

STATE OF NORTH CAROLINA
COUNTY OF WAKE

AGREEMENT FOR PROVISION OF
TRANSIT PLANNING SERVICES

This Agreement for Provision of Transit Planning Services (“**Agreement**”) is made and entered into this ___ day of _____, 2019, by and between the Town of Cary (“**Cary**”) and the Town of Apex (“**Apex**”), both municipal corporations organized and existing under the laws of the State of North Carolina. Apex and Cary are sometimes hereinafter referred to collectively as the “Parties.”

WITNESSETH

WHEREAS, an extensive community driven process was used to develop a strategic transit vision document that set forth an enhanced public transit plan for Wake County, referred to as the “Wake County Transit Plan” (“Wake Transit Plan”), and this plan was adopted by the GoTriangle Board of Trustees on May 25, 2016, the Capital Area Metropolitan Planning Organization’s (“CAMPO”) Executive Board on May 18, 2016, and the Wake County Board of Commissioners on June 6, 2016; and

WHEREAS, the Western Wake Comprehensive Operations Analysis, completed as an implementation item of the Wake Transit Plan, and the Town of Apex’s long range transportation plan, *Advance Apex: The 2045 Plan*, recommend the creation of a new “Apex Circulator” bus route, intended to provide bus service to the areas with the highest propensity to use transit in Apex; and

WHEREAS, Cary, as operator of the GoCary transit system, has expertise in transit planning services such as those needed to create the Apex Circulator bus route; and

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

NOW, THEREFORE, in consideration of the foregoing, the Parties do hereby agree as follows:

1. **RECITALS; PURPOSE.** The recitals are incorporated into this Agreement. The Purpose of this Agreement is for Cary to provide technical assistance to Apex to refine an operating plan, specifically identify capital funding needs, complete targeted outreach to the potential area of service, quantify capital and operating costs, develop a potential municipal agreement for service between the Town of Apex and Town of Cary, and prepare a Community Funding Area application for capital and operating expenses for a proposed Apex Circulator bus route (the “Services”), as more particularly described in Exhibit A attached hereto and incorporated herein by reference.

2. **COMPENSATION.** Apex shall pay to Cary the total sum of \$19,250.68 for provision of Services. Payment shall be made within thirty (30) days of receipt of an invoice from Cary; invoices shall be submitted at least quarterly.

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 February 28, 2020 or upon Cary’s completion of Services, whichever occurs sooner. 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. E-VERIFY REQUIREMENTS. Both parties, and any subcontractors hired by either party for purposes of fulfilling any obligations under this Agreement, will comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, “Verification of Work Authorization,” and will provide documentation or sign affidavits or any other documents requested by either party demonstrating such compliance.

8. 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:

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

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

9. 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.

10. 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.

11. NO THIRD PARTY BENEFICIARIES. There are no third party beneficiaries to Agreement.

12. NO WAIVER OF SOVEREIGN OR QUALIFIED IMMUNITY. Nothing in this Agreement shall be construed to mandate purchase of insurance by either town pursuant to N.C.G.S. 160A-485 or to in any way waive either towns' defense of sovereign or 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 town 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.

13. ANTI-HUMAN TRAFFICKING. Cary warrants and agrees that no labor supplied by Cary or Cary's subcontractors in the performance of this Agreement shall be obtained by means of deception, coercion, intimidation or force, or otherwise in violation of North Carolina law, specifically Article 10A, Subchapter 3 of Chapter 14 of the North Carolina General Statutes, Human Trafficking.

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

[SIGNATURES APPEAR ON THE NEXT TWO PAGES]

TOWN OF APEX, NORTH CAROLINA

By: _____
Drew Havens, Town Manager

Date: _____

Attest:

Donna B. Hosch, Town Clerk, CMC

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

Vance Holloman, Town of Apex Finance Director

TOWN OF CARY, NORTH CAROLINA

By: _____
Danna Widmar, Director of Special Projects
Town Manager's Office

Date: _____