

**Receipt And Release**  
**City of Waukesha – Smart Family Trusts**

The City of Waukesha, Wisconsin, referred to herein as the City, executes this Receipt and Release to and for the benefit of the Robert F. Smart and Carol O. Smart Revocable Trust of 2010; the Carol O. Smart Survivor's Trust; the Smart Family Trust; and their Trustee, Carol O. Smart, together referred to herein as the Trusts.

**Recitals**

The Trusts made a commitment for funding certain improvements to Sunset Drive, referred to herein as the Road Improvements, which the City has determined are necessary to accommodate increased traffic on Sunset Drive resulting from the nearby development of lands belonging to the Trusts, outlined in a letter from the Trusts to City Administrator Ed Henschel dated February 28, 2014, a copy of which is attached. This letter is referred to herein as the Commitment Letter.

The Commitment Letter states that the funding would consist of a payment of \$700,000.00, less expenses incurred by the Trusts in having an engineering consultant perform design work for the Road Improvements. The parties acknowledge that the expense for the engineering consultants, Jahnke & Jahnke Associates, Inc., and PSI, Inc., totaled \$10,106.20, leaving a net payment to be made to the City of \$689,893.80.

The Trusts are willing to commit only to the payment terms stated in the Commitment Letter and no more, and wish to have the City acknowledge that the Trusts' obligation to contribute to the Road Improvements is limited only to the terms of the Commitment Letter, and to release the Trusts from any further obligations with respect to the Road Improvements described in the Commitment Letter.

The Trusts further wish to have the City acknowledge and agree that the City will not rely upon the engineering consultant's work in any way for the design and engineering of the Road Improvements, such that neither the Trusts nor the engineering consultant shall be responsible or liable for the design, engineering, or construction of the Road Improvements.

The City is willing to acknowledge that the Trusts' obligations are limited only to the funding commitment stated in the Commitment Letter, and to release the Trusts from any further obligations or liabilities in connection with the Road Improvements.

Therefore, the City of Waukesha acknowledges and agrees as follows:

- 1. Receipt of Payment.** The City acknowledges receipt of payment from the Trusts in the amount of Six Hundred Eighty-Nine Thousand Eight Hundred Ninety-Three Dollars and Eighty Cents (\$689,893.80), acknowledges that the payment satisfies and discharges in full the Trusts' obligations stated in the Commitment Letter, and agrees that the Trusts have no further obligations to commit additional funds to the design, construction or maintenance of the Road Improvements.
- 2. No Reliance on Engineering Consultants.** The City acknowledges and agrees that (1) the engineering consulting work done by Jahnke & Jahnke Associates, Inc., and PSI, Inc., was limited to determining cost estimates for the Road Improvements, and that such consulting work is deemed to satisfy the requirements of the Commitment Letter even though the work did not extend to design and engineering of the Road Improvements; and (2) the City will not rely upon the engineering consulting work done by Jahnke & Jahnke Associates, Inc. or PSI, Inc., for the Trusts in connection with the Road Improvements; and that the City will perform its own engineering and design work for the Road Improvements.
- 3. Release of Claims.** In consideration of receipt of the payment referred to in section 1, the City hereby forever and fully releases, waives and discharges any and all claims, demands, causes of action, lawsuits, damages, obligations and any other liabilities of any kind arising from, or in any way connected with, the terms and conditions of

the Commitment Letter, which the City has, or may ever have against the Trusts, including, but not limited to, claims relating to the engineering consulting work performed for the Trusts by Jahnke & Jahnke Associates, Inc., and PSI, Inc.

Dated the \_\_\_\_\_ day of April, 2016.

City of Waukesha

\_\_\_\_\_  
By Shawn N. Reilly, Mayor

\_\_\_\_\_  
Attest: Gina L. Kozlik, City Clerk

Approved as to form:

\_\_\_\_\_  
Brian E. Running, City Attorney

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RICHARD S. HIPPENMEYER  
(1911-1979)

WILLIAM F. REILLY  
(1932-2007)

February 28, 2014

Mr. Ed Henschel, City Administrator  
City of Waukesha  
201 Delafield Street  
Waukesha, WI 53188

RE: Robert F. Smart and Carol O. Smart Revocable Trust of 2010, Carol O. Smart, Trustee

Dear Mr. Henschel:

Following our many discussions in regards to this matter, the Robert F. Smart and Carol O. Smart Revocable Trust of 2010, by its Trustee, Carol O. Smart, hereby commits an amount not to exceed \$700,000.00 towards the design and construction of improvements to Sunset Drive (the "Improvements") that the City has determined are necessary to accommodate increased traffic from a nearby redevelopment project and the proposed development of Trust's land. As we have discussed, the Improvements related to this commitment shall be from the eastern line of the proposed Meijer property to Sunset Drive's easternmost intersection with Camden Way, including those portions of Sunset Drive which lie outside of the City's jurisdictional limits. The funds that are being committed by the Trust shall be used exclusively by the City of Waukesha for the construction of those Improvements.

This is a commitment for a defined level of funding only. The City of Waukesha shall be solely responsible for the actual construction of the Improvements, and the Trust shall take no part in that construction, nor shall it have any further obligation to commit additional funds to the construction of those Improvements. It shall be the City's sole responsibility to obtain the necessary approvals from the Town of Waukesha to enable the City to construct those Improvements within the Town's jurisdiction. The City shall also be solely responsible for obtaining any required permits from the proper authorities.

As we have indicated, the Trust will commit a total amount not to exceed \$700,000.00 towards the design and construction of the Improvements. As an initial step, the Trust will engage the necessary professionals for the design of those Improvements. Once the plans for those Improvements have been completed, those plans will be submitted to the City for its review and acceptance, and in order that the City may be able to determine the costs of constructing the Improvements. However, please understand that the costs incurred by the Trust for the initial engineering and design of the Improvements will be deducted from the amount not to exceed \$700,000.00.

Of course, the Trust's commitment of these funds is conditioned upon funds actually being available to the Trust for its use. Accordingly, this commitment is conditioned upon the successful closing on the sales contract between the Trust and Meijer. Assuming that sale transaction successfully closes, the Trust shall then place the remaining balance of the committed funds in an escrow account to be utilized by the City for its construction activities. It is expected that construction will take place by no later than the end of 2016 and the escrowed funds will be available for the City's use until that time. For example, if the design costs are \$50,000.00, following the successful closing of the sale transaction, the Trust will then place the remaining \$650,000.00 in escrow for the City's use until the end of 2016. Any monies remaining in escrow at the conclusion of the construction or the end of 2016 - and/or any interest earned thereon - shall be returned to the Trust.

Mr. Ed Henschel, City Administrator  
February 28, 2014  
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If the Trust's commitment is acceptable, it is expected that the City and Trust will work towards a more formal agreement which incorporates the contents of this letter.

If you have questions regarding this matter, please do not hesitate to contact us.

ROBERT F. SMART AND CAROL O. SMART REVOCABLE TRUST OF 2010

By:   
Carol O. Smart, Trustee

Sincerely,

HIPPENMEYER, REILLY, MOODIE & BLUM, S.C.

  
Thomas G. Schmitzer

TGS/akg

Cc: David Smart (via email)  
Paul Smart (via email)  
Eric Obarski (via email)  
Josh Pudelko (via email)