

CITY OF DURHAM NORTH CAROLINA	__/__/2015
CITY OF RALEIGH, NORTH CAROLINA	INTERLOCAL AGREEMENT BETWEEN THE CITY OF DURHAM AND THE CITY OF RALEIGH FOR THE COMMUNITY VIZ SCENARIO PLANNING INITIATIVE

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, between the City of Durham, a municipal corporation existing under the laws of the State of North Carolina, hereinafter referred to as “Durham,” on behalf of the Durham-Chapel Hill-Carrboro Metropolitan Planning Organization (“DCHCMPO”) and the City of Raleigh, a municipal corporation existing under the laws of the State of North Carolina, acting on behalf of the Capital Area Metropolitan Planning Organization (“CAMPO”), hereinafter referred to as “CAMPO,” collectively referred to as the “Parties.”

WITNESSETH

WHEREAS, DCHCMPO and CAMPO propose to engage the service of a consultant to build a scenario planning model using CommunityViz software which will allocate future year development types, patterns and intensities within the region. This model will be used to identify regional goals and community values, and to explore alternatives for growth, development and transportation investment and results will be used in development of the next long range transportation plan, the 2045 Metropolitan Transportation Plan (“MTP”); and

WHEREAS, DCHCMPO and CAMPO, have jointly undertaken the update of the federally mandated long range transportation plan and are in the process of developing the 2045 MTP, and also have recognized the desirability of centralizing development resources in order to further update, improve, multi-modal transportation plan most efficiently; and

WHEREAS, Federal transportation regulations require the DCHCMPO and CAMPO to develop a Metropolitan Transportation Plan that includes a land use component as well as a scenario planning process; and

WHEREAS, Durham, as the Lead Planning Agency for the DCHCMPO, and Raleigh, as Lead Planning Agency for the CAMPO, have agreed that Durham shall solicit and employ a consultant to perform Community Viz scenario planning services; and,

WHEREAS, DCHCMPO and CAMPO will jointly participate in setting the work program, priorities, and evaluating the performance of the consultant in providing these planning services;

WHEREAS, the Parties desire that this Agreement shall formalize the terms of the shared use of the above described resources; and

WHEREAS, the Parties pursuant to the authority of Chapter 160A-461 et seq. of the North Carolina General Statutes are authorized to enter into this Interlocal Agreement in order to pursue the above stated goals.

NOW THEREFORE, for and in consideration of the promises and covenants contained in this Agreement and the mutual benefits derived therefrom, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

**ARTICLE I  
PURPOSE**

1.01 The purpose of this Agreement is to define the responsibilities of the Parties and the terms with regard to the hiring of a consultant for the performance of planning services related to the development of Community Viz version 2 that will be used to identify regional goals and community values, and to explore alternatives for growth, development and transportation investment and results and recommendations the Community Viz project will be used in development of the next long range transportation plan, the 2045 Metropolitan Transportation Plan ("MTP").

**ARTICLE II  
TERM**

2. 01 This Agreement shall be in effect until June 30, 2016, unless extended by mutual written authorization of the Parties. Any obligation of CAMPO or Raleigh to make payment on any outstanding invoice from Durham shall survive the termination of this Agreement.

**ARTICLE III  
METHOD OF FINANCING**

3.01 Appropriations for the purposes established herein may be established through the normal budget and appropriations processes of Raleigh and Durham. However, there is no requirement that Raleigh or Durham provide additional funding for the functions described herein beyond the specific costs enumerated in this Agreement. Unavailability of funds to finish or continue this undertaking shall result in immediate termination of this Agreement with no requirement of compliance with the notice provisions hereunder.

3.02 Durham, on behalf of DCHCMPO and CAMPO, agrees to hire a consultant to perform planning services related to the development of Community Viz version 2.

3.03 The total approved eligible costs for developing the Community Viz V2 is \$64,120. The Parties agree that each party shall have no financial or other liability to the other parties to this Agreement other than payment of its respective share of the aforementioned contract costs.

3.04 Durham shall be responsible for payment of one-third (33.3%) of the total approved eligible costs for developing the Community Viz V2 scenario planning tool, not to exceed \$21,352.

3.05 CAMPO, through Raleigh, shall be responsible for payment to Durham of two-thirds (66.7%) of the total cost for developing the Community Viz V2 scenario planning tool, not to exceed \$42,768.

3.06 CAMPO, through Raleigh, shall distribute funds to Durham pursuant to the following payment schedule:

- a. An amount not to exceed \$30,000 during Fiscal Year 2015; and
- b. An amount not to exceed \$12,768 during Fiscal Year 2016.

3.07 Reimbursement to Durham shall be made upon billing on a monthly or quarterly basis 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:

- a. Durham shall bill CAMPO quarterly for eligible project costs by submitting an itemized invoice by the 15<sup>th</sup> day of the month following the quarter end, to:

NC Capital Area MPO  
Attn: Chris Lukasina  
421 Fayetteville St, Suite 203  
Raleigh, NC 27601

- b. CAMPO, though Raleigh, shall reimburse Durham for all invoices submitted within sixty (60) days.
- c. Durham 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 Durham.
- d. All invoices must be submitted within sixty (60) days of completion and acceptance of the project by the CAMPO project manager. Any invoices for FY15 must be submitted on or before July 15, 2015 and any invoices for FY16 must be submitted on or before July 15, 2016.
- e. Durham shall be responsible for adhering to applicable administrative requirements of 49 CFR Part 18 and Office of Management and Budget (OMB) Circular A-102. 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.

#### **ARTICLE IV SCOPE OF SERVICES**

4.01 The scope of services and performance criteria by which these planning services are to be assessed will be mutually agreed upon by DCHCMPO and CAMPO.

4.02 Durham, when procuring services on behalf of CAMPO, shall adhere to NC Department of Transportation Rules and Regulations for Major Professional or Specialized Services Contracts to the extent it conforms to State law procurement requirements for municipalities. This policy conforms to N.C.G.S. §143-64, Parts 31 and 32, and Title 23 of the Code of Federal Regulations, Part 172. Durham shall also comply with the policies and standards for negotiated contracts as contained in the Federal Aid Policy Guide, Part 172; said policies and standards being incorporated in this Agreement by reference ([www.fhwa.dot.gov/lefsregs/legislat.html](http://www.fhwa.dot.gov/lefsregs/legislat.html)).

4.03 Durham shall be solely responsible for all agreements, contracts and work orders entered into or issued for this project. Raleigh shall not be held liable by Durham for any expenses or obligations incurred for the project except those specifically eligible for reimbursement as approved under the terms of this Agreement.

4.04 DCHCMPO and CAMPO shall designate project managers to oversee the project.

4.05 Durham 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, Durham shall make such materials available at its office and shall require its agents to make such materials available at its office at all reasonable times during the contract period, and for 5 (five) years from the date of payment of the final voucher by CAMPO for inspection and audit by CAMPO, the Federal Highway Administration or authorized representatives of the Federal Government.

4.06 Durham shall not contract with or make subawards under transactions covered by this agreement to parties that are suspended or debarred or whose principals are suspended or debarred by any federal t or agency. Durham may rely on certification unless it knows the certification to be erroneous. Durham 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.

## ARTICLE V TERMINATION

5.01 The Parties shall each have the right to terminate this Agreement with or without cause upon giving sixty (60) days electronic and written notice to the other party delivered to the following addresses:

For Durham:                   Durham-Chapel Hill-Carrboro MPO  
                                  Attn: Felix Nwoko, Department of Transportation  
                                  City of Durham  
                                  101 City Hall Plaza  
                                  Durham, NC 27701-3329

For Raleigh:                 NC Capital Area MPO  
                                  Attn: Chris Lukasina

421 Fayetteville St, Suite 203  
Raleigh, NC 27601

The roles and responsibilities of each party shall terminate sixty (60) days after notice is given by withdrawing party in accordance with this Agreement unless otherwise agreed by the written consent of the Parties executed with the same formality as the foregoing document. Upon termination of this Agreement, all work completed on the project shall be shared with Raleigh and Raleigh shall reimburse Durham for any services rendered by the Consultant through the date of termination.

#### **ARTICLE VI AMENDMENT**

6.01 Any amendment to this Agreement to be effective must be in writing, signed by both Parties, and executed with the same formality and approvals as the foregoing Agreement.

#### **ARTICLE VII RELATIONSHIP OF PARTIES**

7.01 Durham and Raleigh are, and shall remain independent entities with respect to any service or function performed under this Agreement. Except as provided for in this Agreement, each party shall select the means, method, and manner of performing their respective services herein. Each party is an independent of the other and shall not represent itself or be deemed as an officer, agent or employee of the other party for any purpose. Nothing under this Agreement is intended or should be construed in any manner to create a joint agency, body or organization between the Parties. Each party agrees to be individually responsible to comply with all relevant State and Federal statutes, rules and regulations which are applicable to any responsibility or duty outlined herein.

#### **ARTICLE VIII NON-ASSIGNMENT**

8.01 Neither party shall assign any portion of this Agreement or the rights and responsibilities hereunder to another person or entity who is not a party to this Agreement without the prior written consent of the other party to this Agreement.

#### **ARTICLE IX NON-APPROPRIATION**

9.01 Durham and Raleigh are governmental entities, and the contract validity is based upon the availability of public funding under the authority of their respective statutory mandates.

In the event that funds are not available and not appropriated to the program specified in this Agreement, then this Agreement shall automatically expire without penalty to either party.

In the event of a legal change in either party's statutory authority, mandate, and mandated functions which adversely affects the authority to continue performing obligations under this Agreement, then this Agreement shall automatically expire without penalty to either party.

**ARTICLE X  
NO THIRD PARTY BENEFICIARIES**

10.01 This Agreement is not intended for the benefit of any third party. The rights and obligations contained herein belong exclusively to the Parties hereto, and shall not confer any rights or remedies upon any person or entity other than the Parties hereto.

**ARTICLE XI  
NO WAIVER OF QUALIFIED IMMUNITY**

11.01 No officer, agent or employee of either 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.

**ARTICLE XII  
ENTIRE AGREEMENT**

12.01 The terms and provisions herein contained constitute the entire agreement by and between Durham and Raleigh and shall supersede all previous communications, representations or agreements, either oral or written between the Parties hereto with respect to the subject matter hereof.

**ARTICLE XIII  
SEVERABILITY**

13.01 If any provision of this Agreement shall be determined to be unenforceable by a court of competent jurisdiction, such determination will not affect any other provision of this Agreement.

**ARTICLE XIV  
COUNTERPARTS**

14.01 This Agreement may be executed in several counterparts, each of which shall be deemed an original.

**ARTICLE XV  
NON-DISCRIMINATION**

15.01 In consideration of the signing of this Contract, the Parties hereto for themselves, their agents, officials, employees and servants agree not to discriminate in any manner on the basis of

race, color, creed, national origin, sex, age, handicap, or sexual orientation with reference to the subject matter of this Contract, no matter how remote. The Parties further agree in all respects to conform to the provisions and intent of City of Raleigh Ordinance 1969-889, as amended. This provision is hereby incorporated into this Contract for the benefit of the City of Raleigh and its residents, and may be enforced by action for specific performance, injunctive relief, or other remedy as provided by law. This provision shall be binding on the successors and assigns of the Parties with reference to the subject matter of this Contract.

**ARTICLE XVI  
APPLICABLE LAW**

16.01 All matters relating to this Contract 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 Durham County Superior Court or the United States District Court for the Eastern District of North Carolina, Western Division.

**[THE REMAINDER OF THIS PAGE INTENTIONALLY BLANK]**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their corporate names by their duly authorized officers, all as of the date first above written.

<p><b>CITY OF RALEIGH, NORTH CAROLINA</b></p> <p>By: _____ City Manager</p>	<p>This instrument has been pre-audited in the manner required by The Local Government Budget and Fiscal Control Act.</p> <p>_____ Finance Officer City of Raleigh, North Carolina</p>
<p><b>ATTEST:</b></p> <p>By: _____ Clerk [Seal]</p>	<p>This instrument is approved as to form and legal sufficiency.</p> <p>_____ City Attorney</p>

NORTH CAROLINA  
COUNTY OF WAKE

**CITY ACKNOWLEDGEMENT**

This is to certify that on the \_\_\_\_ day of \_\_\_\_\_, 2015, before me personally came Gail G. Smith, with whom I am personally acquainted, who, being by me duly sworn, says that she is the City Clerk, and Ruffin Hall is the City Manager of the City of Raleigh, the municipal corporation described herein and which voluntarily executed the foregoing; that she knows the corporate seal of said municipal corporation; that the seal affixed to the foregoing instrument is said corporate seal, and the name of the municipal corporation was subscribed thereto by the said City Clerk and Treasurer and that the said seal was affixed, all by order of the governing body of said municipal corporation, and that the said instrument is the act and deed of said municipal corporation.

WITNESS my hand and official seal, this the \_\_\_\_ day of \_\_\_\_\_, 2015.

(OFFICIAL SEAL)

Notary Public: \_\_\_\_\_

My Commission expires: \_\_\_\_\_

CITY OF DURHAM  
ATTEST:

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
City Manager

Type or print name person signing for the City: \_\_\_\_\_

Preaudit Certificate:

ACKNOWLEDGMENT BY CITY OF DURHAM

Name of other party to the contract:

\_\_\_\_\_

Title of the contract:

\_\_\_\_\_  
\_\_\_\_\_

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 \_\_\_\_\_, 20\_\_\_\_\_.

My commission expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public