subject, however, to reconciliation by the County in the manner prescribed under this Section VI.
- G. The County shall pay to the City on a monthly basis, in advance, an amount equal to (1) one-twelfth (1/12) of the amount of the Annual Operating Budget apportioned to the County under Section VI, Paragraph E, plus (ii) the County's portion of any Unanticipated Expense(s) incurred during the immediate preceding month apportioned to the County under Section VI, Paragraph E, by wire transfer no later than 12:00 noon on the first business day of each month.
- H. Twice per year, on or about February 15 and August 15, the Finance Director of the City or his designee and the Finance Director of the County or his designee (hereafter "Finance Directors") shall meet to conduct a review and reconciliation of amounts paid and payable under this Agreement. Such adjustments or payments as may be necessary to effectuate the reconciliations agreed upon by the Finance Directors shall be promptly made. The review and reconciliation shall be conducted for the following purposes:
 - 1. to assure that funds spent by the City from the 9-1-1 Service Charge Funds are used only for purposes (i) authorized by the Act or other applicable law and (ii) designated as payable from the 9-1-1 Service Charge Funds in the approved Annual Operating Budget. This reconciliation shall be performed on or before February 15 and on or before August 15 shall cover the preceding six month periods respectively; and
 - 2. to account for any over expenditure or under expenditure of funds. This annual reconciliation shall be performed by August 15 and shall cover the preceding fiscal year.
- I. Either the City or County may fund services over and above those approved in the Annual Operating Budget. When such additional services are requested by either the City or County, and are performed for the benefit of the requesting government then the requesting government shall pay the full expense

associated with such service(s) and such amounts shall *not* be included in the reconciliation described in this Section VI.

- J. Any 9-1-1 Service Charge Funds received by the County before January 1, 2008 shall remain with the County to fund the City-County Emergency Communications Department using the budget process described herein as permitted by the Act. All 9-1-1 Funds, as that expression is defined in the Original Interlocal, that are received by the County on or after January 1, 2008, shall be paid by the County to the City and treated as 9-1-1 Service Charge Funds.

Section VII. General Terms of Agreement.

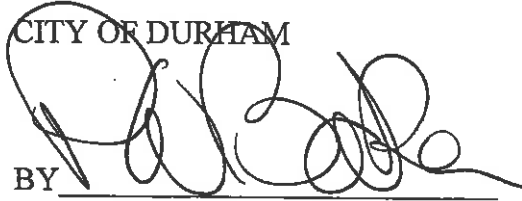
- A. **Amendment.** This Agreement may be amended upon mutual agreement of the Governing Bodies expressed in writing. The Agreement shall be reviewed by the Governing Bodies at least once every two (2) years and such review shall be documented in writing.
- B. **Termination.** Either the City or County may terminate this Agreement in the following manner:
1. This Agreement may only be terminated as of the end of any fiscal year, except as provided by Subparagraph (2) of this Section VII.B. 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 thirty (30) days prior 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, Paragraph B, Subparagraphs (1), (2), or (3).
- C. **Term.** The term of this Agreement shall terminate at 11:59 PM on June 30, 2013 unless terminated earlier as prescribed in this Section.
- D. **Survival.** Sections VI (G) and (H) Agreement 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.

- 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 General Court of Justice in the County of Durham and the State of North Carolina.

- F. **Entire Agreement.** This Agreement shall constitute the entire understanding between the City and the County and shall supersede all prior understandings and agreements relating to the subject matter hereof.

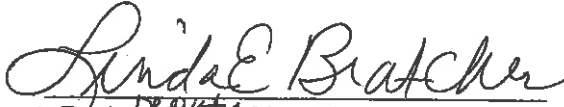
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IN WITNESS WHEREOF, the City and County have authorized this Amendment to the 911 Interlocal Agreement to be executed and attested by their undersigned officers, to be effective January 1, 2008.

CITY OF DURHAM

BY _____
Patrick Baker, City Manager

1/22/08

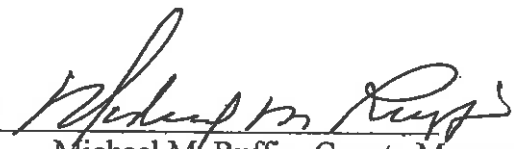
ATTEST:



D. Ann Gray, City Clerk 1-23-08


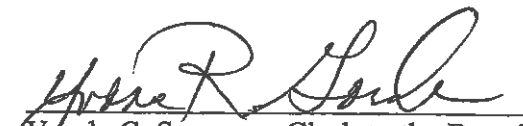
(SEAL)

COUNTY OF DURHAM

BY 

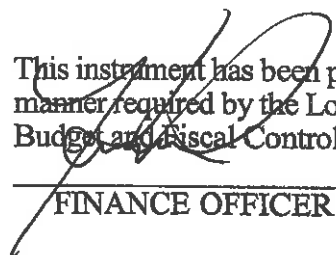
Michael M. Ruffin, County Manager

ATTEST:



Yvonne R. Gordon, Deputy Clerk

(SEAL)

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

FINANCE OFFICER 1/16/08
DATE

