

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

and

TOWN OF CHAPEL HILL

COOPERATIVE AGREEMENT FOR THE DURHAM-ORANGE LIGHT RAIL TRANSIT PROJECT

THIS COOPERATIVE AGREEMENT FOR THE DURHAM-ORANGE LIGHT RAIL TRANSIT PROJECT (“Agreement”) is made 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 (“Town”), a municipal corporation of the State of North Carolina. GoTriangle and the Town may be referred to individually as a “Party” and collectively as the “Parties.”

I. 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, 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 municipal corporation located in Orange County and Durham County, North Carolina, with the powers, duties, and purposes set forth in North Carolina law. The Town supports the Project and recognizes its value to the residents of the Town, the general public, and the State of North Carolina. As proposed, the Project may impact various Town resources, including rights-of-way, other land, utilities, facilities, buildings, drainage systems, vegetation and landscaping, and other properties and assets (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 the Town of Chapel Hill and the City of Durham along a 17.7-mile alignment. The Project also includes a rail operations and maintenance facility (ROMF) and parking facilities. **See Exhibit 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. 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 impact to Town Property to the greatest extent practicable. Implementation of the Project may require additional approvals and agreements between the Parties. 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, 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, GoTriangle and the Town agree as follows:

II. SPECIAL TERMS AND CONDITIONS

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. III, Sec. C of this Agreement; or on December 31, 2021 if GoTriangle has not obtained a Full Funding Grant Agreement 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. This cooperation shall encompass engineering and design, construction, mitigation, 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, to encourage community input regarding the Project generally and station design specifically, 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) tracking progress of decision-

making related to Project-related matters within the Town’s purview, and (iii) making non-binding recommendations to resolve any problems or issues concerning the Project.

C. Project Schedule

The Town and GoTriangle shall use their best efforts to adhere to the **Project Schedule**, incorporated into this Agreement as **Exhibit B**. GoTriangle retains the right to make adjustments to the schedule as it deems necessary or appropriate. Notifications of schedule adjustments will be provided to the Town on a monthly basis or with greater frequency as appropriate.

D. Exemption from Town Requirements

The Project is a linear public transportation system comprised of component parts, such as tracks, bridges, station platforms, 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 powers exercisable under Article 19, Part 3 of Chapter 160A of the N.C. General Statutes, 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). The Parties have discussed all major functional components of the Project and have identified only parking decks as a component subject to regulation, with respect to § 160A-392. The Project does not include any parking deck within the Town. This does not preclude continued collaboration between the Town and GoTriangle for Station Area Planning or coordinated review of station architecture.

E. Engineering Construction Permit

In lieu of zoning review, the Town will review and approve construction of the Project through the Town’s Engineering Construction Permit (“ECP”) process. 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 ECP 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.

F. State and Federal Requirements

GoTriangle and the Town shall comply with all state and federal requirements applicable to Project, including but not limited to the requirements of the 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.

G. Right of Entry

The Town agrees to grant to GoTriangle, its consultants and contractors, right of entry and license to enter Town Property to perform activities including but not limited to: surveys, appraisals, borings, inspections, and subsurface utility exploration associated with the Project, subject to reasonable notice to the Town; GoTriangle's arranging for work so as to not unreasonably disrupt the Town's or the public's use of any Town property; and GoTriangle's committing to reasonably restore any Town property to its pre-entry condition following such exploratory work. Any acquisition by GoTriangle of rights to permanent use of Town property shall require a separate Agreement and approval of the Town's Town Council.

H. General Project Review

Overview. The PCM for each Party shall work with relevant departments and disciplines within his/her organization to coordinate timely and effective review of project construction plans, impacts, and operational matters. As part of its review, the Town is responsible for identifying the following information, to the extent possible: regulatory and feasibility concerns; physical constraints; design standards; impacts to Town Property; maintenance and operational concerns; necessary technical reports, studies, and/or calculations; and transfers of right-of-way or pedestrian or bicycle facilities. The scope of Town concerns may include but is not limited to: drainage and grades; environmental; fire, police and other emergency response; natural resources; landscaping; stormwater; traffic; water, sewer, and other utilities. GoTriangle shall make pertinent information about the Project available to aid this review.

Regular Meetings. To ensure a comprehensive review of the Project and to ensure effective reconciliation of all significant concerns, following execution of this Agreement the Parties shall convene a joint meeting no less frequently than once every three months. The meeting shall include a representative from each Town department involved in or affected by the Project. Prior to each joint meeting, the Parties' PCMs shall agree upon and circulate a written agenda to all attendees. Following each joint meeting, the Parties' PCMs shall agree upon and circulate a written summary of the meeting to all attendees. The summary shall document the nature of each issue that was discussed and whether any decisions were made.

Preliminary Drawings. GoTriangle may submit plans that are less than 90% construction drawings to the Town for review and comment. The Parties acknowledge that GoTriangle submitted 50% construction drawings to the Town for review and comment. The Town completed and returned comments to GoTriangle on the 50% construction drawings prior to execution of this Agreement.

I. Construction Plan Review

Overview. GoTriangle shall submit 90% construction drawings to the Town for review and comment. Plan formatting and other elements of the drawings may be to GoTriangle's standards. The Town may also request GoTriangle to provide other information in GoTriangle's possession related to impacts affecting Town Property.

Timeframe for Review and Comment. Prior to submittal of 90% construction drawings to the Town, the PCM for each Party shall confer to determine the timeframe allowed for Town review and comment. All comments shall be delivered to GoTriangle within the agreed-upon timeframe. 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.

GoTriangle Response to Comments. GoTriangle shall use best efforts to respond to all comments and incorporate such responses into the 100% construction drawings.

J. Impacts to Town Property and Improvements

Generally. This Agreement addresses the management of Project impacts to Town Property and addresses the Project's creation of improvements to be owned, operated, and maintained by the Town after construction is complete ("Improvement(s)"). The Town acknowledges that all Improvements or other work requested by the Town shall be screened for eligibility under FTA's funding laws, rules, and guidelines. Work that is ineligible for FTA funding is outside of the scope of the Project and of this Agreement.

GoTriangle Responsibilities. GoTriangle shall be responsible for engineering, design, and construction of all Improvements related to the Project. By way of example, Improvements may include the reconstruction or realignment of streets, pedestrian and bicycle facilities, utilities, drainage, traffic signals, signs, traffic legends, lane markings, street lighting, and traffic detours. 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.

Betterments. GoTriangle is not required to provide expansions, upgrades, or enhanced levels of service ("Betterments") in connection with the Project unless a Betterment is mandated by state or federal law, regulations or standards. The Town may request GoTriangle to design and construct Betterments provided the Town reimburses GoTriangle the difference in Total Project Cost between an allowable improvement and the Betterment. "Total Project Cost" means all costs incurred for the design and construction of the improvement, including GoTriangle staff effort, design support, construction management, construction, testing, and claims resolution services.

K. Construction and Inspections

GoTriangle shall not issue a notice-to-proceed for construction within Town limits until issuance of the ECP, as set forth in Art. II, Sec. E of this Agreement. 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.

GoTriangle and the Town shall coordinate effective procedures for overseeing the construction of Improvements and any other construction affecting Town Property. These procedures may include pre-construction meetings, inspections, and a final walkthrough prior to acceptance of an Improvement by the Town. The Town shall acknowledge the acceptance of an Improvement by written notice to GoTriangle. The Town may request as-built drawings for Improvements upon completion of the Project.

L. Reimbursement

Reimbursement of the Town's cost for conducting design reviews is governed by separate agreement (Go-Triangle Contract 18-013) executed June 29, 2018 between the Parties.

M. Future Agreements

Additional agreements may be necessary for the successful implementation of the Project. Such future agreements may cover the following topics: construction, including temporary construction easements; dedications of right-of-way or facilities; parking; utilities; pre-revenue service testing; operations and maintenance; and GoPass program.

III. GENERAL TERMS AND CONDITIONS

A. Dispute Resolution

Informal Dispute Resolution. The Parties shall use their best efforts to informally resolve 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 are the General Manager 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.

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 irreparable harm to human health, 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.

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 request for mediation, either Party may resort to any available legal remedies.

B. Amendments

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

C. 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.

D. Choice of Law and Venue

This Agreement shall be governed by the law of the State of North Carolina, excepting only its conflict of law principles. If any 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 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.

E. Notice

All notices, communications, documents, and other materials submitted or exchanged between the Parties pursuant to this Agreement shall be in writing, shall be addressed to the representatives for each Party as set forth below, and shall be deemed to have been made or given (i) when personally delivered, (ii) one business day after being sent by overnight courier, or (iii) five business days after being placed in the United States mail, postage prepaid, registered or certified and properly addressed. Notices and other communications shall be directed to the Parties at the addresses listed below:

If to Town of Chapel Hill:

Name: Judy Johnson
Title: Operations Manager
Address: 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
405 Martin Luther King Jr. Blvd.
Chapel Hill, NC 27514

With copies to:

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

Telephonic and electronic mail communications and facsimile transmittals may be used to expedite communications, but neither shall be considered official notice under this Agreement unless and until confirmed in writing by the Party to whom the notice 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.

F. 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.

G. Entire Agreement

This Agreement is fully binding on the Parties. This Agreement, and the Exhibits attached hereto and incorporated herein by reference, constitute the entire agreement of the Parties, all prior discussions, representations, and agreements being merged herein.

H. 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.

I. 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.

J. 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.

K. 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.

L. 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.

M. 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.

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. Authorized Signature

Each Party represents that the individual executing this Agreement on its respective behalf is authorized to execute this Agreement and to bind the Party to the terms and conditions contained herein.

P. Counterparts

This Agreement may be executed in one or more counterpart originals, each of which together shall constitute one and the same instrument. A fully-executed copy of this Agreement shall be as binding upon the Parties as an original.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives on the dates indicated.

SIGNATURES CONTINUED ON PAGE FOLLOWING

TOWN OF CHAPEL HILL

By: _____
Name: Maurice T. Jones
Title: Town Manager
Date: _____

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

By: _____
Name: _____
Title: Finance Officer
Date: _____

Reviewed and approved as to legal form by Town of Chapel Hill.

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

Exhibit A: Project Map
Exhibit B: Project Schedule

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

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

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 GoTriangle.

By: _____
Name: Shelley Blake
Title: General Counsel