

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

GOTRIANGLE CONTRACT NUMBER: 18-064

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

AND

COUNTY OF DURHAM, NORTH CAROLINA

DONATION AGREEMENT FOR PROPERTY

THIS DONATION AGREEMENT FOR PROPERTY ("Agreement") is made by and between the RESEARCH TRIANGLE REGIONAL PUBLIC TRANSPORTATION AUTHORITY d/b/a GOTRIANGLE, a public body and body politic and corporate of the State of North Carolina ("GoTriangle") and the COUNTY OF DURHAM, North Carolina ("County"). GoTriangle and the County may be referred to individually as a "Party" and collectively as the "Parties."

RECITALS:

WHEREAS, the County owns one or more parcels of land located in Durham County, North Carolina, as described on the attached Exhibit A ("County Parcel");

WHEREAS, a certain portion or portions of the County Parcel will be required for the design, construction, operation and maintenance of the Durham-Orange Light Rail Transit ("D-O LRT") Project;

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

WHEREAS, the County supports the D-O LRT Project and is actively coordinating with GoTriangle and other stakeholders to ensure successful implementation of the D-O LRT Project;

WHEREAS, the purpose ("Purpose") of this Agreement is to enable the County to support the D-O LRT Project by donating to GoTriangle certain property interests necessary for the D-O LRT Project ("Property Interests") as more specifically depicted on Right-of-Way drawings prepared by GoTriangle and attached hereto as Exhibit B;

WHEREAS, the Parties acknowledge that the location and character of the Property Interests are based on engineering activities that remain in progress as of the effective date of this Agreement and that modifications may be required to respond to new circumstances;

WHEREAS, the execution of this Agreement by the County Manager (or his designee) was approved by the Durham County Board of County Commissioners; and

WHEREAS, the County is willing to donate the Property Interests, of the character and in the locations more particularly described on Exhibit A and Exhibit B, to GoTriangle for light rail and ancillary uses, and GoTriangle is willing to accept the donation.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the benefits of which flow to the County and GoTriangle from each other, and in further consideration of the mutual covenants, terms, conditions, restrictions, and representations contained or incorporated into this Agreement, the Parties agree as follows:

TERMS AND CONDITIONS

1. Term. This Agreement shall become effective on the last date executed below ("Effective Date"). The Agreement shall continue in force until the earlier of (i) termination by mutual written agreement between the Parties, (ii) the last recordation date in the Durham County Registry for all Property Interests identified on Exhibit A and Exhibit B, or (iii) January 1, 2020 if GoTriangle has not obtained a Full Funding Grant Agreement for the D-O LRT Project by that date.
2. Exhibits. Exhibits A and B are incorporated into this Agreement.
3. Donation and Acceptance. On or before December 31, 2019, and subject to Paragraph 4 below, the County agrees to transfer and convey to GoTriangle, and GoTriangle agrees to accept from the County, the Property Interests described in Exhibit A and Exhibit B for purposes of designing, constructing, operating and maintaining consistent with all applicable law a light rail transit system and for ancillary uses over, across, upon, and under the County Parcel. Any permanent easement(s) granted shall remain in effect so long as they are used for a light rail transit system. The County shall satisfy its obligation under this paragraph by delivering to GoTriangle one or more instruments conveying the Property Interests. Prior to conveyance, GoTriangle shall obtain surveys and appraisals, and a metes and bounds legal description shall be prepared for all instruments granting any property interest of a permanent character.
4. Changed Circumstances. The Parties acknowledge that the design of the D-O LRT Project is not yet final, and further, that the location and character of the Property Interests are based on engineering activities that remain in progress as of the Effective Date and that modifications to the Property Interests may be required to respond to new circumstances. Therefore, in the event that the character or location of the Property Interests are materially affected by design or engineering activities following the Effective Date, the Parties shall use reasonable efforts and cooperate in good faith to give effect to

the Purpose of this Agreement to the maximum extent possible in light of the changed circumstances. The County shall be under no obligation to donate any Property Interest that will not be used as part of the light rail transit system.

5. Access and Testing. GoTriangle, or its contractors and agents, may go upon the County Parcel for the purposes of surveys, testing, boring, examinations, appraisals, and inspections, including surface and sub-surface conditions. GoTriangle shall be responsible for all costs associated with such activities.
6. Property Condition. Prior to conveyance of the Property Interests, the County shall take no action that materially impairs or otherwise negatively affects the suitability of the County Parcel for use as part of a light rail transit system.
7. County's Representations and Warranties. The County makes the following representations and warranties as of the Effective Date and as of each Property Interest conveyance: (a) the County has full right and authority to enter into this Agreement and to consummate the transactions contemplated in this Agreement; (b) each of the persons signing this Agreement on behalf of the County is properly authorized to do so; (c) to the County's knowledge, there are no parties currently in possession of the County Parcel, including lessees, tenants at sufferance, or trespassers, other than the County, and no one has been granted any license, lease, or other right relating to the use or possession of the County Parcel, including the reservation of any oil, gas or mineral rights; and (d) to the County's knowledge, there are no outstanding actual or potential liens (filed or unfiled) on the County Parcel for labor, services, or materials for improvements to the County Parcel, and all payments due to any person or company that has furnished labor, services, or materials in connection with the County Parcel are current.
8. GoTriangle's Representations and Warranties. GoTriangle makes the following representations and warranties as of the Effective Date and as of the date of each Property Interest conveyance: (a) GoTriangle is a duly organized North Carolina public transportation authority that is authorized to transact business in North Carolina; (b) GoTriangle has full right and authority to enter into this Agreement and to consummate the transactions contemplated in this Agreement; and (c) each of the persons signing this Agreement on behalf of GoTriangle is properly authorized to do so.
9. Risk of Loss. The risk of loss or damage prior to each Property Interest conveyance, excluding loss or damage caused by GoTriangle's negligence or willful misconduct, shall be borne by the County.
10. Environmental Conditions. The Parties will exercise due diligence ("Due Diligence") to determine if any part of the County Parcel is burdened by environmental contamination to an extent requiring remediation or by other conditions limiting or otherwise adversely affecting the land's suitability for use as part of the D-O LRT Project. If, as a result of such Due Diligence, any Party becomes aware of information related to the land's suitability

for use as part of the D-O LRT Project, the Party shall share such information with the other Party. The Parties shall confer in good faith to develop appropriate measures for addressing the situation, including measures to minimize each Party's potential financial risk and to seek possible federal participation in any necessary remediation activities.

11. Successors and Assigns. This Agreement shall bind and inure to the benefit of the Parties, their successors, and permitted assigns. No assignment of this Agreement shall be permitted except with the written consent of the other Party, which consent shall not be withheld unreasonably.
12. Recordation. Either Party may record this Agreement in the Durham County Registry.
13. Reversion. If the D-O LRT Project or another fixed guideway transit project utilizing some portion or all of the D-O LRT Project alignment is not under construction within ten (10) years of the Effective Date of this Agreement, the County may terminate any easements and associated rights of use granted pursuant to this Agreement.
14. Remedies. Notwithstanding anything to the contrary in this Agreement, in the event of a breach under this Agreement by either Party, the breaching Party shall have twenty (20) business days following receipt of notice of a breach from the non-breaching Party to cure such breach ("Cure Period"). If the breaching Party fails to cure such breach during the Cure Period, the non-breaching Party may pursue all remedies available at law or in equity.
15. Survival. If any provision contained in this Agreement which by its nature and effect is required to be observed, kept, or performed after the Agreement's termination, it shall survive termination and remain binding upon and for the benefit of the Parties hereto until fully observed, kept or performed.
16. Further Assurances. Each Party, upon the request of the other Party, shall execute and deliver such further documents or instruments as such other Party may reasonably deem appropriate to carry out the Purpose and the terms and conditions of this Agreement, provided that such further documents and instruments are consistent with the Purpose and the terms and conditions of this Agreement.
17. Time of the Essence. The County and GoTriangle acknowledge and agree that time is of the essence with respect to each term and condition of this Agreement and that the failure to timely perform any of the terms and conditions by either Party shall constitute a breach and default under this Agreement by the Party failing to so perform.
18. Execution. This Agreement may be signed in duplicate originals, all of which together constitute one and the same instrument.

19. **Notice.** To be effective, any notice or other communication required or allowed by this Agreement must be in writing and must be delivered accordingly: by personal delivery to the address set forth below; by certified mail, return receipt requested, to the address set forth below; or by nationally-recognized overnight delivery service to the address set forth below. Either Party may change its address by giving five (5) calendar days prior notice to the other Party of such change. Notice shall be deemed delivered or received upon the earliest to occur of: (a) upon receipt if delivered personally to the Party; (b) three (3) business days after the postmark if sent by certified mail; or (c) the next day that is not a Saturday, Sunday, or legal holiday if sent by overnight delivery service or if refused.

If to the County:

Durham County Manager
200 East Main Street
Durham, NC 27701

If to GoTriangle:

GoTriangle President & CEO
4600 Emperor Blvd., Suite 100
Durham, NC 27703

With copies to:

Durham County Attorney
200 East Main Street
Durham, NC 27701

With copies to:

GoTriangle General Counsel
4600 Emperor Blvd., Suite 100
Durham, NC 27703

20. **Choice of Law and Venue.** This Agreement shall be governed by the law of the State of North Carolina, excepting only its conflict of law principles. If any Party commences a lawsuit or other proceeding relating to or arising from this Agreement, the courts of the State of North Carolina in the County of Durham shall have sole and exclusive jurisdiction. Any such court shall be proper venue for any lawsuit or judicial proceeding, and the Parties waive any objection to such venue.
21. **Severability.** If any provision of this Agreement is held to be invalid, illegal, or unenforceable, then such provision will be fully severable from this Agreement, and the remaining provisions of this Agreement will remain in full force and effect.
22. **No Waiver.** No course of dealing between the Parties or any delay on the part of a Party to exercise any right it may have under this Agreement shall operate as a waiver of any of the rights under this Agreement or a waiver of any rights provided by law or equity. No waiver of any prior default shall operate as a waiver of any subsequent default. No express waiver shall affect any term or condition other than the one specified in such waiver, and such waiver shall apply only for the time and manner specifically stated therein.
23. **Brokerage Commissions.** Each Party warrants to the other that it has not dealt with any broker or agent in connection with the transactions contemplated herein and that they

know of no broker or agent who is or might be entitled to a commission in connection with this Agreement.

24. Federal Tax Identification Numbers. GoTriangle's Federal Tax Identification Number is 56-1718037. The County's Federal Tax Identification Number is _____.
25. Principles of Interpretation and Definitions. In this Agreement, unless the context requires otherwise: (a) the singular includes the plural, and the plural includes the singular; (b) the pronouns "it," "its," and "they" include the masculine and feminine; (c) references to statutes or regulations include all statutory and regulatory provisions consolidating, amending, or replacing the statute or regulation; (d) references to contracts or agreements shall be deemed to include all amendments thereto; (e) the words "include," "includes," and "including" are to be interpreted as if they were followed by either the phrase "without limitation" or "but not limited to"; (f) references to an "Article," "Section," "section," or "paragraph" shall mean an article or section of this Agreement; (g) headings and titles of sections, paragraphs, and articles are for convenience only and shall not be construed to affect the meaning of this Agreement; (h) the word "shall" is mandatory; and (i) all exhibits, attachments, or documents attached to this Agreement or referred to in this Agreement are incorporated by reference into this Agreement as if fully set forth herein.
26. Entire Agreement. This Agreement, including any exhibit attached hereto, contains the entire agreement of the Parties and there are no representations, inducements, understandings, or provisions other than those expressed herein. Any amendment to this Agreement must be in writing and signed by all Parties. This Agreement is entered into after a full investigation into the subject matter and an opportunity to consult legal counsel, neither Party relying upon any statement or representation that is not embodied in this Agreement. Both Parties have participated in drafting and negotiating this Agreement, and no interpretive presumption shall be drawn against either Party by virtue of its role in drafting this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

COUNTY OF DURHAM, NORTH CAROLINA

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

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: Jeffrey G. Mann
Title: President & CEO
Date: _____

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

By: _____

Name: Saundra Freeman

Title: Chief Financial Officer and Director of Administration

Reviewed and approved as to legal form.

By: _____

Name: Shelley Blake

Title: General Counsel

Exhibit A: Table Identifying County Parcel

Exhibit B: Right-of-Way Drawings Depicting Property Interests for Donation

EXHIBIT A

Parcel #	Owner	PIN	Parcel Address	Land Value/sf. Ft.	Fee Area Acquired (sq. ft.)	Total Value of Land Acquired	TCE Acquired (sq. ft.)	Total Value of TCE Acquired	Permanent Esmt Acquired (sq. ft.)	Total Value of Permanent Esmt Acquired	Site Improvements Acquired	Total Appraised Values (Rounded)
387	Durham County	0821-12-96-3137	247 S. Mangum St.	\$65.00	NA	NA	9,932	\$258,232.00	392	\$24,206.00	\$375.00	\$282,825.00
Totals							9,932		392			\$282,825.00

Additional areas required for temporary construction easements (TCE) & permanent easements but subject to design changes

Total area in acres
0.237

Total Acreage (appraised parcels + identified but not confirmed TCE's, PTE's)

Total Donation Value (appraised parcels + identified but not confirmed TCE's, PTE's)

0.237

\$282,825.00

