

**COOPERATIVE PARTICIPATION AGREEMENT  
BETWEEN  
TRANSDEV SERVICES, INC.  
AND WAKE COUNTY  
REGARDING  
USE AND SUPPORT OF THE WAKE COUNTY 800 MHz TRUNKED RADIO  
SYSTEM**

This Agreement entered into this, the \_\_\_\_ day of \_\_\_\_\_, 2017, by and between TRANSDEV SERVICES, INC, hereinafter referred to as "TRANSDEV", and WAKE COUNTY, hereinafter referred to as "COUNTY".

**WITNESSETH**

WHEREAS, the parties to this Agreement are committed to participating in the use and support of such state-of-the-art public safety radio communications systems that may as applicable:

- Provide for the collection and provision of data needed to monitor the continuing effectiveness of radio communications systems to assure that the standards of such systems are met;
- Provide for establishment of benchmarks against which proposals for changes and improvements in radio communications and system operations can be measured, changed; and

WHEREAS, the COUNTY has entered into an Agreement (hereinafter, "COUNTY/TOWN Agreement") with the Town of Cary, (hereinafter, "TOWN"), a copy of which is attached hereto as Exhibit "A" and incorporated herein, that governs the shared use of 800 MHz Radio System Infrastructure ("800 MHz system") owned by the TOWN; and

WHEREAS, COUNTY and the BOARD and OPERATIONS GROUP as defined in Article XI herein are aware of the addition of TRANSDEV as an authorized user pursuant to the terms of this Cooperative Participation Agreement, and aware of the amended cost-sharing agreement attached hereto as Exhibit "B" which is part of the approved Wake County budget; and

WHEREAS the COUNTY'S 800 MHz radio system has sufficient capacity to accommodate TRANSDEV shared use of the system; and

WHEREAS, it is the intention of the parties that a new agreement be entered into to allow TRANSDEV to utilize the COUNTY'S 800 MHz radio system and to establish terms between TRANSDEV and COUNTY specifically regarding such use,

**NOW, THEREFORE,** in consideration of the mutual undertakings and agreements hereinafter set forth, TRANSDEV and COUNTY agree as follows:

### **ARTICLE I - PURPOSE**

- 1.01 The purpose of this Agreement is to define the rights and obligations of the COUNTY and TRANSDEV with respect to the coordinated operation, maintenance, and upgrades of the countywide 800 MHz radio system. TRANSDEV's right to use of the 800 MHz radio system for TRANSDEV operations shall apply solely to TRANSDEV's operation of the Wolfline bus system on a regular basis over regular routes as specified in the existing agreement with North Carolina State University ("NCSU"), and shall not extend to other uses of the 800 MHz radio system by Transdev Services, Inc.

### **ARTICLE II - COOPERATION**

- 2.01 The COUNTY and TRANSDEV will cooperate and use their best efforts to ensure that the various provisions of this Agreement are fulfilled. The parties agree in good faith to undertake resolutions of disputes, if any, in an equitable and timely manner and in accordance with the provisions of this Agreement.

### **ARTICLE III - DEFINITION OF TERMS**

- 3.01 **AGREEMENT.** "Agreement" means this document as approved by appropriate action through ordinance, resolution, or other method, pursuant to the ordinances, resolutions, or charter of the governing bodies of the COUNTY and TRANSDEV.
- 3.02 **AUTHORIZED USERS.** "Authorized users" are parties to this Agreement, including TRANSDEV duly authorized by this Agreement with the COUNTY to utilize the 800 MHz trunked radio and/or the CAD system(s).
- 3.03 **CAD SYSTEM.** "CAD system" means a computer aided dispatch system; a combination of computer hardware, software, and networking components employed to manage efficiently the process of dispatching public safety resources to calls for service and recording data related thereto.

- 3.04 DIRECTOR OF RWCC. “DIRECTOR OF RWCC” means the Director of the Raleigh-Wake Communications Center, duly appointed by the City Manager of the City of Raleigh.
- 3.05 CHIEF TECHNOLOGY OFFICER. “CHIEF TECHNOLOGY OFFICER” means the Wake County Chief Technology Officer within the Information Services Department.
- 3.06 FCC. “FCC” means the Federal Communications Commission as established by The Communications Act of 1934.
- 3.07 FUNDING. “Funding,” means the monies that will be provided by the COUNTY or collected from TRANSDEV by authority of this Agreement to fund the operation, maintenance, and upgrades to the 800 MHz radio or CAD systems.
- 3.08 INFRASTRUCTURE. “Infrastructure” is, collectively, the equipment (including hardware and software) that supports shared use of digital and analog mobile and portable radios on the 800 MHz band frequencies licensed to the COUNTY for public safety and other authorized use and the equipment (including hardware and software) that supports operation of the CAD system.
- 3.09 INFRASTRUCTURE ENHANCEMENT. “Infrastructure enhancement” means acquisition and installation of 800 MHz and CAD system equipment (including hardware and software) that serves to enhance the performance of (or add capabilities to) the 800 MHz radio and CAD system.
- 3.10 INFRASTRUCTURE MAINTENANCE. “Infrastructure maintenance” means those services required to maintain the operating capability of the 800 MHz and CAD systems, including (but not limited to) replacement of worn or broken components with a unit cost of less than \$100,000 (when not otherwise covered by insurance) as well as the maintenance of and utilities for transmission sites, insurance premiums, and any related items as presented to the BOARD by the COUNTY.
- 3.11 INFRASTRUCTURE PURCHASE. “Infrastructure Purchase” means acquisition and installation of 800 MHz radio system and CAD system equipment (including hardware and software) that is required to establish and continually support the designed operating capability of the 800 MHz and CAD systems.
- 3.12 MUTUAL AID USE. “Mutual aid use” means authorized limited and temporary use of the 800 MHz radio system for cross-jurisdictional, cross-service, or cross-technology intercommunications required among eligible users not supported as authorized users within the system.
- 3.13 NPSPAC. “NPSPAC” means the National Public Safety Planning Advisory Committee.

- 3.14 **OPERATING FUND.** “Operating Fund” means a financial account specially designated to provide operating funds for CAD and the 800 MHz radio systems. TRANSDEV shall transfer monies into this fund as required by this Agreement. The COUNTY shall maintain such fund and the records related to such account shall be made available to the BOARD or TRANSDEV as requested.
- 3.15 **RWCC.** “RWCC” means the Raleigh-Wake Communications Center
- 3.16 **SYSTEM.** “System” means either the 800 MHz radio system or CAD system.

#### **ARTICLE IV - TERM**

- 4.01 This Agreement shall take effect upon execution by both parties hereto, and shall remain in effect until the earlier of 1) a period of ten (10) years or 2) the date upon which the COUNTY/TOWN Agreement is terminated or 3) on the date that TRANSDEV's contract with NCSU for the provision of transportation services (“NCSU Contract”) expires or terminates. TRANSDEV shall have an obligation to notify COUNTY in writing within a reasonable time of the termination of the NCSU Agreement, and not less than five (5) business days prior to termination of the NCSU Agreement. Except as set forth in Article XVIII, neither TRANSDEV nor the COUNTY shall have any obligation under this Agreement from the date of termination forward.

If either party to this Agreement elects not to renew the Agreement at the end of the ten (10) year term, then the non-renewing party shall provide written notice of its intent not to renew at least one year before the agreement expires. Notwithstanding the foregoing, either party shall have the right to terminate this Agreement at any time, for any reason, for matters of convenience upon providing the COUNTY thirty (30) days advance written notice.

- 4.02 If the NCSU Agreement is still in effect and no action is taken to give timely notice of its intent not to renew this Agreement, by amendment, and either party to this Agreement fails to extend the Agreement after ten (10) years, the Agreement shall automatically be renewed on a month to month basis.

#### **ARTICLE V - DEFAULT**

- 5.01 Any material violation of this Agreement during its term constitutes a default. In the event of an alleged default, the allegedly defaulting party shall be given notice of such alleged default as provided in Article XII of this Agreement. Upon notice, the party alleged to have defaulted agrees that it will cure the default within thirty (30) days, and may appeal an adverse decision as provided in Article

XII within that same 30 (thirty) day cure period, to the extent that the remedy of appeal is available. In the event that the defaulting party is not satisfied with the outcome of the appeals process, the defaulting party may exercise its rights to terminate the Agreement as specified in Section 5.02. In the event that the party alleged to have defaulted fails to cure the default, the services described in this agreement shall be discontinued sixty (60) days after the notice of default or delivery of the appeal decision, whichever is later.

- 5.02 Except as provided in Section 5.01 of this Agreement, either party to this Agreement may terminate this Agreement upon two (2) years' advance written notice.

#### **ARTICLE VI - CONFORMANCE TO PLANS, ETC.**

- 6.01 COUNTY and TRANSDEV equipment operating on the 800 MHz radio and/or the CAD system(s) shall comply with technical and performance standards that provide for reliable operation and that are intended to prevent interference with system use by other parties to this Agreement.
- 6.02 The failure of the COUNTY and TRANSDEV to comply with the provisions of Article 6.01 of this Agreement shall be considered a default as defined in Article 5.01 of this Agreement.

#### **ARTICLE VII - OWNERSHIP OF INFRASTRUCTURE**

- 7.01 The COUNTY shall own all infrastructure associated with the 800 MHz and CAD systems unless otherwise stated within this Agreement. TRANSDEV shall not be expected to purchase fixed assets except as may be required to provide special system functionality unique to TRANSDEV.
- 7.02 In the event that TRANSDEV dissolves this Agreement or otherwise leaves the system, TRANSDEV shall retain ownership of any portable, mobile, fixed control stations, or related hardware purchased by TRANSDEV for use within the 800 MHz radio system.

#### **ARTICLE VIII – SYSTEM FUNDING**

- 8.01 The COUNTY shall be responsible for the initial 800 MHz radio and CAD systems' infrastructure purchase and installation, and for subsequent infrastructure purchases required to maintain the designed operability of the systems.

## **ARTICLE IX - FCC LICENSE AND USE OF FREQUENCIES**

- 9.01 The COUNTY shall be responsible for the maintenance of all FCC licenses required to operate the 800 MHz radio system.
- 9.02 TRANSDEV may authorize allocated 800 MHz frequencies for which it is licensed to be utilized by the COUNTY 800 MHz radio system. TRANSDEV is not expected to contribute frequencies to the COUNTY if such frequencies cannot be utilized by the 800 MHz radio system or if required for the continuing operation of TRANSDEV.
- 9.03 All COUNTY and TRANSDEV radios used for law enforcement purposes shall be capable of transmission and reception on NPSPAC frequencies.
- 9.04 TRANSDEV shall operate two-way radio equipment in accordance with the rules of the FCC.

## **ARTICLE X – BOARD; FUNDING**

- 10.01 To assist the COUNTY in the administration of the radio and CAD systems, a MANAGEMENT BOARD (“BOARD”) shall be established to develop fiscal and performing policies governing all users of the systems. The BOARD shall meet at least twice per year.
- 10.02 TRANSDEV’S designee (selected by the President of Transdev Services, Inc.), the city or town managers of each participating local government, the chief executive of any participating authority, and the Wake County Manager shall serve as members of the BOARD and each shall be a voting representative thereof.
- 10.03 The CHIEF TECHNOLOGY OFFICER and the DIRECTOR OF RWCC shall serve as non-voting *ex-officio* members of the BOARD and shall be responsible for system management and support services for the BOARD.
- 10.04 The COUNTY shall certify the estimated annual cost of maintaining and operating the radio infrastructure including professional system(s) management services, insurance, consumable parts as well as utility costs and deliver that information to the BOARD. The COUNTY’S certification shall include information on any assumption(s) and formula (e) used to establish those estimated costs. For purposes of Fiscal Year 2018 maintenance-cost documentation pursuant to this section, the parties agree that those costs are established in Exhibit B, “FY 18 800 MHz System Maintenance Cost Estimates and Allocations,” attached hereto and incorporated herein.

- 10.05 On or before January 1 of each year that this Agreement is in effect, TRANSDEV shall be provided with an estimate of costs for the coming fiscal year. However, the final costs as identified in Article 10.04 shall be submitted to the BOARD no later than the first business day in March of any calendar year with dissemination to TRANSDEV as soon thereafter as practical. For purposes of Fiscal Year 2018, maintenance-cost documentation pursuant to this section, the parties agree that those costs are established in Exhibit B.
- 10.06 The BOARD shall annually allocate fully the costs described in Article 10.05 of the Agreement to all parties to this Agreement, including TRANSDEV in a manner fairest and most equitable to those parties and ensuring that the COUNTY, in the fiscal year in which such costs were certified, receives reimbursement for all costs, and TRANSDEV shall remit its share of those costs to COUNTY as provided in this Agreement. The parties acknowledge that sums allocated to use of the 800MHZ system by TRANSDEV shall be identified separately from other use of the system by Transdev agencies or divisions.
- 10.07 The COUNTY shall invoice TRANSDEV quarterly, in arrears, for the prorated fees identified by the BOARD in Article 10.06 of this Agreement. Payment is due to the COUNTY within thirty (30) days of receipt of invoice. Continuing failure to remit payment as required herein shall constitute a material violation of this Agreement.
- 10.08 During the life of this Agreement, TRANSDEV shall pay to the COUNTY any of the outstanding fee(s) for one fiscal year for participation in the radio systems no later than August 15 of the succeeding fiscal year, or, if August 15 is not a business day, the next business day following August 15 on which the COUNTY conducts business.,
- 10.09 As 800 MHz radio and/or CAD system users, the COUNTY and TRANSDEV shall share with other parties to like agreements the costs of such infrastructure enhancements (and the mechanism for financing and payment of such costs) as may be agreed upon by the BOARD and only to the extent that TRANSDEV's share has been approved by TRANSDEV and the COUNTY. Notwithstanding this provision, TRANSDEV shall not be obligated to pay any amount in excess of \$100,000 in any one fiscal year without advanced approval of Transdev.
- 10.10 TRANSDEV shall be responsible for purchase, acquisition, maintenance and replacement of its portable radios, mobile radios, and accessory hardware (including, but not limited to, battery chargers and batteries) for use on the 800 MHz radio system. This section does not limit the ability of the BOARD to establish contracts and financing mechanisms for purchase, lease acquisition, maintenance and replacement of portable radios, mobile radios and accessory hardware in behalf of the municipalities represented by the BOARD members, nor does it require that the COUNTY agree in advance to share any portable or mobile radio programming information with any radio maintenance vendor.

## ARTICLE XI – BOARD AND OPERATIONS GROUP

11.01 In addition to the duties described in Article X, the members of the BOARD, of which TRANSDEV’S designee is one, shall perform the following duties:

- A. Select one employee from their jurisdiction to represent their jurisdiction as a member of an OPERATIONS GROUP that will govern general operations policy for the CAD and 800 MHz radio systems. The BOARD shall make every reasonable effort to approve appointees that provide balanced representation among law enforcement and fire CAD and 800 MHz radio system users. The BOARD may provide for consolidation of the OPERATIONS GROUP and the Wake Emergency Communications Organization Policy Board for purposes of expediting management oversight of emergency communications activities generally.

The CHIEF TECHNOLOGY OFFICER and the DIRECTOR OF RWCC or their designees, shall serve as non-voting *ex officio* members of the OPERATIONS GROUP. If the BOARD elects to consolidate the OPERATIONS GROUP and the Wake Emergency Communications Organization Policy Board, the CHIEF TECHNOLOGY OFFICER and the DIRECTOR OF RWCC may jointly chair the OPERATIONS GROUP.

- B. In addition to the members described in (a), above, the Wake County Manager shall appoint four additional persons to the OPERATIONS GROUP as follows:
  - 1. A representative of non-municipal fire departments with which the COUNTY contracts for delivery of fire protection services in the unincorporated areas of the COUNTY;
  - 2. A representative of Wake County’s EMS system;
  - 3. A representative of the Wake County Sheriff’s Office; and
  - 4. An 800 MHz radio system user not associated with public safety to represent the interests of non-public safety radio users.
- C. Review and respond to matters referred by the OPERATIONS GROUP.
- D. With respect to Article 8 of this Agreement, and with the advice of the OPERATIONS GROUP, establish the criteria through which governments and other Authorized Users may participate in the CAD and radio systems.
- E. Develop capital improvement funding plans for infrastructure enhancement and review such plans developed and submitted by the



## OPERATIONS GROUP

- F. Develop a membership allocation voting method for itself and for the OPERATIONS GROUP, in the event that consensus among either body cannot be reached.
- G. Through the CHIEF TECHNOLOGY OFFICER and the DIRECTOR OF RWCC, authorize the OPERATIONS GROUP to review and adopt certain policies on behalf of the BOARD.

### 11.02 The OPERATIONS GROUP shall perform the following duties:

- A. Review operational matters within the purview of this Agreement and through collegial discussion and non-secret voting, recommend appropriate policies to ensure that the operations of the 800 MHz radio and CAD systems are efficient, effective and reliable, provided that the OPERATIONS GROUP shall have no authority to direct the day-to-day operations of RWCC.
- B. Review applications for membership within the system and make recommendations to the BOARD relative to admission.
- C. Review applications for and approve, when appropriate, additional system “talk groups.”
- D. Review system operating information for the purpose of developing documentation to support requests for additional channel capacity as may be needed.
- E. Develop and review general performance standards that serve as the foundation for technical specifications required for radios used by public safety and non-public safety users that can be procured by all system users at the lowest, responsive vendor price.
- F. Submit policies for users of the CAD and 800 MHz radio systems to the BOARD for review and approval.
- G. Review and approve communications procedures to be utilized during major incidents where system demand can be expected to affect the capacity of the CAD and 800 MHz radio systems to ensure that the CAD and 800 MHz radio systems will perform as efficiently and effectively as possible for all users during such incidents.

### 11.03 TRANSDEV shall assume responsibility for costs of attendance of its employees or representatives at BOARD or OPERATIONS GROUP meetings. The COUNTY shall

not assume any costs of any kind relative to the attendance or participation of a TRANSDEV employee at a BOARD or OPERATIONS GROUP meeting.

## **ARTICLE XII – BOARD; COMPLAINTS AND APPEALS**

- 12.01 Complaints from TRANSDEV or others concerning operating-cost allocation, system performance standards, and other matters within the purview of the MANAGEMENT BOARD shall be forwarded to the CHIEF TECHNOLOGY OFFICER or his designee as soon as possible. The CHIEF TECHNOLOGY OFFICER shall refer the complaint to the OPERATIONS GROUP for assessment and any action as may be necessary. If the OPERATIONS GROUP determines that the complaint requires the attention of the BOARD, the OPERATIONS GROUP shall so advise the CHIEF TECHNOLOGY OFFICER. The CHIEF TECHNOLOGY OFFICER shall be responsible for bringing the matter to the attention of the BOARD as soon as appropriate, but no later than the next meeting of the BOARD. The BOARD shall take such action and render a disposition of the complaint as the BOARD determines to be appropriate, provided that it is otherwise consistent with this Agreement.
- 12.02 In the event that the BOARD issues a directive or other such action compelling any party to this Agreement to take certain actions, TRANSDEV agrees to carry out such action as provided in Section 12.01 of this Agreement.
- 12.03 In the event that TRANSDEV disagrees with the action of the BOARD, TRANSDEV may appeal the directive or action of the BOARD to the CHIEF TECHNOLOGY OFFICER. The CHIEF TECHNOLOGY OFFICER shall consult with COUNTY’S Attorney, a representative of the TOWN or other neutral and disinterested party as appropriate to determine if the BOARD’S actions are contrary to this Agreement and the COUNTY/TOWN Agreement. If the BOARD’S actions are consistent with this Agreement and the COUNTY/TOWN Agreement, the BOARD shall advise TRANSDEV that there is no basis for appeal. However, if the BOARD’S actions are contrary to the provisions of this Agreement and the COUNTY/TOWN Agreement, the CHIEF TECHNOLOGY OFFICER shall advise the BOARD of the inconsistency, permitting the BOARD to amend its action(s) as necessary to withdraw such declaration of default against TRANSDEV.
- 12.04 In the event of a BOARD decision based upon a requirement or upgrade plan pursuant to the COUNTY/TOWN Agreement no appeal shall be heard and the action of the BOARD will be final.
- 12.05 The authority of the BOARD does not extend to the design and implementation of any changes of the internal operations of TRANSDEV that are undertaken as a

result of actions directed by the BOARD pursuant to the provisions of Section 12.02.

### **ARTICLE XIII – RADIO SYSTEMS USES AND LIMITATIONS**

- 13.01 Permitted users of the radio system may include TRANSDEV’S public safety and non-public safety users.
- 13.02 The non-public safety users of the COUNTY and TRANSDEV shall be afforded a lower system priority than public safety users.
- 13.03 To ensure that the channel capacity of the radio system will not be unnecessarily reduced, neither the COUNTY nor TRANSDEV shall purchase any radio with a telephone interconnect capability except as approved by the BOARD.

### **ARTICLE XIV - NOTICE**

- 14.01 Any notice, report of demand which must be given or made by a party hereto under the terms of this Agreement shall be sent by registered or certified mail, return receipt requested. Notices to the COUNTY shall be sent to the CHIEF TECHNOLOGY OFFICER, Post Office Box 550, Raleigh North Carolina 27602.
- 14.02 Any notice, report of demand which must be given or made by a party hereto under the terms of this Agreement shall be in writing and shall be sent by registered or certified mail. Notices to TRANSDEV shall be sent to:

Transdev Services, Inc.  
Attn: COO  
720 East Butterfield Road  
Suite 300  
Lombard, IL 60148

With a copy to:

Scott McClellan – General Manager  
TRANSDEV  
2721 Sullivan Drive, Admin. Bldg. 1  
Campus Box 7221  
Raleigh, NC 27695

With a copy, which shall not constitute notice, to:

Transdev Services, Inc.  
Attn: Executive Vice President and General Counsel

720 East Butterfield Road  
Suite 300  
Lombard, IL 60148

#### **ARTICLE XV - MERGER AND MODIFICATION**

- 15.01 It is understood and agreed that the entire Agreement between the parties with regard to the use of the 800 MHz system for TRANSDEV operations is contained herein and that this Agreement supersedes all oral arguments, previous written agreements, and negotiations between the COUNTY and TRANSDEV regarding use of the system for TRANSDEV Operations. Notwithstanding the above, it is the intent of the parties that the rights and obligations of this Agreement shall be applicable solely to the use of the 800 MHz radio system for TRANSDEV operations and shall not extend to other agreed upon uses of the 800 MHz radio system by Transdev, which shall continue to be governed by separate agreements.
- 15.02 Any alterations, variations, modifications, or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing as an amendment to this Agreement and signed by the parties hereto.

#### **ARTICLE XVI – RECORDS, AVAILABILITY**

- 16.01 The COUNTY and TRANSDEV agree that each party hereto, will cooperate with the State, County or municipal Auditor or any of their duly authorized representatives at any time during normal business hours, and as often as they deem reasonably necessary, and further, that such auditor shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of the other party hereto and involve transactions relating to this Agreement.
- 16.02 The COUNTY and TRANSDEV agree to maintain all records relative to this Agreement and the use of the system during the period in which such system is used by TRANSDEV and further, for an additional period of time as prescribed by law or absent such prescription, for five years beyond the expiration date of the Agreement.
- 16.03 In the event that legislation is passed by either the United States Congress or the North Carolina General Assembly delimiting public access to the financial, operational, or other relevant records of public safety 800 MHz radio or CAD systems, the State, County or municipal auditor conducting such review shall agree to maintain as confidential any information or data permitted to be excluded from public access and review. Such protected information and data shall, to the extent permitted by law, not be included in written findings of an auditor nor discussed in any forum open to the public. The BOARD, with the concurrence of

the County Attorney, shall identify, in writing, the information or data excluded from public access and review, and shall provide the list of exclusions to each party to this Agreement and to the Attorney of Transdev. The COUNTY and TRANSDEV agree to include such restrictions in any public solicitations or contracts for audit services.

## **ARTICLE XVII - DATA PRIVACY**

- 17.01 The COUNTY and TRANSDEV agree to abide by all applicable Federal and State laws and regulations and confidential information concerning individuals and data including, but not limited to information made non-public by such laws or regulation.

## **ARTICLE XVIII - INDEPENDENT CONTRACTOR AND INDEMNIFICATION**

- 18.01 The COUNTY and TRANSDEV are, and shall remain, independent contractors with respect to all services performed under this Agreement. Except as provided within this Agreement, the COUNTY and TRANSDEV shall select the means, method, and manner of performing their respective services herein. Nothing is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the COUNTY and TRANSDEV hereto or as constituting either party as the agent, representative, or employee of the other for any purpose or in any manner whatsoever. The COUNTY represents that it has or will secure at its own expense all personnel required in performing services under this Agreement where proportionate reimbursement from TRANSDEV as defined by the BOARD is required. Any and all personnel of the COUNTY and TRANSDEV or other persons engaged in the performance of any work or services under this Agreement shall have no contractual relationship with the other party, and shall not be considered an employee of any other party. Any and all claims that might arise under the Unemployment Compensation Act, the Worker's Compensation Act of the State of North Carolina, or any other applicable Federal or State law, rule, or regulation on behalf of said personnel, arising out of employment or alleged employment, including, without limitation, claims of discrimination against either party, its officers, agents, contractors, or employees shall in no way be the responsibility of the other party. To the extent permitted and as limited by North Carolina law, TRANSDEV shall defend, indemnify, and hold the COUNTY, its officers, agents, and employees harmless from all such claims, except that TRANSDEV shall have no obligation to indemnify the COUNTY for any action of the BOARD as arising out of TRANSDEV'S membership on the BOARD. To the extent permitted and as limited by law and consistent with the terms of the 2003 Resolution Regarding Limited Waiver of Sovereign Immunity, the County shall be responsible for any claims arising out of the negligence of the County or its employees. Such personnel or other persons shall neither require nor be entitled to any

compensation, rights, or benefits of any kind whatsoever from the other party, including, without limitation tenure rights, medical and hospital care, sick and vacation leave, worker's compensation, Re-Employment Insurance, disability, severance pay, or PERA.

#### **ARTICLE XIX - FORCE MAJEURE AND WARRANTIES**

- 19.01 The COUNTY shall not be responsible for interruptions in system service due to the forces of nature, war, manmade disasters or other such acts beyond the control of the COUNTY.
- 19.02 THE COUNTY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE TO TRANSDEV IN CONNECTION WITH ITS USE OF SERVICE. NOTWITHSTANDING THE FOREGOING, THE COUNTY WARRANTS THAT IT HAS FULL POWER AND AUTHORITY TO EXTEND TO TRANSDEV THE LICENSE AND PRIVILEGES DESCRIBED IN THIS AGREEMENT FOR USE OF THE WAKE COUNTY 800 MHz TRUNKED RADIO SYSTEM. TRANSDEV ACKNOWLEDGES THAT SERVICE DISRUPTIONS WILL OCCUR FROM TIME TO TIME AND AGREES TO HOLD THE COUNTY HARMLESS FOR ALL SUCH DISRUPTIONS.

#### **ARTICLE XX - GOVERNING LAW AND APPLICABLE PROVISIONS OF LAW**

- 20.01 The laws of the State of North Carolina shall govern all questions and interpretations concerning the validity and construction of this Agreement and the legal relations and performance and obligations between the COUNTY and TRANSDEV. Venue for any dispute arising from this Agreement shall be in the courts of Wake County, North Carolina.
- 20.02 Applicable provisions of North Carolina State Law, Federal Law, and any applicable local ordinance shall be considered as a part of this Agreement as though fully set forth herein. Specifically, the COUNTY and TRANSDEV agree to comply with all applicable Federal and State laws as well as local ordinances relating to non-discrimination, affirmative action, public purchases, contracting, employment including worker's compensation and state labor wage provisions, and surety deposits required for construction contracts.

IN WITNESS WHEREOF, intending to be legally bound hereby, and with the authority vested in them by resolution of their respective governing boards, the parties have caused this Cooperative Participation Agreement to be executed and delivered as of the date first above written.

**WAKE COUNTY**

**By:** \_\_\_\_\_  
**Jim Hartman**  
**County Manager**

**Approved as to form:**  
\_\_\_\_\_  
**County Attorney**

**Date:** \_\_\_\_\_

**TRANSDEV SERVICES, INC.**

**By:** \_\_\_\_\_  
**Duane Eskierka**  
**COO**

**Approved as to form:**  
\_\_\_\_\_  
\_\_\_\_\_  
**Transdev Attorney**

**Date:** \_\_\_\_\_

**ATTEST:**

**By:** \_\_\_\_\_  
**Clerk**

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

\_\_\_\_\_  
**Finance Officer, Transdev Services Inc.**

## **EXHIBIT A**



**Exhibit B**  
Exhibit of Costs

	<b>FY17</b>	<b>FY18</b>	<b>FY18</b>	<b>FY18</b>	<b>FY18</b>	<b>FY18</b>
	<b><u>TOTAL</u></b>	<b><u>Allocation</u></b>	<b><u>Allocation</u></b>	<b><u>Allocation</u></b>	<b><u>Allocation</u></b>	<b><u>TOTAL</u></b>
		<b><u>Q1</u></b>	<b><u>Q2</u></b>	<b><u>Q3</u></b>	<b><u>Q4</u></b>	
<b>Town of Apex</b>						
Apex Fire (Town only)	\$11,901.56	\$3,157.02	\$3,157.02	\$3,157.02	\$3,157.02	<b>\$12,628.10</b>
Apex Police	\$22,155.90	\$6,015.78	\$6,015.78	\$6,015.78	\$6,015.78	<b>\$24,063.13</b>
Apex Public Works	\$20,707.74	\$5,175.11	\$5,175.11	\$5,175.11	\$5,175.11	<b>\$20,700.46</b>
<b>Town of Fuquay-Varina</b>						
Fuquay-Varina Fire (Town only)	\$8,098.39	\$2,095.83	\$2,095.83	\$2,095.83	\$2,095.83	<b>\$8,383.31</b>
Fuquay-Varina Police	\$11,760.33	\$3,333.30	\$3,333.30	\$3,333.30	\$3,333.30	<b>\$13,333.21</b>
<b>Town of Garner</b>						
Garner Fire (Town only)	\$8,958.83	\$2,317.03	\$2,317.03	\$2,317.03	\$2,317.03	<b>\$9,268.11</b>
Garner Police	\$29,424.73	\$7,815.48	\$7,815.48	\$7,815.48	\$7,815.48	<b>\$31,261.91</b>
<b>Town of Holly Springs</b>						
Holly Springs Fire (Town only)	\$5,828.50	\$1,553.93	\$1,553.93	\$1,553.93	\$1,553.93	<b>\$6,215.71</b>
Holly Springs Police	\$16,180.98	\$4,242.11	\$4,242.11	\$4,242.11	\$4,242.11	<b>\$16,968.46</b>
<b>Town of Knightdale</b>						
Knightdale Fire (Town only)	\$7,978.08	\$2,086.98	\$2,086.98	\$2,086.98	\$2,086.98	<b>\$8,347.90</b>
Knightdale Police	\$13,025.17	\$3,346.75	\$3,346.75	\$3,346.75	\$3,346.75	<b>\$13,387.00</b>
<b>Town of Morrisville</b>						
Morrisville Fire (Town only)	\$6,340.51	\$1,694.24	\$1,694.24	\$1,694.24	\$1,694.24	<b>\$6,776.98</b>
Morrisville Police	\$14,073.20	\$4,019.69	\$4,019.69	\$4,019.69	\$4,019.69	<b>\$16,078.75</b>
<b>City of Raleigh</b>						
City of Raleigh Fire	\$70,365.38	\$18,780.31	\$18,780.31	\$18,780.31	\$18,780.31	<b>\$75,121.23</b>
City of Raleigh Police	\$441,673.87	\$116,677.93	\$116,677.93	\$116,677.93	\$116,677.93	<b>\$466,711.71</b>
RWCC	\$3,549.90	\$887.16	\$887.16	\$887.16	\$887.16	<b>\$3,548.65</b>
<b>Town of Rolesville</b>						
Rolesville Fire (Town only)	\$1,622.69	\$435.86	\$435.86	\$435.86	\$435.86	<b>\$1,743.46</b>
Rolesville Police	\$3,933.31	\$1,173.71	\$1,173.71	\$1,173.71	\$1,173.71	<b>\$4,694.85</b>
<b>Town of Wake Forest</b>						
Wake Forest Fire (Town only)	\$10,168.53	\$2,686.29	\$2,686.29	\$2,686.29	\$2,686.29	<b>\$10,745.16</b>
Wake Forest Police	\$22,609.75	\$6,042.02	\$6,042.02	\$6,042.02	\$6,042.02	<b>\$24,168.09</b>
<b>Town of Wendell</b>						
Wendell Police	\$6,815.31	\$1,892.81	\$1,892.81	\$1,892.81	\$1,892.81	<b>\$7,571.23</b>
<b>Town of Zebulon</b>						
Zebulon Fire (Town only)	\$3,272.74	\$863.36	\$863.36	\$863.36	\$863.36	<b>\$3,453.43</b>
Zebulon Police	\$11,068.28	\$2,575.77	\$2,575.77	\$2,575.77	\$2,575.77	<b>\$10,303.08</b>
<b>Wake County Fire Tax District - Municipal Shared Departments</b>						
Apex Fire (County)	\$3,101.73	\$813.43	\$813.43	\$813.43	\$813.43	<b>\$3,253.71</b>
Fuquay-Varina Fire (County)	\$6,035.43	\$1,631.36	\$1,631.36	\$1,631.36	\$1,631.36	<b>\$6,525.44</b>
Garner Fire (County)	\$6,346.09	\$1,686.32	\$1,686.32	\$1,686.32	\$1,686.32	<b>\$6,745.27</b>
Holly Springs Fire (County)	\$1,370.37	\$354.79	\$354.79	\$354.79	\$354.79	<b>\$1,419.16</b>
Morrisville Fire (County)	\$1,874.43	\$491.38	\$491.38	\$491.38	\$491.38	<b>\$1,965.50</b>
Rolesville Fire (County)	\$6,462.32	\$1,683.96	\$1,683.96	\$1,683.96	\$1,683.96	<b>\$6,735.85</b>

Wake Forest Fire (County)	\$2,668.17	\$2,152.94	\$2,152.94	\$2,152.94	\$2,152.94	\$8,611.77
Zebulon Fire (County)	\$2,586.77	\$667.83	\$667.83	\$667.83	\$667.83	\$2,671.31
<b>Wake County Fire Tax District - Fire Insurance</b>						
Bayleaf Fire	\$14,197.14	\$3,711.15	\$3,711.15	\$3,711.15	\$3,711.15	\$14,844.59
Durham Highway Fire	\$9,203.48	\$2,388.26	\$2,388.26	\$2,388.26	\$2,388.26	\$9,553.02
Eastern Wake Fire	\$9,193.81	\$2,432.33	\$2,432.33	\$2,432.33	\$2,432.33	\$9,729.34
Fairview Fire	\$8,385.21	\$2,200.28	\$2,200.28	\$2,200.28	\$2,200.28	\$8,801.10
Forestry	\$405.71	\$105.61	\$105.61	\$105.61	\$105.61	\$422.43
Hopkins Fire	\$4,935.41	\$1,282.33	\$1,282.33	\$1,282.33	\$1,282.33	\$5,129.32
Stony Hill Fire	\$8,442.55	\$2,212.22	\$2,212.22	\$2,212.22	\$2,212.22	\$8,848.89
Swift Creek Fire	\$7,335.66	\$1,911.64	\$1,911.64	\$1,911.64	\$1,911.64	\$7,646.57
Wake-New Hope Fire	\$10,164.57	\$2,638.42	\$2,638.42	\$2,638.42	\$2,638.42	\$10,553.68
Wendell Fire	\$9,551.88	\$2,478.23	\$2,478.23	\$2,478.23	\$2,478.23	\$9,912.91
Western Wake Fire	\$7,264.95	\$1,892.82	\$1,892.82	\$1,892.82	\$1,892.82	\$7,571.28
<b>Wake County</b>						
CCBI	\$11,832.99	\$2,957.21	\$2,957.21	\$2,957.21	\$2,957.21	\$11,828.83
EM/PS	\$23,077.01	\$5,770.48	\$5,770.48	\$5,770.48	\$5,770.48	\$23,081.91
EMS System	\$119,684.15	\$33,043.79	\$33,043.79	\$33,043.79	\$33,043.79	\$132,175.18
Fire/Rescue	\$9,928.35	\$2,483.38	\$2,483.38	\$2,483.38	\$2,483.38	\$9,933.54
General Services	\$44,570.94	\$11,138.82	\$11,138.82	\$11,138.82	\$11,138.82	\$44,555.27
Human Services/Transportation	\$10,452.48	\$2,612.20	\$2,612.20	\$2,612.20	\$2,612.20	\$10,448.80
Sheriff	\$182,245.85	\$45,293.29	\$45,293.29	\$45,293.29	\$45,293.29	\$181,173.15
Sheriff - Courtroom	\$8,085.88	\$2,020.76	\$2,020.76	\$2,020.76	\$2,020.76	\$8,083.04
Sheriff - Detention	\$108,469.11	\$27,107.74	\$27,107.74	\$27,107.74	\$27,107.74	\$108,430.97
<b>Other</b>						
Alcohol Beverage Control	\$2,958.25	\$739.30	\$739.30	\$739.30	\$739.30	\$2,957.21
Wake Technical Community College	\$10,058.04	\$2,513.63	\$2,513.63	\$2,513.63	\$2,513.63	\$10,054.51
Triangle Transit Authority	\$19,524.44	\$4,879.39	\$4,879.39	\$4,879.39	\$4,879.39	\$19,517.57
GoRaleigh		\$7,885.89	\$7,885.89	\$7,885.89	\$7,885.89	\$31,543.55
<b>TRANSDEV</b>		<b>\$2,476.18</b>	<b>\$2,476.18</b>	<b>\$2,476.18</b>	<b>\$2,476.18</b>	<b>\$9,904.72</b>
RDU**	\$14,793.91	\$3,856.15	\$3,856.15	\$3,856.15	\$3,856.15	<u>\$15,424.61</u>

1. The FY18 estimated annual cost for TRANSDEV indicated above.
2. This estimate is based on TRANSDEV adding an initial 46 radios at @ \$215.32 per radio per year.
3. These costs are determined on an annual basis and will vary based on a 12-month period incident count and the number of radios per agency as defined in the Cooperative Participation Agreement, ARTICLE X.