

**AGREEMENT FOR PARK CENTER PHASE I
PUBLIC-PRIVATE PROJECTS**

This AGREEMENT FOR PARK CENTER PHASE I PUBLIC-PRIVATE PROJECTS ("Agreement") is entered into this 12th day of October, 2015, by and among DURHAM COUNTY, NORTH CAROLINA, a political subdivision of the State of North Carolina (the "County"), and RESEARCH TRIANGLE FOUNDATION OF NORTH CAROLINA, a North Carolina non-profit corporation ("RTF").

WITNESSETH:

WHEREAS, the County is authorized to enter into this Agreement pursuant to North Carolina Session Law 2005-172, Senate Bill 435; and

WHEREAS, for over fifty (50) years, the County and RTF have invested in education, built a national jobs engine, and forged the Research Triangle Park into a global brand; and

WHEREAS, in 2012, RTF released a Master Plan to guide Research Triangle Park for the next fifty years, including redevelopment of certain areas within Research Triangle Park; and

WHEREAS, the redevelopment of Park Center, the 98-acre area of the Research Triangle Park located at the southwest intersection of Davis Drive and Interstate 40 (as more fully described in Article I below), is the cornerstone of the Master Plan; and

WHEREAS, RTF has been working with the Durham City-County Planning Department to establish a new zoning district under the Durham UDO to allow RTF to develop areas (in particular, Park Center) with support services required by research and production activities, supported by access to open space and amenities that encourage pedestrian activity as well; and

WHEREAS, over the past twenty-four (24) months, RTF has invested over \$25 million in Park Center; and

WHEREAS, RTF is committed to spending at least another \$20 million in the coming years to redevelop the infrastructure on the east end of Park Center ("Phase I Infrastructure"); and

WHEREAS, RTF seeks assurances from the County that the County will fund certain specific Phase I Infrastructure projects; and

WHEREAS, Park Center, when completed, will contain approximately three (3) million square feet of commercial, retail and residential space; and

WHEREAS, RTF estimates and projects based on local economic development data that Park Center, once completed, will yield the following:

- \$324 million in Direct Investment
- 2,300 in Construction Related Jobs
- \$130 million in Total Compensation
- \$13.2 million in Tax Revenue (sales and income); and

WHEREAS, RTF, in addition, estimates and projects based on local economic development data that Park Center, once completed, will on an annual basis yield the following:

- \$3.3 million annual Property Taxes
- 5,900 On-site Jobs
- \$2.2 million in Local Sales Taxes; and

WHEREAS, the County acknowledges that the redevelopment of Park Center, including the Phase I Infrastructure, will bring direct and indirect benefits to the County, including job creation, increase in ad valorem tax base, and economic diversification and stimulus; and

WHEREAS, the Board of Commissioners of Durham County has determined that the County will significantly benefit from the County's participation in the development of the public-private projects defined within this Agreement from increases to annual property taxes, local sales taxes, and by the creation of new jobs; and

WHEREAS, the County is willing to share in the costs of the development of specific Phase I Infrastructure projects in a maximum amount of \$20 million in exchange for a perpetual, non-exclusive access and use easement(s) in all sidewalks, jogging, walking and bike trails, outdoor fitness areas, outdoor sports areas, the parking deck and other areas for parking which are constructed, in part, with funds provided by the County; and

WHEREAS, the parties intend for this Agreement, as supplemented, amended and superseded by subsequent closing documents and plans to be developed pursuant to this Agreement, to govern their relationship, and to set forth the respective roles and obligations of the parties with respect to each specific Phase I Infrastructure project in which the County is involved.

NOW, THEREFORE, in consideration of the mutual covenants and agreements stated herein, the parties do agree as follows:

ARTICLE I DEVELOPMENT OF PHASE I INFRASTRUCTURE

1. ***Description of Real Property.*** The real property that comprises Park Center and is the subject of this Agreement is described as follows:

Being those certain parcels of land, all of PIN #s 0738-04-71-4427; 0738-04-81-3246; 0738-04-80-7819.L00; 0738-04-71-9674.L00; 0738-04-71-3519; 0738-04-91-1249.L00; 0738-04-81-2073.L00; 0748-03-00-1740.L00; 0738-04-90-1744.L00; 0738-03-90-8495; 0738-01-90-8181.L00; 0738-04-90-3382.L00 and 0747-01-09-6920.L00 owned by now or formerly Triangle Service Center, Inc., and Pin# 0738-04-71-5962 owned by now or formerly Research Triangle Foundation, located in Triangle Township, Durham County, North Carolina and more particularly described as follows:

COMMENCING at NCGS Monument "Becton", having a NC Grid Coordinate (NAD 83) of N:780486.18', E:2041507.46'; thence South 44°15'51" West a distance of 566.53' to an existing iron pipe along the western R/W of Davis Drive (a variable width public R/W), existing pipe being the point of BEGINNING; thence with the western R/W of Davis Drive, South 09°06'58" West a distance of 118.07' to an existing R/W monument;

thence South 27°33'14" West a distance of 224.23' to an existing R/W monument; thence South 61°36'53" East a distance of 44.08' to a calculate corner; thence South 27°50'20" West a distance of 401.66' to a calculate corner; thence South 67°24'06" West a distance of 99.60' to a calculated corner marking the northeast intersection of Davis Drive (a variable width Public R/W) and NC Hwy 54 (a variable width public R/W); thence with the northern R/W of NC Hwy 54, thence North 59°43'08" West a distance of 788.84' to an existing rebar; thence North 59°43'08" West a distance of 715.04' to an existing PK Nail; thence North 59°43'08" West a distance of 347.33' to an existing iron pipe; thence North 59°43'08" West a distance of 498.99'; thence North 59°43'08" West a distance of 165.81' to a calculate corner; thence North 59°43'08" West a distance of 856.59' to a calculate corner; thence North 59°43'08" West a distance of 100.04' to an existing iron pipe; thence North 59°43'08" West a distance of 201.57' to an existing R/W monument; thence North 59°25'28" West a distance of 138.64' to a calculate corner; thence North 59°25'28" West a distance of 130.93' to a calculate corner; thence North 59°25'28" West a distance of 206.12' to an existing R/W monument along the eastern R/W of NC Hwy 147 (a variable width public R/W); thence with the eastern and southern R/W of NC Hwy 147, North 43°04'06" West a distance of 304.01' to a calculated corner; thence South 44°37'50" West a distance of 88.25' to a calculate corner; thence North 03°09'10" East a distance of 260.56' to a calculate corner; thence North 71°27'48" East a distance of 487.35' to an existing R/W monument; thence North 66°59'22" East a distance of 187.94' to a calculate corner; thence South 85°27'49" East a distance of 412.93' to a calculate corner; thence South 62°56'28" East a distance of 388.03' to a calculate corner; thence South 58°19'01" East a distance of 261.07' to an existing R/W monument with disk; thence South 73°51'07" East a distance of 54.03' to an existing rebar; thence South 73°51'07" East a distance of 51.24' to a calculate corner; thence South 66°02'29" East a distance of 733.58' to an existing R/W monument; thence South 62°07'14" East a distance of 571.91' to an existing R/W monument (disturbed); thence South 62°16'00" East a distance of 339.63' to an existing R/W monument (disturbed); thence South 55°08'08" East a distance of 302.61' to an existing iron pipe; thence South 56°21'46" East a distance of 187.94' to an existing iron pipe; thence South 46°47'03" East a distance of 160.99' to an existing iron pipe; thence South 37°13'00" East a distance of 187.97' to an existing iron pipe; thence South 35°15'16" East a distance of 153.62' to an existing iron pipe; thence South 41°01'28" East a distance of 231.29' to an existing iron pipe; thence South 58°05'28" East a distance of 113.17' to a calculate corner; thence South 65°00'02" East a distance of 40.31' to the point of BEGINNING, having an area of 4,286,330 square feet or 98.40 acres, more or less.

2. **Existing Property Interests.** A list of the Durham County parcel numbers that comprise Park Center ("Site") and the names of the legal and equitable property owners and ground lessees (if any) of each parcel is attached as Exhibit A. The County and RTF acknowledge and agree that the size of the Site is 98.40 acres and that Triangle Service Center, Inc. and Davis 54, LLC are subsidiaries of RTF.

3. **Permitted Uses.** The uses permitted on the Site, including population densities and building types, intensities, placement on the Site and design, shall meet all applicable zoning requirements.

4. **Responsibility for Plans and Specifications.** A site plan for Phase I of the redevelopment of the Site is attached as Exhibit B. RTF has engaged and will engage architects and engineers as necessary to prepare plans and specifications necessary for the design, development and construction of the Phase I Infrastructure improvements ("Phase I Construction Plans"). The Phase I Construction Plans and all revisions and modifications thereto shall be certified by an architect, engineer or land planner duly registered under the laws of the State of North Carolina. The Phase I Construction Plans must comply with all applicable laws and regulations.

5. **Responsibility for Construction.** RTF will enter into one or more contracts ("Phase I GC Contracts") with one or more general contractors ("Phase I Contractors") for the

construction of the Phase I Infrastructure. The County will not be a party to the Phase I GC Contracts and will have no direct obligations to the Phase I Contractors for payment, indemnification or otherwise in connection with the construction of the Phase I Infrastructure.

6. ***County Participation on Specific Infrastructure Projects.*** A list of the specific Phase I Infrastructure projects for which the County will share in the construction costs is set forth in Article II, Section 2 below (see also the site plans attached as Exhibit C), subject to revision as mutually agreed by the parties. Each of these specific projects is hereinafter referred to as a “Phase I PPP Project.” RTF and the County worked together in good faith to negotiate this Agreement as well as the budgets, the County’s portion of the shared costs, and the anticipated completion dates for each Phase I PPP Project, all as shown in the chart set forth in Article II, Section 2 below.

During the construction of each Phase I PPP Project, the County will be invited to construction progress meetings every month with RTF, the Phase I Contractor, and the architect. Following reasonable advance notice and accompanied by a representative of RTF, the County will have access to the site of each Phase I PPP Project at all reasonable times during construction to view the progress thereof. RTF and the Phase I Contractors will use commercially reasonable efforts to hire Durham residents and companies located in Durham County for the Phase I PPP Projects, and will establish a system for monitoring and enhancing such local participation and jobs.

7. ***County’s Property Interest and Dedication of a Specific Easement(s) to County.*** At the election of the County, upon the substantial completion of each Phase I PPP Project listed in the chart set forth in Article II, Section 2 below, RTF shall promptly dedicate, where applicable, all necessary access and use easements to the County to and over each Phase I PPP Project. The access and use easement(s) shall be a general grant to Durham County and its citizens in perpetuity covering the public amenities, including but not limited to the sidewalks, walking, biking and bicycling trails, playground area, Frisbee golf area, horseshoe area, and the stage area, contained in the following areas shown on Exhibit C: The Common Green, The Meadow, The Canal Green, The Crossroads and The Grove.

8. ***Parking Available to General Public.*** The Phase I PPP Project for parking will consist of a parking deck with a minimum of 1,000 spaces. The parking in this deck shall be available to the general public (including all invitees, licensees, and guests during hours of operation) free of charge. The final parking details and arrangement shall be negotiated by the parties at a later date, the terms of which shall be included in a separate written agreement.

9. ***Enforcement of General Public Parking Rights.*** On or before the completion of the Phase I PPP Project for parking, and in consideration of the County’s sharing in the construction costs thereof, RTF shall prepare and record a non-exclusive perpetual access and parking easement in a form acceptable to the County covering all of the areas within Park Center designated for public access and parking for which the County shares in construction costs. The County shall have the right to enforce said easement for general public parking rights in accordance with applicable law.

The County acknowledges and agrees that the easement will provide that the right to general

public parking will be terminated if the County defaults on its obligations under this Agreement. In such event, the County agrees to execute such documents as are reasonably requested by RTF to terminate the parking easement as a matter of public record.

ARTICLE II FINANCING OF PHASE I PPP PROJECTS

1. ***RTF Responsibility for Funding.*** RTF intends to invest at least \$20 million in the coming years on the Phase I Infrastructure (including but not limited to the Phase I PPP Projects). RTF is responsible for obtaining all funding required for the design, development and construction of the Phase I Infrastructure. Such funding may come from RTF, The Durham-Wake Counties Research and Production Service District, or other entities, and may come in the form of equity or debt.

2. ***Cost Sharing from County.*** In addition to the funds obtained and allocated by RTF for Phase I Infrastructure, the County will provide cost sharing funds, up to an aggregate total of \$20 million. The County's share of the costs for specific Phase I PPP Projects is shown in the chart below, subject to revision as mutually agreed by the parties:

Short Name	Project Description	Total Project Budget	County PPP Cost Sharing	Anticipated Completion
Utilities	On-site utilities of Phase I of Park Center Development, to include: sewer, reclaimed water, duct bank, domestic water; electricity	\$5,000,000	\$2,500,000	June 30, 2017
Stormwater Park	Stormwater Treatment Area & Public Park Meadow	\$2,000,000	\$1,000,000	December 29, 2017
Parking	Public structured parking deck (1,000 spaces) for free access to public parks, retail, transit customers, and community events	\$18,000,000	\$9,000,000	June 30, 2018
Stream Gardens	Park Center Stream Gardens provides a unique public park experience for residents of Durham. Woven throughout Park Center, the Stream Gardens offer areas for meetings, events, exercise food and activities	\$7,000,000	\$3,500,000	June 30, 2018
Civic Park	RTP Central Civic Park is the grand public area located at the heart of Park Center. The space will include areas for music and events, public markets, family/community to gather and children to engage with nature and technology.	\$12,000,000	\$4,000,000	June 30, 2020

3. ***Disbursement of Funds.*** County will make payments of its shared costs for the Phase I PPP Projects upon the request of RTF and the receipt of certain documentation from RTF. Such documentation shall include i) invoices for work completed, ii) verification of the work completed by an architect, engineer or land planner duly registered under the laws of the State of North Carolina, and iii) a lien waiver (where applicable) from the Phase I Contractor

who performed construction work. RTF may request the County's portion of expenses in connection with the specific projects listed in section 2 which were incurred after the date of this Agreement as follows:

- a) Payment 1: \$2,500,000 on or after January 1, 2016 upon submission of required documentation of costs associated with Projects listed in Section 2;
- b) Payment 2: \$2,500,000 on or after July 1, 2016 upon submission of required documentation of costs associated with Projects listed in Section 2
- c) Payment 3: \$2,500,000 on or after July 1, 2017 upon submission of required documentation of costs associated with Projects listed in Section 2;
- d) Payment 4: \$8,500,000 on or after July 1, 2018 upon submission of required documentation of Projects listed in Section 2;
- e) Payment 5: \$2,000,000 on or after July 1, 2019 upon submission of required documentation listed in Section 2;
- f) Payment 6: \$2,000,000 on or after July 1, 2020 upon submission of required documentation listed in Section 2.

County payments will be made within sixty (60) days of RTF's request. The County shall not be responsible for any Phase I PPP Project costs overruns and shall not be responsible for additional costs sharing funds to meet any costs overruns.

ARTICLE III OTHER PROVISIONS

1. ***Term/Duration.*** The duration of this Agreement shall be for ten (10) years ("Initial Term"); however, the parties are not precluded from entering into subsequent agreements that may extend the original duration period. In furtherance of the foregoing, the County hereby agrees that, so long as RTF is not in breach of its obligations hereunder beyond any applicable notice and cure period on the date that this Agreement expires ("Expiration Date"), then, no later than one (1) year prior to the Expiration Date, the County shall, at the written request of RTF, extend the Initial Term of this Agreement for one (1) extension term of five (5) consecutive years commencing upon the Expiration Date, which extension shall be on the same terms and conditions as set forth herein. In no event will the County's total cost sharing amount increase.

2. ***Assignment.*** Neither party shall have the right to assign this Agreement or any portion hereof, or any of its respective rights or obligations hereunder, without the prior written consent of the other party; provided however, that RTF shall be permitted to assign this Agreement or any portion hereof, or any of its rights or obligations hereunder, to any affiliate of RTF or any entity formed to effect Phase I of the redevelopment of Park Center. It is also provided, however, that the rights of RTF under this Agreement may be assigned as collateral for

any construction loan to RTF from an institutional lender.

3. **Notices.** All notices, requests, demands, approvals, or other formal communications given hereunder or in connection with this Agreement shall be in writing and shall be deemed given if, and shall not be deemed given unless, dispatched by (1) express delivery service with a delivery receipt; or (2) personal delivery, to the offices of the addressee, at the addresses set forth below.

If to County: Durham County
 200 East Main Street
 2nd Floor, Old Courthouse
 Durham, NC 27701

With a copy to: Durham County Attorney
 200 East Main Street
 2nd Floor, Old Courthouse
 Durham, NC 27701

If to RTF: Research Triangle Foundation of North Carolina
 Attn: Robert T. Geolas
 12 Davis Drive
 Research Triangle Park, NC 27709

With a copy to: Ellis & Winters LLP
 Attn.: Michael G. Winters
 4131 Parklake Avenue, Suite 400
 Raleigh, NC 27612

or to such other addresses as the parties may designate in writing from time to time.

4. **EEO Provisions.** During the performance of this Agreement, RTF agrees as follows: (1) RTF shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. RTF shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. RTF shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions; (2) RTF shall in all solicitations or advertisement for employees placed by or on behalf of RTF, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap; (3) RTF shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding; and (4) In the event of RTF's noncompliance with these EEO provisions, the County may cancel, terminate, or suspend this contract (after complying with the notice and cure provisions of Article III, Section 14), in whole or in part, and the County may declare RTF

ineligible for further County contracts.

5. ***Default and Termination.*** If RTF fails to fulfill any of its material obligations under the Agreement, or if any certification made by RTF is materially false, then in that event, subject to the notice and cure provisions in this agreement the County may, but is not obligated to, hold RTF in default and terminate this Agreement and make no further payments to RTF beyond any payments which were outstanding and due prior to the event of default, unless such grounds for default were based upon the County's reliance on materially false information provided by RTF as described herein. In the event any certification made by RTF is materially false, the County shall also be entitled to seek the recovery of all prior payments made to RTF, along with reasonable direct expenses, including reasonable attorneys' fees, incurred by the County in connection with RTF's materially false certifications. Notwithstanding the foregoing, it shall not be an event of default if RTF makes any certification under this Agreement based on materially false information it obtains from a third party which RTF, acting in good faith, believed to be accurate at the time such certification was made. If RTF does not deliver to the County the certification of compliance pursuant to this Agreement, and does not seek payment under this Agreement, RTF shall not be considered in default for failing to deliver the required certification. In the event RTF fails to provide such required certification(s) pursuant to this Agreement above, within 18 months after completion of any part of the project, either party shall have the right to terminate this Agreement without becoming liable to the other for any damages as a result of such termination. The Parties agree that the only obligation of the County under this agreement is to pay RTF the County's share of the costs pursuant to the chart described herein under Article II, Section 2. Accordingly, if the County defaults on its obligation to make any costs sharing payment pursuant to this Agreement, RTF's sole claim or remedy at law shall be the value of the County's cost sharing payment(s) that the County is obligated to pay, including reasonable direct expenses and attorneys' fees incurred in pursuing claims against the County related to or seeking the recovery of any of County's sharing payments which are due to RTF.

6. ***Indemnification.*** To the maximum extent allowed by law, RTF shall defend, indemnify, and save harmless Indemnitees from and against all charges that arise in any manner from, in connection with, or out of this Agreement as a result of acts or omissions of RTF or its contractors, subcontractors, employees, or agents acting on behalf of RTF in the performance of RTF's duties under this Agreement. In the event litigation is instituted against County and such litigation is based on a claim for which RTF would be obligated to indemnify and hold the County harmless pursuant to the above subsection RTF will retain legal counsel reasonably acceptable to County.

(a) Definitions. As used in this Section 6: "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). "Indemnitees" means County and its officers, officials, independent contractors, agents, and employees, excluding RTF.

(b) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the County that are otherwise provided in or arise out of this Agreement. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this Agreement.

(c) Survival. This section shall remain in force despite termination of this Agreement (whether by expiration of the term or otherwise).

(d) Limitations of RTF's Obligation. RTF shall not be required to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

7. **Insurance.** In addition to the indemnification provisions above, the County shall be listed as an additional loss payee as its respective interest may appear to any insurance policy issued under this Agreement. RTF shall also meet the following insurance requirements concerning construction of any Phase I PPP Project subject to this Agreement:

(a) The work on any Phase I PPP Project shall not commence until RTF has verified to the County that all required insurance coverage as described herein has been obtained and verifying certificates of insurance have been approved in writing by the County. These certificates shall contain a provision that coverage afforded under the policies will not be cancelled, reduced in amount or coverage eliminated until at least thirty (30) days after mailing written notice, by certified mail, return receipt requested, to the RTF and the County of such alteration or cancellation.

(b) Worker's Compensation and Employer's Liability: RTF shall ensure that it and all contractors and subcontractors with contracts in the amount of at least \$100,000 shall provide and maintain, as applicable for each Phase I PPP Project, worker's compensation insurance, as required by law, as well as employer's liability coverage, with minimum limits of \$2,000,000 or such lower limits as may be agreed to by RTF and the County on a case-by-case basis.

(c) Public Liability and Property Damage: RTF shall ensure that it and all contractors and subcontractors with contracts in the amount of at least \$100,000 shall provide and maintain, as applicable for each Phase I PPP Project, comprehensive general liability insurance, including coverage for premises operations, independent subcontractors, completed operations, products and contractual exposures. Such insurance shall protect RTF, contractors and subcontractors from claims arising out of any bodily injury, including accidental death, and claims for property damages which may arise from operations under this Agreement, whether such operations are by RTF or its contractors or subcontractors. The minimum limits of such insurance shall be \$2,000,000 for each occurrence and \$4,000,000 aggregate, or such lower limits as may be agreed to by RTF and the County on a case-by-case basis.

(d) Property Insurance (Builder's Risk/Installation Floater): RTF shall ensure that it and all contractors and subcontractors with contracts in the amount of at least \$100,000 shall purchase

and maintain property insurance as applicable for each Phase I PPP Project upon the entire work at the site to the full insurable value thereof. This insurance shall include the interests of RTF, the County, contractors and subcontractors in the work and shall insure against the perils of fire, vandalism and malicious mischief. If the County is damaged by failure of RTF, its contractors or subcontractors to purchase or maintain such insurance, then RTF shall bear all reasonable costs properly attributable thereto.

(e) **Other Coverage:** RTF, its contractors and subcontractors with contracts in the amount of at least \$100,000 shall acquire and maintain such other insurance as may be reasonably required of a prudent developer for similar projects.

(f) **Deductible:** Any deductible, if applicable to loss covered by insurance provided, is to be borne by RTF or its contractors or subcontractors.

(g) **Proof of Coverage:** RTF shall ensure that it and all contractors and subcontractors with contracts in the amount of at least \$100,000 shall furnish RTF and the County with satisfactory proof of coverage of the insurance required before commencement of work on each Phase I PPP Project.

8. ***Employment Advertising Requirements.*** RTF shall post local job openings for Phase I PPP Projects with the City of Durham's Office of Economic and Workforce Development, the North Carolina Department of Commerce-Division of Employment Services (formerly ESC, Employment Security Commission) and with the Durham County Department of Social Services throughout the term of this Agreement; provided that the foregoing requirement does not limit RTF ability to advertise and/or otherwise post Phase I PPP Project job openings with other organizations or media outlets.

9. ***Waiver.*** No action or failure to act by either party shall constitute a waiver of any of its rights or remedies that arise out of this Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

10. ***Performance of Government Functions.*** Nothing contained in this Agreement shall be deemed or construed so as to in any way estop, limit, or impair the County from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

11. ***Severability.*** If any provision of this agreement shall be unenforceable, the remainder of this Agreement shall be enforceable to the extent permitted by law.

12. ***Compliance with Law.*** In performing work pursuant to this Agreement on Phase I PPP Projects, RTF shall comply with all applicable law.

13. ***Assurance by Company of Appropriate Treatment of Contractors and Lower Tier Subcontractors.*** In order to remain eligible for County cost sharing payments, upon written request by the County delivered in accordance with the notice provisions of this Agreement, RTF shall provide to County (i) lien waivers demonstrating that all entities with whom it has

contracted to construct all or any portion of the Phase I PPP Projects have been paid in full, or (ii) documentation demonstrating that a bona fide dispute over the satisfactory completion of the work to be performed exists and is in the process of being resolved in accordance with applicable law (collectively, the "Required Documentation"). Evidence of bona fide disputes over the satisfactory completion of any work pursuant to any contract or subcontract shall include, but not be limited to, unsatisfied property or payment liens, pending lawsuits or unresolved contract claims made in writing. If RTF fails to provide the required documentation following a request from the County, the County shall give RTF thirty (30) days written notice of its intent to suspend County cost sharing payments. If RTF has not provided the required documentation at the end of this thirty (30) day period, County may suspend its cost sharing payments. County payments shall be resumed upon the submission by RTF to the County of the required documentation. The County shall have no power to suspend County cost sharing payments due to failures of contractors and subcontractors with whom RTF does not have a direct contractual relationship to comply with the terms of contracts to which RTF is not a party.

14. ***Force Majeure.*** In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of the following: labor dispute, including strike and lockout; unavailability of essential materials, riot; epidemic; war, extreme weather events, fire; explosion; condemnation; accident; delays or default of the other party, then performance of such act shall be excused for the period of the delay, and thereafter the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Both parties must use commercially reasonable efforts to perform despite said events and commercially reasonable efforts to prevent or cure the effects of said event insofar as it prevents performance.

15. ***Cure Period.*** No default by either party hereto shall result in a termination or limitation of any rights of such party hereunder unless and until the other party notifies the defaulting party in writing of said default, and the defaulting party fails to cure said default within thirty (30) days after the receipt of said written notice provided; however, in the event of a non-monetary default which cannot, by its nature, be cured within such thirty (30) day period, if the defaulting party commences and diligently pursues a cure of such default promptly within the initial thirty (30) day cure period, then the other party shall not exercise its remedies or limit the rights of the defaulting party unless such non-monetary default remains uncured for more than ninety (90) days after the initial delivery of the other parties original default notice.

16. ***Governing Law; Jurisdiction.*** This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, without regard to any construction arising from the application of conflicts or choice of law principles, and without regard to any construction arising by virtue of the negotiation or the persons who drafted this Agreement. The parties consent to the exclusive jurisdiction of the Superior Court of Durham County, North Carolina or the United States District Court for the Middle District of North Carolina, or of both as applicable in the circumstance. The parties irrevocably submit to such exclusive jurisdiction.

17. ***Representations and Warranties of the Parties.*** Each of the parties, and each person executing this Agreement on behalf thereof, represent and warrant, as applicable, that (1) such party or person has the full power and authority to enter into this Agreement and the

agreements or instruments referred to herein, to execute them on behalf of the party indicated on the signature page thereof, and to perform the obligations hereunder and thereunder, (2) such party is acting on its own behalf and on behalf of its successors and assigns, (3) this Agreement and the other agreements referenced herein are the valid and binding obligations of such party, enforceable against it in accordance with their terms, (4) entering into this Agreement and the other agreements referenced herein does not conflict with any other agreements entered into by either party, and (5) the execution, delivery and performance of this Agreement has been duly and validly authorized by all necessary corporate or governmental action on its part. The County represents and warrants to RTF that this Agreement and the cost sharing payments contemplated hereunder have been pre-audited to ensure compliance with the budgetary accounting requirements (if any) that apply thereto, and that the County shall use its best efforts to ensure that all necessary sums shall be fully appropriated and allocated, and made available to RTF.

18. **Cooperation and Compliance.** The parties hereto agree to cooperate with each other and provide all necessary documentation, certificates and consents and to take all necessary action in order to satisfy the terms and conditions hereof and the applicable laws, regulations and agreements relating thereto.

19. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one agreement. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually executed original counterpart of this Agreement.

20. **Entire Agreement, Amendment; Construction.** This Agreement, together with the exhibits attached hereto contains the entire agreement between the parties as to the subject matter referenced herein, and supersedes all prior agreements, understandings or undertakings (whether oral, written, electronic or otherwise) between the parties with respect to the subject matter hereof. No amendment may be made to this Agreement except with the prior written consent of all parties hereto. The section titles and headings herein are for convenience of reference only and do not define, modify or limit any of the terms and provisions hereof.

IN WITNESS WHEREOF, the parties, by their duly authorized signatories, hereby enter into this Agreement effective as of the date first set forth above.

DURHAM COUNTY

RESEARCH TRIANGLE FOUNDATION OF
NORTH CAROLINA

By: _____

Name: _____

Title: _____

Attested By: _____

Clerk to the Board of Commissioners

By: _____

Name: _____

Title: _____

Attested By: _____

Secretary

CEO

ACKNOWLEDGEMENT OF DURHAM COUNTY:

NORTH CAROLINA
DURHAM COUNTY

I, Monica W. Toomer, a Notary Public of the County and State aforesaid, certify that Michelle Parker-Evans, personally came before me this day and acknowledged that she is Clerk to the Board of Commissioners of Durham County, a political subdivision of the State of North Carolina, and that by authority duly given and as the act of the County, the foregoing instrument was signed in its name by its Chair, sealed with the County seal, and attested by Michelle Parker-Evans, Clerk to the Board of Commissioners.

Witness my hand and official stamp or seal, this 12th day of October, 2015.

Monica W. Toomer
Notary Public

Printed Name: Monica W. Toomer

My commission expires: 12/12/2018



**ACKNOWLEDGEMENT OF RESEARCH TRIANGLE PARK FOUNDATION
OF NORTH CAROLINA**

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

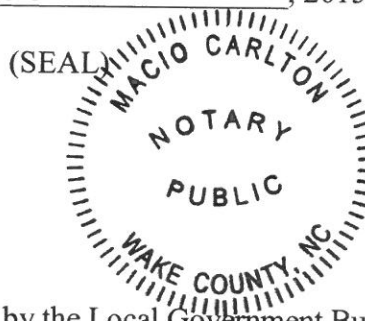
I, Macio Carlton, a Notary Public in and for the aforesaid County and State, do hereby certify that Robert Thomas Gools Jr. personally appeared before me this day and acknowledged that he/she is CEO of Research Triangle Park Foundation of North Carolina, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Chairman, sealed with its corporate seal and attested by him/her as its Chairman.

Witness my hand and notarial seal this 12th day of October, 2015.

Macio Carlton
Notary Public

Printed Name: Macio Carlton

My commission expires: 3/25/2020



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

George K. Quick
GEORGE K. QUICK, DURHAM COUNTY CHIEF FINANCIAL OFFICER

EXHIBIT A

PARK CENTER PARCELS, OWNERSHIP AS OF SEPTEMBER 2015

[Generally listed from west (left) to east (right)]

<u>Parcel No(s).</u>	<u>PIN</u>	<u>Fee Ownership</u>	<u>Ground Lease</u>
154096	0738-04-71-5692	Research Triangle Foundation	<i>none</i>
154094	0738-04-71-4427	Triangle Service Center, Inc.	<i>none</i>
154097	0738-04-71-3519	Triangle Service Center, Inc.	<i>none</i>
154095	0738-04-81-3246	Triangle Service Center, Inc.	<i>none</i>
154089	0738-04-71-9674	Triangle Service Center, Inc.	Davis 54, LLC
154092	0738-04-81-2073	Triangle Service Center, Inc.	Davis 54, LLC
154083	0738-04-91-1249	Triangle Service Center, Inc.	Davis 54, LLC
154086	0738-04-80-7819	Triangle Service Center, Inc.	Davis 54, LLC
154080	0738-04-90-1744	Triangle Service Center, Inc.	Davis 54, LLC
154075	0738-04-90-3382	Triangle Service Center, Inc.	Davis 54, LLC
154071	0738-03-00-1740	Triangle Service Center, Inc.	Davis 54, LLC
205755	0738-03-90-8495	Triangle Service Center, Inc.	Davis 54, LLC
204999	0738-01-90-8181	Triangle Service Center, Inc.	Davis 54, LLC
205000	0738-04-09-6920	Triangle Service Center, Inc.	Davis 54, LLC

EXHIBIT B

PARK CENTER PHASE I SITE PLAN AS OF JULY 2015

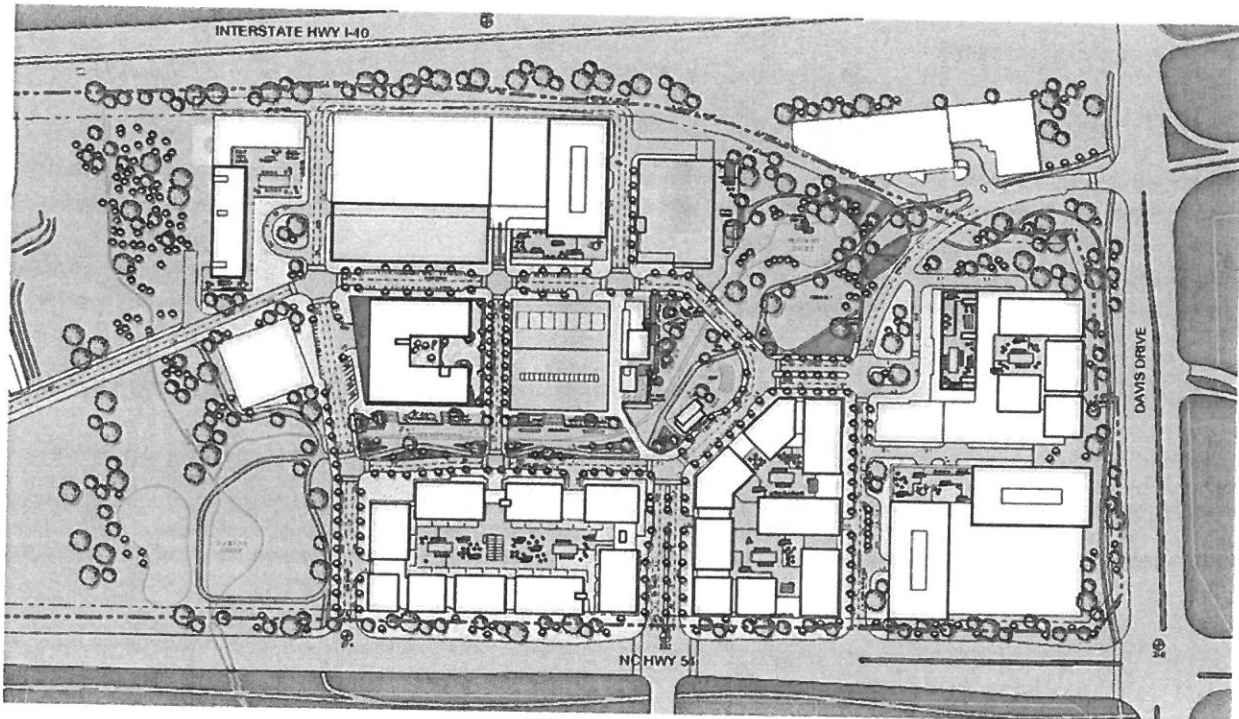
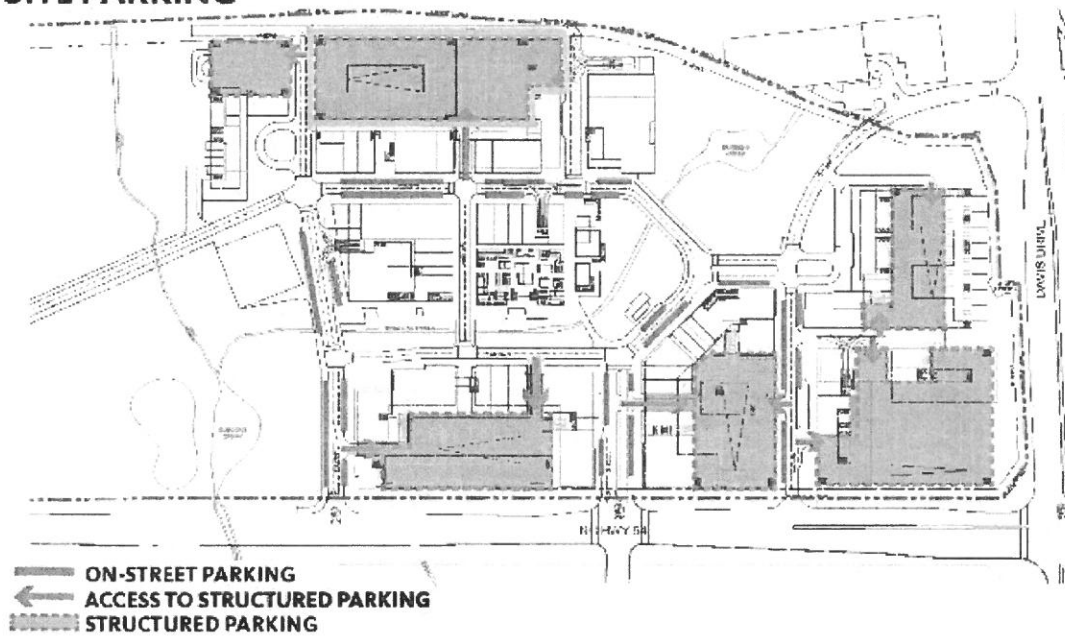


EXHIBIT C

PHASE I PPP PROJECTS

- i. Parking Garage adjacent to Interstate 40 (outlined in yellow)

SITE PARKING



[continued on next page]

EXHIBIT C (continued)

- ii. Park/Open Space adjacent to Highway 54 (outlined in yellow)

