

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.

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

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

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 U~~ 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](#)