

# **Memorandum of Understanding for the Sub-Allocation of Federal Transit Administration Formula Grants to the Raleigh Urbanized Area**

**STATE OF NORTH CAROLINA  
COUNTY OF WAKE**

This Memorandum of Understanding (MOU) is made this \_\_\_\_ day of \_\_\_\_\_, 2017 by and between the **City of Raleigh**, a municipal corporation existing under the laws of the State of North Carolina (“Raleigh”); **The Research Triangle Regional Public Transportation Authority**, d/b/a GoTriangle (“GoTriangle”); the **Town of Cary**, a municipal corporation existing under the laws of the State of North Carolina (“Cary”); the **County of Wake** (“Wake County”); and the **Capital Area Metropolitan Planning Organization** (“CAMPO”). Raleigh, GoTriangle, Cary, Wake County, and CAMPO are collectively referred to herein as “Parties.”

WITNESSETH:

**WHEREAS**, Congress annually appropriates funds for Federal Transit Administration (FTA) programs, and Section 5307/5340 and Section 5339 funds are annually appropriated by FTA to the Raleigh Urbanized Area (UZA) based upon a formula; and

**WHEREAS**, Raleigh is the designated recipient for Section 5307/5340 and Section 5339 federal transit funds for the Raleigh UZA and expects to continue to be the designated recipient; and

**WHEREAS**, GoTriangle is an eligible direct grant recipient for Section 5307/5340 and Section 5339 federal transit funds in the Raleigh UZA and expects to continue to be an eligible direct grant recipient; and

**WHEREAS**, Cary is an eligible direct grant recipient for Section 5307/5340 and Section 5339 federal transit funds in the Raleigh UZA and expects to continue to be an eligible direct grant recipient; and

**WHEREAS**, Wake County is an eligible direct recipient for Section 5307/5340 and Section 5339 federal transit funds in the Raleigh UZA or has made appropriate arrangements to be a sub-recipient of an eligible direct grant recipient of said funds and expects to continue to maintain its status as either an eligible direct grant recipient or sub-recipient of an eligible direct grant recipient; and

**WHEREAS**, the Parties agree that in the event that additional agreements are required between any Party that is an eligible direct grant recipient and any Party that is an eligible sub-recipient to facilitate the flow of funds received by a direct grant recipient to the sub-recipient, then the Parties shall in good faith enter into such agreements; and

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**WHEREAS**, Raleigh, GoTriangle, Cary, and Wake County are required to submit data to the National Transit Database (NTD) that are used by FTA to determine the annual distribution of Section 5307/5340 and Section 5339 funds to the Raleigh UZA; and

**WHEREAS**, FTA distributes its Section 5307 and Section 5339 bus tier/non-fixed guideway funds to the Raleigh UZA using a formula with variable inputs based on UZA population, population density, bus revenue vehicle miles, bus passenger miles, and bus service operating cost; and

**WHEREAS**, FTA distributes its Section 5307 fixed guideway tier funds to UZAs and is expected to distribute fixed guideway tier funds to the Raleigh UZA in future years using a formula with variable inputs based on fixed guideway revenue miles, fixed guideway route miles, fixed guideway passenger miles, and fixed guideway operating cost, as well as a commuter rail floor and commuter rail incentive floor, if applicable; and

**WHEREAS**, FTA distributes additional Section 5307 and 5340 funds to the Raleigh UZA that are unspecific to transit mode based on low-income population and the total population of the Raleigh UZA as a proportion of the total UZA population of the State of North Carolina, respectively; and

**WHEREAS**, Raleigh, as the designated recipient, desires to pass-through Section 5307/5340 and Section 5339 funds on an annual basis in proportion to GoTriangle, Cary, and Wake County transit operations for both the FTA bus/non-fixed guideway tier and the fixed guideway tier, respectively; and

**WHEREAS**, CAMPO, as the federally and state-designated metropolitan planning organization for the Raleigh UZA, is responsible for concurring with the designated recipient's sub-allocation of FTA-distributed urbanized area formula grants to eligible direct grant recipients within the Raleigh UZA; and

**WHEREAS**, it has been determined by the Parties that the previous MOU executed by the City of Raleigh, Town of Cary and GoTriangle on April 1, 2016, that directs the sub-allocation of urbanized area federal formula transit grants distributed by the FTA for the bus/non-fixed guideway tier for use within the Raleigh UZA should be replaced by this new MOU that includes Wake County and CAMPO as additional Parties and directs the sub-allocation of Section 5339 and Section 5340 funds, the low-income component of Section 5307 funds, and the sub-allocation of Section 5307 fixed guideway tier funds; and

**WHEREAS**, Raleigh, Cary, GoTriangle, Wake County, and CAMPO jointly desire to outline the process and methodology for the annual apportionment and distribution of FTA Section 5307/5340 and Section 5339 funds that are available to the Raleigh UZA.

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**NOW THEREFORE**, in consideration of the mutual covenants and agreements herein contained, the Parties hereto agree as follows:

The Recitals are hereby incorporated into this MOU.

### **For FTA-distributed urbanized area bus tier/non-fixed guideway Section 5307 and Section 5339 formula grants:**

1. Formula funds apportioned to the Raleigh UZA based on population and population density shall be distributed to Raleigh and Cary using the most recent decennial U.S. Census enumerated population data. The distribution of formula funds for population and population density to Raleigh and Cary will be based on annual data unit values for population and population weighted by population density (population X population density) used by the FTA to sub-allocate apportionments to UZAs for the respective fiscal year. Cary will be entitled to its full share based upon its population and population density within the most recently delineated Raleigh UZA boundary. Raleigh's share shall be based on the remaining population and population density of the Raleigh UZA after deducting Cary's share.
2. Formula funds apportioned to the Raleigh UZA based on bus revenue vehicle miles (inclusive of vanpool and demand-response revenue vehicle miles) shall be distributed among Raleigh, GoTriangle, Cary, and Wake County in proportion to their certified submissions to the National Transit Database (NTD) from the fiscal year two years prior to the fiscal year of the sub-allocation. The distribution of formula funds for bus revenue vehicles miles to Raleigh, GoTriangle, Cary, and Wake County will be based on the annual data unit value for bus revenue vehicles miles used by the FTA to sub-allocate apportionments to UZAs for the respective fiscal year. Raleigh shall receive credit for North Carolina State University's certified submissions of bus revenue vehicles miles to the NTD from the fiscal year two years prior to the fiscal year of the sub-allocation.
3. Formula funds apportioned to the Raleigh UZA based on bus passenger miles (inclusive of vanpool and demand-response passenger miles) and bus operating cost shall be distributed among Raleigh, GoTriangle, Cary, and Wake County in proportion to their certified submissions to the NTD from the fiscal year two years prior to the fiscal year of the sub-allocation. The distribution of formula funds for bus passenger miles and bus operating cost (known as the incentive tier) to Raleigh, GoTriangle, Cary, and Wake County will be based on the annual data unit value for the incentive tier used by the FTA to sub-allocate apportionments to UZAs for the respective fiscal year. Raleigh shall receive credit for North Carolina State University's certified submissions of bus passenger miles and bus operating cost (incentive tier) to the NTD from the fiscal year two years prior to the fiscal year of the sub-allocation.

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## For FTA-distributed urbanized area fixed guideway Section 5307 formula grants:

4. Formula funds apportioned to the Raleigh UZA based on fixed guideway revenue vehicle miles, route miles, passenger miles, and operating cost shall be distributed among Raleigh, GoTriangle, Cary, and Wake County in proportion to their certified submissions to the NTD from the fiscal year two years prior to the fiscal year of the sub-allocation. The distribution of formula funds to Raleigh, GoTriangle, Cary, and Wake County for these service metrics will be based on the annual data unit values for those respective formula inputs used by the FTA to sub-allocate apportionments to UZAs for the respective fiscal year.
5. Any formula funds apportioned to the Raleigh UZA based on the FTA's commuter rail floor or commuter rail incentive floor shall be distributed to Raleigh, GoTriangle, Cary, and Wake County in proportion to their certified submissions to the NTD from the fiscal year two years prior to the fiscal year of the sub-allocate. The distribution of formula funds to Raleigh, GoTriangle, Cary, and Wake County for the commuter rail floor or commuter rail incentive floor will be based on the annual data unit values for these respective formula outputs used by the FTA to sub-allocate apportionments to UZAs for the respective fiscal year.
6. Formula funds apportioned to the Raleigh UZA based on low-income population (independent of funding tier) shall be distributed to Raleigh and Cary using the same American Community Survey (ACS) dataset employed by the FTA to determine the share of apportionments to UZAs based on low-income population in the respective fiscal year. The distribution of formula funds for low-income population to Raleigh and Cary will be based on the annual data unit value for low-income population used by the FTA to sub-allocate apportionments to UZAs for the respective fiscal year. Cary will be entitled to its full share based upon its low-income population within the most recently delineated Raleigh UZA boundary. If Cary's low-income population within the Raleigh UZA boundary cannot be disaggregated, Cary's share shall be calculated by multiplying the quotient of its most recent decennial U.S. Census enumerated population within the Raleigh UZA (as dividend) divided by its most recent decennial U.S. Census enumerated total population (as divisor) by its total low-income population using the same ACS dataset employed by the FTA to determine the share of apportionments to UZAs based on low-income population in the respective fiscal year in accordance with the following formula:

$$\frac{(\text{most recent decennial population of Cary within Raleigh UZA})}{(\text{most recent decennial total population of Cary})} \times \text{Total ACS dataset low-income}$$

Raleigh's share shall be based on the remaining low-income population of the Raleigh UZA after deducting Cary's share.

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7. Section 5340 formula funds apportioned to the Raleigh UZA based on population shall be distributed to Raleigh and Cary in proportion to their respective populations as further detailed in this section using the most recent decennial U.S. Census enumerated population data. Cary will be entitled to its full share based upon its population within the most recently delineated Raleigh UZA boundary. Raleigh's share shall be based on the remaining population of the Raleigh UZA after deducting Cary's share.
8. When the federal urbanized area formula grant allocations for the Raleigh UZA are published, CAMPO will prepare and make available the annual sub-allocations for review by Raleigh, GoTriangle, Cary, and Wake County. If prepared in accordance with the sub-allocation methodology set forth in this MOU, Raleigh, GoTriangle, Cary, and Wake County shall accept the sub-allocations as prepared, and Raleigh (as the designated recipient) will concur in the allocations and submit to CAMPO the proposed allocations for approval by the CAMPO Executive Board. Upon approval by the CAMPO Executive Board, CAMPO will notify Raleigh, GoTriangle, Cary, Wake County, and FTA.
9. Prior to distribution of the Section 5307/5340 and Section 5339 funds, GoTriangle, Cary, and Wake County shall be certified by FTA as an eligible grant recipient or shall have made an appropriate arrangement to be a sub-recipient of an eligible direct grant recipient.
10. Upon execution, this MOU shall replace the previous MOU executed by the City of Raleigh, Town of Cary and GoTriangle on April 1, 2016, that directs the sub-allocation of urbanized area federal formula transit grants distributed by the FTA for the bus/non-fixed guideway tier for use within the Raleigh UZA. The federal formula transit grant sub-allocation provisions of this MOU shall be effective beginning with the Federal Fiscal Year 2017 FTA apportionment to the Raleigh UZA.

### **11. Non-Discrimination**

No party shall discriminate on any prohibited basis.

### **12. Binding Effect and Assignment**

This MOU shall be binding on the successors and assigns of the Parties with reference to the subject matter of this MOU. No Party may sell or assign any interest in or obligation under this MOU without the prior express written consent of the other Parties.

### **13. Controlling Law**

All matters relating to this MOU shall be governed by the laws of the State of North Carolina, without regard to its choice of law provisions, and venue for

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any action relating to this MOU shall be Wake County Civil Superior Court or the United States District Court for the Eastern District of North Carolina, Western Division.

### **14. Term**

This MOU shall have a term of five (5) years from the date of execution by all Parties. This MOU may be extended or its provisions modified with the written agreement of all Parties hereto.

### **15. Representations and Warranties**

The Parties each represent, covenant and warrant for the other's benefit as follows:

(a) Each Party has all necessary power and authority to enter into this MOU and to carry out the transactions contemplated by this MOU, and this MOU has been authorized by Resolution spread upon the minutes of each Party's governing body. This MOU is a valid and binding obligation of each Party.

(b) Neither the execution and delivery of this MOU, nor the fulfillment of or compliance with its terms and conditions, nor the consummation of the transactions contemplated by this MOU, results in a breach of the terms, conditions and provisions of any agreement or instrument to which either Party is now a party or by which either is bound, or constitutes a default under any of the foregoing.

(c) To the knowledge of each Party, there is no litigation or other court or administrative proceeding pending or threatened against such Party (or against any other person) affecting such Party's rights to execute or deliver this MOU or to comply with its obligations under this MOU. Neither such Party's execution and delivery of this MOU, nor its compliance with its obligations under this MOU, requires the approval of any regulatory body or any other entity the approval of which has not been obtained.

### **16. Dispute Resolution**

In the event of conflict or default that might arise for matters associated with this MOU, the Parties agree to informally communicate to resolve the conflict. If any such dispute cannot be informally resolved, then such dispute, or any other matter arising under this MOU, shall be subject to resolution in a court of competent jurisdiction.

### **17. No Waiver of Non-Compliance with MOU**

No provision of this MOU shall be deemed to have been waived by any Party hereto unless such waiver shall be in writing and executed by the same

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formality as this MOU. The failure of any Party hereto at any time to require strict performance by the other of any provision hereof shall in no way affect the right of the other Party to thereafter enforce the same. In addition, no waiver or acquiescence by a Party hereto of any breach of any provision hereof by another Party shall be taken to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.

### **18. Liability of Officers and Agents**

No officer, agent or employee of any Party will be subject to any personal liability or accountability by reason of the execution of this MOU or any other documents related to the transactions contemplated hereby. Such officers, agents or employees will be deemed to execute such documents in their official capacities only, and not in their individual capacities. This section will not relieve any such officer, agent or employee from the performance of any official duty provided by law.

### **19. Execution in Counterparts/Electronic Version of MOU**

This MOU may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Any Party may convert a signed original of the MOU to an electronic record pursuant to a North Carolina Department of Natural and Cultural Resources approved procedure and process for converting paper

records to electronic records for record retention purposes. Such electronic record of the MOU shall be deemed for all purposes to be an original signed MOU.

### **20. Iran Divestment Act**

The Parties hereby certify that they, and all permitted subcontractors, if any, are not on the Iran Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.58.

### **21. No Third-Party Beneficiaries**

There are no third-party beneficiaries to this MOU.

IN WITNESS THEREOF, the Parties hereto have made and executed this MOU as of the day and year first above written.

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## NC CAPITAL AREA METROPOLITAN PLANNING ORGANIZATION

By: \_\_\_\_\_  
Executive Director

ACKNOWLEDGEMENT by NC CAPITAL AREA METROPOLITAN PLANNING ORGANIZATION, "CAMPO"

STATE OF:  
COUNTY OF:

I, \_\_\_\_\_ a Notary Public for said County and State, do hereby certify that \_\_\_\_\_, with whom I am acquainted, personally appeared before me on \_\_\_\_\_ 2017, who, being by me duly sworn, says that (s)he is an authorized Officer of \_\_\_\_\_ the organization described in and which executed the foregoing instrument; that (s)he knows the name of the organization and that the said Officer subscribed her/his name thereto, having the authority of the Board of Directors of said organization, and that said instrument is the act and deed of said organization.

Witness my hand and official seal, this day of \_\_\_\_\_ 2017.

Notary Public Signature:

(SEAL)

My Commission Expires:



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**CITY OF RALEIGH, NORTH CAROLINA**

By: \_\_\_\_\_  
City Manager or Authorized Designee

**ATTEST:**

By: \_\_\_\_\_  
Clerk  
[Seal]

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**RESEARCH TRIANGLE REGIONAL PUBLIC TRANSPORTATION  
AUTHORITY**

By: \_\_\_\_\_  
General Manager

**ATTEST:**

By: \_\_\_\_\_  
Clerk  
[Seal]

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**TOWN OF CARY, NORTH CAROLINA**

\_\_\_\_\_  
Town Manager

**ATTEST:**

\_\_\_\_\_  
Town Clerk

(SEAL)

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**COUNTY OF WAKE**

\_\_\_\_\_  
County Manager

**ATTEST:**

\_\_\_\_\_  
Clerk

(SEAL)