



310
TOWN OF CHAPEL HILL

Town Hall
405 Martin Luther King Jr.
Boulevard
Chapel Hill, NC 27514

Item Overview

Item #: 13., File #: [18-1001], Version: 1

Meeting Date: 12/5/2018

Consider Authorizing the Town Manager to Execute a Cooperative Agreement with GoTriangle on the Durham-Orange Light Rail Transit Project.

Staff:

Ben Hitchings, Director
Judy Johnson, Operations Manager
Bergen Watterson, Transportation Planning Manager

Department:

Planning

Overview: GoTriangle requests a Cooperative Agreement with the Town of Chapel Hill to outline how the two organizations will work together efficiently during the remaining design and construction of the Durham-Orange Light Rail line. The proposed agreement attached describes roles, responsibilities, and procedures to minimize impacts on the Town and help ensure that the light rail project is built in a timely and cost-effective manner. GoTriangle is seeking similar agreements with about a dozen organizations and agencies including the City of Durham, UNC-Chapel Hill, and Duke Energy, as well as right-of-way approvals from the N.C. Department of Transportation (NCDOT). The Town's legal, planning, and engineering staff have reviewed the agreement and worked with GoTriangle to revise it and provide this final draft.

☆ **Recommendation(s):**

That the Council adopt the resolution authorizing the Town Manager to execute a Cooperative Agreement with GoTriangle to ensure coordination on the design and construction of the light rail line.

Updates: In response to Council direction at the Council meeting on November 28, 2018, staff from the Town and GoTriangle have taken the draft City of Durham Cooperative Agreement with GoTriangle and amended it to include unique elements from the draft Chapel Hill agreement. In addition, staff has added provisions to address the Council's interest on the following topics, among others:

- Stormwater standards and management;
- Parking lot landscaping;
- Relocation of public utilities;
- Environmental evaluations;
- Opportunities for public input;
- Noise impacts; and
- Cost reimbursement.

An annotated, redlined version of the revised agreement is attached to show how it compares with the Durham agreement.

Background: The Durham-Orange Light Rail Transit Project is a major investment in public transportation infrastructure and is eligible for federal funding through FTA's Capital Investment Grant (CIG) program. The Project is a light rail transit service with stations located at major activity centers in the Town of Chapel Hill and the City of Durham along a 17.7-mile segment. The Project is currently in the Engineering phase of the CIG program. During this phase, Project sponsors (GoTriangle) must satisfy several requirements, including the completion of selected third party agreements including the Cooperative

Agreement with the Town. The Town has already signed a Reimbursement Agreement for GoTriangle to repay the Town for staff time spent reviewing the project plans.

The Cooperative Agreement outlines roles and responsibilities for GoTriangle and the Town to facilitate successful completion of the project, should it move forward. The Agreement outlines how GoTriangle and the Town will work together to cooperatively review and resolve matters related to engineering and design, construction, mitigation, bicycle and pedestrian improvements, operations, and maintenance.







Most of the infrastructure and facilities associated with the Durham-Orange Light Rail line are exempt from local regulation under North Carolina state statutes; however, the Cooperative Agreement would commit GoTriangle to securing an Engineering Construction Permit (ECP) from the Town before beginning construction. The Town issues an ECP after reviewing development and infrastructure projects for compliance with the Town’s Public Works Engineering Design Manual, including construction specifications for site features such as streets and sidewalks, stormwater management facilities, and parking. In addition, GoTriangle has agreed to minimize tree clearing and include replacement landscaping where feasible.

The Agreement does not commit the Town to prioritizing inspection of this project over other development and infrastructure projects.

The Agreement includes a provision noting GoTriangle’s obligation to follow all applicable labor wage laws, such as the Davis-Bacon Act, as well as a commitment to provide for public involvement in the design of the stations, including features such as platforms.

Fiscal Impact/Resources: The project involves a commitment of staff time to conduct review and inspections, similar to other development and infrastructure projects in the Town. The Cooperative Agreement references a separate reimbursement agreement in which GoTriangle agrees to reimburse Town staff time spent on reviewing the engineering plans for the light rail project.

Council Goals:

<input checked="" type="checkbox"/>		Create a Place for Everyone	<input type="checkbox"/>		Develop Good Places, New Spaces
<input checked="" type="checkbox"/>		Support Community Prosperity	<input checked="" type="checkbox"/>		Nurture Our Community
<input checked="" type="checkbox"/>		Facilitate Getting Around	<input type="checkbox"/>		Grow Town and Gown Collaboration

 **Attachments:**

- Resolution
- Revised Cooperative Agreement-Redlined_11-30-18
- Revised Cooperative Agreement-Clean_11-30-18
- DOLRT Reimbursement Agreement, June 2018

The Agenda will reflect the text below and/or the motion text will be used during the meeting.

PRESENTER: Bergen Watterson, Transportation Planning Manager, Town of Chapel Hill
 John Tallmadge, Interim Durham-Orange Light Rail Transit Project Director

Item #: 13., **File #:** [18-1001], **Version:** 1

Meeting Date: 12/5/2018

RECOMMENDATION: That the Council adopt the resolution authorizing the Town Manager to execute a Cooperative Agreement with GoTriangle to ensure coordination on the design and construction of the light rail line.

A RESOLUTION AUTHORIZING THE TOWN MANAGER TO EXECUTE A COOPERATIVE AGREEMENT WITH GOTRIANGLE FOR THE DURHAM-ORANGE LIGHT RAIL TRANSIT PROJECT (2018-12-05/R-14)

WHEREAS, the Town Council has established goals to Facilitate Getting Around, Support Community Prosperity, and Create a Place for Everyone; and

WHEREAS, GoTriangle is seeking funding that would bring an estimated \$1.238 billion federal matching investment in transportation infrastructure to serve Chapel Hill and Durham; and

WHEREAS, construction of a major infrastructure facility such as the Durham-Orange light rail line necessitates cooperation between a number of partners in order to keep the project on schedule and under budget; and

WHEREAS, GoTriangle is proposing to undergo review and approval of an Engineering Construction Permit to minimize impacts on Chapel Hill, even though the planned improvements located in Chapel Hill are exempt from local regulation under state statutes; and

WHEREAS, an existing Reimbursement Agreement for the Durham-Orange Light Rail Transit Project was executed on June 29, 2018 to refund the Town for staff time spent reviewing the project plans; and

WHEREAS, the Federal Transit Administration requires execution of this Agreement to demonstrate ongoing coordination between GoTriangle and the Town; and

WHEREAS, GoTriangle has agreed to meet applicable labor wage laws, such as the Davis-Bacon Act; and

WHEREAS, GoTriangle has agreed to continue to work with the Town to gather input from community stakeholders on the design of the stations; and

WHEREAS, GoTriangle and the Town have revised the agreement to include additional provisions to address topics such as stormwater management, parking lot landscaping, relocation of public utilities, environmental evaluations, opportunities for public input, noise impacts, and cost reimbursement.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Town of Chapel Hill that the Council hereby authorizes the Town Manager to execute on behalf of the Town a Cooperative Agreement with GoTriangle for the Durham-Orange Light Rail Transit Project to sustain cooperation and coordination between the Parties.

This the 5th day of December, 2018.

STATE OF NORTH CAROLINA
 COUNTY OF ~~DURHAM~~ ORANGE

GOTRIANGLE CONTRACT NUMBER: 18-03129

RESEARCH TRIANGLE REGIONAL PUBLIC
 TRANSPORTATION AUTHORITY d/b/a
 GOTRIANGLE

AND

CITY OF DURHAM TOWN OF CHAPEL HILL

COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT (“Agreement”) is made by and between the ~~CITY OF DURHAM, NORTH CAROLINA~~ TOWN OF CHAPEL HILL (the “CityTown”), a municipality in Orange County and Durham ~~Durham~~ County, North Carolina, and the RESEARCH TRIANGLE REGIONAL PUBLIC TRANSPORTATION AUTHORITY d/b/a GOTRIANGLE, “a public body and body politic and corporate of the State of North Carolina” (N.C.G.S. § 160A-603), with a principal office located at 4600 Emperor Boulevard, Durham, North Carolina 27703 (“GoTriangle”). The CityTown and GoTriangle may be referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

A. GoTriangle

GoTriangle, a regional public transportation authority organized under the laws of North Carolina, operates and conducts its activities in Durham, Orange, and Wake counties of North Carolina. GoTriangle’s powers, duties, and purposes are set forth in Article 26 of Chapter 160A of the North Carolina General Statutes (N.C.G.S.), as amended. GoTriangle’s broad purpose is “to finance, provide, operate, and maintain for a safe, clean, reliable, adequate, convenient, energy efficient, economically and environmentally sound public transportation system for the service area of the Authority through the granting of franchises, ownership and leasing of terminals, buses and other transportation facilities and equipment, and otherwise through the exercise of the powers and duties conferred upon it, in order to enhance mobility in the region and encourage sound growth patterns” (N.C.G.S. § 160A-608). GoTriangle is the local sponsor for the Durham-Orange Light Rail Transit Project (“Project”) and is working directly with the Federal Transit Administration (“FTA”) to deliver the Project for the benefit of the general public.

B. The CityTown

The CityTown is a municipality in Durham-Orange and County Durham Counties, North Carolina. Based on preliminary engineering plans, there are fourteen-six (614) planned Project stations (Leigh Village, Gateway, Patterson Place, MLK Jr. Parkway, South Square, LaSalle Street, Duke/VA Medical Centers, Ninth Street, Buchanan Boulevard, Durham, Blackwell Mangum, Dillard Street, Alston Avenue, and NCCU/UNC Hospitals, Mason Farm Road, Hamilton Road, Friday Center Drive, Woodmont, and Gateway) in the CityTown (collectively "CityTown Stations"). See *Attachment A* (Project Map). The CityTown supports the Project and recognizes its value to Durham-Chapel Hill residents, the general public, and the State of North Carolina. As proposed, the Project may impact various CityTown resources, including rights-of-way (both fee simple and easements), other land, utilities, facilities, buildings, drainage systems (those accepted and maintained by the CityTown), and other properties and assets owned by the CityTown (collectively, "CityTown Property").

C. Durham-Orange Light Rail Transit Project

The Project, with a budget of approximately \$2.47 billion, is a major investment in public transportation infrastructure and is eligible for federal funding through FTA's Capital Investment Grant ("CIG") program. The Project is a light rail transit service with stations located at major activity centers in Chapel Hill and Durham along a 17.7-mile alignment. The Project also includes a rail operations and maintenance facility ("ROMF") to be located outside of the Town limits, and parking facilities. See *Attachment A* (Project Map). The Project is currently in the engineering phase of the CIG program. During the engineering phase, project sponsors must satisfy several requirements, including the completion of all critical third party agreements. This Agreement has been identified by FTA as critical and a precondition to construction funding.

D. Purpose of Agreement: Ongoing Cooperation and Coordination

This Agreement describes major roles and responsibilities applicable to each Party in connection with the successful implementation of the Project. Sustained cooperation and coordination between the Parties is necessary in order to build the Project within established parameters of budget and schedule, while also minimizing impacts to CityTown Property to the greatest extent practicable. This Agreement memorializes the Parties' commitment to cooperate in good faith and is a record of their shared interest in advancing the Project to full operation and revenue service in a timely, cost-effective, and efficient manner.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the benefits of which flow to the CityTown and

GoTriangle from each other, and in further consideration of the mutual covenants, terms, conditions, restrictions, and representations contained or incorporated into this Agreement, the Parties agree as follows:

ARTICLE 1- GENERAL AGREEMENTS ON PROJECT DEVELOPMENT

A. Term of the Agreement

This Agreement shall become effective on the last date executed below and shall continue in force until terminated by written agreement between the Parties; terminated pursuant to Art. 5.F. of this Agreement; or on December 31, 2021, if GoTriangle has not obtained a Full Funding Grant Agreement (“FFGA”) from the FTA for the Project by that date (“Term”).

Commented [BH1]: This provision is included so that the agreement doesn't have to be amended in the event that state legislative deadlines change in the future. This is consistent with the other Cooperative Agreements that GoTriangle is signing.

B. Project Cooperation

The Parties shall work efficiently and cooperatively to review and resolve all Project-related matters between the Parties in a cost-effective manner. This cooperation shall encompass engineering and design, construction and inspections, and operations and maintenance. The Parties shall support the schedule for the Project developed by GoTriangle and shall take timely actions on matters for which they are responsible under this Agreement. The Parties shall continue to work together to identify ways to improve bicycle and pedestrian connections to stations, to identify strategies to further minimize the visual effects of the Project, and to minimize impacts to CityTown Property.

To carry out this Agreement effectively, each Party shall appoint a Project Coordination Manager (“PCM”). The PCM for each Party shall routinely monitor the status of Project-related decision-making and commitments by the Parties; shall routinely confer with the PCM for the other Party; and shall facilitate ongoing and productive coordination between the Parties, including (i) the exchange and flow of information between GoTriangle and the CityTown specific to the Project, (ii) making non-binding recommendations to resolve any problems or issues concerning the Project, and (iii) ensuring issues are elevated to decision makers and resolved in a timely manner.

C. Future Agreements

The Parties recognize that additional approvals and agreements will be necessary for the implementation of the Project. The Parties shall continue to work together as outlined in Art. 1.B. to resolve outstanding matters referenced throughout Articles 2, 3, and 4 of this Agreement. The mutual understandings of the Parties shall be memorialized in future agreements. Such future agreements may cover the following topics: ~~a full reimbursement agreement that will compensate the City and its consultants for work pursuant to an agreed-upon design review scope~~; temporary construction easements; dedications of right-of-way or facilities; parking; utilities; pre-revenue service testing; operations and maintenance, including management of CityTown traffic signals interconnected with the light rail system; and the GoPass program.

Commented [BH2]: The Parties have already executed a full reimbursement agreement.

D. Project Schedule

The CityTown and GoTriangle shall use reasonable efforts to adhere to the Project Schedule, incorporated into this Agreement as Attachment B. Notifications of schedule adjustments affecting the CityTown will be provided to the CityTown as soon as such adjustments are made.

E. State and Federal Requirements

GoTriangle and the CityTown shall comply with all state and federal requirements applicable to the Project, including the requirements of the FTA and its CIG program and other requirements related to the Project's eligibility for state and federal funding. Such state and federal requirements may also include, when applicable, requirements related to contracting, procurement, and worker protections (e.g., the Davis-Bacon Act). In addition, GoTriangle shall continue to implement commitments contained in final environmental documentation pursuant to the National Environmental Policy Act.

F. Applicability of CityTown Requirements

The Project is a linear public transportation system comprised of component parts, such as tracks, bridges, station platforms (currently planned with canopy architecture), and electrical systems. The siting, design, construction, installation, operation, and maintenance of the component parts of the Project are exempt from regulation under the CityTown's zoning authority, except where a component part constitutes the "erection, construction, and use of buildings" within the meaning of North Carolina law (N.C.G.S. § 160A-392). To date, the Parties have identified parking decks and transformers, if any, and the ROMF as components of the Project, subject to CityTown zoning. The Project does not currently include any parking decks within the CityTown. The Parties have also identified traction power sub-stations ("TPSS") as components that may be subject to Town zoning. The CityTown retains the right to review any changes to the project design or scope that are not excluded from the CityTown's zoning purview pursuant to N.C.G.S. § 160A-392.

The CityTown will review design drawings and approve construction of the Project as outlined in Art. 2 of this Agreement. As part of its review to date, the Town City has also identified the following approvals as necessary for various components of the Project:

- I. Where the component includes construction of rail lines, paths or walkways, station platforms, TPSS units, utilities, road crossings or surface parking within right-of-way held by NCDOT, or the CityTown, or NC Railroad Norfolk Southern Railroad, an encroachment agreement or other appropriate agreement must be executed with the corresponding holder of the right-of-way interest.
- II. Where the component includes the construction of road crossings within right-of-way held by NCDOT, or the CityTown, or NC Railroad, a Construction Management Plan must be approved by the CityTown.
- III. Where the component includes construction of surface parking on GoTriangle property which is not right-of-way, the Town's stormwater performance management standards and buffering and parking landscaping standards apply, as codified on the effective date of this Agreement. (Chapel Hill Land Use Management Ordinance -- Appendix A of the Chapel Hill, North Carolina Code of Ordinances, Section 5.4, Section 5.6, and Section

Commented [BH3]: This language memorializes the stormwater management and buffering and landscaping standards that must be met for parking lots in the design and construction of the project.

~~5.9) for peak runoff control apply. Durham, North Carolina, Municipal Code Art. X, § 70-738 (2012).~~

GoTriangle and the CityTown have already collaborated, and will continue to collaborate, on the development of preliminary design plans for the Project. Upon completion of 90 percent design plans, GoTriangle shall submit the 90 percent design plans to the CityTown for its review and approval, where necessary. The 90 percent design plans shall include drawings, special provisions, supplemental technical specifications, and updated quantity take-offs. The 90 percent design plans shall be essentially complete with only items of insignificance needing detailing or checking. The specifications shall be complete and finalized with all references and standards checked for latest edition and requirements. A separate list of submittals required by contractors during construction shall be included in the individual specification sections. All calculations shall be complete and checked in accordance with established QA/QC procedures and submitted in bound and electronic format. Drawings shall be nearly complete for bidding purposes and shall have incorporated or resolved all comments made during preceding reviews, follow-on progress meetings, Interim Design Reviews, and other informal reviews. All prior review comments and comments from the Interim Design Reviews shall have been responded to, agreed upon, and incorporated into the 90 percent submittal documents. Unresolved comments will be identified and addressed with an action plan for resolution. Reports and studies shall be submitted as draft-final.

CityTown reviews and approvals identified herein represent those that are currently contemplated by the Parties and are subject to the conditions of this Agreement, including adherence to the Project Schedule. Additional CityTown approvals, such as Certificates of Appropriateness, may be required and subject to the standard review process utilized by the CityTown including posting of information on the Town's website and affording opportunities for public review and comment.

During final design, the Parties will evaluate the applicability of the Town's Noise Ordinance to the Project. In addition, GoTriangle will implement any mitigation commitments identified in the final environmental documentation pursuant to the National Environmental Policy Act.

G. Environmental Evaluation

GoTriangle has conducted an evaluation of potential environmental effects resulting from the construction and operation of the Project, pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 et seq.) ("NEPA") and Section 4(f) the U.S. Department of Transportation Act of 1966 (codified in 23 U.S.C. § 138 and 49 U.S.C. § 303 and its implementing regulations codified at 23 C.F.R. Part 774) ("Section 4(f)"). Measures to minimize and mitigate the potential effects from the Project are detailed in the Amended Record of Decision ("Amended ROD"). In addition, GoTriangle, the FTA, and the State Historic Preservation Office ("SHPO") entered into a Memorandum of Agreement ("MOA"), which addresses the identification, evaluation and treatment of historic and archaeological resources that may be affected by the Project. See *Attachment C* (MOA for Protection of Historic and Archaeological Resources). The MOA also outlines the procedures to follow in the event of an unanticipated discovery during construction. Mitigation commitments included in those documents are incorporated by reference into this

Commented [BH4]: This is one of several provisions added to help make project information available to the public.

Commented [BH5]: This section describes how noise issues will be addressed for the project.

Commented [BH6]: This section describes the environmental and historic preservation review that is part of the project.

Agreement. The Parties' obligations pursuant to this Agreement shall be bound by the mitigation measures for Archaeological Resources as set forth in the MOA.

H. Impacts to CityTown Property and Improvements to be Accepted by the CityTown

I. *Generally.* This Agreement addresses the management of Project impacts to CityTown Property and addresses the Project's construction of improvements to be owned, operated, and maintained by the CityTown after construction is complete and upon formal acceptance by the CityTown ("Improvement(s)"). GoTriangle shall provide the CityTown a complete set of record drawings as required for formal acceptance by Durham CityChapel Hill Town Council. GoTriangle agrees to adhere to other procedures as necessary to ensure timely acceptance by CityTown Council. The CityTown acknowledges that all Improvements or other work to be performed by GoTriangle shall be screened for eligibility under FTA's funding laws, rules, and guidelines. Except as otherwise expressly stated herein, work that is ineligible for FTA funding is outside of the scope of the Project and of this Agreement.

II. *GoTriangle Responsibilities.* GoTriangle shall be responsible for design, engineering and construction of all Improvements related to the Project, subject to provisions below related to Betterments. By way of example, Improvements may include the reconstruction or realignment of streets, pedestrian and bicycle facilities, utilities, drainage conveyances, traffic signals, signs, traffic legends, lane markings, street lighting, and traffic detours. GoTriangle shall ~~identify for the City all Improvements that may impact existing City utilities (water, sewer, and stormwater) for Public Works and Water Management review and approval; identify and submit for review and approval to the Town and the Orange Water and Sewer Authority ("OWASA") all improvements that may impact existing utilities (including but not limited to water, sewer, stormwater, and fiber optic facilities), other infrastructure (including but not limited to transportation facilities), and natural waterways; coordinate with Orange Water and Sewer Authority ("OWASA") to ensure the necessary precautions are taken to ensure the continuity of OWASA's water and sewer services.~~ GoTriangle agrees to consult with the CityTown regarding the inclusion of reasonable indemnity, warranty, and assignment of warranty provisions in the Project's construction contracts for Improvements or Betterments that will be accepted by the CityTown for maintenance.

~~When restoring, reconstructing, replacing, or relocating Town Property, GoTriangle shall be responsible for following adopted design standards in effect at the time of the 90% submittal. GoTriangle shall respond to Town comments in a timely manner between submittals in order to resolve review comments. The Town shall not be responsible for any delay in permit issuance incurred in order to resolve issues related to the aforementioned Improvements. In addition, GoTriangle shall provide reasonable notice to the Town for any issues that it would like to resolve.~~

III. *Betterments.* GoTriangle is not required to provide expansions, upgrades, or enhanced levels of service ("Betterments") in connection with the Project unless mandated by state or federal law, regulations or standards. An Improvement is not a Betterment if the materials or devices are required by the Project, of equivalent standards although not identical, of the next highest grade or size when the existing materials or devices are no longer regularly manufactured, required by federal, state or local law or code, or required by current design practices regularly followed by the CityTown in its own work and there is a direct benefit to the Project.

Commented [BH7]: The Town does not own and maintain its own water and sewer utilities.

The CityTown may request GoTriangle to design and construct Betterments provided that the CityTown reimburses GoTriangle the difference in Total Cost between the base Improvement and the Betterment. "Total Cost" means all costs for the design and construction, including GoTriangle staff effort, design support, construction management, construction, testing, and claims resolution services. The CityTown's timely identification and communication of desired Betterments will promote a more cost effective implementation of the Betterment.

E. Town Review Process

The Town will review and approve construction of the Project through the Town's Engineering Construction Permit ("ECP") process. In addition, the Town will review surface parking on GoTriangle property which is not right of way for compliance with the Town's stormwater and landscaping, screening, buffering, and parking landscaping standards. GoTriangle and the Town have already collaborated, and will continue to collaborate, on development of preliminary construction plans for the Project. Upon completion of final construction plans, GoTriangle shall apply to the Town for an ECP. The Town shall coordinate review of the ECP application through its Public Works Department. The review process for the ECP shall focus on issues raised by the Town during the review of the preliminary construction plans.

The review process shall treat separately those Project components that are located on the campus of the University of North Carolina ("UNC") from those that are not. Project components located on the UNC campus are subject to review by UNC. An ECP for Project components located on the UNC campus shall not be issued until GoTriangle has presented evidence of UNC's approval to the Town.

GoTriangle shall not issue a notice-to-proceed for construction within Town limits until the Town issuance of the ECP, including confirmation of compliance with all applicable stormwater, buffering and parking landscaping standards.

In addition, GoTriangle shall prepare a Communications Plan with input from Town staff that outlines procedures for sharing information about construction with the Town and the community.

Commented [BH8]: This provision memorializes the development of a plan to share project construction information with the Town and the community.

GoTriangle shall be responsible for construction and maintenance of each Improvement built under this Agreement until the Improvement is dedicated to or otherwise accepted by the Town.

GoTriangle is responsible for obtaining all federal, state, or local permits and/or approvals required for the Project. All matters related to security and liability for personnel, equipment, and material are wholly GoTriangle's responsibility. The Town does not and shall not be required to carry insurance to cover GoTriangle's activities or property. GoTriangle shall require all contractors, consultants, or subcontractors to carry commercial general liability insurance.

IV. Testing and Inspections. GoTriangle shall allow for inspections of Improvements to be performed by City of DurhamTown of Chapel Hill inspectors. The CityTown shall be authorized to visit the construction at reasonable times to inspect the work. If upon inspection the CityTown discovers an error in construction or defect in quality, the CityTown shall notify GoTriangle within

forty-eight (48) hours and coordinate with GoTriangle to determine a corrective action, cure or other remedial step.

The Parties agree that a pre-construction conference including the Town's Planning, Public Works, and Building & Development Services Departments~~City's Department of Public Works (Engineering and Stormwater), the City-County Inspection Department,~~ GoTriangle, GoTriangle's Construction Management Consultant, and GoTriangle's Contractor shall be required for each of GoTriangle's major construction contracts. The PCM for both Parties shall be responsible for coordinating participation in the pre-construction conference. Prior to finalizing the bid documents for each contract, GoTriangle shall coordinate with the CityTown to confirm the timing requirements for the pre-construction conference (e.g., four weeks prior to commencement of construction activities).

ARTICLE 2- DESIGN PROCESS

This Article outlines the manner in which the Parties will coordinate during the design phase. The CityTown agrees to participate by providing design feedback to GoTriangle in the manner indicated herein.

GoTriangle has contracted with HDR Engineering, Inc. of the Carolinas to provide design services for the Project as the General Engineering Consultant ("GEC"). GoTriangle shall retain responsibility and authority to provide direction to the GEC regarding design plans.

A. Fifty Percent Milestone Design Review

GoTriangle provided 50% milestone design drawings for CityTown review beginning February 23, 2018 through April 9, 2018 ~~and 30% design drawings for Erwin Road in May 2018.~~ The CityTown ~~and its consultants~~ provided comments on these drawings. GoTriangle agrees to resolve those comments in the 90 percent design plans as provided in this Agreement.

B. Interim Design Review

I. *Overview.* The Parties recognize the need for consistent coordination and expeditious decision-making prior to the CityTown's review of 90% design plans. To facilitate this coordination, the Parties have established ~~committees and subcommittees~~ staff working groups, which shall be comprised of appointed members from GoTriangle, its consultants, and the CityTown with expertise in the underlying subject matter. ~~See Attachment D ("Committee Roster").~~ The committees and subcommittees shall hold regular meetings pursuant to an agreed upon meeting schedule. If the members of a committee or sub-committee cannot reach resolution on an issue that falls within its purview, the issue shall be brought to the CityTown Manager/GoTriangle Executive Leadership Meeting as soon as possible for final resolution pursuant to Art. 5.A. of this Agreement.

~~II. *Committees and Subcommittees.* The Parties have established three committees for discipline focused coordination: the Transportation Committee (with subcommittees); the Stormwater Committee; and the Utility Committee.~~

Commented [BH9]: This staff committee structure is unique to Durham.

- ~~a) *Transportation Committee.* The primary focus of the Transportation Committee is to address design issues relating to roadway and typical sections, bicycle and pedestrian facilities, traffic signals, signal controller equipment, traffic operations, emergency vehicle preemption, transit vehicle preemption, bus queue jumpers, maintenance of traffic criteria, maintenance of traffic concepts, road closures, lane closures, detours and other related matters. The Transportation Committee contains the following subcommittees: Roadway, Traffic Operations, Traffic Maintenance, and Transit Integration.~~
- ~~b) *Stormwater.* The primary focus of the Stormwater Committee is to evaluate stormwater outfall locations and stormwater treatment requirements, address comments on hydraulic studies, and address other related design issues.~~
- ~~c) *Utilities.* The primary focus of the Utilities Committee is to evaluate water, sewer and CityTown stormwater conveyance requirements for utility relocations and address other related design issues.~~

While it is GoTriangle’s responsibility to provide coordination, reconciliation, and quality control between ~~each of the identified committees~~ the working groups, the CityTown agrees to provide appropriate subject matter experts (using staff and/or consultants) with the ability to provide direction and availability to be responsive to requests.

C. Grade Crossing Diagnostic Review

Throughout the CityTown, construction of the Project will impact and traverse ~~many~~ several existing streets at-grade. Design of these impacts is ongoing and will require the CityTown’s participation due to the effects on surrounding traffic and necessary integration with existing traffic control devices. This coordination between the Parties will be accomplished through a Diagnostic Review Process. “Diagnostic Review Process” refers to the process by which the CityTown (with assistance from its consultants, as needed) will perform site visits and review the plans, standards, and specifications of at-grade crossings proposed by GoTriangle prior to the submittal of 90% design drawings. The CityTown agrees to provide appropriate subject matter experts with the ability to provide direction to each diagnostic review.

~~The Parties shall cooperate as necessary to amend the Final Design Review Reimbursement Agreement (GoTriangle Contract Number 18-013) to reimburse the Town for expenses related to review of design plans pursuant to this Article 2. The Town may hire consultants to help it conduct this work. GoTriangle shall reimburse the Town for the cost of this work in an amount not to exceed \$150,000 to pay for the time of staff and consultants. GoTriangle shall provide reimbursement to the Town using the procedures outlined in the Reimbursement and Cooperative Agreement signed by GoTriangle and the Town (GoTriangle Contract Number 18-013).~~

Commented [BH10]: This provision helps ensure the Town will be reimbursed by GoTriangle for any consultant assistance it needs with the grade crossing review process.

D. Corridor Aesthetics and Line-wide Identity Review

Prior to the 90% Submittal Review, GoTriangle will hold meetings with the CityTown of Durham Chapel Hill to obtain feedback on retaining wall aesthetics, fence/railings materials and appearance, required landscaping/streetscaping, and station finishes. The CityTown of

~~DurhamChapel Hill~~ agrees to provide appropriate subject matter experts with the ability to provide feedback to the design team in a timeframe aligned with GoTriangle's design development schedule.

E. Ninety Percent Design Plan Review

I. *Overview.* GoTriangle shall submit 90% design plans to the CityTown for review and comment. Plan formatting and other elements of the drawings will be to GoTriangle's standards. The CityTown may also request GoTriangle to provide other information in GoTriangle's possession related to aspects of the Project that impact CityTown Property.

II. *Timeframe for Review and Comment.* Prior to submittal of 90% design plans to the CityTown, the PCM for each Party shall confer to determine the timeframe available for CityTown review and comment; GoTriangle shall provide an index of drawings ahead of each submittal to facilitate this determination. All comments will be delivered to GoTriangle within the agreed-upon timeframes. ~~Timeframes for review of plans by the Town shall be reasonable, and afford an opportunity for plans to be available for posting on the Town's website.~~ If the CityTown intends to seek an extension of the timeframe, the PCM for each Party shall confer to determine the feasibility and duration of such extension. To assist the CityTown with the expedited 90% Design Review, GoTriangle will provide a list of comments and responses from the 50% design review and Interim Design Reviews as well as a reference to the 90% design drawing or other document where the comment was addressed. GoTriangle will respond to all comments arising from the 90% design plan review in the 100% design plans. The Parties recognize that to ensure adherence to the Project Schedule substantial modifications may be restricted once design plans reach 90% completion.

III. *ECP Issuance:* GoTriangle shall submit all documentation required by the ECP for review and approval by the Town's Engineering Department. Upon approval of these items the Town will issue the ECP and the Notice to Proceed. No construction activities may commence prior to the approval of the ECP.

F. Design Changes During Construction

If the need for a design change to an Improvement or Betterment arises during construction that will require deviation from CityTown standards, GoTriangle shall submit the change to the CityTown for review and approval of the change. In order to preserve the construction schedule, the CityTown agrees to provide a response to GoTriangle regarding deviations within ten (10) business days, unless specifically expedited due to urgency. GoTriangle or its designee shall provide final record drawing certifications and required permitting closeout paperwork.

ARTICLE 3- PROJECT ELEMENTS

A. Stormwater Facilities

GoTriangle is responsible for design and construction of systems to collect and discharge stormwater runoff from light-rail facilities. Upon the CityTown's request, GoTriangle shall provide to the CityTown any technical reports, studies, calculations and certifications in GoTriangle's possession that address CityTown facilities or right-of-way.

Commented [BH11]: There are homeland security concerns with sharing detailed construction drawings of community infrastructure. GoTriangle will share more conceptual information.

The project will be governed by 15A NCAC 02B .0271 State and Federal Entities. GoTriangle is responsible for coordination with the North Carolina Department of Environmental Quality (“NCDEQ”) for review of the project design for compliance with 15A NCAC 02B .0271 which includes stormwater control measures for nutrient treatment. The portion of the project to include the rail system, bridges, roadways, pedestrian facilities, and development within the footprint of the rail system shall be considered linear portions of the project. Park-and-ride facilities and other large station developments shall be considered non-linear portions of the project. The CityTown will review non-linear portions of the project for compliance with the Town’s stormwater management standards as codified on the effective date of this Agreement, including those listed in Section 5.4 of the Town’s Land Use Management Ordinance (Appendix A of the Chapel Hill, North Carolina Code of Ordinances). ~~peak runoff control requirements in accordance with Section 70-738 of the City Code.~~ CityTown approval of non-linear portions of the project is contingent upon compliance with these standards, and approval from the NCDEQ. The CityTown agrees to assist GoTriangle in resolving any conflicting State or CityTown stormwater design requirements that may arise.

Commented [BH12]: This section helps memorialize the stormwater management standards that the project must meet.

B. Buchanan Boulevard Station Mural Impacts

~~GoTriangle is aware of the significance of the Pauli Murray mural located on the exterior of the Cary Lumber Warehouse at 117 South Buchanan Boulevard. This mural will be impacted due to construction of the Project. The Parties shall continue to coordinate pursuant to the manner outlined in Art. 1.B. to address this matter through mitigation, preservation or other method to be determined.~~

Commented [BH13]: This provision is inapplicable to the Town.

C. Supply of Electrical Power by Duke Energy

The CityTown acknowledges that Duke Energy will be the supplier of electricity for the Project (“Electrical Service”). Electrical Service includes the installation and maintenance of primary electrical cables for traction power substations, and the installation and maintenance of secondary electrical service for Project facilities.

D. Relocation of ~~CityTown-owned and OWASA-Owned~~ Utilities

I. *Overview.* Relocation of certain ~~CityTown-owned and OWASA-owned~~ utilities ~~may be~~ required to permit the unobstructed construction of the Project, ~~including the ROMF.~~ GoTriangle shall use reasonable efforts to identify all ~~City such Town~~ Utilities impacted by the Project. GoTriangle shall notify the ~~CityTown and OWASA~~ in writing of any planned condemnations of private property that contain existing ~~CityTown or OWASA water and sewer utilities or~~ infrastructure at least 14 calendar days prior to filing any condemnation claim on the private property. ~~GoTriangle shall pursue negotiate a separate agreement with OWASA for relocation of OWASA owned and operated utilities. work with OWASA independently with respect to any relocation of OWASA facilities.~~

Relocation and/or replacement of existing utilities found to be in conflict with construction of the Project is an eligible project expense. Requests to upgrade utilities as part of or in addition to a required relocation would constitute a Betterment as defined in Art. 1.H.III. Requests to install utilities in accordance with a modified design standard that results in a significant increase in

grade or size will be assessed for project expense eligibility pursuant to Art. 1.H. Construction activity in the CityTown may begin as early as 2020 following receipt of a FFGA and shall be completed in accordance with the Project Schedule.

II. *Design of Relocations.* GoTriangle or its consultants shall be responsible for design of relocations of CityTown-owned utilities, including design development and sealing construction drawings. The CityTown agrees to support GoTriangle in the design of conflicting CityTown-owned utilities to be relocated. GoTriangle shall coordinate with the CityTown to identify suitable locations for the relocation of CityTown-owned utilities. ~~The minimum utility easement shall be 25 feet for all relocated utilities unless approved in writing by the City of Durham, and all new easements outside of rights of way shall be accessible across the entire length of the easement without a crossing of the light rail tracks. The Parties shall assess the identified properties for suitability using standards provided to GoTriangle in writing by the City upon the identification of City-owned utilities to be impacted. If the property identified by GoTriangle is not suitable for relocation, the City may request GoTriangle to acquire adjacent property to satisfy suitability. GoTriangle shall provide to the City an initial design, through the 50% and Interim Design Review process, of relocated utilities consistent (to the extent practicable) with NCDEQ's, the City's, and GoTriangle's design standards and specifications for water and sanitary sewer utilities. GoTriangle shall obtain necessary water and sewer permits from the NCDEQ. GoTriangle shall track variances to the state's minimum design criteria during design. The City Department of Water Management must approve all minimum design criteria variance requests in writing prior to submission to the state for review and approval. Any variances from the City's criteria and standards will be logged and provided as information to the City with each review submittal. The City shall review all shop drawings that contain variances from City standards and specifications. GoTriangle will provide sizing calculations for use by the City in verifying utility sizes against City design criteria. The City, through its review of design drawings and calculations, will provide approval of sizing and location of relocated utilities. The Parties anticipate instances in which there is not an established design standard for certain utilities and installation conditions that are unique to rail projects, such as cathodic protection standards. The Parties will jointly develop design standards and specifications for such utilities and installations.~~

Commented [BH14]: This language is specific to Durham's utility review process.

III. *Construction of Relocations.* GoTriangle's contractors shall be responsible for performing relocations of CityTown-owned utilities. Based on the utility relocation and protection configurations agreed to by GoTriangle and the CityTown at the Interim Design Review workshops, GoTriangle will prepare appropriate construction documents and a schedule for bidding and constructing the work. The CityTown shall review and provide comments on the construction documents and the schedule. The CityTown shall provide any qualification requirements to GoTriangle for the prospective bidders prior to the 90% design submittal. Prequalification requirements that may include a list of preapproved utility contractors and or contractor qualification requirements will be incorporated in the contract documents for work on CityTown-owned ~~water and sewer~~ facilities.

~~GoTriangle acknowledges that only the City's designee (Public Works or Water Management) shall be authorized to put a water or sanitary sewer main or service into service. Likewise, only a~~

~~City designee is authorized to take a water or sanitary sewer main or service out of service.~~
GoTriangle shall obtain all required permits for relocations.

E. Relocation of Private Utilities

The CityTown is not responsible for the review, approval, or permitting of private utility relocations. GoTriangle shall separately coordinate relocations with each private utility. GoTriangle shall obtain required permits for private water and sewer utility relocations from the appropriate state agencies.

F. Reconfiguration of Roadways in the Downtown Corridor

~~The City agrees to the reconfiguration of roadways in the downtown area including: one-way West Pettigrew Street eastbound from East Chapel Hill Street to South Dillard Street; two-way Ramseur Street from South Dillard Street to East Chapel Hill Street; the raising of West Pettigrew Street's profile as required to provide safe rail crossings; closing Blackwell Street at the North Carolina Railroad ("NCR") rail crossing; one-way South Dillard Street southbound at the NCR rail crossing; the alteration of intersections including Gregson Street, Duke Street, Blackwell Street, South Mangum Street, Vivian Street, South Dillard Street, and Grant Street, as required to allow for safe rail crossings.~~

~~The City agrees to assist GoTriangle in the study of and mitigation of pedestrian impacts in the downtown corridor due to the closure of the Blackwell Street railroad crossing.~~

Commented [BH15]: This section is specific to Durham.

ARTICLE 4- PROJECT OPERATIONS & MAINTENANCE

A. Future Coordination

Although coordination on matters in this Article are ongoing, the Parties have not yet established committees solely dedicated to certain subject areas. The Parties recognize that specialty committees may need to be established for the successful operations and maintenance of the Project. Such future committees may cover the following topics: safety and security; work force development; transit-oriented development and affordable housing; operations and maintenance; and public engagement and communication.

B. Facility Maintenance Post-Construction

Coordination regarding the maintenance of the facilities described in this Art. 4B is ongoing. The Parties shall continue to coordinate pursuant to the manner outlined in Art. 1.B. Outstanding matters to be addressed include maintenance of areas surrounding grade crossings; maintenance of enhanced pedestrian facilities; maintenance of signage and light poles; maintenance of roadways, curbs, gutters and pavement markings; maintenance of sidewalks, ramps, multi-use-paths and running paths; maintenance of culverts, retaining walls, ditches and other drainage facilities; maintenance of trees, landscaping and hardscaping; maintenance of water supply lines to stations; maintenance of parking facilities; maintenance of fences and gates; and maintenance of utilities; routine station area cleaning and maintenance such as trash pick-up, platform sweeping/cleaning, and vandalism removal at CityTown Stations and weather-related clean-up in station areas such as snow, ice, and storm debris removal. As part of this coordination, the

Parties agree to discuss the procedures that will need to be followed in order for some facilities constructed by GoTriangle to be formally accepted by the CityTown.

C. CityTown Emergency Services and Security

I. *Security*. GoTriangle will be responsible for providing security forces to monitor and regulate the CityTown Stations.

II. *Emergency Response*. The CityTown Stations shall be considered part of the CityTown with respect to emergency services. The City of DurhamChapel Hill Fire Department and the City of DurhamTown of Chapel Hill Police Department shall provide fire protection and emergency response services to the CityTown Stations in accordance with the manner in which these services are provided throughout the CityTown.

III. *Emergency Services Management Plan*. The Parties will continue to work together to coordinate additional details of emergency services to include priority intersection crossing of emergency vehicles and the coordination of new emergency communications infrastructure with existing infrastructure. The Parties agree to memorialize these details in an Emergency Services Management Plan to ensure the safety of light rail passengers, GoTriangle staff, CityTown Fire and Police officers, CityTown residents, and the general public.

ARTICLE 5- COORDINATING COMMITTEES

A. Executive Leadership

The CityTown Manager and GoTriangle President and CEO shall convene a regular meeting to maintain high-level coordination on project issues and provide a forum to resolve issues as they may arise through the coordination processes described in this agreement.

This meeting shall include, at a minimum, CityTown Manager's staff responsible for oversight of Transportation, Planning, ~~and Stormwater~~ Water Management, and Public Works, and GoTriangle staff responsible for management of the D-O LRT Project. This meeting shall be held ~~bi-weekly at~~ a frequency determined by the Town Manager and GoTriangle President and CEO for the duration of project design. As the project transitions into construction, the Parties may adjust the schedule by mutual agreement.

B. Design Review

Design review ~~coordinating committees~~coordination shall be convened as described in Art. 2B.

C. Fire/Life Safety and Security Committee

The Fire/Life Safety and Security Committee is a project-wide committee convened by GoTriangle on an as-needed basis throughout design and construction of the D-O LRT Project (approximately two to four times per year). The committee focuses on the safe operations of GoTriangle-provided services. It is comprised of GoTriangle, other area transit providers, and those entities

that are responsible for emergency medical, fire, and police services throughout the D-O LRT Project corridor. The committee reviews standards and safety/security-related designs and tests to verify code and regulation compliance.

The Parties shall designate CityTown staff responsible for these subject matters to participate in committee meetings and provide support as needed for the committee's work.

D. Transit Operations Committee

The Transit Operations Committee is a project-wide committee convened by GoTriangle on a quarterly basis. The committee is focused on matters involving rail operations and bus/rail integration planning, and includes staff from GoTriangle and transit providers within the D-O LRT Project Corridor.

E. Workforce Development

~~GoTriangle will be a resource to City Departments and partners, such as the Office of Economic and Workforce Development, as the City and its partners pursue workforce development partnerships to prepare the local workforce for construction-related jobs and contracting opportunities. GoTriangle will be a resource to Town staff and partners, such as the Office of Economic Development, as the TownCity and its partners pursue workforce development partnerships to prepare the local workforce for construction-related jobs and contracting opportunities.~~

F. Transit-Oriented Development and Affordable Housing

GoTriangle will continue to work with the CityTown and its partners, such as the Durham-Orange County Housing Authority, as requested to support the CityTown's and the County's affordable housing and transit-oriented development goals.

G. Construction Inspections

The CityTown will be invited to participate in the monthly progress meetings for all contracts with the intent of coordinating construction activities that will affect CityTown-owned facilities, traffic shifts and phasing, road and lane closures, and utility work. The Contractor will provide a one month look-ahead schedule prior to the meeting for review by the CityTown's attendees and time will be allotted on the agenda to allow discussion of concerns and/or conflicts.

ARTICLE 6- OTHER PROVISIONS

A. Relationship of the Parties

Nothing contained in this Agreement shall be construed as creating a partnership, an agency relationship, or joint venture between the Parties or any of their respective employees, representatives, or agents. Neither Party has any express or implied authority to assume or create any obligations on behalf of the other or to bind the other to any contract, agreement, or undertaking with any third party.

B. Force Majeure

The Parties shall not be liable for any failure to perform as required by this Agreement to the extent such failure to perform is caused by any reason beyond the Party's reasonable control, or by reason of any of the following: acts of God, acts or threats of terrorism, civil disorder, severely inclement weather, disease, accidents, failure of utilities, failure of any required governmental approval or funding, acts of law or regulation that prohibit or restrict performance, or similar occurrences.

C. Notice

To be effective, any notice or other communication required or allowed by this Agreement must be in writing and must be delivered accordingly: by personal delivery to the address set forth below; by certified mail, return receipt requested, to the address set forth below; or by nationally-recognized overnight delivery service to the address set forth below. Either Party may change its address by giving five (5) calendar days prior notice to the other Party of such change. Notice shall be deemed delivered or received upon the earliest to occur of: (a) upon receipt if delivered personally to the Party; (b) three (3) business days after the postmark if sent by certified mail; or (c) the next day that is not a Saturday, Sunday, or legal holiday if sent by overnight delivery service or if refused.

If to the ~~City~~Town:

~~_____~~ Bergen
Watterson
~~_____~~ Transportation
Planning Manager
~~_____~~ 405 Martin
Luther King Jr. Blvd
~~Durham, NC 27~~ Chapel Hill, NC
27516

If to GoTriangle:

GoTriangle President and CEO
 4600 Emperor Blvd., Suite 100
 Durham, NC 27703

With copies to:

GoTriangle General Counsel
 4600 Emperor Blvd., Suite 100
 Durham, NC 27703

With copies to:

~~{Attorney}~~ Ralph D. Karpinos, Town
Attorney
~~_____~~ Town of Chapel
Hill
~~Durham, NC 27~~ Chapel Hill, NC
27514

D. Amendments

This Agreement may be amended only by a written instrument executed by the Parties.

E. Dispute Resolution

I. *Informal Dispute Resolution.* The Parties shall use their best efforts to resolve informally any and all disputes that arise between the Parties under this Agreement in a timely and expeditious manner. The Parties shall first endeavor to resolve any dispute by having staff discuss the dispute. If staff cannot resolve the dispute, their respective senior management shall discuss the dispute. Senior management for purposes of this Section is the President and CEO for GoTriangle and the [CityTown](#) Manager for the [CityTown](#), or other such senior managers as the respective Parties may designate. The Parties shall acknowledge and respond to notices of dispute without undue delay.

II. *Exceptions to Informal Dispute Resolution.* If Project construction and/or operations and/or a Party's act(s) or omission(s) creates an imminent threat of harm to human health or safety, or to the environment, the affected Party shall be entitled to immediately take any and all actions necessary to mitigate the harm without engaging in dispute resolution.

III. *Mediation.* As a condition precedent to filing or pursuing any legal or equitable remedy, the Parties agree to participate in good faith in non-binding mediation through the use of a mutually-acceptable neutral mediator. The Parties to the dispute shall share equally in the cost of the mediator. Each Party shall be responsible for its own costs related to such mediation. If the Parties have not resolved their dispute within 30 calendar days after the mediation, either Party may resort to any available legal remedies.

F. Termination of Agreement

The Parties may terminate this Agreement by subsequent written agreement between the Parties, upon terms and conditions mutually acceptable to the Parties at that time. GoTriangle may also terminate this Agreement, effective immediately upon written notice to the [CityTown](#), upon GoTriangle's determination that there is insufficient funding for the Project.

G. Non-Waiver

The waiver by a Party of any default shall not be a waiver of any preceding or subsequent breach of the same or any other term or condition contained in this Agreement.

H. Merger

This Agreement constitutes the entire agreement of the Parties to the contents herein, all prior discussions, representations, and agreements being merged herein.

I. Governing Law

This Agreement shall be governed by the law of the State of North Carolina, excepting only its conflict of law principles. If either Party commences a lawsuit or other proceeding relating to or arising from this Agreement, the United States District Court for the Middle District of North Carolina shall have sole and exclusive jurisdiction over any such proceeding where a federal court would have subject matter jurisdiction, and the courts of the State of North Carolina in the County of Durham [or Orange](#) shall have sole and exclusive jurisdiction in all other cases. Any such

court shall be proper venue for any lawsuit or judicial proceeding, and the Parties waive any objection to such venue.

J. Severability

If for any reason any term or condition of this Agreement shall be declared void or unenforceable by any court of law or equity, it shall only affect such particular term or condition of this Agreement and the balance of this Agreement shall remain in full force and effect and shall be binding upon the Parties.

K. No Third Party Rights

This Agreement shall not be interpreted to create any legally enforceable rights or benefits in any person or entity other than the Parties to this Agreement.

L. Survival of Obligations

Any and all terms and conditions contained herein which by their nature or effect are required or intended to be observed, kept, or performed after termination of this Agreement shall survive the termination of this Agreement and remain binding upon and for the benefit of the Parties.

Commented [BH16]: The Town Attorney notes that survival of obligations is common boilerplate for such agreements in order to protect all parties. There may be obligations in the agreement that extend beyond the current expiration date.

M. Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of the Parties, their successors and permitted assigns. No assignment of this Agreement shall be permitted except with the express written consent of the other Party, which consent shall not be unreasonably withheld.

N. Construction of Terms

This Agreement is entered into after a full investigation into the subject matter and an opportunity to consult legal counsel, neither Party relying upon any statement or representation not contained in this Agreement. Both Parties have participated in drafting and negotiating this Agreement, and no interpretive presumption shall be drawn against either Party by virtue of its role in drafting this Agreement.

O. Captions and Headings

The captions, headings, and section numbers are for convenience and in no way define or affect the meaning of this Agreement.

P. Further Assurances

Each Party, upon the request of the other Party, shall execute and deliver such further documents and instruments as the other Party may reasonably deem appropriate to carry out the terms and conditions of this Agreement, provided that such further documents and instruments are consistent with the terms and conditions of this Agreement.

Commented [BH17]: The Town Attorney notes that this language is common boilerplate as the parties continue to work together. The intent is to help make sure that any future agreements would not inadvertently contradict this one.

Q. Time is of the Essence

The Parties acknowledge and agree that time is of the essence with respect to each term and condition of this Agreement.

R. E-Verify Requirements

I. *N.C.G.S. § 143-129*. If this contract is awarded pursuant to *N.C.G.S. § 143-129* –

- a) the Parties represent and covenant that contractors and subcontractors comply with the requirements of Article 2 of Chapter 64 of the *N.C.G.S.*;
- b) the words "contractor," "contractor's subcontractors," and "comply" as used in this Art. 6.R.I. shall have the meanings intended by *N.C.G.S. § 143-129(j)*; and
- c) the Parties are relying on this Art. 6.R.I. in entering into this contract.

II. *N.C.G.S. § 143-133.3*. If this contract is subject to *N.C.G.S. § 143-133.3*, the contractor and subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the *N.C.G.S.*

S. Iran Divestment Act Certification

Parties certify that, if they submitted a successful bid for this contract, then as of the date it submitted the bid, the Parties are not identified on the Iran List. If it did not submit a bid for this contract, the Parties certify that as of the date that this contract is entered into, the Parties are not identified on the Iran List. It is a material breach of contract for the Parties to be identified on the Iran List during the term of this contract or to utilize on this contract any contractor or subcontractor that is identified on the Iran List. In this Iran Divestment Act Certification section -- "Parties" is defined as defined in this Agreement; and "Iran List" means the Final Divestment List – Iran, the Parent and Subsidiary Guidance List – Iran, and all other lists issued from time to time by the N.C. State Treasurer to comply with *G.S. § 147-86.58* of the N.C. Iran Divestment Act.

T. Acknowledgements

Each Party acknowledges that the individual executing this Agreement on its respective behalf is authorized to execute the document and to bind the Party to the terms contained herein. The Parties further acknowledge that they have read this Agreement, conferred with their legal counsel, and fully understand the contents of this Agreement. A copy, electronically scanned copy, or facsimile copy of the signature of any Party shall be deemed an original with each fully executed copy of this Agreement as binding as an original.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the last date executed below.

THE ~~CITY OF DURHAM~~ TOWN OF CHAPEL HILL, NORTH CAROLINA RESEARCH TRIANGLE
REGIONAL

**PUBLIC TRANSPORTATION
AUTHORITY D/B/A GOTRIANGLE**

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: Jeffrey G. Mann
Title: President and CEO
Date: _____

SIGNATURES CONTINUED ON PAGE FOLLOWING

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

By: _____
Name: Sandra Freeman
Title: Chief Financial Officer and
Director of Administration

Reviewed and approved as to legal form.

By: _____
Name: Shelley Blake
Title: General Counsel

- [Attachment A: Project Map](#)
- [Attachment B: Project Schedule](#)
- [Attachment C: MOA for Protection of Historic and Archaeological Resources](#)
- [Attachment D: Committee Roster](#)

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

By: _____
Name: Amy Oland
Title: Finance Officer

Reviewed and approved as to legal form.

By: _____
Name: Ralph D. Karpinos
Title: Town Attorney

- [Attachment A: Project Map](#)
- [Attachment B: Project Schedule](#)
- [Attachment C: MOA for Protection of Historic and Archaeological Resources](#)

STATE OF NORTH CAROLINA
COUNTY OF ORANGE

GOTRIANGLE CONTRACT NUMBER: 18-031

RESEARCH TRIANGLE REGIONAL PUBLIC
TRANSPORTATION AUTHORITY d/b/a
GOTRIANGLE

AND

TOWN OF CHAPEL HILL

COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT (“Agreement”) is made by and between the TOWN OF CHAPEL HILL (the “Town”), a municipality in Orange County and Durham County, North Carolina, and the RESEARCH TRIANGLE REGIONAL PUBLIC TRANSPORTATION AUTHORITY d/b/a GOTRIANGLE, “a public body and body politic and corporate of the State of North Carolina” (N.C.G.S. § 160A-603), with a principal office located at 4600 Emperor Boulevard, Durham, North Carolina 27703 (“GoTriangle”). The Town and GoTriangle may be referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

A. GoTriangle

GoTriangle, a regional public transportation authority organized under the laws of North Carolina, operates and conducts its activities in Durham, Orange, and Wake counties of North Carolina. GoTriangle’s powers, duties, and purposes are set forth in Article 26 of Chapter 160A of the North Carolina General Statutes (N.C.G.S.), as amended. GoTriangle’s broad purpose is “to finance, provide, operate, and maintain for a safe, clean, reliable, adequate, convenient, energy efficient, economically and environmentally sound public transportation system for the service area of the Authority through the granting of franchises, ownership and leasing of terminals, buses and other transportation facilities and equipment, and otherwise through the exercise of the powers and duties conferred upon it, in order to enhance mobility in the region and encourage sound growth patterns” (N.C.G.S. § 160A-608). GoTriangle is the local sponsor for the Durham-Orange Light Rail Transit Project (“Project”) and is working directly with the Federal Transit Administration (“FTA”) to deliver the Project for the benefit of the general public.

B. The Town

The Town is a municipality in Orange and Durham Counties, North Carolina. Based on preliminary engineering plans, there are six (6) planned Project stations (UNC Hospitals, Mason Farm Road, Hamilton Road, Friday Center Drive, Woodmont, and Gateway) in the Town (collectively “Town Stations”). *See Attachment A* (Project Map). The Town supports the Project and recognizes its value to Chapel Hill residents, the general public, and the State of North Carolina. As proposed, the Project may impact various Town resources, including rights-of-way (both fee simple and easements), other land, facilities, buildings, drainage systems (those accepted and maintained by the Town), and other properties and assets owned by the Town (collectively, “Town Property”).

C. Durham-Orange Light Rail Transit Project

The Project, with a budget of approximately \$2.47 billion, is a major investment in public transportation infrastructure and is eligible for federal funding through FTA’s Capital Investment Grant (“CIG”) program. The Project is a light rail transit service with stations located at major activity centers in Chapel Hill and Durham along a 17.7-mile alignment. The Project also includes a rail operations and maintenance facility (“ROMF”) , to be located outside of the Town limits, and parking facilities. *See Attachment A* (Project Map). The Project is currently in the engineering phase of the CIG program. During the engineering phase, project sponsors must satisfy several requirements, including the completion of all critical third party agreements. This Agreement has been identified by FTA as critical and a precondition to construction funding.

D. Purpose of Agreement: Ongoing Cooperation and Coordination

This Agreement describes major roles and responsibilities applicable to each Party in connection with the successful implementation of the Project. Sustained cooperation and coordination between the Parties is necessary in order to build the Project within established parameters of budget and schedule, while also minimizing impacts to Town Property to the greatest extent practicable. This Agreement memorializes the Parties’ commitment to cooperate in good faith and is a record of their shared interest in advancing the Project to full operation and revenue service in a timely, cost-effective, and efficient manner.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the benefits of which flow to the Town and GoTriangle from each other, and in further consideration of the mutual covenants, terms, conditions, restrictions, and representations contained or incorporated into this Agreement, the Parties agree as follows:

ARTICLE 1- GENERAL AGREEMENTS ON PROJECT DEVELOPMENT

A. Term of the Agreement

This Agreement shall become effective on the last date executed below and shall continue in force until terminated by written agreement between the Parties; terminated pursuant to Art. 5.F. of this Agreement; or on December 31, 2021, if GoTriangle has not obtained a Full Funding Grant Agreement (“FFGA”) from the FTA for the Project by that date (“Term”).

B. Project Cooperation

The Parties shall work efficiently and cooperatively to review and resolve all Project-related matters between the Parties in a cost-effective manner. This cooperation shall encompass engineering and design, construction and inspections, and operations and maintenance. The Parties shall support the schedule for the Project developed by GoTriangle and shall take timely actions on matters for which they are responsible under this Agreement. The Parties shall continue to work together to identify ways to improve bicycle and pedestrian connections to stations, to identify strategies to further minimize the visual effects of the Project, and to minimize impacts to Town Property.

To carry out this Agreement effectively, each Party shall appoint a Project Coordination Manager (“PCM”). The PCM for each Party shall routinely monitor the status of Project-related decision-making and commitments by the Parties; shall routinely confer with the PCM for the other Party; and shall facilitate ongoing and productive coordination between the Parties, including (i) the exchange and flow of information between GoTriangle and the Town specific to the Project, (ii) making non-binding recommendations to resolve any problems or issues concerning the Project, and (iii) ensuring issues are elevated to decision makers and resolved in a timely manner.

C. Future Agreements

The Parties recognize that additional approvals and agreements will be necessary for the implementation of the Project. The Parties shall continue to work together as outlined in Art. 1.B. to resolve outstanding matters referenced throughout Articles 2, 3, and 4 of this Agreement. The mutual understandings of the Parties shall be memorialized in future agreements. Such future agreements may cover the following topics: temporary construction easements; dedications of right-of-way or facilities; parking; utilities; pre-revenue service testing; operations and maintenance, including management of Town traffic signals interconnected with the light rail system; and the GoPass program.

D. Project Schedule

The Town and GoTriangle shall use reasonable efforts to adhere to the Project Schedule, incorporated into this Agreement as Attachment B. Notifications of schedule adjustments affecting the Town will be provided to the Town as soon as such adjustments are made.

E. State and Federal Requirements

GoTriangle and the Town shall comply with all state and federal requirements applicable to the Project, including the requirements of the FTA and its CIG program and other requirements related to the Project's eligibility for state and federal funding. Such state and federal requirements may also include, when applicable, requirements related to contracting, procurement, and worker protections (e.g., the Davis-Bacon Act). In addition, GoTriangle shall continue to implement commitments contained in final environmental documentation pursuant to the National Environmental Policy Act.

F. Applicability of Town Requirements

The Project is a linear public transportation system comprised of component parts, such as tracks, bridges, station platforms (currently planned with canopy architecture), and electrical systems. The siting, design, construction, installation, operation, and maintenance of the component parts of the Project are exempt from regulation under the Town's zoning authority, except where a component part constitutes the "erection, construction, and use of buildings" within the meaning of North Carolina law (N.C.G.S. § 160A-392). To date, the Parties have identified parking decks as components of the Project subject to Town zoning. The Project does not currently include any parking decks within the Town. The Parties have also identified traction power sub-stations ("TPSS") as components that may be subject to Town zoning. The Town retains the right to review any changes to the project design or scope that are not excluded from the Town's zoning purview pursuant to N.C.G.S. § 160A-392.

The Town will review design drawings and approve construction of the Project as outlined in Art. 2 of this Agreement. As part of its review to date, the Town has also identified the following approvals as necessary for various components of the Project:

- I. Where the component includes construction of rail lines, paths or walkways, station platforms, TPSS units, utilities, road crossings or surface parking within right-of-way held by NCDOT, or the Town, , an encroachment agreement or other appropriate agreement must be executed with the corresponding holder of the right-of-way interest.
- II. Where the component includes the construction of road crossings within right-of-way held by NCDOT, or the Town, a Construction Management Plan must be approved by the Town.
- III. Where the component includes construction of surface parking on GoTriangle property which is not right-of-way, the Town's stormwater management standards and buffering and parking landscaping standards apply, as codified on the effective date of this Agreement. (Chapel Hill Land Use Management Ordinance -- Appendix A of the Chapel Hill, North Carolina Code of Ordinances, Section 5.4, Section 5.6, and Section 5.9).

GoTriangle and the Town have already collaborated, and will continue to collaborate, on the development of preliminary design plans for the Project. Upon completion of 90 percent design plans, GoTriangle shall submit the 90 percent design plans to the Town for its review and approval, where necessary. The 90 percent design plans shall include drawings, special provisions, supplemental technical specifications, and updated quantity take-offs. The 90 percent design plans shall be essentially complete with only items of insignificance needing detailing or checking. The specifications shall be complete and finalized with all references and standards

checked for latest edition and requirements. A separate list of submittals required by contractors during construction shall be included in the individual specification sections. All calculations shall be complete and checked in accordance with established QA/QC procedures and submitted in bound and electronic format. Drawings shall be nearly complete for bidding purposes and shall have incorporated or resolved all comments made during preceding reviews, follow-on progress meetings, Interim Design Reviews, and other informal reviews. All prior review comments and comments from the Interim Design Reviews shall have been responded to, agreed upon, and incorporated into the 90 percent submittal documents. Unresolved comments will be identified and addressed with an action plan for resolution. Reports and studies shall be submitted as draft-final.

Town reviews and approvals identified herein represent those that are currently contemplated by the Parties and are subject to the conditions of this Agreement, including adherence to the Project Schedule. Additional Town approvals, such as Certificates of Appropriateness, may be required and subject to the standard review process utilized by the Town including posting of information on the Town's website and affording opportunities for public review and comment.

During final design, the Parties will evaluate the applicability of the Town's Noise Ordinance to the Project. In addition, GoTriangle will implement any mitigation commitments identified in the final environmental documentation pursuant to the National Environmental Policy Act.

G. Environmental Evaluation

GoTriangle has conducted an evaluation of potential environmental effects resulting from the construction and operation of the Project, pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 et seq.) ("NEPA") and Section 4(f) the U.S. Department of Transportation Act of 1966 (codified in 23 U.S.C. § 138 and 49 U.S.C. § 303 and its implementing regulations codified at 23 C.F.R. Part 774) ("Section 4(f)"). Measures to minimize and mitigate the potential effects from the Project are detailed in the Amended Record of Decision ("Amended ROD"). In addition, GoTriangle, the FTA, and the State Historic Preservation Office ("SHPO") entered into a Memorandum of Agreement ("MOA"), which addresses the identification, evaluation and treatment of historic and archaeological resources that may be affected by the Project. See *Attachment C* (MOA for Protection of Historic and Archaeological Resources). The MOA also outlines the procedures to follow in the event of an unanticipated discovery during construction. Mitigation commitments included in those documents are incorporated by reference into this Agreement. The Parties' obligations pursuant to this Agreement shall be bound by the mitigation measures for Archaeological Resources as set forth in the MOA.

H. Impacts to Town Property and Improvements to be Accepted by the Town

I. *Generally*. This Agreement addresses the management of Project impacts to Town Property and addresses the Project's construction of improvements to be owned, operated, and maintained by the Town after construction is complete and upon formal acceptance by the Town ("Improvement(s)"). GoTriangle shall provide the Town a complete set of record drawings as required for formal acceptance by Chapel Hill Town Council. GoTriangle agrees to adhere to other procedures as necessary to ensure timely acceptance by Town Council. The Town acknowledges

that all Improvements or other work to be performed by GoTriangle shall be screened for eligibility under FTA's funding laws, rules, and guidelines. Except as otherwise expressly stated herein, work that is ineligible for FTA funding is outside of the scope of the Project and of this Agreement.

II. *GoTriangle Responsibilities.* GoTriangle shall be responsible for design, engineering and construction of all Improvements related to the Project, subject to provisions below related to Betterments. By way of example, Improvements may include the reconstruction or realignment of streets, pedestrian and bicycle facilities, utilities, drainage conveyances, traffic signals, signs, traffic legends, lane markings, street lighting, and traffic detours. GoTriangle shall identify and submit for review and approval to the Town all improvements that may impact existing utilities (including but not limited to stormwater, and fiber optic facilities), other infrastructure (including but not limited to transportation facilities), and natural waterways.. GoTriangle agrees to consult with the Town regarding the inclusion of reasonable indemnity, warranty, and assignment of warranty provisions in the Project's construction contracts for Improvements or Betterments that will be accepted by the Town for maintenance.

When restoring, reconstructing, replacing, or relocating Town Property, GoTriangle shall be responsible for following adopted design standards in effect at the time of the 90% submittal. GoTriangle shall respond to Town comments in a timely manner between submittals in order to resolve review comments. The Town shall not be responsible for any delay in permit issuance incurred in order to resolve issues related to the aforementioned Improvements. In addition, GoTriangle shall provide reasonable notice to the Town for any issues that it would like to resolve.

III. *Betterments.* GoTriangle is not required to provide expansions, upgrades, or enhanced levels of service ("Betterments") in connection with the Project unless mandated by state or federal law, regulations or standards. An Improvement is not a Betterment if the materials or devices are required by the Project, of equivalent standards although not identical, of the next highest grade or size when the existing materials or devices are no longer regularly manufactured, required by federal, state or local law or code, or required by current design practices regularly followed by the Town in its own work and there is a direct benefit to the Project.

The Town may request GoTriangle to design and construct Betterments provided that the Town reimburses GoTriangle the difference in Total Cost between the base Improvement and the Betterment. "Total Cost" means all costs for the design and construction, including GoTriangle staff effort, design support, construction management, construction, testing, and claims resolution services. The Town's timely identification and communication of desired Betterments will promote a more cost effective implementation of the Betterment.

E. Town Review Process

The Town will review and approve construction of the Project through the Town's Engineering Construction Permit ("ECP") process. In addition, the Town will review surface parking on GoTriangle property which is not right of way for compliance with the Town's stormwater and landscaping, screening, buffering, and parking landscaping standards. GoTriangle and the Town have already collaborated, and will continue to collaborate, on development of preliminary construction plans for the Project. Upon completion of final construction plans, GoTriangle shall

apply to the Town for an ECP. The Town shall coordinate review of the ECP application through its Public Works Department. The review process for the ECP shall focus on issues raised by the Town during the review of the preliminary construction plans.

The review process shall treat separately those Project components that are located on the campus of the University of North Carolina ("UNC") from those that are not. Project components located on the UNC campus are subject to review by UNC. An ECP for Project components located on the UNC campus shall not be issued until GoTriangle has presented evidence of UNC's approval to the Town.

GoTriangle shall not issue a notice-to-proceed for construction within Town limits until the Town issuance of the ECP, including confirmation of compliance with all applicable stormwater, buffering and parking landscaping standards.

In addition, GoTriangle shall prepare a Communications Plan with input from Town staff that outlines procedures for sharing information about construction with the Town and the community.

GoTriangle shall be responsible for construction and maintenance of each Improvement built under this Agreement until the Improvement is dedicated to or otherwise accepted by the Town.

GoTriangle is responsible for obtaining all federal, state, or local permits and/or approvals required for the Project. All matters related to security and liability for personnel, equipment, and material are wholly GoTriangle's responsibility. The Town does not and shall not be required to carry insurance to cover GoTriangle's activities or property. GoTriangle shall require all contractors, consultants, or subcontractors to carry commercial general liability insurance.

V. Testing and Inspections. GoTriangle shall allow for inspections of Improvements to be performed by Town of Chapel Hill inspectors. The Town shall be authorized to visit the construction at reasonable times to inspect the work. If upon inspection the Town discovers an error in construction or defect in quality, the Town shall notify GoTriangle within forty-eight (48) hours and coordinate with GoTriangle to determine a corrective action, cure or other remedial step.

The Parties agree that a pre-construction conference including the Town's Planning, Public Works, and Building & Development Services Departments, GoTriangle, GoTriangle's Construction Management Consultant, and GoTriangle's Contractor shall be required for each of GoTriangle's major construction contracts. The PCM for both Parties shall be responsible for coordinating participation in the pre-construction conference. Prior to finalizing the bid documents for each contract, GoTriangle shall coordinate with the Town to confirm the timing requirements for the pre-construction conference (e.g., four weeks prior to commencement of construction activities). **ARTICLE 2- DESIGN PROCESS**

This Article outlines the manner in which the Parties will coordinate during the design phase. The Town agrees to participate by providing design feedback to GoTriangle in the manner indicated herein.

GoTriangle has contracted with HDR Engineering, Inc. of the Carolinas to provide design services for the Project as the General Engineering Consultant (“GEC”). GoTriangle shall retain responsibility and authority to provide direction to the GEC regarding design plans.

A. Fifty Percent Milestone Design Review

GoTriangle provided 50% milestone design drawings for Town review beginning February 23, 2018 through April 9, 2018. The Town provided comments on these drawings. GoTriangle agrees to resolve those comments in the 90 percent design plans as provided in this Agreement.

B. Interim Design Review

I. *Overview.* The Parties recognize the need for consistent coordination and expeditious decision-making prior to the Town’s review of 90% design plans. To facilitate this coordination, the Parties have established staff working groups, which shall be comprised of appointed members from GoTriangle, its consultants, and the Town with expertise in the underlying subject matter. The committees and subcommittees shall hold regular meetings pursuant to an agreed upon meeting schedule. If the members of a committee or sub-committee cannot reach resolution on an issue that falls within its purview, the issue shall be brought to the Town Manager/GoTriangle Executive Leadership Meeting as soon as possible for final resolution pursuant to Art. 5.A. of this Agreement.

While it is GoTriangle’s responsibility to provide coordination, reconciliation, and quality control between the working groups, the Town agrees to provide appropriate subject matter experts (using staff and/or consultants) with the ability to provide direction and availability to be responsive to requests.

C. Grade Crossing Diagnostic Review

Throughout the Town, construction of the Project will impact and traverse several existing streets at-grade. Design of these impacts is ongoing and will require the Town’s participation due to the effects on surrounding traffic and necessary integration with existing traffic control devices. This coordination between the Parties will be accomplished through a Diagnostic Review Process. “Diagnostic Review Process” refers to the process by which the Town (with assistance from its consultants, as needed) will perform site visits and review the plans, standards, and specifications of at-grade crossings proposed by GoTriangle prior to the submittal of 90% design drawings. The Town agrees to provide appropriate subject matter experts with the ability to provide direction to each diagnostic review.

The Parties shall cooperate as necessary to amend the Final Design Review Reimbursement Agreement (GoTriangle Contract Number 18-013) to reimburse the Town for expenses related to review of design plans pursuant to this Article 2.

D. Corridor Aesthetics and Line-wide Identity Review

Prior to the 90% Submittal Review, GoTriangle will hold meetings with the Town of Chapel Hill to obtain feedback on retaining wall aesthetics, fence/railings materials and appearance, required landscaping/streetscaping, and station finishes. The Town of Chapel Hill agrees to provide

appropriate subject matter experts with the ability to provide feedback to the design team in a timeframe aligned with GoTriangle's design development schedule.

E. Ninety Percent Design Plan Review

I. *Overview.* GoTriangle shall submit 90% design plans to the Town for review and comment. Plan formatting and other elements of the drawings will be to GoTriangle's standards. The Town may also request GoTriangle to provide other information in GoTriangle's possession related to aspects of the Project that impact Town Property.

II. *Timeframe for Review and Comment.* Prior to submittal of 90% design plans to the Town, the PCM for each Party shall confer to determine the timeframe available for Town review and comment; GoTriangle shall provide an index of drawings ahead of each submittal to facilitate this determination. All comments will be delivered to GoTriangle within the agreed-upon timeframes. Timeframes for review of plans by the Town shall be reasonable. If the Town intends to seek an extension of the timeframe, the PCM for each Party shall confer to determine the feasibility and duration of such extension. To assist the Town with the expedited 90% Design Review, GoTriangle will provide a list of comments and responses from the 50% design review and Interim Design Reviews as well as a reference to the 90% design drawing or other document where the comment was addressed. GoTriangle will respond to all comments arising from the 90% design plan review in the 100% design plans. The Parties recognize that to ensure adherence to the Project Schedule substantial modifications may be restricted once design plans reach 90% completion.

III. *ECP Issuance:* GoTriangle shall submit all documentation required by the ECP for review and approval by the Town's Engineering Department. Upon approval of these items the Town will issue the ECP and the Notice to Proceed. No construction activities may commence prior to the approval of the ECP.

F. Design Changes During Construction

If the need for a design change to an Improvement or Betterment arises during construction that will require deviation from Town standards, GoTriangle shall submit the change to the Town for review and approval of the change. In order to preserve the construction schedule, the Town agrees to provide a response to GoTriangle regarding deviations within ten (10) business days, unless specifically expedited due to urgency. GoTriangle or its designee shall provide final record drawing certifications and required permitting closeout paperwork.

ARTICLE 3- PROJECT ELEMENTS

A. Stormwater Facilities

GoTriangle is responsible for design and construction of systems to collect and discharge stormwater runoff from light-rail facilities. Upon the Town's request, GoTriangle shall provide to the Town any technical reports, studies, calculations and certifications in GoTriangle's possession that address Town facilities or right-of-way.

The project will be governed by 15A NCAC 02B .0271 State and Federal Entities. GoTriangle is responsible for coordination with the North Carolina Department of Environmental Quality

("NCDEQ") for review of the project design for compliance with 15A NCAC 02B .0271 which includes stormwater control measures for nutrient treatment. The portion of the project to include the rail system, bridges, roadways, pedestrian facilities, and development within the footprint of the rail system shall be considered linear portions of the project. Park-and-ride facilities and other large station developments shall be considered non-linear portions of the project. The Town will review non-linear portions of the project for compliance with the Town's stormwater management standards as codified on the effective date of this Agreement, including those listed in Section 5.4 of the Town's Land Use Management Ordinance (Appendix A of the Chapel Hill, North Carolina Code of Ordinances). . Town approval of non-linear portions of the project is contingent upon compliance with these standards, and approval from the NCDEQ. The Town agrees to assist GoTriangle in resolving any conflicting State or Town stormwater design requirements that may arise.

B. Buchanan Boulevard Station Mural Impacts

C. Supply of Electrical Power by Duke Energy

The Town acknowledges that Duke Energy will be the supplier of electricity for the Project ("Electrical Service"). Electrical Service includes the installation and maintenance of primary electrical cables for traction power substations, and the installation and maintenance of secondary electrical service for Project facilities.

D. Relocation of Town-owned Utilities

I. *Overview.* Relocation of certain Town-owned utilities may be required to permit the unobstructed construction of the Project. GoTriangle shall use reasonable efforts to identify all Town utilities impacted by the Project. GoTriangle shall notify the Town in writing of any planned condemnations of private property that contain existing Town utilities or infrastructure at least 14 calendar days prior to filing any condemnation claim on the private property. GoTriangle shall negotiate a separate agreement with OWASA for relocation of OWASA owned and operated utilities.

Relocation and/or replacement of existing utilities found to be in conflict with construction of the Project is an eligible project expense. Requests to upgrade utilities as part of or in addition to a required relocation would constitute a Betterment as defined in Art. 1.H.III. Requests to install utilities in accordance with a modified design standard that results in a significant increase in grade or size will be assessed for project expense eligibility pursuant to Art. 1.H. Construction activity in the Town may begin as early as 2020 following receipt of a FFGA and shall be completed in accordance with the Project Schedule.

II. *Design of Relocations.* GoTriangle or its consultants shall be responsible for design of relocations of Town-owned utilities, including design development and sealing construction drawings. The Town agrees to support GoTriangle in the design of conflicting Town-owned utilities to be relocated. GoTriangle shall coordinate with the Town to identify suitable locations for the relocation of Town-owned utilities.

III. *Construction of Relocations.* GoTriangle's contractors shall be responsible for performing relocations of Town-owned utilities. Based on the utility relocation and protection configurations agreed to by GoTriangle and the Town at the Interim Design Review workshops, GoTriangle will prepare appropriate construction documents and a schedule for bidding and constructing the work. The Town shall review and provide comments on the construction documents and the schedule. The Town shall provide any qualification requirements to GoTriangle for the prospective bidders prior to the 90% design submittal. Prequalification requirements that may include a list of preapproved utility contractors and or contractor qualification requirements will be incorporated in the contract documents for work on Town-owned facilities.

GoTriangle shall obtain all required permits for relocations.

E. Relocation of Private Utilities

The Town is not responsible for the review, approval, or permitting of private utility relocations. GoTriangle shall separately coordinate relocations with each private utility. GoTriangle shall obtain required permits for private water and sewer utility relocations from the appropriate state agencies.

F. Reconfiguration of Roadways in the Downtown Corridor

ARTICLE 4- PROJECT OPERATIONS & MAINTENANCE

A. Future Coordination

Although coordination on matters in this Article are ongoing, the Parties have not yet established committees solely dedicated to certain subject areas. The Parties recognize that specialty committees may need to be established for the successful operations and maintenance of the Project. Such future committees may cover the following topics: safety and security; work force development; transit-oriented development and affordable housing; operations and maintenance; and public engagement and communication.

B. Facility Maintenance Post-Construction

Coordination regarding the maintenance of the facilities described in this Art. 4B is ongoing. The Parties shall continue to coordinate pursuant to the manner outlined in Art. 1.B. Outstanding matters to be addressed include maintenance of areas surrounding grade crossings; maintenance of enhanced pedestrian facilities; maintenance of signage and light poles; maintenance of roadways, curbs, gutters and pavement markings; maintenance of sidewalks, ramps, multi-use-paths and running paths; maintenance of culverts, retaining walls, ditches and other drainage facilities; maintenance of trees, landscaping and hardscaping; maintenance of water supply lines to stations; maintenance of parking facilities; maintenance of fences and gates; and maintenance of utilities; routine station area cleaning and maintenance such as trash pick-up, platform sweeping/cleaning, and vandalism removal at Town Stations and weather-related clean-up in station areas such as snow, ice, and storm debris removal. As part of this coordination, the Parties agree to discuss the procedures that will need to be followed in order for some facilities constructed by GoTriangle to be formally accepted by the Town.

C. Town Emergency Services and Security

I. *Security*. GoTriangle will be responsible for providing security forces to monitor and regulate the Town Stations.

II. *Emergency Response*. The Town Stations shall be considered part of the Town with respect to emergency services. The Chapel Hill Fire Department and the Town of Chapel Hill Police Department shall provide fire protection and emergency response services to the Town Stations in accordance with the manner in which these services are provided throughout the Town.

III. *Emergency Services Management Plan*. The Parties will continue to work together to coordinate additional details of emergency services to include priority intersection crossing of emergency vehicles and the coordination of new emergency communications infrastructure with existing infrastructure. The Parties agree to memorialize these details in an Emergency Services Management Plan to ensure the safety of light rail passengers, GoTriangle staff, Town Fire and Police officers, Town residents, and the general public.

ARTICLE 5- COORDINATING COMMITTEES

A. Executive Leadership

The Town Manager and GoTriangle President and CEO shall convene a regular meeting to maintain high-level coordination on project issues and provide a forum to resolve issues as they may arise through the coordination processes described in this agreement.

This meeting shall include, at a minimum, Town Manager's staff responsible for oversight of Transportation, Planning, and Stormwater Management, and Public Works, and GoTriangle staff responsible for management of the D-O LRT Project. This meeting shall be held at a frequency determined by the Town Manager and GoTriangle President and CEO for the duration of project design. As the project transitions into construction, the Parties may adjust the schedule by mutual agreement.

B. Design Review

Design review coordination shall be convened as described in Art. 2B.

C. Fire/Life Safety and Security Committee

The Fire/Life Safety and Security Committee is a project-wide committee convened by GoTriangle on an as-needed basis throughout design and construction of the D-O LRT Project (approximately two to four times per year). The committee focuses on the safe operations of GoTriangle-provided services. It is comprised of GoTriangle, other area transit providers, and those entities that are responsible for emergency medical, fire, and police services throughout the D-O LRT Project corridor. The committee reviews standards and safety/security-related designs and tests to verify code and regulation compliance.

The Parties shall designate Town staff responsible for these subject matters to participate in committee meetings and provide support as needed for the committee's work.

D. Transit Operations Committee

The Transit Operations Committee is a project-wide committee convened by GoTriangle on a quarterly basis. The committee is focused on matters involving rail operations and bus/rail integration planning, and includes staff from GoTriangle and transit providers within the D-O LRT Project Corridor.

E. Workforce Development

GoTriangle will be a resource to Town staff and partners, such as the Office of Economic Development, as the Town and its partners pursue workforce development partnerships to prepare the local workforce for construction-related jobs and contracting opportunities. **F.**

Transit-Oriented Development and Affordable Housing

GoTriangle will continue to work with the Town and its partners, such as the Orange County Housing Authority, as requested to support the Town's and the County's affordable housing and transit-oriented development goals.

G. Construction Inspections

The Town will be invited to participate in the monthly progress meetings for all contracts with the intent of coordinating construction activities that will affect Town-owned facilities, traffic shifts and phasing, road and lane closures, and utility work. The Contractor will provide a one month look-ahead schedule prior to the meeting for review by the Town's attendees and time will be allotted on the agenda to allow discussion of concerns and/or conflicts.

ARTICLE 6- OTHER PROVISIONS

A. Relationship of the Parties

Nothing contained in this Agreement shall be construed as creating a partnership, an agency relationship, or joint venture between the Parties or any of their respective employees, representatives, or agents. Neither Party has any express or implied authority to assume or create any obligations on behalf of the other or to bind the other to any contract, agreement, or undertaking with any third party.

B. Force Majeure

The Parties shall not be liable for any failure to perform as required by this Agreement to the extent such failure to perform is caused by any reason beyond the Party's reasonable control, or by reason of any of the following: acts of God, acts or threats of terrorism, civil disorder, severely inclement weather, disease, accidents, failure of utilities, failure of any required governmental approval or funding, acts of law or regulation that prohibit or restrict performance, or similar occurrences.

C. Notice

To be effective, any notice or other communication required or allowed by this Agreement must be in writing and must be delivered accordingly: by personal delivery to the address set forth below; by certified mail, return receipt requested, to the address set forth below; or by nationally-recognized overnight delivery service to the address set forth below. Either Party may change its address by giving five (5) calendar days prior notice to the other Party of such change. Notice shall be deemed delivered or received upon the earliest to occur of: (a) upon receipt if delivered personally to the Party; (b) three (3) business days after the postmark if sent by certified mail; or (c) the next day that is not a Saturday, Sunday, or legal holiday if sent by overnight delivery service or if refused.

If to the Town:

Bergen Watterson
 Transportation Planning Manager
 405 Martin Luther King Jr. Blvd
 Chapel Hill, NC 27516

If to GoTriangle:

GoTriangle President and CEO
 4600 Emperor Blvd., Suite 100
 Durham, NC 27703

With copies to:

Ralph D. Karpinos, Town Attorney
 Town of Chapel Hill
 Chapel Hill, NC 27514

With copies to:

GoTriangle General Counsel
 4600 Emperor Blvd., Suite 100
 Durham, NC 27703

D. Amendments

This Agreement may be amended only by a written instrument executed by the Parties.

E. Dispute Resolution

I. *Informal Dispute Resolution.* The Parties shall use their best efforts to resolve informally any and all disputes that arise between the Parties under this Agreement in a timely and expeditious manner. The Parties shall first endeavor to resolve any dispute by having staff discuss the dispute. If staff cannot resolve the dispute, their respective senior management shall discuss the dispute. Senior management for purposes of this Section is the President and CEO for GoTriangle and the Town Manager for the Town, or other such senior managers as the respective Parties may designate. The Parties shall acknowledge and respond to notices of dispute without undue delay.

II. *Exceptions to Informal Dispute Resolution.* If Project construction and/or operations and/or a Party's act(s) or omission(s) creates an imminent threat of harm to human health or safety, or to the environment, the affected Party shall be entitled to immediately take any and all actions necessary to mitigate the harm without engaging in dispute resolution.

III. *Mediation*. As a condition precedent to filing or pursuing any legal or equitable remedy, the Parties agree to participate in good faith in non-binding mediation through the use of a mutually-acceptable neutral mediator. The Parties to the dispute shall share equally in the cost of the mediator. Each Party shall be responsible for its own costs related to such mediation. If the Parties have not resolved their dispute within 30 calendar days after the mediation, either Party may resort to any available legal remedies.

F. Termination of Agreement

The Parties may terminate this Agreement by subsequent written agreement between the Parties, upon terms and conditions mutually acceptable to the Parties at that time. GoTriangle may also terminate this Agreement, effective immediately upon written notice to the Town, upon GoTriangle's determination that there is insufficient funding for the Project.

G. Non-Waiver

The waiver by a Party of any default shall not be a waiver of any preceding or subsequent breach of the same or any other term or condition contained in this Agreement.

H. Merger

This Agreement constitutes the entire agreement of the Parties to the contents herein, all prior discussions, representations, and agreements being merged herein.

I. Governing Law

This Agreement shall be governed by the law of the State of North Carolina, excepting only its conflict of law principles. If either Party commences a lawsuit or other proceeding relating to or arising from this Agreement, the United States District Court for the Middle District of North Carolina shall have sole and exclusive jurisdiction over any such proceeding where a federal court would have subject matter jurisdiction, and the courts of the State of North Carolina in the County of Durham or Orange shall have sole and exclusive jurisdiction in all other cases. Any such court shall be proper venue for any lawsuit or judicial proceeding, and the Parties waive any objection to such venue.

J. Severability

If for any reason any term or condition of this Agreement shall be declared void or unenforceable by any court of law or equity, it shall only affect such particular term or condition of this Agreement and the balance of this Agreement shall remain in full force and effect and shall be binding upon the Parties.

K. No Third Party Rights

This Agreement shall not be interpreted to create any legally enforceable rights or benefits in any person or entity other than the Parties to this Agreement.

L. Survival of Obligations

Any and all terms and conditions contained herein which by their nature or effect are required or intended to be observed, kept, or performed after termination of this Agreement shall survive the termination of this Agreement and remain binding upon and for the benefit of the Parties.

M. Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of the Parties, their successors and permitted assigns. No assignment of this Agreement shall be permitted except with the express written consent of the other Party, which consent shall not be unreasonably withheld.

N. Construction of Terms

This Agreement is entered into after a full investigation into the subject matter and an opportunity to consult legal counsel, neither Party relying upon any statement or representation not contained in this Agreement. Both Parties have participated in drafting and negotiating this Agreement, and no interpretive presumption shall be drawn against either Party by virtue of its role in drafting this Agreement.

O. Captions and Headings

The captions, headings, and section numbers are for convenience and in no way define or affect the meaning of this Agreement.

P. Further Assurances

Each Party, upon the request of the other Party, shall execute and deliver such further documents and instruments as the other Party may reasonably deem appropriate to carry out the terms and conditions of this Agreement, provided that such further documents and instruments are consistent with the terms and conditions of this Agreement.

Q. Time is of the Essence

The Parties acknowledge and agree that time is of the essence with respect to each term and condition of this Agreement.

R. E-Verify Requirements

I. *N.C.G.S. § 143-129*. If this contract is awarded pursuant to *N.C.G.S. § 143-129* –

- a) the Parties represent and covenant that contractors and subcontractors comply with the requirements of Article 2 of Chapter 64 of the *N.C.G.S.*;
- b) the words "contractor," "contractor's subcontractors," and "comply" as used in this Art. 6.R.I. shall have the meanings intended by *N.C.G.S. § 143-129(j)*; and
- c) the Parties are relying on this Art. 6.R.I. in entering into this contract.

II. *N.C.G.S. § 143-133.3*. If this contract is subject to *N.C.G.S. § 143-133.3*, the contractor and subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the *N.C.G.S.*

S. Iran Divestment Act Certification

Parties certify that, if they submitted a successful bid for this contract, then as of the date it submitted the bid, the Parties are not identified on the Iran List. If it did not submit a bid for this contract, the Parties certify that as of the date that this contract is entered into, the Parties are not identified on the Iran List. It is a material breach of contract for the Parties to be identified on the Iran List during the term of this contract or to utilize on this contract any contractor or subcontractor that is identified on the Iran List. In this Iran Divestment Act Certification section -- "Parties" is defined as defined in this Agreement; and "Iran List" means the Final Divestment List – Iran, the Parent and Subsidiary Guidance List – Iran, and all other lists issued from time to time by the N.C. State Treasurer to comply with G.S. § 147-86.58 of the N.C. Iran Divestment Act.

T. Acknowledgements

Each Party acknowledges that the individual executing this Agreement on its respective behalf is authorized to execute the document and to bind the Party to the terms contained herein. The Parties further acknowledge that they have read this Agreement, conferred with their legal counsel, and fully understand the contents of this Agreement. A copy, electronically scanned copy, or facsimile copy of the signature of any Party shall be deemed an original with each fully executed copy of this Agreement as binding as an original.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the last date executed below.

THE TOWN OF CHAPEL HILL, NORTH CAROLINA

**RESEARCH TRIANGLE REGIONAL
PUBLIC TRANSPORTATION
AUTHORITY D/B/A GOTRIANGLE**

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: Jeffrey G. Mann
Title: President and CEO
Date: _____

SIGNATURES CONTINUED ON PAGE FOLLOWING

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

By: _____
Name: Sandra Freeman
Title: Chief Financial Officer and
Director of Administration

Reviewed and approved as to legal form.

By: _____
Name: Shelley Blake
Title: General Counsel

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

By: _____
Name: Amy Oland
Title: Finance Officer

Reviewed and approved as to legal form.

By: _____
Name: Ralph D. Karpinos
Title: Town Attorney

- Attachment A: Project Map
- Attachment B: Project Schedule
- Attachment C: MOA for Protection of Historic and Archaeological Resources

NORTH CAROLINA
DURHAM COUNTY

REIMBURSEMENT AND COOPERATIVE
AGREEMENT FOR THE
DURHAM-ORANGE LIGHT RAIL
TRANSIT PROJECT

RESEARCH TRIANGLE REGIONAL
PUBLIC TRANSPORTATION AUTHORITY
D/B/A GOTRIANGLE

AND

GOTRIANGLE CONTRACT NUMBER: 18-013

TOWN OF CHAPEL HILL

THIS REIMBURSEMENT AND COOPERATIVE AGREEMENT FOR THE DURHAM-ORANGE LIGHT RAIL TRANSIT PROJECT (Agreement) is made and entered into on the last date executed below, by and between the Research Triangle Regional Public Transportation Authority d/b/a GoTriangle (GoTriangle), a public body and body corporate and politic of the State of North Carolina, and the Town of Chapel Hill, North Carolina (Reimbursee). GoTriangle and Reimbursee may be referred to individually as a "Party" and collectively as the "Parties."

I. RECITALS

A. GoTriangle

Pursuant to N.C.G.S. §§ 160A-600 *et seq.*, GoTriangle is a regional public transportation authority organized and operating in Durham, Orange, and Wake Counties, North Carolina. In December 2013, GoTriangle requested permission from the United States Department of Transportation Federal Transit Administration (FTA) to enter the Durham-Orange Light Rail Transit (D-O LRT) Project into the New Starts Project Development phase. In February 2014, FTA granted that request. FTA issued a Record of Decision (ROD) in February 2016 and an Amended ROD in December 2016 for the D-O LRT Project. In February 2017, GoTriangle submitted an application for the D-O LRT Project to enter the Engineering Phase of the New Starts process (Final Design). In July 2017, FTA admitted the D-O LRT Project into Final Design.

B. Reimbursee

Reimbursee is a municipality in Orange County, North Carolina.

C. D-O LRT Project

The D-O LRT Project is a 17.7-mile light rail transit service which will provide connections between the University of North Carolina at Chapel Hill (UNC) Hospitals; the UNC campus; the William and Ida Friday Center for Continuing Education; Patterson Place; the South Square area; Duke University; the Duke University and Durham Veterans Affairs Medical Centers; downtown and east Durham; and North Carolina Central University. Multimodal connections at the light rail stations will seamlessly connect transit passengers. At least eighteen (18) stations are planned, and up to 4,000 parking spaces will be provided along the D-O LRT Project alignment. In addition, a rail operations and maintenance facility (ROMF) will be constructed to accommodate the D-O LRT fleet. See Attachment A, D-O LRT Project Alignment Map, which is specifically incorporated by reference as if the same were fully set forth herein.

D. Final Design

As part of the Engineering Phase, GoTriangle must complete the Final Design (i.e., 100% design) of the D-O LRT Project. GoTriangle is aware that the design, construction, operation, and maintenance of the D-O LRT Project will require certain provisions, removals, and/or relocations.

GoTriangle will prepare engineering plans for the design of the D-O LRT Project. GoTriangle requests that Reimbursee: provide information as requested; review final design engineering plans (i.e., fifty percent (50%) and ninety percent (90%)) for the D-O LRT Project; and coordinate with GoTriangle.

GoTriangle will reimburse Reimbursee for Reimbursee's actual costs of performance pursuant to this Agreement, whether such work is performed internally by Reimbursee's in-house personnel or by third party consultants engaged by Reimbursee.

E. Continued Coordination

The Parties acknowledge that as the D-O LRT Project advances to construction and through operations, close coordination and additional agreements and approvals may be required. GoTriangle will reimburse Reimbursee for Reimbursee's actual costs of the continued coordination and the tasks and scope of work associated therewith.

NOW, THEREFORE, in order to facilitate the orderly and expeditious completion of the Final Design of the D-O LRT Project, and in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by GoTriangle and Reimbursee, the Parties agree as follows:

II. TERMS AND CONDITIONS**A. Term of the Agreement**

This Agreement shall commence on _____ and continue until December 31, 2028 or until this Agreement is terminated pursuant to Section II.I.ii. This Agreement may be extended by mutual agreement of the Parties and the availability of funds and personnel for that purpose.

B. Scope of Work**1. Meetings**

As requested by either Party, the other Party shall attend any office and/or field meetings and staff such meetings with the appropriate personnel.

2. Review and Comment

As requested by GoTriangle, Reimbursee shall provide review and comment on designs and engineering plans, which may include but is not limited to:

- a. Station and Park and Ride Site Plans
- b. Track Plan and Profile Sheets and Typical Sections
- c. Cross Sections
- d. Private Utility Relocation Plans
- e. Public Utility Relocation Plans
- f. Roadway and Drainage Plans
- g. Structural Plans
- h. Retaining Wall Plans
- i. Geotechnical Report(s)

- j. Hydraulics Report(s)
- k. Basis for Design Report(s)
- l. Utility Coordination Report(s)

3. Time for Providing Comments

GoTriangle will provide the documents as included in Provision B.2 to Reimbursee for review. Reimbursee will provide comments on the requested D-O LRT Project documents to GoTriangle within six (6) weeks (i.e., thirty (30) business days) from the date the documents are received for review by Reimbursee.

4. Bluebeam

Reimbursee's comments on the D-O LRT Project documents will be provided to GoTriangle using Bluebeam software. See Attachment B, Bluebeam Review Procedures, which are specifically incorporated by reference as if the same were fully set forth herein.

C. Performance of the Work

In performing the Work under this Agreement, Reimbursee shall use either qualified in-house personnel and/or enter into contracts with qualified third party consultants.

D. Reimbursement by GoTriangle

Reimbursee shall invoice GoTriangle for the actual rates and costs for Reimbursee's in-house personnel and for any third party consultants retained by Reimbursee to perform the Work pursuant to this Agreement. GoTriangle shall reimburse Reimbursee for the actual rates and costs invoiced by Reimbursee for the Work performed pursuant to this Agreement, up to and including an amount not to exceed seventy-five thousand and 00/100 dollars (\$75,000) (NTE Amount). Reimbursee shall provide GoTriangle with billing documentation and any other materials as may be required by the FTA.

1. Invoicing GoTriangle

Reimbursee agrees that all itemized invoices submitted to GoTriangle shall reasonably substantiate the actual incurred rates and costs for the Work and/or any other required and mutually agreed upon (in writing) tasks associated with the D-O LRT Project. Reimbursee shall submit an itemized invoice and a progress report based on the Work satisfactorily completed to GoTriangle not more frequently than every thirty (30) days.

2. Payment Terms

GoTriangle, within thirty (30) days of receipt of an invoice from Reimbursee, shall review and reimburse one hundred percent (100%) of the rates and costs invoiced, unless GoTriangle within ten (10) days of receipt of the invoice notifies Reimbursee that it has a question about an invoiced cost. GoTriangle agrees to reimburse Reimbursee in full within thirty (30) days of receipt of an invoice for all costs invoiced about which GoTriangle does not question Reimbursee. In the event GoTriangle has a question about an invoiced cost from Reimbursee, the designated representatives of the Parties agree to discuss promptly the questioned cost(s) and to make reasonable efforts to resolve the matter(s). If the designated representatives cannot resolve the matter(s) within thirty (30) days after receiving notice of the questioned cost(s) from GoTriangle, the appropriate manager of Reimbursee and the General Manager of GoTriangle shall meet promptly to resolve the matter(s).

3. **Auditing**

Reimbursee shall maintain books and records supporting all amounts invoiced to GoTriangle during the performance of the Work. Reimbursee shall preserve such books and records for the duration of this Agreement and for three (3) years thereafter, during which time upon five (5) calendar days' prior written notice, GoTriangle employees or GoTriangle retained accountants (including representatives of the Federal or State government with oversight over the D-O LRT Project) shall have access to only the directly pertinent records relating to the amounts invoiced from Reimbursee to GoTriangle and shall have the right to make any copies thereof for the purpose of auditing or verifying such; provided, however, the foregoing is subject to the confidentiality terms of this Agreement (Section II.E.) and at all times GoTriangle employees and GoTriangle retained accountants shall adhere to and be bound by the Confidentiality terms of this Agreement.

E. **Confidentiality**

The Parties recognize that both GoTriangle and Reimbursee are public agencies and are subject to North Carolina Public Records Law (N.C.G.S. §§ 132.1 *et seq.*) and other requirements under Federal and State law.

F. **Federal Contracting Requirements**

The Work to be performed under this Agreement will be financed in whole or in part with Federal funding. As such, Federal laws, regulations, policies, and related administrative practices apply to this Agreement. The most recent of such Federal requirements, including any amendments made after the execution of this Agreement, shall govern this Agreement, unless the Federal Government determines otherwise. Reimbursee is responsible for complying with all applicable provisions, including the Federal requirements contained herein, but only with regard to the Work to be performed under this Agreement.

G. **Ownership of Materials**

Each Party shall maintain ownership of any materials or work product generated by that Party in the performance of this Agreement.

H. **No Representations; No Warranties; Disclaimer and Limitation of Liability**

Regardless of the nature of the cause of action, whether in contract, tort, or otherwise, in no event shall Reimbursee or GoTriangle be liable to each other or to any third party for any consequential, special, reliance, indirect, or punitive damages, regardless of whether Reimbursee or GoTriangle knew or should have known of the possibility of such damages.

I. **Other Provisions**

i. **Agreement Modifications**

Any changes, amendments, corrections, modifications, or additions to this Agreement shall be by an amendment in writing; shall be executed and approved by the duly authorized representative (or her/his designee) of each respective Party; shall be in accordance with applicable law; and shall become effective upon approval by both GoTriangle and Reimbursee.

ii. **Termination of Agreement**

Either Party shall have the right to terminate this Agreement at any time for its convenience. The terminating Party shall notify the other Party in writing at least sixty

(60) days in advance of an election to terminate this Agreement.

Either Party may terminate this Agreement for a material breach with thirty (30) days' advance written notice specifying the breach to the other Party. After receiving notice of breach, the notified Party shall have a time period of no more than thirty (30) days to cure the breach to the reasonable satisfaction of the notifying Party. If the breach is not cured or cannot reasonably be cured in the notice period, the Agreement shall terminate unless the Parties otherwise agree in writing.

This Agreement is void and unenforceable if all or part of Federal, State, or local funds applicable to this Agreement are not available to GoTriangle.

GoTriangle's obligations under this Agreement are subject to the availability of authorized funds, determined by GoTriangle's fiscal budget, which runs from July 1 to June 30 of each fiscal year. GoTriangle may terminate this Agreement, or any part of the Work, without prejudice to any right or remedy of GoTriangle, for insufficient funds.

If this Agreement is terminated for insufficient funds: (i) GoTriangle will be liable only for payment in accordance with the terms of this Agreement for services rendered and actual Work completed prior to the termination date designated by GoTriangle in its notice of termination; and (ii) Reimbursee shall be released from any obligation to provide further services pursuant to this Agreement that are affected by the termination.

In the event of any termination under the terms of this Agreement, for whatever reason, GoTriangle shall reimburse Reimbursee for all actual Work and costs incurred to that point for completed Work and also for all direct costs Reimbursee reasonably incurs in connection with ending any Work.

iii. Controlling Law and Compliance with Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina without regard to any conflict of laws provisions.

The Parties to this Agreement shall comply with all applicable Federal, State, and local laws and regulations in effect at the time of the execution of this Agreement in the exercise of the Work being performed under this Agreement. In no way shall it be construed or implied that either Party is by this Agreement intending to abrogate its obligation and duty to comply with the regulations promulgated under Federal and State law.

iv. Notice

All notices, communications, documents, and other materials submitted or exchanged between the Parties pursuant to this Agreement shall be in writing and shall be addressed to the representatives for each Party as set forth below and shall be deemed to have been duly given (i) on the date of delivery, if delivered personally to the Party to whom notice is given, or (ii) at the date of actual receipt if mailed by United States mail, postage prepaid, return receipt requested. Notices and other communications shall be directed to the Parties at the addresses listed below:

GoTriangle Contacts

Danny Rogers, PE
 D-O LRT Project Director
 GoTriangle
 Delivery Address: 411 West Chapel Hill Street, Suite 1000, Durham, North Carolina 27701
 US Mail: P.O. Box 13787, RTP, North Carolina 27709
 Email: drogers@gotriangle.org
 Telephone: 919.485.7579

And a copy to:

Shelley Blake, General Counsel
 GoTriangle
 Delivery Address: 4600 Emperor Boulevard, Suite 100, Durham, North Carolina 27703
 US Mail: P.O. Box 13787, RTP, North Carolina 27709
 Email: sblake@gotriangle.org
 Telephone: 919.485.7561

Reimbursee Contacts

Aaron Frank, Senior Planner
 Chapel Hill Planning & Development Services
 405 Martin Luther King Jr. Blvd, Chapel Hill, North Carolina 27514
 Email: afrank@townofchapelhill.org
 Telephone: 919-969-5059

And a copy to:

Ralph Karpinos, Town Attorney
 Chapel Hill Town Attorney
 405 Martin Luther King Jr. Blvd, Chapel Hill, North Carolina 27514
 Email: rkarpinos@townofchapelhill.org
 Telephone: 919-969-2746

Telephonic and electronic mail communications and facsimile transmittals may be used to expedite communications, but neither shall be considered official communications under this Agreement unless and until confirmed in writing by the Party to whom the communication was sent. A Party shall promptly notify the other Party if there is a change regarding the person(s) to whom notices and other communications shall be directed.

v. Non-Waiver

No failure or waiver or successive failures or waivers on the part of either Party, its successors or permitted assigns, in the enforcement of any provision of this Agreement shall operate as a discharge of any such provision nor render the same invalid, nor impair the right of either Party hereto, their successors or permitted assigns, to enforce the same in the event of any subsequent breaches by the other Party hereto, its successors or

permitted assigns.

vi. Merger

This Agreement constitutes the entire agreement of the Parties, all prior discussions, representations, and agreements being merged herein. The Agreement may not be changed, modified, extended, or amended, nor any provision thereof waived, except by a written amendment prepared in accordance with Section II.I.i.

vii. Severability

If any part, term, or provision of this Agreement is judicially determined to be illegal or in conflict with any applicable law, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular part, term, or provision held to be invalid or illegal.

viii. No Third Party Rights

Except as expressly set forth herein, the representations, warranties, terms, and provisions of this Agreement are for the exclusive benefit of the Parties hereto, and no other person or entity shall have any right or claim against either Party by reason of any of these terms and provisions or be entitled to enforce any of these terms and provisions against either Party.

ix. Survivorship

Any and all provisions, promises, and warranties contained herein which by their nature or effect are required or intended to be observed, kept, or performed after termination of this Agreement will survive the termination of this Agreement and remain binding upon and for the benefit of the Parties hereto.

x. Successors and Assigns

Subject to the provisions herein, this Agreement shall be binding upon and inure to the benefit of the Parties, their successors and permitted assigns. No assignment of this Agreement shall be permitted except with the express written consent of the other Party, which consent shall not be unreasonably withheld.

xi. Relationship of the Parties

Nothing contained in this Agreement will be deemed to be construed by the Parties or any third party as creating a partnership, an agency relationship, or joint venture between the Parties or any of their respective employees, representatives, or agents. Neither Party has any express or implied authority to assume or create any obligations on behalf of the other or to bind the other to any contract, agreement, or undertaking with any third party.

xii. Further Assurances

Either Party, upon the request of the other Party, shall execute and deliver such further documents and instruments as such other Party may reasonably deem appropriate to carry out the terms and conditions of this Agreement, provided that such further documents and instruments are consistent with the terms and conditions of this Agreement.

- xiii. Time is of the Essence**
The Parties acknowledge and agree that time is of the essence with respect to each term and condition of this Agreement.
- xiv. Cooperation and Coordination**
The Parties shall make reasonable efforts and work together in good faith to effectuate any additional agreements and approvals that may be required to implement the D-O LRT Project.
- xv. Captions and Headings**
The captions, headings, and section numbers of this Agreement are for convenience and in no way define or affect the meanings hereof.
- xvi. Attachments and Exhibits**
The Attachments and/or Exhibits attached hereto are an integral part of this Agreement and are incorporated into this Agreement as fully as if the contents thereof were set out in full herein at each point of reference thereto.
- xvii. Iran Divestment Act**
Pursuant to N.C.G.S. § 147-86.59, any person identified as engaging in investment activities in Iran, determined by appearing on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. § 147-86.58, is ineligible to contract with the State of North Carolina or any political subdivision of the State. The State Treasurer's Final Divestment List can be found on the State Treasurer's website at the address www.nctreasurer.com/Iran and will be updated every one hundred eighty (180) days.
- Reimbursee (i) represents that neither it nor its agents, third party consultants, or subcontractors are on the Final Divestment List of persons that the State Treasurer has determined engages in investment activities in Iran; and (ii) agrees that it shall not utilize any subconsultant that is identified on the Final Divestment List to perform the Work under this Agreement.
- If Reimbursee receives information that a person is in violation of the Act as stated above, Reimbursee shall immediately notify GoTriangle in writing. GoTriangle will offer Reimbursee an opportunity to respond and GoTriangle will take action as appropriate and as provided for by laws and regulations or this Agreement. Should this Act be repealed, this Agreement shall remain valid.
- xviii. Commercial Non-Discrimination**
GoTriangle values and promotes the full complement of diversity in the workplace. As a condition of entering into this Agreement, Reimbursee represents and warrants that it shall not discriminate on the basis of race, color, gender, religion, sexual orientation, veteran status, national origin, ethnicity, age, or disability, or for any other reason prohibited by law in the solicitation, selection, hiring, or treatment of third party consultants, vendors, suppliers, subconsultants, or commercial customers in connection with the Work to be performed pursuant to this Agreement, nor shall Reimbursee retaliate against any person or entity for reporting instances of such discrimination.

xix. Flow Down Requirements

This Agreement shall be specifically incorporated by reference into all third party contracts and subcontracts regarding or pertaining to the Work. All provisions required by laws and regulations or this Agreement shall apply to all subcontracts of any tier.

xx. Not Debarred by Federal or State Government

It is the policy of both GoTriangle and Reimbursee not to enter into any agreement with another entity that has been debarred by any governmental agency (Federal or State). GoTriangle and Reimbursee certify by signature of this agreement, that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any unit of Federal or State government.

xxi. Construction of Terms

Each Party has agreed to the particular language of this Agreement. Questions of interpretation shall not be resolved by any rule or presumption either for or against the drafter(s), but rather in accordance with the fair and plain meaning of the terms contained herein.

xxii. Acknowledgements

Each Party acknowledges that the individual executing this Agreement on its respective behalf is authorized to execute the document and to bind the Party to the terms contained herein. The Parties further acknowledge that they have read this Agreement, conferred with their legal counsel, and fully understand the contents of this Agreement. A copy, electronically scanned copy, or facsimile copy of the signature of any Party shall be deemed an original with each fully executed copy of this Agreement as binding as an original.

xxiii. Separate Counterparts

This Agreement may be executed in one or more counterparts, each of which, when so executed, shall be deemed to be an original. Such counterparts shall together constitute and be one of the same instrument.

INTENTIONALLY LEFT BLANK
CONTINUED ON PAGE FOLLOWING.

This Contract is between the Town of Chapel Hill and Research Triangle Regional Public Transportation Authority d/b/a GoTriangle for the Durham-Orange Light Rail Transit Project.

IN WITNESS WHEREOF, the parties hereto cause this agreement to be executed in their respective names.

RESEARCH TRIANGLE REGIONAL PUBLIC TRANSPORTATION AUTHORITY

SIGNATURE

PRINTED NAME & TITLE

WITNESS

PRINTED NAME & TITLE

TOWN OF CHAPEL HILL

Florentine Miller, Deputy
DEPARTMENT HEAD OR DEPUTY/TOWN MANAGER

Florentine Miller - Town manager's office
PRINTED NAME & DEPARTMENT

ATTEST BY TOWN CLERK:

[Signature]
TOWN CLERK

TOWN SEAL



Town Clerk attests date this the 29th day of June, 2018.

Approved as to Form and Authorization

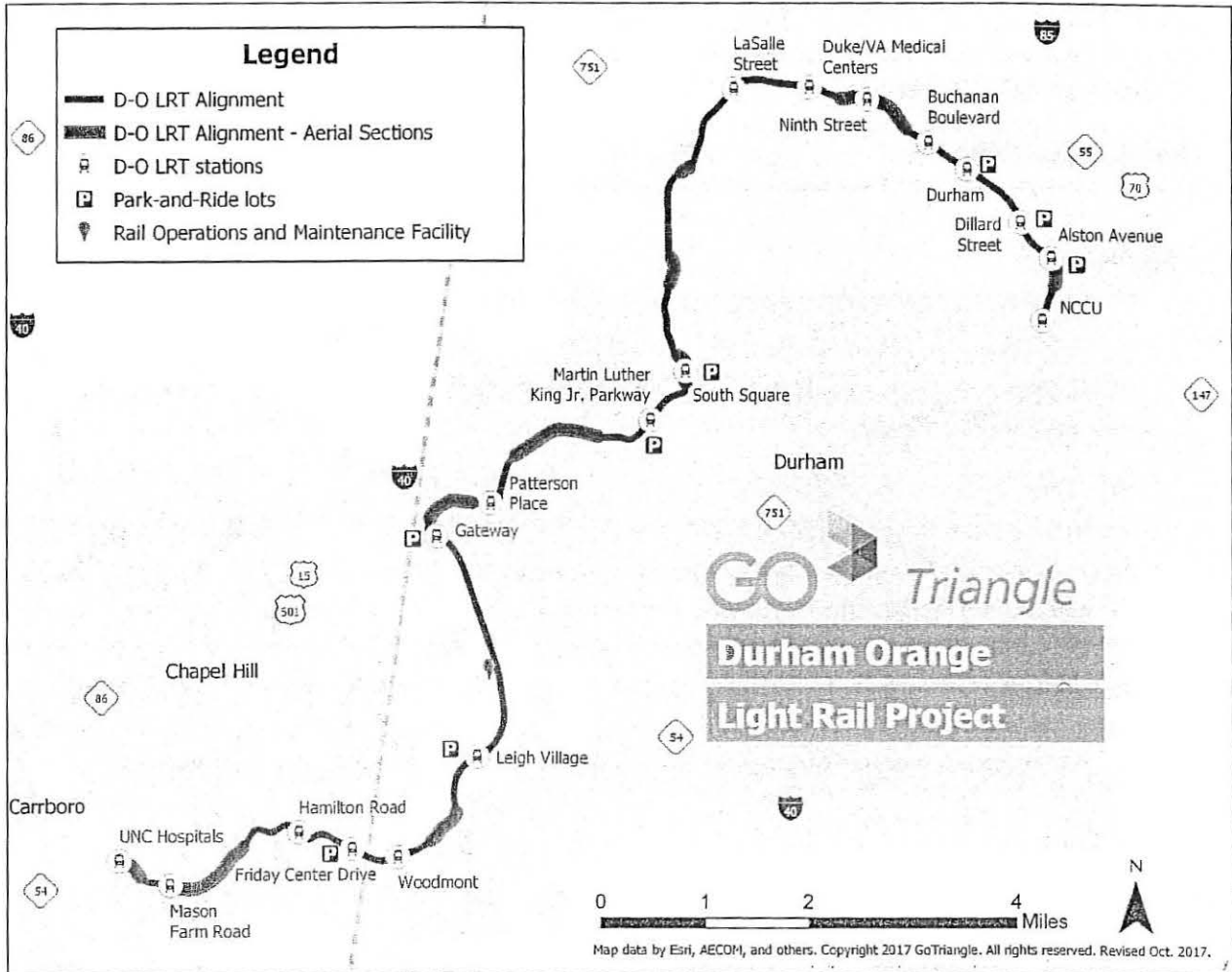
Ralph D. Karsinos
TOWN LEGAL STAFF

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


[Signature]
FINANCE OFFICER

6/25/18
DATE

ATTACHMENT A
D-O LRT PROJECT ALIGNMENT MAP



ATTACHMENT B

	Durham-Orange Light Rail Transit Project Deliverable Review Procedures		Procedure DRP-01
Title: Bluebeam Process			
Issue Date: 10/18/17	Ver. No.: 0	Version Date: 10/18/17	Page 12 of 22

Purpose

Bluebeam is the application used to review and comment on .pdf documents submitted by the GEC to GoTriangle and the PMC. The review, comment, response and resolution process occurs within a Bluebeam 'session' created by the GEC. Multiple Reviewers can access the documents and comment concurrently.

The PMC creates the Bluebeam session from the GEC submittal and provides a link to the GoTriangle and PMC Lead Reviewers via e-mail. The GoTriangle and PMC Lead Reviewers forward the e-mail with additional instructions to their respective Reviewers. After all Reviewers have completed reviewing the documents and entering comments, the GoTriangle Lead Reviewer reviews all comments received from the GoTriangle and PMC Reviewers then notifies the GEC that the comments are ready for review. The GEC then enters responses to the comments within the same Bluebeam session. Note that project stakeholders may decide to perform their submittal reviews using Bluebeam. They will follow similar procedures as described in this document.

Definitions

Bluebeam – Software used for review of .pdf documents.

GEC – General Engineering Consultant (i.e. HDR)

Lead Reviewer – Designated GoTriangle and PMC individuals responsible for coordinating a review by their respective staffs.

PMC – Program Management Consultant (i.e. HNTB)

Reviewer – GoTriangle and PMC individuals identified to participate in a review.

Information for First Time Reviewers

Refer to APPENDIX A-Information for First Time Reviewers for information on how to prepare for and access a Bluebeam session for use on the D-O LRT Project.

Performing a ReviewCommenting Guidelines

Over the course of the D-O LRT Project, thousands of documents will be reviewed that will

generate tens of thousands of comments. Multiple people will be involved in the review, response, and resolution of each comment. Reference DRP-01: Review Process Flowchart for more information. As a result, Reviewers should make an effort to provide comments that are clear and concise, in a timely manner. To that end, comments should conform to the following guidelines:

- a. Requests for comments will come with a timeline on when comments are to be provided.
- b. Highlight the comment area using one of the markup tools provided in the Bluebeam profile.
- c. Double click the markup to open the comment dialog box and type your comment. Refer to Section **Add Comments** for more information on markup tools and procedures. Since multiple people will be reviewing the same drawing the comment box can be minimized to prevent the drawing from becoming over cluttered with text boxes.
- d. Comments should be concise. If a comment is lengthy, consider seeking clarifications to enable the comment to be condensed.
- e. Do not combine multiple comments into a single comment.
- f. Be directive in the wording of the comment. Begin each comment with a verb (i.e. Add, Change, Delete, Verify) that conveys the action desired of the responder.
- g. Do not ask questions in comments. Seek answers to questions before making the comment. Reviewers should contact their respective Lead Reviewer for the appropriate approach to obtaining answers to their questions.
- h. Reviewer is to include the source of the comment (e.g. NCDOT standards, AREMA, etc.) with sufficient clarity for the originator of the document to reference.
- i. If a sheet has no comments, the reviewer shall add "Reviewed with No Comment" to the sheet as a comment.
- j. To avoid delays to the design process and schedule, if a comment is not made on a particular aspect of a design element in a submittal, and no changes impact this design element in future submittals, the Reviewer may not comment on that aspect of the design after its initial submittal.

Enter the Bluebeam Session

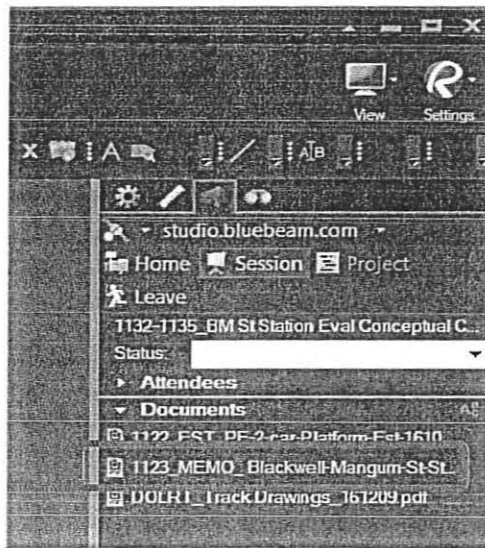
GoTriangle and the PMC identify the Lead Reviewers to be included in each Bluebeam session. The PMC then creates the Bluebeam session and sends an e-mail to the GoTriangle and PMC Lead Reviewers with a URL link to the Bluebeam session similar to this:



Click on the link in the e-mail to enter the Bluebeam session.

The GoTriangle and PMC Lead Reviewers forward the e-mail received from the PMC, along with any additional instructions (e.g. deadline for submitting comments) to their respective Reviewers. Each Reviewer must complete the steps outlined in *Section 3-Information for First Time Reviewers* above in order to enter the Bluebeam session.

Multiple documents can be included in a single Bluebeam session. The documents are listed in the upper right-hand corner of the screen under the heading 'Documents'. Select a document from this list to display it in the center of the screen and begin the review.

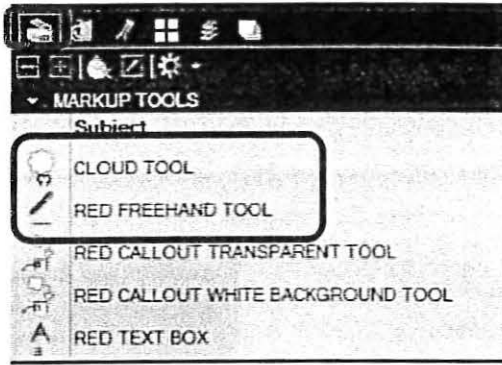


Click on the arrow at the edge of the window to open the side panels.

Select a document from the list to review.

Add Comments

Comments are made on the document by using comment tools available in Bluebeam.



To add a comment, click on the 'Gold Tool Chest Icon' in the upper left corner of the screen.

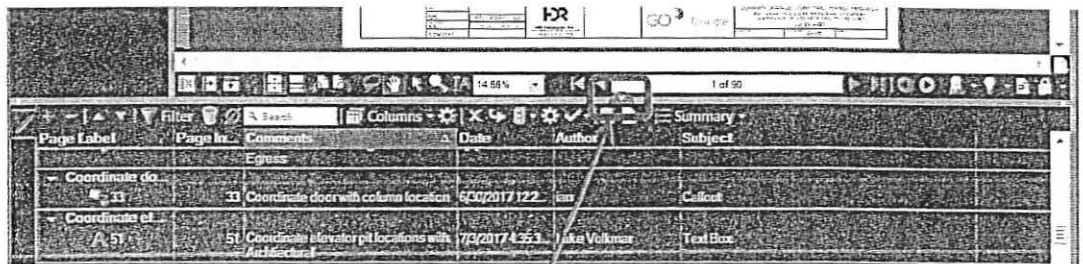
The GoTriangle QC Profile allows the use of 5 markup tools, but the 'Cloud Tool' is the preferred method of making comments. This tool allows the commenter to highlight an area by drawing a red cloud line around it, the commenter then can double click the markup to add a text description, the comment box can

then be minimized to prevent the drawing from getting over crowded with callouts. The 'Red Freehand Tool' can also be used if the cloud tool is insufficient. This tool allows the reviewer to draw comments (e.g. draw a new edge of pavement line), in order to provide clarity to a markup, the commenter then can double click the markup to add a text description.

Use the other comment tools only when the cloud and freehand tools are not sufficient to convey the intent of the comment.

In addition to displaying the comment on the document, the comment is added in two other locations in Bluebeam:

- a. **Markup List** – This table is at the bottom of the screen and lists all comments currently in the document. If a comment is deleted on the document, it is also deleted from the Markup List. Comments can also be edited from the Markup List. Clicking on a comment in the Markup List results in the document page and comment being displayed in the main window.



Click on the arrow to
open the bottom panel

- b. **Record** – This activity log is on the right side of the screen and records the actions of each Reviewer in real time. For example, each time a Reviewer joins or leaves the session, or when a comment is created, edited or deleted, it is displayed in the record.



Comments are automatically and continuously logged and saved in the Bluebeam session, so there is no 'Save' command required.

Complete the Review

When a Reviewer is done reviewing all documents within a Bluebeam session, set the 'Status' option in the upper right-hand corner of the screen to 'Finished'.

This status can be changed back to Blank if the Reviewer wishes to return to the session and make edits before the session is closed by the GEC consultant.

The Reviewer then sends an e-mail to their Lead Reviewer (copying *wbs@gotriangle.org*) that their review is complete.

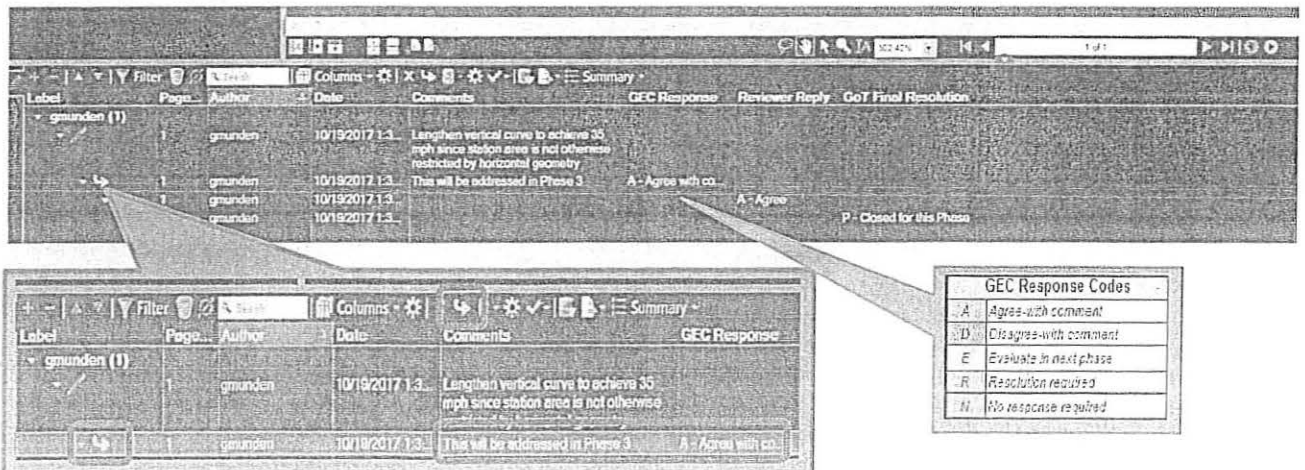


The various reviews are then compiled and transmitted to the GEC as follows:

- a. The PMC Lead Reviewer reviews all comments received from the PMC Reviewers, then sends an e-mail to the GoTriangle Lead Reviewer that the PMC review is complete.
- b. The GoTriangle Lead Reviewer compiles the received comments from the GoTriangle and PMC Reviewers. Any edits are cycled back to the PMC or GoTriangle Reviewers for revision.
- c. When all edits are complete, the GoTriangle Lead Reviewer sends an e-mail to the GEC that the review is complete and ready for the GEC to provide responses.

GEC Responses to Comments

Upon receipt of the comments from the GoTriangle Lead Reviewer, the GEC accesses the Bluebeam session and responds to each comment in the Markup List. The GEC uses the 'Reply' feature in Bluebeam to enter a response and the required response code.

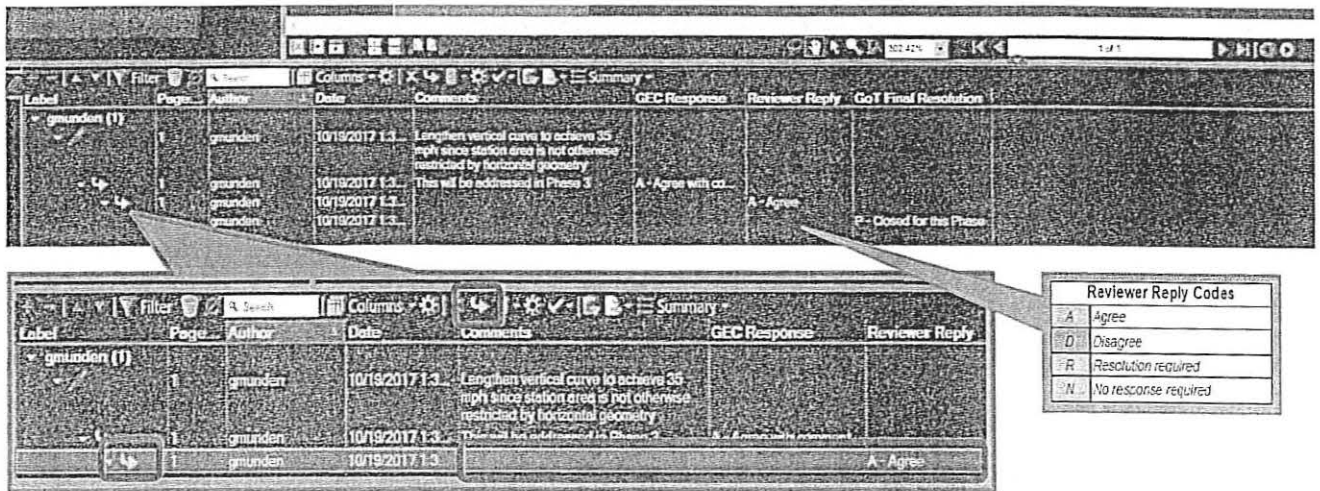


When all GEC responses are complete, the GEC sends an e-mail to the GoTriangle and PMC Lead Reviewers that the GEC responses are complete.

Replies to GEC Responses to Comments

GoTriangle and the PMC reply to the GEC responses as follows:

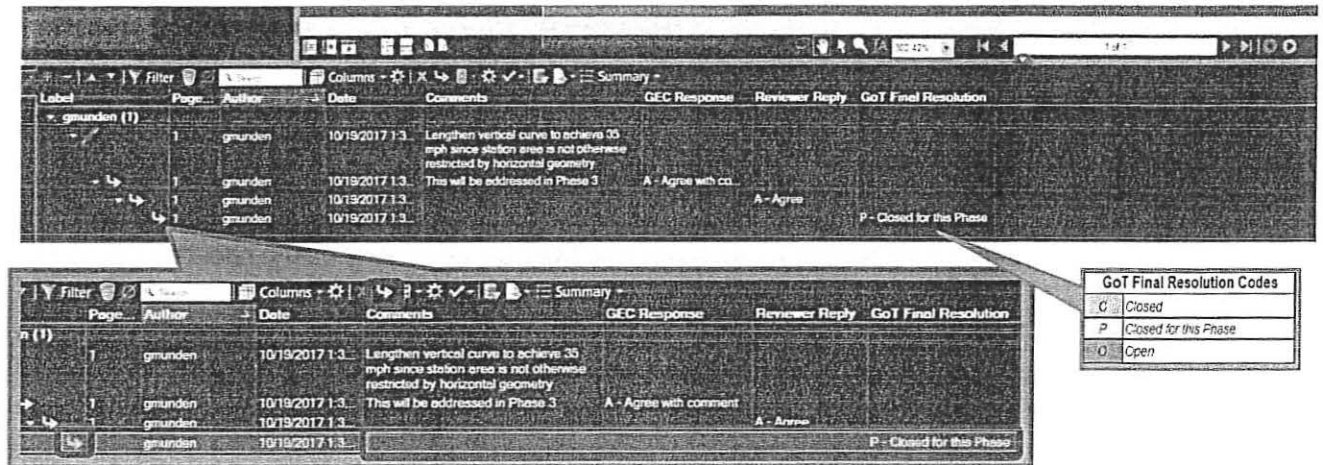
- a. The GoTriangle and PMC Lead Reviewers forward the e-mail received from the GEC, along with any additional instructions (e.g. deadline for submitting replies) to their respective Reviewers.
- b. The Reviewers access the Bluebeam session and reply to the response to their comments in the Markup List. The Reviewers use the 'Reply' feature in Bluebeam to enter a reply and the required reply code. If comment responses are left blank, it will be assumed that the Commenter agrees with the GEC Response.
- c. The Reviewer then sends an e-mail to their Lead Reviewer (*copying wbs@gotriangle.org*) that their replies are complete. If replies are not received by the communicated deadline, then it will be assumed that the Commenter agrees with the GEC Response.
- d. When all PMC replies are complete, the PMC Lead Reviewer reviews all replies received from the PMC Reviewers, then sends an e-mail to the GoTriangle Lead Reviewer that the PMC replies are complete.



Dispositioning Comments

The GoTriangle Lead Reviewer reviews all replies received from the GoTriangle and PMC Reviewers and adds a disposition to each comment in the Markup List as:

- Closed** – meaning no further action is required. (e.g. The GEC disagrees with a Reviewer’s comment and the Reviewer concurs, or the GEC points to other sections in the document that address a Reviewer’s comment).
- Closed for this Phase** – meaning the comment is resolved for this submittal, but will be verified that it has been addressed in the next submittal. (e.g. The GEC’s response indicates that a Reviewer’s comment will be incorporated into the next milestone submittal).
- Open** – meaning resolution is required.



The GoTriangle Lead Reviewer refers comments that are “Open” to the GEC lead for that contract package for resolution, including meetings with GoTriangle, the PMC and the GEC as required. Additional comments, responses and replies are added to the document in Bluebeam as required to resolve the comment.

When all comments are closed, the GoTriangle Lead Reviewer sends an e-mail to the GEC and the PMC Lead Reviewer that all comments are resolved.

Documenting the Bluebeam Session

Saving the Bluebeam Session to SharePoint

The GEC saves a .pdf file of the completed Bluebeam session (i.e., drawings with comments) to the appropriate WBS location on the GoTriangle SharePoint site. This includes separate files for the following:

- Document with comments
- Markup List
- Record

Exporting the Markup List to Excel

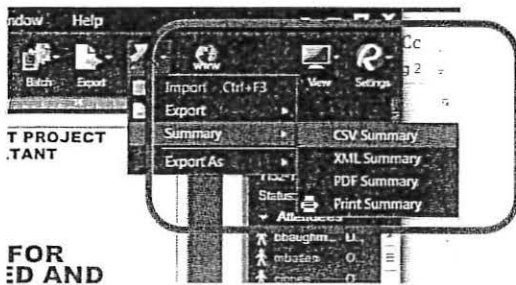
The PMC Lead Reviewer exports the completed Bluebeam Markup List to Excel, where it is tabulated with other comments received via non-Bluebeam processes (e.g. Stakeholder reviews), refer to DRP-01: Comment Tracking Form. The PMC Lead Reviewer saves the Excel file to the

appropriate WBS location on the GoTriangle SharePoint site. This file will be used to document how comments are being addressed in subsequent submittals.

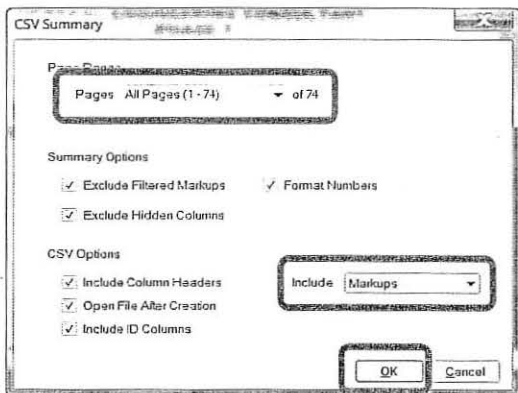
To export the Bluebeam Markup List to Excel (.csv):



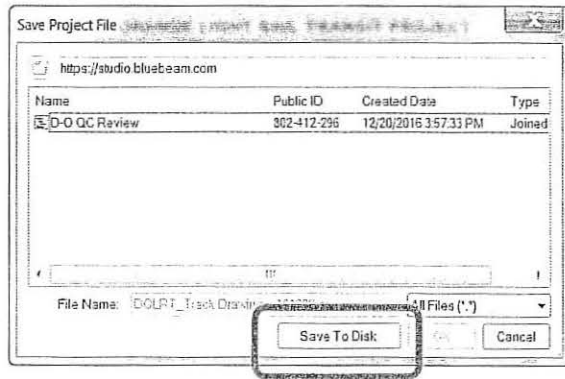
Select the 'File' menu.
Then select the 'Markups' icon.



From the 'Markups' menu:
Select 'Summary'.
Then select 'CSV Summary'.



In the CSV Summary box:
Select the page range.
Verify the 'Markups' option is selected from the dropdown menu.
Click 'OK'.



Click on "Save to Disk"



Identify the appropriate folder and

enter the filename.

Click on 'Save'.

This saves the .csv file and opens it in Excel.

Save the file as an Excel .xlsx file in Excel and modify it as required.

APPENDIX A - Information For First-Time Reviewers

In order for a Reviewer to enter a Bluebeam session, the following is required:

1. Bluebeam Vu/Revu must be installed on the Reviewer's computer. GoTriangle staff will utilize Bluebeam Vu.
2. The Reviewer must set up a Bluebeam Studio account login (see Section A.1 below)
3. The Reviewer must download the DOLRT GoTriangle QC Profile (see Section A.2 below).

A.1 Install Bluebeam Vu/Revu

The computer being used for the review session must have Bluebeam Vu/Revu installed prior to the session being accessible for review. Note administrative rights are required to install the software, the reviewer should consult their respective IT Department for further information. The free VU software download can be found at the following link:

<https://www.bluebeam.com/solutions/vu>

A.2 Create a Bluebeam Studio Account Login

A first-time Reviewer must go through a one-time process to setup a Bluebeam Studio account by going to the following link:

<https://studio.bluebeam.com/join.html?ProjectID=802-412-296>

The following dialogue boxes appear:

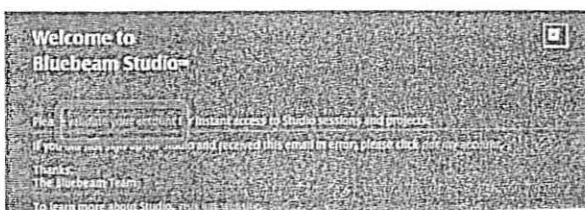
Click on 'Create Account'

Enter your e-mail address, a password.

Enter your first and last name (not your initials). This is the name that will appear as the originator of comments made in Bluebeam.

Click 'OK'

The Reviewer then receives an e-mail from Bluebeam Studio requesting the Reviewer to validate the new account.



Click 'validate your account'

A.3 Load the DOLRT GoTriangle QC Profile

Go to the following link (same link as previous step):

<https://studio.bluebeam.com/join.html?ProjectID=802-412-296>

Log in.

Bluebeam starts and opens a session with two files at the top right corner of the screen:



Double-click on 'DOLRT GoTriangle QC Profile.bpx'.

This loads the DOLRT QC profile into Bluebeam. This sets various options for how comments are entered and tracked as described in Section 4.

If successful, the following box appears:



The Reviewer can now open Bluebeam sessions initiated by the GEC and provide comments as described in the sections above.



376
TOWN OF CHAPEL HILL

Town Hall
405 Martin Luther King Jr.
Boulevard
Chapel Hill, NC 27514

Item Overview

Item #: 14., File #: [18-1002], Version: 1

Meeting Date: 12/5/2018

Consider a Proposal for an Advisory Board Membership Policy Amendment and a Code of Ordinance Text Amendment.

See the Staff Report on the next page.

The Agenda will reflect the text below and/or the motion text will be used during the meeting.

PRESENTER: Becky McDonnell, Planner I

- a. Introduction and recommendation
- b. Comments and questions from the Mayor and Town Council
- c. Motion to adopt the Resolution to Amend the Advisory Board Membership Policy
- d. Motion to enact the Ordinance to Amend the Code of Ordinances.

RECOMMENDATION: That the Council adopt the Resolution to Amend the Advisory Board Membership Policy, and enact the Ordinance to Amend the Code of Ordinances.



CONSIDER A PROPOSAL FOR AN ADVISORY BOARD MEMBERSHIP POLICY AMENDMENT AND A CODE OF ORDINANCE TEXT AMENDMENT

STAFF REPORT

TOWN OF CHAPEL HILL PLANNING AND DEVELOPMENT SERVICES
Ben Hitchings, Director
Judy Johnson, Operations Manager
Becky McDonnell, Planner I

<p>AMENDMENT REQUEST Amend the Advisory Board Membership Policy and the Code of Ordinances regarding the board membership attendance and length of term policies. Amendments to individual board and commission policies are detailed in the attached Technical Report.</p>	<p>DATE December 5, 2018</p>
<p>STAFF RECOMMENDATION That the Council adopt the Resolution to Amend the Advisory Board Membership Policy and enact the Ordinance to Amend the Code of Ordinances.</p>	
<p>UPDATES SINCE PUBLIC HEARING The following changes have been made since the Public Hearing for the accompanying item, Consider a Land Use Management Ordinance Text Amendment - Proposed Changes to Section 8.3 Board of Adjustment and 8.4 Historic District Commission, on November 14, 2018:</p> <ul style="list-style-type: none"> • The Human Services Advisory Board provided feedback and asked to include an update that would clarify the recusal process for board members. This amendment has been incorporated into the proposal. • A clause was added to clarify the attendance policy for boards and commissions that do not meet regularly. • A clause was added to clarify that the proposed changes to the Advisory Board Membership Policy apply to all advisory boards unless otherwise described in the Advisory Board Membership Policy or superseded by the Town Code of Ordinances. 	
<p>PROCESS</p> <ol style="list-style-type: none"> 1. Staff held joint meeting with affected Advisory Boards and Commission to obtain feedback regarding proposed amendments. 2. Council may adopt the Resolution amending the Advisory Board Membership Policy. 3. Council may enact the Ordinance amending the Code of Ordinances. 	<p>OVERVIEW</p> <ul style="list-style-type: none"> • The amendments to the Advisory Board Membership Policy and the Code of Ordinances respond to a Council request to clarify the advisory board membership policy. • On October 17, 2018¹, the Council authorized the Town Manager to act on the recommendations of the Council Committee on Boards and Commissions to submit suggested revisions to Council for adoption and enactment. • This action is not part of the Charting Our Future Land Use Management Ordinance rewrite process.
<p>DECISION POINTS Tonight's proposed actions would amend the Advisory Board Membership Policy and the Code of Ordinances as follows:</p> <p>Advisory Board Membership Policy</p> <ul style="list-style-type: none"> • Membership Section – add a General subsection to add language to the policy about the term length and how vacancies are filled; • Attendance Section – update the policy so any member who misses three or more consecutive regular meetings or more than half of regular meetings in a year shall lose their membership status; • Length of Term Section – remove a clause that allows members to serve until a successor is appointed after their terms have expired; • Community Design Commission membership policy – add “green design, place making” to the Seat Requirements and remove Chapel Hill Historic District resident as a seat category; • Environmental Stewardship Advisory Board membership policy – add a new seat to be designated as a Stormwater Advocate seat. <p>Code of Ordinances</p> <ul style="list-style-type: none"> • Sections 2-121, 2-141, 2-177, and 6-9. Membership terms - update the sections so that any reference to board membership policies refers back to the Advisory Board Membership Policy; • Sections 6-8 through 6-11 – conclude the Cemeteries Advisory Board effective June 30, 2019; • Section 12-17. Membership – designate an existing seat to be a Cemeteries Champion seat to the Parks, Greenways, and Recreation Commission membership; 	

¹ <https://chapelhill.legistar.com/LegislationDetail.aspx?ID=3701641&GUID=F8EE3319-9F18-460A-9158-774ADB93B872>

- Sections 12-21 and 23-16. Attendance at Meetings - update the sections so that any reference to board membership attendance policies refers back to the Advisory Board Membership Policy.
- Sections 2-121. Membership terms – clarify the recusal policy for the Human Services Advisory Board.

ATTACHMENTS

1. Draft Staff Presentation
2. Resolution to Amend the Advisory Board Membership Policy
3. Ordinance to Amend the Code of Ordinances
4. Response to Questions from Public Hearing and Advisory Board Input
5. Technical Report
6. Advisory Board Membership Policy Amendments Feedback



Land Use Management Ordinance Text Amendment, Code of Ordinances, and Advisory Board Membership Policy Changes

DRAFT

December 5, 2018

AGENDA

380

Advisory Board Membership Policy
Code of Ordinances
Land Use Management Ordinance

DRAFT

AGENDA ³⁸¹

Advisory Board Membership Policy
Code of Ordinances
Land Use Management Ordinance

DRAFT

Attendance Clause³⁸² Amendment

Clarify policy so that a member who misses three consecutive regular meetings or more than half of the regular meetings within in a year shall lose membership status, with exception for excused absences.

DRAFT

Length of Term Amendment³⁸³

“Members serve staggered three-year terms which shall expire on June 30. ~~However, members of boards and commissions may serve until their successors have been appointed.~~”

DRAFT

Other Amendments

Affected Board	Amendment
Environmental Stewardship Advisory Board	Designate a Stormwater Champion seat
Community Design Commission	Remove Historic District resident designation
	Add “green design” and “place-making” as possible areas of knowledge or experience necessary to meet seat requirements

DRAFT

AGENDA ³⁸⁵

Advisory Board Membership Policy
Code of Ordinances
Land Use Management Ordinance

DRAFT

Other Amendments

Affected Board	Amendment
Human Services Advisory Board	Clarification regarding recusal of board members
Cemeteries Advisory Board	Conclude board effective June 30, 2019
Parks, Greenways, and Recreation Commission	Designate a Cemeteries Champion seat

Other Changes³⁸⁷

- Board of Adjustment
- Historic District Commission
- Community Design Commission
- Environmental Stewardship Advisory Board
- Human Services Advisory Board
- Chapel Hill Public Library Advisory Board
- Cultural Arts Commission
- Cemeteries Advisory Board

- Parks, Greenways, and Recreation Commission
- Stormwater Management Utility Advisory Board



AGENDA³⁸⁸

Advisory Board Membership Policy
Code of Ordinances
Land Use Management Ordinance

DRAFT

Text Amendment Background



September 2018: Council Committee on Boards and Commissions met to discuss

October 2018: Council approved the recommendations and called a public hearing

November 6, 2018: Joint Advisory Boards Meeting and Planning Commission review

November 14, 2018: Town Council Public Hearing

DRAFT

RECOMMENDATION

Staff Recommendation:

- Approval of Land Use Management text amendment

Planning Commission Recommendation:

- Approval of Land Use Management text amendment

DRAFT

Text Amendment Process

**Staff
Review**



**Joint
Advisory
Board
Meeting
11/6/18**



**Planning
Commission
Review
11/6/18**



**Council
Public
Hearing
11/14/18**



**Council
Action
12/5/18**

LUMO Text Amendment Overview

Amendments to the Historic District Commission and Board of Adjustment:

1. Revise attendance clause
2. Revise length of term clause
3. Reduce HDC membership from 10 members to 9 members



RECOMMENDATION

Land Use Management Ordinance Text Amendments:

- Changes to Historic District Commission and Board of Adjustment attendance and length of term clauses
- Reducing number of seats on Historic District Commission from 10 to 9

Staff recommends:

- Approval of the Land Use Management Ordinance Text Amendment

DRAFT

RESOLUTION TO AMEND THE ADVISORY BOARD MEMBERSHIP POLICY
(Enacting the Advisory Board Membership Policy proposal)

A RESOLUTION AMENDING THE ADVISORY BOARD MEMBERSHIP POLICY AND THE COMMUNITY DESIGN COMMISSION AND THE ENVIRONMENTAL STEWARDSHIP ADVISORY BOARD MEMBERSHIP POLICIES (2018-12-05/R-15)

WHEREAS, the Council Committee on Boards and Commissions met on September 20, 2018 to consider information regarding advisory board alignment, length of term, board member attendance, and the Historic District resident seat on the Community Design Commission; and

WHEREAS, the Council Committee on Boards and Commissions recommends adding a stormwater seat on the Environmental Stewardship Advisory Board (ESAB) to recognize the stormwater interests in the review of development applications and evaluate that interest through the winter and consider the ESAB and Stormwater Management Utility Advisory Board alignment prior to the spring appointment cycle; and

WHEREAS, the Council Committee recommends amending the length of term clause to remove the succession of members for positions where a replacement has not been made; and

WHEREAS, the Council Committee recommends amending the attendance clause to recognize that any member of the board, commission or committee who misses more than three (3) consecutive regular meetings or more than half the regular meetings in a calendar year shall lose his or her status as a member of the board, commission or committee, and shall be replaced by the Council or Orange County Board of Commissioners, as appropriate, provided that special extenuating circumstances may be a basis for automatic removal to be reconsidered by the Council on a case by case basis; and

WHEREAS, the Council has an interest to simplify the process to amend the rules as it pertains to the advisory board membership, it requests, where possible that the staff consolidate this information in the advisory board membership policy and remove it from the Town Code of Ordinance. This is similarly reflected in the related sections for the Planning Commission and Community Design Commission; and

WHEREAS, on October 17, 2018, the Council authorized the Town Manager to act on the Council Committee on Boards and Commissions recommendations, by preparing an item to amend the advisory board membership policy and relevant sections of the Code of Ordinances; and

WHEREAS, staff shared the potential changes with all advisory board members via email requesting comments and invited members to attend a Joint Advisory Board meeting on November 6, prior to the Planning Commission meeting, due to the large number of changes. In the future, a Joint Advisory Board meeting may be considered based on the number of changes or complexity of change; however, this may not be necessary for all amendments; and

WHEREAS, the Planning Commission met on November 6, 2018 and made a recommendation as it pertains to the amendments to the Land Use Management Ordinance; and

WHEREAS, the Council held a public hearing for the Land Use Management Ordinance Text Amendments on November 14, 2018.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Town of Chapel Hill that the Council amends the advisory board membership policy as follows:

Section 1. Membership

"General

Members of the board, commission, or committee shall be appointed to serve terms of three (3) years, unless otherwise described in the Membership section of this policy or superseded by the Town Code of Ordinances. The terms of the original members may be staggered so that all terms do not expire simultaneously. Vacancies shall be filled for the unexpired term only."

Section 2. Amendment to the Length of Term Clause under Policies and Procedures.

"Length of Term

Members serve staggered three-year terms which shall expire on June 30. However, members of boards and commissions may serve until their successors have been appointed. Please note that Advisory Board, Commission, or Committee members who are appointed by Chapel Hill Town Council may be removed at any time by a vote of the Council."

BE IT FURTHER RESOLVED that the Council adds a new subsection titled "General" under Membership to apply to all advisory boards, unless otherwise described in the Membership section or superseded by the Town Code of Ordinances.

Section 3. Amendment to the Attendance Clause under Policies and Procedures.

"Attendance

In order to be considered a member in good standing and to be eligible for reappointment to an advisory board, members must have attended 80% of scheduled meetings and trainings during their previous term. Board chairs shall report to the Chapel Hill Town Council any members who are not meeting attendance requirements.

Such a report should be included as part of the advisory board or commission's recommendation for reappointment, but may also be submitted to Council as part of a request for member removal.

Any member of the board, commission or committee who misses more than three (3) consecutive regular meetings or more than half the regular meetings in a calendar year shall lose his or her status as a member of the board, commission or committee, and shall be replaced by the Council or Orange County Board of Commissioners, as appropriate, provided that special extenuating circumstances may be considered by Council prior to automatic removal, on a case by case basis. Absence due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and shall not affect the member's status on the board, commission or committee, except that in the event of a long illness or other such cause for prolonged absence, the member shall be replaced.

The attendance provision also applies to any member of a board or commission that does not have regular meetings, or any alternate member of a board or commission that does meet regularly, who misses more than three (3) consecutive meetings or more than half the meetings in a calendar year at which their attendance is expected.

Advisory Board or Commission’s Chair and staff liaison shall to reach out to a member who has two consecutive unexcused absences to alert the member of the attendance clause. Notification shall also be sent to Mayor and Council and Town Clerk. Upon the third consecutive regular meeting absence, the chair or staff liaison shall send another notification to the member, Mayor and Council, and Town Clerk. ”

BE IT FURTHER RESOLVED that the Council amends the Community Design Commission membership policy to add “green design, place making” to the Seat Requirements and to remove Chapel Hill Historic District resident as a Seat Category.

“Seat Category	Seat Requirements
Chapel Hill Resident	Must live within the municipal limits of the Town of Chapel Hill and have demonstrated special training or experience in a design field such as architecture, landscape design, horticulture, city planning, <u>green design, place making</u> or a closely related field.
Chapel Hill Historic District Resident	Must live within one of the Town of Chapel Hill’s historic districts. Preference given to applicants who also have demonstrated education, special training, experience, or interest in history or a design field such as architecture, landscape design, horticulture, city planning or a closely related field.”

BE IT FURTHER RESOLVED that the Council amends the membership policy for the Environmental Stewardship Advisory Board to add a new seat designated as a Stormwater Advocate Seat to recognize the stormwater interests in the review of development applications, as follows:

“ Seat Category	Seat Requirements
<u>Stormwater Advocate</u>	<u>Must live within the municipal limits of the Town of Chapel Hill and have demonstrated knowledge of stormwater management and/or engineering as well as relevant laws, policies and adopted Council plans.”</u>

BE IT FURTHER RESOLVED that the changes are effective upon adoption.

This the 5th day of December, 2018.

ORDINANCE TO AMEND THE CODE OF ORDINANCES
(Enacting the Code of Ordinances proposal)

AN ORDINANCE AMENDING THE ATTENDANCE AND LENGTH OF TERM CLAUSES FOR ADVISORY BOARDS, THE MEMBERSHIP ON THE PARKS, GREENWAYS, AND RECREATION COMMISSION AND CONCLUDING THE CEMETERIES ADVISORY BOARD EFFECTIVE JUNE 30, 2019 (2018-12-05/O-2)

WHEREAS, the Council Committee on Boards and Commissions met on September 20, 2018 to consider information regarding advisory board alignment, length of term, board member attendance, and the Historic District resident seat on the Community Design Commission; and

WHEREAS, the Council Committee recommends amending the length of term clause to remove the succession of members for positions where a replacement has not been made; and

WHEREAS, the Council Committee recommends amending the attendance clause to recognize that any member of the board, commission or committee who misses more than three (3) consecutive regular meetings or more than half the regular meetings in a calendar year shall lose his or her status as a member of the board, commission or committee, and shall be replaced by the Council or Orange County Board of Commissioners, as appropriate, provided that special extenuating circumstances may be a basis for automatic removal to be reconsidered by the Council on a case by case basis; and

WHEREAS, the Council Committee recommends the creation of a cemeteries champion seat on the Parks, Greenways, and Recreation Commission to focus on cemetery beautification, and scatter garden interests by utilizing one of the vacant seats. In addition, the Committee recommends that the Council consider concluding the Cemeteries Advisory Board effective June 30, 2019, so that they may finish any existing projects; and

WHEREAS, the Council has an interest to simplify the process to amend the rules as it pertains to the advisory board membership, it requests, where possible that the staff consolidate this information in the advisory board membership policy and remove it from the Town Code of Ordinances. This is similarly reflected in the related sections for the Planning Commission and Community Design Commission; and

WHEREAS, on October 17, 2018, the Council authorized the Town Manager to act on the Council Committee on Boards and Commissions recommendations, by preparing an item to amend the advisory board membership policy and relevant sections of the Code of Ordinances.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Town of Chapel Hill that the Council amend the Town Code of Ordinances as follows:

Section 1. Chapter 12, Article II, Section 12-21 Attendance of commissioners at meetings, for the Parks, Greenways, and Recreation Commission is hereby revised to read as follows:

"Sec. 12-21. - Attendance of commissioners at meetings.

~~A commissioner who, without excuse, misses more than three (3) consecutive regular meetings or a total of four (4) such meetings during the year loses his status as a member of the commission. In such cases, the chair will immediately request the council to fill the~~

~~vacancy. Absences due to sickness, death or other such obligatory emergencies shall be regarded as excused absences and shall not affect the commissioner's status on the commission. However, in the event of long illness, or other such causes for prolonged absence, the commissioner may be replaced. Attendance at meetings shall be in accordance with the council's advisory board membership policy."~~

Section 2. Chapter 12, Article II, Section 12-17 Membership, for the Parks, Greenways and Recreation Commission is hereby revised to read as follows:

"Sec. 12-17. - Membership.

~~From July 1, 2014, until June 30, 2015, the commission shall consist of the members of the greenways commission and [the] parks and recreation commission who were serving on April 17, 2014 unless that member has communicated in writing to the Town that they do not wish to serve on the parks, greenways and recreation commission. The commission shall consist of nine (9) commissioners, all of whom shall be appointed at large. Eight (8) members shall be residents of the town appointed by the town council. One (1) of the town appointed seats shall be designated as a cemeteries champion seat to focus on cemetery interests. One (1) member shall be a resident of Orange County appointed by the Orange County Board of Commissioners.~~

The council shall request that the town's youth teen council appoint a representative to attend commission meetings and serve as a liaison."

Section 3. Chapter 23, Article I, Section 23-16 Meeting Attendance, for the Stormwater Management Utility Advisory Board is hereby revised to read as follows:

"Sec. 23-16. - Meeting attendance.

~~Any member of the board who misses more than three (3) consecutive meetings shall lose his or her status as a member of the board, and shall be replaced or reappointed by the council. Absence due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and shall not affect the member's status on the board, except that in the event of a long illness or other such cause for prolonged absence, the member shall be replaced. Attendance at meetings shall be in accordance with the council's advisory board membership policy."~~

Section 4. Chapter 2, Article IX, Section 2-141 Membership; terms, for the Chapel Hill Public Library Advisory Board is hereby revised to read as follows:

"Sec. 2-141. - Membership; terms.

The Chapel Hill Public Library Advisory Board shall consist of nine (9) appointed members as hereinafter provided. Their terms of office shall be four (4) years ~~or until their successors are appointed and qualified.~~

The terms of all members shall expire on June 30. Members of the board shall be appointed in accordance with the council's advisory board membership policy."

Section 5. Article XIII, Chapter 2, Section 2-177 Membership, terms, for the Cultural Arts Commission is hereby revised to read as follows:

"Sec. 2-177. - Membership, terms.

The Chapel Hill Cultural Arts Commission shall consist of eleven (11) members, appointed as hereafter provided, ten (10) who shall be residents of the town, and one (1) who shall be a Carrboro resident. ~~The terms of office shall be for three (3) years or until their successors are appointed and qualified. Except as otherwise provided by this article,~~

~~appointments, reappointments and vacancies shall be filled as prescribed in the town council's Procedures Manual, Section 11.D-2. Members of the board shall be appointed in accordance with the council's advisory board membership policy."~~

Section 6. Chapter 2, Article VII, Section 2-121 Membership; terms, for the Human Services Advisory Board is hereby revised to read as follows:

"Sec. 2-121. - Membership; terms.

~~The human services advisory board shall consist of seven (7) members appointed as hereinafter provided. Members of the board shall be appointed in accordance with the council's advisory board membership policy. The terms of office shall be three (3) years, or until their successors are appointed and qualified, except that the initial terms of members first appointed shall be as follows: Two (2) members shall be appointed for a period of one (1) year, two (2) members shall be appointed for a period of two (2) years, and three (3) members shall be appointed for a period of three (3) years. Members may be reappointed to succeed themselves. The terms of all members shall expire on the 30th day of June following the end of the final year of their terms.~~

The advisory board shall be selected to be representative of the entire town community, its needs, aspirations and values. The advisory board shall not be an advocacy group to lobby for or represent special interests.

~~Members of the human services advisory board may serve as a board member or as paid or nonpaid staff of a human service agency only if that agency does not apply for or receive funding from the town they recuse themselves from any and all hearings and deliberations about that agency."~~

Section 7. Chapter 6, Article I, Section 6-9 Membership, terms, for the Cemeteries Advisory Board is hereby revised to read as follows:

"Sec. 6-9. - Membership, terms.

~~The cemeteries advisory board shall consist of five (5) members appointed by town council. In addition to council-appointed members, the historic district commission and the Preservation Society of Chapel Hill shall designate one of its current members to represent them on the cemeteries advisory board as non-voting representatives. The terms of office shall be three (3) years, or until their successors are appointed and qualified, except that the initial terms of members first appointed shall be as follows: two (2) members shall be appointed for a period of one (1) year, two (2) members shall be appointed for a period of two (2) years, and one (1) member shall be appointed for a period of three (3) years. Members may be reappointed to succeed themselves for a second consecutive term. The terms of all members shall expire on the thirtieth day of June following the end of the final year of their terms. Members of the board shall be appointed in accordance with the council's advisory board membership policy."~~

Section 8. Sections 1 through 7 of this ordinance shall become effective upon enactment.

Section 9. Article I, Division 2, CEMETERIES ADVISORY BOARD, Sections 6-8 through Section 6-11 is hereby removed from the Town Code of Ordinances, and Sections 6-8 through 6-17 shall be Reserved.

~~"DIVISION 2.—CEMETERIES ADVISORY BOARD~~

~~Sec. 6-8.—Created; named:~~

~~A cemeteries advisory board is hereby created for the Town of Chapel Hill for the purpose of providing citizen input to the town council on policies for the operation and maintenance of~~

the town's cemeteries.

~~Sec. 6-9. — Membership, terms.~~

~~The cemeteries advisory board shall consist of five (5) members appointed by town council. In addition to council appointed members, the historic district commission and the Preservation Society of Chapel Hill shall designate one of its current members to represent them on the cemeteries advisory board as non-voting representatives. The terms of office shall be three (3) years, or until their successors are appointed and qualified, except that the initial terms of members first appointed shall be as follows: two (2) members shall be appointed for a period of one (1) year, two (2) members shall be appointed for a period of two (2) years, and one (1) member shall be appointed for a period of three (3) years. Members may be reappointed to succeed themselves for a second consecutive term. The terms of all members shall expire on the thirtieth day of June following the end of the final year of their terms.~~

~~Sec. 6-10. — Appointment, vacancies.~~

~~The members shall be appointed and vacancies filled as prescribed in Section 11.D-2 of the Council's Procedures Manual.~~

~~Sec. 6-11. — Meetings, chairperson.~~

~~The cemeteries advisory board shall hold meetings quarterly at such time and places as it shall determine. It shall annually elect one (1) member to serve as chairperson and to preside over its meetings. All meetings of the board shall be open to the public in accord with the Open Meetings Law of North Carolina, and reasonable notice of the time and place thereof shall be given to the public in accord with Chapter 143, Article 33C of the N.C. General Statutes. The board shall keep a record of its meetings; including attendance of its members; its resolutions, findings, recommendations and actions. A quorum of the board, necessary to take any official action, shall consist of a majority of members excluding any vacant seats. The concurring vote of a simple majority of those members present shall be necessary to take any official action.~~

Secs. 6-~~8~~12—6-17. - Reserved.”

Section 10. Section 9 of this ordinance shall become effective June 30, 2019.

This the 5th day of December, 2018.

RESPONSES TO QUESTIONS FROM PUBLIC HEARING AND ADVISORY BOARD INPUT

The following summarizes concerns raised at the Public Hearing and from Advisory Board input and provides staff responses:

1. Council Question: Are board and commission members aware of the pilot program for Childcare and Transportation Assistance for Board and Commission Members?

Staff Response: Information about the pilot program will be shared with all staff liaisons at an upcoming meeting, who will then share the policy with their respective boards and commissions. The program has the following guidelines:

- For childcare assistance, the Town will provide a stipend equal to the living wage (\$13.70 per hour) for each hour of the meeting, plus one half hour (\$6.85) to cover the time it takes to get to and from the meeting.
 - Staff will work with board members requesting transportation assistance to determine the most appropriate option between transit or other transportation service.
 - Requests for childcare or transportation assistance must be made at least one day before the board or commission meeting.
2. Council Question: Some boards and commissions do not meet regularly throughout the year, such as the Grievance Hearing Board. How does the attendance policy apply to members of those boards and commissions, and for alternate members for boards and commissions that do meet regularly?

Staff Response: The amendment has been revised to include provisions for the situations mentioned above. The attendance amendment to the Advisory Board Membership Policy has been revised to include the following:

The attendance provision also applies to any member of a board or commission that does not have regular meetings, or any alternate member of a board or commission that does meet regularly, who misses more than three (3) consecutive meetings or more than half the meetings in a calendar year at which their attendance is expected.

3. Question from the Human Services Advisory Board: The board would like to offer the following recommendation to revise the Code of Ordinances, Sec 2-121, Membership terms.

Members of the human services advisory board may serve as a board member or as paid staff or paid consultant of a human services agency only if they recuse themselves from any and all hearings and deliberations about that agency.

Staff Response: This revision has been included in the proposed amendments.

TECHNICAL REPORT



TEXT AMENDMENTS TO THE ADVISORY BOARD MEMBERSHIP POLICY AND THE TOWN CODE OF ORDINANCES

The following Technical Report reviews proposed text amendments to revise the Advisory Board membership and length of term clauses and additional amendments to individual board and commission policies as detailed below.

BACKGROUND

- September 2018 The Council Committee on Boards and Commissions met to discuss the Advisory Board Membership Policy.
- October 2018 The Chapel Hill Town Council reviewed the Council Committee on Boards and Commissions' recommendations and called a public hearing to amend the Land Use Management Ordinance on November 14, 2018.
- November 2018 The Chapel Hill Town Council held a Public Hearing on the accompanying Land Use Management Ordinance Text Amendment (see Item ##) and continued the Public Hearing to December 5, 2018.

SUMMARY OF PROPOSED CHANGES

The proposal before the Council intends to simplify and clarify the rules as they pertain to the Advisory Board Membership Policy. The changes will consolidate the attendance and length of term clauses in the Advisory Board Membership Policy. If the Council approves the changes, staff will also update the corresponding language in each advisory board's respective sections in the Advisory Board Membership Policy, the Code of Ordinances, and the Land Use Management Ordinance to refer back to the Advisory Board Membership Policy, thereby consolidating any reference to board membership attendance and length of term.

Tonight's review is of the Advisory Board Membership Policy Amendments and the Code of Ordinances (Section A and B below). Section C is included as information as it relates to the accompanying Land Use Management Ordinance Text Amendment.

See the following table for a summary of all proposed changes:

¹ <http://www.townofchapelhill.org/home/showdocument?id=15001>

² https://library.municode.com/nc/chapel_hill/codes/code_of_ordinances?nodeId=CO_APXALOUSMA

TECHNICAL REPORT

Summary of Potential Amendments

A. Proposed Advisory Board Membership Policy Amendments		
Proposal	Board	Subsection
1	All advisory boards and commissions	Add "General" subsection
		Length of Term*
		Attendance**
2	Community Design Commission	Modify Membership
		Remove Historic District Resident designation
		Add "green design" and "place-making" as possible areas of knowledge or experience necessary to meet seat requirements
3	Environmental Stewardship Advisory Board	Modify Membership
		Designate a Stormwater Advocate seat

B. Proposed Town Code of Ordinances Amendments		
Proposal	Board	Subsection
4	Parks, Greenways and Recreation Commission	Chapter 12, Article II, Section 12-21 - Modify Membership
		Chapter 12, Article II, Section 12-17 - Designate a Cemeteries Champion seat
5	Stormwater Management Utility Advisory Board	Chapter 23, Article I, Section 23-16 - Attendance**
6	Chapel Hill Public Library Advisory Board	Chapter 2, Article IX, Section 2-141 - Length of Term*
7	Cultural Arts Commission	Chapter 2, Article XIII, Section 2-177 - Length of Term*
8	Human Services Advisory Board	Chapter 2, Article VII, Section 2-121 - Length of Term*
		Clarification regarding recusal of board members
9	Cemeteries Advisory Board	Chapter 6, Article I, Section 6-9 - Length of Term*
		Conclude board effective June 30, 2019

C. Proposed Land Use Management Ordinance Amendments (See Item ##)		
Proposal	Board	Subsection
10	Board of Adjustment	Section 8.3.2 - Length of Term*
		Section 8.3.6 - Attendance**
11	Historic District Commission	Section 8.4.1 - Reduce membership from 10 members to 9 members
		Section 8.4.3 - Length of Term*
		Section 8.4.8 - Attendance**

*Length of Term: Make the following modification. "Members serve staggered three-year terms which shall expire on June 30. ~~However, members of boards and commissions may serve until their successors have been appointed.~~"

**Attendance: Modify threshold to missing three consecutive regular meetings or more than half of the regular meetings within in a year.

TECHNICAL REPORT

A. Proposed Advisory Board Membership Policy Amendments

This proposal includes several changes to the [Advisory Board Membership Policy](#)¹. The changes would clarify the attendance policy, update the membership term clause, and adjust membership seats for the [Community Design Commission](#)², and the [Environmental Stewardship Advisory Board](#)³.

Proposed Changes:

1. Membership

- “Membership
General

Members of the board, commission, or committee shall be appointed to serve terms of three (3) years, unless otherwise described in the Membership section of this policy or superseded by the Town Code of Ordinances. The terms of the original members may be staggered so that all terms do not expire simultaneously. Vacancies shall be filled for the unexpired term only.”

- “Length of Term

~~Members serve staggered three-year terms which shall expire on June 30. However, members of boards and commissions may serve until their successors have been appointed. Please note that Advisory Board, Commission, or Committee members who are appointed by Chapel Hill Town Council may be removed at any time by a vote of the Council.”~~

- “Attendance

~~In order to be considered a member in good standing and to be eligible for reappointment to an advisory board, members must have attended 80% of scheduled meetings and trainings during their previous term. Board chairs shall report to the Chapel Hill Town Council any members who are not meeting attendance requirements. Such a report should be included as part of the advisory board or commission’s recommendation for reappointment, but may also be submitted to Council as part of a request for member removal.~~

Any member of the board, commission or committee who misses more than three (3) consecutive regular meetings or more than half the regular meetings in a calendar year shall lose his or her status as a member of the board, commission or committee, and shall be replaced by the Council or Orange County Board of Commissioners, as appropriate, provided that special extenuating circumstances may be considered by Council prior to automatic removal, on a case by case basis. Absence due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and shall not affect the member’s status on the board, commission or committee, except that in the event of a long illness or other such cause for prolonged absence, the member shall be replaced.

The attendance provision also applies to any member of a board or commission that does not have regular meetings, or any alternate member of a board or commission

¹ <https://www.townofchapelhill.org/town-hall/mayor-and-council/boards-commissions/board-membership-policy>

² <https://www.townofchapelhill.org/town-hall/mayor-and-council/boards-commissions/board-membership-policy/community-design-commission>

³ <https://www.townofchapelhill.org/town-hall/mayor-and-council/boards-commissions/board-membership-policy/environmental-stewardship-advisory-board>

TECHNICAL REPORT

that does meet regularly, who misses more than three (3) consecutive meetings or more than half the meetings in a calendar year at which their attendance is expected.

Advisory Board or Commission’s Chair and staff liaison shall reach out to a member who has two consecutive unexcused absences to alert the member of the attendance clause. Notification shall also be sent to Mayor and Council and Town Clerk. Upon the third consecutive regular meeting absence, the chair or staff liaison shall send another notification to the member, Mayor and Council, and Town Clerk. ”

2. Community Design Commission membership policy

- Add “green design, place making” to the Seat Requirements, and remove Chapel Hill Historic District resident as a Seat Category. The total number of seats will remain the same.

“Seat Category	Seat Requirements
Chapel Hill Resident	Must live within the municipal limits of the Town of Chapel Hill and have demonstrated special training or experience in a design field such as architecture, landscape design, horticulture, city planning, <u>green design</u> , <u>place making</u> or a closely related field.
Chapel Hill Historic District Resident	Must live within one of the Town of Chapel Hill’s historic districts. Preference given to applicants who also have demonstrated education, special training, experience, or interest in history or a design field such as architecture, landscape design, horticulture, city planning or a closely related field.”

3. Environmental Stewardship Advisory Board membership policy

- Add a new seat to be designated as a Stormwater Advocate Seat to recognize the stormwater interests in the review of development applications.

Seat Category	Seat Requirements
<u>Stormwater Advocate</u>	<u>Must live within the municipal limits of the Town of Chapel Hill and have demonstrated knowledge of stormwater management and/or engineering, as well as relevant laws, policies, and adopted Council plans.</u>

B. Proposed Town Code of Ordinances Amendments

These changes propose several amendments to the Town Code of Ordinances. The amendments would update the Cemeteries Advisory Board, the Chapel Hill Public Library Advisory Board, the Cultural Arts Commission, the Human Services Advisory Board, the Parks, Greenways, and Recreation Commission, and the Stormwater Management Utility Advisory Board so that any reference to board membership attendance or length of term policies would refer back to the Advisory Board Membership Policy. Additionally, the proposed amendment would designate a Cemeteries Champion seat on the Parks, Greenways, and Recreation Commission, clarify the Human Services Advisory Board’s recusal policy for staff or board

TECHNICAL REPORT

members of a human service agency, effective upon enactment, and would conclude the Cemeteries Advisory Board, effective June 30, 2019.

Proposed Changes:

4. Parks, Greenways and Recreation Commission Membership Terms

- "Sec. 12-21. - Attendance of commissioners at meetings.
~~A commissioner who, without excuse, misses more than three (3) consecutive regular meetings or a total of four (4) such meetings during the year loses his status as a member of the commission. In such cases, the chair will immediately request the council to fill the vacancy. Absences due to sickness, death or other such obligatory emergencies shall be regarded as excused absences and shall not affect the commissioner's status on the commission. However, in the event of long illness, or other such causes for prolonged absence, the commissioner may be replaced. Attendance at meetings shall be in accordance with the Council's Advisory Board Membership Policy."~~
- "Sec. 12-17. - Membership.
~~From July 1, 2014, until June 30, 2015, the commission shall consist of the members of the greenways commission and [the] parks and recreation commission who were serving on April 17, 2014 unless that member has communicated in writing to the Town that they do not wish to serve on the parks, greenways and recreation commission. The commission shall consist of nine (9) commissioners, all of whom shall be appointed at large. Eight (8) members shall be residents of the town appointed by the town council. One of the town appointed seats shall be designated as a cemeteries champion seat to focus on cemetery interests. One (1) member shall be a resident of Orange County appointed by the Orange County Board of Commissioners.~~
The council shall request that the town's youth teen council appoint a representative to attend commission meetings and serve as a liaison."

5. Stormwater Management Utility Advisory Board Attendance Clause

- "Sec. 23-16.- Meeting attendance.
~~Any member of the board who misses more than three (3) consecutive meetings shall lose his or her status as a member of the board, and shall be replaced or reappointed by the council. Absence due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and shall not affect the member's status on the board, except that in the event of a long illness or other such cause for prolonged absence, the member shall be replaced. Attendance at meetings shall be in accordance with the Council's Advisory Board Membership Policy."~~

6. Chapel Hill Public Library Advisory Board Membership Terms

- "Sec. 2-141. - Membership; terms.
The Chapel Hill Public Library Advisory Board shall consist of nine (9) appointed members as hereinafter provided. Their terms of office shall be four (4) years ~~or until their successors are appointed and qualified.~~
~~The terms of all members shall expire on June 30. Members of the board shall be appointed in accordance with the Council's Advisory Board Membership Policy."~~

TECHNICAL REPORT

7. Cultural Arts Commission Membership Terms

- "Sec. 2-177. - Membership, terms.
The Chapel Hill Cultural Arts Commission shall consist of eleven (11) members, appointed as hereafter provided, ten (10) who shall be residents of the town, and one (1) who shall be a Carrboro resident. ~~The terms of office shall be for three (3) years or until their successors are appointed and qualified. Except as otherwise provided by this article, appointments, reappointments and vacancies shall be filled as prescribed in the town council's Procedures Manual, Section 11.D-2. Members of the board shall be appointed in accordance with the Council's Advisory Board Membership Policy.~~"

8. Human Services Advisory Board Membership Terms

- "Sec. 2-121. - Membership; terms.
The human services advisory board shall consist of seven (7) members ~~appointed as hereinafter provided. Members of the board shall be appointed in accordance with the Council's Advisory Board Membership Policy. The terms of office shall be three (3) years, or until their successors are appointed and qualified, except that the initial terms of members first appointed shall be as follows: Two (2) members shall be appointed for a period of one (1) year, two (2) members shall be appointed for a period of two (2) years, and three (3) members shall be appointed for a period of three (3) years. Members may be reappointed to succeed themselves. The terms of all members shall expire on the 30th day of June following the end of the final year of their terms.~~
The advisory board shall be selected to be representative of the entire town community, its needs, aspirations and values. The advisory board shall not be an advocacy group to lobby for or represent special interests.
Members of the human services advisory board may serve as a board member or as paid or nonpaid staff of a human service agency only if ~~that agency does not apply for or receive funding from the town~~ they recuse themselves from any and all hearings and deliberations about that agency."

9. Cemeteries Advisory Board Membership Terms

- "Sec. 6-9. - Membership, terms.
The cemeteries advisory board shall consist of five (5) members appointed by town council. In addition to council-appointed members, the historic district commission and the Preservation Society of Chapel Hill shall designate one of its current members to represent them on the cemeteries advisory board as non-voting representatives. ~~The terms of office shall be three (3) years, or until their successors are appointed and qualified, except that the initial terms of members first appointed shall be as follows: two (2) members shall be appointed for a period of one (1) year, two (2) members shall be appointed for a period of two (2) years, and one (1) member shall be appointed for a period of three (3) years. Members may be reappointed to succeed themselves for a second consecutive term. The terms of all members shall expire on the thirtieth day of June following the end of the final year of their terms. Members of the board shall be appointed in accordance with the Council's Advisory Board Membership Policy.~~"
- Removal of Article I, Division 2, Sections 6-8 through Section 6-11 CEMETERIES ADVISORY BOARD from the Town Code of Ordinances. Section 6-8 through 6-17 will be Reserved. This amendment will be effective June 30, 2019.

TECHNICAL REPORT

- ~~"DIVISION 2.—CEMETERIES ADVISORY BOARD~~

~~Sec. 6-8.— Created; named.~~

~~A cemeteries advisory board is hereby created for the Town of Chapel Hill for the purpose of providing citizen input to the town council on policies for the operation and maintenance of the town's cemeteries.~~

~~Sec. 6-9.— Membership, terms.~~

~~The cemeteries advisory board shall consist of five (5) members appointed by town council. In addition to council appointed members, the historic district commission and the Preservation Society of Chapel Hill shall designate one of its current members to represent them on the cemeteries advisory board as non-voting representatives. The terms of office shall be three (3) years, or until their successors are appointed and qualified, except that the initial terms of members first appointed shall be as follows: two (2) members shall be appointed for a period of one (1) year, two (2) members shall be appointed for a period of two (2) years, and one (1) member shall be appointed for a period of three (3) years. Members may be reappointed to succeed themselves for a second consecutive term. The terms of all members shall expire on the thirtieth day of June following the end of the final year of their terms.~~

~~Sec. 6-10.— Appointment, vacancies.~~

~~The members shall be appointed and vacancies filled as prescribed in Section 11.D-2 of the Council's Procedures Manual.~~

~~Sec. 6-11.— Meetings, chairperson.~~

~~The cemeteries advisory board shall hold meetings quarterly at such time and places as it shall determine. It shall annually elect one (1) member to serve as chairperson and to preside over its meetings. All meetings of the board shall be open to the public in accord with the Open Meetings Law of North Carolina, and reasonable notice of the time and place thereof shall be given to the public in accord with Chapter 143, Article 33C of the N.C. General Statutes. The board shall keep a record of its meetings; including attendance of its members; its resolutions, findings, recommendations and actions. A quorum of the board, necessary to take any official action, shall consist of a majority of members excluding any vacant seats. The concurring vote of a simple majority of those members present shall be necessary to take any official action.~~

~~Secs. 6-~~8~~12—6-17. - Reserved."~~

C. Proposed Land Use Management Ordinance Amendments

Please see accompanying item **XXX** for additional information.

These proposed amendments change the Historic District Commission and Board of Adjustment sections of the Land Use Management Ordinance. The amendments would update the Historic District Commission and Board of Adjustment sections so that any reference to board membership attendance or length of term policies would refer back to the Advisory Board Membership Policy. Additionally, the Historic District Commission membership would change from ten (10) members to nine (9) members.

Proposed Changes:

1. Board of Adjustment

- Length of Term: "Sec. 8.3.2. Tenure.
Members of the board shall be appointed to serve terms of three (3) years, and until their respective successors have been appointed and qualified. The terms of the original members may be staggered so that all terms do not expire simultaneously.

TECHNICAL REPORT

Vacancies shall be filled for the unexpired term only. Members of the board shall be appointed in accordance with the Council's Advisory Board Membership Policy."

- Attendance: "Sec. 8.3.6. Attendance at Meetings.
Any member of the board who misses more than three (3) consecutive regular meetings or more than half the regular meetings in a calendar year shall lose his or her status as a member of the board, and shall be replaced or reappointed by the council or county board of commissioners, as appropriate. Absence due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and shall not affect the member's status on the board, except that in the event of a long illness or other such cause for prolonged absence, the member shall be replaced. Attendance at meetings shall be in accordance with the council's advisory board membership policy."

2. Historic District Commission.

- Membership: "Sec. 8.4.1. Establishment of the Commission.
A historic district commission, consisting of ~~ten (10)~~ nine (9) members appointed by the council, is hereby established."
- Length of Term: "Sec. 8.4.3. Tenure.
~~Members of the commission shall be appointed to serve terms of three (3) years, and until their respective successors have been appointed and qualified. The terms of the original members may be staggered so that all terms do not expire simultaneously. Vacancies shall be filled for the unexpired term only. Members of the commission shall be appointed in accordance with the Council's Advisory Board Membership Policy."~~
- Attendance: "Sec. 8.4.8. Attendance at Meetings.
Any member of the commission who misses more than three (3) consecutive regular meetings or more than half the regular meetings in a calendar year shall lose his or her status as a member of the commission, and shall be replaced or reappointed by the council. Absence due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and shall not affect the member's status on the commission except that in the event of a long illness or other such cause for prolonged absence, the member shall be replaced. Attendance at meetings shall be in accordance with the Council's Advisory Board Membership Policy."

ADVISORY BOARD MEMBERSHIP POLICY AMENDMENTS FEEDBACK

On October 29, 2018, Communications and Public Affairs sent an email to the Advisory Board members and staff liaisons requesting feedback on the Council Committee on Boards and Commissions recommendation to amend the Advisory Board Membership Policy and the related sections of the Town Code of Ordinances.

This document is a compilation of feedback for each proposed amendment as well as a table that lists each members name, board, term, role, and attendance.

1. Amend the Attendance Clause to clarify when a member is in good standing and simplify the process for removal of a member who is not actively participating

Maripat Metcalf:

- Yes, but I think it really depends on how this is defined - missing 1 meeting is not the same as missing 4. Also, we don't want to discourage those with small children from serving. Would this change impact board members from other areas - such as the non-CH members of the ESAB?

11/1/18 BOA Comment:

- The Board of Adjustment has alternate members. Accommodation for those members would need to be considered within the rule.

11/6/18 Joint Advisory Board Meeting Comments:

- Observation that the Planning Commission meets twice a month, so if someone is out for six weeks they could meet the threshold, while other boards who meet quarterly wouldn't meet the threshold for missing 3 consecutive meetings in a year.
- Proposal to exclude special meetings because that is not a part of the expectation when applying to be an advisory board member.
- Proposal to amend the language to reflect three regular meetings and half of all meetings in a year.
- Proposal to add broad language for excused absences, such as acute illnesses, but maybe not absence for work related activities.
- Observation that excessive vacant seats may cause quorum issues, and likely voting issues where there is a higher threshold of affirmative votes for certain types of approvals.
- Observation that if a volunteer finds themselves unable to attend, then they should resign to allow someone who else to fill the role.

- Proposal to add language that clarifies communication with the member by the Chair or staff, after the second consecutive absence and notification of third consecutive absences triggering the automatic removal from the board.

2. Amend the Length of Term Clause to remove the option to continue to serve until a successor has been appointed

11/6/18 Joint Advisory Board Meeting Comments:

- Observation that the Board of Adjustment has additional attendance requirements for certain types of decisions. This may outweigh the value to terminate this rule for this board. Quorum equals 6, Variance decisions require 8 affirmative votes, with 10 members present the odds increase that an affirmative decision can be reached.
- Observation that delays have occurred due to the low attendance.
- No problem with the change.
- Like the change because it is a driver to fill positions.
- Question: Look at the Board of Adjustment to see if they have frequently had members who are held over the summer to be able to continue its work until fall appointments can be made.

3. Remove the Historic District resident designated seat from the Community Design Commission and make all nine seats the same

Maripat Metcalf:

- Makes sense.

4. Add a Stormwater Advocate seat to the Environmental Stewardship Advisory Board

Maripat Metcalf:

- I'm not sure why this is the first we on the ESAB have heard of this... I'd like to hear more of the reasoning behind this? Also, we are at 9 currently, so adding another member would increase the membership to 10.
- I think it would be useful to clarify the roles/responsibilities of the "Advocates" - the ESAB has an "advocate" on the Planning Committee, but this person does not always attend ESAB meetings, and seems to serve more to tell the ESAB about the Planning Committee than the other way around. The Greenways advocate has not historically seemed to be alert to the Parks/Greenways/Rec board doings - and why are they just an advocate for greenways and not the other issues?

5. Add a Cemeteries Champion seat to the Parks, Greenways, and Recreation Commission

Maripat Metcalf:

- These two makes sense w/o knowing anything about the details.

Steve Moore

- I received a copy of the proposal from the "Council Committee" to terminate the Cemeteries Advisory Board (CAB) and must strongly disagree with the proposal. By way of background, I worked with Rebecca Clark to establish the CAB and have been involved with it since its inception until I resigned in disgust this summer over the mismanagement of the CAB. Many achievements were made by the Board but these apparently are discounted with this decision.
- The first comment I would make is the apparent failure of the CC to talk with the CAB prior to announcing its death. This seems highly inappropriate to show such disregard for its citizen volunteer members.
- I must say that the recent membership problems are in a large part due to the poor way that the CAB has been run for the last few years. Without exception, every departure from the membership was highly influenced by the shabby treatment as a member of the Board and its inability to accomplish even the most minor action. For the limited pool of possible interested parties, this word gets out.
- The town liaison (TL) structure failed to communicate with board members, was slow to develop agendas, was exceptional in the inability to undertake and complete action items and tended to miscommunicate with the CAB on many issues. Even the most minor action items could easily take over a year to complete and periodic status requests were often met with hostility, obfuscation and even mistruths. The TL remained removed from most items which came before the Board and perhaps the most blatant example of this failure was the statement that he thought that the town did not own the Old Chapel Hill Cemetery but merely maintained it for the University who still owned it! Many meetings were openly hostile to even the most minor requests for clarification or disagreement with statements being made. Agendas were manipulated to prevent discussion of pending topics and requests for additional information were usually without follow-through.
- The town policy that minutes of the board meetings were not maintained added further to repeated surfacing of issues that had not been completed, but were resurrected only through memory of board members.
- The Council Liaison (CL) status was nonexistent and the CAB had no contact with any member of the current council membership with this status, adding further to the problems of the TL being the conduit of any information between members and town hierarchy. This lack of interest by the Council and Mayor now manifests itself with the termination proposal, by blaming the victim.
- The CAB also was the only advisory board to be publicly ridiculed by the Mayor. The board undertook a citizen request for a marker, acted in open meetings and publicly installed the marker. The Mayor was appraised of the marker, was shown the actual diagrammatic plans and verbally encouraged to action, only to later turn on the board and publicly berate them over their action!

- Due to "retirements", the cemeteries have perhaps the poorest structure and personnel in place to manage, maintain and control the cemeteries within recent years. As a personal example, I recently agreed to a substantial insurance settlement from the town insurer for 6 separate actions damaging my cemetery property by grounds personnel. Despite continued assurances that this would not reoccur, the words were meaningless. I wish I held out some assurance that this series of actions will not occur again! When the town personnel and management structure for its cemeteries are at its weakest, abolishing the only oversight group related to cemetery issues seems hardly prudent, unless this outcome is readily planned and being brutally executed!
- I remain dismayed at both the total lack of interest and actions on the towns cemeteries by its officials but can only see that bringing this to public issue status with the next town elections may be the only way to work on its resolution. Simply abolishing the public input on cemeteries will not make the issues go away!

11/6/18 Joint Advisory Board Meeting Comments:

- Inquiry about how a Cemeteries Champion position would work for this board. Like Champions on other advisory boards this position would advocate for board actions that broadly pertain to cemeteries. This position would be an equal member on the Parks, Greenways and Recreation Commission, and would participate in other decisions that may not have a cemetery aspect.
- Observation that there has been no Council member participation in the Cemeteries Advisory Board meetings, while there has been on the Parks, Greenways and Recreation Commission. Having a Council connection would be an improvement.
- Proposal to broaden the term in the ordinance to focus on Cemetery issues rather than just beautification.

6. Conclude the Cemeteries Advisory Board effective June 30, 2019 due to minimal membership

Maripat Metcalf:

- These two makes sense w/o knowing anything about the details.

7. Reduce the Historic District Commission Membership to nine members, as requested

Maripat Metcalf:

- Yes
-

8. Simplify the process to amend the rules as it pertains to the advisory board membership, it requests, where possible that the staff consolidate this information in the advisory board membership policy and remove it from the Town Code of Ordinances

Maripat Metcalf:

- I would also suggest trying to standardize board size at 9 unless there is a compelling reason to have more or fewer members.

9. Other Feedback

- Ruchir Vora
 - The Council Committee's recommendations make sense to me.
- S. Baldwin, JAIC
 - I can be in attendance regarding the Advisory Board Membership Policy Amendments, 6pm, November 6th.
- Elinor Landess
 - After reviewing the changes, they all make sense to me and seem like good steps for greater inclusion. Best of luck moving forward.
- Andy Orbich
 - No comments – thank you for the update!
- Maripat Metcalf:
 - If this doesn't exist, I would clarify when a partial term counts as a full-term for purposes of term limits/term designation.
- 11/6/18 Joint Advisory Board Meeting Comments:
 - Follow up on email from Volker Muller to Cory Liles regarding roster information, and link to rules of procedure.
 - Include information when making a call for volunteers, so that doesn't become a surprise later.
- Jackie Thompson
 - The HSAB met on last night and reviewed the Advisory Board Membership Policy. They didn't have any recommendations in relations to the attendance and length of terms changes, but the board would like to offer the following recommendation to revise paragraph 3 for Sec 2-121, Membership terms.
 - "Members of the human services advisory board may serve as a board member or as paid staff or paid consultant of a human services agency only if they recuse themselves from any and all hearings and deliberations about that agency."
 - Rationale: Many people who serve on the HSAB do so after becoming interested by serving in various roles on nonprofit agencies. They bring a wealth of knowledge and experience about how nonprofit agencies work to the role of HSAB member. Past consultations with the Town of Chapel Hill attorney about these situations have resulted in HSAB members being advised that recusal is a sufficient measure to avoid conflicts of

interest. (Note: The town attorney has also advised that being an unpaid volunteer is not grounds for recusal).

10. Member Information			
Name	Board	Term	Role
Ruchir Vora	OWASA	1 st 7/1/17 - 6/30/20 Partial 8/28/14 – 6/30/17	Town Resident
Shiala Baldwin	JAIC	Partial 9/27/17 – 6/30/20	Chapel Hill or Carrboro Planning Jurisdiction
Elinor Landess	Chapel Hill Downtown Partnership	1 st N/A – N/A	Interim Executive Director
Andy Orbich	OWASA	NA	Clerk to the Board
Mary Metcalf	ESAB	1 st 7/1/18 – 6/3/21 Partial 6/27/17 – 6/30/18	Vice Chair Category: Chapel Hill Business Owner/Manager
Steve Moore	Cemeteries Advisory Board	Term completed 9/22/2008 – 6/30/2016	Town Resident
Volker Mueller	Community Design Commission	1 st Term 7/1/18 – 6/30/21 Completed Partial Term 1/23/17 – 6/30/18	Chapel Hill Resident
Neal Bench	Planning Commission	1 st Term 7/1/16 – 6/30/19 Completed Partial Term 7/1/14 – 6/30/16	Town Resident
Amy Ryan	Planning Commission	2 nd Term 7/1/17 – 6/30/20 Completed 1 st Term 7/1/15 – 6/30/17 Completed Partial Term 7/1/14 – 6/30/15	Community Design Commission Champion
Jane Slater	Cemeteries Advisory Board	1 st Term 7/1/15 – 6/30/18	Town Resident
Jackie Thompson	Human Services Advisory Board	NA	Staff Liaison



417
TOWN OF CHAPEL HILL

Town Hall
405 Martin Luther King Jr.
Boulevard
Chapel Hill, NC 27514

Item Overview

Item #: 15., File #: [18-1003], Version: 1

Meeting Date: 12/5/2018

Consider a Land Use Management Ordinance Text Amendment - Proposed Changes to Sections 8.3 (Board of Adjustment) and 8.4 (Historic District Commission).

See the Staff Report on the next page.

The Agenda will reflect the text below and/or the motion text will be used during the meeting.

PRESENTER: Becky McDonnell, Planner I

- a. Introduction and revised recommendation
- b. Recommendation of the Planning Commission
- c. Comments from the public
- d. Comments and questions from the Mayor and Town Council
- e. Motion to adjourn the Public Hearing
- f. Motion to adopt the Resolution of Consistency with the Comprehensive Plan
- g. Motion to enact the ordinance to approve the changes to the Land Use Management Ordinance.

RECOMMENDATION: That the Council close the Public Hearing, adopt the Resolution of Consistency, and enact Ordinance A.



CONSIDER A LAND USE MANAGEMENT ORDINANCE TEXT AMENDMENT – PROPOSED CHANGES TO SECTIONS 8.3 (BOARD OF ADJUSTMENT) AND 8.4 (HISTORIC DISTRICT COMMISSION)

STAFF REPORT

TOWN OF CHAPEL HILL PLANNING AND DEVELOPMENT SERVICES
 Ben Hitchings, Director
 Judy Johnson, Operations Manager
 Becky McDonnell, Planner I

<p>BUSINESS MEETING DATE December 5, 2018</p>	<p>PUBLIC HEARING DATE November 14, 2018</p>
<p>TOWN MANAGER’S RECOMMENDATION</p> <p>I have reviewed and discussed key issues with Town staff. Based on the information in the record to date, I believe the Council could make the findings required to approve the proposal, and therefore should close the Public Hearing, adopt the Resolution of Consistency, and enact Ordinance A.</p>	
<p>UPDATES SINCE PUBLIC HEARING</p> <p>There have been no updates since the Public Hearing on November 14, 2018.</p>	
<p>PROCESS</p> <p>The item before the Council is for approval of a Land Use Management Ordinance Text Amendment. The Council must consider whether one or more of the three findings for enactment of the Land Use Management Ordinance Text Amendment applies:</p> <ol style="list-style-type: none"> 1. To correct a manifest error in the chapter; or 2. Because of changed or changing conditions in a particular area or in the jurisdiction generally; or 3. To achieve the purposes of the Comprehensive Plan. 	
<p>DECISION POINTS</p> <p>Tonight’s proposal is for amendments to Board of Adjustment (Section 8.3) and Historic District Commission (Section 8.4) of the Land Use Management Ordinance including the following changes:</p> <p>Board of Adjustment</p> <ul style="list-style-type: none"> • Section 8.3.2 Tenure - update the section so that any reference to board membership length of term policies would refer back to the Advisory Board Membership Policy; • Section 8.3.6 Attendance at Meetings - update the section so that any reference to board membership attendance policies would refer back to the Advisory Board Membership Policy; <p>Historic District Commission</p> <ul style="list-style-type: none"> • Section 8.4.1 Establishment of the Commission - change from ten (10) members to nine (9) members; • Section 8.4.3 Tenure - update the section so that any reference to board membership length of term policies would refer back to the Advisory Board Membership Policy; and • Section 8.4.8 Attendance at Meetings - update the section so that any reference to board membership attendance policies would refer back to the Advisory Board Membership Policy; <p>Additional changes are proposed to the Advisory Board Membership Policy and the Town Code of Ordinances in the accompanying item, Consider Amendments to the Advisory Board Membership Policy and the Code of Ordinances.</p>	
<p>ATTACHMENTS</p>	<ol style="list-style-type: none"> 1. Resolution of Consistency (For proposed LUMO amendment) 2. Ordinance A (Enactment of Land Use Management Text Amendment Proposal) 3. Resolution B (Deny Land Use Management Text Amendment Proposal) 4. Planning Commission Recommendation 5. Board of Adjustment Recommendation

RESOLUTION OF CONSISTENCY
(Enacting the Land Use Management Ordinance Text Amendment proposal)

A RESOLUTION REGARDING AMENDING ARTICLE 8, SECTIONS 8.3 AND 8.4 OF THE CHAPEL HILL LAND USE MANAGEMENT ORDINANCE RELATED TO THE BOARD OF ADJUSTMENT AND HISTORIC DISTRICT COMMISSION AND CONSISTENCY WITH THE CHAPEL HILL 2020 COMPREHENSIVE PLAN (2018-12-05/R-16)

WHEREAS, the Planning Commission reviewed the text amendments to Land Use Management Ordinance Article 8, Sections 8.3 and 8.4 on November 6, 2018 and recommended that the Council enact the text amendments; and

WHEREAS, the Council of the Town of Chapel Hill has considered the proposed text amendment to the Land Use Management Ordinance (LUMO) Article 8, Sections 8.3 and 8.4 related to the Board of Adjustment and Historic District Commission, and finds that the amendments, if enacted, are reasonable and in the public's interest and are warranted to achieve the purposes of the Comprehensive Plan as explained by, but not limited to, the following goals of the Chapel Hill 2020 Comprehensive Plan:

- A community of high civic engagement and participation (Create a Place for Everyone.5)
- Adopt an integrated development review process that is fair and transparent and that incorporates the Chapel Hill 2020 environmental goals (Nurture our Community.5)
- A development decision-making process that provides clarity and consistency with the goals of the Chapel Hill 2020 Comprehensive Plan (Develop Good Places New Spaces.3)

NOW, THEREFORE, BE IT RESOLVED by the Council of the Town of Chapel Hill that the Council hereby finds the proposed text amendment to be reasonable and consistent with the Town Comprehensive Plan.

This the 5th day of December, 2018.

ORDINANCE A
(Enacting the Land Use Management Ordinance Text Amendment proposal)

AN ORDINANCE AMENDING ARTICLE 8, SECTION 8.3 AND SECTION 8.4 OF THE CHAPEL HILL LAND USE MANAGEMENT ORDINANCE RELATED TO ATTENDANCE AND LENGTH OF TERM FOR THE BOARD OF ADJUSTMENT AND THE HISTORIC DISTRICT COMMISSION AND TO REDUCE THE MEMBERSHIP ON THE HISTORIC DISTRICT COMMISSION (2018-12-05/O-3)

WHEREAS, the Council Committee on Boards and Commissions met on September 20, 2018 to consider information regarding advisory board alignment, length of term, board member attendance, and the Historic District resident seat on the Community Design Commission; and

WHEREAS, the Council Committee recommends amending the length of term clause under policies and procedures in the Advisory Board Membership Policy¹ to remove the succession of members for positions where a replacement has not been made; and

WHEREAS, the Council Committee recommends amending the attendance clause under policies and procedures in the Advisory Board Membership Policy to recognize that any member of the board, commission, or committee who misses more than three (3) consecutive regular meetings or more than half the regular meetings in a calendar year shall lose his or her status as a member of the board, commission or committee, and shall be replaced by the Council or Orange County Board of Commissioners, as appropriate, provided that special extenuating circumstances may be a basis for automatic removal to be reconsidered by the Council on a case by case basis; and

WHEREAS, the Historic District Commission requested that the total membership for its board be reduced to nine members to avoid the potential for a tie vote; and

WHEREAS, as the Council has an interest to simplify the process to amend the rules as it pertains to the advisory board membership, it requests, where possible, that the staff consolidate this information in the advisory board membership policy and remove it from the Land Use Management Ordinance. This is similarly reflected in the related sections for the Planning Commission and Community Design Commission; and

WHEREAS, on October 17, 2018, the Council authorized the Town Manager to act on the Council Committee on Boards and Commissions recommendations, by preparing an item to amend the advisory board membership policy and relevant sections of the Code of Ordinances; and

WHEREAS, staff shared the potential changes with all advisory board members via email requesting comments and invited members to attend a Joint Advisory Board meeting on November 6, 2018 prior to the Planning Commission meeting, due to the large number of changes. In the future, a Joint Advisory Board meeting may be considered based on the number of changes or complexity of change; however, this may not be necessary for all amendments; and

¹ <https://www.townofchapelhill.org/town-hall/mayor-and-council/boards-commissions/board-membership-policy>

WHEREAS, the Planning Commission met on November 6, 2018 and made a recommendation as it pertains to the amendments to the Land Use Management Ordinance; and

WHEREAS, the Board of Adjustment met on November 12, 2018 and made a recommendation as it pertains to the amendments to the Land Use Management Ordinance, as requested by the Planning Commission; and

WHEREAS, the Council called a Public Hearing to amend Article 8, Sections 8.3 and 8.4 of the Land Use Management Ordinance as it relates to Attendance at Meetings and Tenure and the Historic District Commission Membership for the Council's November 14, 2018 meeting; and

WHEREAS, the Council of the Town of Chapel Hill has considered the proposed text amendment to the Land Use Management Ordinance (LUMO) Article 8, Sections 8.3 and 8.4 related to the Board of Adjustment and Historic District Commission, and finds that the amendment, if enacted, is reasonable and in the public's interest and is warranted, to achieve the purposes of the Comprehensive Plan as explained by, but not limited to, the following goals of the Chapel Hill 2020 Comprehensive Plan:

- A community of high civic engagement and participation (Create a Place for Everyone.5)
- Adopt an integrated development review process that is fair and transparent and that incorporates the Chapel Hill 2020 environmental goals (Nurture our Community.5)
- A development decision-making process that provides clarity and consistency with the goals of the Chapel Hill 2020 Comprehensive Plan (Develop Good Places New Spaces.3)

NOW, THEREFORE, BE IT ORDAINED by the Council of the Town of Chapel Hill that the Town Code of Ordinances, Appendix A. Land Use Management Ordinance, Article 8, Administrative Mechanisms be amended as follows:

Section 1 - Section 8.3.6. Attendance at Meetings for the Board of Adjustment is hereby revised to read as follows:

"8.3.6. Attendance at Meetings.

~~Any member of the board who misses more than three (3) consecutive regular meetings or more than half the regular meetings in a calendar year shall lose his or her status as a member of the board, and shall be replaced or reappointed by the council or county board of commissioners, as appropriate. Absence due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and shall not affect the member's status on the board, except that in the event of a long illness or other such cause for prolonged absence, the member shall be replaced. Attendance at meetings shall be in accordance with the council's advisory board membership policy."~~

Section 2 - Section 8.3.2. Tenure for the Board of Adjustment is hereby revised to read as follows:

"8.3.2. Tenure.

~~Members of the board shall be appointed to serve terms of three (3) years, and until their respective successors have been appointed and qualified. The terms of the original members may be staggered so that all terms do not expire simultaneously. Vacancies shall~~

~~be filled for the unexpired term only. Members of the board shall be appointed in accordance with the council's advisory board membership policy."~~

Section 3 - Section 8.4.1 Establishment of the Commission is hereby revised to read as follows:

"8.4.1. Establishment of the Commission.

A historic district commission, consisting of ~~ten (10)~~ nine (9) members appointed by the council, is hereby established."

Section 4 - Section 8.4.3. Tenure for the Historic District Commission is hereby revised to read as follows:

"8.4.3. Tenure.

~~Members of the commission shall be appointed to serve terms of three (3) years, and until their respective successors have been appointed and qualified. The terms of the original members may be staggered so that all terms do not expire simultaneously. Vacancies shall be filled for the unexpired term only. Members of the commission shall be appointed in accordance with the council's advisory board membership policy."~~

Section 5 - Section 8.4.8. Attendance at Meetings for the Historic District Commission is hereby revised to read as follows:

"8.4.8. Attendance at Meetings.

~~Any member of the commission who misses more than three (3) consecutive regular meetings or more than half the regular meetings in a calendar year shall lose his or her status as a member of the commission, and shall be replaced or reappointed by the council. Absence due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and shall not affect the member's status on the commission except that in the event of a long illness or other such cause for prolonged absence, the member shall be replaced. Attendance at meetings shall be in accordance with the council's advisory board membership policy."~~

Section 6. This ordinance shall be effective upon enactment.

This the 5th day of December, 2018.

(Denying the Land Use Management Ordinance Text Amendment Proposal)

A RESOLUTION DENYING AMENDING THE LAND USE MANAGEMENT ORDINANCE ARTICLE 8, SECTIONS 8.3 AND 8.4 RELATED TO THE BOARD OF ADJUSTMENT AND THE HISTORIC DISTRICT COMMISSION (2018-12-05/R-17)

WHEREAS, the Planning Commission reviewed the draft text amendments to amend the Advisory Board Membership Policy and relevant section of the Land Use Management Ordinance on November 6, 2018 and recommended that the Council enact the text amendments; and

WHEREAS, the Council of the Town of Chapel Hill has considered the proposal to amend the Advisory Board Membership Policy and relevant sections of the Land Use Management Ordinance to revise the length of term clause, the attendance clause, and to decrease the number of Historic District Commission seats from ten (10) to nine (9), and finds that the amendments, if enacted, are unreasonable, not in the public's interest, and inconsistent with the Town's Comprehensive Plan.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Town of Chapel Hill that the Council hereby finds the proposed Land Use Management Text Amendments to be unreasonable, not in the public interest, and inconsistent with the Town's Comprehensive Plan.

This the 5th day of December, 2018.

PLANNING COMMISSION

The charge of the Planning Commission is to assist the Council in achieving the Town's Comprehensive Plan for orderly growth and development by analyzing, evaluating, and recommending responsible town policies, ordinances, and planning standards that manage land use and involving the community in long-range planning.

RECOMMENDATION
TEXT AMENDMENT FOR LAND USE MANAGEMENT ORDINANCE
 November 6, 2018

Recommendation: **Approval** **Approval with Condition** **Denial**

Amy Ryan moved and Melissa McCullough seconded a motion to find the proposed text amendment is consistent with the comp plan. The motion was unanimously approved.

Vote: 9 – 0

Ayes: John Rees (Chair), Louie Rivers (Vice-Chair), Amy Ryan, Whit Rummel, Melissa McCullough, Neal Bench, Buffie Webber, Michael Everhart, Stephen Whitlow.

Nays: None

Amy Ryan moved and Melissa McCullough seconded a motion to recommend enactment of Ordinance A, with the suggestion to request input from the Board of Adjustment regarding the proposed change to the length of term clause.

Vote: 9 – 0

Ayes: John Rees (Chair), Louie Rivers (Vice-Chair), Amy Ryan, Whit Rummel, Melissa McCullough, Neal Bench, Buffie Webber, Michael Everhart, Stephen Whitlow.

Nays: None

Prepared by: John Rees, Chair, Planning Commission
 Judy Johnson, Planning Staff

**BOARD OF ADJUSTMENT RECOMMENDATION
TEXT AMENDMENT FOR LAND USE MANAGEMENT ORDINANCE**

November 12, 2018

Recommendation:

Daniel Hatley moved and Phillip Lyons seconded a motion to make a recommendation to Town Council that excused absences should be clarified to include not only medical necessity, but also childcare issues, distance issues, and also to consider incentives for childcare stipends, refreshment policy, free parking in Town for board and commission members, and other incentives.

Vote: 9-0

Ayes: James Bartow (Chair), Devon Bass, Michael Fox, Daniel Hatley, Phillip Lyons, Kathy Murphy, Joe Parrish, Carl Schuler, Larry Daquiaog

Nays: None

Discussion:

Board members expressed concern over current attendance issues. There is trouble getting a full board at regular meetings, so if members lose their membership status, it might increase the chances of not being able to make quorum and put the board in the position of not being able to do business.

Board members also asked if the Council Committee on Boards and Commissions has discussed options for providing incentives for board and commission members in order to encourage attendance. Members are interested in how attendance issues can be addressed with positive reinforcement.

Members also discussed the excused absences policy. There was concern over cutting out a large portion of the Chapel Hill population that has young children and may miss meetings due to childcare issues. Members felt that childcare issues should be included as an excused absence.

Prepared by: James Bartow, Board of Adjustment Chair
Jake Lowman, Staff Liaison
Becky McDonnell, Co-Staff Liaison