

## **SMITH'S/NORTH OGDEN CITY AGREEMENT**

This Agreement (the "Agreement") is made and entered into this 7<sup>th</sup> Day of August, 2013, (the "Effective Date") by and between North Ogden Corporation, a governmental entity duly organized under law as a political subdivision of the State of Utah (hereinafter referred to as the "City"), of 505 East 2600 North, North Ogden, UT 84414 and Smiths 1550 South Redwood Road, Salt Lake City, Utah 84104 (hereinafter referred to as the "Smith's").

WHEREAS, the City desires to have Smith's build a Smith's Market Place store (hereinafter referred to as the "Project") within their community, and

WHEREAS, Smith's has found a site they have determined to be the only viable site for them within the community, but have found that the site has some unique and expensive conditions to it that make it difficult to develop. These unique conditions include: soils with liquefaction properties and a canal relocation/burial. In Smith's opinion these unique conditions make the Project fail to meet the internal rate of return required by Smith's to build a Smith's Market Place store.

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, accepted and agreed to, the City and Smith's, intending to be legally bound, agree to the terms set forth below.

**1. TERM.** The term of this agreement shall commence as of the Effective Date, and continuing until the Project is constructed and occupied sometime prior to December 31, 2014, but not later than \_\_\_\_\_.

**2. DESCRIPTION OF PROJECT.** Smith's will build a Smith's Market Place store on tax parcel number \_\_\_\_\_, within the City limits, that will be approximately 135,000 square feet, with a value of approximately twenty million dollars (\$20,000,000) including equipment. It is estimated that this store will generate approximately eighteen million dollars (\$18,000,000) of incremental sales annually, compared to the existing Smith's grocery store which has a current annual sales volume of \_\_\_\_\_. The Project is to be completed before December 31, 2014. It is anticipated that the sales will grow by an estimated 10% per year for the first five years, between 2015 and 2020.

Both parties acknowledge that these figures represent the best projections to date and any reasonable variance from these numbers will not void this Agreement.

**3. SMITH'S RESPONSIBILITIES.** Smith's agrees to comply with development standards within the City. Smith's will pay the fees that are estimated to be up to \$522,922 that include impact, plan check, building permit and temporary utility and

connection fees to the City and various agencies both public and private. Smith's will use all reasonable efforts to construct the facility and produce the economic results described in this agreement. Smith's will not request additional financial assistance from the City regarding the Project. Smith's understands the financial participation offered by the City in this Agreement is all that will be required of the City, other than normal inspections, reviews, and permitting related duties, for Smith's to complete the Project.

**4. CITY RESPONSIBILITIES.** The City will help Smith's secure a reduction of some of their fees and/or will help pay for the building some of the utility infrastructure for that Project, up to a total dollar amount not to exceed \$272,000. In addition to the financial discounts and contributions, the City will construct a detention basin adjacent to the Project, on parcel \_\_\_\_\_, which is estimated to cost \$70,000. The total cost through to the City for reduction in fees or costs for infrastructure and the detention pond shall not exceed \$342,000. The City will be reasonable, and responsive during the development process and will not impose additional requirements not included in the current ordinances in place on the Effective Date, unless it is a compelling countervailing public interest in accordance with Utah Law. The City will work with Smith's through reasonable efforts to find solutions to any issues that may arise during planning or construction of the Project. Nothing in the Agreement shall be construed to expose the City to more than \$342,000 in liquidated damages as outlined above.

If, for any reason, the Project is not constructed as planned, the City is not responsible for performing any of its responsibilities under the terms of this Agreement.

**5. ENTIRE AGREEMENT.** This Agreement contains the entire agreement of the parties, and there are no other promises or conditions in any other current agreement whether oral or written which modifies or amends this agreement. Any future modifications to this agreement must be written and signed by authorized agents of both parties.

**6. SEVERABILITY.** If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

**7. APPLICABLE LAW.** This Agreement shall be governed by the laws of the State of Utah.

**8. DISPUTE RESOLUTION.** Any disagreement between the two parties regarding this Agreement shall be resolved through mediation and if necessary through binding arbitration. The mediators and arbitrators shall be neutral 3rd parties selected and agreed to by both parties.

**(Signatures on Separate Page)**

**NORTH OGDEN CITY**

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date set forth opposite their respective signatures below.

**BY:** \_\_\_\_\_  
**Mayor: Richard Harris**

**DATE:** \_\_\_\_\_

**ATTEST:**

**BY:** \_\_\_\_\_  
**Recorder: Annette Spendlove**

**As to Form:**

\_\_\_\_\_  
**City Attorney: Jonathan Call**

**DATE:** \_\_\_\_\_

**SMITHS:**

**By:** \_\_\_\_\_  
**Title: Steve Sorensen**

**DATE:** \_\_\_\_\_