

DRAFT FOR DISCUSSION – NOT FOR SIGNATURE

COST SHARING MEMORANDUM OF AGREEMENT FOR THE COMMUTER RAIL PORTION OF THE MAJOR INVESTMENT STUDY

This Cost Sharing Memorandum of Agreement for the Wake-Durham Commuter Rail (CRT) Study (Agreement) dated September ____, 2017, is entered into by and between **DURHAM COUNTY** (Durham), a public body politic and corporate of the State of North Carolina, **WAKE COUNTY** (Wake), a public body politic and corporate of the State of North Carolina, **CAPITAL AREA METROPOLITAN PLANNING ORGANIZATION** (CAMPO), a metropolitan planning organization with jurisdiction in Wake County, and **RESEARCH TRIANGLE REGIONAL PUBLIC TRANSPORTATION AUTHORITY D/B/A GOTRIANGLE** (GoTriangle), a regional public transportation authority. As used in this Agreement, Wake, Durham, CAMPO 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 Wake and Durham Counties, understanding that enhanced mobility options will support a high quality of life, strengthen economic development, and promote sustainability; and

WHEREAS, the Wake County Board of County Commissioners approved the Wake Transit Plan on June 6, 2016; and

WHEREAS, the Durham County Board of Commissioners approved the Durham County Transit Plan (Durham Transit Plan) on April 24, 2017, which updated the 2011 Durham Bus and Rail Investment Plan; and

WHEREAS, the Capital Area MPO Executive Board approved the Wake Transit Plan on May 18, 2016; and

WHEREAS, GoTriangle approved the Wake Transit Plan on May 25, 2016, and the Durham Transit Plan on April 28, 2017, the Wake Transit Plan and Durham Transit Plan being collectively and jointly referred to herein as the “Plans;” and

WHEREAS, Wake and Durham Counties are both members of the Triangle Tax District administered by GoTriangle, but their Plans were modeled separately and apart and have differing governance structures; and

WHEREAS, both Plans include a proposed Commuter Rail Project (“CRT Project”) which will operate in Wake and Durham Counties; and

WHEREAS, both Plans include funding for a Transit Corridors Major Investment Study (MIS) to evaluate and recommend high-capacity transit alternatives for the Commuter Rail Project; and

WHEREAS, Nelson-Nygaard (“Consultant”) has been retained by GoTriangle and CAMPO to conduct the MIS, which includes planning tasks related to the CRT Project as well as unrelated projects not covered by this Agreement, pursuant to a Contract dated _____; and

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WHEREAS, GoTriangle receives and uses public monies, specifically referred to herein as “Wake Transit Plan Revenues¹” and “Non-Wake County Revenues²”, pursuant to N.C.G.S. Chapter 105, Articles 43, 50, 51, and 52, to fund public transportation in GoTriangle’s jurisdiction, including the MIS for the proposed CRT Project, subject to terms and conditions imposed by governance agreements, including the *Transit Governance Interlocal Agreement* entered into between Wake County, CAMPO and GoTriangle; and

WHEREAS, in addition to the Transit Governance Interlocal Agreement, the Parties entered into the *Agreement Setting Forth the Mutual Understanding of the Parties as to the Scope and Content of the Financial Plan* (“Financial Plan MOU”) which establishes that, so long as Wake County is a member of the multi-county Tax District, the “Equitable Use of Net Proceeds Within or to Benefit the Special District ” (as the term is defined by the Financial Plan MOU) requires that Wake Transit Plan Revenues and Non-Wake County Tax Revenue must be segregated, but contemplates the Parties may enter into a Cost Sharing Agreement for regional projects; and

WHEREAS, the Triangle Tax District FY18 Wake Capital Fund Ordinance included \$2.042 million for capital planning studies as outlined in the FY 2018 Wake Transit Work Plan, including a \$2 million appropriation for the MIS, which includes the CRT portion of the MIS; and

WHEREAS, the FY18 Durham Transit Plan included funding for Durham County in support of the CRT Project budgeted at \$850,000; and

WHEREAS, the budgeted cost of the MIS, as negotiated with Nelson/Nygaard, is \$1,605,137, of which the commuter rail portion is estimated at \$657,000.00 as shown in Attachment 1; and

WHEREAS, the Parties desire to enter into an agreement to memorialize their understanding of the division of costs among Wake Transit Plan Revenues and Non-Wake County Tax Revenues for the scope of work authorized by GoTriangle and CAMPO for the commuter rail portion of the MIS as described herein; ; and

WHEREAS, the Parties recognize the importance of the CRT Project to Durham County, Wake County, the Research Triangle region, and the State of North Carolina; and

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 recitals set forth above and the 2016 Wake County Transit Plan and the 2017 Durham County Plan are specifically incorporated by reference as if the same were fully set forth herein.
2. The effective date of this Agreement is the date first set forth above.

¹ “Wake Transit Plan Revenue” is defined in Section 2.39 of the Transit Governance Interlocal Agreement dated May 18, 2016.

² “Non-Wake County Revenues” is defined in Section 2.25 of the Transit Governance Interlocal Agreement dated May 18, 2016.

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3. The term of this Agreement shall be for a period of 24 months, subject to funding availability through the annual Wake Transit Work Plan and annual Durham Transit Work Plan.
4. The scope of this Agreement shall cover the commuter rail portion of the MIS to be completed by Nelson-Nygaard, including but not limited to, such items as the project management plan, development of the concurrence check process, existing conditions, system level standards and policy framework, alternatives, risk assessment, project sponsor identification, and public involvement plan.
5. Per the MIS contract, the Consultant shall submit a progress report ("Progress Report") to both GoTriangle and CAMPO reflecting the current status of milestones, deliverables, and the work as required by GoTriangle. Further, the Progress Report shall include a description of the work performed, a percentage of completion of each task, and the amount of payment requested for each of the tasks performed. Failure to provide a Progress Report may result in the delay of being able to submit an invoice. Based on the approval of both GoTriangle and CAMPO, the Contractor shall prepare and submit an invoice on a monthly basis to GoTriangle in accordance with the format provided by GoTriangle.
6. Upon receipt of the invoice and subject to budgeted appropriations from the annual Wake Transit Work Plan and Durham Transit Work Plan, with further approval of CAMPO, GoTriangle is authorized to pay invoices submitted by the Consultant from Wake Transit Plan Revenues and Durham Transit Plan Revenues for the scope of work outlined in Paragraph 4, and the Consultant will be reimbursed in accordance with the following funding allocation:
 - i. 67% of each approved invoice shall be paid from Wake Transit Plan Revenues; and
 - ii. 33% of each approved invoice shall be paid from Durham Transit Plan Revenues.

As Contract Administrator, GoTriangle, with the concurrence of CAMPO, shall have full discretion and authority to reject or approve any invoice submitted by the Consultant, provided the approval of an invoice does not exceed budgeted appropriations in the annual Wake Transit Work Plan or Durham Transit Plan. CAMPO shall submit their comments on the invoice to GoTriangle within fourteen (14) days of receipt from the Consultant. GoTriangle shall retain all invoices submitted by the Consultant which shall be open to inspection by the Parties. Payments shall detail with specificity the segregation of Wake Transit Plan Revenue from Non-Wake County Tax Revenues.

7. The Parties recognize that the funding division outlined above is based on approximately 37 total track miles currently planned in the CRT Project, approximately 67% of which is proposed to be located in Wake County and 33% of which is proposed in Durham County. The Parties additionally recognize that the funding methodology adopted herein is unique to the scope of work outlined in this Agreement and shall not govern or bind the Parties to the same cost share allocation for any associated aspects of the CRT Project or any other regional project.

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8. As Contract Administrator and Tax District Administrator, GoTriangle agrees to provide MIS updates to the TPAC and to the Parties, within 30 days of a request. Additionally, GoTriangle shall provide on at least a quarterly basis, consistent with the reporting schedule set forth in the *Transit Governance Interlocal Agreement*, financial reports showing the [progress of the study each quarter and](#) expenditure of funds associated with the CRT Project and this Agreement.
9. 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 herein or of any extensions thereto, the Parties shall exercise their best efforts to determine what obligations remain and how to equitably distribute such obligations.
10. 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, unless through legally delegated authority.
11. This Agreement shall be governed by and in accordance with the laws of the State of North Carolina. 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.
12. 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.
13. 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.
14. 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.
15. 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.
16. 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

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originals, with facsimile signatures sufficient to evidence an accord to be bound by the terms of this Agreement.

17. The Parties further acknowledge that this Agreement does not represent a joint undertaking of the Parties pursuant to Chapter 160A of the North Carolina General Statutes and confers no right, power, or authority among any Party to bind the other to commit to the proposed CRT Project. Further, the Parties agree that Wake County and Durham County are not funding partners by virtue of this Agreement.
18. 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. Notwithstanding the above, the Parties recognize that the *Agreement Setting Forth the Mutual Understanding of the Parties as to the Scope and Content of the Financial Plan* shall take precedence over any conflicting provisions within this Agreement. With respect to Wake County, the terms of the *Transit Governance Interlocal Agreement* shall override any conflicting provision within this Agreement.

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

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SIGNATURES CONTINUED ON PAGE FOLLOWING.**

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ATTEST:

DURHAM COUNTY, NORTH CAROLINA

BY: _____

BY: _____

TITLE: _____

TITLE: _____

This instrument has been preaudited in the manner required by The Local Government Budget and Fiscal Control Act.

_____, Chief Financial Officer

Reviewed and approved as to legal form by
Durham County.

Lowell Siler
County Attorney

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ATTEST:

WAKE COUNTY, NORTH CAROLINA

BY: _____

BY: _____

TITLE: _____

TITLE: _____

This instrument has been preaudited in the manner required by the The Local Government Budget and Fiscal Control Act.

_____, Chief Financial Officer

Reviewed and approved as to legal form by Wake County.

County Attorney

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ATTEST:

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

BY: _____

BY: _____

TITLE: _____

TITLE: Jeffrey K. Mann, General Manager

This instrument has been preaudited in the manner required by the The Local Government Budget and Fiscal Control Act.

Saundra Freeman, Chief Financial Officer

Reviewed and approved as to legal form by
GoTriangle.

Shelley Blake, General Counsel

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NC CAPITAL AREA METROPOLITAN PLANNING ORGANIZATION “CAMPO”

By: _____
Chris Lukasina, Executive Director

ACKNOWLEDGEMENT by
NC CAPITAL AREA METROPOLITAN PLANNING ORGANIZATION, “CAMPO”

State of North Carolina
County of Wake

I, Valorie D. Lockhart, a Notary Public for said County and State, do hereby certify that Chris Lukasina, Executive Director personally came before me this day and acknowledged the due execution for the foregoing instrument.

Witness my hand and official seal, this the ____ day of _____, 2017.

Valorie D. Lockhart, Notary Public

(Affix notary seal)

My Commission Expires: February 17, 2021

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EXHIBIT A

To the CRT-specific study amount of \$425,61.49 add a proportionate share of the project management/public involvement costs.

The CRT-specific costs are 40.9% of the combined BRT and CRT costs. 40.9% of the Project Management/Public Involvement costs (\$564,148) is equal to \$230,675.

The CRT-associated total is $\$425,651.49 + \$230,674.96 = \$656,326.46$.

That is rounded to \$657,000 for the total estimated cost for the CRT study portion of the MIS.