

GENERAL CAPITAL FUNDING AGREEMENT

WAKE TRANSIT FY 2022

This Capital Funding Agreement ("Agreement") is made by and between Research Triangle Regional Public Transportation Authority, d/b/a GoTriangle ("GoTriangle") _____ ("Implementing Party"). 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 Wake 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 Wake County, referred to as the "Wake County Transit Plan" ("Wake Transit Plan"), and this plan was unveiled on or about December 8, 2015, and adopted by the GoTriangle Board of Trustees on May 25, 2016, the Capital Area Metropolitan Planning Organization's ("CAMPO") Executive Board on May 18, 2016, and the Wake County Board of Commissioners on June 6, 2016; and

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

WHEREAS, the Governance ILA specifically created the Transit Planning Advisory Committee ("TPAC") and charged the TPAC with coordinating and recommending the planning and implementation aspects of the Wake Transit Work Plan; and

WHEREAS, the Governance ILA Parties, together with the Implementing Party, numerous Wake County municipalities, and other entities, entered into a Master 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 Wake Transit Work Plan, receipt of funding allocations from Wake County Transit Tax Revenue, and confirmed the Participation Agreement Parties' roles in carrying out TPAC responsibilities; and

WHEREAS, the FY 2022 Wake Transit Work Plan was developed and recommended by the TPAC, presented for public comment, and adopted, as required, by the Boards of CAMPO and GoTriangle; and

WHEREAS, the FY 2022 Triangle Tax District Wake Operating Ordinance was adopted by the GoTriangle Board of Trustees on _____; and

WHEREAS, the Parties desire to implement the components of the 2022 Wake Transit Work Plan as adopted by GoTriangle and CAMPO; and

WHEREAS, as stated in the Participation Agreement, all Implementation Elements contained in the Wake Transit Work Plan, whether partially or fully funded with Wake County Transit Tax Revenues, will not move forward until Implementation Agreements, which shall include Capital Funding Agreements and Operating Agreements are executed by and between the Implementing Party; GoTriangle, as administrator of the Special District, and CAMPO, if the Implementing Agreement involves federal or state funding that is otherwise under the distribution and program management responsibility of CAMPO or, regardless of funding source, constitutes a regionally significant project as defined in 23 CFR § 450.104; and

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. **Term:**

The Agreement shall become effective upon execution by all Parties (“Effective Date”). The term of this Agreement shall be from the Effective Date until September 30, 2024. The Parties may extend the term of this Agreement or may otherwise amend this Agreement as set forth in Section 7.

2. **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 an approved Project(s) in the Wake County Transit Annual Work Plan, shall be implemented, in accordance with the requirements of the Participation Agreement.

3. **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 TPAC and adopted by CAMPO and GoTriangle.
- (2) The Wake Transit Work Plan Reimbursement Request and Financial Report Template (“Reimbursement Requests”) must be submitted by the Implementing Party at least quarterly but may be as often as it is efficient and effective for the Implementing Party. The reimbursement request shall be emailed to waketransitreimbursement@gotriangle.org.

All Reimbursement Requests must be made using the Wake Transit Work Plan 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 Wake Transit Work Plan 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 performance on 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 for the fiscal year in which the work was done.
- (6) Further, the Implementing Party shall:
 - (a) Ensure that Wake 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, route planning and development, schedule development, passenger amenities, maintenance and upkeep of passenger amenities, public engagement and advertisement in relation to the new services, etc. These coordination efforts shall occur prior to the execution of the transit services.

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 2022 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 2022 Wake Transit Work Plan.
- (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 Wake Transit Billing, Payment, and Reimbursement Policy and Guidelines, adopted by GoTriangle on June 28, 2017 and CAMPO on June 21, 2017. Payment will be remitted within thirty (30) days of verification to the Implementing Party according to the payment instructions on file.

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 TPAC 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 Wake Transit Financial Policies and Guidelines, adopted by GoTriangle on June 28, 2017 and CAMPO on June 21, 2017.

4. **Progress Reporting:**

Unless otherwise agreed in writing between Parties, the Implementing Agency agrees to provide quarterly and annual reporting per the Master Participation Agreement for the Reported Deliverables as identified in Exhibit A using a Reporting Template agreed to by the Parties. The Implementing Agency shall include in its quarterly reports any details of issues that may impact delivery of the Projects identified in Exhibit A. If the Implementing Party is allocating local funds towards Projects identified in Exhibit A, those expenditures shall be disclosed as part of its quarterly and annual reports.

The Annual Wake Transit Report prepared by GoTriangle shall provide information regarding how strategic public transit objectives have been met and shall include the progress achieved, the strategies being followed, and performance targets and key milestones for capital projects and operating services.

Quarterly Status Reports prepared by GoTriangle and/or CAMPO shall provide information regarding progress toward strategic objectives outlined in the Wake Transit Work Plan and include the performance achieved, the strategies being followed, and performance targets and key milestones for Capital Projects and operating services identified in the Wake Transit Work Plan. GoTriangle shall include in its Quarterly Status Reports any details of issues that may impact delivery of funding for the Projects identified in Exhibit A.

The Parties agree to share supporting documentation, if requested, in addition to their quarterly and annual reporting, in a timely manner.

5. **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. The Parties agree to work together in good faith and with all due diligence to provide for and carry out the purpose of this Agreement.

6. **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.

7. **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) GoTriangle fails to fulfill its 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 Master Participation Agreement (separately each a "breach"), any Party to this Agreement shall notify the Clerk to the TPAC Committee and the other Parties to this Agreement. The Non-breaching Party may place the item on a TPAC 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 Wake Transit Tax.
- (b) GoTriangle shall reimburse the Implementing Party for any expenses for the Projects that have been approved in the annual work plan and made in reliance on this Agreement, whether or not a Reimbursement Request has been made by Implementing Party at the time of termination. 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 final status for its deliverable and GoTriangle shall do a final quarterly report and shall issue the annual report required by this Agreement.

8. **Record Retention:**

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

9. **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
Durham, NC 27703

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

If to the Clerk to the TPAC Committee
CAMPO
Attn: Clerk to the TPAC Committee
One City Plaza
421 Fayetteville Street, Suite 203
Raleigh, NC 27601

<insert other Parties' Notice Information>

10. **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.

11. **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 Participation Agreement or the Governance ILA, the terms of the Participation Agreement and Governance ILA have precedence.

12. **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 Wake County, North Carolina.

13. **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.

14. **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 Wake County.

15. **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.

16. **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.

17. **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.

18. **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.

19. **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.

20. **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.

21. **No third-Party Beneficiaries:**

There are no third-party beneficiaries to this Agreement.

22. **E – Verify:**

Contractor 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 Contractor's knowledge, any subcontractor employed by Contractor as a part of this contract 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 Contract and any of the above incorporated attachments or references, the terms of this Contract shall prevail.

23. **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.

SIGNATURE PAGES FOLLOW

DRAFT

<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 _____, 2021.</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 _____, 2021.</p>
	<p>Reviewed and Approved as to legal form.</p> <p>_____</p> <p>Shelley R. Curran, General Counsel</p>

DRAFT

GENERAL OPERATING AGREEMENT

WAKE TRANSIT FY 2022

This Operating Agreement ("Agreement") is made by and between Research Triangle Regional Public Transportation Authority, d/b/a GoTriangle ("GoTriangle") and _____ ("Implementing Party"). 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 Wake 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 Wake County, referred to as the "Wake County Transit Plan" ("Wake Transit Plan"), and this plan was unveiled on or about December 8, 2015, and adopted by the GoTriangle Board of Trustees on May 25, 2016, the Capital Area Metropolitan Planning Organization's ("CAMPO") Executive Board on May 18, 2016, and the Wake County Board of Commissioners on June 6, 2016; and

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

WHEREAS, the Governance ILA specifically created the Transit Planning Advisory Committee ("TPAC") and charged the TPAC with coordinating and recommending the planning and implementation aspects of the Wake Transit Work Plan; and

WHEREAS, the Governance ILA Parties, together with the Implementing Party, numerous Wake County municipalities, and other entities, entered into a Master 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 Wake Transit Work Plan, receipt of funding allocations from Wake County Transit Tax Revenue, and confirmed the Participation Agreement Parties' roles in carrying out TPAC responsibilities; and

WHEREAS, the FY 2022 Wake Transit Work Plan was developed and recommended by the TPAC, presented for public comment, and adopted, as required, by the Boards of CAMPO and GoTriangle; and

WHEREAS, the FY 2022 Triangle Tax District Wake Operating Ordinance was adopted by the GoTriangle Board of Trustees on _____; and

WHEREAS, the Parties desire to implement the components of the 2022 Wake Transit Work Plan as adopted by GoTriangle and CAMPO; and

WHEREAS, as stated in the Participation Agreement, all Implementation Elements contained in the Wake Transit Work Plan, whether partially or fully funded with Wake County Transit Tax Revenues, will not move forward until Implementation Agreements, which shall include a Capital Funding Agreement and an Operating Agreement, are executed by and between the Implementing Party; GoTriangle, as administrator of the Special District, and CAMPO, if the Implementing Agreement involves federal or state funding that is otherwise under the distribution and program management responsibility of CAMPO or, regardless of funding source, constitutes a regionally significant project as defined in 23 CFR § 450.104; and

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. **Term:**

The Agreement shall become effective upon execution by all Parties (“Effective Date”). The term of this Agreement shall be from the Effective Date until **September 30, 2022**. The Parties may extend the term of this Agreement or may otherwise amend this Agreement as set forth in Section 7.

2. **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 an approved Project(s) in the Wake County Transit Annual Work Plan, shall be implemented, in accordance with the requirements of the Participation Agreement.

3. 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 funds are available to pay for the Projects prior to requesting reimbursement from GoTriangle.
- (2) The Wake Transit Work Plan Reimbursement Request and Financial Report Template ("Reimbursement Request Template") must be submitted by the Implementing Party at least quarterly but may be as often as is efficient and effective for the Implementing Party. The reimbursement request shall be emailed to waketransitreimbursement@gotriangle.org.

All Reimbursement Requests must be made using the Wake Transit Work Plan 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 Wake Transit Work Plan 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 performance on 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, 2022** shall be submitted by August 10 for the fiscal year in which the work was done.
- (6) Further, the Implementing Party shall:
 - (a) Ensure that Wake 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.
 - (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, route planning and development, schedule development, passenger amenities, maintenance and upkeep of passenger amenities, public engagement and advertisement in relation to the new services, etc. These coordination efforts shall occur prior to the execution of the transit services.

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 2021 Triangle Tax District Wake Operating Ordinance in accordance with the Governance ILA. The specific appropriation and approved project budgets are further detailed in Exhibit A and in the FY 2021 Wake Transit Work Plan.
- (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 Wake Transit Billing, Payment, and Reimbursement Policy and Guidelines, adopted by GoTriangle on June 28, 2017 and CAMPO on June 21, 2017. Payment will be remitted within thirty (30) days of verification to the Implementing Party according to the payment instructions on file.

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 business days of receipt. If the Revised Reimbursement Request is denied, the Implementing Party may place the item on the next TPAC 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 Wake Transit Financial Policies and Guidelines, adopted by GoTriangle on June 28, 2017 and CAMPO on June 21, 2017.

4. **Minimum Service Standards:**

For the Projects listed in Exhibit A, the Implementing Party agrees to:

- A. Maintain all vehicles and facilities in accordance with a preventative maintenance program.
- B. Maintain all vehicles and facilities in a safe and dependable condition and clean all vehicles and facilities regularly.
- C. Monitor services and respond to incidents in a timely and professional manner.
- D. Conduct regular reviews of service including: safety, on-time performance, customer satisfaction, accessibility, cleanliness, security, and customer service training.
- E. Conduct public engagement activities in accordance with state and federal guidelines and agency and municipal policies and procedures, if applicable.

5. **Performance Reporting:**

Unless otherwise agreed in writing between Parties, the Implementing Party shall report operating statistics and ridership to the National Transit Database and to the North Carolina Department of Transportation Public Transportation Division.

The Implementing Agency also agrees to provide quarterly and annual reporting per the Master Participation Agreement for the Reported Deliverables as identified in Exhibit A using a Reporting Template agreed to by the Parties. The Implementing Agency shall include in its quarterly reports any details of issues that may impact delivery of the Projects identified in Exhibit A

The Annual Wake Transit Report prepared by GoTriangle shall provide information regarding how strategic public transit objectives have been met and shall include the performance achieved, the strategies being followed, and performance targets and key milestones for capital projects and operating services.

Quarterly Status Reports prepared by GoTriangle and/or CAMPO shall provide information regarding progress toward strategic objectives outlined in the Wake Transit Work Plan and include the performance achieved, the strategies being following, and performance targets and key milestones for

Capital Projects and operating services identified in the Wake Transit Work Plan. GoTriangle shall include in its Quarterly Status Reports any details of issues that may impact delivery of funding for the Projects identified in Exhibit A.

The Parties agree to share supporting documentation, if requested, in addition to their quarterly and annual reporting, in a timely manner.

6. **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. The Parties agree to work together in good faith and with all due diligence to provide for and carry out the purpose of this Agreement.

7. **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.

8. **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) GoTriangle fails to fulfill its 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 Master Participation Agreement (separately each a "breach"), any Party to this Agreement shall notify the Clerk to the TPAC Committee and the other Parties to this Agreement. The Non-Breaching party may place the item on a TPAC 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 Wake Transit Tax.
- (b) GoTriangle shall reimburse the Implementing Party for any expenses for the Projects that have been approved in the annual work plan and made in reliance on this Agreement, whether or not a Reimbursement Request has been made by Implementing Party at the time of termination. 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 final status for its deliverable and GoTriangle shall do a final quarterly report and shall issue the annual report required by this Agreement.

9. **ADA and Paratransit Requirements:**

The Implementing Party shall provide paratransit service as required by law within the ADA-required radius of the all day fixed-route bus services implemented as Projects pursuant to this Agreement.

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
Durham, NC 27703

And with a copy to:
GoTriangle

Attn: General Counsel
4600 Emperor Blvd, Suite 100
Durham, NC 27703

If to Clerk to the TPAC Committee:
CAMPO
Attn: Clerk to the TPAC Committee
One City Plaza
421 Fayetteville Street, Suite 203
Raleigh, NC 27601

<insert other Parties' Notice information>

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

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 Participation Agreement or the Governance ILA, the terms of the 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 Wake 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 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. **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 Wake County.

17. **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.

18. **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.

19. **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.

20. **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.

21. **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.

22. **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. 147-86.59.

23. **No third-Party Beneficiaries:**

There are no third-party beneficiaries to this Agreement.

24. **E – Verify:**

Contractor 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 Contractor’s knowledge, any subcontractor employed by Contractor as a part of this contract 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 Contract and any of the above incorporated attachments or references, the terms of this Contract shall prevail.

25. **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.

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 _____, 2021.</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 _____, 2021.</p>
	<p>Reviewed and Approved as to legal form.</p> <p>_____</p> <p>Shelley R. Curran, General Counsel</p>

DRAFT

SPECIAL CAPITAL FUNDING AGREEMENT

WAKE TRANSIT FY 2022

This Capital Funding Agreement ("Agreement") is made by and between Research Triangle Regional Public Transportation Authority, d/b/a GoTriangle ("GoTriangle"), _____ ("Implementing Party"), and the Capital Area Metropolitan Planning Organization ("CAMPO"). 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 Wake 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 Wake County, referred to as the "Wake County Transit Plan" ("Wake Transit Plan"), and this plan was unveiled on or about December 8, 2015, and adopted by the GoTriangle Board of Trustees on May 25, 2016, the Capital Area Metropolitan Planning Organization's ("CAMPO") Executive Board on May 18, 2016, and the Wake County Board of Commissioners on June 6, 2016; and

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

WHEREAS, based on Section 5.02 of the Governance ILA, CAMPO 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 Transit Planning Advisory Committee ("TPAC") and charged the TPAC with coordinating and recommending the planning and implementation aspects of the Wake Transit Work Plan; and

WHEREAS, the Governance ILA Parties, together with the Implementing Party, numerous Wake County municipalities, and other entities, entered into a Master 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 Wake Transit Work Plan, receipt of funding allocations from Wake County Transit Tax Revenue, and confirmed the Participation Agreement Parties' roles in carrying out TPAC responsibilities; and

WHEREAS, the FY 2022 Wake Transit Work Plan was developed and recommended by the TPAC, presented for public comment, and adopted, as required, by the Boards of CAMPO and GoTriangle; and

WHEREAS, the FY 2022 Triangle Tax District Wake Operating Ordinance was adopted by the GoTriangle Board of Trustees on _____; and

WHEREAS, the Parties desire to implement the components of the 2022 Wake Transit Work Plan as adopted by GoTriangle and CAMPO; and

WHEREAS, as stated in the Participation Agreement, all Implementation Elements contained in the Wake Transit Work Plan, whether partially or fully funded with Wake County Transit Tax Revenues, will not move forward until Implementation Agreements, which shall include Capital Funding Agreements and Operating Agreements are executed by and between the Implementing Party; GoTriangle, as administrator of the Special District, and CAMPO, if the Implementing Agreement involves federal or state funding that is otherwise under the distribution and program management responsibility of CAMPO or, regardless of funding source, constitutes a regionally significant project as defined in 23 CFR § 450.104; and

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. **Term:**

The Agreement shall become effective upon execution by all Parties ("Effective Date"). The term of this Agreement shall be from the Effective Date until **September 30, 2024**. The Parties may extend the term of this Agreement or may otherwise amend this Agreement as set forth in Section 7.

2. **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 an approved Project(s) in the Wake County Transit Annual Work Plan, shall be implemented, in accordance with the requirements of the Participation Agreement.

3. **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 TPAC and adopted by CAMPO and GoTriangle.
- (2) Funding. In the event that there will be funding for the Project from multiple sources, all parties with a financial contribution agree that the cost allocation must be specifically documented.
- (3) Requests for reimbursement (“Reimbursement Requests”) may be submitted by the Implementing Party as often as it is efficient and effective for the Implementing Party. The reimbursement request shall be emailed to waketransitreimbursement@gotriangle.org.

All Reimbursement Requests must be made using a Billing, Payment, and Reimbursement 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 Wake Transit Work Plan 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.
- (4) In special circumstances where an advance payment may be required, Reimbursement Requests must be submitted using the 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.
- (5) Reimbursement Requests for expenses incurred as of June 30 shall be submitted by August 10 for the fiscal year in which the work was done.

(Optional Provision)

(6) Concurrence. The Implementing party shall comply with the Wake Transit Concurrence Framework/Process as adopted by CAMPO and GoTriangle.

(Optional Provision)

(7) The parties acknowledge that the project(s) listed on Exhibit A of this document may be financed with debt proceeds issued by the tax district for the purpose of acquisition, construction and equipping of improvements. The parties understand and agree that additional agreement(s) and documentation will be necessary in addition to this Agreement to support the execution and related debt management of any financings.

(8) Further, the Implementing Party shall:

(a) Ensure that Wake Transit Tax Revenue provided by GoTriangle is 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.

(9) The Implementing Party shall coordinate with CAMPO to have the Project included in CAMPO's Transportation Improvement Plan.

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 2022 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 2022 Wake Transit Work Plan.

(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 Wake Transit Billing, Payment, and Reimbursement Policy and Guidelines, adopted by GoTriangle on June 28, 2017 and CAMPO on June 21, 2017. Payment will be remitted within thirty (30) days of verification to the Implementing Party according to the payment instructions on file.

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 TPAC 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 Wake Transit Financial Policies and Guidelines, adopted by GoTriangle on June 28, 2017 and CAMPO on June 21, 2017.

C. Responsibilities of CAMPO. CAMPO will work to include the Project(s) listed on Exhibit A, attached hereto, in its Transportation Improvement Program, as necessary.

4. **Progress Reporting:**

Unless otherwise agreed in writing between Parties, the Implementing Agency agrees to provide quarterly and annual reporting per the Master Participation Agreement for the Reported Deliverables as identified in Exhibit A using a Reporting Template agreed to by the Parties. The Implementing Agency shall include in its quarterly reports any details of issues that may impact delivery of the Projects identified in Exhibit A. If the Implementing Party is allocating local funds towards Projects identified in Exhibit A, those expenditures shall be disclosed as part of its quarterly and annual reports.

The Annual Wake Transit Report prepared by GoTriangle shall provide information regarding how strategic public transit objectives have been met and shall include the progress achieved, the strategies being followed, and performance targets and key milestones for capital projects and operating services.

Quarterly Status Reports prepared by GoTriangle shall provide information regarding progress toward strategic objectives outlined in the Wake Transit Work Plan and include the performance achieved, the strategies being followed, and performance targets and key milestones for Capital Projects and operating services identified in the Wake Transit Work Plan. GoTriangle shall include in its Quarterly Status Reports any details of issues that may impact delivery of funding for the Projects identified in Exhibit A.

The Parties agree to share supporting documentation, if requested, in addition to their quarterly and annual reporting, in a timely manner.

5. **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. The Parties agree to work together in good faith and with all due diligence to provide for and carry out the purpose of this Agreement.

6. **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.

7. **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) GoTriangle fails to fulfill its 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 Master Participation Agreement (separately each a "breach"), any Party to this Agreement shall notify the Clerk to the TPAC Committee and the other Parties to this Agreement. The Non-breaching Party may place the item on a TPAC 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 Wake Transit Tax.
- (b) GoTriangle shall reimburse the Implementing Party for any expenses for the Projects that have been approved in the annual work plan and made in reliance on this Agreement, whether or not a Reimbursement Request has been made by Implementing Party at the time of termination. 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 final status for its deliverable and GoTriangle shall do a final quarterly report and shall issue the annual report required by this Agreement.

8. **Record Retention:**

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

9. **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
Durham, NC 27703

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

Durham, NC 27703

If to the Clerk to the TPAC Committee
CAMPO
Attn: Clerk to the TPAC Committee
One City Plaza
421 Fayetteville Street, Suite 203
Raleigh, NC 27601

If to CAMPO:
CAMPO
Attn: Executive Director
One City Plaza
421 Fayetteville Street, Suite 203
Raleigh, NC 27601

<insert other Parties' Notice information>

10. **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.

11. **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 Participation Agreement or the Governance ILA, the terms of the Participation Agreement and Governance ILA have precedence.

12. **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 Wake County, North Carolina.

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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.

14. **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 Wake County.

15. **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. Notwithstanding the foregoing, all Parties understand and agree that Implementing Agency currently uses an independent contractor to operate its transit system and that such mode of operation is specifically permitted under this Agreement.

16. **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.

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

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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.

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

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20. **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.

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There are no third-party beneficiaries to this Agreement.

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23. **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.

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 _____, 2021.</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 _____, 2021.</p>
	<p>Reviewed and Approved as to legal form.</p> <p>_____</p> <p>Shelley R. Curran, General Counsel</p>

DRAFT

NC CAPITAL AREA METROPOLITAN PLANNING ORGANIZATION "CAMPO"

By: _____
Chris Lukasina, Executive Director

ACKNOWLEDGEMENT by
NC CAPITAL AREA METROPOLITAN PLANNING ORGANIZATION, "CAMPO"

State of North Carolina
County of Wake

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

Witness my hand and official seal, this the ____ day of _____, 2021.

Notary Public

(Affix notary seal)

My Commission Expires: _____, 20__



Exhibit A

Implementing /Operating Agency	Name of Implementing Agency	Parties to Agreement:	Triangle Tax District(GoTriangle),
Total Bus Operations Appropriation	\$XX,XXX		
Project	<u>Project Name</u>		
Project ID from Work Plan	Project ID		
FY 2022 Budget	\$XX,XXX or as amended by the adopted work plan		
Scope	The project description included in the FY2022 Adopted Wake Transit Work Plan, and as amended, is incorporated herein by reference.		
Expected Implementation Date	7/1/2021		
Reported Deliverables	<ol style="list-style-type: none"> 1. XXXXX 2. XXXXX 3. XXXXX 		
Contract #	21-XXX		