

REVISED UTILITY EXTENSION AGREEMENT FOR WATER AND SEWER

THIS REVISED UTILITY EXTENSION AGREEMENT (hereafter "Revised Contract"), is made and entered into as of the _____th day of _____ 202____, by and between **Corning Incorporated**, a New York corporation (hereafter "Developer"), the **County of Durham**, a political subdivision of the State of North Carolina (hereafter the "County") and the **CITY OF DURHAM**, a North Carolina municipal corporation (hereafter the "City");

WHEREAS, the Developer proposes to extend water and sewer to serve Corning Phase 2, an approximately 240,000 square feet expansion of an existing manufacturing facility ("Corning Phase 2"), located at 1 Becton Circle, further described as Parcel ID 193007 (the "Property").

WHEREAS, the Developer requires water and sewer lines that will connect to the City's water and sewer systems in order to enable construction of the above described development or such other development as may be approved by the Durham City Council; and

WHEREAS, the Property is within Treyburn Industrial Park and will not be annexed into the City pursuant to the December 6, 1985 contract between the City and Research Properties Associates, the original Treyburn developer, and City Code of Ordinances § 70-129(1);

WHEREAS, the City, the County, and Developer entered into the original Utility Extension Agreement regarding the provision of water and sewer service to serve some or all of the Property on June 17, 2019 ("Original Contract"). The Developer, County and the City wish to modify the Original Contract, in the manner as prescribed in Paragraph 29 of the Original Contract, by replacing the corresponding paragraphs in the Original Contract with the revised paragraphs below, and by adding new Appendices C and D. in the manner. Except for the revisions to these paragraphs and the inclusion of new Appendices C and D, the Original Contract shall remain in full force and effect:

1. **Included Appendices.** Appendix B (Project Specific Provisions), Appendix C (TES-Specific Provisions), and Appendix D (Memorandum of Understanding between City of Durham, NC and Army Contracting Command (APG) RTP Division) are a part of this Contract.
3. **Definitions and Rules of Interpretation.** In this Contract, the following terms, whether capitalized or not, shall have the meanings set forth below, unless it is clear in the Contract that the context requires otherwise. In addition, the rules of interpretation set forth below shall apply.

"City" means the City of Durham.

"City Requirements" mean all ordinances, policies, standards, and specifications prescribed by the City applicable to the development activity, work, or construction undertaken pursuant to this Contract. Such Requirements may include, but are not limited to, the Unified Development Ordinance, the City Code, and standards for processing of and construction of infrastructure many of which are contained in the City's Reference Guide for Development maintained by the City Department of Public Works.

"County" means the County of Durham, North Carolina.

"Developer" is the owner of the Property or the entity which has contracted to purchase the various parcels composing the Property thereby becoming the owner of the Property, and is the entity identified in the first paragraph of this Contract. "Developer" includes successors in interest and assigns.

"Temporary Engineered Solution" ("TES") has the same meaning as that term is defined in Appendix C and D.

"Improvements" means all infrastructure on the Property required by the City that allows water and sewer to be delivered specifically to or from the Property and integrated into the City's utility system, all as contemplated in Paragraphs 1 and 2 of Appendix B hereto. The Improvements to be constructed by Developer pursuant to this Contract shall not include the County-Constructed Sanitary Sewer Improvements or the TES. Developer is responsible for the construction of all Improvements required under this Contract with the exception of the design and construction of the County-Constructed Sanitary Sewer Improvements and the TES. The County shall be responsible for the construction of the County-Constructed Sanitary Sewer Improvements and the City is responsible for the construction and operation of the TES.

"Person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities.

"Project" means all improvements approved pursuant to site plan D1800015 and site plan amendment D1800370 and all improvements described under Appendix B (and associated additional site plans, construction drawings, permits, construction, and operational startup).

"Property" means the land located at Parcel ID 193007.

"Water and/or sewer" refer to the particular utilities being installed by Developer, which may include water only or sewer only, or both, as generally described in Appendix B and as ultimately determined through City review of site plans and construction drawings.

The following rules of interpretation apply: (1) The singular includes the plural, and the plural the singular; (2) The word "shall" is mandatory.

4. **Developer's Obligation.** The Developer shall bear the total cost and expense of all the obligations and duties created by this Contract unless otherwise explicitly stated in this Contract. Those obligations and duties are, generally, to create all Improvements on the Property as may be required by the City in accordance with this Contract and with City Requirements, all as described Paragraphs 1 and 2 of Appendix B hereto. The Developer's obligations also include all costs, including but not limited to legal costs, of acquiring all fees or easements within which the Improvements will be located, provided the parties acknowledge and agree that no such easements or fees shall be required in connection with the Improvements being constructed on the Property pursuant to this Contract. If the TES is provided per Appendices C and D of this Revised Contract, then the Developer is bound by the provisions of those Appendices as well.

6. **Improvements.** A general description of the Improvements to be constructed to serve the Project is set forth in Appendix B. The final determination of the number, scope, size, materials, and location of required Improvements shall be as determined in the reasonable discretion of the City with jurisdiction over the utility service provided and shall be made in connection with site plan and construction drawing approval

16. **Assignments/Reimbursements.** Developer shall have the right to assign this Contract in the event of a sale of the Property or a portion thereof without the prior written consent of the County or the City. Developer shall notify the City in writing of any assignment of the obligations under this Contract and/or change in the entity to receive reimbursements under this Contract, in the event that future reimbursements are provided for in Appendix B or pursuant to City Requirements. An assignment by Developer of the obligations under this Contract does not limit the obligations of successor owners of the property unless i) the assignee owns a substantial part of the property; and ii) there is a written modification of this Contract approved by the parties to replace the Developer with the assignee to the exclusion of other owners. If reimbursements are provided for under this Contract, they shall be made to the original Developer or to a successor in interest who has been identified in writing as entitled to the reimbursements. In the absence of a party that legally exists that has been identified as entitled to the reimbursements, the City shall hold the reimbursements for three years from the various dates they are received. After the three year period, the reimbursements shall be forfeited to the City. The City may, but is not required to, provide notice of potential reimbursements to successors in interest to the original Developer. In the event of dispute between owners claiming an interest in the reimbursements, the City shall hold the reimbursements until legal resolution, if a lawsuit has been filed. If legal action is not filed within three years, the reimbursements shall be forfeited to the City. Identification of new owners entitled to reimbursements shall be in a manner which in form and substance meets the City's directives.

APPENDIX B -PROJECT SPECIFIC PROVISIONS

1. The Developer shall extend waterlines in the Project from the existing 12-inch private waterline located on the Property. Water lines shall meet all City Requirements, including but not limited to size, design standards, loop feed requirements (with two waterline feeds constructed and operational prior to exceeding the 100th Certificate of Compliance), fire flow requirements, and system needs. There shall be no City participation in the cost of such extension of the waterline.

2. Developer-Constructed Sanitary Sewer Improvements: The Developer shall extend a new 8-inch private sanitary sewer line from the existing 8-inch private sanitary sewer line located on the Property. All sewer Improvements, including size, location, and service area shall meet City Requirements. There shall be no City participation in the cost of such sewer Improvements.

3. County-Constructed Sanitary Sewer Improvements: The County shall, at the County's sole cost and expense, design and construct a replacement for the existing Snow Hill Road Lift Station (SHRLS). The replacement SHRLS shall be sized to at a minimum accommodate current average and peak daily flows as well as all flow generated by the Project. In addition, the replacement SHRLS should be designed to accommodate additional growth in Treyburn and areas tributary to the SHRLS. As part of the scope of work for the County Work the County will have its consultant perform a Facility Planning and Preliminary Design task ("Task"). The City and County agree to review the results of the Task and reach written agreement regarding the final pump station design, pump and force main configuration, and any required improvements to Treyburn lift stations #3 and #4. All new and replacement lift stations, as well as, all improvements or upgrades to existing lift stations, shall be designed and constructed in accordance with the City's 2019 Lift Station Design Standards.

4. The City will not issue a Certificate of Compliance for the Project until all Improvements required by this Contract have been constructed to the City's satisfaction in conformance with all applicable City requirements. In addition, the City will not issue a Certificate of Compliance for the Project until the County fulfills its obligation to construct the County-Constructed Sanitary Sewer Improvements, or the TES is constructed at the existing Snow Hill Road Lift Station. The County is not relieved of its obligation to construct the County-Constructed Sanitary Sewer Improvements if the TES is constructed.

5. The City will make refunds to the Developer for connections made by subsequent developers to City street, water, and/or sewer lines constructed by the Developer, if any, in accordance with City Requirements. These refunds will be made to the Developer for a period of ten (10) years after the completion of the water and/or sewer line. After ten (10) years have expired, charges received for connecting to the water and/or sewer lines will not be refunded to the Developer. These refunds will be in an amount equal to the frontage charge collected, not to exceed one-half the average cost to the Developer per linear foot of pipeline installed.

6. The Developer shall pay frontage charges at the prevailing rate to the City for any street frontages within or adjacent to the Project where the Developer does not install a City water or sewer line. These frontage charges shall be paid to the City prior to the time that the Project's water or sewer lines are constructed (Section 70-17 of the City of Durham Code of Ordinances). Developer acknowledges that frontage charges are paid to the City as payment for the City's past investment in water and sewer line infrastructure that will serve the Project and also anticipated future maintenance and upgrades to this water and sewer line infrastructure.

7. The Developer shall pay water and/or sewer capital facility fees at the current rate as set by City Council for all new water and/or sewer connections to the City's water and/or sewer system. These capital facility fees shall be paid to the City at the time of the purchase of the water meter and/or sewer service connection (if property is not to be subdivided and/or does not require water and/or sewer extension permits) or pursuant to N.C.G.S.162A-213 (prior to approval of the final plat or issuance of the water and/or sewer extension permit/s). The Developer shall pay the City for the installation of water and/or sewer service laterals installed by the City (Durham City Code of Ordinances § 70-50). Developer acknowledges that these fees and charges are reimbursement to the City for services provided to the Project by the City and for the City's past investment in the City's water and wastewater treatment facilities and also anticipated future maintenance and upgrades to these facilities.

APPENDIX C -TES-SPECIFIC PROVISIONS

1. The City's work with regard to the TES will generally consist of the following components: The TES at the Snow Hill Lift Station will be designed and operated to ensure adequate interim capacity is available for the proposed Project until the County-Constructed Sanitary Sewer Improvements are in service. The TES shall include two temporary, above-ground 300 horsepower (hp) diesel pumps with associated fittings, valves, controls, diesel fuel containment, security fencing, and other necessary appurtenances. The existing pumps will discharge into the existing Snow Hill Lift Station force main. The pumps shall be provided and monitored by a third party contractor. The temporary pumps will be connected to the existing SCADA system for alarming notifications. In addition, the Treyburn #3 and #4 force mains discharges, previously permitted in the Snow Hill Lift Station Permit, shall be relocated to discharge upstream of the existing Snow Hill Rd Lift Station. The City shall ensure all appropriate permitting for the TES is in place prior to implementation.

2. The City will obtain the components of the TES and take the necessary steps to make the TES operational. Once the TES is operational, it will be the City's sole obligation to operate and maintain the TES as a part of the City's wastewater collection system and pursuant to the obligations of the City's Wastewater Collection System Permit #WQCS00005. To the maximum extent allowed by law, the City agrees to hold Developer and the U.S. Government harmless from any claim resulting from the City's operation or maintenance of the TES.

3. Developer will reimburse the City for the City's expenses in acquiring and/or renting the TES components, making the TES operational, operating and maintaining the TES, and demobilizing the TES in accordance with the provisions of Appendix D. The TES will remain in operation until the County-Constructed Sanitary Sewer Improvements are completed. Developer shall reimburse the City for expenses that exceed individual line items provided in Appendix D, so long as the maximum total reimbursement sought by the City does not exceed \$460,380.00.

4. The City will submit invoices to Developer on a monthly basis. Within 30 days of receipt of an invoice, Developer will reimburse the City for its invoiced expenses.

**APPENDIX D – EXECUTED MEMORANDUM OF UNDERSTANDING BETWEEN
CITY OF DURHAM, NC AND ARMY CONTRACTING COMMAND (APG) RTP
DIVISION**

(Insert Copy)

[Signatures Begin on Following Page]

ATTEST:

Secretary
(Affix corporate seal.)

By: _____
President

State of _____
County of _____

I, a notary public in and for the aforesaid county and state, certify that _____ personally appeared before me this day and stated that he or she is _____ Secretary of **Corning Incorporated**, a corporation, and that by authority duly given and as the act of the corporation, the foregoing agreement with the City of Durham was signed in its name by its _____ President, whose name is _____, sealed with its corporate seal, and attested by him/herself as its said Secretary or Assistant Secretary. This the _____ day of _____, 20____.

My commission expires: _____

Notary Public

ATTEST:

COUNTY OF DURHAM

By: _____
County Manager

(Seal)

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

I, a Notary Public for Durham County, certify that _____
personally came before me this day and acknowledged that he/she is _____
to the Board of the County of Durham, and that by authority duly given and as the act of the
County, the foregoing instrument was signed in its name by its County Manager, sealed with its
seal, and attest by himself/herself as its _____ to the Board.

Witness my hand and official seal, this the _____ day of _____, 2019

Notary Public

My commission expires: _____

(Seal)

preaudit certificate, if applicable _____

ATTEST:

CITY OF DURHAM

_____ By:_____

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

I, a Notary Public for Durham County, certify that _____
personally came before me this day and acknowledged that he/she is _____
of the City of Durham, and that by authority duly given and as the act of the City, the foregoing
instrument was signed in its name by its _____, sealed with its seal, and attest by
himself/herself as its _____.

Witness my hand and official seal, this the _____ day of _____, 2019

Notary Public

My commission expires: _____

(Seal)

preaudit certificate, if applicable _____