

AGREEMENT FOR REIMBURSEMENT

This Agreement for Reimbursement (hereafter “Agreement”) is made by and between the Town of Cary, a North Carolina municipal corporation (hereafter “Cary”) and the Town of Apex, a North Carolina municipal corporation (hereafter “Apex”). Apex and Cary are sometimes hereinafter referred to collectively as the “Parties.”

RECITALS

WHEREAS, Apex desires to procure software to assist with its long-range transit planning,

WHEREAS, Cary has an existing agreement with a third-party contractor (Remix Technologies, LLC, Town of Cary Agreement EN23-052-00) providing transit planning software as a service for GoCary transportation services (hereafter “Platform”);

WHEREAS, Cary and Apex as neighbors in the region collaborate on transit planning activities;

WHEREAS, Apex requests authorization to utilize the Platform for future transit planning in Apex;

WHEREAS, Cary has authorized Apex to utilize the Platform, and Apex has agreed to reimburse Cary for this additional expense and amendment to EN23-052-00, and according to the further terms and conditions, set forth herein.

WHEREAS, this Agreement is authorized by N.C.G.S § 160A-20.1.

NOW THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt of which is acknowledged, the parties agree as follows:

1. **RECITALS; PURPOSE.** The recitals are incorporated into this Agreement. This Agreement shall be effective upon execution by both parties (“Effective Date”). This Purpose of this Agreement is for Apex to reimburse Cary for the costs of Cary amending Agreement EN23-052-00 to allow Apex to access the Platform for the 2024 fiscal year, incorporated herein by reference (“Services”).
2. **COMPENSATION:** Apex shall pay to Cary the total sum of eleven thousand two hundred fifty dollars (\$11,250.00) for provision of Services. Payment shall be made within thirty (30) days of receipt of an invoice from Cary.
3. **DURATION AND TERM OF AGREEMENT.** This agreement shall become effective on the date of the full execution of this Agreement (“Effective Date”) and shall terminate on July 31,

2024. The Parties may extend the term of this Agreement by a separate written instrument executed by both Parties.

4. TERMINATION. Either Cary or Apex may terminate this Agreement by notice to the other party at any time as follows:
 - (a) If the other party is in breach of any material obligation hereunder, by causes and reasons within its control, and has not cured such breach within thirty (30) days after notice requesting cure of the breach, provided, however, that if the breach is not capable of being cured within thirty (30) days of such written notice, the Agreement may not be terminated so long as the breaching party commences and is taking commercially reasonable actions to cure such breach as promptly as practicable.
 - (b) Either party may terminate this Agreement for its own convenience at any time by giving ten (10) days written notice to all Parties. If the Agreement is terminated by either party for convenience, Cary will be paid for the portion of its Services provided up to the effective date of termination.
5. NO JOINT AGENCY AND NO PERSONNEL. No joint agency is established by this Agreement, and this Agreement does not create a partnership, joint venture, other joint endeavor, joint ownership, joint operations, or personnel sharing of any kind. No joint personnel are needed by the Parties to carry out this Agreement; this Agreement does not provide for the appointment of any personnel joint or otherwise.
6. AMENDMENT. This Agreement may be amended at any time by the mutual written consent of both Parties.
7. NOTICE. All notices and other communications required or permitted by this Agreement shall be in writing and shall be given either by personal delivery, or deposited in the United States mail, postage prepaid, addressed as follows:

The notice address for Cary shall be:

Attn: Kelly Blazey
Town of Cary
316 North Academy Street
Cary, NC 27513

The notice address for Apex shall be:

Attn: Shannon Cox
Town of Apex Planning Department
PO Box 250
Apex, NC 27502

8. DISPUTE RESOLUTION; GOVERNING LAW; VENUE. In the event a dispute arises between the Parties regarding performance under this Agreement, the Parties agree to bargain

in good faith towards a mutual resolution. If the Parties, after honest good faith negotiations, cannot reach a mutually agreeable resolution of the dispute, then a Party may adjudicate its dispute as allowed by North Carolina State Laws. This Agreement shall be governed by the laws of the State of North Carolina. Any and all suits or actions related to this Agreement shall be brought in Wake County, N.C.

9. NON-EXCLUSIVE REMEDIES/NO WAIVER. The selection of one or more remedies for breach shall not limit a Party's right to invoke any other remedy available under Agreement or by law. No delay, omission or forbearance to exercise any right, power or remedy accruing to a Party shall impair any such right, power or remedy or shall be construed to be a waiver of any breach hereof or default. Every right, power or remedy may be exercised from time to time and as often as deemed expedient.
10. NO THIRD PARTY BENEFICIARIES. There are no third party beneficiaries to Agreement.
11. NO WAIVER OF IMMUNITY. Nothing in this Agreement shall be construed to mandate purchase of insurance by Cary pursuant to N.C.G.S. § 160A-485 or to in any way waive Cary's defense of governmental immunity from any cause of action alleged or brought against any Party for any reason if otherwise available as a matter of law. No officer, agent or employee of Cary shall be subject to any personal liability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute this Agreement in their official capacities only, and not in their individual capacities. This section shall not relieve any such officer, agent or employee from the performance of any official duty provided by law.
12. NONDISCRIMINATION. To the extent permitted by law, neither Party, their officers, employees, contractors, agents, successors, or permitted assigns, shall discriminate against any member of a protected class as defined by federal, state, or local law, including Wake County Code of Ordinances Section 34.01.
13. PUBLIC RECORDS; CONFIDENTIAL RECORDS AND INFORMATION. Apex acknowledges that records made or received in connection with the transaction of public business are public records and subject to public records requests. Cary may provide copies of such records, including copyrighted records, in response to public record requests, except that, upon request of and indemnification by Apex, Cary will not disclose records that meet all of the requirements of a trade secret as set forth in N.C.G.S. § 66-152, that are specifically designated as a "trade secret" or "confidential" at the time of initial disclosure by contractor, and that are otherwise entitled to protection under N.C.G.S. § 132-1.2(1). Apex shall make Cary aware of any public records requests made in regard to Platform or this Agreement. If Apex, its employees or subcontractors, during provision of Platform, becomes aware of or has access to confidential records or information or information otherwise protected from disclosure by Federal or State law ("Confidential Information"), Apex, its employees and subcontractors, shall not disclose any such Confidential Information.
14. ELECTRONIC VERSION OF AGREEMENT. Cary may convert a signed original of this Agreement to an electronic record pursuant to an approved 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 this Agreement shall be deemed for all purposes to be an original signed Agreement.

15. ELECTRONIC SIGNATURES. Apex acknowledges and agrees that the electronic signature application DocuSign may be used, at the sole election of Cary, to execute this Agreement and any associated documents. By selecting "I Agree," "I Accept," or other similar item, button, or icon via use of a keypad, mouse, or other device, as part of the DocuSign application, Apex consents to be legally bound by the terms and conditions of this Agreement and that such act constitutes Apex's signature as if actually signed by Apex in writing. Apex also agrees that no certification authority or other third-party verification is necessary to validate its electronic signature and that the lack of such certification or third-party verification will not in any way affect the enforceability of its electronic signature. Apex acknowledges and agrees that delivery of a copy of this Agreement or any other document contemplated hereby, through the DocuSign application, will have the same effect as physical delivery of the paper document bearing an original written signature.

Remainder of page left blank intentionally.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officials.

APEX, Town of Apex

Catherine Crosby, Town Manager

Date

Attest:

Allen Coleman, Town Clerk

Date

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act:

Antwan Morrison, Finance Director

Date

CARY, Town of Cary

Kelly A. Blazey, Transit Director

Date

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

Deputy Finance Officer

Date