

NIXON FARM TRAFFIC MITIGATION AGREEMENT

THIS AGREEMENT (“Agreement”), made this _____ day of _____, 2015, by and between the **CITY OF ANN ARBOR**, a Michigan Municipal Corporation, with principal address at 301 East Huron Street, Ann Arbor, Michigan 48107, (“City”); and **TOLL BROS., INC.**, a Pennsylvania corporation, with an address of 28004 Center Oaks Ct. Suite 200, Wixom, MI 48393 (“Proprietor”).

RECITALS:

The Proprietor is the purchaser of certain land identified as ***NIXON FARM NORTH and NIXON FARM SOUTH as described in Exhibit A*** (together, the “Property”) by virtue of a certain purchase agreement, as the same may be amended from time to time.

The Proprietor has caused the Property to be surveyed and mapped, has submitted plans for the development of the Property, and has applied to the City for zoning and site plan approval for the development of the Property (“Project”).

The intersection of **NIXON ROAD, GREEN ROAD AND DHU VARREN ROAD** (“Intersection”) is within the vicinity of the Project.

The City has reviewed and inspected the Intersection and concluded that the Intersection should be modified to mitigate traffic, to provide for safe and efficient traffic flow, and to accommodate additional traffic that will be generated by the Project.

The Project will benefit from mitigation of traffic and safe and efficient traffic flow at the Intersection.

The Proprietor is willing to contribute to the improvement of the Intersection so that traffic will be mitigated and safe and efficient traffic flow will be provided, as a condition to construction of the Project and in lieu of the Project or Proprietor being subjected to any tax, assessment, or other fee in connection with or, as a result of, the improvement of the Intersection.

To this end, the Proprietor is willing to grant easements for public right of way purposes (“Dedication”) and to pay a portion of the cost of the improvement of the Intersection (“Contribution”), as more particularly provided herein.

The City is willing to approve the site plan, to allow construction of the Project and to agree that neither the Proprietor nor the Project will be assessed for any tax, assessment, or other fee in connection with the improvement of the Intersection, so long as the Proprietor enters into this Agreement providing for the Dedication and the Contribution.

THE PROPRIETOR HEREBY AGREES:

(P-1) No later than 5 business days after the date of final site plan approval of the Project by the City, the Proprietor shall deposit the following with a mutually acceptable escrow agent pursuant to the terms of a mutually acceptable escrow agreement:

One Million twenty-five thousand four hundred sixty and No/100 Dollars (\$1,025,460.00), by wire transfer of immediately available funds, which amount shall be the Contribution. City and Proprietor agree that this amount is the maximum amount of the Proprietor's Contribution which represents 50% of the maximum projected cost of the Intersection as of the date of this Agreement, which the City has estimated is Two Million Fifty Thousand Nine Hundred Twenty and No/100 Dollars (\$2,050,920.000).

(P-2) The escrow agreement shall provide that the Contribution shall be released and delivered to the City immediately after the Proprietor closes the acquisition of the Property and becomes the fee title owner of the Property.

(P-3) The Proprietor shall grant the City an easement for construction, use, and maintenance of the public right-of-way as depicted in the City's conceptual plan for the reconfiguration of the Intersection as generally shown on Exhibit B. The easement shall include utilities and wetland mitigation adjacent to and within the intersection. The reconfiguration of the Intersection shall not require the Proprietor to deviate from the site plans for the Property as approved by City Council and may change from the conceptual plan consistent with the final design, as well as engineering design standards and best practices. Proprietor agrees to grant the easement to the City within 5 business days of the later of Proprietor closing on the acquisition of the Property, or the City providing the Proprietor with an accurate legal description of the easement area. Easement documents for the Dedication shall be in a form reasonably agreed to by the City and the Proprietor prior to the date of the grant of the easement. Acceptance of the easement shall be subject to the final approval of City Council.

(P-4) In the event the Contribution required under paragraph P-1 is not made, no grading or building permits shall be issued by the City and the Proprietor shall not be allowed to begin construction of the Project. In the event the Contribution required under paragraph P-1 has been made, and the Proprietor does not close on the acquisition of the Property and become the fee title owner on or before April 30, 2016, the Contribution shall be returned to the Proprietor and construction of the Project shall not be allowed to begin. In the event the Dedication required under paragraph P-3 is not made, no additional grading permits, building permits or certificates of occupancy shall be issued by the City for the Project.

(P-5) Proprietor shall not request the issuance of any temporary or final certificate of occupancy for the Project prior to April 1, 2017, and shall not request a total of more than 50 certificates of occupancy prior to October 30, 2017.

(P-6) The Proprietor will cooperate with the City when the Proprietor constructs and installs those water mains, storm sewers, sanitary sewers and other utilities (“Utilities”) provided for in the approved site plan so that those Utilities which are necessary for the improvement of the Intersection are brought to the vicinity of the Intersection in time for the City to make connections to such Utilities as part of the construction of the improvements to the Intersection. The Proprietor will use good faith efforts to coordinate construction timing and to avoid interfering with the City’s construction of the improvements to the Intersection. Proprietor will also cooperate with the City and provide any requested surveys, environmental reports or any other documents reasonably related to the City accepting the Dedication.

(P-7) Proprietor will, following closing on the acquisition of the Property, and at the time the easement is granted and accepted by the City, be the sole title holder in fee simple of the Property except for any mortgage, easements and deed restrictions of record. The Proprietor represents and warrants that the person(s) signing below on behalf of Proprietor has (have) legal authority and capacity to enter into this agreement for Proprietor.

(P-8) The Proprietor will pay for the cost of recording this Agreement with the Washtenaw County Register of Deeds, and will pay for the cost of recording the Dedication.

THE CITY HEREBY AGREES:

(C-1) In consideration of the above undertakings, the City agrees to issue site plan approval of the Project and, following delivery to the City of the Contribution as provided in Paragraph P-1, and when all City Ordinance and development requirements are satisfied, to allow construction of the Project to begin. Furthermore, the City agrees neither the Project nor Proprietor shall be assessed for any tax, assessment, or other fee in connection with or, as a result of, the improvement of the Intersection.

(C-2) The City shall use the Contribution and Dedication solely for reconfiguration of the Intersection as generally shown on Exhibit B, and as generally described in the estimated budget for the reconfiguration of the Intersection, dated ____.

(C-3) Following the Dedication and release of the Contribution, the City shall complete the improvements to the Intersection on or before January 1, 2018, time being of the essence.

(C-4) Should the final cost to construct the Intersection be less than the projected cost in paragraph P-1, the City will credit and pay back to Proprietor 50% of the difference between the actual cost and the projected cost.

(C-5) Should the City receive additional private contributions to the cost of the Intersection, the City will credit and pay those amounts back to Proprietor.

(C-6) The City shall record this agreement with the Washtenaw County Register of Deeds.

GENERAL TERMS

The Proprietor and the City agree as follows:

(T-1) The City has the right to modify the design and implementation of improvements to the Intersection consistent with P-3 so long as the same are consistent with the site plans. However, the City agrees that the Proprietor shall not be responsible for additional improvements to the Intersection beyond the Contribution and Dedication provided for herein.

(T-2) The Proprietor has no responsibility for the design of the improvements to the Intersection. The City shall review and approve the design of the improvements of the Intersection. The Proprietor shall have no liability for design, construction or operation of the Intersection, all of which are disclaimed. The City releases, waives and agrees not to assert against the Proprietor any claims for design, construction or operation of the Intersection. Each party agrees to defend, indemnify and hold harmless the other party, its officers, agents and employees from and against any and all claims, actions, suits or other legal proceedings arising out of or in any way resulting from the other party's default, failure of performance, or negligent conduct associated with this Agreement.

(T-3) This Agreement is not for the benefit of any third parties and is not intended to, and does not create any rights in any third parties.

(T-4) This Agreement and any of its terms, conditions, or provisions cannot be modified, amended, or waived unless in writing and unless executed by both parties to this Agreement. Any representations or statements, whether oral or in writing, not contained in this Agreement shall not be binding on either party.

(T-5) This Agreement and any of its terms or conditions shall not be assigned or transferred to any other individual or entity unless prior approval of the City is received. Such approval shall not be withheld unreasonably. Notwithstanding the foregoing, the Proprietor may assign this Agreement to a wholly owned subsidiary, or to an affiliate controlled by the parties who control the Proprietor on the condition that such assignee assumes all of the obligations of this Agreement and on the further condition that the assignor shall not be relieved of any liabilities under this Agreement.

(T-6) The obligations and conditions on the Proprietor, as set forth above in this Agreement and in the approved site plans, shall be binding on any successors and assigns in ownership of the Project.

(T-7) No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation: (1) acts

of God; (2) flood, fire, earthquake, or explosion; (3) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (4) government order or law; (5) actions, embargoes, or blockades in effect on or after the date of this Agreement; (6) action by any governmental authority; (7) national or regional emergency; (8) strikes, labor stoppages or slowdowns, or other industrial disturbances; and (9) shortage of adequate power or transportation facilities. The party suffering a *force majeure* event shall give prompt notice to the other party, stating the period of time the occurrence is expected to continue, and shall use diligent efforts to end the failure or delay and ensure the effects of such *force majeure* event are minimized.

(T-8) Failure to enforce any provisions of this Agreement by either party shall not be considered a waiver of the right to later enforce that or any other provision of this Agreement.

(T-9) This Agreement shall be interpreted, enforced and governed under the laws of the State of Michigan and Ann Arbor City Code.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day first above written.

CITY OF ANN ARBOR, MICHIGAN
301 East Huron Street
Ann Arbor, Michigan 48107

By: _____
Christopher Taylor, Mayor

By: _____
Jacqueline Beaudry, City Clerk

Approved as to Substance:

Steven D. Powers, City Administrator

Approved as to Form:

Stephen K. Postema, City Attorney

TOLL BROS., INC.

Exhibit A
Legal Description

Exhibit B