



Interoffice Memorandum

January 19, 2024

TO: Mayor Jerry L. Demings
-AND-
County Commissioners

FROM: Ed Torres, M.S., P.E., LEED AP, Director
Utilities Department

A handwritten signature in black ink, appearing to read "Ed Torres", with a long horizontal stroke extending to the right.

SUBJECT: **February 6, 2024 – Consent Agenda
Access and License Agreement (New Hope Road Wastewater Pump
Station)**

**Contact Person: Lindy Wolfe, P.E., LEED AP, Manager
Utilities Engineering Division
407-254-9918**

Integra Towers at Nona South LLC (Licensee) is constructing a new wastewater pump station (Infrastructure) on County-owned property (License Area) to support the Licensee's planned development within the Licensee's property. The Access and License Agreement will grant a non-exclusive license to the Licensee to enter and complete the Infrastructure within the License Area in accordance with County ordinances, resolutions, policies, procedures, and the Licensee's construction plans, as approved by the County. The license will commence on the effective date of the agreement (Effective Date) and expire upon the County's issuance of the Certificate of Completion or three years after the Effective Date, whichever first occurs.

The County Attorney's Office and Risk Management Division reviewed the agreement and find it acceptable as to form. Utilities Department staff recommends approval.

**Action Requested: Approval and execution of Access and License Agreement
(New Hope Road Wastewater Pump Station) by and between
Orange County, Florida and Integra Towers at Nona South
LLC.**

District 4.

**ACCESS AND LICENSE AGREEMENT
(NEW HOPE ROAD WASTEWATER PUMP STATION)**

This Access and License Agreement (“Agreement”) is entered into by and between Orange County, Florida, a charter county and political subdivision of the State of Florida, whose mailing address is P.O. Box 1393, Orlando, Florida 32802-1393 (“Licensor” or the “County”) and Integra Towers at Nona South LLC, a Florida limited liability company, whose mailing address is 1525 International Parkway, Suite 2001, Lake Mary, Florida 32746-7642 (“Licensee”).

RECITALS:

WHEREAS, Licensor is the owner of that certain real property located in Orange County, Florida, as more specifically described in **Exhibit “A”** attached hereto and incorporated by this reference (the “License Area”); and

WHEREAS, Licensee is the owner of that certain property located in Orange County, Florida, more commonly known as “Nona South Apartments,” as more specifically described in **Exhibit “B”** attached hereto and incorporated by this reference (“Licensee’s Property”); and

WHEREAS, Licensee desires to temporarily access the License Area to construct a wastewater pump station and associated infrastructure (the “Infrastructure”) for planned development within Licensee’s Property; and

WHEREAS, Licensee will construct the Infrastructure in accordance with the construction plans (Orange County Permit Number 22-E-046) (the “Construction Plans”); and

WHEREAS, Licensee seeks a license to enter the License Area in order to install the Infrastructure within the License Area; and

WHEREAS, Licensee intends to convey the completed Infrastructure to the County; and

WHEREAS, the County intends to accept the Infrastructure as set forth in Section 3.2 upon satisfactory completion in the County’s sole discretion; and

WHEREAS, the parties desire to set forth the terms and conditions under which Licensee will be permitted to enter to the License Area; and

WHEREAS, Licensor finds that this Agreement serves a public purpose.

NOW THEREFORE, for Ten Dollars (\$10.00) paid to Licensor, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensor and Licensee do hereby agree as follows:

SECTION 1. Grant of License and Purpose. Licensor hereby grants a non-exclusive, revocable license from the date of last execution of this Agreement (the “Effective Date”) to Licensee, its employees, authorized agents, and contractors to enter the License Area to complete the Infrastructure within the License Area in accordance with County ordinances, resolutions, policies, procedures, and the Construction Plans. Licensee agrees and acknowledges that any changes to the Construction Plans shall require prior approval of Licensor.

SECTION 2. Licensee’s Use of the Property. Licensee’s use of the License Area shall be subject to, and in no way interfere with, Licensor’s use of the License Area. Licensee agrees to minimize any inconvenience to or interference with Licensor’s use of the License Area by providing a seventy-two (72)-hour prior notice to, and cooperating in the scheduling of, all activities that may interfere with the activities by Licensor. Licensee will confine its operations to the License Area. At no time may unauthorized parties access the License Area. Any use of the License Area by Licensee or Licensee’s employees, authorized agents, or contractors for any purpose other than set forth in Section 1 shall be deemed a breach of this Agreement and may result in its termination.

SECTION 3. Maintenance Guarantee and Conveyance to County.

3.1. Maintenance Guarantee.

3.1.1. Licensee shall ensure that all construction contract(s) for the Infrastructure contain a maintenance guarantee which shall be in force and effect for a period of one (1) year from the date upon which the County accepts ownership and maintenance responsibility for the Infrastructure. The maintenance guarantee shall be in the form of an irrevocable letter of credit, cash escrow, or maintenance bond in favor of the County in an amount equal to ten percent (10%) of the total cost of the Infrastructure. The purpose of the maintenance guarantee is to ensure the materials, workmanship, structural integrity, functioning, and maintenance of the Infrastructure. If Licensee elects to post an irrevocable letter of credit, the requirements set forth in Section 34-203 of the Orange County Code shall control.

3.1.2. If Licensee elects a maintenance bond as its maintenance guarantee, Licensee or its general contractor shall obtain and deliver to the County a maintenance bond in a form and amount acceptable to the County. The maintenance bond shall name the County as Dual-Obligee and shall be assignable to the County following acceptance of the Infrastructure by the

County. The surety company issuing the maintenance bond shall meet the following qualifications:

- Surety must be licensed to do business in the State of Florida, hold a certificate of authority authorizing it to write surety bonds in the State of Florida, and maintain an A-VI or better rating with A.M. BEST or an equivalent rating agency and shall comply with the provisions of Section 255.05, Florida Statutes.
- Surety must be listed on the most recent version of the U.S. Department of Treasury Fiscal Service, Bureau of Management, Circular 570 entitled: “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies”.
- All bonds/surety instruments shall be originals and issued by a producing agent with the authority to issue said bonds/surety instruments on behalf of the surety company. Attorneys-in-fact who sign bonds/surety instruments must attach with each bond/surety instrument a certified and effectively dated copy of their power of attorney. Agents of surety companies must list their name, address and telephone number on all bonds/surety instruments.

3.2. Conveyance of the Infrastructure. Licensee must complete the Infrastructure within three (3) years after the Effective Date. Prior to Licensee’s conveyance of the Infrastructure to the County, a bill of sale in favor of the County and the maintenance guarantee (collectively referred to as “Conveyance Documents”) shall be provided to the County. Upon the County’s acceptance of the Conveyance Documents and the County’s inspection and approval of the Infrastructure and issuance of a Certificate of Completion (“COC”), the County shall be deemed to have accepted the conveyance of, and the ownership and operational responsibility for, the Infrastructure.

SECTION 4. Term and Termination.

4.1. Term. The term of this license shall commence on the Effective Date and expire upon the County’s issuance of the COC or three (3) years after the Effective Date of this Agreement, whichever first occurs. Upon expiration of the term, the license and this Agreement shall be deemed expired.

During the one (1)-year maintenance period, covered by Section 3.1 above, the parties agree that this Agreement will automatically be reinstated to allow Licensee to access the License Area as necessary to address claims against the maintenance guarantee relating to the Infrastructure. All terms and conditions of the Agreement apply to any such reinstatement period.

4.2. **Termination.** This Agreement may be terminated at any time by mutual written consent of the parties. In the event Licensor finds Licensee to be in breach of any term of this Agreement, Licensor shall provide Licensee with written notice of such breach. If Licensee fails to cure such breach within thirty (30) days of Licensee's receipt of notice of breach, Licensor may unilaterally terminate this Agreement, effective fifteen (15) days after providing written notice of termination.

SECTION 5. Property "As Is." Licensor makes no representations about the condition of the License Area, or the suitability of the License Area, for Licensee's intended use. This Agreement is conditioned upon Licensee's use of the License Area "AS IS" and "WITH ALL FAULTS."

SECTION 6. Ownership of Property. This Agreement is intended and shall be construed only as a temporary, revocable license to enter and install the Infrastructure within the License Area and does not grant an easement or create or confirm any ownership or possessory interest in any portion of the License Area.

SECTION 7. Hazardous Waste and Materials. Licensee, its employees, agents, Licensees, vendors and suppliers shall not discharge any hazardous or toxic materials or waste on the License Area. Licensee shall indemnify, defend, and hold harmless the County from and against any claims including without limitation third party claims for personal injury or property damage, actions, administrative proceedings (including informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, taxes, assessments, liabilities, settlement amounts, interest or losses, including reasonable attorney's fees and expenses, consultant fees, expert fees, and all other costs and expenses of any kind or nature that arise directly or indirectly in connection with the presence, release or threatened release of any hazardous substances by, through, or at the direction of Licensee, its employees, agents, vendors or suppliers, including but not limited to known contaminants in or into the air, soil, groundwater, surface water or improvements at, on, about, under or within the License Area, or any portion thereof, or elsewhere in connection with the transportation of hazardous substances to or from the License Area by, through, or at the direction of Licensee, its employees, agents, vendors or suppliers. Provided however, Licensee shall not be required to indemnify, defend or hold harmless the County from any claims resulting from the negligent or willful misconduct of the County, or its employees, Licensees, vendors, or other agents, or resulting from any environmental condition existing on the License Area or elsewhere which is not caused, disturbed or exacerbated by Licensee or its employees, agents, vendors or suppliers. The indemnification provisions contained herein shall survive the termination of this Agreement.

SECTION 8. Indemnification. Licensee will defend, indemnify, and hold harmless Licensor, its officials, agents, contractors, and employees from and against all claims, suits, judgments, demands, liability, damages, costs and expenses, of any nature whatsoever, including reasonable attorney's fees and costs, arising directly or indirectly out of or caused in whole or in

part by any act or omission of Licensee, its employees, invitees, contractors, subcontractors (if any), anyone directly or indirectly employed by them, or anyone for whose acts any of them may be liable; excepting those acts or omissions arising out of the sole negligence of Licensor. Nothing contained herein shall constitute a waiver of Licensor's sovereign immunity or the limitations specified in Section 768.28, Florida Statutes. This Section 8 shall survive the termination of this Agreement.

SECTION 9. Insurance.

9.1 For the duration of the license, Licensee shall keep on file with the County current certificates of all required insurance on forms acceptable to the County. The certificates shall be issued by companies authorized to do business under the laws of the State of Florida and acceptable to the County and shall clearly indicate that Licensee has obtained insurance of the type, amount, and classification as required for strict compliance with this Section 9. No material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the County.

9.2 The following coverages are required:

9.2.1 Workers' Compensation – Licensee shall provide coverage for its employees within statutory workers' compensation limits, and no less than \$500,000 for Employer's Liability. Said coverage shall include a waiver of subrogation in favor of the County and its agents, employees, and officials.

9.2.2 Commercial General Liability – Licensee shall provide coverage for all operations including, but not limited to, Contractual, Products and Completed Operations, and Personal Injury. The limits shall be not less than \$1,000,000 per occurrence. The General Aggregate limit shall either apply separate to this Agreement or shall be at least twice the required occurrence limit.

9.2.3 Business Auto Liability – Licensee shall provide coverage for all owned, non-owned, and hired vehicles with limits of not less than \$1,000,000 per occurrence, Combined Single Limit (CSL) or its equivalent.

9.2.4 Pollution Liability – Licensee will provide coverage with a limit of not less than \$1,000,000 for all pollution conditions resulting from its operations within the License Area.

9.3 Licensee shall require and ensure that each of its contractors and subcontractors (if any) providing services hereunder procures and maintains, until the completion of their respective services, insurance of the types and to the limits specified herein.

Licensee shall immediately provide the County with proof of such insurance upon request.

9.4 All such insurance required of Licensee shall be primary to, and not contribute with, any insurance or self-insurance maintained by the County. Any exceptions to the insurance requirements in this Section 9 shall be approved by the County in writing. The County shall be included as an additional insured and a waiver of subrogation shall be in effect on all liability policies of Licensee or its contractors and subcontractors. Compliance with these insurance requirements shall not relieve or limit Licensee's liabilities and obligation under this Agreement. Failure of the County to demand such certificates or other evidence of full compliance with these insurance requirements or failure of the County to identify a deficiency from evidence provided will not be construed as a waiver of Licensee's obligation to maintain such insurance.

9.5 For purpose of the foregoing insurance requirements, the County's certificate holder/additional insured shall be:

Orange County, Florida
Attn: Risk Management Division
109 E. Church Street, Suite 200
Orlando, Florida 32801

SECTION 10. Notices.

10.1 **Notice of Default.** Notwithstanding anything herein to the contrary, no party shall be considered in default for failure to perform the terms and conditions hereof, unless said party shall have first received written notice specifying the nature of such failure, and said party fails to cure the same within the time specified in such notice, or in the event no such time is provided within thirty (30) days of receipt of such written notice, unless otherwise provided for herein.

10.2 **Notices.** Any notice required or permitted hereunder shall be delivered by hand delivery, express courier, or certified mail, return receipt requested, and shall be effective upon receipt of the same. Notices shall be delivered to each of the parties at the following addresses or at such other addresses as specified by written notice in compliance with the terms of this Section 10.

Licensor: Orange County Administrator
P.O. Box 1393
201 South Rosalind Avenue
Orlando, Florida 32802-1393

With copy to: Orange County Utilities
9150 Curry Ford Road
Orlando, Florida 32825-7600
Attn: Director

Licensee: Integra Towers at Nona South, LLC
1525 International Parkway Suite 2001
Lake Mary, Florida 32746-7642
Attn: Manager & Agent to Owner

SECTION 11. Assignment. Licensee shall not assign or transfer any interest, rights, or duties under this Agreement to any other party except upon written approval by the County, which shall not be unreasonably withheld, conditioned, or delayed.

SECTION 12. Permits and Licenses. Licensee, with reasonable cooperation of Licensor, but at no expense to Licensor, shall obtain any and all permits, approvals, and licenses which may be required for the work it conducts pursuant to this Agreement.

SECTION 13. Compliance with Applicable Laws. Licensee shall comply with all applicable federal, state, and local rules, orders, laws, and regulations pertaining to the use of the License Area.

SECTION 14. Entire Agreement. This Agreement contains the entire understanding between the parties. Any change, amendment, or alteration shall be in writing and signed by both parties. This Agreement supersedes all prior discussions and agreements between the parties with respect to the subject matter hereof.

SECTION 15. Admission of Facts. Nothing contained in this Agreement shall be construed as an admission of any fact or liability of any party to this Agreement.

SECTION 16. Waiving or Right to Jury, Attorneys' Fees, and Venue. Both parties hereby waive their right to a jury trial for any dispute or legal action resulting from or associated with this Agreement. All claims, controversies, or disputes arising out of this Agreement shall be settled as required herein or by law in the Ninth Judicial Circuit, Orange County, Florida. Each party shall be responsible for all of its attorneys' fees and costs associated with any legal action arising out of this Agreement. However, if any legal action is subject to mediation, the parties shall share the fees and costs of the mediator equally.

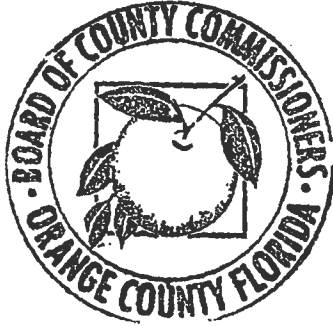
SECTION 17. Severability. The provisions of this Agreement are declared by the parties to be severable. However, the material provisions of this Agreement are dependent upon one another, and such interdependence is material inducement for the parties to enter into this Agreement. Therefore, should any material term, provision, covenant, or condition of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, the party protected or benefited by such term, provision, covenant, or condition may demand that the parties

negotiate such reasonable alternate contract language or provisions as may be necessary either to restore the protected or benefited party to its previous position or otherwise mitigate the loss of protection or benefit resulting from the holding. This Agreement shall be governed by the laws of the State of Florida.

SECTION 18. Captions. Titles used throughout this Agreement are intended for ease of reference only and are not intended to be dispositive.

[SIGNATURES ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.



LICENSOR:

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: *Jerry L. Demings*

for Jerry L. Demings

Orange County Mayor

Date: February 6, 2024

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: *Jennifer Ann Kinney*
Deputy Clerk

[REMAINING SIGNATURES ON THE FOLLOWING PAGE]

LICENSEE:

Integra Towers at Nona South LLC, a Florida limited liability company

By: Integra Towers Development LLC, a Florida limited liability company, its Manager

WITNESSES:

Alyssa Elliott

Print Name: Alyssa Elliott

[Signature]

Print Name: DAVID LINCOLN

By: [Signature]

Print Name: David G. McDaniel

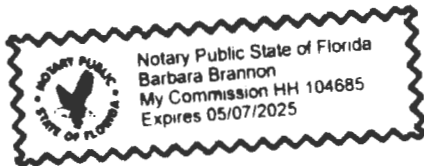
Title: Manager

Date: 12-22-2023

STATE OF FLORIDA
COUNTY OF SEMINOLE

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 20th day of December 2023, by David G. McDaniel as Manager of Integra Towers Development LLC, a Florida limited liability company, as Manager of Integra Towers at Nona South LLC, a Florida limited liability company on behalf of the company. The individual is personally known to me or has produced _____ as identification.

(SEAL)



[Signature]
Notary Signature

Barbara Brannon
Printed Notary Name

Notary Public in and for the county and state aforesaid

My Commission Expires: 05/07/2025

EXHIBIT "A"

Description of License Area

A PORTION OF LOT 10, ORLANDO-KISSIMMEE FARMS, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK "O", PAGE 117-1/2, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, LYING IN SECTION 34, TOWNSHIP 24 SOUTH, RANGE 30 EAST, ORANGE COUNTY, FLORIDA.

DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF LOT 10, ORLANDO-KISSIMMEE FARMS, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK "O", PAGE 117-1/2, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE RUN NORTH 89°55'17" WEST ALONG THE SOUTH LINE OF SAID LOT 10 FOR A DISTANCE OF 37.36 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH 89°55'17" WEST ALONG THE SAID SOUTH LINE FOR A DISTANCE OF 16.08 FEET; THENCE RUN NORTH 01°11'33" WEST DEPARTING SAID SOUTH LINE FOR A DISTANCE OF 18.97 FEET; THENCE RUN SOUTH 89°01'36" WEST FOR A DISTANCE OF 1.50 FEET; THENCE RUN NORTH 00°58'24" WEST FOR A DISTANCE OF 45.00 FEET; THENCE RUN NORTH 89°01'36" EAST FOR A DISTANCE OF 35.00 FEET; THENCE RUN SOUTH 00°58'24" EAST FOR A DISTANCE OF 45.00 FEET; THENCE RUN SOUTH 89°01'38" WEST FOR A DISTANCE OF 17.39 FEET; THENCE RUN SOUTH 01°05'03" EAST FOR A DISTANCE OF 19.26 FEET TO THE POINT OF BEGINNING.

CONTAINING 1,883 SQUARE FEET, MORE OR LESS.

EXHIBIT "B"

Description of Licensee's Property

LOT 1 OF NONA SOUTH, ACCORDING TO THE PLAT THEREOF AS RECORDED IN
PLAT BOOK 112, PAGES 94-95 OF THE PUBLIC RECORDS OF ORANGE COUNTY,
FLORIDA