

CLAY COUNTY
AGREEMENT/CONTRACT 2022/2023-_____
MOBILITY FEE MITIGATION AGREEMENT

This Mobility Fee Mitigation Agreement (the Agreement) is made and executed as of this _____ day of _____, 20____, by and between CLAY COUNTY, FLORIDA, a political subdivision of the State of Florida (the County), and _____ (Applicant).

Recitals

WHEREAS, on October 27, 2020, the County adopted Ordinance No. 2020-39, known as the Clay County Mobility Fee Ordinance (Ordinance), which imposed Mobility Fees, as that term is defined in the Ordinance, on new development in the County; and

WHEREAS, the Ordinance contains provisions for Mobility Fee mitigation for economic development to foster economic development in the County; and

WHEREAS, new construction that houses a Qualified Target Industry Business (QTI), creates a minimum of ten new permanent jobs with each job paying at least 1% in excess of the County's average wage, and maintains the permanent jobs for the duration of the ten-year deferral period is eligible to receive Economic Development Mobility Fee Mitigation up to 100% of the Mobility Fee; and

WHEREAS, a lien in the amount of the Economic Development Mobility Fee Mitigation granted to the QTI shall be imposed on the new construction for a period of ten years from the date of electrical power clearance or payment of the mobility fees, whichever is earlier; and

WHEREAS, Applicant owns real property in the County (described in Exhibit A and attached hereto; Project Property) on which it intends to construct four buildings, totaling

approximately 686,719 square feet of commercial space, to be used to produce construction materials (New Construction); and

WHEREAS, Applicant qualifies as a QTI under the Ordinance; and

WHEREAS, on May 9, 2023, the Clay County Board of County Commissioners approved Economic Development Mobility Fee Mitigation for Applicant; and

WHEREAS, upon the execution of this Agreement and subject to the conditions provided for herein, Applicant shall be entitled to Mobility Fee Mitigation; and

WHEREAS, the administration of the Mobility Fee Mitigation against the imposition of Mobility Fee obligations for new development is the responsibility of the Mobility Fee Coordinator, as identified in the Ordinance; and

WHEREAS, Applicant and the County desire to delineate their respective rights and obligations with regard to the Mobility Fee Mitigation to which Applicant has been awarded under the Ordinance for New Construction to house a QTI.

NOW THEREFORE, in consideration of the mutual covenants herein, it is agreed as follows:

1. **Recitals.** The recitals set forth hereinabove form an integral part of this Agreement. When construing this Agreement, the parties shall refer to the recitals to the extent necessary to give full effect to the intent of the parties as reflected in this Agreement; provided, however, that if the recitals and a substantive provision of this Agreement are in direct conflict and cannot be reconciled, then the substantive provision shall control.

2. **Mobility Fee Mitigation.** Applicant and the County agree that Applicant shall receive Economic Development Mobility Fee Mitigation for New Construction to house a QTI

business on the Project Property. The Mobility Fee Mitigation for Applicant shall be _____ as determined by the Board of County Commissioners of Clay County.

3. **Lien Equal to Mobility Fee Mitigation.** A lien equal to the amount of the Mobility Fee Mitigation shall be imposed on Applicant's Project Property for a period of ten years from the earlier of: 1) the date that electrical power clearance is obtained, or 2) payment of the mobility fee is made, for each building permit for Applicant's buildings on the Project Property. The form of the lien is attached as Exhibit B to this Agreement. The lien may be foreclosed upon in the event of Applicant's noncompliance with the requirements of this Agreement. The lien shall terminate upon the expiration of the ten-year period if the mitigation agreement is not in default, or upon payment of the lien following a sale or transfer of the QTI New Construction as provided herein. Such termination of the lien shall be evidenced by the recording of a release or satisfaction of lien in the public records of Clay County. Such release shall be recorded upon expiration of the ten-year compliance period provided in this Agreement or upon payment in full of the mobility fees.

4. **Non-Transferability of Mobility Fee Mitigation.** The Mobility Fee Mitigation awarded shall not be transferred, assigned, credited, or otherwise conveyed from the New Construction. In the event Applicant sells or transfers any portion of the QTI New Construction, within 10 years of the date of electrical power clearance or payment of the mobility fee is made as described in Paragraph 3 above, to an entity that does not qualify as a QTI business, the mitigated Mobility Fees shall be immediately paid in full to the County, but in no event later than the closing date of the sale or the effective date of the transfer. This Agreement shall run with the land.

5. **Employment Creation and Retention Activities.** Applicant's QTI New Construction shall result in the creation of a minimum of ten new Permanent Jobs in the County, with each job paying at least 1% in excess of the County's average wage, within one year of the earlier of: 1) the date electrical power clearance is obtained, or 2) the mobility fee is paid, for a building permit for the New Construction.

a. A Permanent Job shall be defined as a Full-time equivalent position, as that term is used by the Agency for Workforce Innovation and the United States Department of Labor for purposes of unemployment compensation tax administration and employment estimation, which are:

- i. offered by the Applicant and based at the Project Property;
- ii. reasonably expected to exist for a period of more than one year from the date such position is created and available for applications (as distinguished from temporary construction jobs expected to exist for one year or less);
and
- iii. continuously filled by the Applicant except for periods to advertise, interview, and hire new employees.

Applicant shall maintain at least ten Permanent Jobs paying at least 1% in excess of the County's average wage throughout the ten-year lien period described in Section three above. In the event the number of Permanent Jobs as of December 31 of any year within the ten-year lien period drops below 10 or less than 10 Permanent Jobs are being paid the minimum wage required, then the County, in its sole discretion, may declare (after the applicable cure period) a default which default, if left uncured under Article 8 of this Agreement, will result in the mitigated mobility fees becoming immediately due and payable.

6. **The County's Obligations.** The County, through its Mobility Fee Coordinator, shall:

a. Maintain a ledger reflecting the amount of Mobility Fee Mitigation paid for the Project as a result of Applicant's New Construction to house a QTI business as more particularly provided for under Section 2 of this Agreement;

b. Fund, through other legally available County revenues other than Mobility Fees, the amount of the Mobility Fee Mitigation granted under Section 2 of this Agreement;

c. Forgive all Mobility Fee Mitigation upon the tenth anniversary of the earlier of: 1) the date electrical power clearance is obtained, or 2) the mobility fee payment is made, if the Agreement is not in default or the QTI New Construction is not sold or transferred within the referenced ten-year period; and

d. File a release of lien in accordance with Sections 3 and 6(c) of this Agreement.

7. **Applicant Obligations.**

a. Applicant shall complete the QTI New Construction by constructing four new buildings on the Project Property that will be used by the QTI business in the manufacturing of building materials;

b. Applicant shall timely pay all ad valorem and tangible personal property taxes on the QTI New Construction on the Project Property;

c. Applicant shall create at least ten new Permanent Jobs on the Project Property, with each job paying at least 1% in excess of the County's average wage, within one year of the earlier of: 1) the date electrical power clearance is obtained, or 2) payment of the mobility fee is made, for a New Construction building permit;

d. Applicant shall maintain at least ten Permanent Jobs paying at least 1% in excess of the County's average wage at the QTI business on the Project Property for the ten-year lien period;

e. Applicant shall deliver an annual report (the "Report") to the County no later than January 31st of each year throughout the duration of the ten-year lien period described in Section 3. The Report shall certify to the County as of December 31st of the immediately preceding year, the number of Permanent Jobs in existence and the wages (excluding benefits) paid to the employees filling the Permanent Jobs. The form of the Report is attached as Exhibit C to this Agreement; and

f. Applicant shall make available reasonable documentation evidencing maintenance and description of Permanent Jobs and wages paid for review and inspection by the County at the Project Property at reasonable times and on reasonable notice; and

g. Applicant's business shall remain a QTI business throughout the duration of the ten-year lien period described in Section 3 to remain eligible for the Mobility Fee Mitigation.

8. Defaults and Remedies.

a. County Defaults. If the County defaults in the performance of any obligation required to be performed by it under this Agreement, then Applicant may deliver written notice of such default to the County. The County shall cure such default within 30 days after the delivery of such notice of default. If the County does not cure such default within the time period provided, then Applicant may pursue any available remedies in law or equity.

b. Applicant Defaults. If Applicant defaults in the performance of any obligation required to be performed by it under this Agreement, then the County may deliver written notice of such default to Applicant. Applicant shall cure such default within 30 days after

the delivery of such notice of default. If Applicant does not cure such default within the time period provided, then the County may declare that the Agreement is in default and that the mitigated mobility fees are immediately due and payable. The County may at its sole option bring a civil action to enforce the Agreement. The County shall be entitled to recover all attorney's fees and costs it incurs in enforcing the Agreement plus interest at the then maximum statutory rate for judgments calculated on a calendar day basis until paid. In the event the County initially funded the Mobility Fee Mitigation for the QTI New Construction from other available County revenues, the deferred mobility fees collected upon a breach of the Agreement shall be used to repay such County funds.

9. Future Revisions. If the Ordinance, Clay County Comprehensive Plan or any other Clay County land development regulation is amended to decrease, eliminate, waive (temporarily or permanently), or otherwise revise the Mobility Fee obligations or replace any or all of the Mobility Fee obligations with another form of exaction for transportation impacts in a manner which affects adversely the value or viability of the Agreement, then such amendment shall serve as grounds for the County or the Applicant to request to amend this Agreement in a manner which may maintain the value or viability of the Mitigation. The parties agree that the Mobility Fee Mitigation shall be for those in effect at the time the Mobility Fee obligations for applicable new construction would otherwise be due.

10. Miscellaneous Provisions.

a. Notices, Demands and Communications Between the Parties. Notices, demands and communications between the parties shall be given by depositing the same in the United States Mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

Notices, demands and communications to the County:

Clay County
Attn: County Manager
P. O. Box 1366
Green Cove Springs, Florida 32043

With copy to:

Clay County
Attn: County Attorney
P. O. Box 1366
Green Cove Springs, Florida 32043

Notices, demands and communications to Applicant:

b. **DISCLAIMER.** THE MOBILITY FEE MITIGATION SHALL NOT BE DEEMED TO CONSTITUTE A DEBT, LIABILITY, OR OBLIGATION OF CLAY COUNTY OR OF THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY LIMITATION, OR A PLEDGE OF THE FAITH AND CREDIT OR TAXING POWER OF CLAY COUNTY OR OF THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF. THE COUNTY SHALL NOT BE OBLIGATED TO PAY THE MOBILITY FEE MITIGATION EXCEPT FROM FUNDS WHICH MAY BE APPROPRIATED FOR THAT PURPOSE IN ANY APPLICABLE BUDGET. THE APPLICANT OR ANY PERSON, FIRM OR ENTITY CLAIMING BY, THROUGH OR UNDER THE APPLICANT OR ANY OTHER PERSON WHOMSOEVER, SHALL NEVER HAVE ANY RIGHT, DIRECTLY OR INDIRECTLY, TO COMPEL THE EXERCISE OF THE AD VALOREM TAXING POWER OF CLAY COUNTY OR OF THE

STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF FOR THE PAYMENT OF THE MOBILITY FEE MITIGATION. ANY OTHER PROVISIONS OF THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, THE MAXIMUM PAYMENT THAT THE COUNTY IS OBLIGATED TO MAKE UNDER THIS AGREEMENT FROM THE BUDGET OF ANY FISCAL YEAR SHALL NOT EXCEED THE APPROPRIATION FOR SAID FISCAL YEAR.

c. Waiver. No waiver by either party of any term or condition of this Agreement will be deemed or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different section, subsection, paragraph, subparagraph, clause, phrase, or other provision of this Agreement.

d. Indemnification. Applicant shall indemnify, save harmless and defend the County, its officers, agents, servants, employees and subcontractors from and against any claim, demand or cause of action of whatsoever kind or nature arising out of any error, omission or negligent act of the indemnifying party or its agents, servants or employees in the performance of their respective obligations under this Agreement; provided, however, Applicant shall have no duty to indemnify, save harmless or defend the County to the extent that any such damage, loss or liability is caused by the negligence of, or breach of this Agreement by, the County or its employees, authorized agents or contractors. This indemnification shall survive the termination of this Agreement.

e. Change in law. Any change in law as a result of any amendment to the Constitutions of the United States or the State of Florida, or the promulgation of or amendment to any federal, state, county, city, or local statute, regulation, or ordinance, or any judicial decision

controlling in the Fourth Judicial Circuit of the State of Florida or the Middle District of Florida, which occurs after the date of this Agreement and has the effect of prohibiting the County through regulation, ordinance or the use of this Agreement from performing under this Agreement or rendering it unlawful to do so shall have the effect of immediately terminating all obligations of the County under this Agreement, without the opportunity to cure.

f. County Liability. Nothing contained herein shall be deemed to impose directly or indirectly any obligation or liability on the County to carry out or perform any of the obligations or liabilities of the Applicant.

g. Voluntariness. The parties have voluntarily entered into this Agreement in consideration of the benefits and the rights of the parties arising hereunder.

h. Agreement Executed in Counterparts. This Agreement may be executed in two or more counterparts, each of which is considered and shall be deemed to be an original, but only one agreement is intended hereby.

i. Merger of Agreement Terms. This Agreement constitutes the entire understanding and agreement of the parties as to the subject matter hereof, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter.

j. Section Headings. Section headings included in this Agreement are for convenience only and shall have no effect upon the meaning or construction of this Agreement.

k. Joint Preparation. Preparation of this Agreement has been a joint effort of the parties and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

l. Amendment of Agreement. Unless otherwise provided in this Agreement, no amendment or modification of this Agreement shall be effective or binding upon the parties unless such amendment or modification is in writing and has been executed by the parties.

m. Compliance with Laws. The parties shall comply with any and all applicable federal, state and local laws, ordinances, codes, rules and regulations as the same exist and may be amended from time to time.

n. Cooperation and Further Assurances. The parties hereto agree to cooperate in all reasonable respects to ensure the performance of their obligations pursuant to this Agreement and agree to execute such additional documents and instruments as may be reasonably required to carry out the intent of this Agreement.

o. Applicable Law; Jurisdiction and Venue. This Agreement and the rights and obligations of the parties under this Agreement shall be governed by, construed under, and enforced in accordance with the laws of the State of Florida. Venue for any litigation pertaining to the subject matter of this Agreement shall be exclusively in Clay County, Florida. If any provision of this Agreement, or the application of this Agreement to any person or circumstances, shall to any extent be held invalid or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

p. Time is of the Essence. Time is of the essence with respect to this Agreement and each of its terms and provisions.

q. Effective Date. This Agreement and subsequent amendments hereto shall become effective the date they are approved by the parties.

r. Termination. Should the County ever exercise any of its rights under this Agreement to terminate the same or if the Agreement is otherwise terminated, then upon such

termination the County shall be deemed to have been excused from any further performance and obligations under this Agreement, including but not limited to the obligation to make any payments arising under this Agreement, except with respect to any payments by the County that are delinquent without cause or excuse at the time of termination.

IN WITNESS WHEREOF, the parties hereto have hereunder set their hands and seals this day and year written below.

“Applicant”

By:

Name: _____

Title: _____

“County”

CLAY COUNTY

Betsy Condon, its Chairman

ATTEST:

Tara S. Green

Clay County Clerk of Court and Comptroller

Ex Officio Clerk to the Board

EXHIBIT A

Property Description

EXHIBIT B

Form of Lien

This instrument prepared by and
Record and Return to:
Clay County Attorney's Office
Post Office Box 1366
Green Cove Springs, Florida 32043

R. E. Parcel No.:

WARNING! THIS LEGAL DOCUMENT REFLECTS THAT A LIEN HAS BEEN PLACED ON THE REAL PROPERTY LISTED HEREIN. UNLESS THE OWNER OF SUCH PROPERTY TAKES ACTION TO SHORTEN THE TIME PERIOD, THIS LIEN MAY REMAIN VALID FOR TEN YEARS FROM THE DATE OF RECORDING, AND SHALL EXPIRE AND BECOME NULL AND VOID THEREAFTER UNLESS LEGAL PROCEEDINGS HAVE BEEN COMMENCED TO FORECLOSE OR TO DISCHARGE THIS LIEN.

CLAIM OF LIEN

STATE OF FLORIDA
COUNTY OF CLAY

BEFORE ME, the undersigned notary public, personally appeared _____, who being duly sworn and says that she or he is the Chairman of the Clay County Board of County Commissioners, on behalf of Clay County, a political subdivision of the State of Florida, Lienor, whose address is P.O. Box 1366, Green Cove Springs, Florida 32043, and that in accordance with a Mobility Fee Mitigation Agreement, Lienor provided services consisting of payment of mobility fees for the following described real property in Clay County, Florida:

owned by _____ for a total value of \$ _____.

The Mobility Fee Mitigation Agreement (Clay County Agreement/Contract _____; Agreement) entered into between Clay County and _____ on [date] provides for the County to assert a lien in the amount of the Mobility Fee Mitigation approved by the Board of County Commissioners of Clay County. The lien shall be imposed on the Project Property for a period of ten years from the earlier of: 1) the date that electrical power clearance is obtained, or 2) payment of the mobility fee is made for each building permit for Owner's buildings on the Project Property and the lien shall run in favor of the Board of County Commissioners of Clay County. The Lien may be foreclosed upon in the event of Owner's noncompliance with the requirements of the Agreement.

This Claim of Lien also secures any additional Mobility Fee Mitigation that comes due under the Agreement plus any reasonable attorneys' fees and costs which may be incurred by the County

associated with the collection of the Mobility Fee Mitigation and enforcement of this lien.

The lien shall terminate upon the expiration of the ten-year period if the Agreement is not in default, or upon payment of the lien following a sale or transfer of the Qualified Target Industry Business New Construction as provided in the Agreement.

Date: _____

CLAY COUNTY

Its Chairman

ATTEST:

Tara S. Green
Clay County Clerk of Court and Comptroller
Ex Officio Clerk to the Board

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 20____, by _____, Chairman of the Clay County Board of County Commissioners, on behalf of Clay County. He/She is ☐ personally known to me or who ☐ produced _____ as identification.

Notary Public Signature

My Commission Expires: _____
(SEAL)

Printed Name: _____

☐ Online Notary (Check if acknowledgment done by Online Notarization)

EXHIBIT C

Form of Annual Report

[please type the following on company letterhead]

[Date]

Board of County Commissioners of Clay County, Florida
Attention: Jamie Hovda, Assistant County Attorney
P. O. Box 1366
Green Cove Springs, Florida 32043

re: _____ Mobility Fee Mitigation Annual Report

Dear Mr. Hovda:

In compliance with the Mobility Fee Mitigation Agreement, Contract No. _____ (the "Agreement"), below are the employment details required for the Annual Report as referenced in Sections 5 and 7 of the Agreement. The information below reflects data from January 1, 20__ through December 31, 20__.

1. The number of Permanent Jobs (as defined in the Agreement) created as a result of the QTI New Construction and which were in existence during the period of January 1, 20__ through December 31, 20__.

Permanent Jobs Created _____

2. I certify that at least 10 of the Permanent Jobs listed in Paragraph 1 above pay at least \$_____, which is 1% in excess of the Clay County annual average wage.

3. Number of Permanent Jobs referred to in Section 1 which pay in excess of \$_____.

Jobs in Excess _____

[Signature]