

**STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG
CITY OF CHARLOTTE**

**INTERLOCAL AGREEMENT
FOR A BUSINESS PERMITTING
SOFTWARE APPLICATION**

This interlocal agreement for a business permitting software application is entered into as of _____, 2016 (the “Effective Date”) by and between the CITY OF CHARLOTTE, a North Carolina municipal corporation (the “City”) and MECKLENBURG COUNTY, a political subdivision of the State of North Carolina, (the “County”).

WITNESSETH:

WHEREAS, on July 10, 2015 the City and the County jointly sent out a Request for Qualifications for a business permitting software application to assist City and County customers including small business owners with the commercial permitting processes allowing users to go to a single portal and, by responding to a series of easy to answer questions, provide site and building review requirements, zoning information, and associated fees (the “RFQ”).

WHEREAS, OpenCounter Enterprises (Company) submitted a proposal in response to the RFQ, and the City and County negotiated and entered into an agreement with the Company to design, implement, license, host and maintain a business permitting software application by creating and configuring an instance of the OpenCounter Economic Development suite for the City and the County (the “System”).

WHEREAS, it is in the Parties’ mutual best interest for the successful completion of the System.

WHEREAS, the Parties desire to enter into a funding, development and use agreement that sets out their respective rights and responsibilities with respect to cost sharing, development and use of the System.

NOW THEREFORE, in consideration of the premises and the fulfillment of the terms of this agreement, the City and the County agree as follows:

- 1. Purpose.** The purpose of this Agreement is to establish terms governing funding, development, and use of the System by the City and the County. It is anticipated the Agreement will be amended upon completion of the System to include the establishment of terms governing the joint operation of the System.
- 2. Definitions.** For purposes of this Agreement, the following terms shall have the meanings set forth below:

- 2.1. Agreement:** This Interlocal Agreement.
- 2.2. Business Project Coordinators:** The City and the County shall each designate an individual, or individuals, to serve as its Business Project Coordinator or Business Project Coordinators for the purpose of coordinating resources, facilitating communication about the System, making decisions about the System and performing the other responsibilities assigned to the Business Project Coordinators under Exhibit A. The City or County may change the identity of their Business Project Coordinators upon 5 days prior written notice to each of the other Departments' Business Project Coordinators. The Business Project Coordinators as of the Effective Date are identified in Exhibit B.
- 2.3. City Infrastructure:** The City computer network and City user desktops, and handheld electronic devices.
- 2.4. Company:** OpenCounter Enterprises. The term "Company" shall also mean any successor in interest to OpenCounter Enterprises (whether by merger, acquisition, assignment or other transfer), or any entity that assumes the rights and/or obligations of OpenCounter Enterprises under its contracts with the City or County.
- 2.5. Company Contract:** The contract between the City and the Company for the implementation, hosting and maintenance of the System approved by City Council March 14, 2016, which will make both the City and the County licensed users of the software developed pursuant to the contract.
- 2.6. County Infrastructure:** The County computer network and County user desktops, and handheld electronic devices.
- 2.7. Days:** Each reference to "days" in this Agreement shall mean calendar days, unless stated otherwise.
- 2.8. Department:** A department or division of either the City or the County.
- 2.9. Effective Date:** The date set forth in the first sentence of this Agreement.
- 2.10. Parties:** The City of Charlotte and Mecklenburg County.
- 2.11. Program Managers:** The City and County shall designate an individual to serve as Program Manager for the purpose of resolving conflict. The City or County may change the identity of their Program Manager upon 5 days prior written notice to the Company, the Unified Development Services Committee, and to each of the Business Project Coordinators. The Program Managers as of the Effective Date are identified in Exhibit B.
- 2.12. Project Manager:** The City shall designate an individual to serve as Project Manager for the purpose of communicating with the Company and performing the other

responsibilities assigned to the Project Manager under Exhibit A. The City may change the identity of their Project Manager upon 5 days prior written notice to the Company, the Unified Development Services Committee, Program Managers and to the Business Project Coordinators. The Project Manager as of the Effective Date is identified in Exhibit B.

2.13. System: The term “System” shall mean a business permitting software application developed by OpenCounter Enterprises by creating and configuring an instance of the OpenCounter Economic Development suite for the City and the County, of which both the City and the County will be licensed users.

2.14. System Costs: The configuration, subscription, integration and training costs payable to the Company in accordance with the Company Contract.

2.15. Unified Development Services Committee: The City and County employees comprising the Unified Development Services Committee as of the Effective Date are listed in Exhibit A.

3. Cost Allocation and Payment of System Costs.

3.1. Payments to the Company. The City will pay System Costs within the time required in accordance with the Company Contract.

3.2. Allocation of System Costs between City and County. The County will reimburse the City for fifty percent (50%) of the System Costs unless the Parties agree in writing otherwise, this same cost allocation will apply to any additional System Costs for System Software, System Hardware or services that the Parties mutually agree in writing to procure and add to this Agreement. Any agreement to vary the cost allocation set forth above for new System Costs shall be set forth in a written addendum to this Agreement, and shall be signed by the City Manager and the County Manager.

3.3. Timing of Reimbursement by the County. The City will invoice the County for the County’s share of System Costs upon the City’s receipt of the applicable invoices, and will provide all documentation reasonably requested by the County to verify such payments. The County will reimburse the City within sixty (60) days after receiving the City’s invoice and any requested documentation.

3.4. Disputes as to Payment of the Company. If either the City or the County objects to the payment of any amount invoiced to the City for System Costs, then the party objecting to payment shall notify the other party in writing of the basis for its objection within fifteen (15) days after the objecting party’s receipt of the disputed invoice. If the City and the County disagree as to whether a particular invoice should be paid in full, they will seek to resolve the matter in accordance with the dispute resolution procedures set forth in Section 9 of this Agreement, and in such event: (a) both Parties will use best efforts to resolve the matter as expeditiously as possible; and (b) the City will withhold payment until matter has been resolved. Notwithstanding the forgoing, if the Parties have not agreed whether to pay

an invoice within twenty (20) days after receipt of a written notice of default from the Company, then either party shall be entitled to pay the invoice and have the cost of such payment allocated between the City and the County through the dispute resolution process set forth in Section 9 based upon all surrounding circumstances (including without limitation whether valid grounds existed for withholding payment, any harm suffered by the objecting party as a result of the payment not being withheld and any benefits that accrued to the objecting party as a result of the payment).

4. City and County Responsibilities Regarding System.

4.1. Equal Authority. The City and the County will each have an equal vote and decision making authority regarding all decisions that need to be made regarding the System, including without limitation vendor customization and new development, selection of System features, acceptance or rejection of deliverables, vendor-provided training, performance criteria and timing of implementation, maintenance and support issues and all other matters regarding implementation of the System or maintenance and support of the System. No action will be taken with any decisions regarding the System without the prior written consent of both the City and the County. Any disputes that might arise with regard to any aspect of the System will be resolved in accordance with the dispute resolution process set forth in Section 9 of this Agreement.

4.2. City and County Responsibilities. The City's and County's respective responsibilities regarding operation and maintenance of the System are set forth in Exhibit A.

4.3. City Responsibility to Contract. The City has the responsibility to enter into the Company Contract, and to manage the Company Contract for the mutual benefit of the City and the County.

5. System Hardware. The County and the City shall each own, pay for and maintain all Hardware that supports their individual use of the System. Neither shall own nor be responsible for Hardware that is used to support the other's use of the System, and such Hardware shall not be included in the System Costs.

6. Other Contracts Affecting the System. After execution of this Agreement, neither party will execute any additional software licenses or other agreements that would become part of the System or affect the use or operation of the System without the other Party's prior written consent. Each party represents and warrants that neither of them has entered into any software license or other agreements as of the Effective Date regarding software that would become part of the System or affect the use or operation of the System.

7. Term. Due to the terms, conditions and mutually beneficial purposes of this Agreement, it is reasonable for the duration of this Agreement to be perpetual. Therefore, the term of this Agreement shall commence on its Effective Date and shall continue until terminated in accordance with the termination provisions of this Agreement.

- 8. Termination.** The City and County may terminate this agreement at any time in writing by mutual consent under such terms as may be agreed to by the Parties and in accordance with the Company Contract. Provided, however, this agreement shall automatically terminate without the necessity of a written agreement to terminate after both parties have ceased using the System. Both Parties will be responsible for payments for System Costs as required in accordance with the Company Contract at the time of the termination date.
- 9. Dispute Resolution.** The Parties agree that any disputes which cannot be resolved by the City and County Managers or their designees will first be attempted to be resolved by mediation and if not resolved by mediation, then by binding arbitration. If the Parties cannot agree upon selection an arbitrator and a process for arbitration, disputes between the parties arising out of or in connection with this agreement or the performance or breach thereof shall be resolved by binding arbitration in accordance with the then-applicable Commercial Arbitration Rules (the “Rules”) of the American Arbitration Association. The Rules will apply except as specified in this paragraph. All arbitration proceedings will be held in Charlotte, North Carolina before a single arbitrator. The Parties hereto agree to submit to the enforcement of any award resulting therefrom by any court of competent jurisdiction. Judgment upon the award rendered in any such arbitration proceeding may be entered into any court having competent jurisdiction thereof, or application may be made to such court for a judicial acceptance of the award and an order of enforcement as the case may be.

10. Miscellaneous

- 10.1. Notices.** Any notice, consent or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by telefax to the Business Program Managers for the respective Parties, except that any notice relating to a breach or default by either party under this Agreement shall also be sent to the following:

For The City

David Weekly, P.E.
Land Development Manager
Engineering and Property Management
City of Charlotte
600 E Fourth Street
Charlotte, NC 28202
Phone: 704-336-4103
Email: dweekly@ci.charlotte.nc.us

For The County

Patrick Granson
Deputy Director of Plan Review and Permitting
Code Enforcement
Mecklenburg County
2145 Suttle Avenue
Charlotte, NC 28208
Phone: 980-314-3434
Email:
Patrick.Granson@mecklenburgcountync.gov

Notice shall be effective upon the date of receipt by the intended recipient. Each party may change its address for notification purposes by giving the other party written notice of the new address and the date upon which it shall become effective.

- 10.2. Amendment.** No Amendment to this Agreement shall be valid unless in writing and approved by the Charlotte City Council and the Mecklenburg County Board of

Commissioners except for amendments authorized by this Agreement to be approved and executed by the City Manager and County Manager.

10.3. Force Majeure. Neither party shall be liable for any failure or delay in the performance of its obligations pursuant to this Agreement and such failure or delay shall not be deemed a default of this Agreement or grounds for the exercise of any remedies hereunder if such failure or delay is caused, directly or indirectly, by fire, flood, earthquake, hurricane, tornado, lightning strikes, elements of nature or other acts of God, or by acts of war, terrorism, riots, civil disorders, rebellions or revolutions, strikes, lockouts, court order not attributable to the negligence, misfeasance or malfeasance of the party unable to perform or other acts or circumstances outside such party's reasonable control.

10.4. Right to Audit. Either party shall have the right to audit at its own expense any of the other party's records associated with the System, including financial records, maintenance logs, incident reports, and any other records, during the term of this Agreement and for a period of three years after its termination. Each party will make all such records available for copying and inspection in Charlotte on reasonable notice during regular business hours.

10.5. Waiver. A waiver or any breach of any provision of the Agreement shall not constitute or operate as a waiver of any other provision, nor shall failure to enforce any provision hereof operate as a waiver of the enforcement of such provision or any other provision.

10.6. Severability. The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity of the remaining portion of this Agreement so long as the material purposes of this Agreement can be determined and effectuated. If any provision of this Agreement is held to be invalid or unenforceable, then both Parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it valid and enforceable while preserving its intent.

10.7. Entirety of Agreement. This Agreement constitutes the entire agreement between the Parties with respect to its subject matter, and there are no other representations, understandings, or agreements between the Parties with respect to such subject matter. This Agreement supersedes all prior agreements, negotiations, representations and proposals, written or oral.

10.8. Survival. Those Sections of this Agreement and the Exhibits which by their nature would reasonably be expected to continue after the termination of this Agreement shall survive the termination of this Agreement.

10.9. Exhibits. Each of the following Exhibits attached to and incorporated into this Agreement by reference:

Exhibit A: City and County Responsibilities Regarding the System

Exhibit B: Project Team

The Parties have caused this Agreement to be executed as of the date first stated in the beginning of this Agreement by authority duly granted by the Charlotte City Council and the Mecklenburg County Board of Commissioners.

CITY OF CHARLOTTE

COUNTY OF MECKLENBURG

City Manager

County Manager

Clerk to the Board

Approved as to form:

County Attorney

**This instrument has been preaudited
in the manner required by the Local
Government Budget and Fiscal Control
Act.**

**This instrument has been preaudited
in the manner required by the Local
Government Budget and Fiscal Control
Act.**

**Director of Finance
City of Charlotte**

**Director of Finance
Mecklenburg County**

EXHIBIT A

City and County Responsibilities Regarding the System

County Responsibilities:

- Maintaining and operating the County Infrastructure; and
- Managing any databases that are the responsibility of the County.

City Responsibilities: The City shall be responsible for:

- Maintaining and operating the City Infrastructure; and
- Managing any databases that are the responsibility of the City.

1. **Team and committee roles:** The roles of the Unified Development Services Committee, the Program Managers, the Project Manager, and the Business Project Coordinators are as follows:

Unified Development Services Committee



Program Managers



Project Manager and Business Project Coordinators

2. **Duties of the Unified Development Services Committee:** The Committee shall have the following responsibilities:
 - 2.1. Promptly responding to the Company's Program Manager when consulted with respect to System issues;
 - 2.2. Coordination of the Department's resources whenever required in connection with the development of the System; and
 - 2.3. Resolve any conflicts unable to be resolved by the Program Managers in a timely fashion, as required.
3. **Duties of the Program Managers:** The City and County Program Managers shall have the following responsibilities:

- 3.1. Promptly responding to the Company's Project Manager when consulted in writing or by e-mail with respect to System issues;
- 3.2. Coordination of the Department's resources whenever required in connection with the development of the System; and
- 3.3. Resolve any conflicts in a timely fashion, as required.

4. **Duties of the Project Manager.** The Project Manager will have the following responsibilities:

- 4.1.1. Serving as the liaison between the City and County and the Company;
- 4.1.2. Responsible for overseeing management functions including schedules, payments, meetings and project documentation.
- 4.1.3. Communicating plans and activity statuses regarding the System to the Project Team and Business Project Coordinators
- 4.1.4. Developing and reviewing action items regularly and maintain team accountability;
- 4.1.5. Identifying problems proactively and correct them;
- 4.1.6. Providing direction to team members on completion of task assignments and responsibilities;
- 4.1.7. Promoting teamwork among all Project Team and Management Team members; and
- 4.1.8. Scheduling and conducting status meetings and issuing appropriate communication and documentation in support of decisions.

5. **Duties of the Business Project Coordinators.** The Business Project Coordinators will have the following responsibilities:

- 5.1.1. Serving as the liaison with Company regarding technical issues;
- 5.1.2. Provide all requested data / information as required in the scope of services in the Company Agreement.
- 5.1.3. Developing and reviewing action items regularly and maintain team accountability;
- 5.1.4. Identifying problems proactively and correct them;
- 5.1.5. Providing overall technical decisions for the Project; and
- 5.1.6. Attending and participating in status meetings.

EXHIBIT B

Project Team

1. UNIFIED DEVELOPMENT SERVICES COMMITTEE:

Dave Canaan	Mecklenburg County
Ebenezer Gujjarlapudi	Mecklenburg County
Sofia Hollingsworth	Mecklenburg County
Leslie Johnson	Mecklenburg County
Laura Harmon	City of Charlotte
Rob Kinniburgh	City of Charlotte
Nan Peterson	City of Charlotte
Ann Wall	City of Charlotte
Dave Weekly	City of Charlotte
Carl Wilson	City of Charlotte

2. PROGRAM MANAGERS:

Patrick Granson	Mecklenburg County
Dave Weekly	City of Charlotte

3. PROJECT MANAGER:

Nan Peterson	City of Charlotte
--------------	-------------------

4. BUSINESS PROJECT COORDINATORS:

Sandra Broom-Edwards	Mecklenburg County
Yunhui Hu	City of Charlotte