

CAPITAL AREA METROPOLITAN PLANNING ORGANIZATION

AND THE TOWN OF CARY

LEAD PLANNING AGENCY AGREEMENT

THIS AGREEMENT is entered into the ____ day of December, 2022, by and between the CAPITAL AREA METROPOLITAN PLANNING ORGANIZATION, a transportation planning organization and governmental body, established and operating pursuant to 23 US Code 134, and Chapter 136, Article 16, of the North Carolina General Statutes (“CAMPO”); and the TOWN OF CARY, a municipal corporation organized and existing under the laws of the State of North Carolina (“Cary”) (collectively, the “Parties”).

RECITALS AND BACKGROUND STATEMENT

Title 23, Section 134 of the US Code requires, as a condition of federal transportation funding assistance, the establishment of programs of comprehensive transportation planning in accord with applicable laws. Article 16 of Chapter 136 of the General Statutes provides for the creation of metropolitan planning organizations (“MPO”) to perform comprehensive transportation planning services in the state. CAMPO is the officially designated MPO for its jurisdictional region, consisting of county and municipal governments (“Members”), which comprise CAMPO’s membership and governing authority. Cary has served as a member-participant of CAMPO since its creation.

The Members of CAMPO, together with the NC Department of Transportation and the State of North Carolina, have entered into a Memorandum of Understanding (the “MOU”) as updated and amended April 16, 2014, setting forth their collective agreement regarding a continuing, cooperative, and comprehensive transportation planning process for the Capital Area Metropolitan Planning Area. CAMPO and Cary acknowledge the MOU as establishing those goals, objectives, rules, regulations, responsibilities, mandates, and means for achieving the same, to which CAMPO and its Members and agencies are subject. As established by the MOU, the CAMPO Executive Board is responsible for cooperative transportation planning decision making for CAMPO, including but not limited to review and approval of the Unified Planning Work Program, Comprehensive and Metropolitan Transportation Plans, and Transportation Improvement Program; development and approval of by-laws; providing direction and control of CAMPO staff; and approval of cooperative agreements with municipalities and others.

As authorized by its Executive Board, CAMPO has formally requested that Cary be designated as its Lead Planning Agency (“LPA”) to provide assistance to CAMPO in the performance of certain agreed-upon functions and duties. Cary has agreed to accept the LPA designation and assume the duties and functions of the Lead Planning Agency for CAMPO, effective on January 1, 2023, all according to terms set forth in this Agreement.

While the working relationships and protocols among officers and staff of CAMPO and Cary are expected to adapt and evolve, the Parties desire to formally set forth and clarify their respective primary authorities, responsibilities, and operations, according to terms of this Agreement.

IN CONSIDERATION OF the Recitals and Background statement, the mutual benefits to CAMPO and Cary arising hereunder, and other good and valuable consideration, the Parties agree to the following:

I. PURPOSE AND OBJECTIVES; TERM

As stated in the Recitals and Background Statement (incorporated and adopted as a part hereof), the purpose of this Agreement is to set forth the legal and functional relationships between CAMPO and Cary as LPA. The Agreement is intended to inform and instruct the officers and staff of both organizations regarding their respective areas of responsibility.

The term of this Agreement begins January 1, 2023 and ends June 30, 2025 ("Initial Term"). This Agreement shall automatically renew and continue in effect for successive three-year terms ("Renewal Terms"), up to a maximum of ten (10) additional Renewal Terms, unless either party gives written notice of its intention not to renew the Agreement at least six (6) months prior to the end of the Initial Term or any Renewal Term. In that event, this Agreement shall automatically terminate at the end of the said Term.

II. GENERAL SCOPE OF CAMPO AND CARY RESPONSIBILITY

A. RESPONSIBILITY OF CAMPO

CAMPO shall be responsible for the conduct of the metropolitan transportation planning process in accordance with applicable laws, regulations, and agreements. The planning process shall include the establishment of general goals and objectives; the review and approval of a Prospectus for transportation planning; review, maintenance and updating of the Metropolitan area boundary; review and approval of the Comprehensive and Metropolitan Transportation Plans; review and approval of the Transportation Improvement Program; review and approval on an annual basis of the Unified Planning Work Program ("UPWP") and annual budget; and other duties and responsibilities in accord with the MOU and as directed by the Executive Board.

CAMPO shall at all times be the sole and exclusive common law employer of all CAMPO staff, and CAMPO shall comply with all applicable federal, state and local laws governing such matters. The CAMPO Executive Director shall be selected by the Executive Board, and an employment agreement will be entered into between CAMPO and the Director. The Executive Board shall have sole responsibility for the supervision, direction, and control of the Executive Director, including decisions to hire, terminate, suspend, or discipline the

Executive Director, or to adjust the duties or salaries of the position, and the Executive Director shall report directly to the Executive Board on all matters relating to the administration and operation of CAMPO.

Subject to the authority and direction of the Executive Board, the Executive Director shall have sole responsibility for: (1) The development of an appropriate organizational structure to carry out CAMPO's responsibilities and duties, including number of staff positions along with job titles, job descriptions and responsibilities and pay scale for such positions; (2) The selection, appointment, assignment, training, starting pay and pay adjustments, promotion, discipline, termination, grievances and appeals and all other terms and conditions of employment of CAMPO staff (with the sole exception of those benefits and limited administrative services provided by Cary as set forth in this Agreement), and the development, implementation and enforcement of policies, including but not limited to vacation, sick, and other paid and unpaid time off policies, applicable to CAMPO staff; (3) The supervision, direction, and control of all CAMPO staff and other personnel necessary to carry out the transportation planning process; and (4) The development of procedures to monitor and coordinate the planning process and the overall administration of CAMPO's programs.

B. RESPONSIBILITY OF CARY AS LPA

To facilitate the transportation planning process generally, and in furtherance of the goals and objectives of CAMPO under the MOU, Cary agrees to provide certain administrative services to CAMPO. Such services shall be in accordance with provisions of this Agreement, and as may be further agreed upon by Cary and CAMPO as described herein. The provision of services shall be limited to those specified and allocated to Cary as LPA in the annual UPWP budget, and all approved budgets and management reports under federal or State contracts with CAMPO. In accordance with applicable laws and regulations to which CAMPO is subject, the UPWP shall be prepared by CAMPO in cooperation with Cary (acting as LPA) and the appropriate State and federal agencies. For the avoidance of doubt, Cary shall not supervise, direct, or control any CAMPO staff, including but not limited to the Executive Director, nor have any right to do so.

As a local government unit member of CAMPO, Cary shall continue to have and enjoy the authority, responsibilities, and entitlements arising therefrom.

III. BUDGET; FINANCIAL ADMINISTRATION; COST AND EXPENSE ALLOCATION AND ACCOUNTING

A. In General; Responsible Officers.

As LPA, Cary shall be custodian and repository of CAMPO's funds and accounts. Revenues, proceeds, and other incomes and receipts of CAMPO shall be paid to Cary and maintained by Cary in a designated CAMPO fund, or funds. A member of the CAMPO staff shall be designated as the Finance Officer of CAMPO. This individual shall be assigned to coordinate, maintain, and facilitate the management of CAMPO accounts, in close cooperation with staff of the Cary Finance Department, and shall also be authorized to sign preaudit certificates for CAMPO expenditures as required by NCGS § 159-28. Cary shall not sign preaudit certificates for CAMPO expenditures. Cary's role is to administratively carry out CAMPO's financial directives; in no event shall Cary be responsible for any actions or activity associated with the inappropriate use of funds. The allocation of financial responsibilities as between Cary and CAMPO is set forth in Exhibit 1 to this Agreement.

B. CAMPO Budget.

On or before February 28 of each year, CAMPO shall submit to Cary an annual operating budget for the next fiscal year. This submission shall be approved by Council as part of Cary's budget process and included in Cary's budget ordinance. Once the budget has been approved by the Town Council, any requested increase to the budget will require additional approval by the Town Council. CAMPO staff shall prepare all documents, including staff reports, necessary to bring a requested budget increase forward to the Town Council.

C. Control and Management of Funds; Audit.

Management of CAMPO accounts will be in accordance with federal regulations, the NC Local Government Budget and Fiscal Control Act, rules, regulations, and practices applicable to local governments in this State, and all finance-related policies of Cary. CAMPO funds in the custody of Cary will be part of pooled cash and will be allocated a proportionate share of monthly interest earnings based on cash balance at the end of each month. Cary agrees to maintain sufficient cash to cover the operating expenses of CAMPO as they fall due.

Cary will report year-end financial activities related to the independently created CAMPO revenue and expenditure fund as part of Cary's Annual Comprehensive Financial report. CAMPO is responsible for producing and providing any and all federal reporting and conducting an independent audit of its financial activity for each fiscal year. CAMPO's financial transactions will be included in Cary's annual external financial audit. CAMPO staff shall promptly fulfill any auditor requests for information related to CAMPO transactions. Any findings or action required as a result of the audit shall be promptly addressed and resolved by CAMPO; failure to do so constitutes a material breach of this Agreement.

D. Costs of LPA Services.

CAMPO shall reimburse Cary for Costs arising from services to CAMPO by Cary as LPA. Such Costs include both “Direct LPA Costs” and “Indirect LPA Costs”, as further described below:

Direct LPA Costs. These costs include actual cost reimbursement of any type of sums paid by Cary on CAMPO’s behalf, such as salary and benefit payments and expense reimbursements to or on the behalf of CAMPO staff; costs of office and other equipment or resources leased or purchased by CAMPO; insurance (including worker’s compensation and settlements) and other actual and direct costs of products provided to CAMPO by Cary.

Indirect LPA Costs. Cary and CAMPO have reached agreement regarding principles and guidelines for determining and allocating indirect costs of LPA services and resources provided to CAMPO by Cary (“Indirect LPA Costs”).

The methods of calculating Direct and Indirect LPA Costs for the Initial Term and for Renewal Terms are set forth in Exhibit 2, attached to this Agreement.

CAMPO shall, on a quarterly basis, reimburse Cary for all accrued and eligible Direct and Indirect LPA Costs. Cary will invoice CAMPO for all Direct and Indirect LPA Costs by the 10th of the following month after the end of the quarter (October, January, April, July). All invoices shall be paid within thirty (30) days of receipt. CAMPO shall have sole responsibility for satisfying all requirements, including the submission of all necessary documentation, to receive any federal, state, or other funding necessary to reimburse Cary for such costs. If CAMPO reimbursements to Cary for a given fiscal year do not cover all accrued and eligible Direct and Indirect LPA Costs for that fiscal year, CAMPO will provide final reimbursement to Cary of Direct and Indirect LPA Costs due, if any, on or before September 15 of the following fiscal year. It is anticipated that this funding will come from receipt of CAMPO member participation fees.

IV. CONTRACTING AND PROCUREMENT

CAMPO shall have sole authority and responsibility to review and approve all proposals and contracts for materials, equipment, goods, grants, and services arising under the authority of CAMPO relating to such matters that are not the responsibility of Cary as LPA. CAMPO’s solicitations, proposals, bids, and contracts for procurement of equipment, materials, and services shall be handled in accordance with applicable Cary policies and procedures and State or federal policies and regulations to which CAMPO is subject.

Cary and CAMPO acknowledge and agree that CAMPO’s contracting and procurement practices shall be governed by, and CAMPO has adopted, applicable federal and NCDOT

Disadvantaged Enterprise goals and policies. In addition, CAMPO shall comply with Cary's non-discrimination Policy Statement and requirements, and policies relating to contracting and procurement.

V. INFORMATION TECHNOLOGY AND OFFICE EQUIPMENT

Cary agrees to provide CAMPO with information technology and office equipment and related technical, administrative, and clerical services, and other incidental items, in the performance of CAMPO's duties and responsibilities, as set forth in Exhibit 3 to this Agreement.

CAMPO will purchase or lease, maintain, and upgrade the office equipment, office and/or computer hardware, software, and other resources that it determines is necessary. Funds allocated to CAMPO and identified in the UPWP for such acquisitions will be used for such purposes. Alternatively, upon written request by CAMPO to Cary, acquisition of such equipment and resources may be undertaken as part of Cary purchases of similar items or bundled with Cary or State contracts for similar equipment and resources in accordance with applicable laws and procedures. Any such purchases by Cary are Direct LPA Costs to be reimbursed pursuant to the terms of this Agreement unless otherwise explicitly stated. All resources and equipment purchased by CAMPO independently shall be the property of CAMPO. All resources and equipment purchased by Cary on CAMPO's behalf shall, upon full reimbursement of all costs to Cary, be the property of CAMPO, unless the terms of such purchases preclude ownership by an entity other than Cary. For example, certain software licenses purchased by Cary for use by CAMPO staff may remain property of Cary.

CAMPO acknowledges and agrees that, with respect to computer hardware, software, or other resources intended to operate on or communicate through Cary's network, such hardware, software, or resources are subject to Cary approval for compatibility and consistency with Cary standards.

VI. HUMAN RESOURCES ADMINISTRATIVE SERVICES

Cary agrees to provide certain administrative services on CAMPO's behalf, as set forth in Exhibit 4 to this Agreement. CAMPO and Cary agree that CAMPO staff, including the Executive Director, shall be considered employees of Cary solely for the purposes of the NC Local Governmental Employees' Retirement System ("LGERS"), health and welfare and other benefits, and general payroll administration and tax withholding, remitting and reporting, and the policies and procedures related to such matters (contained in Exhibit 5).

For the avoidance of doubt, Cary shall not be a common law or joint employer of CAMPO staff, and CAMPO staff shall not be considered employees of Cary except for the purpose of LGERS, health and welfare and other benefits, and general payroll administration and, as such, are not subject to, nor afforded rights under, any Cary policies or procedures except as

necessary to the provision of the administrative services provided by Cary pursuant to this Section VI. Neither CAMPO nor CAMPO staff have authority to act on Cary's behalf or hold itself or themselves out as having such authority. CAMPO shall be solely responsible for timely and effectively notifying applicants and staff of the terms of this Section VI.

The Executive Director will be responsible for submitting all information to Cary as requested by Cary necessary to carry out the administrative services provided to CAMPO, or on its behalf, pursuant to this Agreement.

VII. COMMUNICATION/COOPERATION

Cary and CAMPO, through its Executive Director, shall provide mutual cooperation, communication, and assistance, one to the other, so that services and activities of both organizations will be carried out in the most efficient and professional means possible.

Contact individuals for purposes of communications and notices under this Agreement are as follows:

FOR CAMPO:

Chris Lukasina, AICP, GISP
Executive Director
Capital Area MPO
One Fenton Main Street
Building 10, 2nd floor
Cary, N.C. (zip)
(919) 996-4402 (v)
(919) 807-8517 (f)
Chris.Lukasina@campo-nc.us

FOR CARY:

Town Manager's Office
316 N. Academy Street
Cary, NC 27513
Attn: Shelley Curran
Shelley.curran@townofcary.org

With a copy to:

Town Attorney's Office
316 N. Academy Street
Cary, NC 27513
Attn: Lisa Glover
lisa.glover@townofcary.org

VIII. LEGAL REPRESENTATION

The Cary Town Attorney and Town Attorney's Office do not represent CAMPO and are not permitted to provide any legal advice or counsel to CAMPO staff or the Executive Board. CAMPO may contract for general legal services on a continuing basis, as it deems appropriate. As it deems necessary, CAMPO may engage other legal counsel for more specialized needs, projects, or assignments.

IX. AMENDMENT, TERMINATION, INDEMNIFICATION, MISCELLANEOUS.

Entire Agreement; Amendments. 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"). Neither party may amend, or seek to amend, this Agreement by clickthrough agreement. The Town Manager and Executive Director are authorized to make amendments to Exhibits 1, 3, 4, and 5 to this Agreement without further approval from the Town Council or Executive Board; all other amendments to this Agreement (including any amendments to Exhibit 2) must be authorized by the Town Council and Executive Board. All amendments shall be memorialized in a written amendment signed by both parties.

Termination. Any Party desiring to terminate this Agreement without cause shall give written notice to the other Party at least six months prior to the expiration of the Initial Term or any Renewal Term. If such notice is timely given, the Agreement shall terminate at the end of the relevant Term. After thirty (30) days written notice to the other party of its default or breach, this Agreement may be terminated by the non-defaulting party, provided that the other party has not taken all reasonable actions to remedy the breach. In the event of termination for any reason (or no reason), Cary shall be paid (1) all Direct LPA Costs incurred before the date of termination, as well as (2) a pro rata share of all Indirect LPA Costs for the period prior to the date of termination. In addition, Cary shall be paid (3) any costs incurred or anticipated to be incurred by Cary due to CAMPO's breach of Agreement and (4) any Direct or Indirect LPA Costs incurred by reason of termination.

Indemnification. To the fullest extent permitted by law, CAMPO shall indemnify and hold harmless Cary, its officers and employees (collectively, "Indemnitees"), from and against 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 CAMPO or any of its officers, employees, contractors, or agents (collectively, "Indemnitors"), of any term or condition of Agreement, (b) any breach or violation by Indemnitors of any applicable law or regulation, (c) any other cause resulting from any act or failure to act by Indemnitors under this Agreement, (d) the employment of any CAMPO staff, or application for any such employment, or (e) the administration of funds by CAMPO. This indemnification shall survive the termination of Agreement.

CAMPO's Representations and Warranties. By executing Agreement, CAMPO represents and warrants that now and continuing for the term of Agreement:

- a. CAMPO shall comply with this Agreement and with all applicable federal, state, and local laws, ordinances, rules, and regulations governing CAMPO and its operations, including but not limited to employment of its staff;
- b. CAMPO shall work in good faith with Cary to meet requirements imposed by the federal or state government or other funding entity if such funds are used to fund any portion of Agreement;
- c. The individuals signing Agreement have the right and power to do so and bind CAMPO to the obligations set forth herein, and such individuals do so personally warrant that they have such authority; and
- d. Neither the execution of this Agreement, nor the fulfillment of or compliance with its terms and conditions, nor the consummation of the transactions contemplated by this Agreement, (i) results in a breach of the terms, conditions, or provisions of any agreement or instrument to which CAMPO is not a party or by which CAMPO is bound, or constitutes a default under any of the foregoing, or (ii) requires the approval of any regulatory body or any other entity the approval of which has not been obtained.

Cary's Representations and Warranties. By executing Agreement, Cary represents and warrants that now and continuing for the term of Agreement:

- a. Cary shall comply with this Agreement and with all applicable federal, state, and local laws, ordinances, rules, and regulations governing the services it provides under this Agreement;
- b. Cary shall work in good faith with CAMPO to meet requirements imposed by the federal or state government or other funding entity if such funds are used to fund any portion of Agreement; and
- c. The individuals signing Agreement have the right and power to do so and bind Cary to the obligations set forth herein, and such individuals do so personally warrant that they have such authority.

Cary provides no other representations or warranties. Specifically, and not by way of limitation, Cary does not warrant that the arrangement contemplated herein satisfies legal requirements for CAMPO staff to be considered members of the LGERS or eligible for participation in group health or welfare benefit plans.

Insurance. On or before March 1, 2023, CAMPO shall purchase and maintain during the Initial Term and any Renewal Term, and for three years after the termination of this Agreement, insurance for protection from claims under workers' or workmen's compensation acts as required by law; Commercial General Liability Insurance (including contractual liability and completed operations) covering claims arising out of or related to bodily injury and to real and personal property; Commercial Automobile Liability Insurance, including hired and non-owned vehicles, if any, covering bodily injury or death, and property damage when vehicles are use in performance of work or brought onto Town's premises; Employment Practices Liability covering claims arising out of employment including but not

limited to discrimination, harassment, and wrongful termination; Fidelity/Public Official Bond for Finance Officer as required by state law for faithful performance of duties; Cyber Liability (if applicable) 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 Insurance (if applicable) covering personal injury, bodily injury and property damage and claims arising out of or related to performance under this Agreement.

Minimum limits of insurance coverage are:

General Liability	\$1,000,000 per occurrence/ \$2,000,000 aggregate
Commercial Auto Liability	\$1,000,000 CSL
Commercial Excess Liability / Umbrella Policy	\$1,000,000 per occurrence
Employers Liability	\$500,000 per occurrence
Employment Practices Liability	\$1,000,000 per occurrence/ \$2,000,000 aggregate
Fidelity/Public Official Bond	Statutory Limits
Errors & Omissions (if applicable)	\$1,000,000 per claim
Cyber Liability (if applicable)	\$1,000,000 per claim

CAMPO may satisfy the insurance limits above with a combination of primary and umbrella/excess liability insurance policies. 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.

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

Insurers

The minimum insurance ratings for any company insuring CAMPO shall be Best's A-. Should the ratings of any insurance carrier fall below the minimum rating, Cary may, at its option, require CAMPO to purchase insurance from a company whose rating meets the minimum standard. CAMPOs insurance carrier(s) shall be authorized to do business in the state of North Carolina. If CAMPO is unable to find an authorized carrier for any line of insurance coverage, CAMPO shall notify Cary in writing.

Additional Insured Status

All insurance policies (except Workers Compensation and Professional Liability) shall name Cary, its elected officials, officers, employees and volunteers as an additional insured.

Notice of Cancellation

Each policy shall provide that Cary 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, CAMPO shall procure substitute insurance so as to assure Cary that the minimum limits of coverage are maintained continuously throughout the periods specified herein.

Primary

CAMPO 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, its agents or agencies, it being the intention of the parties that the insurance policies shall protect Cary 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 on or before March 1, 2023. Cary's review or acceptance of certificates of insurance shall neither relieve CAMPO 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 address should read:

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

Public Records. CAMPO acknowledges that records in the custody of Cary 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 CAMPO, 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 CAMPO, and that are otherwise entitled to protection under N.C.G.S. § 132-1.2(1). If CAMPO, its employees, or subcontractors, becomes aware of or has access to confidential records or information, or information of Cary that is protected from disclosure by Federal or State law ("Confidential Information"), CAMPO, its employees and subcontractors, shall not disclose any such Confidential Information.

Acknowledgement of Cary Brand and Logo Ownership and Restrictions; Dissemination of Information. Cary has developed proprietary branding (the "Cary Brand") centered around the Cary Logo ("Logo") and "Live Inspired" slogan ("Slogan"). CAMPO acknowledges and understands that Cary is not conferring any license to CAMPO under this Agreement to use or depict the Logo or Slogan or other aspects of the Cary Brand. CAMPO shall not make any use or depiction of the Logo, Slogan, or other aspects of the Cary Brand without the prior express written approval of Cary. 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. CAMPO, mindful of those efforts, agrees that it shall not publicly disseminate any information concerning this Agreement without prior approval from Cary. 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, social media, or other media products, and/or CAMPO's business collateral pieces.

Limited Assignment/Delegation. Neither Party shall assign or transfer its rights or interest in Agreement, nor delegate its duties under Agreement, without the other Party's written consent, which may not be unreasonably withheld.

Dispute Resolution. In the event of conflict or default that might arise for matters associated with this Agreement, the Parties agree to informally communicate to resolve the conflict. If any such dispute cannot be informally resolved, then such dispute, or any other matter arising under this Agreement, shall be subject to resolution in a court of competent jurisdiction.

Governing Law. The rights and duties of the Parties shall be governed by the laws of the State of North Carolina, without regards to conflict of laws provisions. Any dispute arising from Agreement shall be litigated in the courts of the State of North Carolina and any and all suits or actions related to Agreement shall be brought exclusively in Wake County, North Carolina.

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.

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.

Gifts and Favors. CAMPO 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.

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.

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.

Verification of Work Authorization. CAMPO shall comply with Article 2, Chapter 64, of the North Carolina General Statutes.

No Third-Party Beneficiaries. There are no third-party beneficiaries to Agreement.

Pre-Audit Requirement. This Agreement has not been fully executed and is not effective until the Preaudit Certificate (if required by N.C.G.S. § 159-28) has been affixed and signed by the Town of Cary finance officer or deputy finance officer.

Performance of Government Functions. Nothing contained in this Agreement shall be deemed or construed so as to restrict or inhibit Cary's police powers or regulatory authority.

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.

Electronic Signatures. Both Parties acknowledge and agree that the electronic signature application DocuSign may be used 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, the Parties consent to be legally bound by the terms and conditions of this Agreement and that such act constitutes their signature as if actually signed in writing. No certification authority or other third-party verification is necessary to validate such electronic signature and the lack of such certification or third-party verification will not in any way affect the enforceability of such electronic signature. 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.

[SIGNATURES TO BE INSERTED HERE]

Exhibit 1 – Provision of Financial Services

	CARY	CAMPO
Independent Audit		X
Compiling Reimbursement packet to NCDOT/Wake Transit Tax District		X
Review of Reimbursement packet by Finance officer		X
Final Signature and Submission to appropriate portals for funders		X
Reporting schedules to NCDOT/Wake Transit Distric		X
Maintenance and verification of appropriate expenses in GL		X
Creation of reclasses for ledger requests (revenue & expense)		X
Approval and posting of reclasses for ledger requests (revenue & expense)	X	
Reconciliations of ledgers for quarterly reporting		X
Budget reconciliations and monitoring		X
Budget Transfers & Modifications (creation)		X

	CARY	CAMPO
Budget Transfers & Modifications (entry into system)	X	
Budget/UPWP Development		X
Operating Budget entry crosswalk/development		X
Member Dues billing		X
Other Partnership billing		X
Revenue Tracking/reconciliation		X
Submittals of payables/compliance of LPA process		X
Requisition Creation/Submission under LPA process		X
Requests of Change orders/monitoring of POS		X
Contract Execution		X
Travel forms/reimbursement requests		X
PCARDS receipt submission		X
Payroll/Timesheet Entry		X
Uniform Guidance Compliance		X
Maintenance of Financial Source documents		X

	CARY	CAMPO
Policy development and enforcement (in supplement to TOC)		X
Inventories		X
Federal Certification Response		X
Single Audit Documentation		X
Staff Report Preparation		X
Budget amendments (preparation)		X
Budget amendments (system entry)	X	
Paying Invoices	X	
Maintenance/Setup of Vendors	X	
Posting/Receipt of Revenues to GL	X	
Verification of numbers for quarterly billing packets to funders	X	
Budget approvals in system	X	
Budget ordinance formatting for council (Info provided by CAMPO)	X	
Year end entries for SEFA/AFR (Info provided by CAMPO)	X	

	CARY	CAMPO
Creation of PO	X	
Approval of Req or PO change orders	X	
Processing and Paying of T&E	X	

Exhibit 2 - Guidelines for Allocating LPA Costs

Initial Term:

For the period beginning January 1, 2023, and ending June 30, 2023 both Parties agree that Indirect LPA Costs reimbursable to Cary will be \$100,000.00. This sum shall be paid quarterly in equal installments of \$50,000. For the period beginning July 1, 2023 and ending June 30, 2024, both Parties agree that Indirect LPA Costs reimbursable to Cary will be \$187,500. This sum shall be paid quarterly in equal installments of \$46,875. For the period beginning July 1, 2024 and ending June 30, 2025, both Parties agree that Indirect LPA Costs reimbursable to Cary will be \$175,000. This sum shall be paid quarterly in equal installments of \$43,750.

During the period of the Initial Term only, the following information technology costs shall be considered Indirect LPA Costs and shall not be billed to CAMPO as Direct LPA Costs:

- Microsoft Office 365 tenant
- Adobe Acrobat
- WebEx
- ESRI
- Cary applications (Naviline, NeoGov, ServiceNow, training)
- Laptops and other computers
- Plotter
- Printers/copiers/multi-function devices
- Network drives/cloud storage/data backups
- CAMPO LAN & Equipment (Switches, UPS, Wireless Access Points)
- CAMPO Internet
- Telephony (Telephone, Voicemail, & related items)
- Mobile Wi-Fi Hot Spot / Router

Renewal Terms:

Beginning July 31, 2025, Indirect LPA Costs reimbursable to Cary will be calculated pursuant to the methodology set forth as follows:

Cary will utilize a third party to perform an indirect cost study for all Town operations annually (“Annual Cost Study”). The Annual Cost Study will incorporate CAMPO’s operations effective FY 2023 and will calculate the indirect cost rate, which represents the ratio between the total indirect costs and benefiting direct costs, after excluding unallowable costs. Beginning with the October 2025 invoice for the previous quarter, Cary will invoice CAMPO for Indirect LPA Costs at the rate determined by the prior year’s Annual Cost Study. Thereafter, each Annual Cost Study will incorporate the most recent year of CAMPO’s operations, and the updated indirect cost rate calculated by the Annual cost Study will become effective July 1 and billed in the October invoice.

No amendment to this Agreement is required to update the indirect cost rate as described above during any Renewal Term. The use of any indirect cost rate during a Renewal Term that is not determined by the result of the Annual Cost Study must be approved by the CAMPO Executive Board and the Cary Town Council and memorialized in a written amendment to this Agreement.

Exhibit 3 – Provision of Information Technology and Office Equipment

	Cary	CAMPO
<u>Software</u>		
Microsoft Office 365 Tenant	X	
Adobe Acrobat	X	
WebEx	X	
Granicus / Legistar (Agenda Software)		X
DocuSign		X
ESRI (GIS Software)		X
Transportation Modeling (Caliper)		X
Mailchimp		X
PublicInput.com		X
Cary Applications (PeopleSoft, NeoGov, ServiceNow, Training)	X	
<u>Hardware</u>		
Laptops and other Computers	X	
Plotter	X	
Printers/Copiers/Multi-Function Devices	X	

	Cary	CAMPO
Audio / Video Equipment		X
<u>Networking / Telephony</u>		
Network Drives / Cloud data storage / data backups	X	
CAMPO LAN & Equipment (Switches, UPS, Wireless Access Points)	X	
CAMPO Internet	X	
Telephony (Telephone, Voicemail, & related items)	X	
Mobile Wi-Fi Hot Spot / Router	X	
Mobile Phones for CAMPO Staff		X
CAMPO Office Security (Card Readers, Security Cameras)		
<u>Other</u>		
CAMPO Websites & Domains		X

Exhibit 4 – Provision of Human Resources Administrative Services

	Cary	CAMPO
Job specification creation and editing		X
Job ad creation		X
Placing job vacancy recruitment postings via NeoGov and other posting sources	X	
Application screening		X
Formulating interview questions; interviewing candidates; final selection		X
Background and drug testing administrative services	X	
Correspondence with job applicants		X
New Hire Paperwork		X
New employee I-9 verifications and storage		X
New employee onboarding (for payroll and benefits administration only)	X	

New employee orientation (for organizational culture, policies, and procedures)		X
Employee performance evaluations, including pay for performance and merit increase recommendations		X
New Employee entry and existing personnel action entry into Payroll/Personnel system	X	
Disciplinary and employee relations issues		X
Employee investigations		X
Employee dismissals		X
Storage and Maintenance and Retention of employee personnel files (excluding LGERS and group health and welfare benefits)		X
General benefits questions	X (group health and welfare only)	X
Core (health/dental/life ins) related benefits administration services	X	
Short-Term Disability Benefit services	X	

Flexible Spending Benefit services	X	
Any other Cary provided employee benefits administration services	X	
Worker's Compensation Claims and Injury Administration (including settlements)	X	
All Employee Safety		X
Leave related benefits (including FMLA and ADA leave) administration services	X	
Retirement and 401(k) general questions	X	X
Retirement application processing services	X	
All employee appreciation/recognition		X
Storage and Maintenance of benefits and related files	X	
Employee offboarding services (benefits related only)	X	
Employee offboarding		X
Diversity, Equity, and Inclusion Initiatives/work		X

Organizational Development services		X
Employee Communication platforms		X
Policy and Procedure development, implementation, and enforcement (policies and procedures related to group health and welfare benefits only)	X	
Policy and Procedure development, implementation, and enforcement (excluding policies and procedures related to group health and welfare benefits)		X
Employee questions regarding policies and procedures (policies and procedures related to group health and welfare benefits only)	X	
Employee questions regarding policies and procedures (excluding policies and procedures related to group health and welfare benefits)		X

Exhibit 5. Cary Policies and Procedures Applicable to CAMPO Employees.