

NORTH CAROLINA
ORANGE COUNTY

DATE: March 31, 2020

NORTH CAROLINA DEPARTMENT
OF TRANSPORTATION

PRELIMINARY ENGINEERING,
CONSTRUCTION FUNDING AND
MAINTENANCE AGREEMENT

AND

TOWN OF HILLSBOROUGH

TIP: P-5701
WBS: 46395.1.1 (P.E.)
WBS: TBD (CON)

AND

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

This **Preliminary Engineering and Construction Funding and Maintenance Agreement** ("Agreement") is made and entered into on the last date executed below and constitutes an agreement between the North Carolina Department of Transportation, an agency of the State of North Carolina (hereinafter referred to as the "Department"), the Town of Hillsborough, a local government entity (hereinafter referred to as "Municipality"), and the Research Triangle Regional Public Transportation Authority d/b/a GoTriangle, a public body politic and corporate of the State of North Carolina, (hereinafter referred to as "GoTriangle") (each individually hereinafter referred to as a "Party," and collectively as the "Parties") to describe the proposed actions to be taken by the Parties to govern the planning, design, construction, maintenance, and coordination efforts associated with a proposed new Hillsborough Train Station.

WITNESSETH:

WHEREAS, the Parties are interested in establishing a new train station which would encourage economic development for the Municipality, and the surrounding communities (hereinafter referred to as the "Project"); and,

WHEREAS, the Parties hereby agree that it would be beneficial to the Parties to pursue the Project; and,

WHEREAS, North Carolina General Statutes ("N.C.G.S.") Sections 136-18, 136-20, and 136-44 provide the Department with the authority to participate in the planning and construction of railroad projects approved by the North Carolina Board of Transportation; and,

WHEREAS, the Department has performed all work associated with the preparation and approval of the environmental clearance documentation; and,

WHEREAS, the Parties to this Agreement fully understand that this Agreement is to provide for the completion of designs and plans for the Project, ("Preliminary Engineering"), and to provide

for construction of the Project (“Project Work”), and maintenance of the completed Project, and to set out the respective responsibilities regarding funding and reimbursement for said Preliminary Engineering and Project Work; and,

WHEREAS, the project was evaluated and scored using the Strategic Mobility Formula, and the Department agrees to provide primary funding for construction and preliminary engineering for the Project through the utilization of State of North Carolina Capital Funds subject to Strategic Transportation Investment formulas; and

WHEREAS, the Municipality has agreed to participate in certain costs and to assume certain responsibilities in the manner and to the extent as hereinafter set out; and,

WHEREAS, GoTriangle has agreed to participate in certain costs to the extent as hereinafter set out; and,

WHEREAS, the Department has allocated funding for Phases 1 and 2 as described herein; and

WHEREAS, it is in the best interest of the Parties to pursue, to the extent feasible, additional funding for design and construction of the platform and canopy, and any track and signal work for which this Agreement does not provide; and

WHEREAS, the Municipality and GoTriangle fully understand that the Department’s funding for this Project is contingent upon and subject to the receipt and availability of the appropriated funds for the purpose set forth in this Agreement, and this Agreement shall automatically terminate if funds cease to be available.

NOW, THEREFORE, the Parties hereto, each in consideration of the promises and undertakings of the other as set forth herein, do hereby covenant and agree, each with the other, as follows:

1. SCOPE OF WORK

The Preliminary Engineering scope of work shall consist of the planning and design of the proposed Hillsborough Train Station building and site, as shown on the site plan attached as “Exhibit A” and made a part of this Agreement.

The Project Work shall include construction of the portions of proposed Hillsborough Train Station building and site proposed on land owned by the Municipality (Phase 1).

The Project Work specifically excludes any construction within the North Carolina Railroad Company (NCRR) corridor (Phase 2). The construction scope may be amended by a three-party letter to include Phase 2.

In the event utility conflicts within the Project limits are discovered, the Municipality shall be solely responsible for relocation and adjustment of the utility, the cost of which shall be a project cost.

The Preliminary Engineering scope of work will also include the study of the feasibility of pedestrian and bicycle pathways between the Project and downtown Hillsborough, the Riverwalk greenway and the planned greenway in Collins Ridge. The feasibility study will include evaluation of various alignments and how each addresses the street network, utilities,

the railroad corridor, and the Eno River. The study may also include an analysis of permitting requirements, and a cost estimate for the recommended connection. The maximum amount of Department funds to be expended on the Study is \$100,000.

The Parties recognize and agree that consultants and/or sub-consultants may perform all or any portion of the Preliminary Engineering and the Project Work subject to the approval and consent of Department. The Department's approval and consent to all Consultants or sub-consultants shall be obtained before the Department may issue a Notice to Proceed to the Municipality for any Preliminary Engineering or Project Work.

2. ALLOCATION OF PRELIMINARY ENGINEERING RESPONSIBILITIES

The Parties shall have the following responsibilities in connection with the Project Work, including, but not limited to:

- a. The Municipality, and/or its agent, shall:
 - i. Prepare the Project's plans, specifications, and a professional estimate of costs (PS&E package) needed to construct the Project. All work will be done in accordance with applicable State standards, specifications, policies and procedures. The content of each submittal shall comply with Chapter 500 Design Guidelines in State Construction Office State Construction Manual, latest edition. Project plans will be submitted to GoTriangle and the Department for review, comment, and approval.
 - ii. Procure, if necessary, professional services for the design of the Project, in accordance with N.C.G.S. § 143-64, Parts 31 and 32, and the Department's *Policies and Procedures for Major Professional or Specialized Services Contracts*.
 - iii. Perform any additional work as required to complete the Preliminary Engineering.
- b. The Department, its agents and/or contractors, shall:
 - i. Review and provide comments on all Preliminary Engineering submittals within thirty (30) days of receipt. All comments must be submitted to the Municipality in writing.
 - ii. Approve Preliminary Engineering submittals within thirty (30) days of Municipality resolving comments.
 - iii. Pursue, to the extent feasible, additional funding for design and construction of the platform and canopy, and any track and signal work for which this Agreement does not provide.
- c. GoTriangle, its agents and/or contractors, shall:
 - i. Review and provide comments on all Preliminary Engineering submittals within thirty (30) days of receipt. All comments must be submitted to the Municipality in writing.

- ii. Approve Preliminary Engineering submittals within thirty (30) days of Municipality resolving comments.

3. NOTICE TO PROCEED

Upon execution of the Agreement, the Department shall issue a Notice to Proceed and the Municipality shall endeavor to commence its responsibilities under Section 2.a within forty-five (45) calendar days of the date of receipt of such notice.

4. ENVIRONMENTAL DOCUMENTATION AND PERMITTING

a. Environmental

The Department has prepared the Environmental Document in accordance with the State Environmental Policy Act (SEPA) or as required and defined pursuant to N.C.G.S. §113A-1 through §113A-13, National Environmental Policy Act, the National Historic Preservation Act, and the Uniform Relocation Assistance and Real Property Acquisition Act.

b. Permitting

The Municipality shall obtain all State and local regulatory approvals, permits, licenses, and inspections as are necessary for the construction of the Project.

c. Erosion Control

The Municipality shall be responsible for securing all erosion and sediment control permits for the Project using approved plans and documents.

5. RIGHT OF WAY (ROW)

It is understood that all work shall be contained within the existing Municipality-owned right of way, and no additional right of way will need to be acquired for this Project.

If it is determined by the Municipality that right of way and/or property is needed for the Project, the Municipality shall be responsible for acquiring any additional right of way, at no cost or liability whatsoever to the Department, or GoTriangle. All right of way (ROW) activities, including acquisition of easement/property and relocation, shall be accomplished in accordance with N.C.G.S. §136-44.36; Chapter 133, Article 2, §§ 133-5 through 133-18 (Relocation Assistance); and the North Carolina Department of Transportation Right of Way Manual.

6. UTILITIES

In the event utility conflicts within the Project limits are discovered, the Municipality shall be solely responsible for relocation and adjustment of the utility, the cost of which shall be a project cost.

All utility work shall be performed in a manner satisfactory to and in conformance with State rules and regulations and the Department's approved Utility Relocation Policy. The Municipality shall make all necessary adjustments to service connections or services lying within the construction limits of the Project regardless of ownership of the connections or services.

7. ALLOCATION OF PROJECT WORK (CONSTRUCTION) RESPONSIBILITIES

- a. The Municipality, its agents and/or contractors, shall construct the Project in accordance with the approved Project plans and specifications, and all State policies and procedures.
- b. The Department shall be responsible for inspection, approval of change orders, and funding of the Project Work as set out herein.
- c. GoTriangle shall be responsible for inspection, approval of change orders, and funding of the Project Work as set out herein.

8. CONSTRUCTION

b. CONSTRUCTION AUTHORIZATION. The Municipality shall submit the required final construction plans, specifications, and an estimate of Project costs (final PS&E package) to the Department and GoTriangle for review and approval.

Upon receipt of written authorization, in the form of an Authorization for Construction, from the Department, the Municipality shall construct, or cause to be constructed, the Project in accordance with the plans and specifications of said Project as filed with, and approved by, the Department and GoTriangle. Any work performed prior to written authorization to proceed from the Department will not be eligible for reimbursement.

b. CONSTRUCTION PROCUREMENT. The Municipality shall comply with all relevant state statutes, rules, and regulations in procuring goods and services from third parties for construction of the Project. Third party contracts shall be approved by the Department prior to commencing Project work. Letting of contracts for construction and materials purchases shall be in accordance N.C.G.S. §143, Article 8 and N.C.G.S. §136-28.7.

c. CONSTRUCTION SUBCONTRACTOR REQUIREMENTS. Any contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Minority and Women Businesses Enterprises (WBE/WBE), or as required and defined in or as required and defined in G.S. 136-28.4 and the North Carolina Administrative Code (N.C.A.C.) Title 19A Chapter 2, Subchapter D. These provisions are incorporated into this Agreement by reference.

d. RIGHT TO INSPECT. The Department and GoTriangle shall have the right to inspect any portion of the work being performed by the Municipality or its contractors to ensure compliance with the provisions of this Agreement. Any deficiencies inconsistent with approved plans and specifications found during an inspection must be corrected by the Municipality.

e. CONTRACTOR COMPLIANCE. The Municipality, and/or its agents, will be responsible for ensuring the compliance of its contractor(s) with all the terms of the contract, relevant provisions of this Agreement, and any instructions issued by the Department or GoTriangle as a result of any review or inspection.

f. CHANGE ORDERS AND POST CONSTRUCTION DRAWINGS

If changes in the Project Work are necessary, the Parties agree to the following:

i. Change Orders

In the event of deviations from the Scope of Work and/or approved design plans, previously approved revisions, special provisions, and standard specifications for which the remedy results in change to such documents, a proposed Change Order shall be issued by the Municipality. The proposed Change Order shall include a complete description of the proposed change in Scope of Work and estimated cost.

iii. Municipality Change Order Scope Review and Approval

Municipality may proceed with all Change Orders without approval by the Parties except for those Change Orders which (1) result in an additional cost of twenty-five thousand dollars (\$25,000.00) or greater to the Project; or (2) in the exercise of Municipality's reasonable discretion will result in a material change to the approved final plans for the Project.

Change Orders that are not submitted to other Parties for their approval pursuant to the previous paragraph shall nonetheless be distributed to all Parties as information within ten (10) business days.

Change Orders resulting in either (1) an additional cost of twenty-five thousand dollars (\$25,000.00) or greater to the Project, or (2) a material change to the approved final plans for the Project as determined by Municipality in its reasonable discretion, shall be approved in accordance with the general Change Order procedures set forth herein.

iv. General Change Order Procedures

The proposed Change Order shall be provided to all Parties for review and approval. Each Party shall have five (5) business days to review the proposed Change Order and provide comments and/or approval. This review period may be extended for proposed Change Orders resulting in a significant change to the documents upon the agreement of all Parties involved with the origination and review of the proposed Change Order. A proposed material change to the approved design plans must be unanimously approved by the Parties before being implemented.

The originator of the proposed Change Order may request an expedited review of a proposed Change Order if, in the originator's judgment, such is required to maintain the progress of the work, safety, and continuation of railroad operations, and/or to respond to unforeseen conditions. Upon receiving a request for an expedited review, the reviewing Parties shall endeavor to review and/or approve the proposed Change Order within the requested expedited time frame. If review comments and/or approval are not received within the requested expedited time frame, the originator may proceed with the proposed change, unless the proposed change would modify the final approved plans for the Project in a material manner. The originator will make a good faith effort to communicate with the remaining Parties but may elect to proceed with the Change Order without prior review and approval, with the understanding that further revisions to the Change Order may be required by the reviewing Party. As soon as practicable, the originator of the proposed Change Order shall provide the scope of such change to the other Parties for review and approval.

Municipality will each provide to NCDOT on a monthly basis a summary of all Change Orders related to each party's respective work to ensure that aggregate cost increases are monitored by NCDOT.

v. Revised Authorization for Construction

When a Change Order or an aggregate of Change Orders causes the cost of the Project to exceed the revised Project Estimate, involves a change in Scope or Work, and/or causes a change in Project Schedule, a revised Authorization for Construction for the Project among NCDOT and Municipality is required to permit a reimbursement for costs in excess of the revised Project Estimate.

vi. Post-Construction Drawings

Deviations from the approved final design plans will be documented to reflect the constructed field conditions. Municipality will be responsible for preparing post-construction drawings. The post-construction drawings are to be delivered to all Parties within ninety (90) days after issuance of certificate of occupancy.

g. SIGNAGE. The Municipality shall provide and maintain adequate barricades, signs, flagmen, and other warning devices for the protection of the general public.

h. E-VERIFY COMPLIANCE. E-Verify is the federal program operated by the United States Department of Homeland Security and other Federal agencies, or any successor or equivalent program, used to verify the work authorization of newly hired employees pursuant to Federal law. The Parties each individually warrant for themselves that they and any subcontractor performing work pursuant to this Agreement do presently and at all relevant times shall: (i) use E-Verify if required to do so by North Carolina law; and (ii) otherwise comply with the requirements of N.C.G.S. Chapter 64, Article 2. A breach of this warranty by any Party will be considered a breach of this Agreement by such Party, which shall entitle the other Parties to terminate this Agreement, without penalty, upon notice to the breaching Party.

i. CONSTRUCTION ENGINEERING. The construction engineering and supervision will be furnished by the Municipality. Reimbursement for construction administration costs cannot exceed fifteen percent (15%) of the actual construction contract cost. If the Municipality elects to procure a private consulting firm to conduct Project administration, the procurement shall be accomplished in accordance with the terms set out in Provision #2. a. iii of this Agreement. The Municipality, and/or its agent, shall perform Project administration in accordance with all Departmental policies and procedures.

9. TIMEFRAME

Project completion must occur within eighty-four (84) months after the execution of this Agreement. The Municipality will diligently pursue completion of its responsibilities on the Project. If, in the opinion of the Department, satisfactory progress has not been made within six (6) months after the execution of this Agreement the funds may be recalled by the Department. A thirty (30) day notice will be given prior to recall date. The Municipality may petition the Department at least sixty (60) days in advance of the expiration of this Agreement for an extension of the six (6) month period due to extenuating circumstances.

10. MAINTENANCE

Upon completion and acceptance of the Project Work, the Municipality shall be responsible for all maintenance and liability of the Project, at no cost or liability whatsoever to the Department or GoTriangle. The Municipality shall assure the station and platform are available for use by trains and passengers waiting and boarding, at no additional cost to the Department or GoTriangle.

11. FUNDING

The Estimated Cost of the Project is \$7,000,000.

The Department will be responsible for the cost of Preliminary Engineering and the Project Work in the total not to exceed amount of six million two hundred eighty thousand dollars (\$6,280,000.00).

The Municipality will be responsible for the cost of Preliminary Engineering and the Project Work in an amount not to exceed thirty-four thousand dollars (\$34,000.00) as its initial guaranteed contribution plus 100% of all costs which exceed the Estimated Cost.

GoTriangle will be responsible for the cost of Preliminary Engineering and the Project Work in an amount not to exceed six hundred eighty-six thousand dollars (\$686,000.00).

It is understood by all Parties to this Agreement that the amounts dedicated to the Project are based upon an estimated cost of the Project.

12. REIMBURSEMENT

After the Municipality has exhausted its initial guaranteed contribution towards Project costs, The Department and GoTriangle shall reimburse the Municipality the amount of their contributions until the funds described herein are fully expended in accordance with Section 13 set out herein below.

13. INVOICING

The Municipality shall submit an invoice to the Department and GoTriangle separately. Invoices shall show responsibility for all costs to be paid by the parties sequentially. The Municipality shall be responsible for all initial costs until its initial guaranteed contribution is exhausted. Go Triangle shall reimburse the Municipality for costs incurred after the Municipal contribution is exhausted until the Go Triangle contribution is exhausted. The Department then shall reimburse the Municipality for all costs until the Department contribution is exhausted. Any additional costs shall be the responsibility of the Municipality.

- a. SUBMITTAL OF INVOICE TO THE PARTIES. The Municipality shall submit a monthly itemized invoice and requested documentation to the Department and to Go Triangle in the form of Exhibit B, attached hereto and made a part hereof, showing costs to the responsible Party as set out in the paragraph above. The monthly invoice shall include all cumulated costs up to the date of the invoice and show the amount(s) owed by the respected responsible Parties for the payment of costs shown. Attached to each invoice will be a cost detail report to support 100% of the actual cost. The Municipality shall be responsible for completeness and accuracy of the invoice.

- i. The request for reimbursement shall include, but not be limited to, the following: municipal invoices, contractor(s) invoices, materials invoices, proofs of payment of third-party invoices, equipment invoices, and any other invoices that support the invoiced amount.
 - ii. By submittal of the invoice to the Department and Go Triangle, the Municipality certifies that it has adhered to all applicable State laws, policies, rules, regulations and statutes as set forth in this Agreement. Payment to the Municipality shall be made upon review and approval of the invoice by the Department's Rail Division, Office of the Inspector General, and Financial Management Division.
- b. REIMBURSEMENT TERMS. The Department, within thirty (30) calendar days of approval of the Municipality's itemized invoice by the Office of Inspector General and Financial Management Division, shall submit the approved invoice amount to the Municipality.
- c. REIMBURSEMENT FOR FORCE ACCOUNT WORK. Force account work is only allowed when 1) there is a finding of cost effectiveness for the work to be performed by some method other than contract awarded by competitive bidding process, and 2) the force account work is in compliance with N.C.G.S § 143-135. Any work performed by Municipal force account must be preapproved in writing by the Department and must be demonstrated to be an amount less than can be otherwise procured. Subsequent invoices shall show a summary of labor, labor additives, equipment, materials and other qualifying costs in conformance with the standards for costs set forth in 2 C.F.R. 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards", and 2 C.F.R. § 225 (2015). Payment shall be based on actual cost incurred with the exception of equipment owned by the Municipality. Payment for use of equipment owned by the Municipality cannot exceed the Department's rates in effect for the time period in which the work is performed. If work is performed by a contractor, said invoices shall show the contract cost.
- d. AUDITS. In accordance with 2 C.F.R. 200, subpart F, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards", the Municipality shall arrange for an annual independent financial and compliance audit of its fiscal operations and grants administration. The Municipality shall furnish the Department with a copy of the annual independent audit report within thirty (30) days of completion of the report, but not later than nine (9) months after the Municipality's fiscal year ends, to include the years in which the Municipality expends funds and the years in which the Department pays funds to the Municipality.
- e. RECORD RETENTION. Pursuant to N.C.G.S. §147-64.7, the Department, the State Auditor, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Municipality insofar as they relate to transactions with any department, board, officer, commission, institution, or other agency of the State of North Carolina pursuant to the performance of this Agreement or to costs charged to this Agreement. The Municipality shall retain any such books, records, and accounts for a minimum of three (3) years after the final date of payment under this Agreement and shall make them available at its office at reasonable times during the contract period and until the expiration of the term required by this paragraph for inspection and audit by the Department and the State Auditor.

- f. UNSUBSTANTIATED COSTS. The Municipality agrees that it shall bear all costs for which it is unable to substantiate actual costs.
- g. SALES TAX. Municipality is eligible for sales tax refunds under GS 105-164.14 (b) or (c); therefore, when Municipality enters into a contract with a contractor, it shall require the contractor to submit a Sales Tax Certification Form with every pay application. That form identifies how much local or state tax has been paid by the contractor. The Municipality shall pay the sales tax due the contractor as part of the contract payment. When the Municipality requests reimbursement from NCDOT, it shall present an invoice for contract payments, less the sales tax amount. The Municipality may then use the Sales Tax Certification Form(s) to request reimbursement of the sales tax from the NC Department of Revenue on an annual or quarterly basis in accordance with GS 105-164.14 (b) or (c). Under no circumstances does Department reimburse sales tax paid directly or indirectly by the Municipality.

14. OTHER PROVISIONS

- a. Indemnification of Department

The Municipality agrees to indemnify and hold harmless the Department, and the State of North Carolina, to the extent allowed by law, for any and all judgments for payment, damages and/or liabilities of any nature, rendered against the Department in connection with the Project. The Department shall not be responsible for any damages which may be caused by third parties.

- b. Debarment Policy

It is the policy of the Department not to enter into any agreement with parties that have been debarred by any government agency (Federal or State). By execution of this Agreement, the Municipality and GoTriangle certify that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal or State Agency or Department and that they will not enter into agreements with any entity that is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction.

- c. Agreement Modifications

Any modification to this Agreement will be agreed upon in writing by all Parties prior to being implemented.

- d. Other Agreements

The Municipality is solely responsible for all agreements, contracts, and work orders entered or issued by the Municipality for the Project. GoTriangle is solely responsible for all agreements, contracts, and work orders entered or issued by GoTriangle for the Project.

- e. Availability of Funds

All terms and conditions of the Agreement are dependent upon, and subject to, the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

f. Termination of Project

The Department shall have the right to end its participation in the Project Work at any time before the Municipality and GoTriangle have been called upon to perform any work or provide funding under the term of this Agreement.

If the Municipality terminates the Preliminary Engineering or the Project Work prior to completion and acceptance, the Municipality shall reimburse the Department one hundred percent (100%) of all actual costs expended by the Department associated with the Project Work.

g. Complete Understanding

The Parties agree that this Agreement embodies the complete understanding of the Parties with respect to the Project and supersedes other prior or contemporaneous written or oral agreements, understandings, and negotiations with respect to the Project Work.

h. Severability

The Parties agree that if any part, term, or provision of this Agreement is held to be illegal or in conflict with any state or federal law or regulation, such provision shall be severable, and the remaining provisions will remain valid and enforceable.

i. Governing Law

North Carolina law shall govern interpretation and enforcement of this Agreement and any other matters relating to this Agreement (all without regard to North Carolina conflicts of law principles). Any legal actions or proceedings brought by a Party arising from this Agreement shall be brought in the courts of Orange County, North Carolina or Wake County, North Carolina and in accordance with the laws of North Carolina. By the execution of this Agreement, the Parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections that they may have with respect to venue in any court sitting in Orange County, North Carolina or Wake County, North Carolina.

j. Authorization

The Parties acknowledge that the individual executing the Agreement on their respective behalves is authorized to execute this Agreement, on his/her behalf and to bind the respective entities to the terms contained herein, and that he/she has read this Agreement, conferred with his/her attorney, and fully understands its contents.

k. Signatures and Duplicates

A copy or facsimile copy of the signature of any Party shall be deemed an original with each fully executed copy of the Agreement as binding as an original, and the

Parties agree that this Agreement can be executed in counterparts, as duplicate originals, with facsimile signatures sufficient to evidence an agreement to be bound by the terms of the Agreement.

m. Failure to Comply

Failure on the part of the Municipality or GoTriangle to comply with any of the provisions of this Agreement will be grounds for the Department to terminate participation in the costs of the Project and, if applicable, seek repayment of all cost expended by the Department, provided, however, that the Department shall first notify the Municipality and/or GoTriangle of such failure and provide the Municipality and/or GoTriangle the opportunity to cure same.

n. Use of Powell Bill Funds

In the event that the Department determines that the funds paid to the Municipality for this Project are not used in accordance with the terms of this Agreement, the Department reserves the right to deduct or withhold monies from the Municipality's Powell Bill Fund. Such determination by Department shall be made, either by audit and/or inspection of books, documents, papers, accounting records, and such other evidence as may be appropriate to substantiate costs.

o. Transfer of Responsibilities

The Department must approve any assignment or transfer of responsibilities of the Municipality and GoTriangle set forth in this Agreement to other entities.

15. DESIGNATED REPRESENTATIVE

Any notice, consent or other communication required or contemplated by this Agreement shall be in writing and shall be delivered by electronic mail to the intended recipient at the electronic mail address set forth below. Notice shall be effective upon the date of receipt by the intended recipient. Each Party may change its designated representative for notification purposes by giving the other Parties written notice of the new address and the date upon which it shall become effective.

Craig Newton, PE, shall serve as the Department's representative and project manager for the Project as set forth in this Agreement. All notices, correspondence, and questions should be directed to him at cmnewton@ncdot.gov or by calling (919) 707-4731.

Margaret Hauth, AICP, Planning Director/Assistant Town Manager, shall serve as the Municipality's representative and project manager for the Project Work as set forth in this Agreement. All notices, correspondence, and questions should be directed to her at Margaret.hauth@hillsboroughnc.org or by calling (919) 732-1270 ext. 86.

Shelley Blake, Interim President and CEO, shall serve as GoTriangle's representative and project manager for this Project as set forth in this Agreement. All notices, correspondence, and questions should be directed to him at SBlake@gotriangle.org or by calling (919) 485-7424.

16. PROPERTY CEASES TO BE USED FOR RAIL PURPOSES

If the Project ceases to be available for use for passenger rail purposes as a result of the voluntary action of the Municipality, the Department may, at the discretion of the Secretary of

Transportation, require reimbursement by Municipality to Department. This provision applies and shall survive for a period of twenty-five (25) years after the date on which the Department-funded portion of the Project is completed, as memorialized by the date of issuance of a Certificate of Occupancy (CO) by the permitting authority. The Department's initial investment shall be equal to the sum of all state funds paid to Municipality under the Project. The amount of the reimbursement shall be calculated by dividing the initial investment by the number of years of this project (twenty-five (25) years) and multiplying the result by the number of years between the cessation date and the day which is twenty-five (25) years from the CO issuance date. Reimbursement to the Department shall be made in one lump-sum payment within thirty (30) days of billing by the Department.

17. ETHICS PROVISION

By Executive Order 24, issued by Governor Perdue, and N.C.G.S. § 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e. Administration, Commerce, Cultural Resources, Environment and Natural Resources, Health and Human Services, Public Safety, Revenue, Transportation, and the Office of the Governor).

IN WITNESS WHEREOF, this Agreement has been executed, in triplicate originals, the last day and year set out below, on the part of the Department, the Municipality, and GoTriangle by authority duly given.

N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this Agreement, you attest, for your entire organization and its employees or agents, that you are not aware that any gift in violation of N.C.G.S. § 133-32 and Executive Order 24 has been offered, accepted, or promised by any employees of your organization.

WITNESS

TOWN OF HILLSBOROUGH

BY: Kath M. Cathey
NAME: Katherine M. Cathey
TITLE: Town Clerk
DATE: 04/24/2020

BY: [Signature]
NAME: ERIC J. PETERSON
TITLE: TOWN MANAGER
DATE: 4/24/2020

MUNICIPAL SEAL



Approved by the Town of Hillsborough governing board as attested to by the signature of [Signature]
Clerk of the Board of Commissioners 04/24/2020
(Date)

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

Daphna Schwartz Digitally signed by Daphna Schwartz
Date: 2020.04.24 16:13:54 -04'00'

Municipal Finance Director

FEDERAL IDENTIFICATION NUMBER

56-6001246

Town of Hillsborough

MAILING ADDRESS

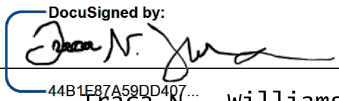
Town of Hillsborough
P.O. Box 429
Hillsborough, NC 27278-0429
Attn: _____

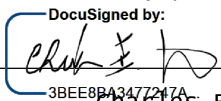
IN WITNESS WHEREOF, this Agreement has been executed, in triplicate originals, the last day and year set out below, on the part of the Department, the Municipality, and the Authority by authority duly given.

N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this Agreement, you attest, for your entire organization and its employees or agents, that you are not aware that any gift in violation of N.C.G.S. § 133-32 and Executive Order 24 has been offered, accepted, or promised by any employees of your organization.

WITNESS

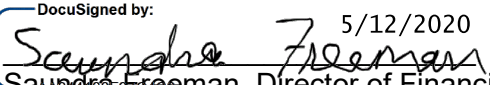
Research Triangle Regional Public
Transportation Authority (d/b/a GoTriangle)

BY: 
NAME: Traca N. Williamson
TITLE: Administration
DATE: 5/12/2020

BY: 
NAME: Charles E. Lattuca
TITLE: CEO
DATE: 5/6/2020

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

FEDERAL TAX IDENTIFICATION NUMBER

DocuSigned by:

Sandra Freeman, Director of Financial
And Administrative Services

561718037

Reviewed and approved as to legal form

MAILING ADDRESS
P.O. Box 13787
Research Triangle Park, NC 27709

DocuSigned by:

Shelley Curran
General Counsel

ATTN: Shelley Blake

IN WITNESS WHEREOF, this Agreement has been executed, in triplicate originals, the last day and year set out below, on the part of the Department, the Municipality, and the Authority by authority duly given.

ATTEST

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

BY: DocuSigned by:
ELIZABETH SMITH
FEC0C28DB12D496...

BY: DocuSigned by:
Julie White
B1309F15DE4B46B...

NAME: Elizabeth Smith

NAME: Julie White

TITLE: Processing Agent

TITLE: Deputy Secretary of Multi-Modal
Transportation

DATE: 2/23/2021

DATE: 2/23/2021

MAILING ADDRESS

North Carolina Department of Transportation
Rail Division, Operations and Facilities
Branch
1553 Mail Service Center
Raleigh, North Carolina 27699-1553
ATTN: Craig Newton, PE
Project Engineer, Rail Division

APPROVED BY BOARD OF TRANSPORTATION ITEM O: January 9, 2020
(Date)

EXHIBITS TO BE PROVIDED