

## SUPPLEMENT TO INTERLOCAL AGREEMENT

This **SUPPLEMENT TO INTERLOCAL AGREEMENT** dated as of \_\_\_\_\_, 2021 (the "*Supplement*") between the **TOWN OF APEX, NORTH CAROLINA**, a municipal corporation organized under the laws of the State of North Carolina ("*Apex*") and the **TOWN OF CARY, NORTH CAROLINA**, a municipal corporation organized under the laws of the State of North Carolina ("*Cary*") and collectively with Apex, the "*Towns*").

### WITNESSETH

**WHEREAS**, under Article 20 of Chapter 160A of the North Carolina General Statutes, as amended (the "*Interlocal Act*"), municipalities are authorized to enter into interlocal cooperation undertakings with other local governments for the joint exercise of any power, function, public enterprise, right, privilege, or immunity of local governments in North Carolina; and

**WHEREAS**, the Towns have each begun planning for and designing improvements to SR 1521 ("Lake Pine Drive"), located in Wake County, North Carolina, and starting from north of Pine Plaza Drive and MacGregor Pines Drive to the Apex Town limit, north of Versailles Drive, which will include widening Lake Pine Drive from two-lanes to three-lanes in certain sections, connecting sidewalks located on Lake Pine Drive, constructing a 10-foot street-side trail on the east side of Lake Pine Drive as part of Cary's greenway system, and providing a high-visibility crosswalk at Versailles Drive (the "*Project*"); and

**WHEREAS**, on or about November 17, 2015 the Towns entered into an Interlocal Agreement (the "*Agreement*") detailing each Town's responsibilities and obligations in the construction of the Project as well as the respective contributions to the financing and construction of the Project; and

**WHEREAS**, Apex has entered into an agreement with the North Carolina Department of Transportation (DOT), dated October 31, 2013, for the design costs associated with the Project, which was attached to the Agreement; and

**WHEREAS**, pursuant to the Agreement, Apex has entered into a contract with a design consultant for the design phase of the Project; and

**WHEREAS**, Apex shall be responsible for entering into a supplemental agreement with DOT for the construction phase of the Project, the form of which was attached to the Agreement; and

**WHEREAS**, Apex shall be responsible for the entering into and administering a construction contract for the construction phase of the Project; and

**WHEREAS**, Cary has agreed to assist Apex in financing the planning, design, and construction costs associated with the Project by reimbursing Apex in an amount equal to one-half of Apex's share of the planning, design, and construction costs associated with the Project and reimbursing Apex one-half of the internal review costs charged to Apex by DOT; and

**WHEREAS**, the Towns have determined that they can achieve significant cost savings by cooperating to construct the Project and entering into a single construction contract for the Project; and

**WHEREAS**, the Agreement contemplated the possibility that the Project costs could exceed the budget approved in the Agreement and in such event Apex could request additional funds from DOT and Cary to be memorialized through the execution of a supplemental interlocal agreement; and

**WHEREAS**, the Project costs are estimated to exceed the budget approved in the Agreement and the parties to this Supplement desire to amend the financial contributions of each Town as set forth herein.

**NOW THEREFORE**, the parties hereto agree as follows:

**1. Contributions and Financing.**

Section 4.1 of the Agreement provides the specific contributions of Apex and Cary as well as federal contributions. Due to inflation in construction costs and other factors identified in the attached letter to NC Capital Area MPO, an estimated construction budget shortfall of \$2,469,654.00 is expected. Apex is therefore requesting up to \$1,234,827 in additional federal funds. Financial specifics of the request are as shown below:

Federal Funds Remaining (80% of anticipated construction cost)	\$462,821.00
Remaining Local Match (20% of anticipated construction cost) Already Committed	\$115,705.00
Contractor’s Bid 11/5/20 (with 5% contingency added)	(\$2,845,500.00)
CEI Contract Proposal	(\$202,680.00)
<b>Construction Funding Shortfall</b>	<b>(\$2,469,654.00)</b>
<b>CAMPO Additional Funds Request (50% of shortfall)</b>	<b>\$1,234,827.00</b>
<b>Additional Required Local Match (50% of shortfall)</b>	<b>\$1,234,827.00</b>

Per the Agreement, if Project costs exceed the approved budget in the Agreement Apex may request and Cary may agree to contribute funds in excess of that designated in the Agreement. Apex and Cary hereby agree to contribute additional funds to the Project as shown below and Cary shall reimburse Apex for portions of Apex contributions as follows:

Construction Funding Shortfall	\$2,468,654.00
CAMPO Additional Funds	\$1,234,827.00
Apex Contribution	\$617,413.50
Cary Reimbursement to Apex	\$617,413.50

**2. Execution in Multiple Counterparts/Electronic Version of Supplement.** This Supplement may be executed in multiple counterparts, each of which constitutes a completed document. Apex and Cary may convert a signed original of the Supplement to an electronic record pursuant to a North Carolina Department of Cultural Resources approved procedure and process for converting paper records to electronic records for record retention purposes. Such electronic record of the Supplement shall be deemed for all purposes to be an original signed Supplement.

**3. Effective Date.** This Supplement shall take effect upon its execution by Apex and Cary and shall terminate according to the terms of the Agreement. Failure on the part of one party to comply with any of the provisions of this Supplement shall be grounds for the other

party to terminate this Supplement and, if applicable, seek payment of any of the contributions agreed to in the Agreement.

4. The Agreement is not modified except as provided herein. To the degree they do not conflict, the terms and conditions of the Agreement shall apply to this Supplement.

***IN WITNESS WHEREOF***, the Town of Cary and the Town of Apex, both pursuant to resolutions of their respective governing boards spread upon their minutes, have caused this Supplement to be executed by their duly authorized officers and their official seals affixed, as applicable, the day and year first written above.

**TOWN OF APEX, NORTH CAROLINA**

[SEAL]

By: \_\_\_\_\_  
Town Manager

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

\_\_\_\_\_  
Deputy Finance Officer

**TOWN OF CARY, NORTH CAROLINA**

[SEAL]

By:  \_\_\_\_\_  
Deputy Manager

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

  
\_\_\_\_\_  
Deputy Finance Officer