

**NORTH CAROLINA
WAKE AND DURHAM COUNTIES**

**TRIANGLE REGIONAL FREIGHT PLAN
AGREEMENT**

**NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION**

1/9/2015

and

**DRAFT FOR REVIEW – NOT FOR
SIGNATURES**

CITY OF DURHAM

and

CITY OF RALEIGH

THIS AGREEMENT, made and entered into on the last date executed below by and between the North Carolina Department of Transportation, an Agency of the State of North Carolina, hereinafter referred to as the “Department,” and 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, hereinafter referred to as “Raleigh,” on behalf of the Capital Area Metropolitan Planning Organization (CAMPO).

WITNESSETH:

WHEREAS, Section 134(a) of Title 23 United States Code states:

“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;” and,

WHEREAS, Durham has been designated by the Governor of the State of North Carolina as the Lead Planning Agency for the DCHCMPO and Raleigh has been designated by the Governor of the State of North Carolina as the Lead Planning Agency for the CAMPO to both be responsible for carrying out the provisions of Section 134(a), Title 23, United States Code, and has agreed to be the

recipient of State Planning and Research Funds to support regional transportation planning and the development of a regional freight plan for the Triangle; and,

WHEREAS, Durham, Raleigh and the Department, hereinafter collectively referred to as the "Stakeholders," have jointly undertaken the update of the federally mandated long range transportation plan and have agreed to jointly develop a regional freight plan, and also have recognized the desirability of centralizing development resources in order to further update, improve, multi-modal freight mobility and maintain freight transportation most efficiently; and,

WHEREAS, the federal transportation regulations requires the DCHCMPO and CAMPO to develop a Metropolitan Transportation Plan that includes a freight component as well as includes freight in its planning process; and,

WHEREAS, Durham, the Department, and Raleigh, as Lead Planning Agency for CAMPO, have agreed that Durham shall solicit and employ a consultant to perform transportation planning services related to the development of a regional freight plan; and,

WHEREAS, Durham and aforementioned Stakeholders will jointly participate in setting the work program, priority and evaluating the performance of the consultant in providing these planning services.

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

1. Durham, on behalf of DCHCMPO, the Department and CAMPO, shall agree to hire a consultant to perform planning services related to the development of the Regional Freight Plan.
2. The Department shall allocate funds to Durham up to fifty percent (50%) of the approved eligible costs for developing the Regional Freight Plan covered under this **AGREEMENT**, or up to TWO HUNDRED THOUSAND DOLLARS (\$200,000). The total approved eligible costs for developing the Regional Freight Plan is \$400,000. The Department's total reimbursement shall not exceed \$200,000.
3. Raleigh shall pay thirty percent (30%) of the total cost to Durham, (or \$120,000). Durham shall pay twenty percent (20%) of the total cost, or \$80,000. 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 contract costs.
 - A. The DCHC Metropolitan Planning Organization share of 80% federal (Surface Transportation Direct Attributable (STP-DA)) and 20% local funds are included in the approved Unified Planning Work Program (UPWP) approved by the MPO Board. The Department has authorized the Fiscal Year 2015 STP-DA funds as part of the DCHC UPWP.

- B. The Capital Area Metropolitan Planning Organization share of 80% federal (Surface Transportation Direct Attributable (STP-DA)) and 20% local funds are included in the approved Unified Planning Work Program (UPWP) approved by the MPO Board. The Department has authorized the Fiscal Year 2015 STP-DA funds as part of the Capital Area MPO UPWP.
 - C. Raleigh and Durham shall be responsible for funding the 20% matching funds for the STP-DA funds authorized. The Municipalities shall be responsible for funding all costs that exceed the total cost and all costs not reimbursed by the Federal Highway Administration.
4. The scope of services, and performance criteria by which these planning services are to be assessed, shall be mutually agreed upon by the Stakeholders.
 5. The completed Regional Freight Plan shall be distributed to the Stakeholders in both hard copy and electronic versions as mutually agreed to by the Stakeholders.
 6. If Durham contracts with a private firm for services required to design and construct the project, it is agreed as follows:
 - A. Durham 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.
 - B. Durham, when procuring architectural, professional and engineering services, agrees to adhere to North Carolina 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 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/legsregs/legislat.html).
 - C. Durham shall submit all professional services contract proposals to the Department for review and prior to execution of the professional services contract by Durham. In the event that the professional services contract proposal (professional and/or engineering) exceeds \$250,000, a pre-negotiation audit must be requested from the Department's External Audit Branch. A pre-negotiation audit of a contract under \$250,000 will be performed by the Department's External Audit Branch if Durham requests it.
 7. Durham is solely responsible for all agreements, contracts, and work orders entered into or issued for this project. The Department shall not be held liable by Durham for any expenses or obligations incurred for the project except those specifically eligible for reimbursement as approved by the Department under the terms of this **AGREEMENT**.
 8. Reimbursement to Durham 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:

- A. Durham 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.
- B. The Department shall reimburse Durham for all invoices submitted within a reasonable time after approval of each invoice by the Department.
- 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 one (1) year of completion and acceptance of the project by the Department. Any invoices submitted after this time will not be eligible for reimbursement.
- E. Durham 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 Durham. Reimbursement for rates of equipment owned by Durham 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.
- F. 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, Durham shall arrange for an independent financial and compliance audit of its fiscal operations. Durham 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 Durham's fiscal year ends.
- G. Any costs incurred by Durham prior to written notification by the Department to proceed with the work shall not be eligible for reimbursement.
- H. Failure on the part of Durham to comply with any of substantive provisions of this **AGREEMENT** will be grounds for the Department to terminate participation in the costs of the project.

9. Durham 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 Durham. Reimbursement shall be made by Durham 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.
10. If Durham 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 Durham until the Department has received payment in full, as authorized by law.
11. 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 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.
12. Durham agrees to indemnify and hold harmless the Department, to the extent allowed by law, for any third party claims for payment or damages, of any nature, asserted against the Department in connection with this **AGREEMENT**. Furthermore, Durham 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**.
13. Durham is prohibited from contracting with or making subawards 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 subrecipients must certify that the organization and its principals are not suspended or debarred. Durham may rely upon the certification unless it knows that the certification is 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.
14. 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.
15. All Stakeholders 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 Stakeholders confirm they have read this **AGREEMENT**, conferred with counsel, and fully understand its contents.

16. 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.
17. 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).

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: _____

DATE: _____

Approved by _____, Clerk of the local governing body of Durham as attested to by the signature of Clerk of said governing body on _____(Date).

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:

ATTEST:

CITY OF RALEIGH

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

THIS INSTRUMENT APPROVED AS TO FORM:

City Attorney

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 L. 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: _____

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:

DEPARTMENT OF TRANSPORTATION

BY: _____
(CHIEF ENGINEER)

DATE: _____

APPROVED BY BOARD OF TRANSPORTATION ITEM O: _____ (Date)