

NORTH CAROLINA
WAKE COUNTY

CONTRACT FOR PROFESSIONAL SERVICES

THIS CONTRACT (the “Contract”) is entered into on [DATE], by and between Nelson/Nygaard Consulting Associates, Inc., hereinafter referred to as the “Contractor;” and the Capital Area Metropolitan Planning Organization, a N.C. metropolitan transportation planning organization, authorized and existing under Article 16 of Chapter 136 of the N.C. General Statutes (“CAMPO”); (Collectively, the “Parties”).

RECITALS:

WHEREAS, in furtherance of its official responsibilities, obligations, and objectives, CAMPO desires to engage a private contractor to perform certain services for CAMPO as further described in this Contract; and

WHEREAS, CAMPO has completed the necessary steps for solicitation and selection of an individual or firm to perform such services, all in accord with CAMPO policies and applicable legal requirements; and

WHEREAS, CAMPO has agreed to engage and contract with the Contractor, and the Contractor has agreed to contract with CAMPO, for performance of the services described herein, and in accordance with the further terms and conditions of this Contract; and

WHEREAS, CAMPO and the Contractor recognize and acknowledge that the Town of Cary (the “Town”) serves as the Lead Planning Agency (“LPA”) for CAMPO and, in this capacity, performs financial and other services in support of CAMPO’s official functions, all in accordance with that Agreement between CAMPO and the Town of Cary, December 16, 2022 as amended, which Agreement is incorporated herein by reference.

NOW THEREFORE, in consideration of the sums to be paid to the Contractor as provided herein, and other good and valuable consideration, the Contractor and CAMPO contract and agree as follows:

1. Scope of Services

The Contractor shall perform for CAMPO the following described services (hereinafter at times referred to as the “work”, “project work”, or “project services”):

Complete the Wake Bus Plan 2035 to prioritize and program Wake Transit-funded operating and capital investments through FY35, including the Multi-Year Operating Program, Capital Improvement Plan, and Short-Range Transit Plans for GoCary, GoRaleigh, and GoTriangle, as

more specifically described in Exhibit 1, attached, entitled "Wake Bus Plan 2035 Scope of Work".

2. Time of Performance

In performing the services described in this Contract, it is mutually agreed that **time is of the essence**. The Contractor shall begin work without delay following execution of this Contract by both parties, and upon CAMPO's giving to the Contractor Notice to Proceed with the work. The work shall be completed by June 30, 2027.

The term of this Agreement shall commence upon execution by all parties and shall continue through the Contractor's satisfactory completion of all work, services, and tasks described in the Contract.

3. Compensation; Time of Payment

For services to be performed hereunder, CAMPO shall pay the Contractor for the actual work satisfactorily performed, in accordance with the Statement of Fees and Charges set forth in Exhibit 1, attached. Total compensation may in no event exceed the sum of \$731,580, except pursuant to a duly authorized, written amendment to this Contract, properly executed by the Parties.

The Contractor shall submit to CAMPO an invoice, or periodic invoices as work is completed, describing in reasonable detail the completed work. Invoices will be reviewed and approved by the CAMPO Executive Director or his designee, prior to payment.

Payment terms shall be: Net 30 days from the date of CAMPO's receipt of the Contractor's invoice. Invoices may be submitted through USPS mail, by personal delivery, or via email. Emailing of invoices is encouraged, to: *Lisa.Blackburn@campo-nc.us*. All invoices **must include** the following **Purchase Order Number [#####]**. Invoices submitted without the correct purchase order number will result in delayed payment.

4. Quality of Services and Standard of Care.

The standard of care for services performed or furnished by Contractor under this Contract will be the care, thoroughness, and skill ordinarily provided by members of Contractor's profession, practicing under generally similar conditions, at the same general time, and in the same general locality.

As deemed appropriate in the performance or furnishing of professional and related services hereunder, the Contractor may engage subcontractor(s), including without limitation consultant(s) or sub-consultant(s). The Contractor is not authorized to engage any such individuals or businesses which shall have been found by CAMPO to be not acceptable in the

performance of work for CAMPO. It shall be the responsibility of the Contractor to confer with CAMPO in this regard prior to engaging for any such subcontractor services.

5. Notices

All notices, requests for payment, or other communications arising hereunder shall be sent to the following:

CAMPO:	Contractor: Nelson/Nygaard Consulting Associates, Inc.
Attn: Steven Mott	Attn: Jonathan Watts
Capital Area MPO	Nelson/Nygaard Consulting Associates, Inc.
1 Fenton Main Street, Suite 201	1525 International Parkway, Suite 3021
Cary, NC 27601	Lake Mary, FL 32746
Telephone: 984-542-3609	Telephone: 202-624-8366
Email: ben.howell@campo-nc.us	Email: jwatts@nelsonnygaard.com

All notices regarding a dispute arising under this Agreement shall also be provided to:

Capital Area MPO
Attn: Executive Director
1 Fenton Main St., Suite 201
Cary, NC 27511

6. Actions in Conformance with Lead Planning Agency Agreement.

The Parties agree to take all reasonable steps and otherwise act in conformance with applicable provisions of the Lead Planning Agency Agreement between CAMPO and the Town of Cary as referenced in the Recitals.

7. Insurance

As indicated by the notation of applicability set forth herein, the Contractor agrees to continuously maintain at its sole expense and at all times during the term of this Contract, the applicable coverages and limits, set forth below to the extent commercially available. The requirements contained herein, as well as CAMPO's review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations of the Contractor under this Contract.

Commercial General Liability – Combined single limit of no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and \$2,000,000 products/completed operations aggregate. Coverage shall include Product/Completed Operations, Contractual Liability or Cross Liability subject to the policy terms, conditions and exclusions. **Applicable: Yes X No**

Automobile Liability – Limits of no less than \$1,000,000 Combined Single Limit per accident. Coverage shall include liability for Owned, Non-Owned and Hired automobiles. In the event Contractor does not own automobiles, Contractor agrees to maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Auto Liability policy. Automobile coverage is only necessary if vehicles are used in the provision of services under this Contract.

Applicable: Yes No

Worker's Compensation & Employers Liability – The Contractor agrees to maintain Worker's Compensation Insurance in accordance with North Carolina General Statute Chapter 97 (relating to statutory limits and number of employees liability) of not less than \$1,000,000 each accident, \$1,000,000 policy limit for bodily injury by disease and \$1,000,000 each employee for bodily injury by disease.

Applicable: Yes No

Professional Liability (Errors and Omissions Coverage) – The Contractor agrees to maintain insurance with limits of not less than \$1,000,000 each claim and aggregate. This coverage is necessary for professional services such as engineering, architecture, or when otherwise required by CAMPO.

Applicable: Yes No

Umbrella or Excess Liability – Contractor may satisfy the minimum general liability, auto liability and employer's liability limits required above under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability, however, the Annual Aggregate limits shall not be less than the highest 'Each Occurrence' limit for required policies. The Contractor agrees to endorse CAMPO and the Town of Cary as additional insured parties on the Umbrella or Excess Liability policy unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.

Additional Insured – Contractor agrees to endorse CAMPO and the Town of Cary as additional insureds on the Commercial General Liability and Auto Liability policies. The endorsement shall read: "Capital Area Metropolitan Planning Organization and the Town of Cary are named additional insured as their interest may appear."

Certificate of Insurance – The Contractor agrees to provide both CAMPO a Certificate of Insurance evidencing that all coverages, limits, and additional insured endorsements required herein are continuously maintained in full force and effect, through annually renewing policies. If the Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Contractor agrees to notify CAMPO within five (5) business days with a copy of the non-renewal or cancellation notice or provide to CAMPO a reasonably sufficient statement identifying the coverage(s) which is/are no longer in compliance. The Certificate Holders' addresses should read as follows:

All insurance coverage referenced above shall be provided by an insurance company authorized to do business in the State of North Carolina.

8. Indemnity

A. PROFESSIONAL SERVICES CONTRACTOR'S INDEMNIFICATION (EXCLUSIVE OF DESIGN SERVICES) TO CAMPO

- a. To the fullest extent allowed by law, the Contractor shall indemnify and hold harmless, but shall have no duty to defend, CAMPO, its officers, officials, employees, (collectively called "Indemnified Parties") from and against those Losses, liabilities, damages, and costs relating to claims made by third parties to the extent caused by, arising out of, or resulting from the negligence of Contractor in the execution of the work provided for in this Agreement, when such negligence of the Contractor or its Derivative Parties is a proximate cause of the Loss, liability, damage, or expense indemnified.
- b. Costs and expenses means attorneys' fees, litigation or arbitration expenses, and court costs actually incurred by the Indemnified Parties to defend against third-party claims alleged in any court, tribunal, or alternative dispute resolution procedure required of any of the Indemnified Parties by law or by contract, but only if the negligence of the Contractor or its Derivative Parties is a proximate cause of the attorney's fees, litigation or arbitration expenses, or court costs to be indemnified.
- c. The Contractor's duty to indemnify and hold harmless described hereinabove shall survive the termination or expiration of this Contract.

B. Definitions:

1. For the purposes of this Section, the term "Fault" shall mean any breach of contract; negligent, reckless, or intentional act or omission constituting a tort under applicable statutes or common law; or violation of applicable statutes or regulations.
2. For the purposes of this Section, the term "Loss" or "Losses" shall include, but not be limited to, fines, penalties, and/or judgments issued or levied by any local, state, or federal governmental entity.
3. For the purposes of this Section, the term "Derivative Parties" shall mean any of the Contractor's subcontractors, agents, employees, or other persons or entities for which the Contractor may be liable or responsible because of any statutory, tort, or contractual duty.

9. Intellectual Property

Subject expressly to the provisions of paragraph 17 of this Agreement, any information, data, instruments, documents, studies, reports or deliverables given to, exposed to, or prepared or assembled by the Contractor under this Contract shall be kept as confidential proprietary information of CAMPO and not divulged or made available to any individual or organization without the prior written approval of CAMPO. Such information, data, instruments, documents, studies, reports or deliverables will be the sole property of CAMPO and not the Contractor.

All intellectual property, including, but not limited to, patentable inventions, patentable plans, copyrightable works, mask works, trademarks, service marks and trade secrets invented, developed, created or discovered in performance of this Contract shall be the property of the CAMPO.

Copyright in and to any copyrightable work, including, but not limited to, copy, art, negatives, photographs, designs, text, software, or documentation created as part of the Contractor's performance of this project shall vest in the CAMPO. Works of authorship and contributions to works of authorship created by the Contractor's performance of this project are hereby agreed to be 'works made for hire' within the meaning of 17 U.S.C. 201.

10. Force Majeure

Except as otherwise provided in any environmental laws, rules, regulations, or ordinances applicable to the parties and the services performed under this Contract, neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by an act of war, hostile foreign actions, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God. Either party to the Contract must take reasonable measures and implement reasonable protections when a weather event otherwise defined as a force majeure event is forecast to be eligible to be excused from the performance otherwise required under this Contract by this provision. Under no circumstances will this section apply to payment obligations.

11. Advertising

The Contractor shall not use the existence of this Contract, or the name of the Town of Cary or CAMPO, as part of any advertising without the prior written approval of CAMPO and the Town of Cary, respectively.

12. Cancellation.

CAMPO may terminate this Contract at any time by providing thirty (30) days written notice to the Contractor. In addition, if Contractor shall fail to fulfill in a timely and proper manner the obligations under this Contract for any reason, including the voluntary or involuntary declaration

of bankruptcy, CAMPO shall have the right to terminate this Contract by giving written notice to the Contractor, and in such event, termination will be effective upon receipt. Upon receipt of such notice, the Contractor shall cease performance immediately.

Contractor may terminate this contract with thirty (30) days written notice if CAMPO fails to provide payment as agreed herein or breaches a material obligation of this Agreement.

In the event of early termination, Contractor shall be entitled to receive just and equitable compensation for work completed and associated costs incurred prior to the Contractor's receipt of notice of termination. Notwithstanding the foregoing, in no event will the total amount due to Contractor under this section exceed the total amount due Contractor under the Contract. The Contractor shall not be relieved of liability to CAMPO for damages sustained by CAMPO by virtue of any breach of this Contract.

Payment of compensation specified in this Contract, its continuation, or any renewal thereof, is dependent upon and subject to the allocation or appropriation of funds to CAMPO for the purpose set forth in this Contract.

13. Laws/Safety Standards

The Contractor shall comply with all laws, ordinances, codes, rules, regulations, safety standards and licensing requirements that are applicable to the conduct of its business, including those of Federal, State, and local agencies having jurisdiction and/or authority regarding the Contractor's work under the Contract.

Contractor must comply with *North Carolina Occupational Safety and Health Standards for General Industry, 29CFR 1910*. In addition, Contractor shall comply with all applicable occupational health and safety and environmental rules and regulations.

As applicable to the scope of work under this Contract, the Contractor shall effectively fulfill and manage their safety and health responsibilities including:

A. Accident Prevention

Prevent injuries and illnesses to their employees and others on or near their job site. Contractor managers and supervisors shall ensure personnel safety by strict adherence to established safety rules and procedures.

B. Environmental Protection

Protect the environment on, near, and around their work site by compliance with all applicable environmental regulations.

C. Employee Education and Training

Provide education and training to all subcontractors, consultants, and employees before they are exposed to potential workplace or other hazards, as required by specific OSHA Standards.

14. Applicability of North Carolina Public Records Law

Notwithstanding any other provisions of this Contract, this Contract and all materials submitted to CAMPO by the Contractor are subject to the public records laws of the State of North Carolina. It is the responsibility of the Contractor to properly designate materials at the time of initial disclosure to CAMPO that may be protected from disclosure as "Confidential" and/or "Trade Secrets" under North Carolina law as such and in the form required by law prior to the submission of such materials to CAMPO. The Contractor understands and agrees that CAMPO may take any and all actions necessary to comply with federal, state, and local laws and/or judicial orders and such actions will not constitute a breach of the terms of this Contract. To the extent that any other provisions of this Contract conflict with this paragraph, the provisions of this section shall control.

15. Audit

At their election, CAMPO may conduct, or provide for, an audit or audits of the Contractor's financial, performance and compliance records maintained in connection with the operations and services performed under this Contract. CAMPO may conduct such audits or inspections throughout the term of this Contract, and for a period of three years after final payment to the Contractor, or for a longer period if such is required by law.

In the event of such an audit, the Contractor agrees that CAMPO, or its/their designated representative(s), shall have the right to review and to copy any work, materials, payrolls, records, data, supporting documentation, or any other sources of information and matters that may in CAMPO judgment have any bearing on or pertain to any matters, rights, duties or obligations arising under the Contract. The Contractor agrees that CAMPO or its/their designated representative, shall have access to Contractor's personnel records pertaining to the performance of this contract, including but not limited to financial, performance, operations and compliance records. The Contractor agrees to maintain such records for a minimum of three years after final payment, unless a longer period of records retention is required by law. The Contractor agrees to allow CAMPO or its/their designee to access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. CAMPO's authorized representative or designee shall have reasonable access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Contract, and shall be provided an adequate and appropriate workspace to conduct audits as provided for herein.

The Contractor agrees to include similar provisions regarding the rights of CAMPO to conduct auditing activities in any contract with employees, consultants, or subcontractors of the Contractor for performance of work under this Contract.

CAMPO agree to provide the Contractor with an opportunity to discuss and respond to any findings before any final audit report is issued.

CAMPO's rights under provisions of this Contract regarding audits shall survive the termination of this contract.

16. E – Verify

Contractor shall comply 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 Contractor's knowledge, any subcontractor employed by 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.*

17. Iran Divestment Act Certification.

Contractor certifies 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, Contractor shall not utilize in the performance of the contract any subcontractor that is identified on the Final Divestment List.

18. 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.C.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.

19. Federal Contracting Requirements.

The Contractor shall, with respect to the subject matter of this Contract and all services provided or performed hereunder be bound, and abide by, the requirements of applicable federal laws set forth in Exhibit 3, attached. Further, with respect to the subject matter of this contract and

services to be provided or performed hereunder, the Contractor shall take all reasonable steps to insure that all of its employees, officers, agents, (sub)contractors, and (sub)consultants abide by such federal requirements, and shall, without limitation, provide reasonable notice of such requirements to its employees, officers, and agents, and shall reference and include such federal requirements in all its contracts with (sub)contractors and (sub)consultants.

20. Cooperation

The parties acknowledge and agree that the project contemplated hereunder is a collaboration between CAMPO and Contractor, and that Contractor's timely performance is, to some extent, dependent upon CAMPO's timely and professional support.

Unless otherwise provided for under this Agreement, CAMPO shall provide information in a timely manner regarding requirements for and limitations on the project, including any reasonably foreseeable changes thereto;

CAMPO shall identify a representative authorized to act on Client's behalf with respect to the project. As of the date of execution, CAMPO's representative is Ben Howell, AICP, Wake Transit Program Manager. CAMPO shall render decisions and approve Contractor's submittals in a timely manner in order to avoid unreasonable delay in the orderly progress of Contractor's services;

CAMPO shall promptly furnish information or materials related to the project as reasonably requested by Contractor. CAMPO shall furnish such information or materials in a commonly readable digital format;

CAMPO shall make reasonable efforts to cooperate with Contractor throughout the duration of the project, including but not limited to timely communication, reasonable participation in any meetings with Contractor or any subcontractor thereof, and a respectful regard toward Contractor, its subcontractors, and the representatives and agents of same.

To the extent that CAMPO's non-compliance with its obligations in this section impacts Contractor's timely performance or causes Contractor to incur additional costs, Contractor's schedule of performance and fees shall be equitably adjusted, but in no case shall the fees exceed the fee cap specified in this Agreement, if any.

The obligations in this section are material obligations of the Agreement.

21. Assignment

This Contract may not be assigned without the express written consent of CAMPO.

22. Applicable Law

All matters relating to this Contract shall be governed by the laws of the State of North Carolina, without regard to its choice of law provisions, and venue for any action relating to this Contract shall be Wake County Civil Superior Court or the United States District Court for the Eastern District of North Carolina, Eastern Division.

23. Companies Boycotting Israel Divestment Act Certification.

The Contractor hereby certifies, pursuant to NCGS 147-86.81, that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel.

24. Miscellaneous.

The Contractor shall be responsible for the proper custody and care of any property furnished or purchased by CAMPO for use in connection with the performance of this Contract and, without limitation as to further claims, will reimburse for, as applicable, repair costs or the replacement value of such property.

The Contractor shall be considered an Independent Contractor, and as such shall be wholly responsible for the work to be performed, including the supervision of its employees, consultants, or subcontractors. Nothing herein is intended or will be construed to establish any agency, partnership, or joint venture relationship between the Parties. The Contractor represents that it has, or will secure at its own expense, all resources and personnel required to satisfactorily perform the required services under this Contract. Any employees, sub-contractors, and/or consultants performing work hereunder shall not be employees of, or have any individual contractual relationship with, CAMPO.

This Contract may be amended only by written agreement of the parties executed by their authorized representatives.

This Contract, and any documents incorporated below, represent the entire Contract between the parties and suspend all prior oral or written statements, agreements, or contracts between the Parties.

Specifically incorporated into this Contract are the following attachments, or if not physically attached, are incorporated fully herein by reference:

- Exhibit 1: Scope of Services and Statement of Fees and Charges
- Exhibit 2: CAMPO Requirements under Federal Laws
- CAMPO-Town of Cary Lead Planning Agency Agreement of December 16, 2022 not attached – incorporated by reference.

In the case of any conflict between this Contract and any of the above incorporated attachments, the terms of this Contract shall govern.

IN WITNESS WHEREOF, the Contractor has executed the Contract by the signature of its duly authorized officer(s), and CAMPO has executed the Contract, with proper authority, by the signature of its Executive Director, with the official seal affixed, the day and year first above written.

THE CONTRACTOR: Nelson/Nygaard Consulting Associates, Inc.

By:

Jonathan Watts, Director of Operations

ATTEST (If corporate):

By: _____
Jennifer Wieland, Managing Director
(Affix Seal)

THE CAPITAL AREA METROPOLITAN PLANNING ORGANIZATION “CAMPO”

By: _____
Chris Lukasina, Executive Director

ATTEST:

By: _____
Brenda Landes, Fiscal Analyst

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Exhibit 1

SCOPE OF SERVICES AND STATEMENT OF FEES AND CHARGES

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Exhibit 2

CAMPO REQUIREMENTS UNDER FEDERAL LAWS

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