

**ORANGE COUNTY, DURHAM COUNTY,
AND RESEARCH TRIANGLE REGIONAL PUBLIC TRANSPORTATION AUTHORITY
INTERLOCAL AGREEMENT FOR COST SHARING
FOR THE DURHAM-ORANGE LIGHT RAIL TRANSIT PROJECT**

This Interlocal Agreement for Cost Sharing for the Durham-Orange Light Rail Transit (D-O LRT) Project (Agreement) dated April ~~20~~, 2017, is entered into by and between Orange County (Orange), a political subdivision of the State of North Carolina, Durham County (Durham), a political subdivision of the State of North Carolina, and Research Triangle Regional Public Transportation Authority d/b/a GoTriangle (GoTriangle), a regional public transportation authority. As used in this Agreement, Orange, Durham, and GoTriangle may be referred to individually as a "Party" and collectively as the "Parties." This Agreement is made pursuant to Article 20 of Chapter 160A of the North Carolina General Statutes (N.C.G.S.) and N.C.G.S. § 105-508.1.

RECITALS:

WHEREAS, all Parties desire to provide for the future transportation needs of Durham and Orange, understanding that enhanced mobility options will support a high quality of life, strengthen economic development, and promote sustainability; and

WHEREAS, the Durham County Board of County Commissioners approved the first Durham County Bus and Rail Investment Plan on June 27, 2011 (Durham BRIP); and

WHEREAS, Orange, Durham, and GoTriangle entered into the original Interlocal Agreement for Cost Sharing for the D-O LRT Project on May 15, 2012 (2012 Cost Sharing Agreement); and

WHEREAS, the Orange County Board of County Commissioners approved the first Bus and Rail Investment Plan in Orange County on October 2, 2012 (Orange BRIP); and

WHEREAS, the Durham-Chapel Hill-Carrboro Metropolitan Planning Organization (DCHC MPO) approved the Durham BRIP on June 22, 2011, and the Orange BRIP on October 10, 2012 (Orange BRIP and Durham BRIP collectively, County BRIPs); and

WHEREAS, the GoTriangle Board of Trustees (GoTriangle Board) approved the Durham BRIP on June 22, 2011, and approved the Orange BRIP on June 27, 2012; and

WHEREAS, the D-O LRT Project was included in both County BRIPs as a major capital investment; and

WHEREAS, the Federal Transit Administration (FTA) issued its Record of Decision (ROD) for the D-O LRT Project on February 11, 2016, and an Amended ROD on December 14, 2016; and

WHEREAS, in accordance with the FTA approvals, the D-O LRT Project is a 17.7-mile, 18-station light rail transit service which will provide connections between University of North Carolina (UNC) Hospitals, the UNC campus, the William and Ida Friday Center for Continuing Education, Patterson Place, the South Square area, Duke University, the Duke University and Durham Veterans Affairs Medical Centers, downtown Durham, east Durham, and North Carolina Central University; and

WHEREAS, GoTriangle is seeking funds from FTA's Capital Investment Grant (CIG) Program (49 U.S.C. § 5309) for the D-O LRT Project; and

WHEREAS, the D-O LRT Project Cost Estimate which is eligible for federal participation, including costs related to project development, engineering, construction, testing, commissioning, start-up, and financing costs through the anticipated final year of disbursement of federal funds (projected to be 2032), is \$2,476.3 million year of expenditure (YOE) (New Starts Project Cost); and

WHEREAS, GoTriangle receives and uses public monies, pursuant to N.C.G.S. Chapter 105, Articles 43, 50, 51, and 52, to fund public transportation in GoTriangle's jurisdiction, including the planning, financing, construction, maintenance, and operation costs of the D-O LRT Project; and

WHEREAS, there are four dedicated local revenue sources used to fund the D-O LRT Project and other new transit projects and services in Durham and Orange: (1) Article 43 Half-Cent (0.5 percent) Sales and Use Tax; (2) Article 50 Five-Percent (5 percent) Vehicle Rental Tax; (3) Article 51 Three-Dollar (\$3) increase to GoTriangle Regional Vehicle Registration Fee; and (4) Article 52 Seven-Dollar (\$7) County Vehicle Registration Fee (collectively, Dedicated Local Transit Revenues); and

WHEREAS, in light of changes to the original funding assumptions in the County BRIPs, the Parties have revised their funding strategy for the D-O LRT Project as follows: federal (50 percent [\$1,238.15 million YOE]), state (10 percent [\$247.63 million YOE]), and local/other (40 percent [\$990.52 million YOE]); and

WHEREAS, in order for the D-O LRT Project to advance to the Engineering Phase of the CIG Program (Engineering Phase), at least 30 percent of the non-CIG share of the D-O LRT Project (\$371.4 million YOE) must be committed at entry to the Engineering Phase; and

WHEREAS, the Parties acknowledge that the total non-CIG share of the New Starts Project Cost is \$1,238.15 million YOE, of which \$887.9 million YOE (71.7 percent) is committed from the Dedicated Local Transit Revenues; and

WHEREAS, the Parties acknowledge that one hundred percent (100%) of non-CIG funds must be committed prior to GoTriangle's application for a Full Funding Grant Agreement (FFGA), which is anticipated to be submitted to FTA in calendar year 2019; and

WHEREAS, on February 16, 2017, GoTriangle received guidance from FTA explaining that additional documentation would be necessary to update the estimated D-O LRT Project cost in the County BRIPs, and to confirm that at least 30 percent of the non-CIG share (at least \$371.4 million YOE) is committed; and

WHEREAS, the Parties acknowledge material changes to the County BRIPs have occurred, as defined in the 2012 Interlocal Implementation Agreement for Orange County Bus and Rail Investment Plan and the 2013 Interlocal Implementation Agreement for Durham County Bus and Rail Investment Plan, prompting the Parties to revise the County BRIPs; and

WHEREAS, on April 24, 2017, the Durham County Board of County Commissioners adopted the updated Durham County Transit Plan (2017 Durham Plan) and authorized the execution of this Agreement; and

WHEREAS, on April 27, 2017, the Orange County Board of County Commissioners adopted the updated Orange County Transit Plan (2017 Orange Plan) and authorized the execution of this Agreement; and

WHEREAS, on April 28, 2017, the DCHC MPO Board approved the 2017 Orange Plan and the 2017 Durham Plan (collectively, 2017 County Plans); and

WHEREAS, on April 28, 2017, the GoTriangle Board approved the 2017 County Plans and authorized the execution of this Agreement; and

WHEREAS, the D-O LRT Project remains a major capital investment of the 2017 County Plans; and

WHEREAS, pursuant to the 2017 County Plans, Orange and Durham mutually desire to allocate Dedicated Local Transit Revenues for the planning, construction, financing, and operation and maintenance of the D-O LRT Project; and

WHEREAS, the Parties intend this Agreement to supersede the May 2012 Cost Sharing Agreement, to memorialize a D-O LRT Project cost sharing plan, and to fully satisfy FTA's requirements for entry into the Engineering Phase; and

WHEREAS, the Parties recognize the importance of the D-O LRT Project to Orange, Durham, the Research Triangle region, and the State of North Carolina;

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

1. The effective date of this Agreement is the date first set forth above.
2. This Agreement supersedes the Parties' 2012 Cost Sharing Agreement.
3. The 2017 County Plans are specifically incorporated by reference as if the same were fully set forth herein.
4. The New Starts Project Cost is \$2,476.3 million YOE. The Parties acknowledge that as the D-O LRT Project moves from preliminary design (30 percent) to final design (100 percent), as with any major capital project planned and constructed over a number of years, the actual capital and financing costs may be subject to change and adjustment. The Parties acknowledge that entry into the Engineering Phase establishes a maximum CIG funding share of \$1,238.15 million YOE.
5. As set forth in the 2017 County Plans, the Parties agree to pay for the New Starts Project Cost using a combination of federal (50 percent), state (10 percent), and local/other (40 percent) funding sources. From the Dedicated Local Transit Revenues, and as of the effective date of this Agreement, the Parties commit a total of \$887.9 million YOE to fund

the New Starts Project Cost (County Contributions). The Parties agree that total County Contributions shall not exceed 40 percent of the New Starts Project Cost.

6. The share of the County Contributions from the Dedicated Local Transit Revenues committed by Durham shall be \$738.4 million YOE (Durham Share).
7. The share of the County Contributions from the Dedicated Local Transit Revenues committed by Orange shall be \$149.5 million YOE (Orange Share).
8. Without further approval from Orange and Durham, GoTriangle shall allocate and pay for the Durham Share and the Orange Share of the New Starts Project Cost, including the planning, engineering, financing, and construction, from the Dedicated Local Transit Revenues in accordance with this Agreement and the 2017 County Plans.
9. GoTriangle may allocate and pay for the counties' respective shares of the New Starts Project Cost, including the planning, engineering, financing, and construction, from the Dedicated Local Transit Revenues on a pay-as-you-go basis and/or by issuing debt with a par value up to the amount committed in Paragraph 5 above. Consistent with North Carolina law and the 2017 County Plans, GoTriangle may use the Dedicated Local Transit Revenues for the purposes of issuing and repaying debt. GoTriangle will allocate debt attributed to each county as follows: eighty-one and one-half percent (81.5%) for Durham and eighteen and one-half percent (18.5%) for Orange.
10. In preparation for submittal of the FFGA application, the Parties shall collaborate among themselves and with philanthropic, corporate, institutional, non-profit, and other supporters to secure the remainder of the non-CIG share needed for construction from sources including, but not limited to: private monetary and in-kind donations, other funds specifically identified to fund the Joint Development component of the D-O LRT Project, and additional federal and state funds (as may become available). The Parties understand that the Financial Plan for the D-O LRT Project must reflect that one hundred percent (100%) of non-CIG funds are committed prior to GoTriangle's application for a FFGA.
11. The costs to operate and maintain the D-O LRT system (O&M Cost) will be paid first from light rail system fare revenues, with any remaining O&M Cost being paid from the Dedicated Local Transit Revenues.
12. The division of responsibility for O&M Cost and State of Good Repair cost shall be allocated as follows: eighty percent (80%) for Durham and twenty percent (20%) for Orange through 2036, and eighty-one percent (81%) for Durham and nineteen percent (19%) for Orange thereafter.
13. If, during the term of this Agreement, federal CIG funds, private, in-kind, local or other funds as described in Paragraph 10, or state funds to be used for the D-O LRT Project are cancelled, terminated, withdrawn, do not materialize, or otherwise become unavailable for the D-O LRT Project, or if such federal CIG or state funds are reduced in an amount that requires additional local revenues beyond the County Contributions, the Parties shall meet within fifteen (15) business days to determine how to address the situation. Such

response may include, but not be limited to the following: a schedule delay in one or more aspects of the D-O LRT Project; phased implementation of the D-O LRT Project; a reduction in the scope of the D-O LRT Project; suspension of the D-O LRT Project; working together to identify and pursue additional funding mechanisms to directly support the D-O LRT Project from sources other than the Dedicated Local Transit Revenues; a combination of these measures; discontinuation of the D-O LRT Project; or other reasonable steps to mutually address the situation.

If the Parties elect to discontinue the D-O LRT Project, the Staff Working Groups¹ shall convene within twenty (20) business days to begin the process to develop new transit plans for Orange and Durham so that funds generated by the Dedicated Local Transit Revenues can be reallocated.

14. Upon entry into the Engineering Phase, GoTriangle will produce Quarterly D-O LRT Project Reports in accordance with FTA requirements (Quarterly Reports) and will share such Quarterly Reports with FTA, Orange, Durham, and DCHC MPO. In the event of significant cost overruns or unmitigated funding shortfalls that require additional local revenues beyond the County Contributions, as may be reflected in the Quarterly Reports to FTA, the Parties shall meet within fifteen (15) business days to determine how to address the situation. Such response may include, but not be limited to the following: a schedule delay in one or more aspects of the D-O LRT Project; phased implementation of the D-O LRT Project; a reduction in the scope of the D-O LRT Project; suspension of the D-O LRT Project; working together to identify and pursue additional funding mechanisms to directly support the D-O LRT Project from sources other than the Dedicated Local Transit Revenues; a combination of these measures; discontinuation of the D-O LRT Project; or other reasonable steps to mutually address the situation. As used herein, "significant cost overruns or unmitigated funding shortfalls" means either: (i) an annual decrease in total revenues from the Dedicated Local Transit Revenues as set forth in the 2017 County Plans, as those Plans may be amended, of 5% or more; or (ii) after entering the Engineering Phase, an increase in the D-O LRT Project capital cost (including financing) as set forth in the 2017 County Plans, as those Plans may be amended, of 5% or more; or (iii) an annual increase in the overall project operating costs of the D-O LRT Project as set forth in the 2017 County Transit Plans, as those Plans may be amended, of 5% or more.

If the Parties elect to discontinue the D-O LRT Project, the Staff Working Groups shall convene within twenty (20) business days to begin the process to develop new transit plans for Orange and Durham so that funds generated by the Dedicated Local Transit Revenues can be reallocated.

15. In the event of a significant cost overrun or an unmitigated funding shortfall as set forth in Paragraphs 13 or 14, representatives of each Party shall meet as set forth in Paragraphs 13 or 14 to attempt in good faith to resolve the matter(s). All Parties must be represented by a person with the authority to settle the matter(s) on behalf of the Party. The Parties

¹ As set forth in the Durham and Orange Implementation Agreements, the Staff Working Group for each County Plan consists of one voting member and one alternate from each of the following entities: the applicable county, GoTriangle, and DCHC MPO.

may by agreement and in good faith conduct further meetings as necessary to resolve the matter(s).

If resolution is not achieved, any Party may demand mediation in writing. Upon such demand, all Parties shall be required to participate in mediation. The dispute(s) to be mediated shall be memorialized in writing. The Parties shall in good faith select a mediator certified in accordance with the rules of mediator certification in Superior Court in North Carolina. If the parties are unable to agree to a mediator, a mediator will be appointed by the American Arbitration Association. If, after all reasonable good faith attempts to resolve the matter have been made, and it appears to the mediator that the parties are at an impasse with no significant likelihood of reaching resolution, the mediator shall issue a written notice of impasse identifying the unresolved issue(s) between the Parties.

Following a declaration of impasse by the mediator, the unresolved issue(s) shall be arbitrated upon the written demand of any Party. The arbitration shall be expedited, and the American Arbitration Association rules shall apply to the arbitration, unless the Parties agree otherwise. Prior to arbitration, the Parties may bring forward all possible remedies that may be considered by the arbitrator(s). The arbitration hearing shall take place in Wake County, North Carolina, before a panel of three (3) arbitrators, with Orange selecting one (1) arbitrator, Durham selecting one (1) arbitrator, and those two (2) arbitrators jointly selecting the third arbitrator, unless Durham and Orange can reach consensus on a single arbitrator. The decision of the arbitrator(s) shall be by simple majority and binding upon the Parties. Judgment on an award rendered in any such arbitration may be entered in the Superior Court of Wake County.

Each Party shall bear its own costs related to the foregoing dispute resolution process, including reasonable attorneys' fees, except that all mediation and/or arbitration fees charged by a mediator or arbitration panel shall be divided equally among the Parties. Each Party hereby consents to any such disputes being so resolved.

16. If the balance of the Dedicated Local Transit Revenues attributed to a county is insufficient to meet that county's respective share of costs, then neither Orange nor Durham shall be obligated to use revenues other than the Dedicated Local Transit Revenues to pay its respective share.
17. If, after the effective date of this Agreement, the Parties are authorized to levy new transit-specific taxes or fees, or if the limits of the Dedicated Local Transit Revenues are expanded by the North Carolina General Assembly, this Agreement shall not obligate the use of such additional revenues for the D-O LRT Project.
18. GoTriangle shall provide an annual report on the collection, allocation, and expenditure of the Dedicated Local Transit Revenues to the elected governing boards of Durham and Orange. GoTriangle shall provide to the governing boards of Durham and Orange copies of its annual audit reports as those reports are related to the collection of transit revenues

in Durham and Orange, including funds collected pursuant to N.C.G.S. Chapter 105, Articles 43, 50, 51, and 52.

19. The term of this Agreement shall continue until the latter of June 30, 2037 or the final maturity date of any debt issued in connection with the D-O LRT Project and payable from the Dedicated Local Transit Revenues.
20. This Agreement may be terminated upon mutual agreement of the Parties. In the event of termination prior to the expiration of the term set forth in Paragraph 19 or of any extensions thereto, the Parties shall determine what obligations remain and how to equitably distribute such obligations as they relate to the D-O LRT Project.
21. To be effective, any amendment, change, correction, extension, or termination of this Agreement shall be in the form of a written instrument approved by the governing board of each Party.
22. This Agreement shall be governed by and in accordance with the laws of the State of North Carolina. Except as to those matters subject to arbitration under Paragraph 15, the Parties agree that all actions relating in any way to this Agreement shall be brought in the General Court of Justice in the County of Wake, North Carolina.
23. Except to the extent provided otherwise in this Agreement, the Orange County Manager shall designate persons to carry out Orange's obligations under this Agreement, the Durham County Manager shall designate persons to carry out Durham's obligations under this Agreement, and the General Manager of GoTriangle shall designate persons to carry out GoTriangle's obligations under this Agreement.
24. All equipment, improvements, and interests in real property acquired under this Agreement shall be the property of GoTriangle or another entity under separate agreement and shall be subject to disposition as required under applicable law.
25. This Agreement is entered into by the Parties for their purposes only and does not confer any rights, benefits, remedies, or privileges on any other person or entity.
26. If any provision of this Agreement is determined to be unenforceable by a court of competent jurisdiction, such determination shall not affect any other provision of this Agreement.
27. Pursuant to N.C.G.S. § 147-86.59, any person identified as engaging in investment activities in Iran, determined by appearing on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. § 147-86.58, is ineligible to contract with the State of North Carolina or any political subdivision of the State. The Iran Divestment Act of 2015, N.C.G.S. § 147-86.55 et seq., requires the contracting party to certify that it meets the requirements of the Iran Divestment Act. By execution of this Agreement, each Party certifies that it is not on the Final Divestment List of entities that the State Treasurer has determined engages in investment activities in Iran, and that it shall not utilize in

connection with this Agreement any subcontractor that is identified on the Final Divestment List.

28. Each Party acknowledges that the individual executing this Agreement on behalf of the respective party 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.
29. A copy or facsimile copy of the signature of the individuals executing this Agreement shall be deemed an original with each fully-executed copy of this Agreement as binding as an original. The Parties agree that this Agreement can be executed in counterparts, as triplicate originals, with facsimile signatures sufficient to evidence an accord to be bound by the terms of this Agreement.
30. The terms and provisions herein contained constitute the entire agreement by and among the Parties and shall supersede all previous communications, representations, or agreements, either oral or written among the Parties with respect to the subject matter herein.

IN WITNESS WHEREOF, this Agreement has been executed, in triplicate originals, on the part of Orange County, Durham County, and GoTriangle by authority duly given.

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SIGNATURES CONTINUED ON PAGE FOLLOWING.**

ATTEST:

BY: Michelle Park

TITLE: County Clerk



ATTEST:

BY: Michelle Park

TITLE: Clerk to the Board



ATTEST:

BY: Michelle (Dawra)

TITLE: Clerk to the Board / Assistant Secretary

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

Saundra Freeman
Saundra Freeman
Chief Financial Officer and Director of Administrative Services

DURHAM COUNTY, NORTH CAROLINA

BY: Wendy Jacobs

TITLE: Chairperson, Board of County Commissioners

Reviewed and approved as to legal form by Durham County.

Lowell Siler
Lowell Siler
County Attorney

ORANGE COUNTY, NORTH CAROLINA

BY: John Roberts

TITLE: Chairperson, Board of County Commissioners

Reviewed and approved as to legal form by Orange County.

John Roberts
John Roberts
County Attorney

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

BY: Shelley Blake

TITLE: Chairperson, Board of Trustees

Reviewed and approved as to legal form by GoTriangle.

Shelley Blake
Shelley Blake
General Counsel