

**INTERLOCAL AGREEMENT
FOR EMERGENCY DISPATCH AND COMMUNICATIONS SERVICES**

This INTERLOCAL AGREEMENT FOR EMERGENCY DISPATCH AND COMMUNICATIONS SERVICES, dated the [REDACTED] day of [REDACTED], 20[REDACTED] (“Agreement”), is between the Town of Cary (“Cary”), the Town of Apex (“Apex”) and the Town of Morrisville (“Morrisville”), each being municipal corporations organized and existing under the laws of the State of North Carolina. Cary, Apex, and Morrisville are sometimes referred to jointly as “Parties.”

WITNESSETH

WHEREAS, The Town of Cary is a Primary Public Safety Answering Point (“Primary PSAP), the first point of reception for 9-1-1 calls made within its municipal boundary. As a Primary PSAP, Cary is capable of receiving and processing 9-1-1 calls from all voice communications service providers; and

WHEREAS, Apex is a Secondary PSAP capable of receiving and processing 9-1-1 calls from a Primary PSAP. Apex currently has 9-1-1 calls made from within the Apex municipal boundary routed to the Raleigh Wake Emergency Communications Center (“RWECC”), which then dispatches Fire response calls and transfers all Police response calls to Apex’s Secondary PSAP; and

WHEREAS, Morrisville does not operate a PSAP. Instead, RWECC answers all 9-1-1 calls made from within the Morrisville municipal boundary and dispatches all Fire and Police responses for Morrisville; and

WHEREAS, the Parties, which are all municipalities located within the western part of Wake County, recognize advantages to having a unified emergency dispatch and communications system capable of improving the service level to the western Wake region; and

WHEREAS, the Parties desire improvements to their systems, including station alerting, overall situational awareness, automatic vehicle location (“AVL”), dispatch, interoperability and improvement in response times and call processing to bring their systems more in line with industry standards; and

WHEREAS, recognizing that there may be potential benefits of changing their current service models, Cary retained L.R. Kimball, a design firm that specializes in providing advisory services for architectural, engineering, and public safety communications technology projects, to conduct a PSAP Service Improvement Study (“Study”) for the Parties, a copy of which Study is attached to this Agreement as Exhibit D; and

WHEREAS, Study identified advantages, technical concerns, and limitations to changing service models to consolidate emergency dispatch and communications service under a Cary operated Primary PSAP; and

WHEREAS, understanding such advantages, concerns, and limitations, the Parties desire to enter an arrangement through which Cary shall serve as a Primary PSAP and provide emergency dispatch and communications services to the Parties in accordance with the terms and conditions hereinafter stated; and

WHEREAS, the Parties agree that, while Cary shall operate the Primary PSAP, Morrisville and Apex shall retain responsibilities in securing and maintaining necessary system infrastructure and upgrades within their respective jurisdictions to allow the Primary PSAP to operate effectively in accordance with the terms and conditions hereinafter stated; and

WHEREAS, the Parties further agree that each shall share in the costs of maintaining and operating the Primary PSAP once it is put into operation in accordance with the terms and conditions hereinafter stated; and

WHEREAS, Article 20, Interlocal Cooperation, of North Carolina General Statutes 160A authorizes and empowers any units of local government to enter into interlocal agreements for the contractual exercise by one unit for one or more other units of any power, function, public enterprise, right, privilege or immunity of local government; and

NOW THEREFORE, for and in consideration of the recitals and the mutual promises and covenants contained in this Agreement, the Parties agree as follows;

1. **Incorporation of Recitals and Purpose:** The Recitals are true and are incorporated into this Agreement. The purposes of this Agreement include:
 - a. To provide the terms and conditions under which Cary will serve as the Primary PSAP and provide Communications Services for the Parties;
 - b. To set out the Parties' obligations as they relate to readying each Party's respective emergency communications systems and infrastructure in preparation for connection to, and service by, the Primary PSAP; and
 - c. To define Apex and Morrisville's obligations as they relate to the ongoing funding of the Primary PSAP.

2. **Definitions:**

In addition to the terms defined in the Recitals, the following definitions apply to this Agreement:

- a. **"Agreement"** means this document, as it may be amended from time to time.
- b. **"Communications Services"** means
 - i. the receipt of incoming 9-1-1 calls;
 - ii. the Transfer of certain 9-1-1 calls to the appropriate Secondary PSAP;
 - iii. the Dispatch of Public Safety Responders in response to 9-1-1 calls;

- iv. the collection and maintenance of data concerning incidents to which Transfer or Dispatch services were provided; and
 - v. such other activities incidental to the above as the Primary PSAP deems necessary and appropriate.
- c. “Cost per Dispatch/Transfer” means the costs incurred by Cary each time the Primary PSAP Dispatches Public Safety Responders in response to a 9-1-1 Call or Transfers a 9-1-1 Call to the Secondary PSAP.
- d. “Dispatch” means the receipt and processing of incoming 9-1-1 calls, including the routing of Public Safety Responders as required by the nature of the emergency and the monitoring of the same throughout the incident to which the 9-1-1 call relates.
- e. “Fiscal Year” means the period commencing on July 1 of any calendar year and concluding on June 30 of the following calendar year.
- f. “Operation Costs” means the costs incurred by Cary for the operation and maintenance of the Primary PSAP after the Operation Date. Operation Costs includes 1) the Cost per Dispatch/Transfer Cary incurs when Dispatching and Transferring calls and 2) costs for any Primary PSAP Improvements needed to continue operation of the Primary PSAP.
- g. “Operation Date” means the date by which:
- i. All Pre-Operability Improvements shall be completed by the Parties;
 - ii. Cary as Primary PSAP shall be operational and ready to begin receiving 9-1-1 calls from each Party’s jurisdictional limits and unincorporated areas for which the Parties may be contracted to provide service; and
 - iii. Apex as Secondary PSAP shall be operational and ready to begin receiving 911 calls Transferred from Cary as Primary PSAP.
- h. “Performance Standards” means the standards for the provision of Communications Services to be provided by the Primary PSAP as outlined in “Exhibit B” to this Agreement.
- i. “Pre-operability Costs” means any and all costs incurred by the Parties to make and maintain all Pre-operability Improvements before and after Operation Date.
- j. “Pre-operability Improvements” means the respective improvements each Party must make to integrate and connect their respective systems to the Primary PSAP or Secondary PSAP, and to maintain such integration and connection throughout the term of this Agreement. This term includes modifications to existing equipment and infrastructure as well the purchase and installation of new equipment or infrastructure, if required. Pre-operability Improvements are set forth in the Exhibit A to this agreement.

- k. “Primary PSAP” means the Town of Cary, the PSAP that is the first point of reception of a 9-1-1 call and from which the call is either Dispatched or Transferred to the Secondary PSAP.
- l. “Primary PSAP Improvement” means any improvement or software upgrade incurred by Cary to maintain operation of the Primary PSAP’s functions of 9-1-1 call reception, processing, and dispatching after the Operation Date that is of a type that is not eligible to receive funding from the North Carolina 911 Board. This term includes, but is not limited to, the following:
 - i. The purchase of additional call reception, process, and dispatch equipment to be located at the Primary PSAP;
 - ii. Building construction improvements to the Primary PSAP; and
 - iii. Upgrades to or replacement of radio infrastructure equipment.
- m. “Public Safety Answering Point (PSAP)” means the location that receives an incoming 9-1-1 call and Dispatches appropriate public safety agencies to respond to the call or Transfers the call.
- n. “Public Safety Responder(s)” means the police and fire department personnel employed by the respective Parties.
- o. “Secondary PSAP” means a PSAP capable of receiving a 9-1-1 call Transferred from the Primary PSAP.
- p. “Transfer” means the transfer of certain 9-1-1 calls received by the Primary PSAP to the Secondary PSAP.

3. Duration and Term:

- a. This Agreement shall have an “Initial Term” of five (5) years beginning on March 5, 2019 (“Effective Date”) and shall thereafter automatically renew for up to twenty (20) successive one (1) year renewal terms (each a “Renewal Term”). If not earlier terminated in accordance with its terms, this Agreement shall terminate on March 7, 2044.
- b. Cary may terminate this Agreement as to either or both of the other Parties by providing one hundred eighty (180) days written notice of termination prior to the end of the Initial Term or the then current Renewal Term (“Termination Notice”). If Cary provides Termination Notice to only one Party, Agreement shall terminate at the end of the then current term as to such noticed Party and shall continue as to the other Party. If Cary provides Termination Notice to both Parties, the Agreement shall terminate at the end of the then current term. Upon a request from a noticed Party, Cary shall extend the termination of Agreement once for an additional ninety (90) days as it relates to the noticed Party. Any further extension shall be at the sole discretion of Cary.

- c. Apex or Morrisville may terminate this Agreement by providing Termination Notice to Cary prior to the end of the Initial Term or any Renewal Term. If only one of Apex or Morrisville provide Termination Notice, this Agreement shall terminate at the end of the then current term as to the Party who provided the Termination Notice only. If both Apex and Morrisville provide Termination Notice, this Agreement shall terminate at the end of the then current term.
4. **Operation Date:** The Operation Date for the purposes of this Agreement shall be March 5, 2019.
 5. **Roles and Responsibilities of each Party:** No joint agency is established by this Agreement. Cary shall have sole responsibility and authority to appoint or otherwise employ the personnel necessary for the implementation of the Primary PSAP as outlined in this Agreement.

A. Cary's Roles and Responsibilities:

- a. The Town of Cary shall operate a Primary PSAP that shall provide Communication Services to the Public Safety Responders of the Parties;
- b. Cary shall complete any respective Pre-operability Improvements required by Operation Date as detailed on the attached Exhibit A;
- c. Cary shall be responsible for its Pre-operability Costs incurred pursuant to Section 6(a) of this Agreement;
- d. Cary shall provide Communication Services in the following manner:
 - i. Cary shall provide Dispatch of Public Safety Responders from the Cary Police Department and Cary Fire Department;
 - ii. Cary shall provide Dispatch of Public Safety Responders from the Morrisville Police Department and Morrisville Fire Department;
 - iii. Cary shall provide Dispatch of Public Safety Responders from the Apex Fire Department; and
 - iv. Cary shall provide Transfer of incoming 9-1-1 calls that require response from Public Safety Responders from the Apex Police Department to the Secondary PSAP operated by Apex.
- e. Cary shall work with the other Parties to continually endeavor to provide Communications Services at levels detailed in the attached Exhibit B;
- f. Cary shall cause the Primary PSAP to accurately track all Dispatches and Transfers pursuant to Section 6(b)(i) of this Agreement;
- g. Cary shall budget appropriate funds for the payment of its Pre-operability Costs pursuant to Section 6(a) of this Agreement and of its share of the Operation Costs pursuant to Section 6(b) of this Agreement;
- h. Cary shall invoice Apex and Morrisville for their apportioned share of Operation Costs pursuant to Section 6(b)
- i. Cary shall appoint up to three Cary staff members to serve on the PSAP Advisory Committee pursuant to Section 7 of this Agreement.
- j. Cary shall ensure that all interlocal or mutual aid agreements related to the ability for its Public Safety Responders to respond to calls within the territorial jurisdictions of the other Parties are in effect and complied with.

- k. Cary shall provide after-hours support for the third-party fiber connection between Cary and Apex.

B. Apex Roles and Responsibilities:

- a. Apex shall complete its required Pre-operability Improvements by Operation Date as detailed on the attached Exhibit A;
- b. Apex shall budget appropriate funds for the payment of its Pre-operability Costs pursuant to Section 6(a) of this Agreement and annually budget its share of the Operation Costs pursuant to Section 6(b) of this Agreement;
- c. Apex shall be responsible for its respective Pre-operability Costs incurred pursuant to Section 6(a) of this Agreement;
- d. Apex shall be responsible for its respective share of the Operation Costs incurred pursuant to Section 6(b) of this Agreement;
- e. Apex shall operate and maintain a Secondary PSAP that shall:
 - i. Receive 9-1-1 calls that require response from Public Safety Responders from the Apex Police Department Transferred from the Primary PSAP;
 - ii. Dispatch Public Safety Responders from the Apex Police Department to 9-1-1 calls Transferred from the Primary PSAP.
- f. Apex shall work with the other Parties to continually endeavor to provide Communications Services at levels detailed in the attached Exhibit B;
- g. Apex shall provide and maintain those Pre-operability Improvements and such other improvements and services necessary to allow the Primary PSAP to provide Communications Services at a level that meets the Performance Standards;
- h. Apex shall ensure that its Fire Public Safety Responders shall respond to Dispatches given by the Primary PSAP and that the Secondary PSAP shall Dispatch its Police Public Safety Responders upon receipt of a call Transferred by the Primary PSAP.
- i. Apex shall appoint up to three Apex staff members to serve on the PSAP Advisory Committee pursuant to Section 7 of this Agreement.
- j. Apex shall ensure that all interlocal or mutual aid agreements related to the ability for its Public Safety Responders to respond to calls within the territorial jurisdictions of the other Parties are in effect and complied with.

C. Morrisville's Role and Responsibilities:

- a. Morrisville shall complete its required Pre-operability Improvements by Operation Date as detailed on the attached Exhibit A;
- b. Morrisville shall budget appropriate funds for the payment of its Pre-operability Costs pursuant to Section 6(a) of this Agreement and annually budget its share of the Operation Costs pursuant to Section 6(b) of this Agreement;
- c. Morrisville shall work with the other Parties to continually endeavor to provide Communications Services at levels detailed in the attached Exhibit B; Morrisville shall be responsible for its respective Pre-operability Costs incurred pursuant to Section 6(a) of this Agreement;
- d. Morrisville shall be responsible for its respective share of the Operation Costs incurred pursuant to Section 6(b) of this Agreement;

- e. Morrisville shall ensure that its Public Safety Responders shall respond to Dispatch orders given by the Primary PSAP
- f. Morrisville shall appoint up to three Morrisville staff members to serve on the PSAP Advisory Committee pursuant to Section 7 of this Agreement.
- g. Morrisville shall ensure that all interlocal or mutual aid agreements related to the ability for its Public Safety Responders to respond to calls within the territorial jurisdictions of the other Parties are in effect and complied with.

6. Costs:

a. Pre-operability Costs: Each Party shall be responsible for any and all Pre-operability costs that Party incurs in making the Pre-operability Improvements to ensure it remains integrated with the Primary PSAP and, if necessary, the Secondary PSAP for the term of this Agreement. Pre-operability Improvements are outlined in the attached Exhibit A and discussed in the Study attached as Exhibit D.

b. Operation Costs:

- i. Dispatch/Transfer Tracking. Cary shall maintain call logs that show each time a particular Public Safety Responder type is Dispatched as a result of a call or when a call is Transferred to the Secondary PSAP.
- ii. Cost per Dispatch/Transfer Allocation. Each Party shall be responsible for the costs of all Dispatches of Public Safety Responders from that Party's jurisdiction, including Dispatches to any unincorporated areas for which that Party may be contracted to provide service. Apex shall be responsible for costs of all calls Transferred to the Secondary PSAP. The costs of each Dispatch or Transfer shall be calculated as detailed below and as shown on the attached Exhibit C.
 - a) For the first three (3) years of the Initial Term, the Cost per Dispatch/Transfer shall be the values shown on the attached Exhibit C, which are amounts determined by and detailed in the Study.
 - b) For the remaining years of the Initial Term after the third (3rd) and for all Renewal Terms, the Cost per Dispatch/Transfer shall be calculated based on the following formulas:
 - a. Cost per Dispatch: The cost per call for North Carolina as determined by the most recent FCC Annual Report to Congress on State Collection and Distribution of 9-1-1 Fees, multiplied by a "growth factor percentage" representing the average increase in call volume for the Parties over the prior three (3) years, multiplied by a "response factor percentage" representing the average percentage of calls Dispatched by the Primary PSAP per

Public Safety Responder agency type over the prior three (3) years. This formula is outlined in further detail in the attached Exhibit C.

- b. Cost per Transfer: The cost per call for North Carolina as determined by the most recent FCC Annual Report to Congress on State Collection and Distribution of 9-1-1 Fees, multiplied by a “growth factor percentage” representing the average increase in call volume for the Parties over the prior three (3) years. This formula is outlined in further detail in the attached Exhibit C.
 - c) Beginning January 12th, 2022, Cary shall recalculate the Cost per Dispatch/Transfer amounts using the above formulas at the end of each calendar year, and provide Apex and Morrisville notice of the same, to allow the Parties time to incorporate said costs into their respective upcoming fiscal-year budgets. The newly-calculated values will then be charged upon commencement of the following Fiscal Year pursuant to the billing cycle outlined in Section 6(b)(iv) of this Agreement.
- iii. Primary PSAP Improvements Cost Allocation. The cost of any PSAP Improvements shall be apportioned between the Parties in percentages equal to the average percentage of calls Dispatched/Transferred by the Primary PSAP for each respective jurisdiction during the prior 3 fiscal years.
- a) For the first two years of the Term of this Agreement, the cost allocation percentage for each of those years shall be the unaveraged, annual percentage of calls Dispatched/Transferred for the respective year.
 - b) From time to time, and in sufficient time for Apex and Morrisville to arrange financing for their respective shares of Primary PSAP Improvement Costs, Cary shall provide its best estimate of expected Primary PSAP Improvement Costs and of each party’s share of those costs. The Parties hereby acknowledge that the amount so provided shall be an estimate only based upon the information available, and that Primary PSAP Improvement Costs, whether less or greater than the estimate, are to be allocated to and borne as set forth in this Agreement.
- iv. Invoicing and Payment. Cary shall invoice Apex and Morrisville for their respective portions of the Operation Costs in the following manner:

- a) Cost per Dispatch/Transfer: Cary shall invoice Apex and Morrisville for each Parties' respective share of the Costs per Dispatch/Transfer on a quarterly basis. At the conclusion of each quarter, Cary shall generate an invoice for the Costs per Dispatch/Transfer incurred for that quarter. These invoices shall be sent to Apex and Morrisville by the second (2nd) Wednesday of the month following the end of each quarter.
 - b) Primary PSAP Improvements Cost: Cary shall invoice Apex and Morrisville for each Parties' respective share of Primary Improvement Costs on an annual basis. At the conclusion of a Fiscal Year, Cary shall generate an invoice for the Primary PSAP Improvement costs incurred during that year. Invoices shall be sent to Apex and Morrisville by August 1st of each year.
 - c) Apex and Morrisville shall, within thirty (30) days of receipt of an invoice, make payment in the amount of the invoice to Cary. If Apex or Morrisville disagrees with any expense allocated to it by Cary, it may notify Cary of the disagreement and request a review and that an adjustment be made but shall make the required payment to Cary pending resolution of the disagreement.
 - d) Any amounts due and payable by Apex or Morrisville hereunder that are not paid by the second monthly invoice following the month in which the unpaid amount was invoiced (approximately sixty (60) days) shall bear interest at the rate of six percent (6%) per annum until paid.
 - v. Budgeting. Each Party shall be responsible for budgeting appropriate funds during each Fiscal Year for the payment of their respective Pre-operability Costs and Operation Costs obligations as outlined in this Agreement.
7. **Primary PSAP Advisory Committee**: The Town Managers, Police Chiefs, and/or Fire Chiefs of any of the Parties can request a meeting of the Parties to discuss any aspect of this Agreement. Any such meeting shall be held within a reasonable time of the initial request and shall be attended by each Party's Town Manager and/or up to three of their designees from each Party. The attendees may discuss and make recommendations related to any aspect of this Agreement.

Cary is solely responsible for the operation of the Primary PSAP and while attendee recommendations will be carefully considered and evaluated, such recommendations are advisory only.

8. **Termination**:

- a. Upon termination for any reason, all equipment and assets of the Primary PSAP shall be and remain the property of Cary. In the event a Party

terminates their participation in this Agreement pursuant to Section 3 of this Agreement, that Party shall remain responsible for its share of the Operation Costs for the then current Term and for any fees for the termination of services being provided by third-parties that result from the terminating Party's termination.

9. Breach and Default:

- a. Any material breach of the terms or conditions of this Agreement shall constitute a default. In the event of a default, the defaulting Party shall be given notice of such alleged default in the manner prescribed in Section 10 of this Agreement. Upon receipt of notice, the defaulting Party shall have the opportunity to cure the default within thirty (30) days.
- b. In the event Cary is the defaulting Party and fails to cure all defaults within the thirty (30) day cure period, Apex or Morrisville shall have the ability to provide Termination Notice as described in Section 3 of this agreement, irrespective of current Term. Cary shall continue to provide the services described in this agreement to the terminating Party for the one-hundred and eighty (180) day notice period or until the terminating Party obtains Communication Services from another source, whichever is sooner. The terminating Party shall remain responsible for its share of Operations Costs for the then current term, minus any costs for Primary PSAP Improvements.
- c. In the event that Apex or Morrisville are the defaulting party and have failed to cure all defaults within the thirty (30) cure period, Cary shall cease to provide the services described in this Agreement to the defaulting party within one hundred eighty (180) days after the conclusion of the cure period. Upon a request from a noticed Party, Cary shall extend the date of the cessation of services described in this Agreement once for an additional ninety (90) days as it relates to the noticed Party. Any further extension shall be at the sole discretion of Cary. If services are terminated in this manner, the defaulting Party shall be responsible for its share of the Operations Costs for the then current Term.

10. Notices. Unless otherwise provided, all notices provided for herein shall be in writing and shall be sent properly addressed by first class mail, with a copy sent by e-mail, to the Parties at the addresses shown below:

Town of Cary
Town Manager
Town of Cary
PO Box 8005
Cary, North Carolina 27512-8005

Attention: Town Manager

Email address: Sean.Stegall@townofcary.org

With copies to: Raymond.Cain@townofcary.org

Town of Apex

Town Manager
Town of Apex
PO Box 250
Apex, North Carolina 27502

Attention: Town Manager

Email address: drew.havens@apexnc.org

With copies to:

john.letteny@apexnc.org (Police Chief); keith.mcgee@apexnc.org (Fire Chief)

Town of Morrisville

Town Manager
100 Town Hall Drive
Morrisville, NC 27650

Attention: Town Manger

Email address: mpaige@townofmorrisville.org

With copies to: Todd Wright, Assistant Town Manager

All notices shall be effective three (3) days after having been deposited, properly addressed and postage prepaid, in the US Postal Service. Any Party hereto may change the person to whom or the address to which notices should be provided by giving written notice to the other Parties of the change.

11. **Public Records.** The Parties may provide copies of public records, including copyrighted records, in response to public record requests.
12. **Due Diligence Assessment.** Each Party has conducted such due diligence assessment as it deems appropriate to verify that the assumption of Communications Services by Cary in accordance with the assumptions used to develop the terms and conditions of this Agreement are reasonable.
13. **Force Majeure.** No Party shall be responsible for any default, delay, or failure to perform if such default, delay, or failure to perform is due to causes beyond the Party's reasonable control, including, but not limited to, actions or inactions of governmental authorities, epidemics, wars, actions of malicious actors, embargoes, fires, hurricanes, unusual adverse weather, acts of God, or the default of a common carrier. In the event of a default, delay, or failure to perform due to causes beyond a Party's reasonable control, the Party shall diligently and in good faith act to the extent within its power to remedy the circumstances affecting its performance and to complete its performance in as timely a manner as is reasonably possible.

- 14. Entire Agreement/Amendments.** This Agreement constitutes the entire agreement between the Parties with respect to its general subject matter. This Agreement may not be changed except in writing signed by all the Parties.
- 15. Representations and Warranties.** The Parties each represent, covenant and warrant for the other's benefit as follows:
- a. Each Party has all necessary power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement, and this Agreement has been authorized by Resolution spread upon the minutes of each Party's governing body. This Agreement is a valid and binding obligation of each Party.
 - b. Neither the execution and delivery of this Agreement, nor the fulfillment of or compliance with its terms and conditions, nor the consummation of the transactions contemplated by this Agreement, results in a breach of the terms, conditions and provisions of any agreement or instrument to which either Party is now a party or by which either is bound, or constitutes a default under any of the foregoing.
 - c. To the knowledge of each Party, there is no litigation or other court or administrative proceeding pending or threatened against such Party (or against any other person) affecting such Party's rights to execute or deliver this Agreement or to comply with its obligations under this Agreement. Neither such Party's execution and delivery of this Agreement, nor its compliance with its obligations under this Agreement, requires the approval of any regulatory body or any other entity the approval of which has not been obtained.
- 16. Dispute Resolution.** In the event of conflict or default that might arise for matters associated with this Agreement, the Parties agree to informally communicate to resolve the conflict. If any such dispute cannot be informally resolved, then such dispute, or any other matter arising under this Agreement, shall be subject to resolution in a court of competent jurisdiction. Such disputes, or any other claims, disputes or other controversies arising out of, and between the Parties shall be subject to and decided exclusively by the appropriate general court of justice of Wake County, North Carolina.
- 17. No Waiver of Non-Compliance with Agreement.** No provision of this Agreement shall be deemed to have been waived by any Party hereto unless such waiver shall be in writing and executed by the same formality as this Agreement. The failure of any Party hereto at any time to require strict performance by the other of any provision hereof shall in no way affect the right of the other Parties to thereafter enforce the same. In addition, no waiver or acquiescence by a Party hereto of any breach of any provision hereof by another Party shall be taken to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.

- 18. Governing Law.** The Parties intend that this Agreement be governed by the law of the State of North Carolina. Proper venue for any action shall solely be Wake County.
- 19. Assignment.** The Parties may not sell or assign any interest in or obligation under this Agreement without the prior express written consent of the other Parties.
- 20. Liability of Officers and Agents.** No officer, agent or employee of any Party will be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents or employees will be deemed to execute such documents in their official capacities only, and not in their individual capacities. This section will not relieve any such officer, agent or employee from the performance of any official duty provided by law.
- 21. Execution in Counterparts/Electronic Version of Agreement.** This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The Parties may convert a signed original of the Agreement to an electronic record pursuant to a North Carolina Department of Natural and Cultural Resources approved procedure and process for converting paper records to electronic records for record retention purposes. Such electronic record of the Agreement shall be deemed for all purposes to be an original signed Agreement.
- 22. No Third-Party Beneficiaries.** This Agreement is not intended to and does not confer any right, power, or benefit on any person other than the Parties and only the Parties may enforce, modify or terminate this Agreement as provided herein. There are no third-party beneficiaries to this Agreement.
- 23. Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof. If one or more paragraphs, sections sentences, clauses, or phrases shall be declared void, invalid or otherwise unenforceable for any reason by the valid, final judgment or decree of any court of competent jurisdiction, such judgment or decree shall not affect the remaining provisions of this Agreement and the same shall continue to be fully effective and enforceable on the basis that said remaining provisions would have been agreed to by the Parties without the incorporation of such void, invalid or otherwise unenforceable paragraph, section, sentence, clause or phrase.
- 24. Time.** Time is of the essence in this Agreement and each and all of its provisions.
- 25. Further Assurances/Corrective Instruments; Good Faith/Due Diligence.** The Parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the intention of this Agreement. The Parties agree to work together in good faith and will all due diligence to provide for and carry out the purpose of this Agreement.

26. Verification of Work Authorization. The Parties shall comply with Article 2, Chapter 64, of the North Carolina General Statutes to the extent applicable.

27. Pre-Audit Requirement. This Agreement has not been fully executed and is not effective until the Preaudit Certificate (if required by N.C.G.S § 159-28) has been affixed and signed by the Parties' finance officers or deputy finance officers.

IN TESTIMONY WHEREOF, the Town of Apex, the Town of Cary, and the Town of Morrisville, pursuant to resolutions of their respective governing boards spread upon their minutes, have caused this Agreement to be executed and attested by their duly authorized officers and their official seals affixed, the day and year first written above.

Town of Cary:

By: _____
Sean Stegall, Town Manager

Attest: _____
Virginia Johnson, Town Clerk

Town of Apex:

By: _____
Drew Havens, Town Manager

Attest: _____
Donna Hosch, Town Clerk

Town of Morrisville:

By: _____
Martha Paige, Town Manager

Attest: _____
Erin Hudson, Town Clerk

EXHIBIT A

Pre-operability Improvements

Terms used in this Exhibit A shall have the same meanings as the identical terms found in the INTERLOCAL AGREEMENT FOR EMERGENCY DISPATCH AND COMMUNICATIONS SERVICES (“Agreement”) to which this is attached.

1. Cary shall be responsible for all costs associated with making the following Pre-operability improvements:

Programming of Answering Positions
Training - Multi-Agency Configuration
Switch to Switch
CAD to CAD (Cary Side)
Direct Fiber Connection to Morrisville - IT (Not Applicable)
Town Hall Networking Equipment
PWUT Networking Equipment
Console Programming
Backup Center Recorder Reconfigure (Includes Additional Radio)
Third Party Connection from Apex to Cary - IT

2. Apex shall be responsible for all costs associated with making the following Pre-operability improvements:

FD MDC Client
FD MDC Hardware – Fire (15)
FD MDC Superior Service - Fire
Fire Station Resource Status Monitors License
Fireworks Customization
CAD to CAD (Apex Side)
Networking Equipment
Fire Station Radios (5)
Fire Reprogramming (95 Radios)
Police Reprogramming (225 Radios with Encryption)
Recorder Reconfigure

3. Morrisville shall be responsible for all costs associated with making the following Pre-operability improvements:

PD MDC Client (50)
PD MDC Hardware (50)
PD MDC Superior Service
FD MDC Client - Fire (15)
FD MDC Hardware - Fire (15)
FD MDC Superior Service - Fire

Fire Station Resource Status Monitors License (5 Monitors)
Direct Fiber Connection to Cary - IT
Networking Equipment
PD Radios
FD Radios
FD Station Radios
PD Reprogramming (108 Radios)
FD Reprogramming (Fire Personnel Handling)

The Parties recognize that there may be additional Pre-operability Improvements that have yet to be identified. Should such improvements be necessary, the costs for which shall be incurred by the Party for whom the improvements are needed to allow that Party to integrate or connect its respective systems to the Primary PSAP or Secondary PSAP.

DRAFT

EXHIBIT B

Performance Standards

The Towns of Apex, Cary, and Morrisville shall work together to assure the provision of accurate, consistent, and timely Communication Services. The Towns are sometimes referred to individually as “Party” and jointly as “Parties.”

1. **Definitions:** Terms used in this Exhibit B shall have the same meanings as the identical terms found in the INTERLOCAL AGREEMENT FOR EMERGENCY DISPATCH AND COMMUNICATIONS SERVICES (“Agreement”) to which this is attached. In addition, the following terms shall be given the meanings defined below:
 - a. “Benchmark” means the service levels identified in Section 2 of this Exhibit B which the Parties shall work towards achieving for single processes.
 - b. “Baseline” means the service levels for the measurable activities identified in Section 2 that are actually achieved by the Primary PSAP at the time Agreement is entered into. An individual Baseline is the quantitative representation of the actual performance of the Primary PSAP for a single process.
 - c. “Call Answering Time” means the time between when the Primary PSAP receives a 9-1-1- call until the time the call is acknowledged by an ECO. (The time it takes for the EOC to answer a 9-1-1 call);
 - d. “Call Handling Time” means the total of the Call Answering Time, Call Transfer Time (if applicable), and the Call Processing Time;
 - e. “Call Processing Time” means the time between when a call is acknowledged by an ECO and the ECO begins to relay information via voice or electronic about the call to the appropriate Public Safety Responders;
 - f. “Call Transfer Time” means the time between when an ESO determines a received call needs to be Transferred to the Secondary PSAP and the time when the Transfer of that call to the Secondary PSAP is completed;
 - g. “Computer-Aided Dispatch” (“CAD”) means a combination of hardware and software used by ECOs that provides data entry, makes resource recommendations, and notifies and tracks those resources before, during, and after 9-1-1 calls, and preserves records of those calls and status changes for later analysis.
 - h. “Emergency Communication Officer” (“ECO”) means an individual handling calls from within the Primary PSAP.

- i. "Timestamp" means information encoded by ECOs into CAD entries by that identify when certain events occur.

2. Service Level:

- a. **Benchmarks:** The Parties shall continually work towards the reduction of the intervals between Baseline performance and these agreed upon Benchmarks:

- i. **For Calls that Require Fire Department Response:**

- 1) **Call Answering Time Benchmark:** Ninety-five percent (95%) of calls answered within 15 seconds.

- 2) **Call Processing Time Benchmark.**

- (1) For the eight types of calls listed below, the Call Processing Time Benchmark shall be ninety percent (90%) of calls processed within 90 seconds:

- i. Calls requiring emergency medical dispatching questioning and pre-arrival medical instructions;
 - ii. Calls requiring language translation;
 - iii. Calls requiring the use of a TTY/TDD device or audio/video relay services;
 - iv. Calls of criminal activity that require information vital to emergency responder safety prior to dispatching units;
 - v. Hazardous materials incidents;
 - vi. Technical rescue;
 - vii. Calls that require determining the location of the alarm due to insufficient information; and
 - viii. Calls received by text message.

- (2) For all other calls, the Call Processing Time Benchmark shall be ninety percent (90%) of calls processed within 64 seconds.

- 3) **Call Transfer Time Benchmark:** Ninety-five percent (95%) of 9-1-1 Calls received by the Primary PSAP that are determined to need to be Transferred to the Secondary PSAP are then Transferred within 30 seconds of that determination being made.

- ii. **For Calls the Require Police Department Response:**

- 1) **Call Processing Time Benchmark**: Maintain an average Call Processing Time for Emergency Response call types at or less than 90 seconds.

- b. **Call Transfers**: When a 9-1-1 call needs to be transferred from the Primary PSAP to the Secondary PSAP:
 - i. The ECO shall Transfer the call without delay;
 - ii. The ECO shall advise the caller of the transfer; and
 - iii. The ECO shall maintain the call connection until it is certain that the Transfer is complete and verified by the Secondary PSAP.

- c. **Timestamps**: When possible, ECOs shall cause to be applied Timestamps to individual CAD entries for the purposes of incident response data aggregation and review. Said Timestamps may include, but are not limited to:
 - i. **For Calls the Require Fire Department Response:**
 - 1) Working Fire
 - 2) Command established
 - 3) Rapid Intervention Crew (“RIC”) established
 - 4) First Line Entering the Structure
 - 5) Primary Search Complete
 - 6) Secondary Search Complete
 - 7) Ventilation established
 - 8) Utilities controlled (electricity, gas, etc.)
 - 9) Fire Under Control
 - 10) Time at Patient (“TAP”)
 - 11) Event Under Control
 - 12) Extrication Complete

 - ii. **For Calls the Require Police Department Response:**
 - 1) One Detained
 - 2) Clearing Building
 - 3) In Custody
 - 4) K9 Warning
 - 5) K9 Release
 - 6) K9 Search
 - 7) CEW Deployed (CEW standing for “Conducted Electrical Weapon”)

3. **Data Reporting**: The Parties shall, upon request, make available to one another Baseline and Benchmark data to assist each Party in evaluating its current processes and for preparation of monthly, quarterly, or annual reports. In addition and upon request, the Parties shall make available to one another Primary and Secondary PSAP data for the purposes of analyzing specific Dispatch events.

4. **Quality Assurance Standards:** Cary acknowledges that Apex and Morrisville seek to continue to meet their respective community expectations as they relate to the provision of Communications Services and shall strive to provide Apex and Morrisville with a level of service supporting each agencies' goal to meet those expectations. Cary shall make any documentation required to meet these goals available to Apex and Morrisville staff upon request. Apex and Morrisville shall make any such requests in a manner that provides Cary with the amount of time to provide the requested data within a time period acceptable to Cary and the requesting Party.

DRAFT

EXHIBIT C

Cost per Dispatch/Transfer Valuation

- A. For the first three (3) years of Initial Term, the costs of each Dispatch/Transfer shall be valued as shown below. These values are amounts determined by and detailed in the PSAP Service Improvement Study:

Agency	Cost per Dispatch
Apex	
Apex Fire Department	\$15.50
Cary	
Cary Police Department	\$21.56
Cary Fire Department	\$15.50
Morrisville	
Morrisville Police Department	\$21.56
Morrisville Fire Department	\$15.50

Agency	Cost per Transfer
Apex	
Apex Police Department	\$13.48

- B. **Cost per Dispatch.** For the remaining years of the Initial Term after the third and for all Renewal Terms, the Cost per Dispatch for each Public Safety Responder agency type except the Apex Police Department shall be calculated based on the following formula:

The cost per call for North Carolina as determined by the most recent FCC Annual Report to Congress on State Collection and Distribution of 9-1-1 Fees.	X	A growth factor percentage representing the average increase in call volume for the Parties over the prior three (3) years.	X	A response factor percentage representing the average percentage of calls Dispatched by the Primary PSAP per Public Safety Responder agency type over the prior three (3) years.
---	---	---	---	--

A similar formula was utilized by the Study in determining the initial Cost per Dispatch values outlined in Section A of this Exhibit C. These figures will be used to provide an example of how the formula will function:

As of the date of the execution of this Agreement:

- a. The FCC Annual Report to Congress on State Collection and Distribution of 9-1-1 Fees identified the cost per call for North Carolina to be \$11.83.
- b. The amount of calls each Party received over the prior three years, when taken together, increased by 14%. This percentage is the “growth factor percentage” that is then applied to the \$11.83. \$11.83 multiplied by 14% (or 1.14) results in a value of \$13.48.
- c. The amount of calls Dispatched by the Primary PSAP will differ between Public Safety Responder agency type; traditionally, Police agencies are Dispatched at higher rates than Fire and Emergency Medical Services (“EMS”). The “response factor percentage” for each agency type is the percentage of Dispatches the Primary PSAP Dispatches for that particular agency.

The Study used the national average percentage of Dispatched Police and Fire calls to determine its response factor percentages, which resulted in a response factor percentage of sixty percent (60%) to be applied to Police calls and a response factor percentage of fifteen percent (15%) to be applied to Fire calls. The remaining fifteen percent (15%) were EMS calls.

These response factor percentages were then applied to the \$13.48. \$13.48 multiplied by 60% results in a value of \$21.56, which is the final Cost per Dispatch for Police calls. Similarly, \$13.48 multiplied by 15% results in a value of \$15.50, which is the final Cost per Dispatch for Fire calls.

For the purposes of this Agreement, the response factor percentages will be determined from the average percentage of Dispatches performed by the Primary PSAP over the prior three (3) years, not the national average as reported in the Study. In addition, because the Parties intend for the Primary PSAP to Dispatch Fire Public Safety Responders to all EMS calls in addition to Fire calls, the response factor percentage for the Cost per Dispatch for Fire calls shall be the total percentages of both Fire Dispatches and EMS Dispatches performed by the Primary PSAP.

- C. **Cost per Transfer** For the remaining years of the Initial Term after the third and for all Renewal Terms, the Cost per Transfer for the Apex Police Department shall be calculated based on the following formula:

The cost per call for North Carolina as determined by the most recent FCC Annual Report to Congress on State Collection and Distribution of 9-1-1 Fees.	X	A growth factor percentage representing the average increase in call volume for the Parties over the prior three (3) years.
---	---	---

A similar formula was utilized by the Study in determining the initial Cost per Transfer value outlined in Section A of this Exhibit C. These figures will be used to provide an example of how the formula will function:

As of the date of the execution of this Agreement:

- a. The FCC Annual Report to Congress on State Collection and Distribution of 9-1-1 Fees identified the cost per call for North Carolina to be \$11.83.
- b. The amount of calls each Party received over the prior three years, when taken together, increased by 14%. This percentage is the “growth factor percentage” that is then applied to the \$11.83. \$11.83 multiplied by 14% (or 1.14) results in a value of \$13.48.
- c. Calls that are Transferred to the Secondary PSAP are not Dispatched by the Primary PSAP, so no response factor percentage is applied to the \$13.48 and the Cost per Transfer for the call remains at that value.

EXHIBIT D

PSAP Service Improvement Study

DRAFT