

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 plus costs related to financing, which are subject to variables like interest rates and payment schedules, 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. 6.F. of this Agreement; or three (3) months after the FTA has made a final determination that it will not provide funding for the Project as generally described above and as included in the full funding Grant Agreement application anticipated to be submitted to the FTA in the spring of 2019("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 Project contains three (3) traction power substations ("TPSS") within the Town limits. Two (2) of the TPSS are on UNC's campus and subject to a separate review process. With regard to the remaining TPSS structure within Town limits, GoTriangle shall present before the Town's Community Design Commission ("CDC") for a courtesy review of the TPSS structure and seek advisory feedback related to its visual appearance. GoTriangle will make reasonable efforts to incorporate feedback from the CDC into the design of the TPSS to the extent it would be practicable to do so.

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, and parking lot lighting 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, Section 5.9, and Section 5.11).

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% design plans, GoTriangle shall submit the 90% design plans to the Town for its review and approval, where necessary. The 90% design plans shall include drawings, special provisions, supplemental technical specifications, and updated quantity take-offs. The 90% 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.

As a safety requirement, the light rail operator must test the horn daily to ensure that the horn is in operable condition. GoTriangle will make reasonable efforts to perform such safety testing in less populated areas along the alignment and during times that may be less disruptive. 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.

IV. *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.

I. 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. 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.

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.

Prior to processing GoTriangle's ECP application, the Town will review the Noise and Vibration Technical Report, which was produced in conjunction with the Draft Environmental Impact Assessment ("DEIS"), *Durham-Orange Light Rail Project DEIS, Appendix K.24-7*, and any updates thereto to assess consistency with decibel levels in the Town's Noise Ordinance at the time this Agreement goes into effect. Upon its review, the Town shall submit to GoTriangle, within a reasonable amount of time to be determined by the Parties, any noise ordinance compliance concerns the Town may have related to the Noise and Vibration Technical Report. The Project is being designed to limit noise impact to the acceptable decibel range of the noise ordinance as currently written. GoTriangle will comply during construction and operation of the Light Rail System, with the applicable decibel standards of the Chapel Hill noise ordinance as codified at the time this agreement is executed. GoTriangle and the Town will coordinate during the remainder of the Design phase of the Project to ensure that the anticipated noise levels in Chapel Hill remain within the range allowed by the Town's noise ordinance, as applicable and in effect as of the date of this agreement. 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 the Noise and Technical Vibration Report.

The GoTriangle Board will adopt a noise mitigation policy. Noise levels will be monitored by GoTriangle and a noise compliance officer will be identified as a point of contact for the public for noise issues.

GoTriangle will coordinate with the Town to formulate a plan to provide regular updates to the public and Town Council, and hold public workshops related to progression of light rail design, construction and operations. 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.

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. The Town provided comments on these drawings. GoTriangle agrees to resolve those comments in the 90% design plans as provided in this Agreement.

B. Interim Design Review

The Parties recognize the need for consistent coordination and expeditious decision-making prior to the 90% Submittal Review. 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. 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.

C. 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.

D. 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.

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; public engagement and communication; and disadvantaged business enterprises participation.

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.**

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: Maurice Jones
Name: MAURICE JONES
Title: TOWN MANAGER
Date: 12-20-18

By: Jeffrey G. Mann
Name: Jeffrey G. Mann
Title: President and CEO
Date: 12-31-18

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: Saundra Freeman
Name: Saundra Freeman
Title: Chief Financial Officer and
Director of Administration

Reviewed and approved as to legal form.

By: Shelley Blake
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: Amy Oland
Name: Amy Oland
Title: Finance Officer

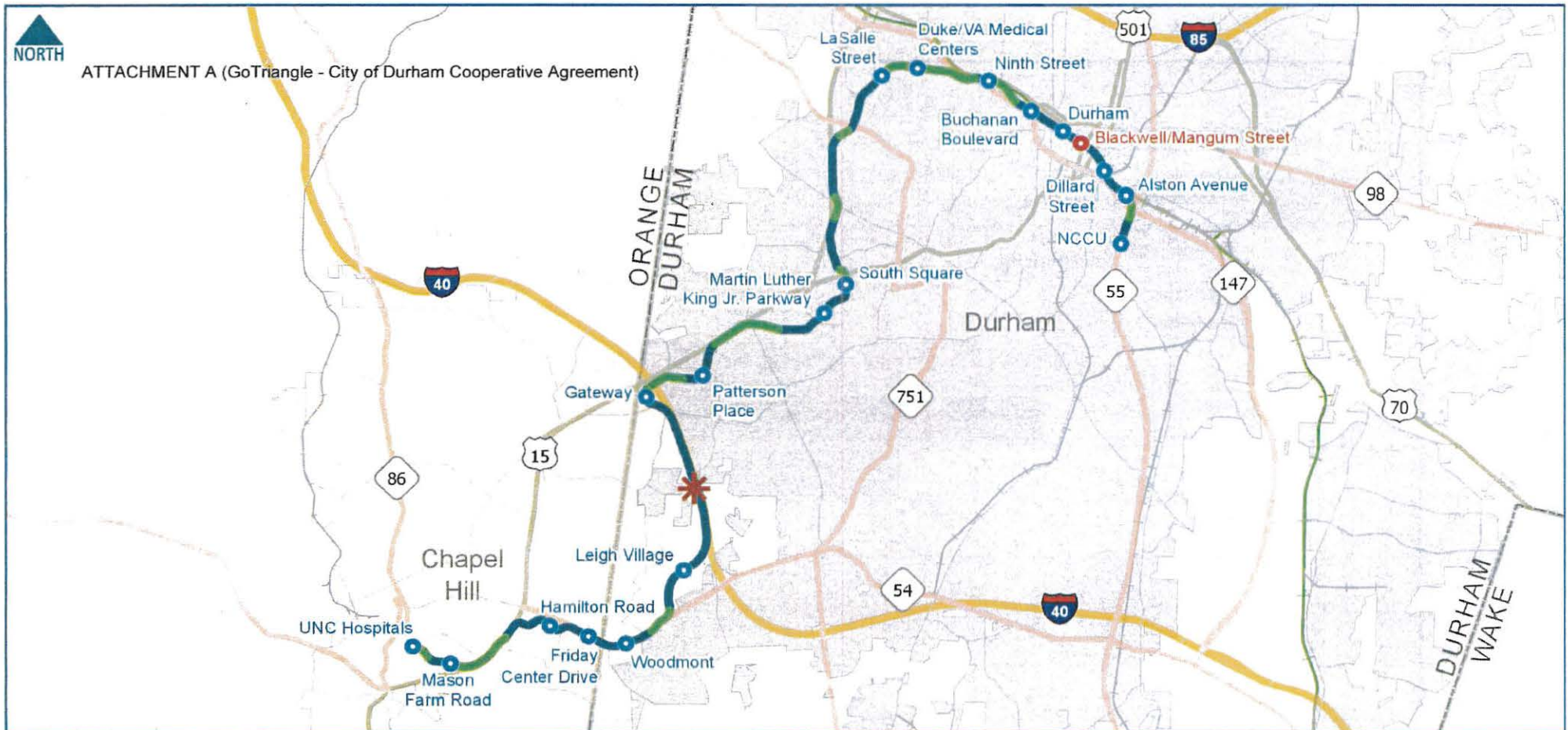
Reviewed and approved as to legal form.

By: Ralph D. Karpinos
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



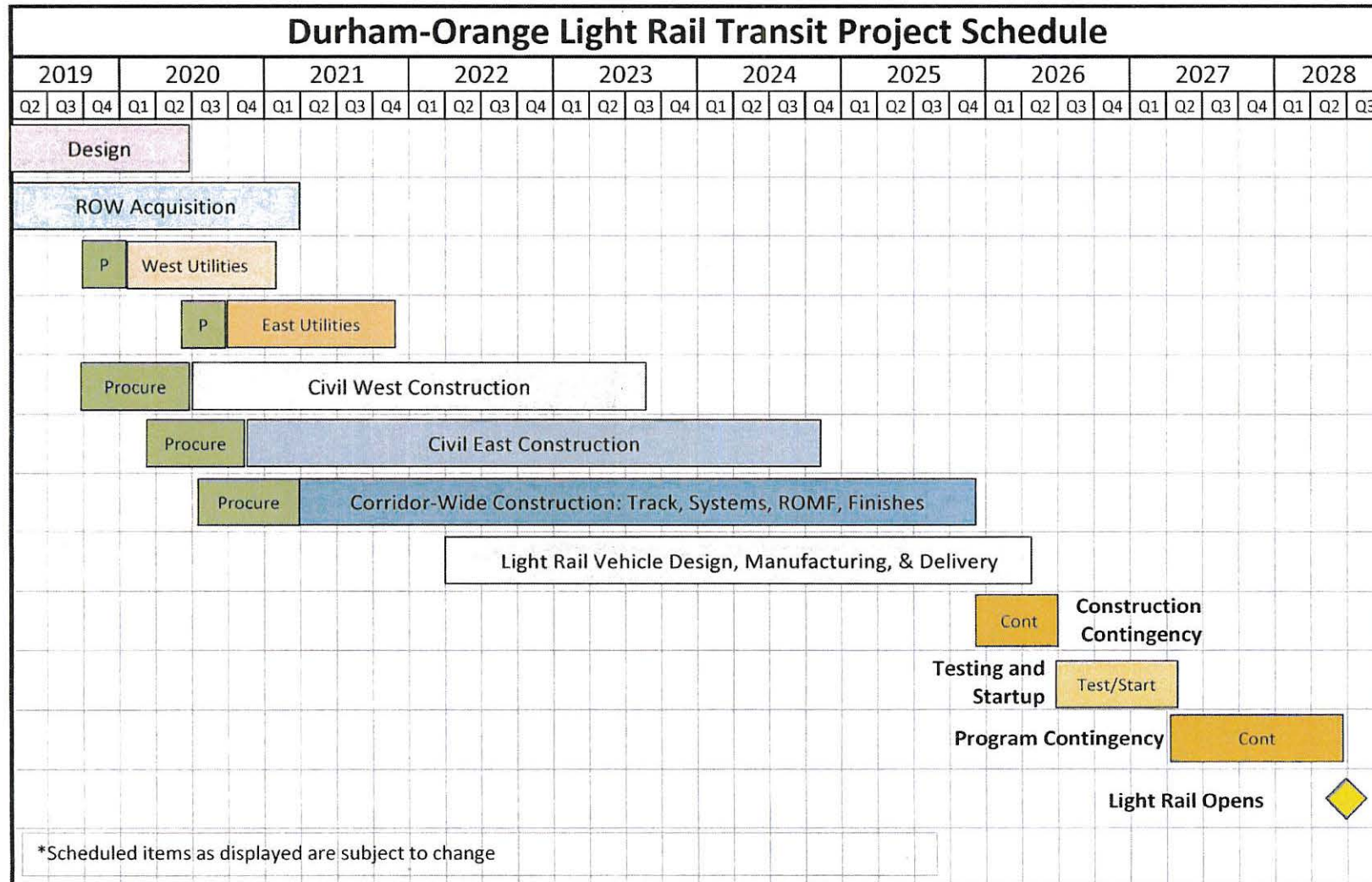
**DURHAM-ORANGE
LIGHT RAIL TRANSIT PROJECT**
Durham and Orange Counties, North Carolina

Sources: ESRI, CGIA, NCDOT, and HDR

D-O LRT Stations	Proposed D-O LRT Station	Railroad
Rail Operations and Maintenance Facility	D-O LRT Aerial Sections	NCCR Corridor
D-O LRT At-Grade Sections	Chapel Hill	Durham
	County Boundary	gotriangle.org/



Durham-Orange Light Rail Transit Project





Connecting all points of the Triangle

January 21, 2016

JAN 25 2016

CIN 160032

Yvette G. Taylor, Ph.D.
Regional Administrator
Federal Transit Administration, Region IV
230 Peachtree St., NW, Suite 1400
Atlanta, GA 30303

RE: MOA for Durham-Orange Light Rail Transit Project, Durham and Orange Counties, ER 12-0738

Dear Dr. Taylor:

Enclosed for your review and signature, please find the Memorandum of Agreement (MOA) for protection of Historic and Archaeological resources for the proposed Durham-Orange Light Rail Transit Project. Pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations codified in *36 CFR Part 800*, the MOA addresses the identification, evaluation, and treatment of archaeological resources that may be affected by the undertaking and cannot be avoided.

The GoTriangle General Manager and the State Historic Preservation Officer have signed the agreement and are returning the MOA for your signature. GoTriangle understands that once the MOA is signed, a copy of the MOA will be provided for our files.

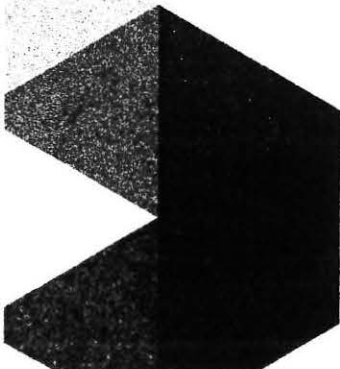
If there is any additional information that you may need, please contact me at 919-485-7558, or dcharters@gotriangle.org.

Regards,

A handwritten signature in cursive script that reads "David A. Charters, Jr.".

David A. Charters, Jr., PE
Manager, Design & Engineering
GoTriangle (formerly Triangle Transit)

Enclosure: Memorandum of Agreement for the proposed Durham-Orange Light Rail Transit Project
Cc: Julia Carrie Walker, Environmental Protection Specialist, FTA Region IV
Stanley A. Mitchell, Environmental Protection Specialist, FTA Region IV



**MEMORANDUM OF AGREEMENT
BETWEEN THE
FEDERAL TRANSIT ADMINISTRATION,
RESEARCH TRIANGLE REGIONAL PUBLIC TRANSPORTATION AUTHORITY, AND
NORTH CAROLINA STATE HISTORIC PRESERVATION OFFICE FOR THE
DURHAM-ORANGE LIGHT RAIL TRANSIT PROJECT**

THIS MEMORANDUM OF AGREEMENT (MOA) is made and entered into on the last date executed below, by and between the FEDERAL TRANSIT ADMINISTRATION (FTA), RESEARCH TRIANGLE REGIONAL PUBLIC TRANSPORTATION AUTHORITY d/b/a Triangle Transit d/b/a GoTriangle (Triangle Transit), and the NORTH CAROLINA STATE HISTORIC PRESERVATION OFFICE (SHPO) for the proposed Durham-Orange Light Rail Transit (D-O LRT) Project to establish the procedures by which FTA, Triangle Transit, and SHPO (collectively, the Parties) will work together to ensure the effective protection of historic and/or archaeological resources during the implementation and construction of the proposed D-O LRT Project.

WHEREAS, Triangle Transit is seeking grant funding from FTA for the construction of light rail, related rail stations, and a rail operations and maintenance facility, and FTA has determined that this proposed project is an undertaking pursuant to 36 C.F.R. Part 800; and

WHEREAS, the proposed D-O LRT Project consists of an approximately 17.1 mile double-track light rail transit line with seventeen (17) proposed stations and one (1) rail operations and maintenance facility that will greatly expand transit service in Durham and Orange counties within the State of North Carolina; and

WHEREAS, Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to consider the effects on historic properties of projects they carry out, approve, or fund. See 36 C.F.R. Part 800. While Section 106 does not mandate preservation, consultation takes place to ensure that preservation values are considered in federal agency planning and decisions; and

WHEREAS, FTA, in consultation with Triangle Transit and SHPO has defined the D-O LRT Project's area of potential effects (APE) for the purposes of the Section 106 analysis, as defined at 36 C.F.R. § 800.16(d), to encompass the geographic areas within which the D-O LRT Project may directly or indirectly cause alterations in the character or use of historic or archaeological resources, recognizing that the APE may require modification as more detailed engineering for the D-O LRT Project is developed; and

WHEREAS, FTA, in consultation with Triangle Transit and SHPO has identified certain archaeologically sensitive areas that may be affected by the D-O LRT Project primarily due to the proximity of the areas to the proposed construction activities, and therefore, may be subject to protection or ongoing evaluation pursuant to Section 106; and

WHEREAS, as FTA's grantee, Triangle Transit must comply with all Section 106 requirements for the D-O LRT Project pursuant to 36 C.F.R. Part 800. Therefore, implementation of all stipulations will be the responsibility of Triangle Transit with FTA providing oversight and approval of stipulation

completion. FTA will request that SHPO review all implementation plans and projects and FTA will coordinate with Triangle Transit to provide all necessary documentation to SHPO for its respective files; and

WHEREAS, FTA has made a reasonable and good faith effort to identify and contact by letter the appropriate Native American tribes and groups, including the Eastern Band of the Cherokee and the Catawba Indian Nation; and

WHEREAS, the Catawba Indian Nation responded to the FTA's request and will be notified in the event of the discovery of Native American artifacts and/or human remains but no consulted tribes named above have responded affirmatively to the FTA's request to be a consulting party;

NOW, THEREFORE, FTA, Triangle Transit, and the SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the undertaking on historic properties.

A. ARCHAEOLOGICAL RESOURCES

1. The Draft Environmental Impact Statement (DEIS) prepared pursuant to the National Environmental Policy Act, 42 U.S.C. §§ 4321, et seq., (NEPA) based in part on the document *Archaeological Background Information, Durham-Orange Light Rail Transit Project* produced by Triangle Transit in November 2014 (Report), identified five (5) areas that should be subjected to archaeological field investigations through a Phase I survey. These five (5) areas include: (i) Mason Farm Road (corridor between UNC and US 15/501 parallel to Mason Farm Road); (ii) Leigh Village park and ride and corridor between George King Road and Interstate 40; (iii) Farrington Road Rail Operations and Maintenance Facility; Gateway park and ride; and (v) the corridor between US 15/501 and the intersection of Erwin Road and NC Highway 751.

2. FTA will ensure that the following measures are carried out in connection with implementation of the D-O LRT Project for these five (5) archaeologically sensitive areas:

a. Identification of Archaeologically Sensitive Areas and Assessment of Potential Project Effects

1. A Phase I terrestrial archaeological survey (Survey) will be performed for the five (5) archaeologically sensitive areas defined above by either Triangle Transit or their contractor. All Surveys will be performed pursuant to accepted standards of SHPO. A report of the findings from the Survey will be produced pursuant to the 1988 *Guidelines for Preparation of Archaeological Survey Reports in North Carolina* (Survey Guidelines) as promulgated by the North Carolina Office of State Archaeology (OSA).

2. Should the Survey outlined in Stipulation I.A.1 identify historical and/or archaeological resources evaluated as potentially eligible for the National Register of Historic Places (NRHP), the FTA, in consultation with Triangle Transit

and SHPO, will devise and implement an appropriate testing work plan to determine the of NRHP-eligibility of any potentially eligible sites.

3. FTA will also consult with Triangle Transit and SHPO to determine an appropriate plan of action, if any, for addressing one (1) archaeological resource and two (2) potential archaeological resources previously identified as warranting Phase II testing to determine NRHP eligibility. These three (3) actual and/or potential resources, detailed in the Report, include: archaeological site 31DH655**, Potential Site 1, and Potential Site 3. Initial consultation between FTA, Triangle Transit, and SHPO in 2014 determined that these three (3) sites were identified and evaluated over ten (10) years ago, and therefore, the original recommendations may not be accurate for the resources' current conditions. Further, if it is determined no adverse effects will occur, testing of the resources may not be required. Therefore, FTA, Triangle Transit, and SHPO will need to consider the location, type, and extent of disturbances for the D-O LRT Project in conjunction with the reported locations and current conditions of the three (3) resources in order to evaluate any testing needs for them.

b. Adverse Effects Determination, Mitigation, and Data Recovery

1. If NRHP-eligible historic and/or archaeological resources are identified during the Survey and/or Phase II study outlined above, FTA will determine if there are any adverse effects to the resources. FTA will determine if preservation in place is possible for any affected eligible resources. If it is determined that preservation in place is deemed unlikely for the D-O LRT Project as track alignment and structure have no tolerance for movement, then FTA, in consultation with Triangle Transit and SHPO, will develop and implement a data recovery plan that is consistent with the *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation* (48 Fed. Reg. 44716) and the Advisory Council on Historic Preservation's (ACHP) handbook *Treatment of Archaeological Properties* (1980).
2. Any data recovery plan developed under this MOA will consist of: (1) the development of significant research issues to be investigated; (2) the phased recovery of resources; (3) the scientific investigation of the resources recovered in sufficient detail to address the identified research issues and test assumptions; (4) allowances for addressing unanticipated resources or site conditions; (5) a process for consultation with Triangle Transit and SHPO; and (6) a schedule of these proposed data recovery activities for each site.

c. Curation and Reporting

Within eighteen (18) months after the archaeological field work is complete, FTA, in consultation with Triangle Transit and SHPO, and in accordance with 36 C.F.R. Part 79,

will plan for the analysis and curation of material and records from any archaeological excavations associated with the D-O LRT Project. Triangle Transit will be responsible for the implementation of such a plan, and ensure that all final archaeological reports are responsive to the Survey Guidelines and any archaeological assemblages are prepared and curated pursuant to Archaeological Curation Standards and Guidelines as set forth by the OSA.

d. Unanticipated Discovery During Construction

An unanticipated discovery is one that occurs outside the five (5) archaeologically sensitive areas or outside the boundaries of archaeological resources identified within the five (5) archaeologically sensitive areas described in Paragraph A1. The procedures for the unanticipated discovery plan are set forth below.

1. Initiate Unanticipated Discovery Plan. Cultural Resources to be considered as an unanticipated discovery and that require reporting include, but are not limited to: a) any human remains, b) any features (pits, foundations), and c) any artifacts (individual objects, specimens or physical evidence of prehistoric or historic human activity).
2. Procedures to Follow in the Event of an Unanticipated Discovery.
 - (i) Triangle Transit will notify the Parties of an unanticipated discovery within forty-eight (48) hours of the discovery.
 - (ii) Triangle Transit will flag or fence off the archaeological discovery location and take measures to ensure site security. Any discovery made on a weekend will be protected until all appropriate Parties are notified of the discovery. Triangle Transit will not restart work in the area of the find until clearance has been granted by FTA, in consultation with the SHPO. Triangle Transit will indicate the location and date of the discovery on the D-O LRT Project plans. Triangle Transit will have an archaeologist undertake a site visit or otherwise coordinate an on-site archaeological consultation.
 - (iii) Triangle Transit will direct the archaeologist to begin a more detailed assessment of the find's significance and the potential effects of the D-O LRT Project to the find(s).
 - (iv) Triangle Transit will notify FTA and the SHPO of the find within 48 hours of discovery. The notification to FTA and SHPO will either: (i) explain why the archaeologist for Triangle Transit recommends that the find is not significant, or (ii) describe a proposed scope of work for evaluating the significance of the find and evaluating project effects. All work to evaluate significance of the find would be confined to the D-O LRT Project's area of effect. Prior to the

implementation of any scope of work, FTA will consult with Triangle Transit and SHPO.

3. If the find is determined to be significant, and continuing construction may damage more of the site, then Triangle Transit will work with FTA to determine appropriate recommendations regarding the proper measures for site treatment. These measures may include:
 - (i) Formal archaeological evaluation of the site;
 - (ii) Visits to the site by FTA, Triangle Transit, SHPO and/or other entities;
 - (iii) Preparation of a mitigation plan by the archaeologist for Triangle Transit for FTA approval and consultation with Triangle Transit and SHPO;
 - (iv) Implementation of the mitigation plan; and
 - (v) FTA, in consultation with the SHPO, will provide approval to resume construction following completion of the fieldwork component of the mitigation plan.
4. If the find is determined to be isolated or completely disturbed by prior construction activities, then Triangle Transit will consult with FTA, SHPO, and/or other entities as appropriate, and will request approval from FTA to resume construction, subject to any further mitigation that may be determined necessary.

e. Procedures to Follow In the Event of an Unanticipated Discovery of Human Remains

The Unmarked Human Burial and Human Skeletal Remains Protection Act, N.C.G.S. §§ 70-26 – 70-40, (Act) addresses discovery of unmarked human remains. Triangle Transit will adhere to all provisions of the Act as the D-O LRT Project moves forward. Should human remains be discovered as a result of construction related activities associated with the D-O LRT Project, “disturbance of the remains shall cease immediately and shall not resume without authorization for either the county medical examiner or the State Archaeologist,” under the provisions of N.C.G.S. §§ 70-30(c) or 70-30(d).

Within 48 hours, Triangle Transit will notify the Parties, local law enforcement, the medical examiner of the county in which the remains are encountered, and other appropriate entities of the find and cooperate with all agencies and/or entities as required.

If it is determined that intact internments are present and may be disturbed by continuing construction, Triangle Transit will consult with the next of kin or descendent community (if known). Triangle Transit will receive direction from FTA regarding additional measures to avoid or mitigate further damage. FTA will consult with Triangle Transit, SHPO, and other entities as appropriate. The avoidance or measures may include:

1. Formal archaeological evaluation of the site;
2. Visits to the site by FTA, SHPO, and other entities, as appropriate;
3. Preparation of a mitigation plan by the archaeologist for Triangle Transit, including procedures for avoidance or disinterment and reinterment, to be approved by FTA and in consultation with Triangle Transit, SHPO, and others as appropriate;
4. Implementation of the mitigation plan by Triangle Transit; and
5. Approval to resume construction following completion of the fieldwork component of the mitigation plan.

B. GENERAL TERMS

1. This MOA will expire if its terms are not carried out within ten (10) years from the last date executed below.
2. All terms and conditions of this MOA are dependent upon and subject to the allocation and availability of funds for the purposes set forth in this MOA. The MOA will immediately terminate if funds cease to be available, and Triangle Transit will immediately notify all Parties if funding becomes unavailable.
3. Each year following the execution of this MOA until it expires or is terminated, Triangle Transit will provide all Parties with a summary report detailing work undertaken pursuant to its terms. Such reports will include any scheduling changes proposed, any problems encountered, and any disputes and objections received in Triangle Transit's efforts to carry out the terms of this MOA.
4. Should any Party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the FTA shall consult with such Party to resolve the objection. If the FTA determines that such objection cannot be resolved, the FTA will:
 - A. Forward all documentation relevant to the dispute, including the FTA's proposed resolution, to the ACHP. The ACHP shall provide the FTA with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the FTA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and the Parties to the MOA, and provide them and the AHCP with a copy of such written response. The FTA will then proceed according to its final decision.
 - B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, the FTA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the FTA shall prepare a written response that takes into

account any timely comments regarding the dispute from the Parties to the MOA, and provide them and the ACHP with a copy of such written response.

- C. The Parties' responsibilities to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.
5. If any Party determines that its terms will not or cannot be carried out, that Party shall immediately consult with the other Parties to attempt to develop an amendment to this MOA. If within sixty (60) days an amendment cannot be reached, any Party may terminate the MOA upon written notification. Once the MOA is terminated, and prior to work continuing on the D-O LRT Project, the FTA will either (i) execute an MOA pursuant to 36 C.F.R. § 800.6 or (ii) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. The FTA will notify the Parties as to the course of action it will pursue. The execution of this MOA and the implementation of its terms evidence that the FTA has taken into account the effects of the D-O LRT Project on historic properties and afforded the ACHP an opportunity to comment.
 6. Any changes, amendments, corrections, or additions to this MOA shall be in writing; shall be executed and approved by the same officials or their respective designee of the Parties who execute and approve the original MOA; shall be in accordance with applicable law; and shall become effective upon complete approval by all Parties.
 7. The Parties agree to resolve any disputes arising hereunder through good faith discussions and negotiations.
 8. Any notices, correspondence, or other submissions required by this MOA shall be in writing and shall be sent by electronic mail or by United States mail, First Class postage pre-paid to ensure delivery to the Parties, respectively, at the following addresses or email addresses, unless a Party has been notified in writing by the other of a change of address or preferred methodology of delivery and receipt:

To FTA:

Yvette G. Taylor, Ph.D.
Administrator, Region IV
Federal Transit Administration
230 Peachtree NW, Suite 1400
Atlanta, Georgia 30303
Telephone: 404.865.5600
Facsimile: 404.865.5606
Email: Yvette.Taylor@dot.gov

To Triangle Transit:

Jeffrey G. Mann
General Manager, Triangle Transit
P.O. Box 13787
Research Triangle Park, NC 27709
Telephone: 919.485.7510


Facsimile: 919.485.7441
Email: jmann@gotriangle.org

To SHPO:

Kevin Cherry, Ph.D.
State Historic Preservation Officer
Attn: SHPO-ER
4610 Mail Service Center
Raleigh, NC 27699-4610
Telephone: 919-807-7279
Email: kevin.cherry@ncdcr.gov

9. This MOA shall be construed to promote the purposes of the statutes and regulations of the United States and the State of North Carolina, and the objectives of this MOA, resolving any ambiguities and questions of the validity of the of specific provisions so as to give maximum effect to the values and other objectives sought to be protected herein.
10. Each Party acknowledges that the individual executing the MOA on behalf of the respective Party is authorized to execute the document and to bind the Party to the terms contained herein.
11. A copy, email copy, or facsimile copy of the signature of any Party shall be deemed an original with each fully executed copy of this MOA as binding as an original, and the Parties agree that this MOA can be executed in counterparts, as duplicate originals, with email or facsimile signatures sufficient to evidence an agreement to be bound by the terms of this MOA.

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



Yvette G. Taylor, Ph.D.
Administrator, Region IV
Federal Transit Administration

2-2-16
Date



Jeffrey G. Mann
General Manager
Triangle Transit

1/21/2016
Date



Kevin Cherry, Ph.D.
State Historic Preservation Office

1/11/2016
Date