

STATE OF NORTH CAROLINA

COUNTY OF WAKE

INTERLOCAL AGREEMENT

BETWEEN

CITY OF RALEIGH

AND

WAKE COUNTY

REGARDING

THE REVIEW AND PROCESS OF

COMMERCIAL PERMIT APPLICATIONS

BY WAKE ENVIRONMENTAL SERVICES

This Interlocal Agreement (the “Agreement” or “Interlocal Agreement”), entered into this the ____ day of _____, 20__, by and between the **CITY OF RALEIGH, NORTH CAROLINA**, a municipal corporation organized under the laws of the State of North Carolina (hereinafter “City of Raleigh” or “City”) and **WAKE COUNTY, NORTH CAROLINA**, a public body politic and corporate (hereinafter “Wake County” or “County”); collectively referred to herein as “the Parties”;

WITNESSETH:

WHEREAS, the Parties to this Agreement are each committed to excellence in the delivery of customer service when receiving, reviewing, and processing commercial building permit applications and related services; and

WHEREAS, the Parties currently use the City’s IRIS permitting system for, *inter alia*, the collection of fees for projects within the City of Raleigh that require Plans Review by Wake Environmental Services staff; and

WHEREAS, in 2018, the Wake County Department of Environmental Services will launch EnerGov, a new permitting software system, and therefore, will no longer need to utilize the City’s IRIS system for the collection of fees; and

WHEREAS, by and through this Interlocal Agreement, the Parties will formalize their joint and individual responsibilities for coordination of reviewing, and processing commercial building permit applications and related services for properties located within the City of Raleigh, received by the Wake County Department of Environmental Services; and

WHEREAS, the citizens of Wake County and the City of Raleigh are benefitted by the increased coordination among agencies, better leveraged limited resources, resulting in more timely service of clients, reduction of administrative costs, and the potential to serve more citizens;

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**

The purpose of this Agreement is to define the rights and obligations of the Parties regarding the coordinated receipt, review, and processing of commercial permit applications and related services.

**ARTICLE II
TERM**

This Agreement shall be effective upon the properly authorized execution of the Agreement by both parties hereto (“Effective Date”), and shall continue in effect until the earlier of (i) either

party terminates this Agreement in accordance with Article III, (ii) the City begins use of the EnerGov system, or (iii) the County ceases use of the EnerGov system or (iv) ten (10) years.

ARTICLE III TERMINATION

- 3.01 **TERMINATION BECAUSE OF MATERIAL BREACH.** Upon the material breach of this Agreement by any Party, the non-breaching Party shall deliver written notice of said breach and request to cure. If such breach is not cured within thirty (30) days of the written notice thereof, the non-breaching Party may, without further notice or demand, in addition to all other rights and remedies provided in this Agreement, at law or in equity, terminate this Agreement and recover any damages to which it is entitled because of said breach.
- 3.02 **TERMINATION UPON ONE (1) YEAR'S NOTICE.** Either Party may terminate its participation in this Agreement, with or without breach, by giving written notice to the other Party of intent to terminate, at least one (1) year prior to the termination date.
- 3.03 **BANKRUPTCY/INSOLVENCY.** If any Party applies for or consents to the appointment of a receiver, trustee or similar officer for it or any substantial part of its property or assets, or any such appointment is made without such application or consent by such Party and remains undischarged for sixty (60) days, or files a petition in bankruptcy or makes a general assignment for the benefit of creditors, then such action shall constitute a material breach of this Agreement not requiring notice and opportunity to cure, and the other Party may terminate effective immediately.
- 3.04 **COOPERATION.** In the event of termination pursuant to any subsection hereunder, the terminating Party shall **not** be relieved of any existing and unperformed obligations, including funding obligations, incurred up until the effective date of termination.
- 3.05 **NON-EXCLUSIVE REMEDIES.** No remedy provided in this Agreement shall be considered exclusive of any other remedy in law or in equity.
- 3.06 **NOTICE.** Any written or electronic notice required by this section shall be delivered to the Parties at the following addresses:

For City of Raleigh: Ruffin Hall, City Manager
City of Raleigh
Post Office Box 590
Raleigh, NC 27602

With a copy to City Attorney
City of Raleigh
Post Office Box 590
Raleigh, NC 27602

For Wake County: David Ellis, County Manager
Wake County Justice Center

PO Box 550
Raleigh, NC 27602

With a copy to

Wake County Attorney
Wake County Justice Center
PO Box 550
Raleigh, NC 27602

Notices shall be deemed delivered on the date sent if addressed as set forth herein. Either party may notify the other of a change of address, which will only be effective by written notice. As necessary, day to day communication may occur between Jessica Sanders, or her designee, for the County and Leon Skinner, or his designee, for the City.

ARTICLE IV AMENDMENT

If any Party desires to amend the Agreement, then the proposed amendment and the reasons for the proposed amendment shall be communicated in writing to the other Party. If the Parties agree to the proposed amendment, then the amendment shall be effected by entering a written amendment to the Agreement. An amendment that does not change any substantive or financial commitments of the Agreement may be executed by the Wake County Manager and the City of Raleigh Manager. Any other amendment to the terms of this Agreement to be effective must be in the form of a written instrument properly authorized and executed by the governing boards of each Party to this Agreement. Any amendment to this Agreement to be effective must be in writing and signed by both Parties.

ARTICLE V RESPONSIBILITIES OF THE PARTIES

5.01 MUTUAL RESPONSIBILITIES.

5.01.1 The purpose of this Agreement is to define the process by which the Parties will work together to coordinate the receipt, review, and processing by the City of those certain commercial building permit applications which by law requires plan review by the County before the City may issue a building permit, as set forth in Section 5.01.2 below, and to facilitate the Parties' transition period from and between IRIS to EnerGov. The Parties shall each appoint a designated representative, and shall work closely through their assigned designees to effectuate the purpose of this Agreement.

5.01.2 The Wake County Environmental Services Department's Environmental Health & Safety Division ("Wake County Environmental Health & Safety") is required by State law to conduct plan review for the following types of facilities before any jurisdiction within the geographic boundaries of Wake County, including the City, may issue a building permit for the construction of any such facility:

- a. Food service facilities (restaurants, food stands, drink stands, temporary food establishments, limited food service, push carts, mobile food units, meat markets, and school lunch rooms), pursuant to N.C.G.S. 130A-248 and 15A NCAC 18A .2650;
- b. Lodging facilities with more than 4 rooms, pursuant to N.C.G.S. 130A-248 and 15A NCAC 18A .1833;
- c. Childcare facilities for more than 5 children, pursuant to N.C.G.S. 110-91 and 15A NCAC 18A .2802;
- d. Hospitals, nursing homes, adult care homes providing care on a 24-hour basis for 13 or more persons, orphanages, and children's homes providing care on a 24-hour basis for 13 or more children, pursuant to N.C.G.S. 130A-235 and 15A NCAC 18A .1302;
- e. Adult day services facilities, pursuant to N.C.G.S. 130A-285 and 15A NCAC 18A .3302;
- f. Summer camp facilities, pursuant to N.C.G.S. 130A-248 and 15A NCAC 18A .1003;
- g. Public swimming pool facilities, pursuant to N.C.G.S. 130A-282 and 15A NCAC 18A .2509;
- h. Local confinement facilities, pursuant to N.C.G.S. 153A-226 and N.C.G.S. 143B-165, and 15A NCAC 18A .1502; and
- i. Primitive camps facilities, pursuant to N.C.G.S. 130A-248 and 15A NCAC 18A .3502.

5.01.3 Each party shall keep the other informed of changes in its system, policies, and staff, which may affect client services.

5.01.4 The County and City will cooperate and use their best efforts to ensure that the various provisions of this Agreement are fulfilled. The Parties agree in good faith to undertake resolutions of disputes, if any, in an equitable and timely manner and in accordance with the provisions of this Agreement.

5.01.5 The failure of either Party to comply with the provisions of Article V of this Agreement shall be considered a material breach.

5.02 CITY OF RALEIGH.

5.02.1 Upon receipt of a commercial building permit application to construct or renovate a facility as designated within Section 5.01.2 of this Agreement, the City Development Services Department, or its designee, ("City Development Services") shall proceed as follows:

- 5.02.1.1 As part of its building permit application to City Development Services, and before a building permit may be issued, City Development Services staff will verify that the applicant has submitted any required application for plan review to Wake County Environmental Health & Safety by requiring the applicant to provide the Wake County Environmental Health & Safety Facility Improvement Permit number for the proposed facility.
 - 5.02.1.2 Using the Wake County Environmental Health & Safety Facility Improvement Permit number provided by the applicant, City Development Services staff will verify that the applicant has submitted the required application for plan review to Wake County Environmental Health & Safety by accessing the County database (i.e. EnerGov) and viewing the Wake County Environmental Health & Safety Facility Improvement Permit file for the proposed facility.
 - 5.02.1.3 Upon verification, City Development Services staff will record the Wake County Environmental Health & Safety Facility Improvement Permit number into the Raleigh database (e.g. IRIS) for reference.
 - 5.02.1.4 City Development Services staff shall be responsible for collecting plans from the applicant, as received, or the applicant's designee, and shall route the plans to Wake County Environmental Health & Safety via the Raleigh database to enable Wake County Environmental Health & Safety to conduct its plan review for the proposed facility. City Development Services shall not be responsible for incomplete plans or the failure to submit plans by applicants.
- 5.02.2 As part of the Final Review for Raleigh Building Inspections, City Development Services staff shall review the Raleigh database to verify that all plan review fees applicable to the proposed facility have been paid in full to Wake County by accessing the associated Wake County Environmental Health & Safety Facility Improvement Permit file in the Wake County database. City Development Services staff shall not issue a building permit for the proposed facility unless and until a zero-fee (\$0.00) balance for Wake County Environmental Health & Safety plan review fees is verified in the Wake County database.

5.03 WAKE COUNTY.

- 5.03.1 Wake County Environmental Health & Safety staff will monitor the Wake County plan review work log in the Raleigh database.
- 5.03.2 Wake County Environmental Health & Safety staff will review plan submittals in the order that the work is due in the Raleigh database. Wake County Environmental Health & Safety staff will update review statuses and enter any comments, or conditions into the Raleigh database with each review cycle.
- 5.03.3 Wake County Environmental Health & Safety staff will indicate in the Raleigh database if a project is subject to plan review fees, or if it is not subject to fees.

Wake County Environmental Health and Safety staff shall invoice applicants as needed directly through the Wake County Database.

ARTICLE VI RECORDS AND INSPECTION

The County and the City agree that each party hereto, will cooperate with the State, County, or municipal Auditor, or any of their duly authorized representatives, at any time during normal business hours; and further, that such auditor shall have access to, and the right to examine, audit, excerpt, and transcribe any books, documents, papers, and records, which are pertinent to the accounting practices and procedures of the other party hereto and involve transactions relating to this Agreement.

ARTICLE VII DATA PRIVACY

The County and the City agree to abide by all applicable Federal and State laws and regulations regarding privacy and confidential information concerning individuals and data including, but not limited to information made non-public by such laws or regulation.

ARTICLE VIII APPLICABILITY OF NORTH CAROLINA PUBLIC RECORDS LAW

Wake County is the owner of Wake County materials and City of Raleigh is the owner of City of Raleigh materials. Public records requests shall be addressed by the party who is the owner of the requested information.

The parties to this Agreement are government agencies, subject to the North Carolina Public Records Act, NCGS §132-1, et seq. Notwithstanding any other provisions of this Agreement, this Agreement and all materials submitted to either party in the course of this Agreement are subject to the public records laws of the State of North Carolina and it is the responsibility of each party to properly designate materials that may be protected from disclosure under North Carolina law as such and in the form required by law prior to the submission of such materials. Each party understands and agrees, that the other party, as a government agency, may take any and all actions necessary to comply with federal, state, and local laws and/or judicial orders and such actions will not constitute a breach of the terms of this Agreement. To the extent that any other provisions of this Agreement conflict with this paragraph, the provisions of this section shall control.

ARTICLE IX RELATIONSHIP OF PARTIES

Wake County and the City of Raleigh are, and shall remain, independent contractors 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 contractor 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 partnership or venture between the Parties.

ARTICLE X NON-ASSIGNMENT

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 XI NON-APPROPRIATION

Wake County and the City of 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 XII NO THIRD-PARTY BENEFICIARIES

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 XIII INDEMNIFICATION AND FINANCIAL RESPONSIBILITY

- 8.01 City shall be responsible for, and to the extent permitted by law, indemnify and hold County harmless from all loss, liability, claims or expense (including reasonable attorney's fees) arising from bodily injury, including death or to any person or persons or property damage caused in whole or in part by the sole negligence or willful misconduct of City of Raleigh, its officers, directors, students, agents, contractors, employees, or representatives, except to the extent that the same are caused by negligence or willful misconduct of the County.
- 8.02 County shall be responsible for, and to the extent permitted by law, indemnify and hold the City of Raleigh harmless from all loss, liability, claims or expense (including reasonable attorney's fees) arising from bodily injury, including death or to any person or persons or property damage caused in whole or in part by the sole negligence or willful misconduct of County, its officers, directors, students, agents, contractors, employees, or

representatives, except to the extent that the same are caused by negligence or willful misconduct of the City of Raleigh.

ARTICLE XIV LIMITATION OF LIABILITY

Each party to this Interlocal Agreement will be responsible for its own actions in providing services under this Interlocal Agreement and, to the extent permitted by law, shall not be liable for any civil liability that may arise from the furnishing of the services by the other party.

ARTICLE XV NO WAIVER OF SOVEREIGN IMMUNITY

Nothing in this Agreement shall be construed to mandate purchase of insurance by Wake County pursuant to N.C.G.S. 153A-435; or to be inconsistent with Wake County's "Resolution Regarding Limited Waiver of Sovereign Immunity" enacted October 6, 2003; or to in any other way waive either Party's defense of sovereign or governmental immunity from any cause of action alleged or brought against Wake County or City of Raleigh for any reason if otherwise available as a matter of law.

ARTICLE XVI NO WAIVER OF QUALIFIED IMMUNITY

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 XVII FORCE MAJEURE

Except as otherwise provided in any environmental laws, rules, regulations or ordinances applicable to the parties and the services performed under this Agreement, neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by an act of war, hostile foreign actions, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God. Either party to the Agreement must take reasonable measures and implement reasonable protections when a weather event otherwise defined as a force majeure event is forecast to be eligible to be excused from the performance otherwise required under this Contract by this provision.

ARTICLE XVIII NON-DISCRIMINATION

To the extent permitted by North Carolina law, 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. The parties further agree, to the extent permitted by law, to conform with 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 XIX APPLICABLE LAW

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 the United States District Court for the Eastern District of North Carolina, Western Division.

ARTICLE XX ENTIRE AGREEMENT

The terms and provisions herein contained constitute the entire agreement by and between Wake County and the City of Raleigh and shall supersede all previous communications, representation or agreement, either oral or written between the parties hereto with respect to the subject matter hereof. No oral representations, statements, or inducements apart from the foregoing written License Agreement have been made.

ARTICLE XXI MODIFICATION/RENEWAL

Any renewals or modifications of this Agreement must be in writing, signed by both parties, and executed with the same formality as the foregoing instrument.

ARTICLE XXII SEVERABILITY

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 XXIII COUNTERPARTS

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

IN WITNESS WHEREOF, intending to be legally bound hereby, and with the authority vested in them by resolution of their respective governing boards, the parties have caused this Interlocal Agreement to be executed and delivered as of the date first above written.

CITY OF RALEIGH, NORTH CAROLINA By: _____ City Manager	This instrument has been pre-audited in the manner required by The Local Government Budget and Fiscal Control Act. _____ Finance Officer City of Raleigh, North Carolina
ATTEST: By: _____ Clerk <div style="text-align: center;">[Seal]</div>	This instrument is approved as to form and legal sufficiency. _____ City Attorney
WAKE COUNTY, NORTH CAROLINA By: _____ County Manager	This instrument has been pre-audited in the manner required by The Local Government Budget and Fiscal Control Act. _____ Finance Director Wake County, North Carolina
[Seal] ATTEST: _____ By _____ Clerk	This instrument is approved as to form and legal sufficiency. _____ County Attorney