

**INTERLOCAL AGREEMENT FOR REGIONAL TRANSPORTATION PLANNING
SERVICES AMONG THE**

CITY OF DURHAM

and

**DURHAM-CHAPEL HILL-CARRBORO METROPOLITAN PLANNING
ORGANIZATION (DCHCMPO)**

and

**CAPITAL AREA METROPOLITAN
PLANNING ORGANIZATION (CAMPO)**

THIS INTERLOCAL AGREEMENT, made and entered into on the last date executed below by and between the City of Durham, a municipal corporation existing under the laws of the State of North Carolina, hereinafter referred to as “Durham,” the Durham-Chapel Hill-Carrboro Metropolitan Planning Organization (DCHCMPO), and the Capital Area Metropolitan Planning Organization (CAMPO).

The City of Durham, DCHCMPO, and CAMPO are collectively referred to herein as “Parties.” The term “municipalities” as used herein refers to the City of Durham The North Carolina Department of Transportation, an Agency of the State of North Carolina, is hereinafter referred to as the “Department.” This Agreement is made pursuant to Article 20 of Chapter 160A of the North Carolina General Statutes.

WITNESSETH:

WHEREAS, the United States Congress mandated the establishment of Metropolitan Planning Organizations (MPOs) to encourage and promote the safe and efficient management and operation of surface transportation systems. 23 U.S.C. § 134 (a) (1).

“It is in the national interest to encourage and promote the development of transportation systems embracing various modes of transportation in a manner which will efficiently maximize mobility of people and goods within and through an urbanized area and minimize transportation related fuel consumption and air pollution. To accomplish this objective, metropolitan planning organizations, in cooperation with the State, shall develop transportation plans and programs for urbanized areas of the State. Such plans and programs shall provide for the development of transportation facilities (including pedestrian and bicycle transportation facilities) which will function as an intermodal transportation system for the State, the metropolitan area, and the Nation. The process for developing such

plans and programs shall provide for consideration of all modes of transportation and shall be continuing, comprehensive and cooperative to the degree appropriate, based on the complexity of the transportation system;”
23 U.S.C. § 134 (a) (1)

WHEREAS, MPOs established pursuant to 23 U.S.C. ¶ 134 are recognized under the laws of North Carolina. N.C.G.S. § 136-200.1 (2016);

WHEREAS, The Governor of the State of North Carolina has designated the cities of Durham and Raleigh to be the Lead Planning Agencies for DCHCMPO and CAMPO, respectively, and to be responsible for carrying out the provisions of Section 134(a), Title 23, United States Code;

WHEREAS, the Parties have agreed to use funds identified in the FY 2020 Unified Planning Work Program (UPWP) approved by the DCHC and CAMPO governing boards, respectively, to support regional transportation planning and the development of the Triangle Bikeway Implementation Study;

NOW, THEREFORE, in consideration of the foregoing recitals, mutual agreements set forth below, and other good and valuable consideration, the Parties agree as follows:

I. BACKGROUND AND PURPOSE.

The Parties have undertaken the updating of the federally mandated long-range transportation plan and have agreed to develop the Triangle Bikeway Implementation Study, recognizing the desirability of centralizing development resources in order to develop this multi-modal study. CAMPO shall solicit and employ a consultant to perform transportation planning services related to the development of the Triangle Bikeway Implementation Study. The Parties will jointly participate in setting the work program, priorities and a performance evaluation of the consultant in providing these planning services, and have agreed to share in the cost of employing said consultant.

II. METHOD OF FINANCING; APPORTIONMENT OF COSTS.

A. In furtherance of the Triangle Bikeway Implementation Study, CAMPO, shall hire a consultant to perform planning services related to the development of the Triangle Bikeway Implementation Study. The apportionment of costs shall be as follows:

1. The total approved eligible cost for developing the Triangle Bikeway Implementation Study is \$400,000.
2. For services associated with the study, Durham shall pay thirty-three percent (33%) of the total cost to CAMPO for developing the Triangle Bikeway Implementation Study. Payments shall be made in FY 2020 (51 percent of total) and FY 2021 (49 percent of total).
3. For services associated with the study during FY 2020 and 2021, CAMPO shall pay sixty-seven percent (67%) of the total approved eligible costs for developing the Triangle Bikeway Implementation Study.

B. The parties agree that each party shall have no financial or other liability to the other parties herein under this **AGREEMENT** other than payment of their respective shares of the contract costs, as follows:

1. The DCHCMPO share of 80% federal (Surface Transportation Block Grant Direct Attributable [STBGDA]) and 20% local funds are included in the FY 2020 Unified Planning Work Program (UPWP) approved by the DCHCMPO Board. The Department has authorized the Fiscal Year 2020 STBGDA funds as part of the DCHCMPO UPWP.
2. The CAMPO share of 80% federal (Surface Transportation Block Grant Direct Attributable [STBGDA]) and 20% local funds are included in the FY 2020 Unified Planning Work Program (UPWP) approved by the CAMPO Board. The Department has authorized the Fiscal Year 2020 STBGDA funds as part of the Capital Area MPO UPWP.
3. CAMPO and Durham shall be responsible for funding the 20% matching funds for the STBGDA funds authorized, and for funding all costs that exceed the total cost, and all costs not reimbursed by the Federal Highway Administration.

III. SCOPE OF SERVICES AND RESPONSIBILITY OF PARTIES

The scope of services and performance criteria by which these planning services are to be assessed shall be mutually agreed upon by the Parties.

A. The completed Triangle Bikeway Implementation Study shall be distributed to the Parties in both hard copy and electronic versions as mutually agreed to by the Parties.

B. If CAMPO contracts with a private firm for services required to complete the project, it is agreed as follows:

1. CAMPO shall ensure that a qualified firm is obtained through an equitable selection process, and that prescribed work is properly accomplished in a timely manner and at a just and reasonable cost.
2. When procuring professional services, CAMPO must adhere to Title 2 Code of Federal Regulations Part 200; Title 23 of the Code of Federal Regulations, Part 172; Title 40 United States Code, Chapter 11, Section 1101-1104; and the Department's Policies and Procedures for Major Professional or Specialized Services Contracts. Said policies and standards are incorporated in this **AGREEMENT** by reference at www.fhwa.dot.gov/legsregs/legislat.html and www.ncleg.net/gascripts/Statutes/Statutes.asp.
3. A pre-negotiation audit will be conducted by the Department's External Audit Branch. The municipalities shall not execute a consultant contract until the Department's review has been completed.

C. CAMPO is solely responsible for the administration of all agreements, contracts, and work orders entered into or issued for this project. Neither Durham nor the Department shall not be held liable by CAMPO for any expenses or obligations incurred for the project except those specifically eligible for reimbursement as approved under the terms of this **AGREEMENT**.

D. Reimbursement to CAMPO shall be subject to the policies and procedures contained in Federal-Aid Policy Guide Part 140, Subpart G, and Federal-Aid Policy Guide Part 172, which is being incorporated into this **AGREEMENT** by reference (www.gpoaccess.gov/ecfr). Said reimbursement shall also be subject to the Department being reimbursed by the Federal Highway Administration, which is to participate in the eligible costs of the project up to the maximum amount specified in this **AGREEMENT**, subject to compliance with all applicable federal policy and procedural rules and regulations. Said reimbursement shall be made as follows:

1. CAMPO may bill the Department on a quarterly basis for eligible project costs by submitting an itemized invoice to the Transportation Planning Branch, 1554 Mail Service Center, Raleigh, NC 27699-1554. Proper supporting documentation shall accompany each invoice as may be required by the Department.
2. CAMPO agrees that it shall bear all costs of any item for which it is unable to substantiate actual costs or any costs that have been deemed ineligible due to actions of CAMPO.
3. CAMPO shall be responsible for adhering to applicable administrative requirements of 49 CFR Part 18 (www.dot.gov/ost/m60/grant/49cfr18.htm) and Office of Management and Budget (OMB) Circular A-102 (www.whitehouse.gov/omb/circulars/a102/a102.html). If the work is performed by the Municipal force account, said invoices shall show a summary of labor, labor additives, equipment, materials and other qualifying costs in conformance with the standards for allowable costs as set forth in OMB Circular A-87. Reimbursement shall be based on actual costs incurred with the exception of equipment owned by CAMPO. Reimbursement for rates of equipment owned by CAMPO cannot exceed the Department's rates in effect for the time period in which the work is performed. If the work is performed by a contractor, said invoices shall show the contract cost.
4. In accordance with OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations www.whitehouse.gov/omb/circulars/a087/a87_2004.html, dated June 27, 2003 and the Federal Single Audit Act Amendments of 1996, CAMPO shall arrange for an independent financial and compliance audit of its fiscal operations. CAMPO shall furnish the Department with a copy of the independent audit report within thirty (30) days of completion of the report, but not later than nine (9) months after CAMPO fiscal year ends.
5. Any costs incurred by CAMPO prior to written notification by the Department to proceed with the work shall not be eligible for reimbursement.
6. Failure on the part of CAMPO to comply with any of the substantive provisions of this **AGREEMENT** will be grounds for the Department to terminate participation in the costs of the project.

E. CAMPO agrees that, if the Federal Highway Administration should not participate in certain costs because of noncompliance with Federal and/or State regulations, it will reimburse the Department for such costs caused by actions of CAMPO. Reimbursement shall be made by Raleigh

to the Department within sixty (60) days of invoicing by the Department. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with G.S. 147-86.23.

F. If CAMPO fails for any reason to reimburse the Department in accordance with the provisions for payment as provided in this **AGREEMENT**, the Department may withhold, in full or in part, any payments due to CAMPO until the Department has received payment in full, as authorized by law.

G. CAMPO and its agents shall maintain all books, documents, papers, accounting records, and such other evidence as may be appropriate to substantiate costs incurred under this **AGREEMENT**. Further, CAMPO shall make such materials available at its office and shall require its agent to make such materials available at its office at all reasonable times during the contract period, and for three (3) years from the date of payment of the final voucher by the Federal Highway Administration under this **AGREEMENT**, for inspection and audit by the Department, the Federal Highway Administration, or any authorized representatives of the Federal Government.

H. CAMPO agrees to indemnify and hold harmless the other Parties to the extent allowed by law, for any third party claims for payment or damages, of any nature, asserted against the the Parties in connection with this **AGREEMENT**. Furthermore, CAMPO shall certify to the Department compliance with all applicable State, Federal, and local environmental laws and regulations and ordinances and shall indemnify the Department against any fines, assessments or other penalties resulting from noncompliance by Durham under this **AGREEMENT**.

I. CAMPO is prohibited from contracting with or making sub-awards under transactions covered by this **AGREEMENT** to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000 and all non-procurement transactions (e.g., subawards to subrecipients). Contractors receiving individual awards for \$25,000 or more and all sub-recipients must certify that the organization and its principals are not suspended or debarred. CAMPO may rely upon the certification unless it knows that the certification is erroneous. CAMPO agrees that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.

IV. TERM OF AGREEMENT; APPOINTMENT OF PERSONNEL

A. Term. This **AGREEMENT** shall be effective as of the date it is duly executed by all the Parties. Unless terminated sooner, it shall expire at 12:01 AM, July 1, 2021. This **AGREEMENT** may be terminated by any party, effective at the beginning of the fiscal year after such notice is given, upon 6 months' notice given in writing prior to the start of the fiscal year in which termination is effective. Notwithstanding the termination date heretofore established, if the jurisdictions have not indicated their intent to terminate this **AGREEMENT**, this **AGREEMENT** shall continue after the termination date indicated above unless either jurisdiction indicates in writing, through its respective duly authorized officer, that the **AGREEMENT** is terminated.

B. Amendments. This **AGREEMENT** may be amended from time to time upon mutual consent of the respective governing bodies of the Parties expressed in writing.

C. Appointment of Personnel. It is agreed that the duly authorized officer executing this **AGREEMENT** on behalf of his or her respective Party, shall designate persons to carry out the respective Party's obligations under this **AGREEMENT**.

V. MISCELLANEOUS

A. All terms and conditions of this **AGREEMENT** are dependent upon, and subject to, the allocation of funds for the purpose set forth in the **AGREEMENT** and the **AGREEMENT** shall automatically terminate if funds cease to be available.

B. All Parties hereby respectively confirm that the individuals executing the **AGREEMENT** are authorized to execute this **AGREEMENT** and to bind the respective entities to the terms contained herein. All Parties confirm they have read this **AGREEMENT**, conferred with counsel, and fully understand its contents.

C. This **AGREEMENT** shall be interpreted under the laws of the State of North Carolina, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to the values and purposes sought to be set forth herein.

D. By Executive Order 24, issued by Governor Perdue, and NCGS § 133-32, it is unlawful for any vendor or contractor (i.e., architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e., Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor).

E. E – Verify. The parties herein have complies 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 the parties' knowledge, any subcontractor employed by a 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.

F. IRAN DIVESTMENT ACT CERTIFICATION. The parties herein certify that, as of the date listed below, it is not on the Final Divestment List as created by the State Treasurer pursuant to N.C.G.S. § 147-86.55, et seq. In compliance with the requirements of the Iran Divestment Act and N.C.G.S. § 147-86.59, the parties shall not utilize in the performance of the contract any subcontractor that is identified on the Final Divestment List.

All matters relating to this agreement shall be governed by the laws of the State of North Carolina, without regard to its choice of law provisions, and venue for any action relating to this Contract shall be Wake County Civil Superior Court or the United States District Court for the Eastern District of North Carolina, Western Division.

This agreement may be amended only by written agreement of the parties executed by their authorized representatives.

IN WITNESS WHEREOF, this **AGREEMENT** has been executed, in triplicate, the day and year heretofore set out, on the part of the Department, Raleigh and Durham by authority duly given.

ATTEST:

CITY OF DURHAM

BY: _____

BY: _____

TITLE: _____

TITLE: _____

ACKNOWLEDGMENT BY CITY OF DURHAM

I, _____, a notary public, certify:
(Type or print name of Notary Public)

(1) _____ personally appeared before me
(Type or print name of City Clerk or Deputy City Clerk who attested)

in Durham County, N. C. on this day; (2) I have personal knowledge of her identity; and (3) she acknowledged that by authority duly given and as the act of the City of Durham, the foregoing document was signed in its corporate name by its _____ City Manager, sealed with its corporate seal, and attested by its said City Clerk or Deputy City Clerk.

This the _____ day of _____, 2019.

My commission expires:

Notary Public

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 procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

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

(SEAL)

(FINANCE OFFICER)

Federal Tax Identification Number

Remittance Address:

DURHAM, CHAPEL-HILL, CARRBORO METROPOLITAN PLANNING ORGANIZATION (DCHC-MPO)

By: _____
Felix Nwoko, Manager

By: _____
Damon Seils, Board Chair

This, the ____ day of _____, 2019.

This, the ____ day of _____, 2019.

ATTEST:

By: _____
_____, Clerk

[Seal]

ACKNOWLEDGEMENT by DURHAM-CHAPEL HILL-CARRBORO METROPOLITAN PLANNING ORGANIZATION (DCHCMPO)

STATE OF:
COUNTY OF:

I, _____ a Notary Public for said County and State, do hereby certify that _____, with whom I am acquainted, personally appeared before me on _____ 2019, who, being by me duly sworn, says that (s)he is an authorized Officer of _____ the organization described in and which executed the foregoing instrument; that (s)he knows the name of the organization and that the said Officer subscribed her/his name thereto, having the authority of the Board of Directors of said organization, and that said instrument is the act and deed of said organization.

Witness my hand and official seal, this day of _____ 2019.

Notary Public Signature

(SEAL)

My Commission Expires:

CAPITAL AREA METROPOLITAN PLANNING ORGANIZATION (CAMPO)
CAMPO

By: _____
Executive Director

This, the _____ day of _____ 2019

ATTEST:

By: _____ Sara Akimoto

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

STATE OF:
COUNTY OF:

I, _____ a Notary Public for said County and State, do hereby certify that _____, with whom I am acquainted, personally appeared before me on _____ 2019, who, being by me duly sworn, says that (s)he is an authorized Officer of _____ the organization described in and which executed the foregoing instrument; that (s)he knows the name of the organization and that the said Officer subscribed her/his name thereto, having the authority of the Board of Directors of said organization, and that said instrument is the act and deed of said organization.

Witness my hand and official seal, this day of _____ 2019.

Notary Public Signature

(SEAL)

My Commission Expires: