

**ORANGE COUNTY  
NORTH CAROLINA**

**TOWN OF HILLSBOROUGH  
WATER/SEWER EXTENSION CONTRACT**

THIS CONTRACT (the "**Contract**") is entered into this \_\_\_ day of \_\_\_\_\_, 2023, by and between TERRA EQUITY, INC., a Texas corporation (hereinafter the "**Developer**") and the TOWN OF HILLSBOROUGH, a North Carolina municipal corporation (hereinafter the "**Town**");

WHEREAS, Developer proposes to undertake an infrastructure development project (the "**Project**") to extend the Town's water and sewer system (hereinafter the "**Work**", or "**Improvements**") to serve future development and improvements located on the south-side of Interstate 40, which future development and improvements include, without limitation, Developer's planned future development project commonly known as the Research Triangle Logistics Park located generally at the southwestern quadrant of Interstate 40 and Old NC Hwy. 86, Orange County, North Carolina (the "**Development**"); and

WHEREAS, the Work for the Project related to this Contract include the Project as approved by the Town, Board of Commissioners and as permitted by the applicable State agencies as depicted in plans prepared by Summit Engineering and Consulting entitled, Construction Drawings for Research Triangle Logistics Park Water and Sewer Extensions, incorporated herein by reference; and

WHEREAS, Developer has agreed to pay certain costs associated with the proposed Work; and

WHEREAS, at its meeting held March 13, 2023, the Town Board of Commissioners authorized the proposed extension Project and sewer and water reservation and allocation for the Development, subject to execution of this Contract and compliance with its terms.

NOW, THEREFORE, Developer and the Town, and the heirs, successors, and assigns of each of them agree:

**A. GENERAL AUTHORIZATION TO CONNECT**

(1) Subject to Developer's compliance with the terms and conditions set forth herein, and subject to Developer obtaining all necessary approvals from the State of North Carolina or any other Federal, State or local agency or authority having jurisdiction over the Project, the Town will permit (i) the connection of Improvements constructed for the above-referenced Project to the Town's water and sewer systems and thereafter will permit use of such systems by the Improvements and Development, (ii) the connection of the Improvements to the Development's sewer and water systems to provide for sewer and water service to the Development, and (iii) provide the Development Allocation for the benefit of the Development as specified in **Section (A)(1)(b)**.

a) Notwithstanding the foregoing, Developer acknowledges that water service is subject to Town-wide use restrictions or limitations on usage of the water system in the event of water shortage restrictions or health emergency restrictions uniformly implemented by the Town pursuant to its Code of Ordinances.

b) The Town's authorization and capacity reservation ("**Development Allocation**") of **108,000 gallons per day** to connect to the Town's water and sewer system under this Contract, shall expire if:

i. construction of the Project has not materially commenced within two (2) years from the date upon which this Contract is approved by the Town of Hillsborough Board of Commissioners; or

ii. after construction of the Project begins, construction of the Project - ceases prior to substantial completion for a continuous period of at least one (1) year; or

iii. the first (1<sup>st</sup>) phase of the Development (i.e., at least one (1) materially relevant (i.e., not a guard house or maintenance shop) building planned within the Development) has not been connected to the Town's system and measuring consumption in accordance with the requirements set forth herein within three (3) years from the date this Contract is approved by the Town of Hillsborough Board of Commissioners.

- c) Notwithstanding the foregoing, the deadlines set forth herein shall be subject to extension for a period of time equal to any delay resulting from **Force Majeure** (as defined in **Section B(13)** hereof). For the remaining site development after the first connected building per (b)(iii) above, the Developer shall be entitled to extensions for two (2) additional periods of one (1) year each for capacity and construction upon Developer's written request to the Town and payment by Developer to Town of a non-refundable capacity reservation fee equal to \$25,000 per extension request, made prior to the expiration of the then current Development Allocation term. Any extension fees paid by Developer shall be applied as a credit benefiting Developer against system development fees owed by Developer under this Agreement or otherwise with respect to the extension Improvements and the connection of the Development to the Improvements.

For the avoidance of any doubt, except for the first (1<sup>st</sup>) phase of the Development (i.e., at least one (1) materially relevant building planned within the Development), the foregoing does not dictate a date by which any sewer or water infrastructure improvements within the Development need be connected to the Improvements, and any cessation or delay in constructing the horizontal or vertical site improvements or buildings within the Development and connecting such Development improvements to the Town's Improvements and systems shall not constitute cessation of construction or default hereunder. Provided, however, that any unused portion of the Development Allocation shall expire no later than five (5) years from the date that the Contract is approved by the Town of Hillsborough Board of Commissioners unless an extension request is approved by the Town and capacity reservation fee paid.

- (2) Nothing in this Contract shall be construed as constituting express or implied approval of the Development by the Town under any applicable Town zoning, subdivision, or other land use ordinance. The Contract is also not related to any action taken by Orange County related to zoning, land use or master planning of the Development.
- (3) The Developer shall cause the Development to be annexed into the Town's corporate limits no later than five (5) years from the date this Contract is formally approved by the Town of Hillsborough Board of Commissioners (the "**Annexation**

**Delay Period**"). Developer agrees to voluntarily annex the Development to the Town prior to the expiration of the Annexation Delay Period. Within thirty (30) days after formal approval of this Contract by the Town of Hillsborough Board of Commissioners, Developer shall cause a written covenant in a form approved by the Town to be recorded in the Orange County Registry committing Developer, and its successors and assigns, to seek voluntary annexation as provided herein. Should Developer, or its successors or assigns, fail to seek voluntary annexation of the Development as set forth herein, the Town may suspend any remaining Development Allocation until such time as the Development is annexed into the Town.

- (4) Developer agrees to comply with or satisfy the following terms and conditions and acknowledges that the Town's authorization to connect the proposed extension Improvements to the Town's system is specifically contingent upon compliance with or satisfaction of the same. If these conditions are not met, and Developer fails to commence efforts within sixty (60) days following Developer's receipt of written notice of such failure to cure any such non-compliance and thereafter diligently pursue the same, then this Contract may be terminated by the Town upon not less than an additional sixty (60) days' written notice to Developer, in which case Developer will need to re-negotiate a new Contract for extension of service from the Town.

## **B. GENERAL CONDITIONS**

- (1) Unless otherwise explicitly and specifically stated, Developer shall reimburse the Town for all actual, out-of-pocket third party costs and expenses incurred by the Town in connection with the Improvements constructed under this Contract, including without limitation, reasonable engineering and reasonable legal fees incurred by the Town in connection with the proposed extension Improvements, provided that (i) such costs and expenses shall be documented by paid invoices and shall be commercially reasonable, (ii) the maximum amount of reimbursements owed to Town hereunder shall not exceed the sum of \$50,000 (the "**Expense Cap**") except for that described in **Section B(12)**. The Town will invoice the Developer for such costs incurred, periodically and not less than thirty (30) days following the Town's receipt of an invoice for such costs, and payment is due within 30 days.

- (2) The Town will permit the physical connection of the Improvements to the Town's water and sewer system after all the conditions set forth in **Sections D and E** and any costs billed per **Section B(1)** and **Section F** have been satisfied. The Town will also permit the connection of the water and sewer improvements constructed within the Development to the Improvements and the Town's water and sewer systems and the Improvements, provided that the design and construction of the water and sewer improvements within the Development have been reviewed and approved by the Town.
- (3) The Town shall own and maintain the Improvements constructed under this Contract after they are accepted by the Town Board of Commissioners, and the Town agrees to accept such Improvements so long as the same are constructed pursuant to all applicable state regulations and Town standards and in accordance with this Contract. Until such time as the Improvements have been accepted by the Town Board of Commissioners, the Developer remains responsible for all maintenance and repairs to the Improvements. Notwithstanding the foregoing, if the Town's requirement to allow connectivity and reserve capacity to the Development has expired under **Section (A)(1)(b)** above, and the Town does not otherwise allow connectivity and the reserved capacities stated herein, then Developer shall have no obligation to dedicate the Improvements to the Town unless and until the Developer and Town otherwise reach a mutually agreeable resolution.
- (4) The Developer shall warrant all materials and workmanship of the Improvements pursuant to the Post-Construction Conditions set forth in **Section E** of this Contract. Should defects in workmanship or materials be discovered in work done pursuant to this Contract by or for Developer during the Warranty Period, Developer shall be responsible to see that all such defects are promptly corrected at Developer's expense and written evidence of such is provided to the Town.
- (5) The Town may make or authorize extensions or connections to or from any of the Improvements constructed pursuant to this Contract without permission of the Developer, so long as there shall be no degradation or other impact on the service and capacities provided to the Development as a result of such additional extensions or connections, and so long as the Town will thereafter provide the Development Allocation to the Development as provided for in **Section (A)(1)(b)**.

- (6) Developer's construction of Improvements pursuant to this Contract shall not relieve Developer of the obligation to pay applicable fees under the Town's water and sewer ordinances and policies.
- (7) Developer's construction of Improvements pursuant to this Contract does not affect the Town's policy with respect to the fees to be paid to the Town by property owners other than Developer for connection to the Improvements constructed by Developer pursuant to this Contract; nor shall Developer have any right to collect fees from persons connecting onto or extending the Improvements constructed under this Contract, except as otherwise allowable by Town Code.
- (8) Water and sewer service which meet minimum State standards will be provided to the Project, but in any event not less than the amounts and capacities specified as the Development Allocation in **Section (A)(1)(b)**, except for temporary emergencies, such as water restrictions or unforeseen supply situations such as a water main break or contamination event. Except for the foregoing, the Town makes no other warranty as to any water quality, quantity, or pressure to be provided.
- (9) All fees and charges to be paid pursuant to this Contract shall be calculated in accordance with the fee schedule in effect when the fees and charges are paid and not necessarily when and as invoiced. Fees typically are adopted each year for an effective date of July 1 and are subject to change if invoiced in the prior year and not paid promptly.
- (10) This Contract may be assigned by Developer to any successor or affiliate of Developer, any bona fide lender of Developer, and to any successor Developer or owner of the Development, or any material portion thereof, upon written notice to the Town, provided that any such assignee hereunder shall expressly and in writing assume the obligations of Developer under this Contract.
- (11) Any change or alteration in the approved Plans and Specs (as hereinafter defined in **Section C(2)**), permitted system configuration or size of the Project by Developer or any successor or assignee shall not be permitted absent the written consent of the Town and any necessary modification to such approvals including permits, easements, encroachments, or this Contract. Physical field change means that as described in **Item D(7)(a)**.

- (12) The Town shall select a qualified professional to provide third-party construction observation services ("**Third-Party Inspector**") for the duration of the construction of the Project through the Town's acceptance of the Project as more specifically outlined in **Section D**, which Third-Party Inspector shall be subject to Developer's approval, not to be unreasonably withheld, conditioned, or delayed. Town will share the Third-Party Inspector Contract with the Developer. The Town shall be responsible for timely performance of the Third-Party Inspector and construction of the Project shall not be unnecessarily delayed by the Third-Party Inspector, provided that Developer gives the Third-Party Inspector 48-hours' advance notice that Work requiring inspection is scheduled to occur. Developer shall pay the costs of such services within thirty (30) days of receipt of invoices for such services. The cost of the Third-Party Inspector shall not be charged against the Expense Cap established in Section B.1 above.
- (13) The words "line" or "lines" shall include "main or "mains" unless the contract otherwise requires. "Sewer" means "sanitary sewer." The term "**Force Majeure**" means: fire, flood, extreme weather, labor disputes, labor shortages, supply-chain delays, manufacturing or shipping delays, strike, lock-out, riot, acts or threats of terrorism, government interference (including regulation, appropriation or rationing), unusual delay in governmental permitting, unusual delay in deliveries or unavailability of materials, unavoidable casualties, litigation, appeals, injunctions, or court-ordered stays, Act of God, or other causes beyond the Developer's reasonable control. In the case of timelines or deadlines applicable to Developer, Force Majeure shall also mean any delays caused the Town, Orange County, or other governmental entity or legal or court challenges to this Contract or other governmental authority and/or approvals.
- (14) This Contract shall be deemed made in and shall be construed in accordance with the law of North Carolina.
- (15) All Town inspection obligations and approval obligations shall be made based on time being of the essence.

### C. PRE-CONSTRUCTION CONDITIONS

- (1) Water and sewer capacity allocated to the Development is defined in **Section (A)(1)(b)** as the Development Allocation, and any changes to the Development scope requiring more than the allocated Development Allocation amount specified in **Section (A)(1)(b)** will require an amendment to this Contract. If not previously performed by its own engineer, Developer may be required to conduct its own capacity analysis using a licensed North Carolina Professional Engineer utilizing information provided by the Town due to limited Town resources. The Town will assist as much as possible to keep the process moving in a timely fashion. If results of the capacity analysis determine off-site improvements are needed to the Town's existing system (conveyance or treatment) to accommodate the Development in excess of the Development Allocation (as defined in **Section (A)(1)(b)**), the Developer shall pay the cost of all such off -site improvements.
- (2) Developer shall engage a licensed North Carolina Professional Engineer to prepare plans and specifications for the construction of the Improvements for the Project (the "**Plans and Specs**"). The Plans and Specs for the Improvements shall conform to the Town's Standard Utility Specifications and Details, in effect at the time of construction, and any other engineering specifications required to execute the construction of the Project properly and safely (i.e., trenching, shoring, backfill, bypass pumping, site security, pre- and post-construction video, etc.).
- (3) Developer shall secure written approval of the Plans and Specs by the following agencies or authorities and by any other agencies which may have regulatory jurisdiction over one or more elements of the Project, and provide copies of such written approvals to the Town:
  - a) Town Utilities Department; and
  - b) North Carolina Department of Environmental Quality (if the Project entails any site infrastructure that is considered private, the plans and permit applications shall clearly delineate such and two applications may be required); and
  - c) North Carolina Department of Transportation.
- (4) Orange County has secured and recorded all required easements for the Work (the "**Easements**"), and Developer shall cause the Easements to be assigned to the



Town, and the Town agrees to accept an assignment of the Easements, pursuant to a General Assignment of the Easements (the "**Easement Assignment**"). The Town acknowledges that Developer shall be a co-assignee and benefited party of the Easements for the purposes of being permitted to utilize the same for the purposes intended and for constructing the Project. Developer is responsible to acquire any additional Easements, temporary or permanent, required to construct the Improvements, in accordance with Town requirements for public utilities easements.

- (5) Developer shall schedule a pre-construction meeting to include the Town Utilities, Third Party Inspector, and Planning Departments, the Developer's general contractor, all major subcontractors who will be performing any portion of the Work, and other pertinent stakeholders prior to commencement of the Work and provide the Town a list of contacts for the Project.
- (6) Developer shall pay all pre-construction related fees for the Improvements due to the Town prior to commencement of construction of the Improvements. Fees assessed during the construction shall be paid prior to the Town's approval of a Certificate of Completeness (i.e., occupancy permit).
- (7) No pumping stations are allowed except with the Town's prior approval. If the Town accepts a pumping station in the Project design, Developer shall pay the Town's Perpetual Maintenance Fees as required by the Town Code.
- (8) Developer shall ensure that its engineer, surveyor, and contractor and Third-Party Inspector receive a copy of the final approved permits, plans and specifications for the Work and are aware of the Town's Utility Specifications, Standard Details and As-Built Digital Submittal Requirements prior to construction commencement, as applicable to each.

#### **D. CONSTRUCTION CONDITIONS**

- (1) Unless otherwise provided in this Contract, all construction shall be in accordance with Town Utility Specifications and Standard Details and all State permits at the time of construction commencement.

- (2) The Town shall approve the size and type of material for all water and sewer lines forming part of the Improvements.
- (3) All Work shall be subject to inspection by the Town. No Work may be covered until such inspection has taken place and if any Work is covered up prior to inspection, the Town may require such line or facility to be uncovered or exposed to view at Developer's expense to facilitate such inspection.
- (4) The Town will require acceptance testing to determine whether the Work complies with State and Town standards and specifications. All such testing shall be at Developer's expense, and a Town representative must be present when testing occurs unless declined or delegated in writing. The Developer or its Contractor must provide the town at least 48 hours advance notice of any testing. The Contractor or third-party Inspector shall document the testing of each segment in detail (type of test, date, test conditions and results, pass/fail) on legible forms.
- (5) Developer shall allow, at its sole cost and expense, for construction observation of the water and sewer Improvements by an independent, competent, and experienced Third-Party Inspector selected by the Town as provided for above. Such Inspector shall have at least five years' experience in observing water and sewer main construction. Inspection by the Town does not consist of or imply supervision. The role of the Town's inspection staff is not to oversee construction of the Project, but only to (i) witness the installation of critical items of importance to the Town and (ii) periodically check on the Project's progress.
- (6) The Third-Party Inspector shall be onsite each day that meaningful work is performed and shall prepare daily logs to be submitted weekly to the Town. Developer shall ensure its Contractor is communicating with the Third-Party Inspector on construction schedule to assure proper observation of meaningful Work. Work may continue if the Third-Party Inspector is not onsite provided 48-hours' advance notice was given that Work is taking place as provided in **A(12)**. Daily logs shall include a general description of the Work performed that day, weather conditions, equipment used, number of crew, any installation observations, or concerns and who they were communicated to, and associated photos with a photo log. The Third-Party Inspector shall routinely communicate with the Town on progress and issues that arise.

- a) Meaningful work means the installation of water or sewer infrastructure and appurtenances that will become part of the public system of the Town, installation of water or sewer services, making taps to existing Town water or sewer mains, testing (including flushing and chlorinating of water mains) of water or sewer systems for acceptance, testing of soils for compaction around water and sewer systems, pouring thrust blocking constructing pumping stations, tanks or other water and sewer features.
- (7) The Third-Party Inspector shall consult with the Town and Developer's engineer regarding any physical field changes. Developer's engineer shall obtain approval in writing from the Town's Utilities Director or delegated staff prior to making such changes. Changes shall be reflected on the record drawings.
- a) Physical field change may include but not be limited to: adding or deleting infrastructure; changing the alignment or grade of infrastructure; moving hydrants, manholes, valves, meters, or backflow prevention device locations; adding additional services; changing pipe sizes or materials; adding couplings or reducers; or making other changes that will affect the layout or operation of the system as designed and approved.
- (8) Developer shall require that all construction shall be performed by a contractor licensed to perform this type of Work in North Carolina.
- (9) Developer shall have its construction contractor coordinate with the Town on tie-in plans and water shutdowns at least one week in advance. Contractor shall be responsible for notification to customers of water disruptions provided that the Town shall provide Developer and Contractor a list of its customers in the affected areas to allow such notifications to be made.
- (10) Town shall operate any existing system features (i.e., valves, hydrants) to accommodate Work by Developer's Contractor and subcontractors, unless permission for others to operate such features is granted by the Town in writing. Unauthorized operation of hydrants or valves or other system components by Developer or its Contractor (or subcontractor) (e.g., utilizing hydrants to fill up water trucks without permission to do so or opening or closing valves) without prior approval of Town constitutes tampering and theft and will result in the Town assessing fees and penalties pursuant to the Town's adopted code and fee schedule. Should Developer fail to pay, or its cause the appropriate Contractor or

subcontractor to pay, an assessment imposed pursuant to this paragraph, or if tampering occurs more than once on the Project, the Town may stop work on the Project until all assessments imposed pursuant to this paragraph have been paid in full, or in the case of repeat occurrences of tampering from the same contractor or subcontractor following notice thereof, an alternative satisfactory resolution for such repeated tampering incidents has been reached.

- (11) Developer shall report to the Town and any other Federal, State, or local agency as may be required by law, any instances of sewer bypass or overflow, or any instance of water system issues, caused by the Work.
- (12) Developer shall ensure its Contractor checks and confirms line and grade throughout installation of future public gravity sewer Improvements to ensure proper slope and alignment per the Plans and Specs. Failure to comply with minimum slope required per the Plans and Specs shall result in the removal and replacement of such sewers mains at proper grade, at Developer's cost.
- (13) Developer shall provide proof of approved product submittals to the Town prior to construction commencement.
- (14) Developer shall provide a copy of this Contract to its water and sewer Contractor and submit proof to the Town of same.
- (15) Developer shall require that the Contractor have its field superintendent onsite during all construction of the Improvements. The field superintendent and a secondary field contact shall be identified at the preconstruction meeting.
- (16) Developer shall ensure that the water and sewer Contractor maintains field records of the Work as it progresses and shall have a registered land surveyor collect and seal as accurate, the location and survey attributes for all water and sewer features as required by the Town according to its As-Built Digital Submittal Requirements. Such records shall be made available and provided to the Third-Party Inspector as requested. Any missing information needed to meet the requirements shall be collected at Developer's expense and delivered to the Town prior to Town acceptance of the system.

- (17) Developer shall have final as-builts prepared of the Work from the Contractor's field records which are sealed by a North Carolina registered Professional Engineer.
- (18) As between Town and Developer, Developer shall bear the total cost of all water and/or sewer Work within the Project and the total cost of all water and/or sewer construction required to extend service to the Development.

**E. POST-CONSTRUCTION CONDITIONS**

The following stages shall be completed after construction of the Project:

- (1) Prior to use of the Project for any reason the Town shall have performed a pre-acceptance inspection and received from the Developer and approved the following with respect to the Work and Improvements:
  - a) sewer smoke testing and televising reports as required by the Town specifications,
  - b) copies of all acceptance testing performed on the Improvements, including any testing of backflow prevention devices; fats, oils and grease interceptors or separators; fire flow or apparatus testing (as it relates to affecting the public water system); sewer manhole vacuum testing; sewer and water main pressure and leakage testing; mandrel testing; geotechnical compaction testing if utilized; and bacteriological testing of any water mains,
  - c) two printed copies (1 full D-size and 1 half-size) and one electronic PDF copy of the sealed as-built drawings (full as-built drawings should be presented unless the Town agrees to accept a series of partial as-built drawings),
  - d) a full CAD version of the final as-built drawings including all necessary X-references and font files to make a complete view of the data in Autodesk's AutoCad 2020 or other Autodesk CAD viewer software,
  - e) a contractor's notarized affidavit that the drawings accurately represent the as-built Improvements,

- f) the completed Engineering Certifications executed by the Professional Engineer of record indicating that Work has been performed in substantial compliance with the approved Plans and Specs and that the Town has received such certifications and approved them (final certification should be provided unless the Town agrees to accept a series of partial certifications and then a final certification), and,
  - g) evidence the noted deficiencies, including any noted from the sewer televising and smoke testing, have been corrected by the Developer's Contractor and approved by the Town, unless the Town has provided written permission for specific minor deficiencies not affecting the operation of the system to be corrected before acceptance of the system per **Item E(2)(g)**.
- (2) Prior to the Town accepting the Improvements for ownership, the Developer shall:
- a) provide a Contractor's Affidavit and Release of Liens from all subcontractors and materialmen,
  - b) provide digital data as required by the Town's As-Built Digital Submittal Requirements,
    - i. the digital data will be quality checked by the Town's surveying firm (typically 10% of the system),
    - ii. the data shall be corrected at the Developer's expense if significant discrepancies exist between the survey data exist from the quality check,
    - iii. The charges for the Town to perform the quality check and input the data into the town GIS system will be billed to the Developer pursuant to the Town's fee schedule for such services.
  - c) cause to have recorded in the Orange County Registry the Easement Assignment,
  - d) provide an engineer-certified Statement of Value per bid line item of the final cost of the water and sewer Improvements to be used for asset valuation upon Town acceptance,

- e) have submitted all daily field reports and other pertinent Project records as requested such as approved submittals, Requests for Information, acceptance testing logs, Field Work Orders and Change Orders (noting if the town or Third-Party Inspector, after receiving at least 48 hours' advance notice of Work, fails to observe material work or acceptance testing during the project, it shall not be grounds to reject or deny acceptance of the utilities after a complete dedication package is submitted),
- f) ensure all Engineering Certifications are final,
- g) cause all Town punch list items to be completed and signed off upon on forms prescribed by the Town,
- h) provide Developer-completed State Change of Ownership forms to transfer the State-permitted sewer Improvements that are to become public to the Town (the Town will execute its portion and submit to the state upon Town Board of Commissioners acceptance of the Improvements),
- i) formally dedicate to the Town by letter all physical Improvements constructed as part of the Project, which Improvements shall become part of the Town water and sewer system upon acceptance by the Town Board of Commissioners (which will be sought promptly upon submission of a complete dedication package and satisfaction of all Post Construction Conditions for acceptance) and will thereafter be owned and maintained by the Town, with exception of the warranty conditions, and
- j) present a warranty (the "**Warranty**") in the name of the Town of Hillsborough for a minimum period of two (2) years from the date the Improvements are formally accepted by the Town of Hillsborough Board of Commissioners. The method of securing the warranty shall be by Maintenance Bond or Letter of Credit from a viable surety with a rating of AA or above, or other form of security in a form acceptable to the Town. The security amount will be 25% of the total cost of the Improvements as certified in the Statement of Value prepared by a North Carolina licensed engineer.

- (3) It shall be the Developer's responsibility to request release of the Warranty at a point not earlier than two years from the date of acceptance of the system by the Town. The Warranty shall remain in effect until such time as all four of the following conditions are satisfied:
- a) Town staff have evaluated the Improvements for the end-of-warranty release and provided documented comments of defects to be corrected, which evaluation Town shall cause to be done within a reasonable time after receipt of Developer's request for release of the Warranty,
  - b) Developer has performed end-of-warranty sewer smoke testing and televising (CCTV) and provided such to the Town for review in accordance with the Town's specifications,
  - c) Developer has corrected any defects noted by the Town staff in its evaluation of the system and the Town has verified this, and
  - d) The Town has returned or noted cancellation of the Warranty security instrument.

#### **F. FEES**

- (1) All fees and charges to be paid pursuant to this Contract shall be calculated in accordance with the Town's fee schedule in effect when the fees and charges are paid, or if not in the fee schedule, commercially reasonable and as outlined in this section. Fees typically are adopted as part of the Town's budget process each year with an effective date of July 1 and are subject to change.
- (2) Developer's construction of Improvements pursuant to this Contract shall not relieve Developer of the obligation to pay applicable fees under the Town's water and sewer ordinances and policies in effect at the time the fees are paid, and this **Section F**.
- (3) Developer's construction of Improvements pursuant to this Contract does not affect the Town's policy with respect to the fees to be paid to the Town by property owners other than Developer for connection to the Improvements constructed by Developer pursuant to this Contract. Nor shall Developer have any right to collect fees from persons connecting onto or extending the Improvements constructed under this



Contract, unless otherwise allowable by Town Code.

- (4) The following fees will be applicable to the Project:
- a) Water and sewer system development, engineering review, and meter fees as applicable,
  - b) Perpetual Maintenance Fees for any approved pumping station forming part of the Improvements, if applicable, per standard Town Code calculations,
  - c) Tampering fees, if any, as outlined in **Item D(10)**.
  - d) Reinspection fees. Developer shall ensure its water and sewer contractor is prepared for acceptance testing by pre-testing items in advance. Unless otherwise specified in the Town's fee schedule in effect at the time, reinspection fees for each recurring trip for previously failed tests, a call for testing that requires the Inspector to wait more than 30 minutes or observation by the Inspector that the items are not ready to be tested, or no timely notification of cancellation (4 hours in advance) of testing will be charged to Developer. Reinspection of service taps (including sewer cleanout, meter box, curb stop), mainline valves, hydrants, manholes, air release valves, and other singular items will also be pursuant to the adopted fee schedule in effect at the time of payment.
  - e) Orderly construction. Developer shall ensure the construction is conducted in an orderly and organized fashion and that the Town's resources are efficiently utilized. Repeated and duplicative effort by the Town on the Project will require reimbursement from the Developer for staff time and travel in accordance with Section 14-68 of the Town Code.
  - f) Town water usage. Construction water for the Project, and if requested by Developer to facilitate the construction of the Development prior to final completion of the Project, can be obtained from the Town through rental of a hydrant meter, installation of a construction meter (for home building), or through bulk water purchase from the Town's Water Treatment Plant in accordance with policies and rates in place at the time of rental. Otherwise, water supply shall be from non-Town supply sources.
  - g) Review of sewer televising video. Developer shall reimburse the Town for review of sewer CCTV tapes at the rate per linear foot in the Town's fee schedule. CCTV that is submitted and not in accordance with the Town CCTV

specifications will be immediately rejected with a one-time charge per the fee schedule.

#### **G. MISCELLANEOUS**

- (1) **Entire Agreement.** It is expressly understood that this Contract sets forth the entire agreement of the parties and supersedes any prior written or oral agreements between them concerning the subject matter contained herein.
- (2) **Choice of Laws.** The validity and construction of this Contract shall be determined in all respects in accordance with the laws of the State of North Carolina.
- (3) **Counterparts.** This Contract may be signed by the parties in counterparts and all counterparts together shall constitute a fully executed original of the Contract.
- (4) **Severability.** Should any one or more of the provisions of this Contract be determined to be illegal or unenforceable by a court of competent jurisdiction, the other provisions shall remain in full force and effect.
- (5) **Benefit.** This Contract shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns.
- (6) **Authority.** Each party hereby covenants and warrants that the persons executing this Contract on its behalf is duly authorized to sign and execute this Contract on its behalf and has been duly authorized to execute this Contract, and that this Contract is a valid and binding obligation of such party, enforceable in accordance with its terms.
- (7) **Estoppel.** Within ten (10) days following a written request by a party hereto, the other party shall execute an estoppel certificate in commercially reasonable form certifying that this Contract remains in full force and effect, the absence of defaults hereunder, and any other factual matter that is reasonably requested by the requesting party.
- (8) **Notices.** Any notice required by this Contract shall be in writing and delivered by certified or registered mail, return receipt requested, hand delivery, or via overnight courier delivery, addressed to the following:

Town:

K. Marie Strandwitz, PE  
Town of Hillsborough  
PO Box 429  
105 E. Corbin St. (physical)  
27278-0429

[Marie.strandwitz@hillsboroughnc.gov](mailto:Marie.strandwitz@hillsboroughnc.gov)

Developer:

Terra Equity, Inc.  
3810 Springhurst Blvd., Suite 120  
Louisville, KY 40241  
Attn: Frank Csapo

[fcaspo@barristercrg.com](mailto:fcaspo@barristercrg.com)

With a Required Copy to:

The Brough Law Firm PLLC  
1526 E. Franklin Street, Suite 200  
Chapel Hill, NC 27514  
Attn: Robert E. Hornik, Jr.

[hornik@broughlawfirm.com](mailto:hornik@broughlawfirm.com)

Manning, Fulton & Skinner, P.A.  
3605 Glenwood Ave., Suite 500  
Raleigh, NC 27612

Attn: Douglas J. Short

[short@manningfulton.com](mailto:short@manningfulton.com)

Notwithstanding the foregoing, notices from and to the Town concerning the permitting, construction, design, review, inspection or otherwise relating to the Work or Improvements may be sent via electronic mail to and from the appropriate Town department or representative in accordance with general custom and practice of communications between the parties. By way of example, but not limitation, the Notice provisions in this Paragraph (8) shall not prohibit the parties from corresponding via electronic mail to schedule inspections, request approvals to plans or change orders, etc., to the appropriate representatives made in accordance with the parties' course of dealing or practices.

Notwithstanding the foregoing or anything contained herein to the contrary, in the event of any notice to Developer, in the event that the Town is provided with a notice specifying the name and notice address of any lender or investor of Developer, and their counsel (collectively, "**Lender Parties**"), then in order for such notices to be effective against Developer, copies of said notices must be provided to such Lender Parties at the addresses specified by such Lender Parties. In such event, without limiting any notice and/or cure period afforded Developer hereunder, such Lender Parties shall be provided with the same notice and/or cure periods afforded Developer hereunder, commencing from the date of such notice to Lender Parties.

- (9) Mediation of Disputes. In the event of any disputes or claims arise under this Contract or any exhibit attached hereto (a "**Claim**") cannot be settled in an amicable manner by the parties by direct discussions, then the parties agree to first endeavor

to settle the Claim or all other claims by initiating a mediation process, administered by a certified mediator not having an interest in the outcome of the controversy, before resorting to litigation or other dispute resolution procedures. Upon the written request of any party hereto, the mediation process will be triggered. A mediator shall be mutually agreed upon by all parties within fifteen (15) days or, if they cannot so agree, each party shall select one (1) mediator and the selected mediators shall, within an additional fifteen (15) day period, select a mediator to act as the sole mediator. The mediation shall be conducted at a location mutually agreed upon by the parties in Orange County, North Carolina. The costs and expenses of mediation shall be divided equally among all the parties involved in such mediation process. As used herein, the term "**Mediator**" shall mean a trained professional mediator who (1) has commercial mediation experience; and (2) has at least three (3) years' experience in mediation.

The parties shall use good faith efforts to reach a decision not more than ninety (90) days after the parties have agreed upon the mediator. The provisions governing the mediation shall be as follows:

- a) The mediation hearing shall remain informal, with each party being permitted to present such facts and evidence as it may reasonably believe supports that party's position.
- b) The parties hereto intend that each conflict and dispute submitted to mediation shall be unique, with facts, circumstances, and recommended resolutions to be determined on a case-by-case basis.
- c) Neither party shall have the right to compel performance of the Mediator's recommended solutions, unless such solutions are reduced to a binding, written agreement between the parties at the conclusion of the mediation process.
- d) All positions taken or proposed, and all information disclosed during the mediation process shall be deemed settlement negotiations. If the claims are not resolved by mediation, then such positions shall not be binding, and such information shall not be disclosed in any subsequent arbitration or legal proceeding.

If the Claim or all other claims are not resolved through mediation, the issues, and controversies the parties shall be free to pursue the Claim or all other claims in accordance with their rights at law or in equity, including without limitation litigation or arbitration.

[remainder intentionally blank; signatures follow]

IN TESTIMONY WHEREOF, the parties hereto have executed this Contract induplicate originals, as of the day and year first above written.

**TERRA EQUITY, INC.**

**TOWN OF HILLSBOROUGH**

By: \_\_\_\_\_  
Frank A. Csapo, CEO

By: \_\_\_\_\_  
Eric J. Peterson  
Town Manager

ATTEST:

ATTEST:

\_\_\_\_\_

\_\_\_\_\_  
Town Clerk  
Sarah Kimrey

This Contract is approved to as form:

\_\_\_\_\_  
Robert Hornik  
Town Attorney

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
Dave McCole  
Finance Director