

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: September 18, 2013

SUBJECT: **Board Approval of NC 911 Board Grant
Public Safety Answering Point (PSAP or 911 Center) Relocation Project**

PRESENTER: Marcus Jones, P. E.

ATTACHMENTS: Yes

1. Grant Award Letter from NC911 Board dated 7/2/2013
2. Proposed 911 Board Grant Contract

SUMMARY OF REQUEST:

Following the February 4, 2013 Board Meeting, the project team for the relocation of the County PSAP (911 Center) began the programming and preliminary design for the new Center. The next step was development and submission of the grant application to the North Carolina 911 Board on April 17, 2013. Taking advantage of all possible grant eligible criteria for a completely new and state of the art PSAP, the grant application estimate was \$5,700,000. In addition, the grant eligibility for 2013 changed to allow not only equipment but facility construction as well. On July 2, 2013, the NC 911 Board sent the attached letter to Lisha Corn Stanley, Communications Director, announcing the award of a reduced grant for \$3,600,000. The project team subsequently reviewed the project scope to meet the awarded budget.

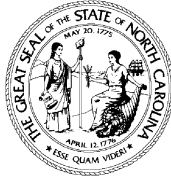
The Grant Contract from the 911 Board is attached for approval. There is not a requirement or need for funding from Henderson County.

BOARD ACTION REQUESTED:

Authorize the County Engineer to execute the required documents for the 911 Board Grant Contract based on the presented project scope of \$3,600,000.

Suggested Motion:

I move that the Board authorize the County Engineer to execute the required documents for the 911 Board Grant Contract based on the presented project scope of \$3,600,000.



North Carolina 911 Board

George Bakolia, Chair

David Corn, Vice Chair

July 2, 2013

Lisha Corn
Director
Henderson County Sheriff Communications
100 N. Grove St.
Hendersonville, NC 28792

Good Morning Lisha,

It is with great pleasure that I inform you the North Carolina 911 Board voted unanimously to award Henderson County Sheriff Communications, \$ 3,600,000 for the Henderson County PSAP Relocation Project at the June 28, 2013 meeting.

Currently the grant contract is being prepared and will be sent to you as soon as it is completed. Once you receive the contract, please review and, if approved, please have it signed by appropriate legal authority for the county and return two copies to me. I will return one fully signed copy.

The contract must be fully signed no later than 90 days after it is sent to you or the 911 Board's grant award will be retracted.

Should there be any questions, please let me know at your earliest convenience. Congratulations on this award and I, along with the 911 Board and staff, look forward to working with you on this project.

Sincerely,

A handwritten signature in black ink, appearing to be "RT", written in a cursive style.

Richard Taylor
Executive Director

www.nc911.nc.gov

P.O. Box 17209 • Raleigh, North Carolina 27619-7209
Tel: (919) 754-2942 • Fax: (919) 981-2548 • State Courier MSC 4101
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AGREEMENT

THIS AGREEMENT (the Agreement) is made effective the _____ day of _____ 2013 by and between **Henderson County** the **Grantee**, a unit of local government of Henderson County North Carolina, and the **North Carolina 911 Board** (hereinafter referred to as 911 Board), an agency of the State of North Carolina. Grantee and the Board (together “the Parties”) hereby agree as follows:

WITNESSETH:

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

WHEREAS, Grantee is Henderson County North Carolina, represented by Henderson County Sheriff Communications; and

WHEREAS, the 911 Board solicited grant applications pursuant to N.C. Gen. Stat. §62A-47 and procedures for Grants adopted by the Board; and

WHEREAS, Grantee desires funding to relocate and upgrade Henderson County Sheriff Communications; and

WHEREAS, the Parties desire to contract;

NOW, THEREFORE, the Parties enter into this Agreement, and in consideration of the mutual promises and such other valuable consideration as shall be set out herein, the Parties hereto do mutually agree to the following terms and conditions:

1. Definitions:
 - a. Project: Henderson County 911 – PSAP Relocation.
 - b. Executive Director: the Executive Director of the 911 Board.
 - c. Grant Funds: the amount authorized for award by the 911 Board, \$3,600,000.
 - d. Grant: Financial assistance provided by the 911 Board, or a subgrantee, to carry out activities whereby the 911 Board anticipates no programmatic involvement with the grantee or subgrantee during the performance of the Grant.
 - e. Grantee: Henderson County, notwithstanding N.C. Gen. Stat §143C-6-23(a)(2).
 - f. State Funds: Any funds appropriated by the N.C. General Assembly or collected by the State of North Carolina. The Grant Funds are State Funds. Grantee 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.
 - g. Subgrantee: As defined in N.C. Gen. Stat. §143C-6-23(a)(3), a non-State entity that receives a grant of State funds from a Grantee of a State Agency, here the 911 Board, or a Subgrantee of a Grantee, but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission.

h. 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. Scope of Project: The Project comprises up-fitting a new facility under construction by Henderson County to serve as a primary PSAP replacing the present primary PSAP, relocation of the current communications center to the new facility, and ensuring that such improvements meet proposed standards for 911 centers.

a. Grantee shall be responsible for management of the Project and completing the objectives and goals presented in the Grant Application. To the extent that the Project includes expenses that are not eligible for reimbursement, Grantee shall be responsible for all expenses for the non-eligible items.

b. Objectives include: Replacing all equipment that has reached end of life, is without vendor support or is technically outdated with new upgraded equipment. Integrating “Next Generation” technologies allowing the 911 Center to communicate, transfer and share data across jurisdictional boundaries and enabling geospatial call routing and the ability to receive emergency text messages when that service becomes available. Providing a more secure facility by meeting proposed 911 Board standards and industry best practices for the installation, performance, operation and maintenance of PSAPS, thus protecting critical equipment, personnel and infrastructure. Providing a facility with appropriate work space and room for future growth by following recommendations made by Mission Critical Partners for space allocation during design programming.

c. Grantee shall submit a revised budget and work plan within thirty (30) days of signing this Agreement. These revised documents must reflect any changes and special conditions of the Grant award. The budget must include any matching funds or funds from other sources and the anticipated time when such funds will be spent. The work plan should include a time line and specific milestones and/or deliverables that will be used to measure interim progress and accomplishments of the project during the term of this Agreement. Grant Funds will not be released until these revised documents are approved by the 911 Board Executive Director.

d. Grantee will draft one or more Requests for Proposal to be utilized by Grantee in development, procurement and/or operations of the Project.

e. Grantee will collect and compile documents as directed by the 911 Board for the purpose of Grantee’s verifying the requirements of Article 3 of Chapter 62A.

f. Grantee shall assist the 911 Board in any audits of Grant Funds by supplying required document(s) to satisfy the requests of an auditor.

3. Changes in the Project.

a. If changes or extra work are requested with respect to the Project, such changes must be authorized in writing by the Parties. The 911 Board will not approve any changes that exceed its authority under N.C. Gen. Stat. §62A-40 *et seq*, or subsequent modification thereof.

b. Any work referred to in Paragraph 3(a) above shall be the subject of a separate written agreement between Grantee stating the costs and schedule for completing any such extra work.

c. 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 the Project.

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

e. A request for change in the project period requires advance written approval by the 911 Board Executive Director. The request must be submitted in writing, stating the basis for the request, to the 911 Board Executive Director at least 30 calendar days prior to the expiration of the Grant. The Grantee shall submit a revised budget and any other documentation or information requested by the 911 Board Executive Director indicating the planned use of all unexpended funds during the extension period.

4. Regional/Consortium.(Reserved)

5. Term of Agreement. The Parties intend that the term of this Agreement shall begin upon the Effective Date and extend through the end of the 2014-2015 Fiscal Year: 30 June 2015 (End Date). The effective period of this Agreement shall commence upon completion by the Parties' authorized signatories (the Effective Date), and terminate upon the End Date unless sooner terminated under Paragraph 14; or amended by written agreement to extend said date by the Parties or their successors in interest.

6. Project Schedule. The Henderson County Board of Commissioners authorized the selection of Delta Engineering, Inc. for architectural services and Mission Critical Partners for consulting to design a new 911 Center. The total cost for these services was \$99,710. The planning phase is underway and estimated at 6 months duration. A suitable location has been established inside of our new Law Enforcement Center. Grantee shall prepare and deliver a project schedule consistent with this Agreement that substantially conforms to the following:

a. The Project is anticipated to be completed no more than 18 months from the Effective Date.

b. Grantee shall complete up-fitting a back-up PSAP within a new facility consistent with the Grant Application and this Agreement.

c. Grantee shall prepare and release one or more solicitation documents comprising RFPs or other similar documents within sixty (60) days of the Effective Date.

d. Contracts based upon Grantee's solicitation documents shall be awarded within thirty (30) days of receipt.

7. Delivery of Grant Funds. The total Grant Funds equals Three Million Six Hundred Thousand (\$3,600,000) Dollars. The total Project equipment cost anticipated is (\$2,409,220). Grant Funds shall be held by the 911 Board and delivered as follows:

a. Funds shall be released to Grantee after receiving copies of Grantee's contracts, purchase orders and invoices therefor, and Grantee's satisfactory completion of its

obligations under this Agreement. Grant Funds shall not be used for updating data gathered during the Project. The 911 Board may release Grant Funds directly to subgrantees upon receipt of evidence satisfactory to the 911 Board Executive Director that all conditions necessary to release such Funds have been satisfied. Such evidence may comprise demonstrated compliance with work and payment schedules of this Agreement and any agreement with a Subgrantee, relevant contracts, purchase orders and invoices therefor, satisfactory completion of testing and acceptance criteria of Grantee's contracts with its vendors, approval of the Grantee, and such other evidence as the Executive Director deems reasonably necessary or proper. Payment schedules may include pre-determined progress payments, payments based upon time and materials that are not to exceed a maximum amount, retainage, and such other terms that are consistent with this Agreement.

b. Grant Funds shall not be released, or paid, in advance of performance of actual services or reimbursable purchases. Funds shall be released only for expenses that are eligible under N.C. Gen. Stat. §62A-40 *et seq.* and the policies of the 911 Board.

c. Indirect costs and administrative costs will not be allowable charges against Grant Funds unless such costs are specifically included in the approved Project budget as incorporated into the award.

d. Grantee 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. Expenditures must be consistent with the Project Budget and N.C. Gen. Stat. §62A-40 *et seq.*

e. In the event Grantee breaches any of the covenants or agreements contained in this Paragraph, or any of the representations and warranties of Paragraphs 9, 19, and 24 are untrue as to a material fact as of the date of this Agreement, Grantee agrees to return any unearned Grant Funds held by Grantee and refund sums equal to any non-qualified expenditures paid with Grant Funds. Grantee's obligations that are created by this subsection (e), to return Grant Funds and to refund sums, apply only to Grant Funds held by Grantee. Grant Funds are "held" by Grantee only to the extent they are in the actual, not constructive, possession of Grantee.

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

8. Travel Expenses. The approved budget does not include travel costs. Such costs, if any, are limited to reimbursement rates set forth in N.C. Gen. Stat. §138-6; as interpreted by the Office of State Budget and Management, and as amended from time to time. Further expenditures for travel, conferences, software or equipment that are not within the deliverables and payment schedule annexed hereto and as presented in the approved budget may be reimbursed at the rates set forth in N.C. Gen. Stat. §138-6; as interpreted by the Office of State Budget and Management, and as amended from time to time. The State of North Carolina's Travel Policy is contained in the State Budget Manual located on the Internet at <http://www.osbm.state.nc.us>. Original receipts for such expenses shall be retained by Grantee.

9. Independent Status of Grantee.

a. It is agreed between the Parties that neither this Agreement nor any provisions hereof shall be deemed to create a partnership or joint venture between Grantee and any third party; nor with the 911 Board. It is further agreed that except for the rights expressly granted to Grantee or the 911 Board in this Agreement, neither of them shall have any proprietary rights in the Project.

b. The Parties acknowledge that Grantee is an independent entity. Grantee shall not represent itself as an agent of the 911 Board; nor shall the Agreement be construed so as to make Grantee an agent of the 911 Board. Grantee shall not have the ability to bind the 911 Board to any agreement for payment of goods or services, nor shall it represent to any person or entity that it has such ability. Grantee shall be responsible for payment of all its expenses, including rent, office expenses and all forms of compensation to employees. Grantee shall provide workers compensation insurance to the extent required for its operations and shall accept full responsibility for payments of unemployment compensation, social security, income taxes and any other charges, taxes or payroll deductions required by law in connection with its operations, for itself and its employees who are performing work pursuant to this Agreement. All expenses incurred by Grantee are its sole responsibility. The 911 Board shall not be liable for the payment of any obligations incurred in the performance of the Project.

10. Conflicts of Interest. Grantee acknowledges and represents that it has adopted policies governing conflicts of interest and ethics in the exercise of its authority, and its actions under this Agreement. Grantee will review, disclose and employ its best efforts to resolve any anticipated or reported conflict of interest or issue involving its ethics policies during the performance of this Agreement. Grantee shall, upon request, submit a copy of its conflict to interest policy, and shall ensure that such policy conforms to the requirements of N.C. Gen. Stat. §143C-6-23 and other applicable laws.

11. Obligation of Funds. Grant Funds provided by the 911 Board may not be utilized for expenses incurred by Grantee prior to the Effective Date or subsequent to the Termination Date. All unpaid obligations incurred prior to the Termination Date shall be paid and satisfied by Grantee within thirty (30) days thereafter. Prior approval shall not be required for changes that affect the approved budget unless a line item in the Grant Application Budget Narrative is exceeded by ten (10%) percent or \$500.00, whichever is greater. Any changes in the approved budget that would result in the addition or deletion of a budget category shall require prior approval from the 911 Board.

12. Project Records.

a. Grantee shall maintain full, accurate and verifiable financial records, supporting documents, and all other pertinent data for this Project in such a manner so as to identify and document clearly the expenditure of Grant funds provided under this Agreement, separate from accounts for other awards, monetary contributions, or other revenue sources for this Project.

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

c. Pursuant to N.C. Gen. Stat. §143C-6-23, and §147-64.7, Grantee agrees to make available to the State Auditor, Grantee, 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. Grantee acknowledges and agrees that it will be subject to the audit and reporting requirements prescribed by N.C. Gen. Stat. § 143C-6-23 *et seq.*, Non-State Entities Receiving State Funds or N.C.G.S §159-34, The Local Government and Fiscal Control Act - Annual Independent Audit, Rules, N.C. Gen. Stat. §62A-40 *et seq.* and the policies of the 911 Board, and Regulations; as applicable. Such audit and reporting requirements may vary depending upon the amount and source of funding received by Grantee, and are subject to change from time to time. Grantee shall constantly monitor all performance under Grant-supported activities, including activities performed by Sub-grantees, to ensure that time schedules are being met, projected work units by time periods are being accomplished, and other performance goals are being achieved. Such obligations to comply with the Board's or other agency's monitoring activities shall survive grant closeout and the termination of this Agreement.

13. Publications.

a. Any published or distributed reports, data, or other information shall contain a disclaimer statement to the following effect: *Any opinions, findings, conclusions, or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the view and policies of the 911 Board.*

b. 911 Board may publish or arrange for the publication of information resulting from work carried out under this Agreement, and copyright any books, publications, films, or other copyrightable materials developed in the course of or resulting from work under this Agreement.

c. Upon publication of materials resulting from the work of the Project, Grantee shall furnish a minimum of two copies of reprints to the 911 Board.

14. Termination; Availability of Funds.

a. If Grantee 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 Grantee 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. No further expenditures shall be made under this Agreement except for such work as shall have already been performed prior to the Termination Date and Grantee shall return all unearned funds upon the demand of the 911 Board. The Grantee 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 Grantee 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 Parties may terminate this Agreement by mutual consent upon sixty (60) days notice. 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 28 below.

c. Termination of the contract by the Grantee shall not prohibit the 911 Board from seeking remedy for additional costs consequential to the termination, which are incurred by the 911 Board. The Grantee shall repay to the 911 Board any Grant Funds received in excess of the payment due under this Agreement.

d. Grantee 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.

15. 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 Grantee or its contractors under this Agreement, whether with respect to persons or property of Grantee, or third parties. Grantee agrees to obtain insurance to protect it and others as it may deem desirable, or, if it elects not to obtain such insurance, it represents that it has adequate resources available to it for this purpose. Further, Grantee agrees to indemnify, defend and save harmless the 911 Board, and their respective officers, agents and employees against any liability, including costs and expenses and attorneys fees, for the violation of any proprietary right or right of privacy arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any information published resulting from the work of the Project or based on any libelous or other unlawful matter contained in such information. Grantee also further agrees to indemnify, defend and save harmless the 911 Board, and their respective officers, agents and employees from any and all claims and losses accruing or resulting to any and all subgrantees, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the Project and the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by Grantee or its agents in the performance of the Project.

16. Bankruptcy of Third Parties. In the event that any Sub-grantee (or other entity other than Grantee) receiving Grant funds files bankruptcy owing Grantee, the Board or other entities any money, it shall be the sole responsibility of Grantee to (i) immediately notify the Board and (ii) pursue all reasonable claims against the debtor in bankruptcy to obtain the maximum payment allowed by law. To the extent that Grantee fails to pursue the debtor in bankruptcy and obtain the maximum payment allowed by law, Grantee shall be responsible for all amounts paid to such Third Party that are not returned to Grantee; and no Grant Funds may be expended to replace such monies or payments represented by claims against the Third Party.

17. Remedies. In the event of Grantee's non-compliance with any provision in this Agreement, Grantee agrees that the Board may take any actions authorized by law or by this Agreement, including but not limited to those described in 9 N.C.A.C. 3M.0401. These remedies include, but are not limited to, reducing or suspending Grant funds or terminating the Grant, including the withdrawal of all funds described in this Agreement except for funds already expended on otherwise eligible activities which may not be recaptured or deducted from future grants. The Board may also require Grantee to reimburse Grantee's Program account, or

improperly expended funds by Grantee or any Subgrantee or other Third Party. Additionally, the Grant and the Program may be terminated by either party for convenience.

a. Upon non-compliance with the applicable provisions of 9 N.C.A.C. 3M, the Board shall take measures under .0801 of that Subchapter to ensure that the requirements are met, including: communicating the requirements to the non-State entity; requiring a response from the non-State entity upon a determination of noncompliance; and suspending payments to the non-State entity until the non-State entity is in compliance.

b. Pursuant to 9 N.C.A.C. 3M.0703(11), the Parties may terminate this Agreement with 60 day's notice by mutual consent, or as otherwise provided by law. Pursuant to 9 N.C.A.C. 3M.0703(13), unexpended grant funds shall revert back to the Board upon termination of the Agreement, unless otherwise provided by applicable laws, rules, regulations or orders.

c. However, no termination of this Agreement or the Grant (i) removes Grantee's liability regarding any Grant funds improperly expended (including the Board's enforcement abilities to recover such funds) or (ii) removes Grantee's existing and continued obligations and liabilities with respect to Grant funds already properly expended (including the Board's enforcement abilities).

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

19. Grantee Representation and Warranties. Grantee hereby represents and warrants that:

a. Grantee is 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 Grantee, 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 Grantee, and does not violate any applicable organizational documents of Grantee, 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 Grantee'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 Grantee'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 Grantee. Grantee 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 Grantee will notify the 911 Board Executive Director of any significant problems relating to the administrative or financial aspects of the award, 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.

20. Performance Measures. Grantee shall ensure that its contracts with third parties include performance measures that provide remedies ensuring protection of the Grant Funds, any matching funds or funds from other sources, and that secure completion of this Agreement consistent with the time and budget for the Project. Specific measures are within the discretion of Grantee, and shall consider including measures including one or more of the following:

- a. Requiring terminated vendors to provide costs of cover for replacement goods or services.
- b. Termination of vendor contracts for cause and vendor's forfeiture of rights to payment.
- c. Grantee's ownership, or free use, of all planning materials, estimates, drafts, plans, drawings and similar items or information produced by Grantee's vendors in the event of termination for any reason.
- d. Grantee's requirement that its vendors provide contract security for their performance, including but not limited to, bonds, letters of credit, escrows of funds or other assets, or like security.
- e. Terms and conditions of agreements allocating damages and setting forth limitations of liability as may be necessary or proper to ensure that any breaches or failures to perform by Grantee's vendors, as a minimum measure,
- f. Acceptance testing and warranties for any and all equipment, goods and services provided by Grantee's vendors of sufficient duration and measurement to ensure performance consistent with 911 center operations.

21. Subcontracting. Grantee shall not subcontract any of the work contemplated under this contract without obtaining prior written approval from the 911 Board. Any approved subcontract shall be subject to all conditions of this Agreement. Only the subgrantees specified in the Application are to be considered approved upon award of the contract. Grantee shall be responsible for the performance of any subgrantee; and shall require all subgrantees to comply with the provisions of the grant award, including this Agreement. Grantee shall be responsible for the performance of any subgrantee.

- a. Grantee shall ensure that any subgrantee provides all information necessary or proper to ensure compliance with this Agreement and the timely completion of the Project.
- b. The Grantee shall provide all necessary personnel, equipment, and facilities required to implement the work as stated in the Grantee's grant application and subsequently approved project schedules, budgets and project scope identified herein, in accordance with the stated objectives, goals, results, standards, and deliverables.

22. 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. Grantee shall notify the 911 Board promptly of any factor, occurrence or event that comes to its attention that may affect or delay Grantee'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.

23. Dispute Resolution. The Parties agree that it is in their mutual interest to resolve disputes informally. A claim by Grantee shall be submitted in writing to the 911 Board for decision. A claim by the 911 Board shall be submitted in writing to Grantee for decision. 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. If both Parties agree to submit the matter to mediation, the following actions shall be taken:

a. Each Party shall recommend a mediator certified by the N.C. Courts after first determining that the recommended mediator, and said mediator's firm, if any, have no conflict or prior knowledge of the matter to be resolved, and no prior work for or against either Party; and,

b. The recommended mediators must have knowledge of the general subject matter of the FCC 911 laws, regulations and 911 practices; and,

c. The recommended mediators must be able to execute and deliver a satisfactory confidentiality and non-disclosure agreement if information exempt from disclosure under N.C. Gen. Stat. §132-1, *et seq.* is relevant or material to the matter to be resolved; and,

d. Recommended mediators and their respective contact and qualification information shall be exchanged within five (5) days to each party as provided in Paragraph 28 below following the agreement to mediate; and

e. Unless the Parties mutually agree to select a particular mediator, the selection of a mediator shall be determined by the Mediator's earliest available date to initiate mediation. Any agreement to mediate shall require the Parties to appear and mediate the matter in good faith in accordance with the schedule and calendar established by the Mediator; and,

f. 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 the N.C. Attorney General.

24. Special Provisions and Conditions.

a. The 911 Board may request from Grantee certain information that will assist 911 Board with evaluation of the short and long-range impact of its programs. Grantee recognizes that such requests may occur after termination of this Agreement and agrees, to the extent possible, to provide such information as requested.

b. If the 911 Board finds that Grantee has used grant funds for an unauthorized purpose, or in a manner not agreed and approved as provided in this Agreement, the Board shall report such findings to the Attorney General, The Office of State Budget and Management, the Office of the State Auditor, and the Office of the State Controller, as

may be required by applicable law and regulations. Funds shall not be disbursed to Grantee if the Grantee fails to comply with the reporting requirements of this Agreement.

c. Nondiscrimination. Grantee agrees not to discriminate by reason of age, race, religion, color, sex, national origin, or handicap related to the activities of this Agreement.

d. Conflict of Interest. Grantee certifies that to the best of its knowledge no employee or officer of Grantee has any pecuniary interest in the business of the 911 Board or of the Project, and that no person associated with Grantee has any interest that would conflict in any manner with the performance of the Agreement.

e. Order of Precedence. To the extent of any conflict between this Agreement, including the Exhibits comprising Grantee's Grant Application and supporting documents and Reporting Schedule, such conflicts shall be resolved by first referring to this Agreement, followed serially by the Reporting Schedule, grant application, and lastly by other subordinate documents in reverse order to their adoption.

f. Compliance with Laws. Grantee 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.

g. Non-Assignability. Grantee 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; provided, however, that claims for money due to Grantee from the 911 Board under this Agreement may be assigned to any commercial bank or other financial institution without such approval.

h. Personnel. Grantee represents that it has, or will secure at its own expense, all personnel required to carry out and perform the scope of services required under this Agreement. Such personnel shall be fully qualified and shall be authorized under state and local law to perform such services.

i. Future Cooperation. The Board and Grantee 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.

j. Illegal Aliens. No costs incurred as a result of work performed by illegal aliens shall be eligible for reimbursement by Grant funds. As such, in submitting a reimbursement request to the Board for payment, Grantee shall be required to certify to the Board that the expenses for which reimbursement is sought were not incurred as a result of work performed by illegal aliens.

25. Intellectual Property Rights. All documents, data, databases, maps, compilations and other works produced by Grantee or any subgrantee under this Agreement shall be considered either Works for Hire under applicable copyright law, or as public records, and neither Grantee nor any subgrantee shall have any property rights of ownership in such works.

26. 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.* The Parties further acknowledge and agree that other standards of confidentiality may apply to information

made or received during the performance of this Agreement. Such information may include proprietary information of a third party. Prior to accepting any proprietary information, the receiving Party shall ensure that an appropriate and acceptable non-disclosure agreement (NDA) is prepared. Any NDA shall ensure:

- a. That the Proprietary Information is protected as permitted by applicable law,
- b. That the Proprietary Information is available and accessible to all persons as may be necessary to complete the purposes of this Agreement, and
- c. That the Proprietary Information is clearly marked as such.

27. Proprietary Information: Proprietary information shall be subject to the N.C. Public Records Act, which is set forth in N.C. Gen. Stat. 132-1, *et seq.* Grantee shall ensure that any third party is encouraged to review the applicable Statutes prior to submitting any information or documentation believed to be proprietary.

- a. 911 Board may maintain the confidentiality of certain types of information described in N.C. Gen. Stat. §132-1, *et seq.* Such information may include trade secrets defined by N.C. Gen. Stat. §66-152 and other information exempted from the Public Records Act pursuant to N.C. Gen. Stat. §132-1.2.
- b. Grantee may permit third parties to designate appropriate portions of reports, data, and other deliverables as confidential, consistent with and to the extent permitted under the statutes set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type “**CONFIDENTIAL.**” By so marking any page, any disclosing party warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors that the portions marked confidential meet the requirements of the Statutes set forth above.
- c. The 911 Board may serve as custodian of confidential information and not as an arbiter of claims against any party’s assertion of confidentiality. If an action is brought pursuant to N.C. Gen. Stat. §132-9 to compel disclosure information marked confidential, the disclosing party agrees that it will intervene in the action through its counsel and participate in defending the 911 Board, including any public official(s) or public employee(s). The 911 Board agrees to promptly notify Grantee in writing of any action seeking to compel the disclosure of a third party’s confidential information. The 911 Board shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The 911 Board shall have no liability to Grantee 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.

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

If to the 911 Board: Attn: Richard Taylor, Executive Director
N.C. 911 Board
P.O. Box 17209
Raleigh, NC 27609

Fax: 919-981-2548
E-Mail: Richard.Taylor@nc.gov

If to Grantee: Attn: Lisha Corn
Director
100 N. Grove St.
Hendersonville, NC 28792

Fax: 828-698-4462
E-Mail : lcorn@Hendersoncountync.gov

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

29. 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.

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

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

Henderson County

By: _____

Title: _____

Date: _____

ATTEST:

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

By:

Chief Finance Financial Officer

N.C. 911 Board

By: _____

Title: _____

Date: _____

Exhibit A
Reporting Schedule

Grantee shall report the following to the Board, by providing information to the Executive Director:

1. Grantee's contracts shall include performance measures and acceptance testing criteria to ensure that the equipment and services meet the operational and technical requirements of the 911 center. Grantee shall provide copies of contracts, purchase orders and invoices for any equipment or services for which Grant Funds will be expended, including direct disbursements to subgrantees, if any. Such items shall be reported to the Executive Director in a timely manner to ensure prompt payment for any authorized invoices.
2. Progress Reports or assessments that demonstrate the success, or lack thereof, of the Project. The progress reports shall include activities and actions within the Scope of Project (Section 2) including construction of the new 911 center facility, Project Schedule (Section 6), and the following information: a comparison of actual accomplishments to the goals and objectives described in the Grant Application as such are established for the period and any significant findings; reasons why established goals were not met, if applicable; and other pertinent information including, where appropriate, analysis and explanation of cost overruns or projected changes in time or funding needed for completion of project objectives.
3. Reports: The Grantee shall provide monthly reporting of contracts, purchase orders and other financial matters identified in Paragraph 1 above. These monthly reports shall be delivered to the Executive Director beginning on 1 November 2013 and continue thereafter on the first of each month for the term of the Agreement.
 - a. The Grantee shall submit one copy of the each report via email in Microsoft Word and PDF format to the Project Officer and one copy of the transmittal letter to the Grant Administrator.
 - b. The Grantee shall appear and provide presentations to the 911 Board during the term of this Agreement upon request of the 911 Board.
4. Interim Reports: Between the required reporting dates, events may occur which have significant impact upon the project or program. In such cases, the Grantee shall inform the 911 Board as soon as the following types of conditions become known:
 - a. Problems, delays, or adverse conditions which will materially affect the ability to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work. This disclosure shall be accompanied by a statement of the action taken or contemplated, and any Federal assistance needed to resolve the situation.
 - b. Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.
5. Final Technical Report
 - a. An interim report and final report documenting activities and outcomes is required. In addition, an ROI case study describing the project, completed ROI spreadsheets,

financial analyses summary, and multi-agency financial business case for the project should be attached to the final report.

- b. The Grantee shall submit one copy of the final technical report via email in Microsoft Word and PDF format to the Project Officer and one copy of the transmittal letter to the Grant within 90 days of the end of the project period.
 - c. The final technical report shall document and summarize the results of the work. Such reports shall contain a comprehensive review of accomplishments, a chronological bibliography of any publications as well as significant scientific papers resulting from the work performed. The final report shall be submitted within 90 days of the end of the project period.
6. Budgets and/or budget projections for subsequent years, as may be developed during the term of this Agreement, illustrating financial support to update and maintain the Project equipment.

Exhibit B
Grant Application

Grantee's grant application is incorporated by reference.