

**INTERLOCAL AGREEMENT FOR APEX RAIL SWITCHING OPERATIONS RELOCATION
STUDY BETWEEN THE**

TOWN OF APEX

and the

**CAPITAL AREA METROPOLITAN
PLANNING ORGANIZATION (CAMPO)**

THIS INTERLOCAL AGREEMENT, is made and entered into on the last date executed below by and between the Town of Apex, a N.C. municipal corporation, (“Apex”) and the Capital Area Metropolitan Planning Organization, a metropolitan transportation planning organization, (“CAMPO”) (collectively, the “Parties”).

BACKGROUND AND RECITALS:

WHEREAS, the U.S. Congress has mandated the establishment of Metropolitan Planning Organizations (MPOs) to encourage and promote the safe and efficient management and operation of surface transportation systems. 23 U.S.C. § 134 (a) (1)-(2), to wit:

“(a) Policy.-It is in the national interest-

(1) to encourage and promote the safe and efficient management, operation, and development of surface transportation systems that will serve the mobility needs of people and freight, foster economic growth and development within and between States and urbanized areas better connect housing and employment, and take into consideration resiliency needs while minimizing transportation-related fuel consumption and air pollution through metropolitan and statewide transportation planning processes identified in this chapter; and

(2) to encourage the continued improvement and evolution of the metropolitan and statewide transportation planning processes by metropolitan planning organizations, State departments of transportation, and public transit operators as guided by the planning factors identified in subsection (h) and section 135(d).”

23 U.S.C. § 134 (a) (1)-(2)

WHEREAS, CAMPO has been established and exists under the authority and mandate of Article 16 of Chapter 136 of the North Carolina General Statutes; and

WHEREAS, pursuant to the above referenced federal and State laws, CAMPO has the authority and responsibility for development of multi-modal transportation plans (including plans for pedestrian and pedestrian transportation facilities); and

WHEREAS, CAMPO will enter into a contract with A. Morton Thomas and Associates, Inc. (AMT), in partnership with the Town of Apex to perform an Apex Rail Switching Operations Relocation Study (or the “Study”) with a view toward examining the feasibility of moving the CSX rail switching operations out of downtown Apex. The Study will evaluate and document CSX operational requirements for their rail switching operations, opportunities to benefit the CSX network and operations, the feasibility of at least two alternate locations for CSX rail switching operations, conceptual designs for required upgrades to existing infrastructure, and planning-level cost estimates associated with alternative locations; and

WHEREAS, the Apex Rail Switching Operations Relocation Study contract will be entered into for FY 24 and FY25 and submitted in final form to CAMPO and the Town of Apex; and

WHEREAS, the Apex Rail Switching Operations Relocation Study will address the safety, traffic congestion, diesel engine emissions, vibration, and noise issues created by the CSX switching operations in downtown Apex; and

WHEREAS, the Town of Apex and CAMPO have made funding commitments to the Study, and they desire to formally acknowledge their respective funding commitments and assignment of coordination and implementation responsibility to CAMPO.

NOW, THEREFORE, in consideration of the Background Statement and Recitals, the mutual agreements set forth below, and other good and valuable consideration, the Parties agree as follows:

I. BACKGROUND AND PURPOSE.

The Parties acknowledge their mutual support for continued planning, project management, and related work for the Study. To this end, the parties desire to affirm their respective financial and other commitments to the Study.

II. APEX RAIL SWITCHING OPERATIONS RELOCATION STUDY SCOPE

The Parties acknowledge and agree that the Apex Rail Switching Operations Relocation Study contract entered into between AMT and CAMPO should include the work elements set forth below.

The Consultant's fee for the Study shall be the sum of one hundred thousand dollars (\$100,000.00). This cost shall cover 100% of the Study's elements, including the following:

- Project management, meetings, presentations
- Data collection and documentation of requirements for CSX rail switching operations
- Technical Steering Committee engagement strategy
- Identification of and feasibility analysis for two potential alternate locations for CSX rail switching operations
- Conceptual designs and planning-level cost estimates
- Implementation strategies and plan for recommendations
- Identification of Federal and state funding sources to aid in implementation of the recommendations identified through the Study, and preparation of materials that can be used for grant applications

The Apex Rail Switching Operations Relocation Study is summarized, and costs broken down according to category in Exhibit 1.

III. CAMPO AS LEAD AGENCY FOR STUDY

The Town of Apex and CAMPO acknowledge and agree that, due to the regional nature of the Study, and considering CAMPO's experience in regional transportation planning, CAMPO should be the entity to coordinate and lead the Study. CAMPO acknowledges and agrees that, subject to approval by the CAMPO Executive Board, it is willing to serve as the lead agency for the Apex Rail Switching Operations Relocation Study.

CAMPO shall engage the Town of Apex throughout the Study, providing specific opportunities to:

- Review the scope of services between CAMPO and the selected consultant
- Provide data to inform the study
- Review plans for stakeholder engagement
- Review all deliverables

IV. FINANCIAL PROJECT COMMITMENTS BY THE TOWN OF APEX.

In recognition of the Study cost of \$100,000.00, the Town of Apex and CAMPO are willing to make the following funding commitments in support of planning costs identified in the Study as follows:

- As approved by formal action of its Town Council, Apex agreed to commit the sum of fifty thousand dollars (\$50,000.00), to defray the costs of the Study contract.

-As approved by formal action of its Board of Directors, CAMPO agreed to commit the sum of fifty thousand dollars (\$50,000.00) to defray the costs of the Study contract.

V. INCORPORATION OF THE APEX RAIL SWITCHING OPERATIONS RELOCATION STUDY PROJECT INTO THE UPWP

In furtherance of the Project, the Parties acknowledge that the Apex Rail Switching Operations Relocation Study has been incorporated into CAMPO's adopted *FY24* and *FY25* Unified Planning Work Program ("UPWP"). CAMPO shall accordingly take all steps necessary and appropriate to advance, support, and carry forward the Apex Rail Switching Operations Relocation Study Project.

VI. COMMUNICATIONS; CONTACTS

CAMPO will regularly communicate with the Town regarding the Apex Rail Switching Operations Relocation Study, including contracts entered into, progress made, and work performed on the specific project elements enumerated in Article II hereof. CAMPO will also ensure Apex receives a full and complete copy of the Study.

For purposes of such communications, including notices to be given under terms of the Agreement, the parties have designated the following contact persons and/or entities:

FOR CAMPO:

Gaby Lawlor,
Transportation Planner
One Main St. Fenton, Suite 201
Cary, NC 27511

FOR THE TOWN OF APEX:

Shannon Cox
Long Range Planning Manager
Planning Department, Town of Apex
PO Box 250
Apex, NC 27502

VII. SCOPE OF SERVICES AND RESPONSIBILITY OF PARTIES

Anticipating that a contract for the Study will be entered into between CAMPO and AMT it is acknowledged and agreed as follows:

A. CAMPO has ensured that a qualified firm is obtained through an equitable selection process, so that the prescribed work is properly accomplished, in a timely manner, and at a just and reasonable cost.

B. CAMPO will take appropriate steps to ensure that, with respect to the Study contract and performance of all work associated therewith, Title 2 Code of Federal Regulations Part 200; Title 23 of the Code of Federal Regulations, Part 172; Title 40 United States Code, Chapter 11, Section 1101-1104; and the Department's Policies and Procedures for Major Professional or Specialized Services Contracts, will be adhered to. Said policies and standards are incorporated in this Agreement by reference at www.fhwa.dot.gov/legsregs/legislat.html and www.ncleg.net/gascripts/Statutes/Statutes.asp.

C. CAMPO is responsible for the administration of all agreements, contracts, and work orders entered into or issued for this Project.

D. CAMPO and its agents shall maintain all books, documents, papers, accounting records, and such other evidence as may be appropriate to substantiate costs and financial obligations incurred under this AGREEMENT. Further, CAMPO shall make such materials available at its office and shall require its agent to make such materials available at its office at all reasonable times during the term of this Agreement, and for three (3) years from the date of payment of the final vouchers for services or other expenses incurred by CAMPO in fulfillment of the Project. All funds received by CAMPO for, and to be applied to costs of, the Project shall be maintained in a designated Project fund balance. All such funds will be held and managed in accordance with the budgeting, fiscal control, and accounting standards applicable to units of local government in the State, including compliance with requirements for annual, or more frequent, audits.

VIII. FUNDING PROCEDURES

A. CAMPO shall bill Apex for a lump sum once the consultant has completed and provided invoice(s) for \$50,000.00 of eligible project costs by submitting an itemized invoice to the TOWN OF

APEX (PO Box 250 Apex, NC 27502). Proper supporting documentation shall accompany the invoice as may be required by Apex.

B. Apex shall reimburse CAMPO for all invoices within thirty (30) days of receipt of invoice by Apex.

IX. TERM OF AGREEMENT; AMENDMENT; APPOINTMENT OF PERSONNEL

A. Term. This Agreement shall be effective as of the date it is duly executed by all the Parties. Unless terminated sooner, it shall expire on June 30, 2025, or at the conclusion of the Study, whichever is earlier. This Agreement may be terminated by any party after such notice is given, upon six months' notice given in writing prior to the start of the fiscal year in which termination is effective. Notwithstanding the termination date heretofore established, the Parties' obligations to contribute to the cost of the Study shall survive the termination of this Agreement unless both Parties mutually agree to terminate the Study and its associated costs.

B. Amendments. This AGREEMENT may be amended from time to time upon mutual consent of the respective governing bodies of the Parties expressed in writing.

C. Appointment of Personnel. It is agreed that the duly authorized officer executing this Agreement on behalf of his or her respective Party, shall designate persons to carry out the respective Party's obligations under this Agreement.

X. MISCELLANEOUS

A. Available Funds Condition. All terms and conditions of this Agreement are dependent upon, and subject to, the allocation of funds for the purpose set forth in the Agreement, and the Agreement shall automatically terminate if funds cease to be available. By executing this Agreement, the Parties acknowledge that at the time of the signing, the funds required by the terms of this Agreement are available and allocated to the Study.

B. Acknowledgment of Authority. All Parties hereby respectively confirm that the individuals executing the Agreement are authorized to execute this Agreement and to bind the respective entities to the terms contained herein. All Parties confirm they have read this Agreement, conferred with counsel, and fully understand its contents.

C. Merger and Severability. This Agreement supersedes any and all prior agreements or understandings, oral or written, among the Parties, and shall comprise the whole agreement regarding any agreements or undertakings with respect to the subject matters addressed hereunder. In the event any provision hereof shall be adjudicated to be invalid or unenforceable, in whole or in part, the remaining provisions hereof shall remain in full force and effect, and this Agreement is accordingly declared to be Severable.

D. Governing Law. This Agreement shall be interpreted under the laws of the State of North Carolina, with venue in Wake County, resolving any ambiguities and questions regarding the validity of specific provisions, so as to give maximum effect to the values and purposes sought to be set forth herein.

E. E-Verify. The parties herein have complied with E-Verify, the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law and as in accordance with N.C.G.S. §64-25 et seq. In addition, to the best of the parties' knowledge, any subcontractor employed by a contractor as a part of this contract shall be in compliance with the requirements of E-Verify and N.C.G.S. §64-25 et seq.

F. IRAN DIVESTMENT ACT CERTIFICATION. The parties herein certify that, as of the date listed below, it is not on the Final Divestment List as created by the State Treasurer pursuant to N.C.G.S. § 147-86.55, et seq. In compliance with the requirements of the Iran Divestment Act and N.C.G.S. § 147-86.59, the parties shall not utilize in the performance of the contract any subcontractor that is identified on the Final Divestment List.

G. NON-DISCRIMINATION. To the extent permitted by law, the parties hereto for themselves, their agents, officials, employees, and servants agree, with respect to the subject matter of this contract, not to discriminate in any manner based on race, color, creed, national origin, sex, age, disability, handicap, marital status, pregnancy, or sexual orientation. The parties further agree, to the extent permitted by law, to comply with all State, Federal, and local statutes, ordinances, and regulations prohibiting discrimination, including but not limited to Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000 et seq.); the Fair Housing Act, Title VII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.); Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); the Age Discrimination Act of 1975, as amended (42 U.S.C.6101 et seq.); Title II of the Americans with Disabilities Act of 1990; and Wake County Code of Ordinances Section 34.01.

H. Electronic Signature. Pursuant to Article 40 of Chapter 66 of the North Carolina General Statutes (the Uniform Electronic Transactions Act) this Agreement and all documents

related hereto containing an electronic or digitized signature are legally binding in the same manner as are hard copy documents executed by hand signature. The Parties hereby consent to use electronic or digitized signatures in accordance with Apex's Electronic Signature Policy and intend to be bound by the Agreement and any related documents. If electronic signatures are used the Agreement shall be delivered in an electronic record capable of retention by the recipient at the time of receipt.

[The Remainder of This Page Intentionally Left Blank; Signatures Follow]

THE CAPITAL AREA METROPOLITAN PLANNING ORGANIZATION “CAMPO”

By: _____
Chris Lukasina, Executive Director

ATTEST:

By: _____
Star Rogers, Administrative Specialist

TOWN OF APEX

Shawn Purvis, Interim Town Manager

Date

Attest:

Allen L. Coleman, Town Clerk

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

Antwan Morrison, Finance Director

Date

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EXHIBIT 1, (Attachment)

APEX RAIL SWITCHING OPERATIONS RELOCATION STUDY AMT and CAMPO Contract