

**STATE OF NORTH CAROLINA
COUNTY OF ORANGE**

GOTRIANGLE CONTRACT NUMBER: 18-031

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

AND

TOWN OF CHAPEL HILL

COOPERATIVE AGREEMENT

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

RECITALS

A. GoTriangle

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

B. The Town

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

C. Durham-Orange Light Rail Transit Project

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

D. Purpose of Agreement: Ongoing Cooperation and Coordination

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

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

ARTICLE 1- GENERAL AGREEMENTS ON PROJECT DEVELOPMENT

A. Term of the Agreement

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

B. Project Cooperation

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

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

C. Future Agreements

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

D. Project Schedule

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

E. State and Federal Requirements

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

F. Applicability of Town Requirements

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

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

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

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

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

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

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

G. Environmental Evaluation

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

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

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

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

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

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

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

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

E. Town Review Process

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

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

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

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

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

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

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

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

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

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

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

A. Fifty Percent Milestone Design Review

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

B. Interim Design Review

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

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

C. Grade Crossing Diagnostic Review

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

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

D. Corridor Aesthetics and Line-wide Identity Review

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

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

E. Ninety Percent Design Plan Review

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

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

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

F. Design Changes During Construction

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

ARTICLE 3- PROJECT ELEMENTS

A. Stormwater Facilities

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

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

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

B. Buchanan Boulevard Station Mural Impacts

C. Supply of Electrical Power by Duke Energy

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

D. Relocation of Town-owned Utilities

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

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

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

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

GoTriangle shall obtain all required permits for relocations.

E. Relocation of Private Utilities

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

F. Reconfiguration of Roadways in the Downtown Corridor

ARTICLE 4- PROJECT OPERATIONS & MAINTENANCE

A. Future Coordination

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

B. Facility Maintenance Post-Construction

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

C. Town Emergency Services and Security

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

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

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

ARTICLE 5- COORDINATING COMMITTEES

A. Executive Leadership

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

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

B. Design Review

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

C. Fire/Life Safety and Security Committee

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

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

D. Transit Operations Committee

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

E. Workforce Development

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

F. Transit-Oriented Development and Affordable Housing

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

G. Construction Inspections

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

ARTICLE 6- OTHER PROVISIONS

A. Relationship of the Parties

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

B. Force Majeure

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

C. Notice

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

If to the Town:

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

If to GoTriangle:

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

With copies to:

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

With copies to:

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

D. Amendments

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

E. Dispute Resolution

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

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

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

F. Termination of Agreement

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

G. Non-Waiver

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

H. Merger

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

I. Governing Law

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

J. Severability

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

K. No Third Party Rights

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

L. Survival of Obligations

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

M. Successors and Assigns

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

N. Construction of Terms

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

O. Captions and Headings

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

P. Further Assurances

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

Q. Time is of the Essence

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

R. E-Verify Requirements

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

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

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

S. Iran Divestment Act Certification

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

T. Acknowledgements

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

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

THE TOWN OF CHAPEL HILL, NORTH CAROLINA

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

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: Jeffrey G. Mann

Title: President and CEO

Date: _____

SIGNATURES CONTINUED ON PAGE FOLLOWING

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

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

Reviewed and approved as to legal form.

By: _____
Name: Shelley Blake
Title: General Counsel

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

By: _____
Name: Amy Oland
Title: Finance Officer

Reviewed and approved as to legal form.

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

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