

GOAPEX AGREEMENT

This Agreement ("Agreement") is made by and between **Town of Cary** (hereinafter "Cary"), a North Carolina municipal corporation having its office at 316 North Academy St., Cary, NC 27513, **Town of Apex** (hereinafter, "Apex"), a North Carolina municipal corporation having its office at 73 Hunter St., Apex, NC 27502, and Cary's bus services contractor **MV Transportation, Inc.** ("MV Transportation") a corporation duly organized under the laws of the State of California and duly qualified to transact business in the State of North Carolina having an office at 2711 N. Haskell Ave., Suite 1500-LB2, Dallas, TX 75204. The foregoing may be individually referred to herein as "Party" and collectively referred to as "Parties."

Cary provides a transit service called GoCary. Pursuant to an agreement between Cary and MV Transportation ("GoCary Agreement"), MV Transportation is GoCary's service provider. MV Transportation will extend transit service to Apex pursuant to the terms of this Agreement.

Apex is utilizing the services of MV Transportation pursuant to this Agreement to provide a public bus service called "GoApex Route 1" (hereinafter "Route 1" or "Service") with the respective responsibilities and duties of the Parties as listed below.

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. Term

The Agreement shall become effective upon execution by all Parties ("Effective Date") and shall expire June 30, 2023. The Route 1 initial date of service will begin at a date agreed upon via email by the Town of Cary Transit Administrator, Town of Apex Long Range Planning Manager, and MV's General Manager. The Parties may extend the term in one-year increments for a period up to three (3) additional years. In January of each year of this Term, Cary and Apex will begin to confer and to review MV Transportation's performance and projected cost for the coming contract year. The option for extending the term of the Agreement must be agreed upon by the Parties in writing at least ninety (90) days before the end of the current term.

2. Operations

The purpose of this Agreement is to set forth the duties and responsibilities of each Party in the provision of Route 1 service. GoApex Route 1 will be a fixed-route transit service open to the general public. Operational characteristics of the Service may be changed for the benefit of any party upon written approval by all Parties.

A. Cary shall have the following responsibilities:

1. Finalize the alignment for Route 1, including the schedule, the span of

revenue service (the time when a vehicle is available to the general public and there is an expectation of carrying passengers), and the timing of revenue service, after collaboration with Apex. Cary agrees to consult with Apex on these elements to maximize regional coordination. Any material change in the route alignment, stop locations, schedule, span of service, timing of service, or overall operation of Route 1 must be agreed to in writing by both parties. Cary will respond to all communications and requests by Apex within ten (10) business days unless such communication or request is specifically identified by Apex as an “Urgent Operational Concern” Cary will respond within two (2) business days. Cary will provide feedback to Apex on the operation of the service.

2. Assist Apex where reasonably possible (in Cary’s sole discretion) in the provision of information about and marketing of Route 1. This may include reviewing and providing comments on marketing materials, participating in outreach events, and assisting with coordination with other regional transit providers.
3. Provide Apex a minimum of 15 days written notice of potential service disruption, except in the case of service disruption due to inclement weather, safety concerns, or other emergency situations in which case notice will be provided as soon as reasonably possible. Cary has final authority on all changes to service level. Cary will attempt to maintain service on all scheduled routes dependent on available resources. Action plans for service disruptions will be communicated by email to the MV Transportation General Manager and Town of Apex Long Range Planning Manager, or designee.
4. Cary shall report Route 1 operating statistics to comply with deliverables outlined in the General Operating Agreement for Bus Operations – Community Funding Area Program executed between the Town of Apex, GoTriangle, and Capital Area Metropolitan Planning Organization (Wake Transit Operating Agreement), including ridership by date, revenue and deadhead hours, revenue and deadhead miles, missed trips, and a log of customer complaints and resolutions, all in an editable format, to Apex by the 15th of the month following the month of service.

B. MV Transportation shall have the following responsibilities:

1. Operate Route 1 on all weekdays and Saturdays according to the operating schedule set forth in Section 2.A.1, except for the holidays listed in Exhibit A, attached and incorporated by reference, or as otherwise agreed to in writing by the Parties. By February 15th of the preceding fiscal year, Cary agrees to provide a revised list of holidays during which time GoCary and Route 1 will not be operated during the subsequent fiscal year. Apex agrees to provide annually a revised list of holidays, if any, during which time Route 1 will or will not be operated by March 1st.

2. Ensure appropriate usage and placement of any identifying Route 1 materials on vehicles, including bus wraps, or other appropriate industry accepted signage as agreed upon, and paper schedules.
3. Use Americans with Disabilities Act (ADA) accessible light transit vehicles (LTVs) with a seated capacity of no less than 16 persons, equipped with automated vehicle locators (AVL) and which comply with all applicable federal and state laws and regulations.
4. Agree that if any vehicle intended for, or normally used for Route 1 service is inoperable for any reason, MV Transportation will immediately deploy another vehicle of equal or greater seating capacity which is compliant as required in subsection 2.B.3. MV Transportation will ensure that any vehicle deployed will have either a bus wrap or other industry-accepted signage identifying it as a GoApex vehicle.
5. MV Transportation shall operate Route 1 in accordance with all governing agency regulations and shall be held to the same standard and shall exercise the same degree of care, skill, and judgment in the performance of services as is ordinarily provided by a similar professional under the same or similar circumstances at the time in North Carolina. MV Transportation is responsible for the maintenance, cleaning, and safe operation of all vehicles used in providing the Service as well as any claims, demands, suits or losses, including all costs connected therewith, for any damages which may be asserted, claimed or recovered for personal injury, including bodily injury or death and/or property damage, including loss of use thereof, resulting from the negligence of MV Transportation.
6. Maintain, throughout the term of the Agreement and any extensions of the term, commercial general liability, auto and umbrella/excess insurance policies at its expense, covering personal injury and property damage on and in the vehicles and inside and outside the park and ride lots. The policies shall have at least the coverage amounts specified in Section 19 of this Agreement and at no time during the term of this Agreement shall coverage amounts be less than the coverage amounts required of MV Transportation by the GoCary Agreement. Cary and Apex shall be named as an additional insured on the general liability, business auto liability, and umbrella/excess policies and the policies will be primary and non-contributory. At Apex or Cary's written request, MV Transportation shall provide certificates of insurance referencing that the coverage is primary and non-contributory with copies of the Additional Insured Endorsement attached. Apex or Cary may request complete, certified copies of the policies. Notwithstanding the foregoing, neither the requirement of MV Transportation to have sufficient insurance nor the requirement that Cary and Apex are named as additional insureds, shall constitute waiver of either Town's governmental immunity in any respect, under North Carolina law.
7. Prepare and maintain on a form developed by Cary or MV Transportation

on-going statistical, operational, and service data related to Route 1 separately from regular GoCary data. This includes but is not limited to the following: Vehicle Pre-Trip Inspection Checklist sheets, monthly reports that include total road calls, passenger trips, vehicle miles and vehicle hours, and any other daily, monthly, and/or annual data as required by FTA under the National Transit Database (NTD) program requirements. This information shall be provided to Apex upon request.

8. Report all passenger or vehicle accidents to Cary within one (1) hour of occurrence and follow-up with a detailed written accident report within twenty-four (24) hours. Cary will provide this information to Apex's Planning Director and/or designee by email as soon as is reasonably practical, but no more than 48 hours after the accident.

C. Apex shall have the following responsibilities:

1. Apex shall build or provide ADA accessible bus stops as identified in Exhibit C, or additional future bus stops proposed by Apex with Cary's written approval. Apex shall maintain the bus stops used for the Service as identified in Exhibit C. Exceptions are stops that are either: (1) shared by a regional provider or (2) located on private property. Maintenance includes maintaining and upkeeping all associated transit amenities, including cutting or trimming of any vegetation; routine cleaning of the transit amenities, including the removal of litter and trash from trash receptacles; snow and ice removal; and maintaining ADA accessible conditions.
2. Provide employees of MV Transportation with access to restroom facilities during all periods of revenue service, including any keys or other methods of entry needed to access such a facility. These locations will be agreed to in writing by all parties.
3. Obtain National Transit Database (NTD) ID and complete annual NTD reporting.
4. Determine the fare, if any, to be charged for the Service. The initial service will be implemented fare-free. If Apex decides to charge a fare, Apex is solely responsible for determining and procuring technology, developing policies and procedures, conducting public involvement and marketing, and paying any associated implementation and operating costs.
5. Respond to all communications and requests by Cary within ten (10) business days, unless such communication or request is specifically identified by Cary as an "Urgent Operational Concern," in which case Apex will respond within two (2) business days.
6. Establish and implement a plan for marketing Route 1, including: designing and printing schedule brochures or other informational literature; providing such literature to Cary for distribution on vehicles; and following, at a minimum, engagement standards outlined in the Wake

Transit Public Engagement Policy (“Engagement Policy”). Materials must be consistent with the service provided. Materials with a GoCary logo, image of a vehicle or person covered by the GoCary Agreement, or any other reference to GoCary, are subject to Cary review and approval to ensure accuracy of information. Images of vehicles or person(s) covered by the GoCary Agreement may be pre-approved for general use in public materials, eliminating the need for review and approval for each use.

7. Report all Route 1 operating statistics in compliance with the deliverables associated with the Wake Transit Operating Agreement.

3. Funding and Billing

- A. Apex will pay for the cost of installing GoApex branding on the bus operating the Service. MV Transportation shall provide a quote for the installation of the images subject to Town of Apex approval. Following completion and inspection of the installation by the Town of Apex, Town of Cary shall invoice the Town of Apex. The invoice shall be paid by the Town of Apex within 30 days of receipt. Apex is responsible for any costs associated with the removal of branding and other identifying characteristics from vehicles and the cost to fabricate and install replacement GoCary wraps on the vehicles at the conclusion of the service agreement.
- B. Apex will pay Cary the annual operating cost for the Route 1. Costs may be reduced based on any grants, fare revenue collected, or other monetary contributions received from Cary from any other party, if applicable. The annual operating cost as agreed by the Parties is determined by the following formula: operating cost per hour (\$97.50) multiplied by the number of platform hours per day multiplied by the number of operating days per year. Platform hours are the revenue plus deadhead hours (deadhead hours are times when the bus is away from the maintenance facility but not in revenue service, including travel to and from the facility to the service start/end location). Cary will inform Apex of any changes to its operating cost per hour and the justification therefore, no later than February 15th of each year. Operating cost is a fully allocated rate which includes the full cost of the service provided by MV Transportation, fuel, capital expenses and overhead for Cary. It is expected that, at a minimum, the operating cost per hour will be adjusted based on the Municipal Cost Index (MCI), as calculated by Cary.

All service information will be reported to the National Transit Database (NTD). Apex must obtain an NTD ID and submit all Route 1 data. Cary and MV Transportation will assist Apex in this reporting. As a result, Cary and Apex agree that the provision of Route 1 service may increase the amount of Federal Transit Administration (FTA) formula grant funding that can be acquired by Cary. If Cary secures FTA Section 5307 and Section 5339 formula grant funds that are attributable to Route 1, Cary will deduct from its billing of Apex for the operation of Route 1 an amount equal to the share of FTA Section 5307 and Section 5339 funds allocated to Cary for the preceding

federal fiscal year (October 1 – September 30) that is attributable to Route 1, starting with the fourth fiscal year following the first fiscal year of annual reporting. This deduction may be applied on a prorated monthly basis.

- C. Cary will provide a monthly invoice to Apex within fifteen (15) days after the end of each month of Service. Apex shall reimburse Cary within thirty (30) days of receipt of an invoice. In the event Apex finds any part of an invoice inconsistent with this Agreement, Apex shall clearly identify and provide evidence to Cary of any inconsistent or erroneous expenses within ten (10) days of receipt of an invoice and Cary will work in good faith to determine if there is an error in the invoice.
- D. MV Transportation will be compensated by Cary pursuant to the terms of the GoCary Agreement.

4. ADA and Paratransit Requirements

- A. MV Transportation agrees to provide Route 1 service in a manner that meets all applicable ADA public transit requirements, including the policies, regulations and training of all operators in the safe use of all ADA equipment. Requirements may include, as appropriate, providing ADA accessible vehicles on fixed route service, knowledge of mobility device tie-down procedures, operation of bus kneeling feature (if available), appropriate use of the public address and talking bus technologies, and knowledge of service animal regulations.
- B. Apex will be responsible for providing all complementary ADA paratransit service to Route 1. Cary and MV Transportation will not be required to provide complementary ADA paratransit service as part of this Agreement.

5. Technology

MV Transportation agrees to install and utilize the standard technology platform agreed to between Cary and MV Transportation, including Computer-Aided Dispatch/Automated Vehicle Locator systems (CAD/AVL), equipment for counting passenger totals, camera systems, Automated Passenger Counters (APCs), head signs, announcement systems, wi-fi routers, real-time passenger information, and communication systems between drivers and dispatch. Costs of these platforms will be included in the hourly rate.

6. Termination for Failure to Perform ("Breach")

The Parties agree that in the event that a Party breaches any provision of this Agreement, within sixty (60) days of receipt of written notice from a non-breaching Party, the breaching Party will cure the breach to the reasonable satisfaction of the non-breaching Party if the breach can be cured. Any breach of this Agreement

materially impacting operation of GoApex service (“Operation Breach”) shall require immediate response and a plan of action to cure the breach within fifteen (15) days of receipt of written notice from a non-breaching party which clearly states that such breach is considered an Operation Breach. If the breach is not timely cured, or cannot be cured, then, the non-breaching Party may, at its election, terminate the Agreement. The Parties will cooperate on a winding down of the Service, including reasonable notice to the public. Apex shall pay Cary for Service provided prior to date of termination.

7. Termination for Convenience

Any Party may terminate this Agreement at any time for any reason, provided the terminating Party provides a minimum of one hundred eighty (180) days advance written notice to the other Parties. In this event, the Parties will cooperate on a winding down of the service, including reasonable notice to the public. Apex shall pay Cary for the Service provided prior to the date of termination.

8. Customer Information and Complaint Handling

- A. Apex agrees to receive and respond to customer complaints regarding stop-related issues applicable to Route 1.
- B. MV Transportation will utilize existing customer service and dispatch staff during all hours of operation to respond to inquiries about immediate operational concerns. MV Transportation will work to resolve complaints within 48 hours of receipt, with follow-up to the complainant within one week after receipt. MV Transportation will maintain a separate complaint log that will include both the nature of the complaint and the resolution thereof and share with Cary and Apex on a monthly basis.
- C. The GoTransit Regional Information Center, operated by GoTriangle, is the call center responsible for most transit-related inquiries in the Triangle region. Cary contracts with GoTriangle for usage of this call center. Apex, in coordination with Cary, agrees to provide current schedule and stop location information to the Regional Information Center, which the Parties agree will serve as the primary point of contact for customer information about Route 1.

9. Further Agreements

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 with due diligence to provide for and carry out the purpose of this Agreement.

10. Amendment

Any modification of this Agreement shall be made by Written Agreement.

11. Notices

Any notice given pursuant to this Agreement shall be deemed given if delivered by hand or if deposited in the United States Mail, postage paid, certified mail, return receipt requested and addressed as follows:

If to Cary:

Transit Administrator
Town of Cary
316 N. Academy St.
Cary, NC 27513

With a copy to:

Senior Transit Planner (Service)
Town of Cary
316 N. Academy St.
Cary, NC 27513

If to Apex:

Town Manager
Town of Apex
Physical - 73 Hunter Street
Mail - PO Box 250
Apex, NC 27502

And with copy to:

Senior Long Range Transit Planner
Town of Apex
Physical - 73 Hunter Street
Mail - PO Box 250
Apex, NC 27502

If to MV Transportation:

Regional Vice President for Division 178
MV Transportation, Inc.
2711 N. Haskell Av., Suite 1500-LB2
Dallas, TX 75204

With a copy to: contractsreview@mvtransit.com

12. Binding Effect

This Agreement shall be binding upon and inure to the benefit of the Parties and their agents, grantees, successors, and assigns.

13. Dispute Resolution

In the event a dispute arises between the Parties to this Agreement concerning a question of fact in connection with the requirements of this Agreement or compensation therefore, the Parties agree to bargain in good faith towards a mutual resolution. If the Parties, after honest good faith negotiations, cannot reach an agreement, then either Party may adjudicate their dispute as allowed by North Carolina State Law.

14. Force Majeure

The Parties shall not be liable to each other for any failure, delay, or interruption of service or for any failure or delay in the performance of any obligation under this contract due to strikes, walkouts, unusual adverse weather, governmental restriction, enemy action, civil commotion, unavoidable casualty, unavailability of fuel or parts, epidemic, pandemic, or other similar acts beyond the reasonable control of the Parties (“Force Majeure Event”). In the event a Party believes a Force Majeure Event has occurred (“Invoking Party”), the Invoking Party shall provide written notice to the other Party within fifteen (15) days of the date on which the Invoking Party determines that the Force Majeure Event will render performance to be impossible (including temporary delays). Thereafter, the Invoking Party shall diligently and in good faith act to the extent within its power to remedy the circumstances affecting the specific performance noticed and to complete its performance in as timely a manner as is reasonably possible. In no event shall the delayed performance be longer than the duration of the noticed Force Majeure Event without the joint written approval of the other Party.

15. Verification of Work Authorization

All Parties, and any permitted subcontractors, shall comply with Article 2, Chapter 64, of the North Carolina General Statutes.

16. Compliance with Federal Laws and Regulations

The following federal provisions apply pursuant to 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II (as applicable), unless a more stringent state or local law or regulation is applicable: Equal Employment Opportunity (41 C.F.R. Part 60); Davis-Bacon Act (40 U.S.C. 3141-3148); Copeland “Anti-Kickback” Act (40 U.S.C. 3145); Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708); Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387); Debarment and Suspension (Executive Orders 12549 and 12689); Byrd Anti-Lobbying Amendment (31 U.S.C. 1352); Procurement of Recovered Materials (2 C.F.R. § 200.322); and Record Retention Requirements (2 CFR § 200.324); and any other federal

provisions required by law.

17. Cary Branding

Apex and MV Transportation shall not use the seal, logo, or any other branding identifiers of GoCary or the Town of Cary.

18. Representations and Warranties

The individuals signing the Agreement have the right and power to do so and bind their respective parties to the obligations set forth herein, and such individuals do so personally warrant that they have such authority.

19. Insurance

MV Transportation and MV Transportation's permitted subcontractors shall purchase and maintain on a primary basis and at its sole expense during the term and for three years after the termination of this Agreement insurance or self-insurance for the following: protection from claims under Worker's or Workmen's Compensation Acts covering claims arising out of or related to bodily injury, including bodily injury, sickness, disease or death of any of MV Transportation's employees or subcontractors; Commercial General Liability Insurance, including contractual liability and covering bodily injury, property damage, products and completed operations and personal injury; Commercial Automobile Liability Insurance, including owned, hired and non-owned vehicles, if any, covering bodily injury and property damage; Cyber Liability covering infringement, information theft, release of private information, damage, destruction and alteration of electronic information, extortion, network security, breach response costs, and regulatory fines; and Professional Liability/Errors & Omissions Insurance (if applicable) covering claims arising out of or related to MV Transportation's performance under this Agreement.

Minimum limits of insurance coverage are:

General Liability	\$2,000,000 per occurrence/ \$2,000,000 aggregate
Commercial Automobile Liability	\$2,000,000 CSL
Commercial Excess/Umbrella Liability	\$5,000,000 per occurrence
Workers Compensation	Statutory Limits
Employer's Liability	\$500,000 each accident
Professional Liability	\$1,000,000 per claim
Cyber Liability	\$2,000,000 per claim and aggregate

MV Transportation may satisfy the insurance limits above with a combination of primary and umbrella/excess liability insurance policies or self-insurance. Umbrella/Excess liability shall follow form as to each of the underlying policies. Any available insurance proceeds in excess of or broader than the specified minimum limits of insurance and coverage shall be available to Cary and Apex, as applicable based on loss.

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Insurers

The minimum insurance ratings for any company insuring MV Transportation shall be Best's A- or a qualified self-insurance program approved by the state of North Carolina. Should the ratings of any insurance carrier fall below the minimum rating, Cary or Apex, may, at their option, require MV Transportation to purchase insurance from a company whose rating meets the minimum standard. MV Transportation's insurance carrier(s) shall be authorized to do business in the state of North Carolina. If MV Transportation is unable to find an authorized carrier for any line of insurance coverage, MV Transportation shall notify Cary in writing. Cary shall then notify Apex.

Additional Insured Status

All insurance policies (except Workers Compensation and Professional Liability) shall name Cary and Apex, and each Town's elected officials, officers, employees, and volunteers as additional insureds.

Notice of Cancellation

Each policy shall provide that Cary and Apex shall receive not less than thirty (30) days prior written notice, when available, of any cancellation or non-renewal of coverage of any of the policies. Upon notice of such cancellation, non-renewal or if a policy's limits are exhausted, MV Transportation shall procure substitute insurance so as to assure Cary and Apex that the minimum limits of coverage are maintained continuously throughout the periods specified herein.

Primary

MV Transportation's insurance coverage shall be primary for any claims related to this Agreement.

Waiver of Subrogation

The insurer shall have no right of recovery or subrogation against Cary or Apex, or either Town's agents or agencies, it being the intention of the parties that the insurance policies shall protect Cary and Apex and be primary coverage for any and all losses covered by the policies.

Verification of Coverage

A certificate of insurance and all endorsements required shall be provided at, or prior to, execution of this Agreement. Cary's or Apex's review or acceptance of certificates of insurance shall neither relieve MV Transportation of any requirement to provide the specific insurance coverage set forth herein nor shall it constitute a waiver or acknowledgement of satisfaction of the specific insurance requirements set forth in this Agreement.

Certificate Holder addresses should read:

Town of Cary
PO Box 8005
Cary, NC 27512-8005

Town of Apex
PO Box 250
Apex, NC 27502

Special Risks or Circumstances

Cary, with prior written consent from the Town of Apex, reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. Written consent from Apex may be provided by electronic communication.

20. Indemnification

To the fullest extent permitted by law, MV Transportation shall indemnify and hold harmless Cary and Apex, their elected officials, officers, and employees, from and against any and all claims, costs, civil penalties, fines, losses, and damages (including but not limited to professionals' fees and charges and all court or other dispute resolution costs) (collectively "Claims"), by whomsoever brought or alleged, arising out of, resulting from, or in connection with (a) any breach by MV Transportation of any term or condition of Agreement, (b) any breach or violation by MV Transportation of any applicable law or regulation, or (c) any other cause resulting from any act or failure to act by MV Transportation under this Agreement, but only to the extent caused by any negligence, act, or omission of MV Transportation. This indemnification shall survive the termination of Agreement.

21. Independent Contractor

MV Transportation is an independent contractor and is solely responsible for its Services and the supervision of its employees and permitted subcontractors. All persons assigned by MV Transportation to provide Services pursuant to this Agreement shall, for all purposes of this Agreement, be considered employees of MV Transportation only. MV Transportation shall assume the sole and exclusive responsibility for the payment of wages to individuals for services performed under this Agreement and the withholding of all applicable Federal, State, and local taxes, unemployment insurance, and maintaining workers compensation coverage in an amount and under such terms as required by law. If Cary notifies MV Transportation in writing that any person providing Services appears to be incompetent, disorderly, or otherwise unsatisfactory to Cary or Apex, such person shall be removed from the project and shall not again be employed on it except with the prior written consent of Cary. No extension to any "Milestone Date" or completion date will be granted for replacement of such personnel or subcontractors.

22. Public Records

All parties acknowledge that records in the custody of Cary or Apex may be public records and subject to public records requests. Cary or Apex may provide copies of such records, including copyrighted records, in response to public record requests, except that, upon request of and indemnification by MV Transportation, the Town 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 “trade secret” or “confidential” at the time of initial disclosure by the Contractor, and that are otherwise entitled to protection under N.C.G.S. 132-1.2(1).

23. Entire Agreement; Amendments to Agreement

This Agreement represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, or agreements, either written or oral, including clickthrough agreements, clickwrap agreements, clickwrap licenses, or similar non-reciprocal agreements (collectively, “clickthrough agreement”). Agreement may be amended only by written amendment signed by both parties. Neither party may amend, or seek to amend, this Agreement by clickthrough agreement.

24. Dissemination of Information.

Cary takes efforts to assure that accurate information about Cary is disseminated such that neither the public trust nor the public’s perception of Cary impartiality is compromised. MV Transportation and Apex, mindful of those efforts, agrees that they shall not publicly disseminate any information concerning Cary or GoCary, to include images of vehicles or people covered by the GoCary Agreement, without prior approval from Cary. Images of vehicles or person(s) covered by the GoCary Agreement may be pre-approved for general use in public materials, eliminating the need for review and approval for each use. Any approval given by Cary may be given with certain stipulations, such as Cary participation in the creation of the public product or Cary review and the option to refuse ultimate release of the final product should it fail to meet Cary’s standards and goals. “Publicly disseminate” means but is not limited to electronic, video, audio, photographic or hard copy materials serving as, in whole or part, advertising, sales promotion, professional papers or presentations, news releases, articles, or other media products, and/or business collateral pieces. Notwithstanding the foregoing, the parties agree that MV Transportation may list Cary as a reference in response to requests for proposal and may identify Cary as a customer in presentations to potential customers.

25. 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.

26. Survival

All representations, indemnifications and other terms and conditions of Agreement which by their nature should survive Agreement termination shall survive its expiration or termination.

27. 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 either Cary or Apex 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.

28. Gifts and Favors

MV Transportation shall become aware of and comply with laws related to gifts and favors, conflicts of interest and the like, including N.C.G.S. §14-234, N.C.G.S. §133-1, and N.C.G.S. §133-32.

29. Nondiscrimination

No party shall discriminate in violation of any federal, state, or local law. MV Transportation and Apex shall comply with the Americans with Disabilities Act of 1990 ("ADA").

30. Electronic Version of Agreement

Cary 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.

31. No Third Party Beneficiaries

Unless otherwise explicitly stated, there are no third-party beneficiaries to Agreement.

32. Electronic Signatures

Apex and MV Transportation acknowledge and agree 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 and MV Transportation consents to be legally bound by the terms and conditions of this Agreement and that such act constitutes Apex and MV Transportation's signature as if actually signed by Apex and MV Transportation in writing. Apex and MV Transportation also agree 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 and MV Transportation acknowledge and agree 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.

33. Recitals

The Recitals are incorporated into this Agreement.

(SIGNATURE PAGE FOLLOWS)

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

APEX, Town of Apex

Town Manager

Date

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

Finance Director

Date

MV TRANSPORTATION, MV Transportation, Inc.

Chief Financial Officer

Date

CARY, Town of Cary

Assistant Town Manager

Date

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

Deputy Finance Officer

Date

Exhibit A

Initial Span of Revenue Service

Monday – Saturday 6:00 AM to 10:00 PM

GoApex Route 1 does not operate on the following holidays:

New Year's Day

Martin Luther King Jr.'s Birthday

Memorial Day

Independence Day

Labor Day

Thanksgiving Day

Christmas Eve

Christmas Day

Exhibit B

Initial GoApex Route 1 Map

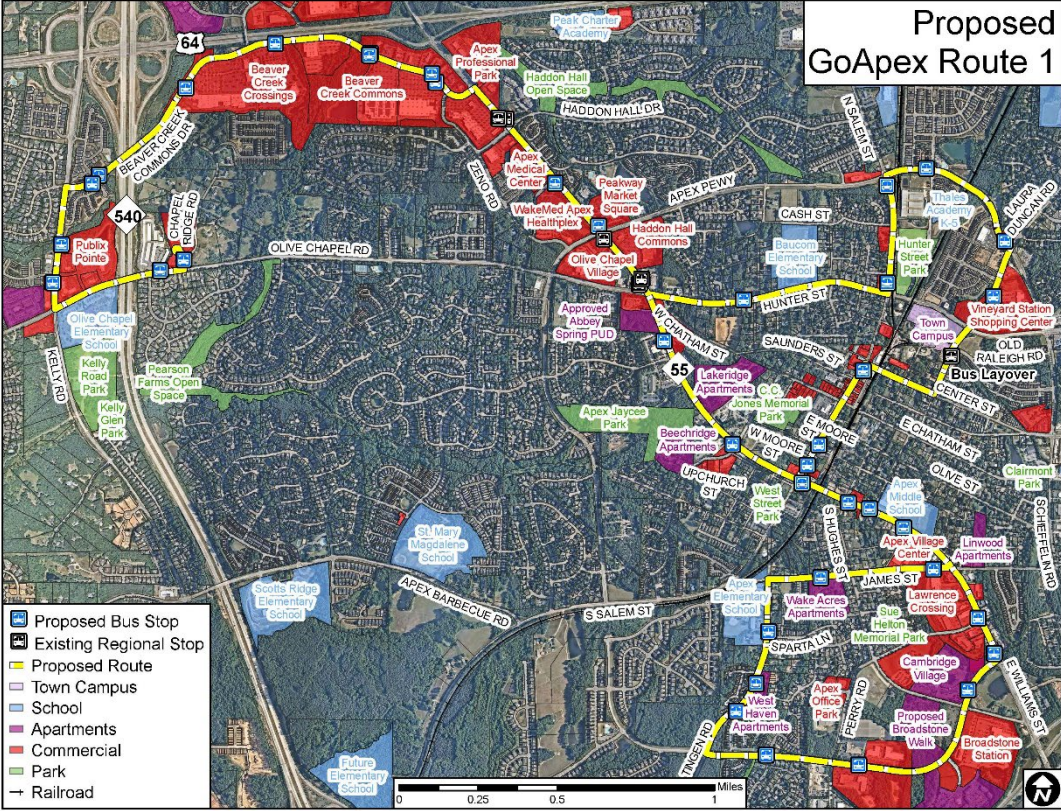


Exhibit C**GoApex Route 1 Initial Bus Stops and Commitments**

Route Order	Bus Stop ID	Bus Stop Name	Direction	Latitude	Longitude	Built by Town of Apex?	Maintained by Town of Apex?	Shared by a regional provider?	Amenities on private property?
1	1452	N Mason St at Old Mill Village Dr (Town Hall (NB))	NB	35.732839	-78.845471	No	Trash removal only	Yes (GoTriangle 305)	
2	1165	Laura Duncan Rd at Vineyard Station (NB)	NB	35.735576	-78.843081	Yes	Yes	Yes (GoTriangle 305)	
3	16005	Apex Peakway at Laura Duncan Rd	WB	35.738116	-78.842433	Yes	Yes		
4	16007	Apex Peakway at Ambergate Station	WB	35.741476	-78.846851	Yes	Yes		
5	16009	N Salem St at Apex Peakway	SB	35.740682	-78.849079	Yes	Yes		
6	11371	N Salem St at Hunter St (Liberty Station (SB))	SB	35.73621	-78.849066	Yes	Yes	Yes (GoCary ACX)	
7	16013	Hunter St at Hillcrest Rd	WB	35.735441	-78.857171	Yes	Yes		
8	1593	W Williams St at Hunter St (NB)	NB	35.736411	-78.862941	No	No	Yes (GoTriangle 311)	
9	16017	W Williams St at Apex Peakway (NB)	NB	35.738837	-78.865363	Yes	Yes		
10	1725	W Williams St at Haddon Hall Dr (NB)	NB	35.743772	-78.870595	No	No	Yes (GoTriangle 311)	
11	16021	Beaver Creek Commons Dr at Chick-fil-A (WB)	WB	35.745855	-78.874754	Yes	Yes		
12	16023	Beaver Creek Commons Dr at Beaver Creek Greenway (WB)	WB	35.7468	-78.878228	Yes	Yes		
13	16027	Beaver Creek Commons Dr at Diamond Dove Ln (WB)	WB	35.741207	-78.893545	Yes	Yes		
14	16029	Kelly Rd at Evening Star Dr (SB)	SB	35.736275	-78.896151	Yes	Yes		
15	16031	Chapel Ridge Rd at Olive Chapel Professional Park	SB	35.737313	-78.888764	Yes	Yes		

Route Order	Bus Stop ID	Bus Stop Name	Direction	Latitude	Longitude	Built by Town of Apex?	Maintained by Town of Apex?	Shared by a regional provider?	Amenities on private property?
16	16033	Olive Chapel Rd at Western Wake Crisis Ministry	WB	35.736819	-78.890092	Yes	Yes		
17	16035	Kelly Rd at Publix Pointe (NB)	NB	35.738028	-78.895671	Yes	Yes		
18	16037	Beaver Creek Commons Dr at Diamond Dove Ln (EB)	EB	35.740821	-78.893927	Yes	Yes		
19	16039	Beaver Creek Commons Dr at Beaver Creek Crossings West	EB	35.745216	-78.888646	Improved	No		Yes
20	16041	Beaver Creek Commons Dr at Regal Cinemas	EB	35.747255	-78.883581	Yes	Yes		
21	16043	Beaver Creek Commons Dr at Beaver Creek Greenway (EB)	EB	35.746706	-78.878278	Yes	Yes		
22	16045	Beaver Creek Commons Dr at Lowe's (EB)	EB	35.745468	-78.874547	Improved	Yes		Yes
23	1731	W Williams St at Haddon Hall Dr (SB)	SB	35.743802	-78.871002	No	No	Yes (GoTriangle 311)	
24	16049	W Williams St at Healthplex Way (SB)	SB	35.740806	-78.867814	Yes	Yes		
25	1723	W Williams St at Apex Peakway (SB)	SB	35.738247	-78.865063	No	No	Yes (GoTriangle 311)	
26	1447	W Williams St at Olive Chapel Rd (SB)	SB	35.736155	-78.863075	No	No	Yes (GoTriangle 311)	
27	16055	W Williams St at Bryan Dr (Post Office)	SB	35.733557	-78.861665	Yes	Yes		
28	16057	W Williams St at Upchurch St	SB	35.728802	-78.85782	Yes	Yes		
29	16059	E Williams St at Salem St	SB	35.727015	-78.8539	Yes	Yes		
30	16061	E Williams St at S Hughes St (Park and Ride (SB))	SB	35.726105	-78.851297	Yes	Yes		
31	16063	E Williams St at Apex Village Center (SB)	SB	35.724946	-78.848173	Yes	Yes		

Route Order	Bus Stop ID	Bus Stop Name	Direction	Latitude	Longitude	Built by Town of Apex?	Maintained by Town of Apex?	Shared by a regional provider?	Amenities on private property?
32	16065	E Williams St at Perry Rd	SB	35.720795	-78.843994	Yes	Yes		
33	16067	E Williams St at Apex Peakway	SB	35.71916	-78.843082	Yes	Yes		
34	1183	Apex Peakway at S Hughes St (Cambridge Village)	SB	35.717491	-78.844572	Yes	Yes	Yes (GoTriangle 305)	
35	16071	Apex Peakway at Norris Park	WB	35.714045	-78.850733	Yes	Yes		
36	16073	Apex Peakway at Shackleton Rd	WB	35.714521	-78.855948	Yes	Yes		
37	16075	Tingen Rd at Baberton Dr	NB	35.716528	-78.857636	Yes	Yes		
38	16077	Tingen Rd at Peace Haven Pl	NB	35.717794	-78.856513	Yes	Yes		
39	16079	Tingen Rd at Sparta Ln	NB	35.720186	-78.855802	Yes	Yes		
40	16081	James St at Germaine St	EB	35.72266	-78.852845	Yes	Yes		
41	16083	James St at E Williams St	EB	35.723031	-78.846483	Yes	Yes		
42	16085	E Williams St at S Mason St (Apex Middle School (NB))	NB	35.725827	-78.8501	Yes	Yes		
43	16087	S Salem St at Williams St	NB	35.727836	-78.853603	Yes	Yes		
44	16089	S Salem St at Moore St	NB	35.728765	-78.852957	Yes	Yes		
45	16091	N Salem St at The Depot	NB	35.732186	-78.85045	Yes	Yes		