

* County has signed

Now need City Manager + City Clerk
Terry says City Manager won't sign unless Finance is OK.



City of Durham North Carolina
Inter-Governmental Agreement Authorization

(To be completed by Department)

Finance

Date of Contract Jan 23, 2006

Department City-County Planning Resource Person Bonnie Estes 41371258

Selected Government Agency Durham City-County Planning Dept

Description of Agreement Interlocal Agreement for Planning (Renewal)

Contract Period (Start to Finish) Jan 23, 2006 - Jan 23, 2009

Total Cost Planning's Contingency Allocation If Multi-Year, Current Fiscal Year Cost See City Budget

Payment Terms Annual Dept Budget Progress Payments See Agreement Capital Project Ordinance # None

Responsibility Code and Account Number 0012110 + 0012110

Authorization City Council _____ Meeting Date Jan 3, 2006 Agenda Item # 21 Manager's Office _____
City Manager _____ PR# 2452

Department Head or Designee Frank Duke, Durham City-County Planning

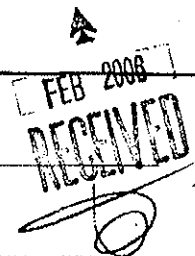
- () Check if the City Attorney's Office is to review the way the Contract is signed
- () Check if the City Attorney's Office is to review the way a bond has been signed

City Attorney Office _____ Date _____

(To be completed by Department of Finance)

Contract Number NA Compliance Ad Funds Availability _____

Date Encumbered NA



Comments

This is a renewal of an agreement in effect since 1988
The agreement allows for operation of Planning as a
City-County Dept.
County Comm approved on 1/23/06
City Council approved on 1/3/06

Attachment B - Final Copy

STATE OF NORTH CAROLINA, COUNTY OF DURHAM INTERLOCAL COOPERATION AGREEMENT

This is an Interlocal Cooperation Agreement between the CITY OF DURHAM, a North Carolina municipal corporation, and the COUNTY OF DURHAM, a political subdivision of the State of North Carolina. This agreement is made pursuant to Article 20 of Chapter 160A of the North Carolina General Statutes. The date of this agreement is January 23, 2006. The agreement replaces, and carries forward, most of the substantive provisions of the initial City-County Interlocal Planning Agreement of June 20, 1988, as amended October 19, 1990, December, 1992, and November 2003.

The City and County agree as follows:

SECTION I. POLICY

- A. The Governing Bodies hereby find and declare that interlocal cooperation for comprehensive planning and plan implementation is a necessity. Such planning allows for more orderly and coordinated growth, provides a mechanism for consistent analysis of planning issues across political boundaries and therefore gives a more sound basis for policy decisions which affect both political entities. The Governing Bodies recognize that comprehensive planning and its implementation are vital to the public interest. Therefore, it is found that such activities as planning investigations and surveys, formulation of development goals and objectives, and development or means to carry out plans in a cooperative, coordinated and efficient manner are necessary in order that the two governments may more competently perform their duties, and in order that the citizens of the respective jurisdictions may have a better understanding of planning issues and be better able to participate in decision-making.
- B. The purpose of this Agreement is to establish a joint planning endeavor and to provide for the organization and administration necessary to effectuate that endeavor.

SECTION II. DEFINITIONS

The words defined in this section shall have the following meanings when used in this Interlocal Cooperation Agreement, unless otherwise defined or explained hereafter:

- A. "Annual Budget" shall mean the listing of anticipated annual expenditures of the Planning Agency, submitted and approved by the governing bodies pursuant to Section V, Subsections G and H of this agreement.
- B. "Board" shall mean the Durham County Board of Commissioners
- C. "BOA" shall mean the Board of Adjustment
- D. "City" shall mean the City of Durham
- E. "Comprehensive Plan" shall mean the adopted development plan for the community which has been officially adopted to provide long range development policies including all specified individual elements thereof among which are the plans for land intensities, land subdivision, circulation, and community facilities, utilities and services.
- F. "Council" shall mean the Durham City Council

- G. "County" shall mean the County of Durham
- H. "Durham City County Planning Jurisdiction" shall mean the combined geographic area in which the City and County exercise planning and zoning authority.
- I. "Governing Bodies" shall mean the Council and the Board
- J. "Joint City County Planning Committee" (JCCPC) shall mean the advisory committee established pursuant to Section VI of this agreement.
- K. "Plan" shall mean policies, strategies, and programs designed to improve an existing physical condition or to positively affect future physical development.
- L. "Plan Implementation" shall mean those measures used to carry out plans, including ordinances, regulations, technical assistance, public improvements or financing, incentives, and other actions
- M. "Planning" shall mean the process and procedures undertaken to produce a plan including collection and analysis of alternatives, selection, refinement and adoption of a plan, as well as the regulation of the development of property through land development regulations including zoning and subdivision
- N. "Planning Department" shall mean the administrative organization responsible for carrying out planning and implementation activities as specified in Section V
- O. "Planning Commission" shall mean the Durham Planning Commission as herein established pursuant to Section III of this Agreement.
- P. "Unit or Units of Local Government" shall mean a county, city, consolidated city-county or other local political subdivision or agency of local government.
- Q. "Work Program" shall mean a listing of anticipated planning projects and other significant work activities to be carried out on an annual basis by the Planning Agency.

SECTION III. PLANNING COMMISSION

A. Establishment of Durham Planning Commission

There is hereby established a joint commission to be known as the Durham Planning Commission. The Planning Commission is designated as the planning advisory body to the City and the County, and shall have the powers and duties described in this Agreement and other powers and duties as may be delegated by the governing bodies from time to time.

B. Appointments by Governing Bodies

1. Number; Composition. The Planning Commission shall consist of fourteen (14) members; of whom seven (7) shall be appointed by the Board and seven (7) shall be appointed by the Council. Seven (7) persons who reside within Durham City limits at the time of their appointment shall be appointed for three (3) year staggered terms by the Council, and seven (7) persons, at least three (3) of whom shall reside within the Durham City limits at the time of their appointment and at least three (3) of whom shall reside outside of the Durham City limits at the time of their appointment, shall be appointed for three (3) year staggered terms by the Board.
2. Subsequent Appointments. Appointments made to fill Commission vacancies shall be made by the governing body that made the initial appointment, and shall be for three (3) year terms except for appointments to replace members who have become disqualified, or have been removed, which shall be for the remainder of

the replaced member's term. New appointments should be made by the governing bodies at least 90 days prior to the expiration of a term to ensure that the newly appointed member is afforded ample opportunity to observe Planning Commission meetings prior to assuming office.

3. District Representation. The Council and the Board shall use district representation plans adopted by each body for appointments to the Commission. As the Council and Board deem necessary, these plans may be revised to reflect population changes and to maintain geographic and population balance. A map indicating the current district representation plan shall be kept in each respective Clerk's office, and shall be utilized in advertising Commission vacancies. When a vacancy cannot be filled by a resident of a district after the position has been advertised twice, the governing body making the appointment may appoint a representative from outside the district. Districts that are not represented on the Commission shall be given first priority when the governing bodies fill vacancies.
4. Property Taxes. County and City taxes must not reflect any delinquencies before an application is submitted. Members must remain non-delinquent in their local property taxes during their term, with the appropriate policy of the City Council or the Board of County Commissioners applied to their respective appointees regarding payment of taxes that become delinquent during the term of appointment. The Clerk of the appointing jurisdiction shall notify the jurisdiction of any noncompliance with this provision.
5. Vacancies/Removal Prior to Expiration of Term. Upon resignation, permanent disqualification or removal of any member of the Planning Commission, the governing body which appointed that member shall appoint a successor to fill the unexpired term. The governing bodies may only remove members for cause, which shall be defined as failure to meet the obligations set forth in Requirements for Membership, below. If a member is removed by the appointing governing body, the effective date of the action must be explicitly noted by the appointing governing body.
6. Optional Replacement of Members who Move within County. The governing bodies may replace Commission members who move during their tenure if they no longer are within the representation district they previously resided in, or do not meet the in-city or out-of-city appointment requirements they met when appointed. Notification of changes in residency shall be made as part of the Commission's annual report to the governing bodies, and shall be presented along with a breakdown of residency information about all current Commission members.

C. Requirements for Membership on the Durham Planning Commission; Compensation

1. Term. The term of office of a member of the Planning Commission, except for persons appointed to fill unexpired terms, shall be three (3) years and shall expire on June 30 of the final year of service. If a successor has not been appointed by the respective governing body, however, a member's term shall continue until such appointment is made. No person shall serve consecutively more than two

full terms. An individual appointed to a two-year term shall be deemed to have served a full term.

2. Residency Requirements. Members of the Planning Commission shall be residents of the County. Prior to any change in residency, members shall notify the Clerk to the Commission of the prospective change and the date of the move. A member who ceases to be a resident of the Durham City/County Planning Jurisdiction shall become disqualified immediately upon the change in residency, and the governing body that made the appointment shall be notified. Changes of residency within the County may result in replacement by the governing body that made the appointment (see Appointments by Governing Bodies, #3). Such changes in residency shall be reported to the governing bodies in the Commission's yearly report.
3. Voting Conflicts; County Ethics Policy. Commission members shall follow state statutory requirements regarding voting when there are conflicts of interest. In addition, they shall follow the County Ethics Policy, as such policy may be amended from time to time and annually shall complete the disclosure form provided by the County.
4. Attendance. Members shall attend at least seventy-five (75) percent of the total number of regular meetings of the Planning Commission during any twelve (12) month period, except for excused absence due to illness or other extraordinary circumstances. The Planning Commission shall establish, within its Rules of Procedure, conditions which constitute an excused absence, and the case-by-case application of those rules shall be the duty of the Chairperson of the Planning Commission. The Chairperson shall immediately report to the appropriate governing body, the failure of any member appointed by said governing body to meet said attendance standard, and the appropriate governing body may then remove said member from the Planning Commission.
5. Compensation. Members shall receive such compensation and reimbursement for expenses as the governing bodies may prescribe.

D. Operating Procedures

The Planning Commission shall elect its own officers in a manner prescribed in its Rules of Procedure. Further, the Planning Commission shall comply with the following:

1. The officers of the Planning Commission shall be a Chairperson and Vice Chairperson, one of whom shall be a City appointee and one of whom shall be a County appointee. The positions shall alternate between a City appointee and a County appointee at least every two years.
2. The Planning Commission may establish *ad hoc* committees of the Commission, and may also establish citizen committees or subcommittees to advise the Planning Commission; however, any such committees or subcommittees shall not receive staff support, unless explicitly provided for by the Joint City/County Planning Committee.
3. The Planning Commission shall adopt rules of procedure for the transaction of its business. Such rules shall be consistent with applicable laws, ordinances and

regulations and shall be filed with the city and county clerks. Such rules shall include, but not be limited to, the adoption of the County Ethics Policy as part of the Commission's procedures, and any other relevant provisions concerning conflicts of interest. Changes to the Commission's adopted rules of procedure shall be summarized as part of the yearly report made by the Commission to the governing bodies

4. The Planning Commission shall hold regular monthly meetings, and may hold special meetings. The regular meeting may be canceled by the Chairperson, acting in concert with the Planning Director, if a determination is made that there is no business to conduct. All meetings shall be open to the public but the Planning Commission may hold appropriate closed sessions when allowed or required by law.
5. The Planning Commission may invite and receive suggestions from the public concerning any and all matters within the scope of its duties.
6. The Planning Commission shall keep minutes, which shall record all actions taken by it. Such minutes shall be public records, when required by law.
7. The Planning Commission shall adopt policies and procedures encouraging broad public input on all plans and programs for which the Planning Commission has review responsibility.

E. Voting:

1. Quorum. A quorum for the Planning Commission shall consist of eight (8) members present.
2. Conflicts of Interest. Members may be disqualified from voting for a conflict of interest as determined under State statute or the County Ethics Policy. The procedures for recusal and for determining potential or actual conflicts of interest shall be as provided in the Commission's Rules of Procedure.
3. Duty to Vote: A member of the Planning Commission must vote unless the member has a conflict of interest or other good cause. The Commission's Rules of Procedure shall address the process by which members may be excused from voting.
4. Votes Required for Action. Actions of the Planning Commission shall require a simple majority vote of those present and voting, a quorum being present. A tie vote shall be considered as a recommendation to deny the change requested.
5. Annual Report. The Planning Commission shall submit an annual report to the governing bodies summarizing actions taken in the past year and recommendations as to ordinance changes, processing of zoning applications, consideration of land use plans, and other areas in which the Planning Commission has input. The report shall include a breakdown of Commission membership by district and by residency inside and outside the City and shall show any seats for which new members could be sought due to changes in

residency, in accordance with the provisions above. It shall also summarize any changes made in the Commission's Rules of Procedure.

F. Powers and Functions of the Planning Commission

1. For the purpose of fulfilling its role as contemplated by this agreement, the Planning Commission is hereby designated as a planning board pursuant to G.S. 153A-344 and G.S. 160A-383. The Commission may also take on any other planning related functions as delegated, in writing, by the governing bodies.
2. Pursuant to Article 19 Chapter 160A and Article 18 Chapter 153A of the North Carolina General Statutes, the Planning Commission shall have among other duties the following duties:
 - a. Propose and review policies and procedures for encouraging broad public input on all comprehensive, area, sub-area, neighborhood and functional plans.
 - b. Review and make recommendations on the annual Work Program of the Planning Department.
 - c. Review reports of committees it has appointed, or other commissions or agencies making recommendations in the area of land use planning.
 - d. Review and make recommendations on plans, including the Comprehensive Plan and land use, transportation, and capital improvements plans, planning policy and planning implementation actions and on amendments to these plans. Such review and recommendations shall be transmitted to the appropriate governing bodies for consideration during their deliberation.
 - e. Coordinate with the City, County and the Planning Department in order to accommodate Work Program or Annual Budget changes which may result from contracts between the City and the County, or the application for or receipt of funds by the City or County from the Federal government and its agencies, the State government and its agencies, any local government and its agencies, or any private or civic sources.
 - f. Coordinate with the City, County and the Planning Department in accommodating any Work Program or Annual Budget changes which may result from the City or County contracting with any other city, county, or regional council or planning agency under which the City or County agrees to furnish technical planning assistance to the other entity.
 - g. Advise and cooperate with units of local government, State government or Federal government on any matter within the Planning Commission's powers and duties.

- h. Review and make recommendations to the appropriate governing body concerning proposed zoning map changes and proposed text changes to the Unified Development Ordinance.
- i. Serve, if requested by either governing body, or if required by ordinance as *ex officio* members on other appointive boards, commissions or committees.
- j. Carry out such additional duties as may from time to time be given or directed by either governing body, so long as no conflict exists between the City and County concerning work priorities or use of resources. In such a case where a conflict exists, the Joint City-County Planning Committee shall work out a resolution to the conflict sufficient for the Governing Bodies to agree upon.

SECTION IV. BOARD OF ADJUSTMENT

A. Establishment of the Board of Adjustment (BOA)

There is hereby established a joint BOA which shall exercise all the powers and duties authorized under G.S. 160A-381, G.S. 160A-388, G.S. 153A-340, and G.S. 153A-345, all applicable special enabling legislation including, but not limited to Section 93 of the Durham City Charter, the City and County zoning ordinances and any other applicable ordinances.

B. Structure of BOA; Appointments by Governing Bodies

- 1. **Composition.** The BOA shall consist of seven (7) members and three (3) alternates. The Council shall appoint four (4) members and one (1) alternate. All must reside within the City limits at the time of appointment. The Board shall appoint three (3) members and two (2) alternates of whom at least three (3) must reside outside the City limits at the time of appointment.
- 2. **Vacancies and Removal.** Upon resignation, permanent disqualification or removal of any member of the BOA, an alternate appointed by the governing body that made the original appointment shall fill the subsequent vacancy in that position for the remainder of the previous member's term.
- 3. **Diverse Representation.** In making appointments, the Council and the Board shall make a good faith effort to assure urban and rural representation on the BOA. Alternates shall be given first consideration for nomination to regular positions on the BOA.

C. BOA Membership

- 1. **General/Term.** The term of office of members of the BOA shall be three (3) years, except where a member is replacing a member whose term has not ended, and shall expire on June 30 of the final year of membership. Members shall receive such compensation and reimbursement of expenses as the governing bodies may prescribe.

2. Membership Requirements. Members of the BOA shall be residents of the County and shall be subject to the following conditions:
 - a. Residency. A member or alternate who ceases to be a resident of the Durham City/County Planning Jurisdiction shall be immediately disqualified from membership upon the change of residency and shall resign from the BOA upon such change.
 - b. Property Taxes. County and City taxes must not reflect any delinquencies before an application is submitted. Members must remain non-delinquent in their local property taxes during their term, with the appropriate policy of the City Council or the Board of County Commissioners applied to their respective appointees regarding payment of taxes that become delinquent during the term of appointment. The Clerk of the appointing jurisdiction shall notify the jurisdiction of any noncompliance with this provision.
 - c. Attendance. Members have an obligation to attend at least seventy-five (75) percent of the total number of regular meetings of the BOA as further prescribed in the BOA's Rules of Procedures, and may be removed by the appointing governing body for failure to meet this standard.

D. Operation of the BOA

1. The officers of the BOA shall be a Chairperson and Vice Chairperson. They shall be elected by the BOA in accordance with its Rules of Procedure and shall have such duties as prescribed in the Rules of Procedure.
2. The BOA shall adopt Rules of Procedure concerning the conduct of the business of the BOA and other necessary matters. Votes required to approve matters before the BOA shall be as provided by General Statute, special legislation, ordinance and such Rules.
3. The BOA shall be subject to applicable state statutes regarding conflicts of interest in voting. In addition the BOA shall follow the Ethics Policy of the County, as such may be amended from time to time. Annually, members shall complete the disclosure form provided by the County.
4. The BOA shall furnish an annual report to the City Council and to the Board in which the previous year's work shall be summarized and any recommendations for changes in zoning ordinance or policy shall be made.

E. Legal Representation and Liability

The City Attorney's Office and County Attorney's Office shall provide legal support and representation for the BOA on issues arising from actions taken within and on behalf of their respective jurisdictions and for issues that arise before the BOA involving the respective jurisdictions. The City shall be liable for judgments rendered against the City and for actions within the City and the County shall be

liable for judgments against the County and for actions outside the City. When both the City and the County are named in any action against the BOA or neither jurisdiction is named but the BOA itself is named, the jurisdiction on whose behalf the contested action was taken shall be responsible for defense and payment, if any, of the claim, and, where necessary, shall cooperate in allowing dismissal of the other jurisdiction. In any action, the offices of the City and County Attorney shall only be responsible for representing their respective jurisdictions, and the BOA actions involving their jurisdictions.

SECTION V. ADMINISTRATION

A. Establishment of Durham Planning Agency.

There is hereby established the Durham Planning Agency, which shall consist of the Director and such subordinate employees as may be funded in the Annual Budget. The Planning Agency is designated as the administrative body for performing the professional planning functions and providing information, reports, and recommendations to the Planning Commission, City and County Managers and governing bodies.

B. Responsibility of Agency/Selection of Director/Responsibilities.

The Planning Agency shall provide such management, regulatory, administrative, and support services as are required or provided for under the approved Work Program and Annual Budget.

1. Director. The administrative head of the Planning Agency shall be the Planning Director. The process for the appointment, evaluation and termination of the Planning Director shall be as follows:
 - a. Appointment of the Planning Director. The Planning Director shall be appointed by the City Manager and the County Manager, acting in concert.
 - b. Evaluation and Supervision of Director. The City and County Managers shall meet at least annually with the Director to evaluate the performance of the Director.
 - c. Termination of Director. The Planning Director may be terminated by the City Manager and County Manager, acting in concert.
2. Duties of Director. Pursuant to and consistent with the provisions of the annual Work Program and Annual Budget, the Planning Director shall perform the following duties:
 - a. Appoint, reappoint, assign and reassign all subordinate employees of the Agency and prescribe their duties;
 - b. Coordinate the activities of the Agency in its functions with other local, State and Federal agencies;

- c. Represent the Planning Department, Planning Commission, City or County Manager, or governing bodies, before any agency or local government, the State, any other State or the United States with respect to:
 - i. Functions, analysis or recommendations of the Planning Department;
 - ii. Adopted policies of the Planning Commission or Governing Bodies;
 - iii. Other matters as may be directed to the Planning Director from time to time by the Planning Commission, the City or County Managers, or the Governing Bodies.
- d. Prepare and submit to the Planning Commission and City and County Managers the Department's Work Program and Annual Budget. The Planning Director will prepare revisions to the Work Program or Annual Budget, as needed for subsequent action by the Planning Commission, City and/or County Manger(s), or the Council or Board, as may be required.
- e. Perform professional planning duties as administrative head of the Planning Department, including but not limited to the following:
 - i. Meet with City and County officials and discuss planning issues, including the development of capital improvement and infrastructure plans, and the development of policy options in response to those issues;
 - ii. Meet and discuss with City and County departments and other public agencies or private groups planning programs in process, under consideration, or established as community objectives.
 - iii. Meet and consult with individuals and groups affected by planning issues, programs, and activities, in order to encourage citizen participation in the planning process;
 - iv. Advise the City and County Managers concerning planning issues and activities of City or County government, which have planning implications;
 - v. Provide management, leadership, and oversight for all planning and implementation activities of the Planning Agency;
 - vi. Facilitate the understanding of planning issues and processes by the Planning Commission, City and County governmental agencies and general public.

vii. Perform such other duties as may be prescribed by the governing bodies or City or County Managers, or which may be required to carry out the terms of this Agreement

f. Regularly advise the Planning Commission, City and County Managers and governing bodies concerning the activities and program progress of the Durham Planning Agency.

g. Annually complete the disclosure form provided by the County to ensure compliance with the County Ethics Policy.

C. Applicable Policies and Procedures for Employees

1. Joint Employees. The Planning Department staff shall be considered joint City/County employees.

2. Policies. In order to facilitate administration of the department, the personnel procedures of the City shall be followed by the Planning Agency regarding the selection, advancement, discipline, and dismissal of employees, with the exception of special provisions specified in this Agreement regarding selection and retention of the Planning Director; compensation and expenses; and affirmative action and equal employment opportunity.

3. Workers' Compensation. Costs and expenses associated with workers' compensation shall be apportioned as follows:

a. Unless otherwise specified in the Annual Budget of the Department, the City shall be responsible for administering the workers' compensation program, for the handling of legal claims associated with such program, and for all expenses related thereto, except as may be specifically excepted below;

b. Notwithstanding the above, the administration, legal defense, and other expenses of workers' compensation claims for any employee funded solely by the County to do County work shall be the responsibility of the County;

c. Salary continuation or other expenses associated with workers' compensation that are generally included as part of the Planning Department's budget shall be apportioned between the City and the County in the same manner as all other expenses that are part of the Department's budget, with the exception of expenses associated with employees who are funded solely by the County or by the City. In the case of such employees, the jurisdiction paying the employee's salary shall be responsible for any expenses.

D. The budget and financial procedures of the City shall be followed by the Planning Agency.

E. Property.

The City shall own, and may sell or otherwise dispose of any, or all real and personal property used by the Planning Agency. If such property is sold, the sale proceeds shall be divided between the City and County in proportion to the share of the City and/or County in the original acquisition cost. For example, the proceeds of the disposition of property purchased and funded by one government shall revert to that

government and the proceeds from the sale of any jointly purchased property shall revert to the City and County in the same proportion as each contributed to the initial purchase of the property. If the proportion of acquisition costs cannot be determined, the disposition shall be in the same ratio as the respective governing bodies assume for the expenses of the Department at the time of sale.

F. Work Program.

The annual Work Program shall be prepared and approved as follows:

1. The annual Work Program shall be prepared by the Planning Director.
2. The Planning Director shall present the annual Work Program to the City and County Managers and to the Planning Commission.
3. After recommendations have been made by the Planning Commission and the City and County Managers have approved the Work Program, the Planning Director shall present the Work Program approved by the City and County Managers, together with the Planning Commission recommendation, to the Joint City-County Planning Committee. The recommendations of the Joint City-County Planning Committee shall then be forwarded to the governing bodies for their action.

G. Budget.

The Annual Budget process shall be coordinated with and related to the development of the Work Program. The Planning Director shall prepare and submit the proposed Annual Budget to the City and County Managers at the time they are reviewing the proposed annual Work Program. Once the City and County Managers have agreed on their Work Program recommendation to the governing bodies, the proposed Annual Budget shall, if necessary, be revised to be consistent with and reflective of the City and County Managers' recommended Work Program. The proposed Annual Budget shall be prepared in a manner and detail consistent with City departmental budget requests.

The Planning Director, after obtaining concurrence from the City and County Managers, shall submit the recommended Annual Budget, together with the recommended annual Work Program, to the Joint City-County Planning Committee for their review and consideration along with the recommendations of the Planning Commission concerning the Work Program. The ultimate authority for approval of the budget shall rest with the governing bodies. In the event of a conflict between the governing bodies concerning the budget or any expense incurred under this Agreement, the Joint City-County Planning Committee shall propose to the governing bodies a resolution to the conflict.

H. Method of Funding; Reimbursement of Budget Expenses

1. The expenses of the approved Annual Budget and all other unanticipated expenses shall be apportioned between the City and County on an equal basis, with each contributing half of the cost of shared functions of the Department.

2. The City shall initially pay any expenses incurred under this Agreement, subject, however, to reimbursement by the County in the manner prescribed in the next paragraph. Such procedure may be varied, however, for contracts or other obligations for planning services that are not included within the approved annual budget, or that are invoiced on a separate basis.
3. The County shall pay to the City on a monthly basis, in advance, an amount equal to (i) one-twelfth (1/12) of the County's portion of the approved Annual Budget (such amount to be determined as provided in paragraph 1 of this Subsection); plus (ii) the County's portion of any unanticipated expense incurred during the immediately preceding month (such proportion also to be determined as prescribed in paragraph 1 of this Subsection). The County's payment shall be made by wire not later than 12:00 noon on the first business day of the month.
4. The expenses to be apportioned between the City and County pursuant to paragraph 1 of this Subsection H shall be net expenses. Net expenses shall be determined by subtracting from total expenses (including unanticipated expenses) all fees, charges and other similar revenues received by the City or County from the general public for any service, function or activity which is jointly funded by the City and County under this Agreement. If, for any reason, the amount paid by the County to the City pursuant to paragraph 3 of this Subsection for any fiscal year differs from the amount of net expenses for the fiscal year, then the Directors of Finance of the City and County shall meet and determine the amount of such difference. In the event of an overpayment, the City shall refund such overpayment to the County. In the event of an underpayment, the County shall pay the amount of such underpayment to the City. This reconciliation shall be completed on or before October 15th following each fiscal year.
5. Either the City or the County may fund services over and above those approved in the Annual Budget as part of the shared functions of the Department. When such additional services are requested by either the City or County and are performed for the benefit of the requesting government, then the requesting government shall pay the expenses associated with such service(s).

I. Legal Representation and Liability

The City Attorney's Office and County Attorney's Office, respectively, shall provide legal support and representation for the Planning Department and its employees on issues arising from actions taken within and on behalf of their respective jurisdictions and for issues that arise before the various commissions, agencies, and programs that are staffed and directly supported by the Planning Department. Legal support and compensation for claims against Planning Department employees shall be in accordance with the adopted policies and procedures of the respective jurisdiction regarding defense of employees and payment of claims. For the County, such policy is the Durham County Policy of Uniform Standards for Claims Against Employees, Officers and Officials as amended, and for the City such policy is the Resolution Establishing Uniform Standards Under Which Claims or Civil Judgments

Sought or Entered Against City Officers and Employees May be Paid. The City shall be liable for judgments rendered against the City and the County shall be liable for judgments against the County. When both the City and the County are named in any action against the Planning Department and/or an employee or neither jurisdiction is named but the Planning Department itself is named, the jurisdiction on whose behalf the contested action was taken shall be responsible for defense of the claim, consistent with the policies identified above, and, where necessary, shall cooperate in allowing dismissal of the other jurisdiction. In any action, the offices of the City and County Attorney shall only be responsible for representing their respective jurisdictions, and for Department employees acting on behalf of their jurisdictions, as detailed above, and shall not be responsible for representation of the other jurisdiction.

SECTION VI. JOINT CITY-COUNTY PLANNING COMMITTEE

- A. There is hereby established a Joint City-County Planning Committee ("JCCPC"), comprised of three members from each governing body, and as *ex officio* members, the Planning Director, the City and County Managers, and the Chairperson of the Planning Commission. Any other member of the governing body may serve in the absence of a regular member from that body. *Ex officio* members may also designate an alternate to represent them in their absence from regular meetings. Voting members of the JCCPC shall be the governing body members, and any alternate substituting for such member, and the Chair of the Planning Commission, and the alternate substituting for the chair.

The function of this committee is to expedite consideration by the two governing bodies of planning issues which affect both governments. The committee is advisory to the two governing bodies and has no ultimate decision-making power, but is created to help develop consensus between the City and County concerning planning issues for which coordinated decisions must be made.

- B. The duties of the Committee are as follows:
1. Advise the City and County Managers and Planning Director on the proposed Annual Budget and Work Program, and provide appropriate input to the governing bodies concerning those matters.
 2. Review proposed planning policies, programs and regulatory requirements that affect both governments; advise the City and County Managers and Planning Director, and provide appropriate input to the governing bodies concerning those matters.
 3. Discuss and propose resolution to any disputes arising between the City and County involving the budget, the planning program, or the policy content of the planning program.
 4. Discuss and make recommendations on any other matters concerning City-County Planning as may be deemed appropriate by the governing bodies.

- C. The seven (7) voting members shall elect a Chairperson and a Vice Chairperson, each January, alternating the Chairmanship each year between the City and County.

The Planning Director shall confer with the Chairperson concerning the agenda of each meeting.

SECTION VII. GENERAL TERMS OF AGREEMENT

- A. This Agreement may be amended from time to time upon mutual consent of the Governing Bodies expressed in writing. The Governing Bodies shall review this Agreement at least once every three (3) years.
- B. It is the intent of the City and County under this Agreement for the City to exercise no planning or zoning authority within an Extraterritorial Area (ETA).
- C. Either the City or County may terminate this Agreement for any reason as follows:
 - 1. Termination: This Agreement can only be terminated as of the beginning of any fiscal year, except as provided under paragraph 2, below. Notice to terminate must be given in writing to the other party on or before January 1 immediately preceding the proposed July 1 termination date.
 - 2. This Agreement may also be terminated by either party upon thirty (30) days prior written notice to the other party in the event the City and County are unable to agree upon an Annual Budget or Annual Work Program.
 - 3. Return to ETA Jurisdiction: If this agreement is terminated, the Extraterritorial Area Jurisdiction of the City established by Resolution adopted by the Durham County Commissioners on June 5, 1972 and by Ordinance adopted by the Durham City Council on July 3, 1972, shall be restored to the City by the County in accordance with applicable General Law.

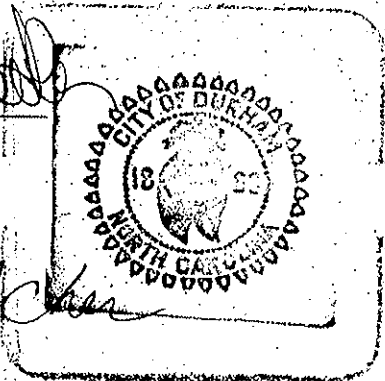
IN WITNESS WHEREOF, the parties have authorized this Agreement to be executed and attested by their undersigned officers, to be effective from and after the date written above.

CITY OF DURHAM

By [Signature]
CITY MANAGER

ATTEST:

[Signature]
Deputy City Clerk 2-10-06



COUNTY OF DURHAM


By 
Chairman, Durham County


Board of Commissioners

ATTEST:


County Clerk / Deputy Clerk

This instrument has been pre-audited in the manner required by the local government budget and fiscal control act.


Durham County Finance Director


City Finance Officer