

AGREEMENT FOR WAIVER OF CONSTRUCTION TRAFFIC ROAD FEES

This *Agreement for Waiver of Construction Traffic Road Fees* (“Agreement”) is made by and between the City of North Port, Florida, a municipal corporation of the State of Florida (“City”) whose mailing address is 4970 City Hall Boulevard, North Port, Florida 34286, and _____ (“Applicant”) , which is registered to do business in the State of _____ and whose mailing address is _____.

WHEREAS, Chapter 66, Article III, Division 2 of the Code of the City of North Port, Florida (“City Code”) establishes a road maintenance rehabilitation program and a construction traffic road fee that must be paid prior to the issuance of a building permit; and

WHEREAS, Section 66-71 of the City Code authorizes the City Manager to waive a construction traffic road fee for non-residential or commercial developments when a timely filed application meets the codified criteria;

WHEREAS, prior to applying for a building permit, Applicant filed an application for a waiver of construction traffic road fees, attached as Exhibit A (“Application”), for the non-residential or commercial development of the site proposed for construction, as set forth in the Application (“Project”);

WHEREAS, the Public Works Director reviewed and made a recommendation to the City Manager as to whether the Application should be approved or denied; and

WHEREAS, the Application meets the criteria identified in Section 66-71(b) of the City Code;

WHEREAS, the City Manager finds that the proposed transportation routes do not use or adversely impact the city-wide transportation network or increase the number of trips to the building site.

NOW THEREFORE, for and in consideration of the mutual covenants specified herein and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

1. **Recitals.** The above recitals are incorporated by reference as findings of fact.
2. **Effective Date.** This Agreement becomes effective on the date the last party ratifies and approves the Agreement (“Effective Date”).
3. **Term.** The term of this Agreement begins on the Effective Date and ends upon issuance of the Certificate of Occupancy for the buildings on all parcels of the Project.
4. **Waiver Determination.**
 - a. **Fees.** With respect to the Project, the City hereby waives construction traffic road fees:

 in whole; or

 in part, as further described: _____.

b. Trucking Routes. The following trucking routes and roads are designated for all construction-related trucks accessing or exiting the Project site:

as set forth in the Application; or

as set forth in the City Manager's Designated Trucking Routes, attached as Exhibit B.

5. **Applicant's Obligations.** Applicant represents, warrants, and agrees to the following:

- a. No construction-related trucks servicing the project will use city-owned or maintained streets or roads to access or exit the Project site.
- b. All of the Project's construction-related trucks will only use the trucking routes identified in Section 4.b of this Agreement.
- c. Construction-related trucks will dispose of all construction materials and waste at the locations identified in the Application.

6. **Security.**

- a. Pursuant to Section 66-71(d) of the City Code, Applicant has provided a performance guarantee in the amount of 100 percent of the total construction traffic road fee, in the form of a performance bond or a letter of credit ("Security").
- b. The Security secures Applicant's performance of the terms of this Agreement. The City has the right to file a claim against the bond or to draw on the full amount of the letter of credit, if the Applicant fails to perform any covenant, term, or provision of this Agreement.

7. **Construction Traffic Road Fee Waiver Revocation.** In the event of Applicant's breach or default of any covenant or obligation in this Agreement, the City may revoke this construction traffic road fee waiver pursuant to the provisions of Section 66-71(f)(1) of the City Code. Applicant will be provided notice of the City Manager's intent to revoke the waiver and an opportunity for a hearing before the City Manager. The City Manager will issue the determination in writing. In the event that Applicant disagrees with the City Manager's determination, then Applicant may, within ten (10) days of the City Manager's determination, file a written request to appeal the decision to the City Commission. The payment of the total fee will be required within twenty (20) days after issuance of the final determination of revocation. If not paid, then the City will have the right to claim against the bond or to draft on the letter of credit in the amount of the total fee.

8. **Notice.** All notices required by this Agreement shall be in writing and delivered to the intended party as follows. Delivery must be made by hand; by United States Postal Service certified mail, return receipt requested; or by a nationally recognized overnight courier service which provides for proof of delivery. Delivery by email is sufficient if followed by delivery of a confirmation copy by one of the means set forth above.

To Applicant:

Name: _____
Title: _____
Address: _____
Phone: _____
Email: _____

To City:

City Manager
City of North Port
4970 City Hall Boulevard
North Port, Florida 34286
Phone: _____
Email: _____

9. Miscellaneous.

- a. Authority to Execute Agreement. The signature by any person to this Agreement shall be deemed a personal warranty that the person has the full power and authority to bind any corporation, partnership, or any other business or governmental entity for which the person purports to act hereunder.
- b. Binding Effect/Counterparts. By the signatures affixed hereto, the parties intend to be bound by the terms and conditions hereof. This Agreement is binding upon and shall inure to the benefit of the parties and their respective heirs, executors, administrators, successors and assigns. It may be signed in counterparts.
- c. Governing Law and Venue. The laws of the State of Florida govern the rights, obligations, and remedies of the parties under this Agreement. The exclusive venues for any legal or judicial proceedings in connection with the enforcement or interpretation of this Agreement are the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida and the United States District Court for the Middle District of Florida.
- d. No Agency. Nothing contained herein shall be deemed or construed as creating the relationship of principal and agent, or of partnership or joint venture, between the parties, it being understood and agreed that no provision contained herein, or any acts of the parties shall be deemed to create any relationship between them other than that as detailed herein.
- e. Severability. In the event any court shall hold any provision of this Agreement to be illegal, invalid, or unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any breach of any provision, term, condition or covenant shall not be construed as a waiver of a subsequent breach by the other party.

- f. Headings. The descriptive titles appearing in each respective paragraph thereof are for convenience only and are not a part of this Agreement and do not affect its construction.
- g. Complete Agreement. This Agreement incorporates and includes all prior negotiations, correspondence, agreements, or understandings between the parties, and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. This Agreement supersedes all other agreements between the parties, whether oral or written, with respect to the subject matter.
- h. Amendment. No amendment, change, or addendum to this Agreement is enforceable unless agreed to in writing by both parties and incorporated into this Agreement.
- i. Assignment. The Applicant will not assign this Agreement or any right or responsibility herein unless with the written consent of the City.
- j. Non -Discrimination. The City of North Port, Florida does not discriminate on the basis of race, color, national origin, sex, age, disability, family or religious status in administration of its programs, activities, or services. The Applicant will not administer this Agreement in an unlawfully discriminatory manner, nor deny participation in or the benefits of same to any individual based on that individual's race, color, national origin, sex, age, disability, family or religious status, marital status, sexual orientation, gender identity or expression, or physical characteristic.

(This space intentionally left blank; signature pages to follow)

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date and year written below.

CITY OF NORTH PORT, FLORIDA

By: _____
Jason Yarborough, ICMA-CM
Interim City Manager

Date: _____

ATTEST

Heather Taylor, CMC
City Clerk

APPROVED AS TO FORM AND CORRECTNESS

Amber L. Slayton
City Attorney

APPLICANT

Entity Name: _____

By: _____

Print Name: _____

As: _____

Date: _____

ACKNOWLEDGEMENT

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ___ day of _____ 20__, by _____ (name), as _____ (title) for _____ (entity).

Notary Public

___ Personally Known OR ___ Produced Identification
Type of Identification Produced _____

EXHIBIT A
APPLICATION

EXHIBIT B *(if needed)*

CITY MANAGER'S DESIGNATED TRUCKING ROUTES