

1.3 Ordinance Amendments. The CITY reserves the right to amend the Ordinance at any time. The CITY shall give the PROVIDER notice and an opportunity to be heard concerning any proposed amendment. If there is any inconsistency between the PROVIDER's rights and obligations under the Ordinance as amended and this Agreement, the provisions of this Agreement shall govern during its term. Otherwise, the PROVIDER agrees to comply with any such amendments.

1.4 Franchise Description. The Telecommunications Franchise provided hereby shall confer upon the PROVIDER the nonexclusive right, privilege, and franchise to construct and maintain a telecommunications, but not video, network in, under, above and across the present and future public Rights-of-Way in the City, subject to the requirements set forth in the Ordinance and other applicable laws and City standards. Nothing in this Agreement shall excuse the PROVIDER from complying with City laws, including but not limited to the requirement to obtain excavation permits, inspections, and adhere to other applicable regulations. The franchise does not grant to the PROVIDER the right, privilege or authority to engage in community antenna (or cable) television business; although, nothing contained herein shall preclude the PROVIDER from: (1) permitting those with a cable franchise who are lawfully engaged in such business to utilize the PROVIDER's System within the CITY for such purposes; or (2) from providing such service in the future if an appropriate franchise is obtained and all other legal requirements have been satisfied.

1.5 Licenses. The PROVIDER acknowledges that it has obtained the necessary approvals, licenses or permits required by federal and state law to provide telecommunication services consistent with the provisions of this Agreement and with the Ordinance.

1.6 Relationship. Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties and neither party is authorized to, nor shall either party act toward third persons or the public in any manner that would indicate any such relationship with each other.

ARTICLE 2. FRANCHISE FEE.

2.1 Franchise Fee. Pursuant to state law, in lieu of any "Franchise Fee", for the Franchise granted herein, the PROVIDER shall pay to the CITY a tax in accordance with the Municipal Telecommunication License Tax Act, as set forth in Utah Code Ann. § 10-1-401 to §10-1-410, as amended (the "Tax"), as well as any other applicable taxes or fees. All payments shall be made to the Utah State Tax Commission, and sent as follows:

Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134

2.2 Equal Treatment. The CITY agrees it shall not grant any provider any undue preference or unreasonable advantage.

COMPARISON

on Exhibit "C" as Phase 1B improvements. Phase 1B shall begin construction no later than 2014, and shall be completed by December 31, 2018. Notwithstanding any other provisions to the contrary, the Parties specifically acknowledge and agree that (i) no vertical construction shall begin on any Residential Buildings or the clubhouse in Phase 1B until after vertical construction on the first Flex Business Space building in Phase 1A (approximately 52,500 square feet) has begun; (ii) until vertical construction begins on the second Flex Business Space building of Phase 1A (approximately 52,500 additional square feet), vertical construction shall not be allowed on more than three Residential Buildings plus the clubhouse in Phase 1B containing a total of not more than 84 Residential Dwelling Units (plus or minus 8%, or 6 units, as set forth above); and (iii) after vertical construction begins on the second Flex Business Space building of Phase 1A, vertical construction may begin on additional Residential Buildings in Phase 1B (the remaining approximately 84 Residential Dwelling Units not previously built in Phase 1B). Notwithstanding anything to the contrary herein, Master Developer shall have the right to reduce, by any amount, the number of Residential Dwelling Units to be constructed in any Phase, and in such event Master Developer shall have the right to increase, by the same amount, the number of Residential Dwelling Units constructed in a subsequent Phase or Phases. In all events Master Developer shall not exceed the Total Approved Residential Units.

(c) Phase 1C. Master Developer shall construct the following improvements as Phase 1C of the Project, consisting of (i) Flex Business Space containing

Deleted:) no building permits shall be issued for any Residential Buildings or the clubhouse in Phase 1B until after the first Flex Business Space building in Phase 1A (approximately 52,500 square feet) has received a building permit from the City and construction has begun; (ii

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Deleted:) shall be issued building permits from the City until the first Flex Business Space building in Phase 1A has been issued a certificate of occupancy by the City and

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approximately 27,000 square feet, and (ii) those certain items of Project Infrastructure specifically designated on Exhibit “C” as Phase 1C improvements. Phase 1C shall begin construction as soon as justified by market conditions.

(d) Phase 1D. Master Developer shall construct the following improvements as Phase 1D of the Project, consisting of (i) a new school, community center or other similar civic/community use as set forth in 4.1D of the MDP, and grounds occupying approximately five (5) acres, and (ii) those certain items of Project Infrastructure specifically designated on Exhibit “C” as Phase 1D improvements. Phase 1D shall begin construction as soon as justified by market conditions. If Phase 1D is developed as a school, (i) the school’s field areas shall be available for use by the public during periods when they are not in use for school purposes, as determined in the school’s sole, reasonable discretion, (ii) such use by the public shall be subject to reasonable rules and regulations as determined by the school in its sole, reasonable discretion, and (iii) any conveyance of the school grounds property shall include restrictive covenants/easements to protect said public access.

(e) Phase 2. Master Developer shall construct the following improvements as Phase 2 of the Project, consisting of (i) not less than two Flex Business Space buildings containing a total of approximately 187,000 square feet (“Phase 2A”); (ii) three Residential Buildings containing a total of not more than 96 Residential Dwelling Units (plus or minus 8%, or 7 units, as set forth above) (“Phase 2B”), and (iii) those certain items of Project Infrastructure specifically designated on Exhibit “C” as Phase 2 improvements. Phase 2 shall begin construction as soon as justified by

market conditions. Notwithstanding any other provisions to the contrary, the Parties specifically acknowledge and agree that (i) no vertical construction shall begin on any Residential Buildings in Phase 2B until after vertical construction on the first Flex Business Space building in Phase 2A (approximately 93,500 square feet) has begun; (ii) until vertical construction begins on the second Flex Business Space building of Phase 2A (approximately 93,500 additional square feet), vertical construction shall not be allowed on more than two Residential Buildings in Phase 2B containing a total of not more than 48 Residential Dwelling Units (plus or minus 8%, or 4 units, as set forth above); and (iii) after vertical construction begins on the second Flex Business Space building of Phase 2A, vertical construction may begin on additional Residential Buildings beyond the second Residential Building in Phase 2B (the remaining approximately 48 Residential Dwelling Units not previously built in Phase 2B).

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Deleted:) shall be issued building permits from the City until the first Flex Business Space building of Phase 2A has been issued a certificate of occupancy by the City and

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(f) Remaining Project Improvements. Implementation, development and construction of improvements in connection with all subsequent Phases of the Project, including the timing thereof and the particular types and uses of such improvements, shall be based on market conditions and site constraints as determined by Master Developer. However, the Parties acknowledge and agree that buildout of all remaining Phases (3 through 9), if they are built, shall be in sequential order as set forth in Section 6.1 of the MDP, unless the Parties agree in writing to amend the MDP and modify the Phasing plan therein. In other words, no buildings in Phase 4 shall be issued building permits by the City until all of the buildings in Phase 3 have been completed, and so forth.

16.2.2. Identification of Provisions. Identify with particularity the provisions of any applicable law, rule, regulation or provision of this MDA or the MDP that is claimed to be in Default;

16.2.3. Specify Materiality. Identify why the Default is claimed to be material; and

16.2.4. Optional Proposed Cure. If elected by the party delivering the Notice of Default, in its discretion, the Notice of Default may propose a method and period of time for curing the Default, which period of time shall be not more than sixty (60) days.

16.3. **Meet and Confer.** Upon the issuance of a Notice of Default the Parties shall engage in a “Meet and Confer” process, which means that the Parties and/or their representatives shall meet together in person (or by telephone if meeting in person is not reasonably possible in a timely manner) to discuss the claimed Default and shall attempt, in good faith, to reach a mutually acceptable resolution.

16.4. **Remedies.** If the Parties are not able to resolve the Default through the “Meet and Confer” process then the parties may pursue the following remedies:

16.4.1. Legal Remedies. The rights and remedies available at law and in equity, including injunctive relief and specific performance, but not damages; provided, however, that Master Developer shall be allowed to pursue a money judgment for out-of-pocket costs actually paid by reason of the City’s Default, limited to the following: (i) payment of interest pursuant to any loan, contract or other obligation, (ii) costs incurred in connection with the delay, termination, and/or extension of construction activity, (iii) costs incurred in connection with construction mobilization and/or remobilization, (iv)

costs incurred in connection with management, termination, and/or amendment of existing contracts, and with entering into new contracts as necessary to replace any such terminated contracts. (v) payment of penalties and/or fees under any contract or account, (vi) payment of insurance premiums, ~~(vii) costs incurred in connection with renewing,~~ updating and/or replacing reports, studies and/or applications, and (viii) reasonable attorney's fees, legal expenses and court costs. In no event shall the City have any obligation to pay Master Developer, UTA, or any successor in interest, for consequential damages, lost profits, or lost opportunity costs arising by reason of an alleged or established Default of the City, and Master Developer and UTA hereby irrevocably waive any right to assert any claim for the same. Notwithstanding any other provision contained herein, the City's aggregate liability for out-of-pocket costs actually paid by Master Developer by reason of the City's Default, including but not limited to attorney's fees, legal expenses and court costs, shall not exceed five million dollars (\$5,000,000.00).

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16.4.2. Enforcement of Security. The right to draw on any security posted or provided in connection with the Project and specifically relating to remedying of the particular Default.

16.4.3. Withholding Further Development Approvals. The right to withhold all further reviews, approvals, licenses, building permits and/or other permits for development of the Project in the case of a default by Master Developer, or in the case of a Default by a Subdeveloper, development of those Subareas for which it has acquired development rights, until the Default has been cured.

16.5. **Public Meeting.** Before any remedy in Section 16.4 may be imposed by the City

Master Developer reasonably deems necessary for the construction of said Depot Street extension, Master Developer shall give written notice thereof to City, whereupon Master Developer and City shall work together in good faith to identify a mutually acceptable resolution. The City acknowledges its right of eminent domain to acquire property necessary for roads and related purposes as well as its willingness to consider the exercise of such right if warranted by the circumstances; however, the Parties also acknowledge and agree that the City's exercise of eminent domain powers is a future legislative decision of the City Council as constituted when that issue arises. In the event that the Parties are unable to mutually agree upon a resolution within ninety (90) days of the date of such notice, the Parties may mutually agree in writing to terminate this MDA, whereupon this MDA shall have no further force or effect. If, at the time of such termination, the physical construction of improvements pursuant to a building permit has already commenced, Master Developer shall be obligated to complete the construction of such improvements.

10.3. New Primary Intersection at State St. The Parties understand and agree that in order to facilitate better traffic flow both within and adjacent to the Project, Master Developer shall either construct or cause to be constructed, at its own expense (except as otherwise provided in Exhibit "C"), a new four-way intersection at the junction of the Project's main road and State Street. Said intersection shall be generally in conformance with the conceptual design in the MDP, subject to approval from the Utah Department of Transportation ("UDOT") and the City. Master Developer shall apply for UDOT's approval of said intersection in connection with each Phase until such time as the intersection is approved by UDOT. Once UDOT determines that said intersection is warranted and Master Developer has obtained all permits and other

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approvals, whether from UDOT, the City, and/or any other applicable governing authority, necessary for the construction of said intersection, the City will not be required to issue any building permits with respect to any Phase beyond the Phase that immediately follows the then current Phase, until construction of said intersection is complete. As an example for illustration purposes only, if UDOT determines that said intersection is warranted and Master Developer obtains all necessary permits and other approvals during Phase 1C, then Master Developer may complete Phase 1C and obtain building permits for Phase 1D without limitation, but the City shall not be required to issue any building permits for Phase 2A or any subsequent Phase until construction of said intersection is completed. The City acknowledges its willingness to consider

loaning funds to Master Developer for acquisition of lands required in connection with such intersection, and City and Master Developer shall, within one hundred twenty (120) days after the date of this MDA, seek to enter into a loan agreement on terms that are mutually agreeable to the Parties (including four percent (4%) interest on loan balance annually until paid). In the event that Master Developer is unable, for any reason, to purchase or otherwise acquire any lands and/or rights, including from third-parties, as Master Developer reasonably deems necessary for the construction of said intersection, Master Developer shall give written notice thereof to City, whereupon Master Developer and City shall work together in good faith to identify a mutually acceptable resolution. The City acknowledges its right of eminent domain to acquire property necessary for roads and related purposes as well as its willingness to consider the exercise of such right if warranted by the circumstances; however, the Parties also acknowledge and agree that the City's exercise of eminent domain powers is a future legislative decision of the City Council as constituted when that issue arises. In the event that the Parties are unable to mutually