

GLOBAL CAPITAL FUNDING AGREEMENT FOR
CAPITAL INFRASTRUCTURE

ORANGE COUNTY TRANSIT FY 2025

This Global Capital Funding Agreement ("Agreement") is made by and between Research Triangle Regional Public Transportation Authority, d/b/a GoTriangle ("GoTriangle") as the administrator of the Triangle Tax District, and the Town of Hillsborough ("Implementing Party") and Orange County ("County"). The foregoing may collectively be referred to as "Parties."

WHEREAS, the Parties to Agreement, who have or may have specific roles in the implementation of public transit and the support of public transit infrastructure in the Orange County area, have determined that it is in their best interest and the best interest of the constituents they represent to coordinate future public transit planning, funding, expansion and construction; and

WHEREAS, an extensive community driven process was used to develop a strategic transit vision document that set forth an enhanced public transit plan for Orange County, referred to as the "Orange County Transit Plan" ("Orange Transit Plan"), and this Plan was unveiled and adopted by the GoTriangle Board of Trustees, the Durham Chapel Hill Carrboro Metropolitan Planning Organization's ("DCHC MPO") Policy Board, and the Orange County Board of Commissioners in 2022; and

WHEREAS, in conjunction with the Orange Transit Plan, GoTriangle, Orange County, and DCHC MPO (collectively, "the Governance ILA Parties") adopted the Orange Transit Governance Interlocal Agreement ("Governance ILA") that creates a governance structure for the implementation of the Orange Transit Plan by and through the annual Orange County Transit Annual Work Program; and

WHEREAS, based on Section 5.02 of the Governance ILA, the Town of Hillsborough has the authority to enter into this Agreement and enforce the provisions thereof and is a necessary Party to this Agreement; and

WHEREAS, the Governance ILA specifically created the Staff Working Group ("SWG") and charged the SWG with coordinating and recommending the planning and implementation aspects of the Orange County Transit Annual Work Program; and

WHEREAS, the Governance ILA Parties, together with the Implementing Party, entered into a Comprehensive Participation Agreement ("Participation Agreement"), which, among other purposes, established standards that govern the Participation Agreement Parties' eligibility for inclusion of sponsored Implementation Elements in the Orange County Transit Annual Work Program, receipt of funding allocations from Orange County Transit Tax Revenue, and confirmed the Comprehensive Participation Agreement Parties' roles in carrying out SWG responsibilities; and

WHEREAS, the FY 2025 Orange County Transit Annual Work Program was developed and recommended by the SWG, presented for public comment, and

adopted, as required, by the Boards of Orange County and GoTriangle; and

WHEREAS, the FY 2025 Triangle Tax District Orange Capital Ordinance was adopted by the GoTriangle Board of Trustees on; and

WHEREAS, the Parties desire to implement the components of the FY 2025 Orange County Transit Annual Work Program as adopted by GoTriangle and Orange County; and

WHEREAS, as stated in the Comprehensive Participation Agreement, all Implementation Elements (“Projects”) contained in the Orange County Transit Annual Work Program, whether partially or fully funded with Orange County Transit Tax Revenues, will not move forward until Implementation Agreements, which shall include Global/Capital Funding Agreements and/or Global/Operating Agreements, are executed by and between the Implementing Party, GoTriangle, as administrator of the Special District, and all other appropriate Parties as identified in Exhibit A.

WHEREAS, the Parties are authorized to enter into this Agreement pursuant to, inter alia, N.C.G.S. §§ 160A-20.1; 160A-312; 160A-313; 160A-610; 153A-275; 153A-276; and 153A-449.

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

1. **Annual Approval:**

The Agreement shall be reviewed annually to determine project progress and appropriate updates to Exhibit A documents, which is then executed by all appropriate Parties. The review and approval should consist of:

- A. Addition of new Projects to the Exhibit A if one or more is identified to be included as a part of this Agreement.
- B. Removal of active Projects from the Exhibit A if one is identified by Project sponsor to be completed during the Agreement review process.
- C. Update of scope, schedule, and budget baselines for active Projects with a duration longer than the current year of this Agreement, as defined in the Exhibit A. Documentation shall maintain record of both original planned dates and updated planned dates and include supporting allocation of programmed and planned funds from local funding revenue sources as defined by the Annual Work Program and Multi-Year Capital Improvement Plan.
- D. Updated Agreement shall be reviewed and executed by all parties to the Agreement.

2. **Term:**

The Term, or period of performance, is defined as the latest anticipated completion date of all Projects identified in Exhibit A, which incorporates references to the Multi-Year Capital Improvement Plan.

3. **Purpose:**

The purpose of this Agreement is to outline the details of how the Project(s) listed in Exhibit A attached hereto and incorporated herein by reference, being approved Projects in the Orange County Transit Annual Work Program, shall be implemented with programmed funding commitments as highlighted in the Exhibit A, in accordance with the requirements of the Comprehensive Participation Agreement.

4. **Responsibilities:**

A. **Responsibilities of the Implementing Party.**

- (1) The Implementing Party shall provide the Projects listed in Exhibit A and fund the cost of the Projects on an up-front basis, except as provided herein. The Implementing Party is responsible for ensuring local funds are available to pay for costs incurred related to Project phases, or invoices, prior to requesting reimbursement from GoTriangle, except in instances where advance payments are requested. Implementing Parties may utilize pre-award authority for Capital Projects requiring immediate implementation. Pre-award authority may not be exercised until the annual budget has been recommended by the SWG and adopted by the governing boards of Orange County and GoTriangle.
- (2) The Orange County Transit Annual Work Program Reimbursement Request and Financial Report Template ("Reimbursement Requests") must be submitted by the Implementing Party at least quarterly, or monthly if preferred by the Implementing Party. The reimbursement request shall be emailed to DOTransitReimbursements@gotriangle.org with a copy to the identified Tax District Administration staff Steven Schlossberg (SSchlossberg@gotriangle.org) and Darlene Weaver (dweaver@orangecountync.org).

All Reimbursement Requests must be made using the Orange County Transit Annual Work Program Reimbursement Request and Financial Report Template agreed to by the Parties and must include a signed statement by the Implementing Party's Finance Officer or designee stating that funds were spent in accordance with the Orange County Transit Annual Work Program and with all applicable laws, rules, and regulations, and that the Reimbursement Request includes items due and payable. All Reimbursement Requests shall be based on actual expenses incurred as recorded in the financial system.
- (3) In special circumstances where an advance payment may be required, Reimbursement Requests must be submitted using the Reimbursement Request Template and with a justification for the advance payment request. Advance payments received by the Implementing Party must be disbursed within 72 hours of receipt from GoTriangle.
- (4) Any work for which an Implementing Party receives reimbursement must be performed by June 30 of that fiscal year.

- (5) Reimbursement Requests for expenses incurred as of June 30 shall be submitted by August 10 or date determined by the Tax District Administrator for the fiscal year in which the work was done.
- (6) Further, the Implementing Party shall:
 - (a) Ensure that Orange Transit funds provided by GoTriangle are not misappropriated or misdirected to any other account, need, project, or line item, other than as listed in Exhibit A. The Implementing Party shall have an obligation to return any reimbursed or advanced payments that were misappropriated or expended outside the approved Project(s) listed in Exhibit A.
 - (b) Monitor award activities, to include sub-awards, to provide reasonable assurance that funds are spent in compliance with applicable requirements. Responsibilities include accounting for receipts and expenditures, cash management, maintaining adequate financial records, and refunding disallowed expenditures.
 - (c) Maintain a financial management system adequate for monitoring the accumulation of costs.
- (7) The Implementing Party agrees to coordinate with the municipality as it relates to transit service that enters the local municipal area. These coordination efforts should include discussions as it relates to, but are not limited to, passenger amenities, maintenance and upkeep of passenger amenities, public engagement and advertisement in relation to the new/enhanced services, etc. These coordination efforts shall occur prior to the execution of the Implementation Elements identified in Exhibit A.

B. Responsibilities of GoTriangle.

- (1) GoTriangle, as administrator of the Triangle Tax District, shall have the responsibilities and duties as set forth in the Governance ILA, including appropriating funds from the FY 2025 Triangle Tax District Capital Ordinance in accordance with the Governance ILA. The specific appropriation and approved Project budgets are further detailed in Exhibit A and in the FY 2025 Orange County Transit Annual Work Program.
- (2) GoTriangle, upon receipt of a Reimbursement Request, shall verify within five business days whether the Reimbursement Request is complete; is within the approved budget; is within the annual work plan; and is in accordance with the Orange County Transit Financial Policies & Procedures, which includes Billing, Payment, and Reimbursement Policy and Guidelines, adopted by GoTriangle, DCHC MPO and Orange County in 2023.

If GoTriangle is unable to verify the Reimbursement Request, GoTriangle shall, within two (2) business days, notify the Implementing Party in writing of the deficiencies in the Reimbursement Request. The Implementing Party may thereafter submit a revised Reimbursement Request (“Revised Reimbursement Request”), which shall be verified within five (5) business days of receipt. If the

Revised Reimbursement Request is denied, the Implementing Party may place the item on the next SWG agenda for discussion and a recommendation to GoTriangle and the Implementing Party.

- (3) Where advance payments are requested, GoTriangle, after due consideration of the request, will remit funds via payment instructions on file.
- (4) All disbursements from GoTriangle shall be in accordance with North Carolina General Statute 159 Article 3, known as the North Carolina Budget and Fiscal Control Act, and the Orange Transit Financial Policies and Guidelines, adopted by GoTriangle, DCHC MPO, and Orange County.

5. **Progress Reporting:**

Unless otherwise agreed in writing between Parties, the Implementing Party agrees to provide quarterly and annual reporting per the Comprehensive Participation Agreement for the Reported Deliverables as identified in Exhibit A using a Reporting Template agreed to by the Parties. The Implementing Party shall include in its reports, which includes standard Q1 & Q3 reports as well as the enhanced Q2 and Q4/annual reports, an assessment of risks that may impact delivery of the Projects identified in Exhibit A, and a forecast of anticipated deviations from scope, schedule, and budget baselines identified in Exhibit A. If the Implementing Party is allocating local, federal, state, or other funds towards Projects identified in Exhibit A, it is the Implementing Party's responsibility if they desire to report those expenditures to the Tax District Administrator, which shall be included as part of the reports, which includes standard Q1 & Q3 reports as well as the enhanced Q2 and Q4/annual reports. The Parties agree to share supporting documentation, if requested, in addition to their quarterly and annual reporting, in a timely manner.

6. **Progress Updates**

- A. **Meeting:** Parties to this Agreement shall endeavor to schedule one project update meeting annually within the forum of the Staff Working Group, unless otherwise determined, so long as it precedes the development and publication of the Orange County Transit Draft Annual Work Program. This is to review the enhanced Q2 report developed by the Implementing Party and Implementation Partners and discuss the extent to which the Project, or sets of Projects, is achieving documented metrics, as outlined in Section 4 of this Agreement. Generally, these expectations can be defined through the three following elements: Cost, Schedule and Functionality. This meeting shall also evaluate and confirm that the Project, or sets of Projects, is meeting expectations outlined in Exhibit A, and provide a forum to discuss proposed mitigation strategies when metrics are not on track.
- B. **Amendment Initiation:** If metrics for one or more Projects are not being met, Parties to this Agreement shall utilize the approved work program development

and/or amendment process to make any necessary adjustments to support the meeting of defined expectations.

7. **Further Agreements:**

The Parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the intention of this Agreement.

8. **Amendment:**

Any extension of the Term of this Agreement and/or change to the content of this Agreement shall be by written amendment signed by all Parties.

9. **Breach; Termination:**

In the event that (1) the Implementing Party is not able or fails to provide a Project(s) as required by the Agreement; or (2) GoTriangle is not able or fails to provide funding for a Project(s) as required by the Agreement; or (3) Parties to this Agreement fail to fulfill responsibilities and duties as set out in the Governance ILA; or (4) any Party fails to fulfill a responsibility or duty of this Agreement; or (5) any Party withdraws from the Comprehensive Participation Agreement (separately each a "breach"), any Party to this Agreement shall notify the SWG Administrator to the SWG Committee and the other Parties to this Agreement. The Non-breaching Party may place the item on a SWG agenda for discussion and a non-binding recommendation to the Parties.

The Non-breaching Party may provide the Breaching Party with a period of time to cure the breach to the reasonable satisfaction of the Non-breaching Party. If the breach is not timely cured, or cannot be cured, the Non-breaching Party may (1) elect to terminate this Agreement in full; or (2) elect to terminate this Agreement only as to one or more Projects listed in Exhibit A. In the event of breach of this Agreement, the Parties shall be entitled to such legal or equitable remedy as may be available, including specific performance.

In the event the Agreement is terminated for any reason other than by the end of the Term of the Agreement:

- (a) The Implementing Party shall not be required to continue implementing the Projects but may elect to continue implementing the Projects using funds from sources other than the Orange Transit Tax.
- (b) The Implementing Party shall have sixty (60) days after the date of termination to submit all Reimbursement Requests.
- (c) The Implementing Party shall report the project status.

10. **Record Retention:**

All Parties must adhere to record retention guidelines as set forth in North Carolina General Statutes or federal guidelines as appropriate.

11. **Notices:**

Any notice given pursuant to this Agreement shall be deemed given if delivered by hand or if deposited in the United States Mail, postage paid, certified mail, return receipt requested and addressed as follows:

If to GoTriangle:
GoTriangle
Attn: President and CEO 4600
Emperor Blvd, Suite 100
Orange, NC 27703

And with a copy to:
GoTriangle
Attn: General Counsel
4600 Emperor Blvd, Suite 100
Orange, NC 27703

If to the Clerk to the SWG Committee
Orange County
Attn: SWG Administrator
300 W. Tryon St.
Hillsborough, NC 27278

If to DHCHMPO:
DCHC MPO
Attn: Executive Director
Central Pines Regional Council
4307 Emperor Blvd. Suite 110
Durham, NC 27703

If to the Implementing Party
Town of Hillsborough
Attn: Town Manager
101 E. Orange St.
Hillsborough, NC 27278

12. **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 Agreement and to carry out the transactions contemplated by this Agreement, and the individuals signing this Agreement have the right and power to do so. This Agreement is a valid and binding obligation of each Party.

B. To the knowledge of each Party, neither the execution and delivery of this Agreement, nor the fulfillment of or compliance with its terms and conditions, nor the consummation of the transactions contemplated by this Agreement, results in a breach of the terms, conditions and provisions of any agreement or instrument to which a Party 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 Agreement or to comply with its obligations under this Agreement. Neither such Party's execution and delivery of this Agreement, nor its compliance with its obligations under this Agreement, requires the approval of any regulatory body or any other entity the approval of which has not been obtained.

D. Parties agree to work together in good faith and with all due diligence to provide for and carry out the purpose of this Capital Funding Agreement.

E. The Project(s) listed in the attached Exhibit A are not debt funded unless otherwise approved in accordance with the Orange County Transit Interlocal Agreement and supporting Financial Policies & Procedures.

13. **Merger and Precedence:**

The provisions of this Agreement, including all Exhibits and attachments, constitute the entire agreement by and between the Parties hereto and shall supersede all previous communications, representations or agreements, either oral or written between the Parties hereto with respect to the subject matter hereof.

Notwithstanding the foregoing, in the event of any inconsistency or conflict between this Agreement and the Comprehensive Participation Agreement or the Governance ILA, the terms of the Comprehensive Participation Agreement and Governance ILA have precedence.

14. **Dispute Resolution:**

In the event of conflict or default that might arise for matters associated with this Agreement, 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 Agreement, shall be subject to resolution in a court of competent

jurisdiction. Such disputes, or any other claims, disputes or other controversies arising out of, and between the Parties shall be subject to and decided exclusively by the appropriate general court of justice of Orange County, North Carolina.

15. **No Waiver of Non-Compliance with Agreement:**

No provision of this Agreement shall be deemed to have been waived by any Party hereto unless such waiver shall be in writing and executed by the same formality as this Agreement. The failure of any Party hereto at any time to require strict performance by the other Party 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.

16. **Force Majeure.** The performance of each Party hereunder shall be excused for such period of time as performance is delayed due to force majeure. If any Party hereto is delayed in the completion of its obligations hereunder by the act, delay in providing approval, or default of the other Parties through no fault of the delayed Party, or by acts of God (which shall be deemed to include weather delays caused by rainfall, snow or other factors in excess of such weather for the season in which such performance is to occur that actually cause a delay in performance, fire, strikes, lockouts, unavoidable casualties, war, acts of terrorism, civil commotion, fire or other casualty, theft of materials, unseasonable shortages of materials or supplies, pandemic, epidemic, or any other cause whatsoever beyond the commercially reasonable control of the delayed Party then the time herein fixed for completion of such obligations shall be extended by the number of days that the delayed Party has thus been delayed. The delayed Party shall provide the other Parties hereto with written notice of any delay within ten (10) days after commencement of such delay; provided, however, that only one notice is necessary in the case of a continuing delay.

17. **Compliance Non-Discrimination Law and Policy.** Parties shall not discriminate against any contractor, employee, or applicant for employment because of age, race, sex, sexual orientation, gender identity or expression, creed, national origin or ancestry, marital or familial status, pregnancy, military status, religious belief or non-belief, or disability. Parties shall take affirmative action to ensure that qualified applicants are employed and that employees are treated fairly and legally during employment with regard to their age, race sex, sexual orientation, gender identity or expression, creed, national origin or ancestry, marital or familial status, pregnancy, military status, religious belief or non-belief, or disability. In the event Implementing Party is determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Agreement may be canceled, terminated or suspended in whole or in part by COUNTY. **Implementing Party certifies that Implementing Party shall abide by Orange County Ordinance Article I, Sections 15-1 through 15-85. Failure to abide by said Ordinance is a breach of this Agreement and grounds for terminating the Agreement for cause and without fault or liability to COUNTY.**

18. **Governing Law:**

The Parties intend that this Agreement be governed by the law of the State of North Carolina. Proper venue for any action shall solely be Orange County.

19. **Assignment:**

No Party may sell or assign any interest in or obligation under this Agreement without the prior express written consent of the other Parties.

20. **Independence of the Parties:**

Nothing herein shall be construed to modify, abridge, or deny the authority or discretion of any Party to independently develop, administer, or control transportation projects pursuant to enumerated authority or funding sources separate from those in this Agreement.

21. **Execution in Counterparts/Electronic Version of Agreement:**

This Agreement 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 Agreement 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 Agreement shall be deemed for all purposes to be an original signed Agreement.

22. **No Waiver of Sovereign Immunity:**

Nothing in this Agreement shall be construed to mandate purchase of insurance by any municipality pursuant to N.C.G.S. 160A-485; or to in any other way waive any Party's defense of sovereign or governmental immunity from any cause of action alleged or brought against any Party for any reason if otherwise available as a matter of law.

23. **No Waiver of Qualified Immunity:**

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

24. **Verification of Work Authorization; Iran Divestment Act:**

All Parties, and any permitted subcontractors, shall comply with Article 2, Chapter 64, of the North Carolina General Statutes. 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.

25. **No Third-Party Beneficiaries:**

There are no third-party beneficiaries to this Agreement.

26. **E – Verify:**

All Parties shall comply with *E-Verify*, the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law and as in accordance with N.C.G.S. §64- 25 *et seq.* In addition, to the best of ta Party’s knowledge, any subcontractor employed by a Party as a part of this Agreement shall be in compliance with the requirements of E-Verify and N.C.G.S. §64-25 *et seq.* In cases of conflict between this Agreement and any of the above incorporated attachments or references, the terms of this Agreement shall prevail.

27. **Companies Boycotting Israel Divestment Act Certification:**

Contractor certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. 147- 86.81.

28. **Electronic Signatures:**

Parties acknowledge and agree that the electronic signature application Adobe Sign may be used to execute this Agreement and any associated documents. By selecting "I Agree," "I Accept," or other similar item, button, or icon via use of a keypad, mouse, or other device, as part of the Adobe Sign application, Parties consent to be legally bound by the terms and conditions of this Agreement and that such act constitutes Parties’ signatures as if signed by Parties in writing. Parties also agree that no certification authority or other third-party verification is necessary to validate the electronic signature and that the lack of such certification or third-party verification will not in any way affect the enforceability of the electronic signature. Parties acknowledge and agree that delivery of a copy of this Agreement or any other document contemplated hereby, through the Adobe Sign application, will have the same effect as physical delivery of the paper document bearing an original written signature.

Town of Hillsborough, NC

By: _____
Eric Peterson, Town Manager

This, the ____ day of _____, 2024.

SIGNATURE PAGES FOLLOW

| | |
|--|---|
| <p>RESEARCH TRIANGLE REGIONAL PUBLIC TRANSPORTATION AUTHORITY (d/b/a GoTriangle)</p> <p>By: _____ Charles E. Lattuca, President and CEO</p> <p>This, the ____ day of _____, 2024.</p> | <p>This instrument has been preaudited in the manner required by The Local Government Budget and Fiscal Control Act.</p> <p>_____</p> <p>Sandra Freeman, Chief Financial Officer for GoTriangle</p> <p>This, the ____ day of _____, 2024.</p> |
| | <p>Reviewed and Approved as to legal form.</p> <p>_____</p> <p>T. Byron Smith, General Counsel</p> |

Exhibit A

| Project ID | 18TOHCD1 | Project Category | Transit Infrastructure | Project Subcategory | Other Bus Service |
|---|----------|------------------|------------------------|--|----------------------------|
| Project Description & Goals | | | | Project at a Glance | |
| <i>Construct a station along the NCRB corridor in Hillsborough to serve Amtrak and potentially commuter rail service. Provides the local funding for TIP project P-5701</i> | | | | Project Title | Hillsborough Train Station |
| | | | | Agency | Town of Hillsborough |
| | | | | Parties to Project | |
| | | | | Estimated Total Project Cost | |
| | | | | Budgeted FY25 Costs funded by this Agreement | \$461,668 |
| | | | | Programmed FY25 Costs funded by this Agreement | \$461,668 |
| | | | | Start Date | July 2022 |
| | | | | Anticipated End Date | July 2028 |