

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: May 21, 2025

SUBJECT: 911 Fund Allocations to Secondary PSAP

PRESENTER: Stephanie Brackett, E-911 Director

ATTACHMENT: Yes

1. Fund Allocations Agreement
2. Inter-Local Agreement

SUMMARY OF REQUEST:

The Board is requested to approve the 911 Fund Allocations and Inter-Local Agreement, appropriating funds from the Primary PSAP, Henderson County Sheriff's Office Emergency Communications, to the Secondary PSAP, the City of Hendersonville, for the purpose of 911 transfers being completed with the call taking and dispatching processes.

BOARD ACTION REQUESTED:

The Board is requested to approve the 911 Fund Allocations and Inter-Local agreement as presented, appropriating funds from the Primary PSAP to the Secondary PSAP.

Suggested Motion:

I move the Board approve execution of the 911 Funds Allocation Agreement and Inter-Local Agreement

AGREEMENT
For 911 Fund Allocations to a Secondary PSAP

THIS AGREEMENT (the "Agreement") is made effective the ____ day of _____ 20____ by and between **Henderson County**, a unit of local government operating a Primary PSAP (Public Safety Answering Point) in Henderson County North Carolina, and the **North Carolina 911 Board** (hereinafter referred to as "911 Board"), an agency of the State of North Carolina. Henderson County and the Board (together "the Parties") hereby agree as follows:

WITNESSETH:

WHEREAS, the 911 Board collects service charges from service providers and administers 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, Henderson County presently transfers 911 calls to the City of Hendersonville, a Secondary PSAP meeting the Secondary Policy attached as Exhibit A incorporated herein, which relieves the Henderson County from completing the call taking process and dispatching transferred 911 calls; and

WHEREAS, Henderson 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, Henderson County and the 911 Board entered into an agreement regarding Secondary PSAP funding and continued to operate under that agreement following the agreement term; and

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

NOW, THEREFORE, the Parties enter into this Agreement to implement the 911 Board's Secondary PSAP Funding Policy as marked Exhibit A, the Parties hereto ratify their past actions as consistent with the secondary funding agreement, and mutually agree to the following terms and conditions:

1. Definitions:

a. Definitions set forth in N.C. Gen. Stat. §143B-1400 *et seq.* are incorporated herein.

b. Allocated Funds: the amount authorized by the 911 Board for distribution to Henderson County for further allocation to the Secondary PSAP determined annually based on a "911 cost-per-call basis" as measured by the Board's approved call data analytics system. These Allocated Funds shall not diminish the monthly base amount distribution to the Primary PSAP, nor modify the approved Primary PSAP carryforward pursuant to N.C. Gen. Stat. § 143B-1406(c).

c. County: Henderson County, the unit of local government that established and is operating a Primary PSAP.

- d. Executive Director: Executive Director of the 911 Board.
 - e. Interoperable: Capability of the telephone systems of the Primary and Secondary PSAPs to ensure complete transfer of a 911 call.
 - f. Primary PSAP: The Primary Public Safety Answer Point, as defined by N.C. Gen. Stat. §143B-1400(23). For the purposes of this Agreement, "Primary PSAP" is the PSAP established and operated by Henderson County.
 - g. Secondary PSAP: A PSAP that is able to receive the voice and data of Next Generation 911 call transferred from a Primary PSAP and to complete the call taking process dispatching law, medical, fire or other responder. Receiving the voice and data of a Next Generation 911 call includes all identification and location data generated by the Subscriber. For the purposes of this Agreement, "Secondary PSAP" is the PSAP operated by the City of Hendersonville.
 - h. Secondary PSAP Funding Policy: A policy of the Board that may be amended from time to time.
 - i. State Funds: Any funds appropriated by the N.C. General Assembly or collected by the State of North Carolina. For the purposes of this Agreement, the 911 Funds are State Funds. The 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 the City of Hendersonville and receives 911 calls transferred from the Primary PSAP to complete the call taking and dispatching processes. Henderson County agrees and acknowledges the conditions set forth in Exhibit A, the 911 Board's Secondary PSAP Funding Policy, have been satisfied, and
- a. Allocated Funds shall be determined by the 911 Board and utilize call data from the single Primary PSAP. Allocated Funds shall not be available for Back-up PSAPs.
 - b. The County shall provide its interlocal agreement with the Secondary PSAP's governing body, which shall be incorporated in this Agreement as Exhibit B, to the Executive Director prior to disbursement of the Allocated Funds from the 911 Fund. The Secondary PSAP shall participate in the State ESInet.
 - c. The County's Primary PSAP will serve as the approved backup for the Secondary PSAP, as reflected in the Secondary PSAP's approved backup plan.
 - d. 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).

e. 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.

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

g. The 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. §143B-1400 *et seq.*, or subsequent modification thereof.

b. 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.

c. Administrative expenses or costs of the County, the Primary 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 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, and at the same time a Primary PSAP is permitted to request 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 began on June 30, 2025, (Effective Date) and shall extend through June 30, 2027, (End Date) and may be renewed for an additional two-year term, unless otherwise amended, extended, or terminated as provided herein. 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 the County, the Primary PSAP, or Secondary PSAP prior to the Effective Date or subsequent to the End Date.

5. Distribution of Funds. Allocated Funds for the Primary PSAP will be subject to annual Board approval of distribution and the Allocated Funds will be delivered in monthly installments

to the Primary PSAP. The County agrees it will disburse proportionally the said funds based upon a 911 cost-per-call basis to the Secondary PSAP in monthly installments.

- a. Funds shall be distributed only for expenses eligible under N.C. Gen. Stat. §143B-1400 *et seq.* and the policies of the 911 Board.
- b. Administrative costs are not allowable expenses.
- c. The 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. The County will record the Secondary revenue expenditures separately from the Primary revenue expenditures as reflected in its annual Revenue Expenditure Reports.
- e. In the event the 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 are untrue as to a material fact as of the date of this Agreement, the County shall return any un-distributed Allocated Funds held by the Primary PSAP and refund sums equal to any non-eligible expenses paid with Allocated Funds. The County's obligations that are created by this subsection to return Allocated Funds and to refund sums apply only to Allocated Funds held by the Primary PSAP. Allocated Funds are "held" by the Primary PSAP only to the extent they are in the actual, not constructive, possession of the Primary PSAP.
- f. The Primary PSAP must attend workshops or other instructional sessions relating to administration or use of 911 Funds provided by the 911 Board during the term of this Agreement.

6. Independent Status of Henderson County.

- a. The Parties agree neither this Agreement nor any provisions hereof shall be deemed to create a partnership or joint venture between the County, the 911 Board, or a Secondary PSAP.
- b. The Parties acknowledge that each is an independent entity. Nor shall this Agreement be construed 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.

- a. The County shall maintain full, accurate and verifiable financial records, supporting documents, and all other pertinent data consistent with the 911 Board's funding model and policies.
- b. The 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. §147-64.7, the County agrees to make available to the State Auditor 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. The County acknowledges and agrees that it will be subject to the audit and reporting requirements prescribed by N.C. Gen. Stat. §159-34, The Local Government and Fiscal Control Act - Annual Independent Audit; Rules and Regulations, N.C. Gen. Stat. §143B-1400 *et seq.* and the policies, procedures and rules of the 911 Board, as applicable.

8. Termination; Availability of Funds.

a. If the 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 the 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. The County shall return all undistributed Allocated Funds to the Board without the demand therefore. 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 911 Board may terminate this Agreement immediately upon notice to the 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 911 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 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. The 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 the County or Secondary PSAP, or its contractors.

10. Remedies. In the event of the County's non-compliance with any provision in this Agreement or the Secondary PSAP's failure to adhere to the statutes, rules, and policies of the 911 Board, or the provisions of this Agreement or the corresponding interlocal agreement, the 911 Board may take any actions authorized by the statutes, rules, and policies 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 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 terminates the reporting and records retention requirements of this Agreement.

11. Henderson County Representation and Warranties. The County hereby represents and warrants that:

- a. The 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 the 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 the County and does not violate any applicable organizational documents of the 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 the 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 the 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 the County. The 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, pandemics, labor strikes or other difficulties or circumstances beyond its reasonable control. The County shall notify the 911 Board promptly of any factor, occurrence or event that comes to its attention that may affect or delay the 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. §143B-1412. The 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. §143B-1412. 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 the 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 delivered by Certified Mail and a Return Receipt requested.

If to the 911 Board: Attn: L. V. Pokey Harris, Executive Director
N.C. 911 Board
P.O. Box 17209
Raleigh, NC 27609

If to Henderson County: Attn: Stephanie Brackett
911 Communications Manager
Henderson County
100 North Grove St.
Hendersonville, NC 28792

or addressed to such other address or to the attention of such other individual as the 911 Board or the 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 the County certain information that will assist 911 Board with evaluation of the short and long-range impact of its programs. The 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. The 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. The County certifies that to the best of its knowledge no employee or officer of The County has any pecuniary interest in the business of the 911 Board or Allocated Funds, and that no person associated with the County has any interest that would conflict in any manner with the performance of the Agreement.

d. Compliance with Laws. The 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. The 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 the 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 the 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.

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

Henderson County

By: _____
Title: _____

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: _____

ATTEST:

Exhibit A
911 Board Secondary PSAP Funding Policy

Exhibit B
Interlocal Agreement

INTER-LOCAL AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of May, 2025, by and between the County of Henderson, a body corporate and politic of the State of North Carolina ("Henderson County") and the City of Hendersonville, a North Carolina municipal corporation ("Hendersonville").

WITNESSETH:

WHEREAS, the parties have the authority pursuant to Article 20 of NCGS Chapter 160A to enter into this Interlocal Agreement; and

WHEREAS, pursuant to N.C. Gen. Stat. §62A-40 *et seq.*, Henderson County's Emergency Communications Center is a "Primary PSAP", defined in that statute as the first point of reception of a 911 call by a public safety answering point; and,

WHEREAS, Henderson County has or is about to enter into an "Agreement For 911 Fund Allocations to a Secondary PSAP" ("the State Agreement") with the North Carolina 911 Board, in a form substantially identical to that of Exhibit IL-1 hereto (including its own exhibits), pursuant to that statute; and,

WHEREAS, also pursuant to that statute, Hendersonville maintains a backup or secondary PSAP as those terms are defined in the State Agreement, did so well prior to 2010, and will be providing enhanced service; and,

WHEREAS, the parties wish to specify their respective rights and expectations under the State Agreement, as set out in this Agreement;

NOW, THEREFORE, in consideration of the premises and the sum of \$1.00 paid by each party to the other, the receipt and sufficiency of which is hereby acknowledged, the parties do covenant and agree as follows:

1. So long as the North Carolina 911 Board actually forwards funds to Henderson County which are identified as intended to be forwarded to Hendersonville ("Hendersonville 911 funds"), Henderson County shall forward such funds to Hendersonville within ten (10) days of receipt.
2. Should the North Carolina 911 Board later identify any Hendersonville 911 funds which were forwarded to Henderson County in error which Henderson County has subsequently forwarded to Hendersonville, Hendersonville will promptly repay such funds to the North Carolina 911 Board (insuring proper crediting for the same for both Hendersonville and Henderson County).
3. The decision of whether Hendersonville 911 funds are forwarded to Henderson County shall be solely that of the North Carolina 911 Board.
4. Hendersonville's use of Hendersonville 911 funds shall comply with North Carolina law and all rules, regulations and procedures required by the North Carolina 911 Board.
5. Hendersonville will retain and maintain full, accurate and verifiable accounting records for the Hendersonville 911 funds to the same extent and for the same duration as required of Henderson County in the State Agreement.

6. Henderson County's remedies as to Hendersonville 911 funds are identical to those of the North Carolina 911 Board in the State Agreement.

7. The terms of the State Agreement concerning Henderson County's obligations to the North Carolina 911 Board, including those for record-keeping, dispute resolution, warranties, and confidential information, and all general provisions and conditions contained therein, are incorporated herein by reference, and shall be deemed to apply to and be enforceable against Hendersonville to the same extent they are enforceable against Henderson County.

This Agreement shall be ratified by the City Council of Hendersonville and the Board of Commissioners of Henderson County, and a copy thereof shall be spread upon the minutes of both bodies.

IN WITNESS WHEREOF, the parties have executed this Agreement, the City of Hendersonville by causing it to be signed in its corporate name by its Mayor and attested by its City Clerk, and sealed with its corporate seal, and the County of Henderson by causing it to be signed by the Chairman of its Board of Commissioners and attested by the Clerk to the Board of Commissioners and sealed with its seal, on the day and year first above written.

[signature page follows]

Attest:

CITY OF HENDERSONVILLE

Jill Murray, City Clerk
(official seal)

By:_____
BARBARA VOLK, Mayor

HENDERSON COUNTY BOARD
OF COMMISSIONERS

Attest:

Denisa Lauffer, Clerk to the Board
(official seal)

By:_____
WILLIAM LAPSLEY, Chairman

APPROVED AS TO FORM:

Henderson County Attorney

Hendersonville City Attorney