

## **DEVELOPMENT AGREEMENT**

For Property Located at Approximately 151 E. 2550 N.

This Agreement (the "Agreement") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2018, (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 Double Ott Ranch LLC, a Utah Limited Liability Company, 2600 Mountain Road, LLC, a Utah Limited Liability Company and 2100 North Investments, LP a Utah Limited Partnership all of 1025 E. 2100 N. North Ogden, Utah 84414, 2600 North (hereinafter collectively referred to as the "DOR").

WHEREAS, the City desires to construct a new storm water facility along with park improvements to provide a benefit to the community; and

WHEREAS, DOR has a desire to at some point in the future develop the property it owns at approximately 151 E. 2550 N., North Ogden, Utah 84414 known on the tax roles as parcel # 18-056-0060 ("Property"); and

WHEREAS, the City has been approached by Pineview Water Systems about locating a new secondary water storage facility in the boundaries of North Ogden City; and

WHEREAS, the City sees the opportunity to construct a fishing pond, park, and secondary water storage, (collectively "Project") on the Property to satisfy the needs of the City and Pineview Water Systems; and

WHEREAS, DOR sees a benefit to the remainder of the Property with the location of a City park on the Property; and

WHEREAS, DOR desires to facilitate the construction of the Project by selling the a six point six (6.6) acre parcel on the Property for the Construction of the Project; and

WHEREAS, the City and DOR find it mutually beneficial to have DOR dedicate the six point six (6.6) acres to the City in lieu of future parks and storm water impact fees as allowed for under Utah State Statute 11-36a et al; and

WHEREAS, the DOR has two additional properties located in the City that have minor development issues;

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 DOR, intending to be legally bound, agree to the terms set forth below.

**1. TERM.** Commencing as of the Effective Date, and continuing until January 1, 2043.

**2. DESCRIPTION OF PROJECT.** The City will cause to be constructed a detention basin (“basin”) which may also act as a community park, recreation pond, and secondary water reservoir for all residents of the City. The construction of the basin will be to the terms and conditions as outlined on **Schedule 2**.

**3. Double Ott Ranch LLC’s RESPONSIBILITIES.** DOR will deed, via warranty deed, an approximately six point six (6.6) acre parcel plus or minus to the City for the Project as identified in **Exhibit 3**. The property will be transferred with marketable title via a properly executed warranty deed. DOR will provide an easement for the storm drain, secondary water and other utilities as outlined on Exhibit 3. It is agreed by both parties the value of the land is Two Hundred Thousand Dollars (\$200,000) per acre with each party to pay its own closing costs. It is agreed by both parties that the 66 foot wide utility easement for 150 East from 2225 North to 2550 North shall be transferred to the City in exchange for the City to pay for and construct the storm drain line, sewer line, and 150 East roadway to base standards as described in Schedule 2. This means that the DOR shall be allowed to connect to the storm drain line and sewer line as provided for through the normal development process.

The City has purchased an easement from the Maria Montessori School for the storm drain/irrigation line supply piping to the Project along the eastern border of the DOR property.

**4. CITY RESPONSIBILITIES.**

- a. The City agrees to accept a dedication in lieu of the impact fees on the Property, as outlined below.

Parks Impact Fees – enough fees to cover 542 multifamily units which is equal to 325 equivalent residential units.

Storm Water Impact Fees – the fee for 855,000 square feet of impervious surface which is equal to 306 equivalent residential units.

- b. The City shall provide adequate vouchers valid for the 325 ERUs of park impact fees and 306 ERUs of storm water impact fees. DOR is not required to present the vouchers for redemption at the time impact fees are due, but such vouchers are not transferrable unless approved in writing by the Mayor of North Ogden City, whose signature shall not be unreasonably withheld. Any vouchers are fully transferrable by the DOR. In the event the DOR transfers the vouchers, said transferred vouchers shall be considered the property of the transferee and shall be deducted from the total vouchers originally received by DOR. Each voucher shall be valued at one (1) ERU at the time they are redeemed. This means that they will cover the full cost of

an ERU even if the impact fee changes between the time the vouchers are issued and the time at which they are redeemed.

- c. The City shall provide DOR with a non-pressurized irrigation turn-out from the Project sufficient to supply irrigation water for the DOR. The DOR shall construct and pay for its own pump and facilities to irrigate the DOR property. The DOR's pump facilities shall be approved by the North Ogden Irrigation Company and equipped with a meter.
- d. The City will approve a zoning on the remaining acreage of the property owned by Double Ott Ranch, LLC (**Exhibit 4b**) with a minimum density of twenty (20) multi-family units to the acre.
- e. The City agrees to install a 36" storm drain on 2100 North to connect to the property owned by 2100 North Investments, LP as outlined on **Exhibit 4c**. This project is currently on the City's capital facilities plan. The storm drain line is expected to extend through property owned by the DOR. The DOR is aware that the construction of the storm drain on its property is the DOR's responsibility, however, if the storm drain needs to be larger to serve future development beyond the current boundary of 2100 North Investments, LP; the City will pay the cost to make the line bigger. The DOR shall not be responsible for any costs associated with the installation of the storm drain to its property along 2100 North. Construction shall occur at the earliest of either (1) the application from 2100 North Investments, LP for the development of the property into residential housing or (2) the construction by the City of any improvements to 2100 North.
- f. The City agrees to install a storm drain relief line of sufficient capacity downstream of 2600 North and 1125 East to carry storm water from the proposed Northampton Phase 7-8 subdivision. The developer of Northampton Phase 7-8 will be required to pay for and construct a storm drain outfall line to carry the peak 100-yr storm water flow rate from Northampton Phase 7-8 to the intersection of 2600 North and 1125 East. The developer of Northampton Phase 7-8 will not be required to have onsite detention if the development is approved prior to January 1, 2019 as shown on Exhibit 4D. The reason for the deadline is to have approval prior to the date at which the City's general storm water permit will be renewed. The Department of Environmental Quality has indicated that storm water permit renewal in 2019 will require onsite retention for all new development and redevelopment.
- g. The City shall cause a detention basin and public park to be constructed on the property. The parties understand that the basin and park design has not been approved and that the design and construction is the sole responsibility of the City. However, the City shall work with DOR in designing the basin and park to mutually benefit the surrounding property by providing for adequate

shoreline treatment to mitigate weeds and unsightly things. FURTHERMORE, the City shall not use or develop the purchase property for any other purpose than a detention basin, irrigation pond, and city park.

- h. The City shall provide at no cost to DOR two solar inspections and building permits at a location of DOR's choosing.

**5. FUTURE AGREEMENT.** Though the parties anticipate the future approval of a rezone (Master Planned Community) on the Property if no agreement is reached the developer shall be authorized to develop the property under the current R4 zoning standards in effect on the date of this agreement with twenty (20) units to the acre. Provided that building heights shall not exceed 45' and there remains at least 25% vegetative open space for the entire project and all exterior materials are a mixture of cementitious siding and/or brick or natural stone. Glass, metal, and vinyl are allowed for the windows and doors and any railing within the project. DOR shall be allowed to count the 6.6 acres sold for up to 10% of the landscaping requirement on DOR's remaining property but shall still be required to provide at least 15% landscaping for each portion of development.

A site plan and other approvals will be required in accordance with the R4 zone and all relevant land use provisions in the North Ogden City Code.

**6. ENTIRE AGREEMENT.** This Agreement including all attached Schedules and Exhibits which are made a part hereof contains the entire agreement of the parties, and there are no other promises or conditions in any other agreement whether oral or written.

**7. 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.

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

**9. TIED TO THE LAND.** This Agreement shall run with the land to all successors in interest to DOR as it relates to the deeding of acreage to the City and as it relates to the vesting of density on the Property. However the ERUs granted under paragraph 4a above are completely transferrable by the DOR and the City agrees to honor those ERUs if and when presented by any successor in interest.

**10. SURVIVAL CLAUSE.** All relevant provisions of this Agreement shall survive the closing of any property exchanges between the parties such that this shall not be construed as a purchase agreement for the exchange of property.

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**Double Ott Ranch, LLC**

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**NORTH OGDEN CITY**

\_\_\_\_\_  
By: Brent Chugg  
Its: Mayor

\_\_\_\_\_  
**Attest: S. Annette Spendlove**

## **Schedule 2**

### **Construction Terms**

#### **Construction of 150 East:**

1. The City shall create a final design of 150 East from the extension of 2225 North Street northward to 2550 North.
2. The City shall install the storm drain on 150 East from the extension of 2225 North Street northward to 2550 North. The discharge from the storm drain flows both to the north and the south.
3. The City shall install the sewer main on 150 East from 2300 North to 2225 North.
4. The City shall improve 150 East to road base standards. The City is not required to put in sidewalk, curb and gutter.
5. The City shall allow DOR to install additional utilities in 150 East at the discretion of the DOR. The cost of these additional utilities shall be the responsibility of the DOR. Both sides agree to work with the subcontractor chosen to improve 150 East to minimize the cost.

#### **Construction of 2300 North:**

1. The City shall design AND construct the 2300 North road from the purchased property east to the nearest city road.
- 2.
3. The City shall improve 2300 North to a public road standard.
4. The City shall allow DOR to install additional utilities in 2300 North at the discretion of the DOR. The cost of these additional utilities shall be the responsibility of the DOR. Both sides agree to work with the subcontractor chosen to improve 2300 North to minimize the cost.

#### **General Construction:**

1. The City shall coordinate construction with the DOR especially concerning the storage and staging areas of construction, the truck routes, temporary fencing, etc.
2. The City will cause a barrier to be constructed across 150 East to prohibit public traffic using 150 East until such time as the property west of the purchased property is developed. The City will also place permanent fencing along 2300 North's south boundary until such time as the property south of the purchased property is developed. In addition, fencing shall be placed around the purchased property.

#### **Detention Basin Construction:**

1. The City shall cause a detention basin to be constructed on the property within two years of the date of this Agreement.

2. The City agrees to install a 6 foot, commercial grade, poly vinyl chain link, black fence along the boundaries of the property.
3. The City shall install permanent bathroom facilities on the property.
4. The City shall improve 2300 North to final City standards on the property.
5. A non-pressurized irrigation turnout shall be provided from the irrigation facility at the site to divert irrigation water to the DOR property. The irrigation turnout shall be designed and constructed as part of the project. The DOR shall pay for pumping and metering equipment as required by the North Ogden Irrigation Company at the DOR's end of the turnout.

**Additional Project Sponsors and Participants:**

1. This agreement is subject to the cooperative efforts of North Ogden Irrigation Company, Pineview Water Systems and the Weber-Box Elder Conservation District to provide the irrigation amenities mentioned herein. The City and the DOR understand that this agreement does not obligate the North Ogden Irrigation Company, Pineview Water Systems or the Weber-Box Elder Conservation District in any way.
2. The City and DOR acknowledge that the ongoing cooperative efforts with all parties associated with the Project may not result in the Project being constructed as anticipated in this agreement or being constructed at all. Likewise, both parties agree that modifications may need to be made to this agreement to keep the Project active and will not unreasonably delay or inhibit the Project construction or timeline.
3. Both Parties acknowledge that the project may be constructed without the irrigation facility component. If the irrigation component is not incorporated into this facility the City shall not be obligated to provide an irrigation solution to the DOR. This means that the DOR shall provide their own irrigation pond, pumping facilities and other infrastructure needed to irrigate the pasture.

**Exhibit 3**

**(This Schedule would be the Concept Plan on Double Ott's property)**

**Exhibit 4b**

**(This is a map of the area DOR wants rezoned)**

**Exhibit 4c**

**(This is a map of the easement for the Storm Drain on 2100)**

**Exhibit 4d**

**(This is a map of the 2600 North detention basin and hook-up option)**