



## **Request for Qualifications**

# **Apex Rail Switching Operations Relocation Study FY 2024/2025**

**Capital Area Metropolitan Planning Organization  
September 11, 2023**

**REQUEST FOR QUALIFICATIONS (RFQ)**  
**CAPITAL AREA MPO**  
**APEX RAIL SWITCHING OPERATIONS RELOCATION STUDY**

**PURPOSE**

The North Carolina Capital Area Metropolitan Planning Organization (MPO) is inviting qualified consulting firms or persons to submit Statements of Qualifications, Interest, and Experience in examining the feasibility of moving CSX rail switching operations out of downtown Apex. The study should 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. In addition, the scope should identify relevant federal grant opportunities to fund future phases and provide information that can be used to pursue those federal funds. The intent behind this effort is to address the safety, traffic congestion, diesel engine emissions, vibration, and noise issues created by the CSX switching operations in downtown Apex.

**RFQ SCHEDULE**

<b>Advertise RFQ</b>	September 11, 2023
<b>RFQ Question Submittal Deadline – 11 AM EST</b>	September 25, 2023
<b>CAMPO Responses Posted By 5 PM EST</b>	September 27, 2023
<b>Statement of Qualifications Submittal Deadline – 3 PM EST</b>	<b>October 16, 2023</b>
<b>Tentative Candidate Selection</b>	Early November 2023
<b>Contract Negotiations</b>	Nov – Dec 2023
<b>Anticipated Notice to Proceed</b>	December 2023

**LEAD AND SPONSORING AGENCY**

The Federal Aid Highway Act of 1962 required that transportation projects in urbanized areas of 50,000 or greater in population be based on a continuing comprehensive urban transportation planning process undertaken cooperatively by the states and local governments. In an effort to complete this transportation planning process in an effective manner, the North Carolina Capital Area Metropolitan Planning Organization was created. The current CAMPO planning area boundary encompasses over 1,600 square miles and a population of more than 1,000,000.

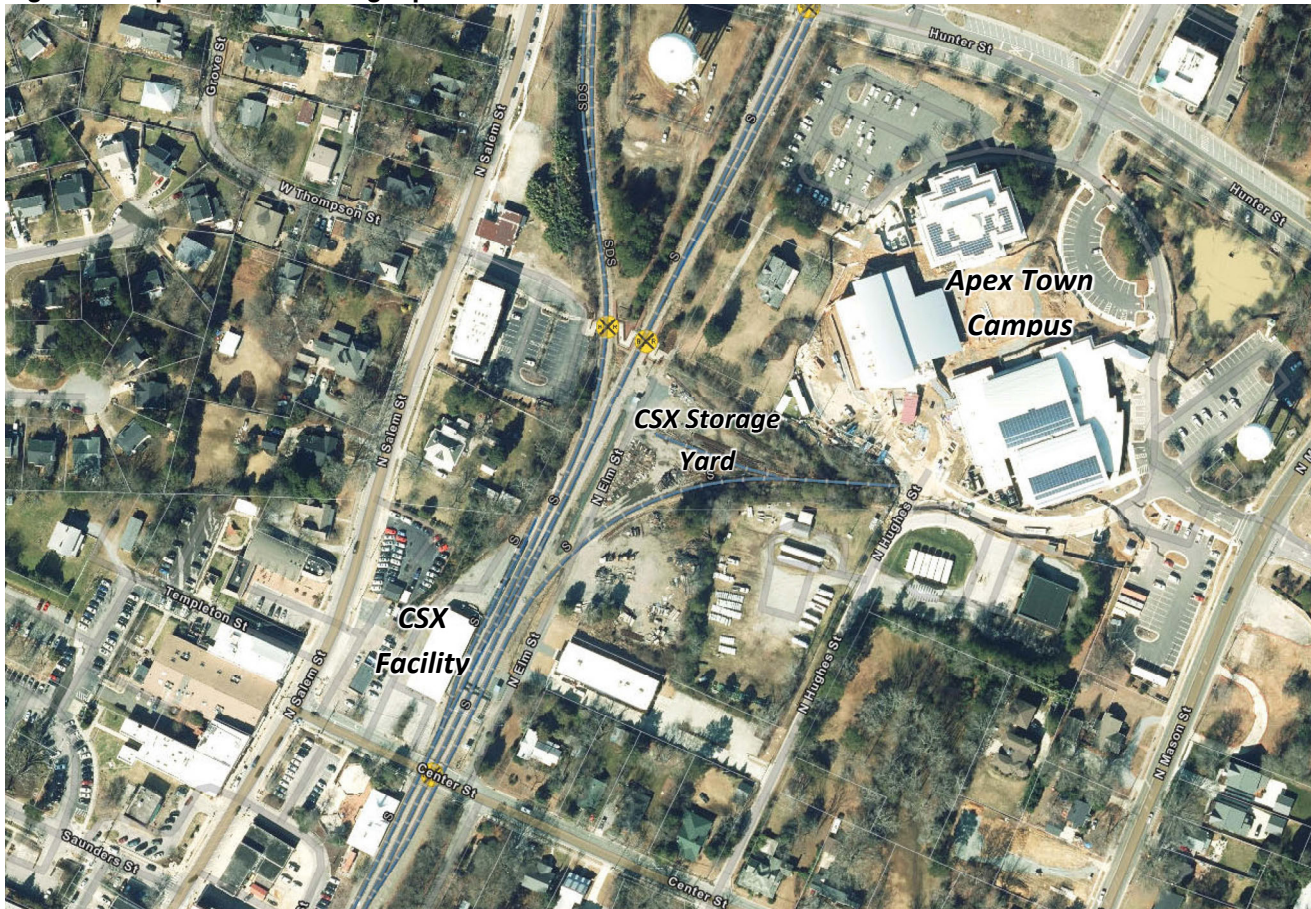
CAMPO is tasked with providing a regional, comprehensive, and cooperative planning process that serves as the basis for the expenditure of all federal transportation funds in the area. Under Section 134 of the Federal Highway Act of 1973, MPOs are required to prepare long range transportation plans for the planning area with a minimum of a 20-year planning horizon.

The Town of Cary serves as the Lead Planning Agency for CAMPO. The MPO is required to complete the transportation planning process in a continuing, cooperative, and comprehensive manner.

## BACKGROUND

CSX is a privately-owned company that owns two rail corridors in Apex, one of which joins the other at the Apex Yard, located between Hunter Street and Chatham Street in downtown Apex. The company owns additional property in downtown Apex including several structures. The CSX “S-Line” is the rail corridor that connects through downtown Apex to downtown Raleigh and to Columbia, South Carolina; the tracks carry freight hauled by CSX and passengers on Amtrak’s Silver Star with service between New York and Florida. Combined freight and passenger service results in six trains operating through Apex on a typical day. The train count crossing streets in downtown Apex is higher than six because of the operations in the Apex Yard; the daily train movement count averages roughly 16 movements a day, but varies from day to day, depending on the amount of switching of train cars and other operational activities. CSX switching operations in downtown Apex create a safety, traffic congestion, diesel engine emissions, vibration, and noise issue.

**Figure 1 – Apex Rail Switching Operations Location**



The Town of Apex has coordinated with NCDOT, CSX Railroad, and CAMPO over several years to discuss possible opportunities to move the CSX maintenance facility. The next step is to complete the feasibility study to advance this effort and continue coordination between relevant agencies.

## SCOPE OF SERVICES

To advance the process of relocating the CSX rail switching operations out of downtown Apex, the MPO seeks a variety of tasks to be performed by a professional consultant or firm.

Tasks and Outcomes expected under this project include:

- Preparing a detailed work plan and schedule to guide project implementation and administration.
- Engaging with a technical steering committee comprised of CAMPO staff, Town of Apex, NCDOT Rail, and CSX staff to review and develop documentation of operational requirements for the rail switching operations and possible opportunities for improving the CSX network or operations. Requirements and opportunities should consider anticipated future needs, such as increase to freight traffic with the opening of VinFast, rail to truck transloading, and any other applicable economic development project in the area. This information will aid in identification and review of candidate sites for the relocation, as well as possible benefits to CSX. Coordination with CSX must follow their [Public Project Information manual](#).
- Identifying and studying the feasibility of two possible alternative locations, including: acceptance of site to CSX, conceptual designs for associated track and roadway improvements, and planning-level cost estimates.
- Recommending appropriate funding opportunities for implementation of the recommendations developed through this study, which can range from short to long-term implementation.
- Preparing a grant application, based on identified funding sources.

This project will be guided by a technical steering committee comprised of CAMPO, Town of Apex, NCDOT Rail, and CSX staff and other key stakeholders. It is anticipated that this committee will meet up to four times throughout the study. The consultant project manager will also be expected to convene with the CAMPO project manager and Apex project administrator for monthly project management check-ins. The consultant will be expected to meet with staff from the MPO, Apex and NCDOT Rail during the study and prepare material for information and updates.

While this contract will *not* include preparation of right-of-way or final design plans, the ideal consultant or consultant team should have experience in preparation of conceptual, preliminary, right-of-way, and final design plans for rail facilities and improvement projects per NCDOT standards and specifications; ability to effectively coordinate with local and railroad officials, leaders, and staff; collection of GPS data and analysis of that data via GIS and/or CADD per NCDOT specifications; collection and analysis of traffic data at or near rail crossings per NCDOT Rail Division requirements and practices.

Deliverables for this effort include:

- Documentation of all project and technical steering committee meetings;
- Convening of up to four meetings with staff from the MPO, the Town of Apex, NCDOT, and CSX during the study;
- Documentation of requirements for CSX rail switching operations;
- Identification and feasibility study of two alternative locations, including conceptual design of associated infrastructure improvements and planning-level cost estimates; and,
- Identification of applicable funding sources and preparation of materials that can be used for grant application(s) towards federal or state funding.

It is anticipated that a Notice to Proceed will be issued no later than **December 2023**. **All work and invoicing should be completed by June 30, 2025.**

All interested parties will have demonstrated ability to conduct thorough analysis on complex transportation, land use, and rail safety issues and objectively present feasible options and recommendations on associated issues; experience conducting engineering and analysis work using NCDOT Rail and FRA specifications and

standards; work in a team environment; and demonstrated ability to undertake and complete projects within allotted timeframes and budgets.

### STATEMENT OF QUALIFICATIONS, INTEREST AND EXPERIENCE

Statements of Qualifications of no more than 15 pages, plus a one-page cover letter shall be submitted with **one (1) digital copy in a PDF format**, labeled “Apex Rail Switching Operations Relocation FY 2024-FY2025,” to the contact person listed below. Statements of Qualifications will need to include a comprehensive response describing the consultant knowledge and experience with the tasks described in the above Scope of Services. Statements of Qualifications will also need to include the following:

1. *General Experience Summary:* The summary will need to emphasize the team’s experience with railroad planning and engineering, traffic separation and crossing evaluation studies, and community impacts. This section should include an overview of directly related project experience of key personnel.
2. *Proposed Approach Summary:* The proposed approach should include a brief overview of how the consultant team will achieve the tasks and outcomes associated with the requested Scope of Services presented above, and a proposed timeline showing major tasks and meetings needed to achieve the desired Scope of Work no later than June 30, 2025.
3. *Project References:* References will need to include a brief project description, contact name, address, telephone number, email address, and provide evidence of similar work completed within the last five (5) years.
4. *Project Team:* Provide resumes for specific personnel that will be assigned to the project, including verification that they have experience with similar projects and will be available to complete the project within the allotted timeframe.
5. *General Information:* A profile of the firm and description of current projects will need to be included in this section. This section can also be used to provide additional information the firm feels would be useful during the evaluation process.
6. *Vendor ID Numbers:* **Any interested respondent must be a registered vendor with the Town of Cary and the NC Department of Transportation prior to contracting with the MPO.** Vendor identification numbers, if available, for both organizations should be provided in the cover letter accompanying the RFQ response.

### EVALUATION PROCESS

Statements of Qualifications will be evaluated according to the consultant’s relevant knowledge and experience in the tasks described in the Scope of Services and thoroughness in addressing the Statements of Qualifications requirements. Evaluation criteria include, but are not limited to:

- Professional qualifications of the consultant, previous experience with similar projects, and technical competence of consultant team
- Understanding and approach toward scope of services
- Demonstrated ability to successfully interact with clients and committee members
- Appropriateness of organization, key personnel and their availability
- Quality of references
- Ability to undertake project in a timely manner and meet deadlines

The selected consultant will be evaluated based on information that is submitted in response to the RFQ. The first task to be undertaken will be to more specifically define work elements that are generally described in



the Scope of Services, so that work will be authorized on a task assignment basis based on negotiated hours agreed to as necessary to complete the assigned task.

The Capital Area MPO will select a consultant after analysis of all information provided in the qualification packages. The Capital Area MPO reserves the right to select the most competitive proposal for this presentation. During the selection process, the MPO will ensure that all answers or clarifications to questions posed by any particular respondent are provided through the project website by the response date shown in the schedule on page 2. The Capital Area MPO reserves the right to negotiate a contract, including the final scope of work and contract price, with any respondent or other qualified party.

### **GENERAL INFORMATION**

CAMPO will not accept faxed information as a valid submission in response to the RFQ. The successful firm must enter into a contract with the Capital Area MPO, which specifies requirements for indemnification, insurance and other applicable policies.

The Capital Area MPO reserves the right to suggest to any or all respondents to this request for qualifications that such respondents form into teams of consulting firms or organizations deemed to be advantageous to the Capital Area MPO in performing the scope of work. The Capital Area MPO will suggest the formation of such teams when such relationships appear to offer combinations of expertise or abilities not otherwise available. Respondents have the right to refuse to enter into any suggested relationship.

The Capital Area MPO may reject any or all of the submissions as it deems in its best interests. The Capital Area MPO reserves the right to waive any irregularities or technicalities when it deems the public interest will be served thereby.

This request for qualifications does not commit the Capital Area MPO to award a contract, to pay any costs incurred in preparation of a response to this invitation, or to procure or contract for services or supplies. The Capital Area MPO reserves the right to accept or reject any or all responses received as a result of this request for qualifications, or to cancel this request in part or in its entirety if it is in the best interest of the Capital Area MPO to do so.

The selected consultant or firm will enter a contract with the Capital Area MPO, and must agree to contract provisions, including applicable federal requirements.

### **METHOD OF COMPENSATION**

Upon selection, the Capital Area MPO will propose a contract to the selected consultant for review. The contract is for a cost-plus fixed fee with a contract maximum. Reimbursement will be made on a periodic schedule based on documentation of work tasks completed exclusive of travel, which will be reimbursed on a not to exceed basis for reasonable costs as identified in the contract. The Project Manager will review and, if appropriate, approve payment of all invoices submitted under the contract. The MPO has budgeted a total of one hundred thousand dollars (\$100,000) for this study in FY 24. Proposals should not include work which is anticipated to exceed this budgeted amount.

**NOTE: DUE TO THE MINI-BROOKS ACT NO FEE IS TO BE SUBMITTED AT THIS TIME. FINAL FEE NEGOTIATIONS WILL COMMENCE WITH THE FIRM(S) SELECTED BASED ON THIS QUALIFICATIONS-BASED SELECTION PROCESS.**

### **MPO CONTACT INFORMATION**

Questions regarding this RFQ must be received no later than the schedule shown on page 2 (email versions are acceptable; no phone calls). Based on questions received, the project manager will provide clarification

or further information through the project website, if needed. Questions may be emailed to [Gaby.Lawlor@campo-nc.us](mailto:Gaby.Lawlor@campo-nc.us) . **All Statements of Qualifications in response to this RFQ must be received no later than the date and time shown on page 2 in the RFQ schedule.**

Please forward Statements of Qualifications as PDF attachments, per instructions on page 6 of this document, to: [Gaby.Lawlor@campo-nc.us](mailto:Gaby.Lawlor@campo-nc.us).

## **ATTACHMENT A:**

### **Required Capital Area MPO Contract Provisions**



NORTH CAROLINA  
WAKE COUNTY

CONTRACT FOR PROFESSIONAL SERVICES

THIS CONTRACT (the “Contract”) is entered into on \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, 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”:

Perform necessary data collection and analysis and preparation of a written report on CSX operational requirements for their rail switching operations, conceptual designs for required upgrades to existing infrastructure, and planning-level cost estimates associated with alternative locations, as more specifically described in Exhibit 1, attached, entitled “\_\_\_\_\_”.

## 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, 2025.

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

*(Billing by Time, Charges, and Expenses)* 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 2, attached. Total compensation may in no event exceed the sum of \$100,000, 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.

All work performed under this Contract (including all phases of project work to which the Contract applies) shall be performed in a high quality and professional manner, to the reasonable satisfaction of CAMPO, and shall conform to all prevailing industry and professional standards. 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:  
Attn:  
Capital Area MPO

Cary, NC 27601  
Telephone: 919-996-4400

Contractor:  
Attn:

Telephone:  
Email:

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

Capital Area MPO  
Attn: Executive Director

## 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, on a primary basis, at its sole expense and at all times during the term of this Contract, the applicable coverages and limits, set forth below. 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 and \$2,000,000 aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.

**Applicable:** Yes ☐ No ☐.

Automobile Liability – Limits of no less than \$1,000,000 Combined Single Limit. 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.

**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. 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 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, Auto Liability, and Professional 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 endorsements required herein are continuously maintained in full force and effect. 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 defend, indemnify and hold harmless CAMPO, its officers, officials, employees, agents, or indemnnities (collectively called "Indemnified Parties") from and against those Losses, liabilities, damages, and costs caused by, arising out of, resulting from, or in connection with the execution of the work provided for in this Agreement, when the Fault of the Contractor or its Derivative Parties is a proximate cause of the Loss, liability, damage, or expense indemnified.

b. Costs and expenses shall include 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 Fault 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, defend, 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.

## 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.

In the event of early termination, Contractor shall be entitled to receive just and equitable compensation for satisfactory 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, and CAMPO may withhold any payment due to the Contractor for the purpose of setoff until such time as CAMPO can determine the exact amount of damages due CAMPO resulting from the breach.

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. Minority or Women Owned Businesses

Consistent with, and in furtherance of the above-stated agreements not to discriminate on the basis of race, color, creed, national origin, sex, age, marital status, pregnancy, or sexual orientation, the Contractor will pursue an affirmative policy of fostering, promoting and conducting business with and engagement of women and minority owned business enterprises ("WMBE"). Further, the Contractor shall adhere to any State and Federal MWBE requirements associated with any governmental funding involved in this Contract.

20. 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.

## 21. 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.

## 22. Assignment

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

## 23. 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.

## 24. 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
- Exhibit 2: Statement of Fees and Charges
- Exhibit 3: 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:**

By:

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Printed Name/Title

ATTEST (If corporate):

By: \_\_\_\_\_

(Affix Seal)

**THE CAPITAL AREA METROPOLITAN PLANNING ORGANIZATION “CAMPO”**

By: \_\_\_\_\_  
Chris Lukasina, Executive Director

(Affix Seal)

*\* The execution template language may be deleted in the final form, as an electronic signature template may be typically used.*

## **ATTACHMENT B:**

### **Additional Federal Requirements**



## **CAMPO Federal Requirements**

All recipients of federally funded grants or use federal assistance to support procurements must comply with the applicable provisions of the Federal procurement standards 2 CFR pt. 200. As a result, firms awarded federally funded contracts by Capital Area MPO must comply with the following contract provisions set forth herein, unless a particular award term or condition specifically indicates otherwise. These terms and conditions are hereby incorporated into the Agreement or Contract to which it is attached as an Exhibit.

### **Definition**

“Firm” means any company, corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, governmental body or other legal entity

### **Age Discrimination Act of 1975**

All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the requirements of the Age Discrimination Act of 1975 (Title 42 U.S. Code, § 6101 et seq.), which prohibits discrimination on the basis of age in any program or activity receiving Federal financial assistance.

### **Americans with Disabilities Act of 1990**

All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, which prohibits discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities. (42 U.S.C. §§ 12101– 12213).

### **Byrd Anti-Lobbying Amendment**

All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Suppliers, contractors, subcontractors, consultants, and subconsultants who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of an agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

**Civil Rights Act of 1964 – Title VI**

All suppliers, contractors, subcontractors, consultants, and subconsultants must comply with the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

**Clean Air Act and Federal Water Pollution Control Act (Clean Water Act)**

All suppliers, contractors, subcontractors, consultants, and subconsultants must comply with the Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended—when contract amounts exceed \$150,000 and agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387

**Contract Work Hours and Safety Standards Act**

All suppliers, contractors, subcontractors, consultants, and subconsultants must comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708) and where applicable, all contracts awarded in excess of \$100,000 that involve the employment of mechanics or laborers must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5)

**Copeland “Anti-Kickback” Act**

All suppliers, contractors, subcontractors, consultants, and subconsultants must comply with the with the Copeland “Antikickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Sub-contractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

**Davis-Bacon Act**

All suppliers, contractors, subcontractors, consultants, and subconsultants must comply with Davis-Bacon Act, as amended (40 U.S.C. 3141–3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 must comply with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations

(29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”)

**Debarment and Suspension**

All suppliers, contractors, subcontractors, consultants, and subconsultants are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, and 2 C.F.R. Part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

**Drug-Free Workplace Regulations**

All suppliers, contractors, subcontractors, consultants, and subconsultants must comply with the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 et seq.), which requires agreement to maintain a drug-free workplace.

**Education Amendments of 1972  
Equal Opportunity in Education Act) – Title IX**

All suppliers, contractors, subcontractors, consultants, and subconsultants must comply with the requirements of Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.

**Energy Policy and Conservation Act**

All Suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the requirements of 42 U.S.C. § 6201 which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.

**Fly America Act of 1974**

All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with Preference for U.S. Flag Air Carriers: (air carriers holding certificates under 49 U.S.C. § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.

**Hotel and Motel Fire Safety Act of 1990**

In accordance with Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. § 2225a, all suppliers, contractors, subcontractors, consultants, and sub-

**Limited English Proficiency  
(Civil Rights Act of 1964, Title VI)  
and Executive Order 13166**

consultants must ensure that all conference, meeting, convention, or training space funded in whole or in part with Federal funds complies with the fire prevention and control guidelines of the Federal Fire Prevention and Control Act of 1974, as amended, 15 U.S.C. § 2225.

All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the Title VI of the Civil Rights Act of 1964 (Title VI) prohibition against discrimination on the basis of national origin, which requires taking reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services.

**Civil Rights Restoration Act of 1987**

Broadened scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, to include program activities of federal-aid recipients, subrecipients and contractors.

**Executive Order 12898**

Addresses environmental justice in minority and low-income populations by discouraging programs, policies, and activities with disproportionately high and adverse health or environmental effects.

**Executive Order 14008**

Regarding climate crisis issues, establishing environmental justice initiatives, focusing on transportation disadvantaged populations.

**Patents and Intellectual Property Rights**

Unless otherwise provided by law, suppliers, contractors, subcontractors, consultants, and sub-consultants are subject to the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and codified in 35 U.S.C. § 200 et seq. All suppliers, contractors, and subcontractors, consultants, sub-consultants are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. § 401.14.

**Procurement of Recovered Materials**

All suppliers, contractors, and subcontractors, consultants, sub-consultants must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

**Terrorist Financing**

All suppliers, contractors, subcontractors, consultants, and subconsultants must comply with E.O. 13224 and U.S. law that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism.

**Trafficking Victims Protection Act of 2000**

All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the requirements of the government-wide award term which implements Section 106(g) of the Trafficking Victims Protection Act of 2000, (TVPA) as amended (22 U.S.C. § 7104). The award term is located at 2 CFR § 175.15, the full text of which is incorporated here by reference in the standard terms and conditions for federally funded procurements.

**Federal Transit Laws**

Specifically, 49 USC Sec.5332, prohibiting discrimination based on race, color, religion, national origin, sex (including gender identity), disability age, employment, or business opportunity.

**Rehabilitation Act of 1973**

All suppliers, contractors, subcontractors, consultants, and subconsultants must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, as amended, which provides that no otherwise qualified handicapped individual in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

**Universal Identifier and System of Award Management (SAM)**

All suppliers, contractors, subcontractors, consultants, and sub-consultants are required to comply with the requirements set forth in the governmentwide Award Term regarding the System for Award Management and Universal Identifier Requirements located at 2 C.F.R. Part 25, Appendix A, the full text of which is incorporated here by reference in the standard terms and conditions for federally funded procurements.

**USA Patriot Act of 2001**

All suppliers, contractors, subcontractors, consultants, and subconsultants must comply with requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act), which amends 18 U.S.C. §§ 175–175c.

**Whistleblower Protection Act**

All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the statutory requirements for whistleblower protections (if

applicable) at 10 U.S.C § 2409, 41 U.S.C. 4712, and 10 U.S.C. § 2324, 41 U.S.C. §§ 4304 and 4310.

**Termination Provisions**

Capital Area MPO may terminate any resulting contract should the Contractor fail to abide by its requirements.

**Legal Remedies Provisions**

In instances where the Contractor violates or breaches contract terms the MPO shall use such sanctions and penalties as may be appropriate.

**Conflict of Interest Provisions**

Interest of Members, Officers, or Employees of the Recipient Members of Local Governing Body or Other Public Officials. No member officer or employee of the recipient or its agent no member of the governing body of the locality in which the program is situated and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year thereafter shall have any financial interest direct or indirect in any contract or subcontract or the proceeds under this agreement. Immediate family members of said member's officers, employees and officials similarly barred from having any financial interest in the program. The recipient shall incorporate or cause to be incorporated in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purpose of this section.

**Access to Records and Record Retainage**

In general all official project records and documents must be maintained during the operation of this project and for a period of five years following close out. The Town of Cary as Lead Planning Agency, , the comptroller General of the United States, or any of their duly authorized representatives shall have access to any books documents papers and records of the of the Administering Agency which are pertinent to the execution of the Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

**Solicitations for Subcontractors**

In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, each potential subcontractor or supplier shall be notified of the contractor's obligations under this contract.

**Information and Reports**

The contractor shall provide all information and reports required under applicable federal and state laws, and shall permit access to its books, records, accounts, other sources of information, and its facilities, as may be determined by CAMPO, the NCDOT, or the Federal

Highway Administration to be pertinent to ascertain compliance with applicable statutes and regulations.

**Sanctions for Non-Compliance**

In the event of the contractor's noncompliance with applicable statutes and regulations, CAMPO may impose remedies and sanctions available under applicable laws to it, the NCDOT, or the Federal Highway Administration.

**Incorporation of Provisions**

Any contractor shall include the provisions of this Exhibit in every subcontract pertaining to work or services to CAMPO, unless exempted by federal or state law. The Contractor shall take such action with respect to any subcontract as the NCDOT or Federal Highway Administration may direct as a means of enforcing such provisions, including sanctions for non-compliance.