

NORTH CAROLINA  
ORANGE COUNTY

DATE: APRIL 21, 2023

NORTH CAROLINA DEPARTMENT  
OF TRANSPORTATION

NON-BINDING SUMMARY OF  
PROPOSED TERMS FOR THE NEW  
HILLSBOROUGH TRAIN STATION

AND

TIP: P-5701

TOWN OF HILLSBOROUGH

AND

NATIONAL RAILROAD PASSENGER  
CORPORATION (AMTRAK)

This NON-BINDING SUMMARY OF PROPOSED TERMS FOR THE NEW HILLSBOROUGH TRAIN STATION (“**Term Sheet**”) summarizes certain terms of a proposed sublease agreement being considered by the TOWN OF HILLSBOROUGH, a municipal entity (“**Municipality**”); and the NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, an agency of the State of North Carolina (“**Department**”); and the NATIONAL RAILROAD PASSENGER CORPORATION (“**Amtrak**”). Each party may hereinafter be referred to individually as “Party” and collectively as “Parties.”

The proposed transaction is subject to (i) the written acceptance by all Parties of the principal terms, as finally negotiated, of both a lease agreement between the Municipality and the Department (“**Lease**”) and a sublease agreement between the Department and Amtrak (“**Sublease**”) and any other agreements related thereto. It is understood that this Term Sheet does not constitute a binding contract, and that the Parties do not intend to be legally bound, unless and until a definitive Sublease agreement has been executed by all Parties. Unless and until such definitive Sublease agreement has been executed by all Parties, any party is free to terminate further negotiations at any time for any reason.

**BACKGROUND:**

1. Amtrak provides intercity rail passenger service through forty-six (46) states, the District of Columbia, and three (3) Canadian provinces.
2. Department owns a portion of the equipment and subsidizes a portion of Amtrak’s operating costs for the *Piedmont* and *Carolinian* services.

3. Municipality has requested Amtrak add a route stop to its Carolinian and Piedmont lines to provide intercity rail passenger service to the Hillsborough community. The relative tracks are owned, operated over, and dispatched by Norfolk Southern Railway (“**NSR**”) with additional oversight provided by the North Carolina Railroad Company (“**NCRR**”), which owns the railroad corridor in the NSR-owned right-of-way (“**ROW**”).
4. Municipality, at no cost to Amtrak, proposes to design, construct, own, repair, and maintain a new intermodal transportation facility, including a passenger rail station building, railroad platform(s), and parking, on real property located at 255 Orange Grove Street, Hillsborough, North Carolina (collectively, the “**New Station**”).
5. To help facilitate the negotiation of a binding Sublease agreement for this proposed transaction, the Parties desire to set out certain proposed terms in this Term Sheet. This Term Sheet is not intended to be legally binding upon Amtrak or Department or Municipality.

#### **SUMMARY OF TERMS UNDER CONSIDERATION:**

PROPERTY:	Certain properties located near the intersection of Orange Grove Street and Old NC Route 86 in Hillsborough, North Carolina. The address of the New Station will be 255 Orange Grove Street, Hillsborough, NC 28275.
PREMISES:	The “ <b>Premises</b> ” in the Sublease will include all nonexclusive portions of the New Station, including but not limited to a waiting area, restrooms, platforms, parking, and other common areas, for use by Amtrak and its passengers on a nonexclusive basis. Municipality intends to lease the Premises to the Department and the Department will then sublease to Amtrak.
PROJECT:	With funding provided by the Municipality (and at no cost to Amtrak), Municipality will design and construct the New Station in accordance with plans and specifications reviewed and approved by Amtrak along the ROW (“ <b>Project</b> ”). Any agreed upon Lease will require the Project to be designed, constructed, operated, repaired, and maintained in a manner meeting Amtrak’s technical and operational standards and requirements and complying with all applicable federal, State, and local requirements for passenger railroad stations, and applicable statutes, laws, rules, regulations, ordinances, and codes including the Americans with Disabilities Act of 1990, as amended (42 United States Code (U.S.C.) §§ 12101 <i>et seq.</i> , hereinafter “ <b>ADA</b> ”) (collectively, “ <b>Laws</b> ”). The proposed New Station shall follow Amtrak’s Station Planning and Development Guidelines as written and distributed to the Municipality in January 2022. The Municipality may also have to include requirements of NS and NCRR.

The Municipality shall, at its sole cost and expense, have the Project constructed in accordance with design plans prepared by the Municipality's designer of record and reviewed and approved by Amtrak and the Department.

The Premises shall be designed, constructed, operated, repaired, and maintained by Municipality so that Amtrak shall not (i) incur operating expenses not otherwise agreed to by Amtrak as defined in this Term Sheet; or (ii) be required to modify, curtail, or terminate any business operations such as package express, baggage which are deemed Amtrak exclusive space, and thruway bus service.

INITIAL SUBLEASE TERM Twenty (20) years.

RENEWAL TERM(S): Amtrak will have two (2) renewal options of twenty (20) years each.

EARLY TERMINATION: The Sublease will provide Amtrak the right to terminate the Sublease by providing a minimum of ninety (90) days prior written notice to Municipality if: (i) the below defined Commencement Date for operations at the New Station does not occur on or before January 1, 2028, (ii) in the event funding for the New Station is reduced or ceases to exist; or (iii) the New Station is not built in accordance with Amtrak's technical and operational standards and requirements and in compliance with all applicable Laws; (iv) Amtrak's rail passenger service to Hillsborough, North Carolina will relocate or cease; or (v) in the event the New Station is materially damaged and Municipality elects not to rebuild.

COMMENCEMENT DATE: The Commencement Date of the Sublease will be the date on which Amtrak begins operating passenger rail services in and to the New Station. The Sublease will require the Commencement Date to occur five (5) days after Amtrak has provided written acceptance of the completed Project. The Parties acknowledge that Amtrak will not provide written acceptance unless and until: (a) Amtrak has received a final certificate of occupancy for the Project, including the New Station and the Premises, in a form acceptable to Amtrak; and (b) Amtrak has inspected the New Station and Premises for compliance with the terms of the Sublease (including, but not limited to, compliance with ADA) and the Municipality has corrected any non-compliant items. The Municipality, Department, and Amtrak will execute a declaration confirming the agreed upon Commencement Date.

RENT: One Dollar (\$1.00) annually and One Dollar (\$1.00) annually during each year of the Renewal Term(s).

- MAINTENANCE/REPAIR:** The Municipality will, at its sole cost and expense, operate, repair, and maintain the New Station in good operating condition and suitable for Amtrak's use, and in compliance with all Laws.
- STATION ATTENDANT:** The Department shall pay for all costs of providing a station attendant at the New Station. The station attendant shall open and close the New Station at appropriate times centered around scheduled train arrivals and departures. The station attendant may be asked to adjust its schedule for opening / closing of the New Station if a train has a delayed arrival or departure.
- SUPPORT OFFICES:** The Department will provide appropriate office equipment such as telephones, computers, printers, fax machines, radios, and any other necessary equipment necessary for the operation of the New Station.
- USE:** The Sublease will permit Amtrak to use and occupy the New Station for all purposes relating to the operation of a passenger railroad station inclusive of limited or emergency alternative uses necessary for the operation of Amtrak's business, and as permitted by Laws.
- PARKING:** The Sublease will provide Amtrak with the exclusive right to use, free of charge, five (5) reserved parking spaces at the New Station, including one (1) van-accessible ADA parking space, in mutually agreed upon locations. The Municipality will provide signage denoting Amtrak's reserved spaces. In addition, the Department and Amtrak and their respective employees, agents, licensees, contractors, passengers, and invitees shall have the right to use any remaining available parking at the New Station. The Municipality will be responsible for ensuring the parking is only used in conjunction with the use of the New Station (including uses unrelated to intercity passenger service) and provide signage and enforcement to such effect. The parking will be provided in compliance with all current and future Laws.
- SIGNAGE:** At no cost to Amtrak, the Municipality and Department will provide for all necessary Project and New Station signage and replacement signage, including but not limited to all signage required by applicable Laws, ADA signage, passenger information display system including audio and visual components ("PIDs"), public announcement systems, displays, wayfinding, and pursuant to Amtrak's standard train station requirements and standards. Any sign bearing Amtrak trademarks or logos, must have prior approval from Amtrak signage brand management. In addition, Amtrak, in its sole discretion, may install and replace any Amtrak business/branded signage in the New Station. Amtrak's name and

any Amtrak logo selected by Amtrak shall be placed on all New Station identification and wayfinding signage.

SECURITY:	At no cost to Amtrak, the Municipality shall comply with all applicable safety and security requirements of Amtrak, NS, NCRR, and any other transportation providers, and applicable Laws.
INSURANCE and INDEMNIFICATION:	To the extent permitted by law, the Municipality and the Department and their contractors and subcontractors who perform work on the Project and in the New Station, shall maintain insurance consistent with Amtrak requirements. The Municipality and the Department shall purchase and maintain insurance on the New Station for its full replacement value including the value of all alterations and improvements made to the New Station, with Amtrak as loss payee. The Municipality and the Department shall indemnify Amtrak and its officers, directors, employees, agents, successors, assigns and subsidiaries from all liability, damage, expenses and costs to any person or property caused by the Municipality and/or the Department, their employees, or agents in connection with the Project, the ownership and operation of the New Station and the Sublease, without regard to Amtrak's negligence.
STATUTORY/ DEED RIGHTS:	Any deed(s) or other instrument used to acquire any real property interest for the Project must reserve to Amtrak a perpetual right that runs with the land for Amtrak to use the New Station consistent with Amtrak's statutory rights under 49 U.S. Code 24308.
NO GIFTS:	N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any North Carolina state employee of any gift from anyone with a contract with the state of North Carolina, or from any person seeking to do business with the state. The Parties acknowledge this requirement and will attest in the Lease and Sublease that they are not aware that any gift in violation of N.C.G.S. § 133-32 and Executive Order 24 that has been offered, accepted, or promised by any employees of their respective organizations.
GOVERNING LAW:	The Sublease or any other agreement relating to the New Station between the Parties will be governed by and construed under the laws of the state of North Carolina. All legal proceedings shall be adjudicated in the U.S. District Court for the Eastern District of North Carolina.
NON-BINDING:	This Term Sheet does not constitute a complete statement of the terms and conditions pursuant to which the Department will lease

the Premises from the Municipality, or the Municipality will lease the Premises to the Department. This Term Sheet also does not constitute a complete statement of the terms and conditions pursuant to which Amtrak will sublease the Premises from the Department, or the Department will sublease the Premises to Amtrak.

This Term Sheet does not constitute a legally binding and enforceable agreement or commitment on the part of the Municipality, Department, or Amtrak with respect to the matters described herein, nor does it impose on any Party an enforceable duty or obligation to conclude any transaction. Notwithstanding anything to the contrary contained herein: (i) no Party will be bound by any written or oral representations or negotiations between them, either directly or through any intermediary; (ii) no Party will have any liability hereunder for refusing to compromise on any issue, or terminating negotiations at any time for any reason or no reason; (iii) this Term Sheet will not give rise to any claim based on promissory estoppel, partial performance, detrimental reliance or any other equitable theory; and (iv) no Party shall have any liability hereunder or bring suit against the other in connection with the terms of this term sheet.

The Parties acknowledge that the Municipality entering into a Lease and/or Sublease agreement is contingent upon Municipality negotiating and entering into an agreement with NSR and NCRR for the railroad platform.

The Parties acknowledge that Amtrak entering into a Sublease agreement is contingent upon: (i) the Municipality and Department first executing the Lease; (ii) Amtrak negotiating and entering into a mutually agreeable Sublease with Department; (iii) the Project being designed, constructed, operated, repaired, and maintained in a manner meeting Amtrak's technical and operational standards and requirements and complying with all applicable Laws; and (iv) the approval of Amtrak providing service to the New Station by the Amtrak Board of Directors and the Federal Railroad Administration ("FRA"). In no event shall Amtrak be obligated to enter into the Sublease (even if the Lease has been executed) unless and until the Sublease has been negotiated, prepared, approved by Amtrak's Board of Directors and the FRA, if applicable, executed and delivered.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, this NON-BINDING SUMMARY OF PROPOSED TERMS FOR THE NEW HILLSBOROUGH TRAIN STATION has been executed the day and year heretofore set out below, on the part of Municipality, Department, and Amtrak by authority duly given.

N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this Agreement, you attest, for your entire organization and its employees or agents, that you are not aware that any gift in violation of N.C.G.S. § 133-32 and Executive Order 24 has been offered, accepted, or promised by any employees of your organization.

**TOWN OF HILLSBOROUGH**

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

Approved by the Town of Hillsborough governing board as attested to by the signature of

MUNICIPAL SEAL

\_\_\_\_\_  
Clerk of the Town Council \_\_\_\_\_  
(Date)

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

\_\_\_\_\_  
Municipal Finance Officer

**FEDERAL TAX IDENTIFICATION NUMBER**

\_\_\_\_\_  
Town of Hillsborough

**MAILING ADDRESS**

Town of Hillsborough  
[Street Address]  
[City, State Zip]  
Attn: [Contact Name]  
[Job Title]  
[Email]

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NATIONAL RAILROAD PASSENGER  
CORPORATION (AMTRAK)

BY: \_\_\_\_\_

NAME: Louis Wolfowitz

TITLE: Vice President, Real Estate and  
Commercial Development

DATE: \_\_\_\_\_

FEDERAL TAX IDENTIFICATION NUMBER

\_\_\_\_\_  
National Railroad Passenger Corporation

**MAILING ADDRESS**

National Railroad Passenger Corporation  
William H. Gray, 30<sup>th</sup> Street Station  
2955 Market Street  
Philadelphia, PA 19104  
ATTN: Angel D'Ippolito  
Senior Director, Real Estate Development  
215-349-2548  
angelique.dippolito@amtrak.com



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NORTH CAROLINA DEPARTMENT OF  
TRANSPORTATION

BY: \_\_\_\_\_

NAME: Julie A. White

TITLE: Deputy Secretary for Multi-Modal  
Transportation

DATE: \_\_\_\_\_

SEAL

**MAILING ADDRESS**

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Rail Division, Operations & Facilities Branch  
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ATTN: Craig Newton, PE  
Facilities Engineer Consultant  
[cmnewton@ncdot.gov](mailto:cmnewton@ncdot.gov)  
919-707-4761

APPROVED BY BOARD OF TRANSPORTATION ITEM O: \_\_\_\_\_ June 8, 2023  
(Date)