

INTERLOCAL AGREEMENT  
BETWEEN ORANGE COUNTY AND THE TOWN OF  
HILLSBOROUGH FOR CONSTRUCTION AND OPERATION  
OF WATER AND SEWER FACILITIES IN THE  
HILLSBOROUGH AREA ECONOMIC DEVELOPMENT  
DISTRICT OF ORANGE COUNTY

This agreement is dated, made, and entered into as of the 25 day of September, 2017, by the Town of Hillsborough, a North Carolina municipal corporation ("Hillsborough," "Town" or "Town of Hillsborough") and Orange County, a North Carolina political subdivision ("County," "Orange" or "Orange County").

**Purposes.** The purposes of this agreement are (1) to further the economic development potential of land identified by Orange County and the Town of Hillsborough in their respective planning documents as particularly suitable for industrial and business development, as well as to promote the public health and safety of residents within the area, and (2) to accomplish the design, construction, and operation of water and sewer facilities within the Hillsborough Area Economic Development District ("County EDD").

1. **Definitions.**

**Year**-July 1-June 30

**Zone**-The Hillsborough Area Economic Development District located around the Interstate 40 interchange with Churton Street (Old NC 86), shown in greater detail by the map titled "Hillsborough Area Economic Development District Utility Service Boundary" and attached as Exhibit A.

**Water and Wastewater Utility Agreement**- an agreement between at least two parties setting forth conditions, including but not limited to utility service, construction, ownership and operation.

2. **Engineering Design and Firm Selection.** Orange County will solicit and receive proposals for the design of water and/or sewer infrastructure to serve the County EDD. A representative from the Town of Hillsborough will be part of the selection team. Before awarding contracts for such design, Orange County will provide the Town of Hillsborough with the proposals and other responses to the request for proposals so that the Town of Hillsborough may review and comment to Orange County regarding the selection of the designer(s). Orange County will then proceed to negotiate the professional fees with the designer(s). Orange County will not select any designer to which the Town of Hillsborough objects based on the qualifications. If the Town of Hillsborough does not object within a reasonable time (10 days after Town of

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Hillsborough's receipt of a proposal and/or other response to Orange County's request for proposals) to a designer, Orange County may award a contract to the designer for such design.

3. Construction. Orange County will solicit bids for the construction of the water and sewer infrastructure. Orange County will share the proposals with the Town of Hillsborough before awarding any bid or contract for construction of the infrastructure. The Town of Hillsborough will pay the cost of construction and pro-rata share of the related engineering and construction engineering & inspection services for those sections of the water and/or sewer infrastructure lying outside the county economic development zone and Orange County will pay the cost of construction and pro-rata share of the related engineering and inspection services for those sections of the water and/or sewer infrastructure lying within the county economic development zone. If the Town of Hillsborough does not choose to extend and pay for the aforesaid sections of the infrastructure and acceptable design alternatives exist, the remaining aspects of the project can continue and terminate at the EDD land use line with the infrastructure improvements solely financed by Orange County. By authorizing their respective managers to sign this agreement, the parties' governing bodies also authorize them to agree to suspend or abandon the process if the managers jointly determine it is prudent to do so. If the managers do not jointly agree it is prudent to suspend or abandon the process, it is agreed that suspension or abandonment will not be affected unless the parties' governing bodies jointly agree to suspend or abandon the process. Except as otherwise provided herein, should either party unilaterally suspend or abandon the process, such party shall be responsible for the costs incurred pursuant to this Agreement pro-rated to the time of suspension or abandonment.
4. New Development and Buildings. Non-Residential development shall be consistent with the joint land use plan and county zoning. Industrial or commercial water and sewer connections and other public uses shall be subject to the utility approval of the Town of Hillsborough regardless of whether the development site(s) are annexed. Provided, however, such approval shall not be unreasonably withheld and shall be based on the Town's determination of availability of capacity in the Town's water and sanitary sewer systems, the ability of the Town's water and sewer systems to provide service within the Town's entire service area, and consistency with the Town's adopted comprehensive plan. All water and sewer connection approvals shall take into consideration the resources available to the Town of Hillsborough and shall be consistent with the Water and Sewer Management Planning and Boundary Agreement Map (WASMPBA, see Exhibit B). A reservation of 108,000 gallons per day (GPD) sewer capacity and 108,000 GPD water capacity will be made available to subject

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properties for up to 5 years after the date of execution of this agreement. The Town of Hillsborough acknowledges that industrial, office, and commercial uses are intended within the County EDD and that such uses, if permitted by Orange County (for those projects not slated for immediate and/or delayed annexation), will be served subject to available capacity and other factors stated above.

The reservation is made for a period of 5 years and may be extended by written agreement of the Town for up to an additional 5 years upon written request made to the Town of Hillsborough prior to expiration of the initial 5 year period. If a Town of Hillsborough utility agreement uses part of this reservation then the reservation amount is reduced unless otherwise requested and approved. This agreement is not intended to mandate annexation nor exclude the potential for the project to remain in the County's planning jurisdiction. If the project remains in the County's planning jurisdiction, the water and sewer service utility agreement between the developer and the Town of Hillsborough will be accompanied by a voluntary annexation agreement to be acted upon when Orange County and the Town of Hillsborough agree to the timing of such annexation. This would include the preparation and review of an annexation report prepared for and submitted to the Town of Hillsborough by a developer.

When development occurs in the jurisdiction as noted in Exhibit A, the land use parameters noted within the Orange County/Town of Hillsborough joint land use plan will act as guidance to zoning.

5. Construction Standards. In all respects, except to the extent otherwise stated in this agreement, the construction will be done in accordance with (i) Hillsborough utility standards, requirements, specifications, and procedures, including approvals of plans and permits, conducting inspections, requiring tests and certifications, and requiring record (as-built) drawings, and (ii) any applicable federal and state standards. Notwithstanding any other part or provision of this agreement should any such approvals or permits be withheld or unobtainable, this agreement may be terminated by Orange County, at no cost and with no further liability or obligation to Orange County, upon written notice to the Town of Hillsborough. In the event of such termination, the County and the Town shall each be responsible for the respective costs they incurred pursuant to this agreement up until the time of termination.

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6. Ownership of and Responsibility for Infrastructure. Upon final completion of construction, and subject to any maintenance and warranty requirements included in the construction contract for the infrastructure, the Town of Hillsborough will be the owner of and responsible for the operation and maintenance of the infrastructure constructed under the construction contracts. All construction contracts shall provide for the indemnification and defense by the contractors of both Orange County and the Town of Hillsborough.
7. Fees and Charges. As long as a particular property is located outside the Town of Hillsborough's corporate limits, the Town of Hillsborough will impose, process, and collect all fees and charges with respect to that particular property, including acreage fees, connection charges, frontage charges, capacity charges, and utility rates in accordance with then-existing Town policies and consistent with State law. These fees and charges shall be in accordance with the Town of Hillsborough's charges on other locations outside the Town's corporate limits. Except to the extent specified otherwise, Orange County will have no right to any of those fees and charges, and nothing in this agreement will affect the use or disposition of those fees and charges unless defined in a reimbursement clause in this agreement or by supplemental agreement.
8. Reimbursement to Orange County. The acreage fees and/or frontage charges collected by the Town of Hillsborough, if any, from property situated within the County EDD (as shown on Exhibit A) will be used to reimburse Orange County for the design and construction of infrastructure in the County EDD. Collectively, these fees collected from development inside the County EDD will be termed "Dedicated Receipts" and will be paid to Orange County by Hillsborough. Such utility infrastructure reimbursement fees, if employed in this specific area, will be jointly developed and be implemented within respective development ordinances. No other fees or charges collected by Hillsborough, such as capacity and connection charges, will be used for that purpose. If at any time Hillsborough's acreage and/or frontage fees are held to be unlawful or unauthorized, Hillsborough agrees to indemnify Orange County from and against any and all claims related to acreage fee payments made to Orange County by Hillsborough. This indemnification requirement shall survive any termination of this Agreement.
9. Nondiscriminatory Policies. The Town of Hillsborough will not establish policies that impose

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a level of water and sewer service in the County EDD that is inferior to that provided to similarly situated users of Hillsborough water and sewer services.

10. Annexation. The Town of Hillsborough may enter into agreements with developers and property owners that comply with Town of Hillsborough requirements related to annexation, including, but not limited to, that they will not seek annexation by any municipality other than the Town of Hillsborough; that they will petition for annexation when requested by the Town of Hillsborough; the Town of Hillsborough can delay annexation; and that they will be subject to remedies for violating the annexation-related provisions.
11. Regulations. The Town of Hillsborough shall have the authority to protect and regulate the water and sewer systems and its users in the County EDD, including water use restrictions and regulations regarding discharges into the wastewater system.
12. Duration. The term of this Agreement shall be 5 years, unless terminated earlier by mutual agreement. On such termination, all obligations that are still executory on both sides are discharged but any right based on prior breach or performance survives. The term of this Agreement may be extended for additional 5 year terms upon written agreement of the governing bodies of each party. The governing body of each party hereto has determined the duration provided in this paragraph to be reasonable.
13. Appointment of Personnel. The Town Manager shall designate persons to carry out the Town of Hillsborough's obligations under this agreement. The County Manager shall designate persons to carry out Orange County obligations under this Agreement
14. Amendment and Termination. This Agreement may be amended or terminated by agreement of the parties. An amendment is not valid unless signed by both parties and wholly in accordance with requirements of the law. An amendment is not enforceable against the Town of Hillsborough unless it is signed by its Town Manager, or a deputy or assistant Town Manager and/or Mayor. An amendment is not enforceable against Orange County unless signed by the County Manager or Deputy County Manager and/or Chair of the Board of County Commissioners.

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15. Notice.

- a) All notices and other communications required or permitted by this agreement shall be in writing and shall be given either by personal delivery, UPS, Federal Express, or certified United States mail, return receipt requested, addressed as follows. The parties are requested to send a copy by email.

To Town of Hillsborough:

Eric Peterson  
Town Manager  
Town of Hillsborough  
101 E. Orange St.  
Hillsborough, NC 27278

Email: [eric.peterson@hillsboroughnc.gov](mailto:eric.peterson@hillsboroughnc.gov)

To Orange County:

Bonnie B. Hammersley  
Orange County Manager  
200 S. Cameron Street  
P.O. Box 8181  
Hillsborough, NC 27278  
Email: [bhammersley@orangecountync.gov](mailto:bhammersley@orangecountync.gov)

- b) A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this agreement shall be deemed given and sent at the time of actual delivery, if it is personally delivered. If the notice or other communication is sent by United States mail, it shall be deemed received upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

16. No Third Party Rights Created. This agreement is intended for the benefit of the two parties and not any other person and no rights or benefits are created for or granted to any third party by this agreement.

[SIGNATURE PAGE TO FOLLOW]

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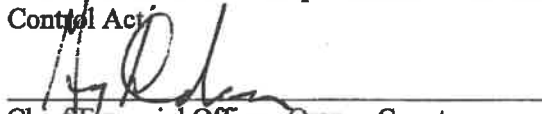
Town of Hillsborough

  
Mayor

Orange County

  
Chair of the Board of Commissioners

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

  
Chief Financial Officer, Orange County

  
Finance Director, Town of Hillsborough

