

COOPERATIVE AGREEMENT

**Between
County/City/Town**

and the

**NC Department of Crime Control and Public Safety,
Division of State Highway Patrol**

for the

USE

of the

**VIPER 800 MHZ MIXED MODE
TRUNKED RADIO SUBSYSTEM**

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**INTERLOCAL AGREEMENT
BETWEEN
THE COUNTY/CITY/TOWN OF _____ AND THE NORTH CAROLINA STATE
HIGHWAY PATROL
REGARDING
USE AND SUPPORT OF THE VIPER 800 MHz TRUNKED RADIO NETWORK**

This Agreement entered into this, the ____ day of _____, 200 __, by and between the COUNTY/CITY/TOWN of _____, hereinafter referred to as “CITY,” “COUNTY“, or “TOWN” and the North Carolina State Highway Patrol, hereinafter referred to as “PATROL,” pursuant to the provisions of Article 20 of Chapter 160A of the North Carolina General Statutes.

WITNESSETH

WHEREAS, the parties to this Agreement are committed to delivery of the highest possible level of fire, law enforcement, medical emergency and related services; and

WHEREAS, the parties to this Agreement believe that interoperability – the ability for public safety agencies and communications centers to seamlessly communicate with each other – is a critical component of state-of-the-art public safety radio communications; and

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 and computer aided dispatching systems that:

- Provide for efficient and effective support of the delivery of public safety services to people who need help;
- Provide the greatest support possible for firefighters, paramedics, law enforcement officers and others for whom reliable, interoperable communications can mean the difference between life and death;

WHEREAS, the COUNTY/CITY/TOWN has entered into an Agreement (hereinafter referred to as the, “COUNTY/CITY/TOWN and PATROL Agreement”) with the State of North Carolina, through the PATROL, a copy of which is attached hereto as Exhibit A (without Appendix A of that Agreement outlining the technical radio components which the COUNTY/CITY/TOWN shall acquire) and incorporated herein, to work in partnership to develop a state-of-the-art interoperable public safety radio communications system based upon the 800 megahertz analog/digital trunked radio system (“800 MHz system”) that is capable of



supporting analog or digital trunked radio services and capable of being expanded in a manner consistent with current public safety communications technical standards; and

WHEREAS, the COUNTY/CITY/TOWN and PATROL Agreement provides for COUNTY/CITY/TOWN and PATROL approval of the use of radio communications created by that Agreement (and COUNTY/CITY/TOWN procurement and construction of an 800 MHz system that operates in a manner consistent with the provisions of the COUNTY/CITY/TOWN and PATROL Agreement) by parties in addition to the COUNTY/CITY/TOWN and the PATROL; and

ARTICLE I - PURPOSE

1.01 The purpose of this Agreement is to define the rights and obligations of the COUNTY/CITY/TOWN and PATROL with respect to the coordinated operation, maintenance, and upgrades of the 800 MHz mixed mode radio system.

ARTICLE II - COOPERATION

2.01 The COUNTY/CITY/TOWN and PATROL 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/CITY/TOWN and the PATROL.

3.02 AMENDMENT. “Amendment” means a change to this Agreement as submitted to and approved by the governing bodies of the COUNTY/CITY/TOWN and PATROL.

3.03 APPORTIONMENT OF COSTS AND REVENUES. “Apportionment Of Costs And Revenues” means the manner in which the operating, maintenance, and upgrade costs of the 800 MHz mixed mode trunked radio systems may be identified and allocated between the COUNTY/CITY/TOWNS and the PATROL.

3.04 AUTHORIZED USERS. “Authorized users” are COUNTY/CITY/TOWN users duly authorized by the Agreement with the PATROL to utilize the 800 MHz mixed mode trunked radio systems.

3.05 COUNTY/CITY/TOWN. “COUNTY/CITY/TOWN” means the city, county, consolidated city-county, town, local BOARD of Education, sanitary district, facility authority created under Part 4 of § 160A-460, or other local political subdivision, authority, or agency of local government, party to this Agreement.

- 3.06 COUNTY/CITY/TOWN RADIO EQUIPMENT. “COUNTY/CITY/TOWN radio equipment” means portable, mobile, fixed control stations, or related hardware purchased by the COUNTY/CITY/TOWN for use within the 800 MHz mixed mode radio system. In the event that the COUNTY/CITY/TOWN dissolves this Agreement or otherwise leaves the system, the COUNTY/CITY/TOWN shall retain ownership of any COUNTY/CITY/TOWN radio equipment.
- 3.07 ELIGIBLE RADIO USERS. “Eligible radio users” means those public and private non-profit entities and individuals eligible to hold FCC licenses in the Public Safety, Local Government, Highway Maintenance, and Special Emergency Radio Services as defined in C.F.R. Part 90, Subparts B and C, and those entities and individuals eligible to operate radios in the Public Safety, Local Government, Highway Maintenance, and Special Emergency Radio Services under the provisions of 47 C.F.R. §90.421, and approved by COUNTY/CITY/TOWN and PATROL pursuant Article 3.08 of the COUNTY/CITY/TOWN/PATROL Agreement.
- 3.08 FCC. “FCC” means the Federal Communications Commission as established by The Communications Act of 1934.
- 3.09 FISCAL YEAR. “Fiscal Year” means the period commencing on July 1 of any calendar year and concluding on June 30 of the following calendar year.
- 3.10 FUNDING. “Funding,” means the monies that will be provided by the COUNTY/CITY/TOWN through the PATROL to fund the operation, maintenance, and upgrades to the 800 MHz mixed mode radio system.
- 3.11 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/CITY/TOWN or PATROL for public safety and other authorized use.
- 3.12 INFRASTRUCTURE ENHANCEMENT. “Infrastructure enhancement” means acquisition and installation of 800 MHz equipment (including hardware and/or software) that serves to enhance the performance of (or add capabilities to) the 800 MHz mixed mode radio system.
- 3.13 INFRASTRUCTURE MAINTENANCE. “Infrastructure maintenance” means those services required to maintain the operating capability of the 800 MHz mixed mode radio 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 PATROL.
- 3.14 INFRASTRUCTURE PURCHASE. “Infrastructure Purchase” means acquisition and installation of 800 MHz mixed mode radio system equipment (including hardware and/or

software) that is required to establish and continually support the designed operating capability of the 800 MHz systems.

- 3.15 MUTUAL AID USE. “Mutual aid use” means authorized limited and temporary use of the 800 MHz mixed mode radio system for cross-jurisdictional, cross-service, or cross-technology intercommunications required among eligible users not supported as authorized users within the system.
- 3.16 NPSPAC. “NPSPAC” means the National Public Safety Planning Advisory Committee.
- 3.17 OPERATING FUND. “Operating Fund” means a financial account specially designated to provide operating funds for the 800 MHz mixed mode radio systems.
- 3.18 RADIO. “Radio” means the 800 MHz mixed mode radio system.
- 3.19 SEVERABILITY. “Severability” means that if any provision of the State of North Carolina Inter-local Cooperation Act, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected.
- 3.20 SYSTEM. “System” means the 800 MHz mixed mode radio system.
- 3.21 TERM. “Term” means the period of time for which this Agreement is in effect.
- 3.22 TERMINATION. “Termination” means dissolution of this Agreement.

ARTICLE IV - TERM

- 4.01 This Agreement shall take effect upon execution by both parties hereto, and shall remain in effect for a period of ten (10) years, starting upon the day in which the governing bodies of the COUNTY/CITY/TOWN and PATROL have executed this Agreement.
- 4.02 If no action is taken to dissolve this Agreement and the COUNTY/CITY/TOWN and PATROL fail to extend the Agreement after ten (10) years, the Agreement shall automatically be renewed for additional twelve (12) month period(s).

ARTICLE V - DEFAULT

- 5.01 Any material violation of the Agreement during the term of this Agreement shall constitute a default. In the event of an alleged default, the PATROL shall give the allegedly defaulting party notice of such alleged default. Upon notice, the party alleged to have defaulted shall have a period of thirty (30) calendar days to cure the alleged default or appeal the decision of the PATROL pursuant to this Agreement provided further that the matter is subject to appeal. If the default is not cured to the satisfaction of the PATROL within the thirty (30) day cure period or during the appeal process, Article 10.04-G of this Agreement may apply.

- 5.02 Except as provided in Article V of this Agreement, either the COUNTY/CITY/TOWN or PATROL may terminate this Agreement upon one hundred (180) days notice.

ARTICLE VI - CONFORMANCE TO PLANS, ETC.

- 6.01 COUNTY/CITY/TOWN equipment operating on the 800 MHz mixed mode radio system shall comply with technical and performance standards established or adopted by the PATROL.
- 6.02 The failure of the COUNTY/CITY/TOWN 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 PATROL shall own all infrastructure associated with the 800 MHz systems unless otherwise stated within this Agreement. COUNTY/CITY/TOWN shall not be expected to purchase Fixed Assets except as may be required to provide special system functionality unique to COUNTY/CITY/TOWN.

ARTICLE VIII – SYSTEM FUNDING

- 8.01 The PATROL shall be responsible for the initial 800 MHz mixed mode radio infrastructure purchase and installation, and for subsequent infrastructure purchases required to maintain the designed operability of the systems.
- 8.02 In the event that a COUNTY/CITY/TOWN not previously party to this Agreement wishes to join in the shared use of the 800 MHz mixed mode radio and systems and that said COUNTY/CITY/TOWN has determined that infrastructure enhancements need to be made to accommodate the shared use of the 800 MHz mixed mode radio system, that COUNTY/CITY/TOWN shall be responsible for providing for purchase of any infrastructure necessary to make such enhancements to accommodate that COUNTY/CITY/TOWN use of the 800 MHz and systems without interfering with, or otherwise degrading, system capabilities for another COUNTY/CITY/TOWN that is a party to this Agreement.

ARTICLE IX - FCC LICENSE AND USE OF FREQUENCIES

- 9.01 The PATROL shall be responsible for the maintenance of all FCC licenses required to operate the 800 MHz mixed mode radio system, regardless of whether said licenses are in the name of the COUNTY/CITY/TOWN or the Patrol.
- 9.02 A participating COUNTY/CITY/TOWN may authorize allocated 800 MHz frequencies for which it is licensed to be utilized by the PATROL 800 MHz mixed mode radio system. COUNTY/CITY/TOWN is not expected to contribute frequencies to the PATROL if such

frequencies cannot be utilized by the 800 MHz mixed mode radio system or if required for the continuing operation of the COUNTY/CITY/TOWN.

9.03 All COUNTY/CITY/TOWN radios used for law enforcement shall be capable of transmission and reception on NPSPAC frequencies.

9.04 Any COUNTY/CITY/TOWN shall operate two-way radio equipment in accordance with the rules of the FCC.

ARTICLE X – GOVERNANCE COMMITTEE AND TECHNICAL SUBCOMMITTEE

10.01 To assist the PATROL in the administration of the radio systems, a GOVERNANCE COMMITTEE (“COMMITTEE”) shall be established to develop fiscal and performing policies governing all users of the systems. The COMMITTEE shall meet at least twice per year.

10.02 The COMMITTEE shall be made up of no more than 15 members representing all public safety disciplines. Each member should represent an agency that is an active participant on the VIPER Network. It is recommended that the COMMITTEE have the following representation:

- | | |
|-------------------------------|----------------------------|
| NC Fire Chief’s Assn | Wake County Representative |
| Emergency Medical Services | NCSUN |
| State Highway Patrol | Local EM Coordinator |
| State Bureau of Investigation | Local Fire Chief |
| NC Emergency Management | Local Sheriff |
| NC Sheriff’s Assn | Local EMS Coordinator |
| NC Police Chief’s Assn | US Marshall’s Service |
| CJIN Board | |

- 10.03 The Patrol Commander's designee shall serve as chairman of the COMMITTEE.
- 10.04 Additionally, the COMMITTEE shall create a technical sub-committee to provide technical advice on issues that could have statewide impact on the network. Membership of the technical sub-committee should come from agencies participating on the network.
- 10.05 Items for consideration by the COMMITTEE shall include, but not be limited to:
- A. Review and respond to matters pertaining to the operation of the VIPER system.
 - B. With respect to Article 8 of this Agreement, establish the criteria through which governments and other authorized governmental bodies may participate in the radio systems.
 - C. Develop capital improvement funding plans for infrastructure enhancement.
 - D. Develop a membership allocation voting method for itself and for the Operations Group, in the event that consensus among either body cannot be reached.
 - E. Recommend to the PATROL when an Interlocal Agreement with a COUNTY/CITY/TOWN should be terminated following a finding that the COUNTY/CITY/TOWN is in default of this Agreement.
 - F. 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 radio system are reliable.
 - G. Review applications for membership within the system and make recommendations to the PATROL relative to admission.
 - H. Review applications for and approve, when appropriate, additional system "talk groups."
 - I. Review system operating information for the purpose of developing documentation to support requests for additional channel capacity as may be needed.
 - J. 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.

- K. Submit policies for users of the 800 MHz mixed mode radio systems to the PATROL for approval.
 - L. Review and approve communications procedures to be utilized during emergencies to ensure that the 800 MHz mixed mode radio system will perform as efficiently and effectively as possible for all users during such an emergency.
- 10.06 COUNTY/CITY/TOWN shall assume responsibility for costs of attendance at COMMITTEE meetings. The PATROL shall not assume any costs of any kind relative to the attendance or participation of a COUNTY/CITY/TOWN employee at a PATROL or COMMITTEE meeting.
- 10.07 In the event that the PATROL issues a directive or other such action compelling any party to this Agreement to take certain actions and the COUNTY/CITY/TOWN fails to comply with the instructions of the PATROL, such COUNTY/CITY/TOWN shall be considered to be in default as defined in Article 5.01 of this Agreement.
- 10.08 In the event that a COUNTY/CITY/TOWN is declared to be in default as defined in Article 5.01 of this Agreement and disagrees with the action of the PATROL, such COUNTY/CITY/TOWN may appeal the directive or action of the PATROL to the COMMITTEE. The COMMITTEE shall consult with a representative of the PATROL or other neutral and disinterested party as appropriate to determine if the PATROL'S actions are contrary to the COUNTY/CITY/TOWN and PATROL Agreement. If the PATROL'S actions are consistent with the COUNTY/CITY/TOWN and PATROL Agreement, the PATROL and appealing COUNTY/CITY/TOWN shall be advised that there is no basis for appeal. However, if the PATROL'S actions are contrary to the COUNTY/CITY/TOWN and PATROL Agreement, the COMMITTEE shall advise the PATROL of the inconsistency permitting the PATROL to amend its action(s) as necessary. The PATROL shall amend the action necessitating the COUNTY/CITY/TOWN to appeal in order to comply with the COUNTY/CITY/TOWN and PATROL Agreement.
- 10.09 In the event that a COUNTY/CITY/TOWN desires to appeal a decision of the PATROL to the COMMITTEE and such PATROL decision was based upon a requirement or upgrade plan of the PATROL, no appeal shall be heard and the action of the PATROL will be final.

- 10.10 The authority of the PATROL does not extend to the internal operations of the COUNTY/CITY/TOWN when such operations have no substantial impact upon the management or performance of the 800 MHz and system.

ARTICLE XI – RADIO SYSTEMS USES AND LIMITATIONS

- 11.01 Permitted users of the radio system may include the COUNTY/CITY/TOWN’S public safety and non-public safety users.
- 11.02 The non-public safety users of the COUNTY/CITY/TOWN shall be afforded a lower system priority than public safety users.
- 11.03 To ensure that the channel capacity of the radio system will not be unnecessarily reduced, neither the COUNTY/CITY/TOWN shall utilize any radio with a telephone interconnect capability except as approved by the PATROL.

ARTICLE XII - NOTICE

- 12.01 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 PATROL shall be sent to NORTH CAROLINA STATE HIGHWAY PATROL, Technical Services Section, 4702 Mail Services Center, Raleigh North Carolina 27699.
- 12.02 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 the COUNTY/CITY/TOWN shall be sent to _____.

ARTICLE XIII - MERGER AND MODIFICATION

- 13.01 It is understood and agreed that the entire Agreement between the parties is contained herein and that this Agreement supercedes all oral arguments, previous written agreements, and negotiations between the COUNTY/CITY/TOWN and the PATROL.
- 13.02 Any alterations, variations, modifications, or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing and signed by parties hereto as an amendment to this Agreement and signed by the parties hereto.

ARTICLE XIV – RECORDS, AVAILABILITY

- 14.01 COUNTY/CITY/TOWN and PATROL 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.

- 14.02 The COUNTY/CITY/TOWN and PATROL 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 the COUNTY/CITY/TOWN 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.
- 14.03 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 mixed mode radio system, 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 not be included in written findings of an auditor nor discussed in any forum open to the public. The COUNTY/CITY/TOWN and PATROL agree to include such restrictions in any public solicitations or contracts for audit services.

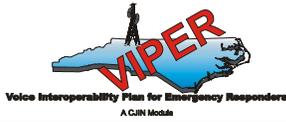
ARTICLE XV - INDEPENDENT CONTRACTOR AND INDEMNIFICATION

- 15.01 The COUNTY/CITY/TOWN and PATROL are, and shall remain, independent contractors with respect to all services performed under this Agreement. Except as provided within this Agreement, the COUNTY/CITY/TOWN and PATROL 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/CITY/TOWN and PATROL 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/CITY/TOWN represents that it has or will secure at its own expense all personnel required in performing services under this Agreement where proportionate reimbursement from a COUNTY/CITY/TOWN as defined by the PATROL is required. Any and all personnel of the COUNTY/CITY/TOWN 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. Each party

shall defend, indemnify, and hold the other party, its officers, agents, and employees harmless from any and all such claims. 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 XVI - GOVERNING LAW AND APPLICABLE PROVISIONS OF
LAW**

- 16.01 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 PATROL and COUNTY/CITY/TOWN.
- 16.02 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 PATROL and COUNTY/CITY/TOWN 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.



COUNTY/CITY/TOWN and PATROL APPROVAL

CITY/TOWN, having signed this Agreement, and the PATROL having duly approved this Agreement on the ____ day of _____, 20____, and pursuant to such approval, the proper PATROL and COUNTY/CITY/TOWN officials having signed this Agreement, the parties hereto agree to be bound by the provisions herein set forth.

COUNTY/CITY/TOWN

Authorized Signatory

STATE HIGHWAY PATROL

By: _____
SECTION DIRECTOR

Approved as to Form:

ATTORNEY GENERAL

Date

Approved as to Form and Execution

Legal Counsel

Date