

ENOCH CITY COUNCIL NOTICE AND AGENDA

July 1, 2026 at 6:00pm

City Council Chambers City Offices, 900 E. Midvalley Road

Join Zoom Meeting <https://us02web.zoom.us/j/87344015039>

Meeting ID: 873 4401 5039

1. CALL TO ORDER OF REGULAR COUNCIL MEETING

- a. Pledge of Allegiance-
- b. Invocation (2 min.)-Audience invited to participate-
- c. Inspirational thought-
- d. Approval of Agenda for July 1, 2026
- e. Approval of Minutes for June 17, 2026
- f. Conflict of Interest Declaration for this agenda-

2. PUBLIC COMMENTS

3. ECONOMIC DEVELOPMENT PRESENTATION

4. CONSIDER BOOTS FREI DEVELOPMENT AGREEMENT

5. DISCUSS FRAUD RISK ASSESSMENT

6. DISCUSS FIREWORKS FOR THE 24TH

7. COUNCIL/STAFF REPORT

8. CLOSED SESSION TO DISCUSS ONE OR MORE OF THE FOLLOWING: THE CHARACTER, PROFESSIONAL COMPETENCE OR PHYSICAL OR MENTAL HEALTH OF AN INDIVIDUAL COLLECTIVE BARGAINING; PENDING OR REASONABLY IMMINENT LITIGATION, THE PURCHASE, EXCHANGE, OR LEASE OF REAL PROPERTY, INCLUDING ANY FORM OF WATER RIGHTS OR WATER SHARES; DEPLOYMENT OF SECURITY PERSONNEL, DEVICES OR SYSTEMS; INVESTIGATIVE PROCEEDINGS REGARDING ALLEGATIONS OF CRIMINAL MISCONDUCT.

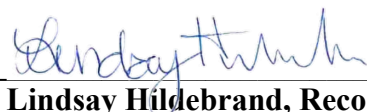
9. ACTION FROM CLOSED MEETING

10. ADJOURN

In compliance with the Americans with Disabilities Act, persons needing auxiliary communicative aids and services for these meetings should call the City Offices at 435-586-1119, giving at least 24 hours advance notice. Meetings of the Enoch City Council may be conducted by electronic means pursuant to Utah Code Annotated, Section 52-4-207. In such circumstances, contact will be established and maintained by telephone or other electronic means and the meeting will be conducted pursuant to the Enoch City Code of Revised Ordinances, Chapter 3-500, regarding meeting procedures including electronic meetings.

CERTIFICATE OF DELIVERY

I certify that a copy of the foregoing "Notice and Agenda" was delivered to each member of the City Council, posted on the Enoch City website, on the City Office entrance, and published on the Utah Public Meeting Notice website on 06/29/2026.


Lindsay Hildebrand, Recorder

06/29/2026

Date

MINUTES
ENOCH CITY COUNCIL
June 17, 2026 at 6:00pm
City Council Chambers
City Offices, 900 E. Midvalley Road

MEMBERS PRESENT:

Mayor Jim Rushton
Council Member David Harris - Excused
Council Member Shawn Stoor
Council Member Debra Ley
Council Member Kimberlee Trower
Council Member Jacob Miner

STAFF PRESENT:

Ryan Robinson, City Manager
Ashley Horton, Treasurer
Lindsay Hildebrand, Recorder
Jackson Ames, Police Chief
Justin Wayment, City Attorney
Hayden White, Public Works Director

Public Present: Delaine Finlay, Jonathan Wilson, Kellie Counsil, and Montana Darger

1. CALL TO ORDER OF REGULAR COUNCIL MEETING by Mayor Rushton

- a. **Pledge of Allegiance-** Led by Lynn Nielson
- b. **Invocation (2 min.)-Audience invited to participate-** Given by Mayor Rushton
- c. **Inspirational thought-** Given by Council Member Ley
- d. **Approval of Agenda for June 17, 2026- Council Member Ley made a motion to approve the agenda. Council Member Miner seconded and all voted in favor.**
- e. **Approval of Minutes for June 3, 2026 - Council Member Ley had two changes to the minutes. "Day of Service" needed to be capitalized, and the word "wreaths" was misspelled. Council Member Ley made a motion to approve the minutes with those amendments. Council Member Miner seconded and all voted in favor.**
- f. **Ratification of Expenditures- Council Member Ley made a motion to ratify the expenditures for the month. Council Member Miner seconded and all voted in favor.**
- g. **Conflict of Interest Declaration for this agenda-** None stated

2. PUBLIC COMMENTS

Kellie Counsil was present representing a new coffee shop moving in, next to the Hub on Midvalley Rd. She expressed concern that the \$25,777 transportation impact fee was excessive for a small, locally-owned business and questioned whether the fee calculation accurately reflected her business's actual traffic impact.

Lynn Nielson, Building Inspector, explained that transportation impact fees were charged based on occupancy type rather than at the time of shell building construction, and that the coffee shop met the criteria for "fast food" classification based on having two or more of four characteristics: no table service, disposable packaging, limited seating, and drive-up service. City Manager Robinson explained that the City's impact fee study had recommended even higher rates, and that the City had already reduced fees below the study recommendations.

The Council discussed the complexity of impact fees and their role in ensuring that new development pays for infrastructure improvements necessitated by growth. City Attorney Wayment explained that impact fees help protect existing residents from bearing the full cost of infrastructure expansion required by new development. The Council invited Ms. Council to meet with staff to review the classification and explore whether any changes to the business model could affect the fee calculation. Council Member Trower suggested adding an item to a future agenda regarding the criteria for fast food establishments.

3. CONSIDER RESOLUTION NO. 2026-06-17-A, A RESOLUTION TO ADOPT A CERTIFIED PROPERTY TAX RATE FOR FISCAL YEAR ENDING JUNE 30TH 2027

Mayor Rushton tabled this item until City Attorney Wayment could research whether it needed to include a public hearing.

After research, staff confirmed that the resolution simply certified the existing tax rate without increasing it, and no public hearing was necessary.

Council Member Ley made a motion to approve Resolution No. 2026-06-17-A, a resolution to adopt a certified property tax rate of 0.001115 for the fiscal year ending June 30th, 2027. Council Member Trower seconded and a roll call vote was held as follows:

**Council Member Stoor: Yes
Council Member Ley: Yes
Council Member Miner: Yes**

**Council Member Harris: Yes
Council Member Trower: Yes**

4. CONSIDER ORDINANCE NO. 2026-06-17, AN ORDINANCE TO AMEND THE CODE OF REVISED ORDINANCES OF ENOCH CITY, SECTION 11.300.344 UNLAWFUL PARKING

City Manager Robinson introduced this item. The ordinance made several key changes: it reduced the penalty for unlawfully parking a commercial vehicle from a Class B misdemeanor (which could include jail time) to an infraction with a fine; removed the specific time restriction of 10 p.m. to 5 a.m. for on-street parking; and clarified language regarding road width requirements and fire lane access.

The Council discussed enforcement procedures, with Police Chief Ames explaining that the department would take an educational approach, typically providing warnings before issuing citations, and that towing would be used only as a last resort after multiple violations. City Manager Robinson emphasized that the ordinance was primarily intended to address winter snow removal issues and that extensive public outreach would be conducted before winter to educate residents.

Council Member Stoor made a motion to approve Ordinance No. 2026-06-17, an ordinance to amend the Code of Revised Ordinances of Enoch City, Section 11.300.344 Unlawful Parking. Council Member Trower seconded and a roll call vote was held as follows:

**Council Member Stoor: Yes
Council Member Ley: Yes
Council Member Miner: Yes**

**Council Member Harris: Yes
Council Member Trower: Yes**

5. CONSIDER RESOLUTION NO 2026-06-17-B, A RESOLUTION TO PICK UP EMPLOYEE CONTRIBUTION IN THE PUBLIC SAFETY TIER II RETIREMENT

City Manager Robinson noted that this resolution authorized the City to pick up employee contributions for public safety Tier II retirement, which had increased to 5.98%, representing an increase of 1.25% from the previous year. The total annual cost would be approximately \$42,000, which was an increase of \$9,000 from last year.

Police Chief Ames noted that the City had historically chosen to pay both employer and employee contributions to avoid placing this burden on employees. The Council discussed the importance of remaining competitive with other cities in the region and the value of pension benefits as part of public employment compensation. The Council expressed interest in establishing a future cap on the City's contribution but agreed to continue covering the costs for the current year.

Council Member Trower made a motion to approve Resolution No. 2026-06-17-A, a resolution to pick up employee contribution in the Public Safety Tier II Retirement Council Miner seconded and a roll call vote was held as follows:

Council Member Stoor: Yes

Council Member Harris: Yes

Council Member Ley: Yes

Council Member Trower: Yes

Council Member Miner: Yes

6. CONSIDER RESOLUTION NO. 2026-06-17-C, A RESOLUTION APPROVING AN INTERLOCAL AGREEMENT BETWEEN ENOCH CITY AND PAROWAN CITY, UTAH

City Manager Robinson noted that under the agreement, Lynn Nielson would provide building inspections for Parowan, with Enoch receiving 35% of Parowan's standard building permit fees and 100% of plan review fees. Additionally, Parowan would provide a vehicle for use in conducting inspections.

Lynn Nielson explained that revenue from the agreement (estimated at approximately \$30,000 annually) would support hiring a part-time inspector, Alicia, who had been serving as an unpaid intern through a DWS program. He noted that Parowan had conducted only 160 inspections from January through May compared to Enoch's 1,400 inspections during the same period. The agreement was structured as a one-year arrangement with a 60-day termination notice provision. There was discussion about the needs of the building department.

Council Member Stoor made a motion to approve Resolution No. 2026-06-17-C, a resolution approving an Interlocal Agreement between Enoch City and Parowan City, Utah. Council Member Ley seconded and a roll call vote was held as follows:

Council Member Stoor: Yes

Council Member Harris: Yes

Council Member Ley: Yes

Council Member Trower: Yes

Council Member Miner: Yes

7. DISCUSS INCREASING BUILDING DEPARTMENT FEES - Lynn Nielson, Inspector

Lynn Nielson presented information regarding potential increases to building department fees, noting that the City's building valuation data had not been updated since 2016. The current rate of \$112.65 per square foot for residential construction was significantly below the national average of \$175.92. Nielson explained that if fees were increased by just \$20 per square foot, it would generate an additional \$60,000 to \$100,000 in annual

revenue based on current building activity.

Nielson proposed implementing a gradual percentage-based increase over five years rather than a single large adjustment, which would soften the impact on builders and homeowners. He noted that the building department was currently overwhelmed, with one inspector handling 130 homes with a month still remaining in the fiscal year, compared to an industry standard of 100 permits per inspector annually.

The Council expressed interest in the proposal but requested additional comparative data from neighboring cities before making a decision. Council Member Trower noted concerns about balancing fee increases with affordability for younger generations. Staff agreed to bring back more detailed information at the July 1st meeting.

8. CONSIDER RESOLUTION NO. 2026-06-17-D, A RESOLUTION ADOPTING A DEVELOPMENT AGREEMENT BETWEEN ENOCH CITY AND THE DEVELOPER OF THE SWISS DEVELOPMENT

City Attorney Wayment highlighted several outstanding issues requiring clarification before the agreement could be finalized. The primary discussion centered on pressurized irrigation requirements, with the developer requesting exemptions for smaller lots that would be primarily xeriscaped.

After extensive discussion, the Council reached a tentative consensus that lots of 0.25 acres or larger would be required to have pressurized irrigation connections, while smaller lots would not, though trunk lines would still need to be installed throughout the development to ensure future connectivity. Public Works Director Hayden emphasized the importance of installing trunk lines to preserve the culinary water system and ensure access to secondary water throughout the subdivision.

Other issues discussed included road connectivity, with the agreement requiring Phase 2 to connect to Moldau Road rather than Minersville Highway due to property ownership concerns. City Attorney Wayment also noted that language allowing the developer to apply the agreement terms to future land acquisitions needed to be removed, as current councils cannot bind future councils to agreements on property not yet owned. The development agreement would include a 25-acre park donation.

9. COUNCIL/STAFF REPORT

Police Chief Ames:

- Conducted recent firearms training with scenarios focusing on physical fitness, shooting skills, and fine motor control exercises
- Ordered new automated external defibrillators (AEDs) to replace outdated equipment in the building and vehicles

Public Works Director Hayden:

- Well drilling project progressing at 700 feet depth, encountering cobble rock formations that slow drilling
- Equipment breakdowns have required multiple extractions and repairs during drilling
- Water Conservancy District has doubled water rates, significantly higher than City charges

Building Inspector Lynn Nielson:

- Building department completed 131 homes by end of May compared to 119 for entire previous fiscal year
- Currently processing more than 20 commercial permits compared to typical 4-5 permits
- Lin's Market projected opening September 10-14, with drywall installation in progress

- Gateway Prep Academy (Andy Burt Field House) progressing with insulation and drywall
- Multiple businesses near Dollar General approved and beginning construction: Hub Pizza, physical therapy, Golden Hour Coffee, and Pallete Bakery
- MCM project approved for footing and foundation work
- Iron Elk Fitness Center construction on hold due to payment dispute between owner and builder

City Manager Robinson:

- UDOT Academy scheduled for next Monday and Tuesday in Hurricane; Mayor Rushton, Council Member Miner, and Hayden registered to attend
- Fire department will distribute firework safety information encouraging use of designated areas rather than implementing outright ban
- Attended HR training with Chief Ames in St. George hosted by UIA Insurance Group
- Public Works employee Brad Kidman retiring after 28 years of service; retirement barbecue held last Thursday, final day Jul 30, 2026
- Variance request withdrawn after property survey showed variance not needed
- SUU intern will assist with social media presence and scheduling
- Cedar Valley Conservancy District Water Festival scheduled June 27, 10 a.m. to 2 p.m. at Main Street Park in Cedar; City booth will demonstrate new mobile app
- Transient room tax would generate \$2,000 annually; *RAPtax could generate \$80,000* but requires ballot measure
- Completed tabletop emergency planning exercise with Silver Jackets focusing on flood response; exercise revealed City has strong institutional knowledge from previous flood events
- Southern Utah Economic Alliance will present at next Council meeting regarding \$10,000 annual membership; organization assists with economic development, grant funding, and connecting cities with appropriate businesses

City Recorder Lindsay Hildebrand:

- Finalizing newsletter; will have temporary replacement for July 1st meeting

Mayor Rushton:

- Attended Brad Kidman retirement barbecue
- Fourth of July activities planned including Wings of Death eating contest sponsored by Johnny Mac's providing wings
- Recreation and Tree Committee meeting scheduled for June 18 at 4:30 p.m.

Council Member Ley:

- Seeking volunteers for Fire Department
- Need event coordinator for July 24th activities including 5K Freedom Run at 7 a.m.
- Iron County America 250 celebration information will be distributed to Council

Council Member Trower:

- Sue Longson from Rotary offering assistance with grant application for park funding from Utah Office of Outdoor Recreation; \$2.2 million available with few applicants
- Water Conservancy donating raffle booth space at water fair to support Parowan Strong fundraiser for two young girls affected by recent tragedy
- Inquired about potential emergency ordinance to ensure Mayor retains authority during crisis situations

Council Member Miner:

- Attended first Coordinated Entry meeting for Local Homeless Council; thorough client review process in place
- Appointed to Iron County Economic Advisory Board alongside representatives from Parowan and Cedar City; board reviews RCG and RCOG state grant applications
- Selected to participate in Iron County Leadership program through SUU
- Expressed support for Southern Utah Economic Alliance membership based on organization's engagement and local knowledge
- Noted significant increase in commercial building activity compared to previous year
- Planning Commission scheduled public hearing for annexation policy plan update for July 14; no meeting June 23 due to primary election

10. CLOSED SESSION TO DISCUSS ONE OR MORE OF THE FOLLOWING: THE CHARACTER, PROFESSIONAL COMPETENCE OR PHYSICAL OR MENTAL HEALTH OF AN INDIVIDUAL COLLECTIVE BARGAINING; PENDING OR REASONABLY IMMINENT LITIGATION, THE PURCHASE, EXCHANGE, OR LEASE OF REAL PROPERTY, INCLUDING ANY FORM OF WATER RIGHTS OR WATER SHARES; DEPLOYMENT OF SECURITY PERSONNEL, DEVICES OR SYSTEMS; INVESTIGATIVE PROCEEDINGS REGARDING ALLEGATIONS OF CRIMINAL MISCONDUCT.

Council Member Miner made a motion to close the regular City Council Meeting and go into a closed meeting for the purpose of purchase, exchange, or lease of real property. Council Member Ley seconded and a roll call vote was held as follows:

Council Member Stoor: Yes

Council Member Harris: Yes

Council Member Ley: Yes

Council Member Trower: Yes

Council Member Miner: Yes

11. ACTION FROM CLOSED MEETING – Council Member Miner made a motion to move forward as instructed. The motion was seconded by Council Member Trower and all voted in favor.

12. ADJOURN – Council Member Stoor made a motion to adjourn. The motion was seconded and all voted in favor.

Lindsay Hildebrand, Recorder

Date

ENOCH CITY COUNCIL AGENDA MEMO

SUBJECT: Boots Development Agreement

FOR CONSIDERATION ON: July 1st, 2026

PETITIONER: Boots Development LLC

ACTION REQUESTED BY PETITIONER: Approval of Development Agreement

Review Type: Legislative

BACKGROUND INFORMATION:

Boots Development, LLC is requesting approval of a Development Agreement for the Swiss Master Development Plan. This project is a Planned Unit Development (PUD) that includes approximately 279.54 acres in northern Enoch. The plan establishes a maximum density of 1,106 dwelling units, two commercial nodes, and approximately 55.91 acres of open space.

As part of the Master Plan, the Developer is required to construct public access roads connecting Midvalley Road to Bulldog Road. The development must maintain a minimum of three (3) separate points of ingress and egress; however, the City Engineer reserves the right to require a fourth access point based on the results of a Traffic Impact Analysis (TIA). All internal infrastructure shall be Developer-funded, except for City-requested upsizing for regional benefit. Furthermore, a secondary pressurized irrigation (P.I.) water system is required for all phases of the development.

This item was reviewed and discussed during the previous City Council meetings. The following changes have been made:

1. Density Transfers Administrative vs. Legislative Amendment
 - a. Clarified that transfers of density between parts of the Project are treated as an Administrative Amendment (not requiring Council approval), *except* where density transfers are tied to a Substantial Amendment. Separately, the redline restructured how adding new acreage to the Project is handled.
2. Lot Width and Setback Standards
 - a. A new section on lot widths and setbacks was inserted. It establishes:
 - b. Minimum lot width: 45 feet
 - c. Front yard setback: 20 feet minimum for lots under 0.25 acres; 25 feet minimum for lots 0.25 acres or larger
 - d. Side yard setbacks: 5 feet for lots under 0.25 acres; standard City ordinance setbacks for lots over 0.25 acres
 - e. All other City ordinance dimensional standards still apply
3. Pressurized Irrigation Consolidated and Expanded
 - a. Two separate irrigation provisions (one for multi-family, one for single-family) were deleted and replaced with a single unified requirement. The new language requires Developer to install a secondary pressurized irrigation system serving: (a) all residential lots greater than 0.25 acres, (b) parks, and (c) open spaces

- b. It also adds a new obligation to extend all irrigation main lines to the end of the Project's connecting streets to adjacent developments.
 4. Open Space Calculation Park Donation Cross-Reference
 - a. A sentence was inserted clarifying that the 25-acre parcel to be donated to the City for public recreational use (paragraph 12.b) also counts toward the Project's open space requirement. The paragraph cross-reference was also corrected from "12.c" to "12.b."
 5. Road Access Second Access Point and Road Extension
 - a. The requirement for a second access road upon 80 residential structures was amended to specify it must run *along Bulldog Road to Midvalley Road* (previously it referenced connection to Minersville Highway/a principal arterial, which was deleted)
 - b. A new sentence was added limiting Developer's road extension obligation: Developer is only required to extend roads to the end of each phase, with an appropriate temporary turnaround for emergency vehicles as required by City Code and fire laws
 6. Land Donation Provision
 - a. The full paragraph governing the 25-acre land donation for public parks/recreation was added as a tracked insertion by Matt Ence (paragraph 12.b), establishing the terms of dedication, timing (within 5 years), form of conveyance (special warranty deed or plat dedication), and the ability to redesignate the parcel if additional land is added to the Project.
-

GENERAL PLAN REFERENCE:

- C- Low-Density Residential – This designation is for residential neighborhood development with an average density of up to two (2) dwelling units per gross (pre-developed) acre.
- D- Medium-Density Residential – This designation is for residential neighborhood development with an average density between three (3) to four (4) dwelling units per gross acre—primarily consisting of single-family detached homes, with some options for attached housing (e.g. twin homes and townhouses).
- E- High-Density Residential – This designation allows residential development with an average density of six (6) to sixteen (16) dwelling units per gross acre—primarily consisting of attached housing, and some options for apartment buildings, manufactured home parks, and PUDs.
 - o Enoch City General Plan Pg. 8

CITY CODE REFERENCE:

- 12.1200 Planned Unit Development
- 12.1500 R-1-11

PUBLIC NOTICE:

A public hearing is not required for this agenda item.

STAFF RECOMMENDATION:

Because this is a legislative decision, the City Council should base its decision for approval or denial on the standards in the General Plan and the City's general policies. The Council should include “findings” or reasons for their approval or denial.

**ENOCH CITY CORPORATION
RESOLUTION NO. 2026-06-17-D**

**A RESOLUTION ADOPTING A DEVELOPMENT AGREEMENT BETWEEN
ENOCH CITY AND THE DEVELOPER OF THE SWISS DEVELOPMENT**

WHEREAS, the owner wishes to develop 279.54 acres of land with Enoch City; and

WHEREAS, the owner is proposing to develop the property into both commercial and residential; and

WHEREAS, Enoch City desires the project be developed with further objectives of promoting water conservation, creating a greater diversity in residential properties, and creating a finished commercial property development; and

WHEREAS, such agreement promotes the orderly and appropriate development of property, and will provide public facilities, amenities, and other benefits for the better welfare of the community and in connection with a proposed development;

NOW THEREFORE, BE IT RESOLVED The Development Agreement between Enoch City and Boots Development, LLC, for the Swiss Master Development Plan, is hereby approved by the Enoch City Council on July 1, 2026.

Dated the 1st of July 2026

ENOCH CITY CORPORATION

VOTING:

Shawn Stoor	Yea___	Nay___
David Harris	Yea___	Nay___
Debra Ley	Yea___	Nay___
Kimberlee Trower	Yea___	Nay___
Jacob Miner	Yea___	Nay___

Jim Rushton, Mayor

ATTEST:

SEAL:

Lindsay Hildebrand, City Recorder

AFTER RECORDING PLEASE RETURN TO:

BOOTS DEVELOPMENT LLC
104 E 600 S, #887
Heber, UT 84032

Approved by the Enoch City
Council on _____, 2026

**DEVELOPMENT AGREEMENT FOR
SWISS MASTER DEVELOPMENT PLAN**

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this ____ day of _____, 2026 by and among BOOTS DEVELOPMENT LLC, a Utah limited liability company with a mailing address of 385 Michael Circle, Santa Clara, UT 84765 (the "Developer"), and any assigns, and ENOCH CITY, a political subdivision of the State of Utah and established under applicable law of the State of Utah (the "City").

RECITALS

A. **WHEREAS**, Developer is the owner of approximately 279.54 acres of real property located within Sections 3, 10, and 11, Township 35 South, Range 11 West within the corporate boundaries of Enoch City, Utah, with a legal description as indicated in Exhibit "A" attached hereto and incorporated by reference herein (the "Property"). No additional land shall be added to the Property without the express, written amendment of this Agreement, executed and approved by Developer and City;

B. **WHEREAS**, Developer has proposed the development of a new Project on the Property to be known as "Swiss Master Development Plan" (the "Project") with a Planned Unit Development ("PUD") of approximately 980 dwellings consisting of a mix of single family residences, multiplexes, townhomes, apartments, and commercial uses, in addition to open space, ponds, and common recreation areas and amenities, all set forth in a conceptual design as incorporated by reference herein as Exhibit "B" (the "Conceptual Plan");

C. **WHEREAS**, Exhibit "B" attached hereto constitutes the current Conceptual Plan for the Development and is incorporated herein for illustrative and reference purposes only. The Parties acknowledge and agree that the Conceptual Plan is preliminary in nature and is intended solely to depict the general configuration, anticipated character, and overall components of the Development as presently contemplated by Developer. Notwithstanding anything herein to the contrary, Developer shall not be entitled to obtain, and City shall have no obligation to consider or approve, any application for approval of the first phase of the Development unless and until the Master Plan for the Development has first been submitted by Developer and approved by the City in accordance with all applicable ordinances, regulations, policies, and procedures of the City. Approval of the Master Plan shall be an express condition precedent to any consideration or approval by the City of the first phase of the Development. Prior to the City's approval of the first phase of the Development, Exhibit "B" shall be replaced with the then-current Conceptual Plan, Master Plan, or other refined plan approved by the City and applicable to such first phase, and upon such substitution the revised exhibit shall thereafter constitute Exhibit "B" for all purposes under this Agreement.

D. **WHEREAS**, Developer has certain obligations to install all utilities, provide paved hard surface roads from the public street to the Development, extend any off-site utilities to the Development, provide the Development with all public utility facilities including but not limited to curb, gutter and sidewalk, stormwater containment, streets, power, water, and public sewer systems, in accordance with the applicable law and design standards, which infrastructure necessary to service the Project will be funded in whole by the Developer, unless upsized by the City in which event City shall pay the difference in material costs incurred by Developer for any upsizing of the infrastructure;

E. **WHEREAS**, pursuant to Enoch City Ordinance 12.1200, the City allows a PUD overlay for existing residential zones to provide for more flexible and balanced development of mixed uses and densities, contribute to the overall infrastructure and improvements of the City for future growth, and promote economic development, all of which will be advanced by Developer through private financial resources, other than any costs for upsizing the infrastructure;

F. **WHEREAS**, Developer agrees to develop the Project in a manner consistent with the City's, zoning ordinances, regulations, impact requirements, engineering standards, and policies and all other procedures contemplated by the General Plan, as well as all applicable City rules and regulations with respect to required development approvals, and the City's legislative body has determined to approve the Project subject to the terms and conditions set forth in this Agreement;

G. **WHEREAS**, in recognition of the development of the Project and the resulting benefits to the community through increased tax base, more infrastructure, recreational and attainable housing, the City is willing to agree to vest the development of the Project pursuant to the terms of this Development Agreement against future legislative changes in the General Plan, ordinances and regulations that would be inconsistent with the provisions in this Development Agreement;

H. **WHEREAS**, Developer and City desire to establish certain standards and procedures that will be applied to certain additional administrative approvals contemplated in connection with the development of Project and the construction of improvements located on the Property;

I. **WHEREAS**, Enoch City, acting pursuant to its authority under Utah Code and applicable ordinances, has made certain determinations with respect to the proposed Project and, in the exercise of its legislative discretion, has elected to process and approve the use, density, general configuration and development standards for the Project, resulting in the negotiation, consideration and approval of this Development Agreement after any and all necessary public hearings;

J. **WHEREAS**, the Enoch City Planning Commission and the Enoch City Council have found that this Development Agreement:

- i. complies with the City Ordinance 12.1200.1203;

- ii. meets the spirit and intent of the applicable codes and regulations; and
- iii. promotes the health safety, prosperity, security, and general welfare of the inhabitants and tax payers of Enoch City

K. **WHEREAS**, the Property is currently zoned R-1-11;

L. **WHEREAS**, upon approval of this Agreement in accordance with Enoch City ordinances, the Project, which will be built in multiple phases and will include features, amenities, areas, and uses as generally depicted on the Conceptual Plan as replaced hereafter by the Master Plan, including but not limited to: (i) water retention areas; (ii) ponds; (iii) off-street vehicle storage; and (iv) the residential areas with various densities ranging from 1.5 acre lots to apartments; (collectively, the “Planned Uses”) as shall hereafter be more fully set forth in the Master Plan.

M. **WHEREAS**, upon completion, dedication, and acceptance of the infrastructure, the City is willing to provide the necessary public services to the Development Property, upon certain conditions as outlined in City ordinances and in accordance with the terms included herein; and

N. **WHEREAS**, the Parties desire to enter into this Agreement to implement applicable City regulations and conditions of approval, to memorialize the covenants and commitments of the Parties regarding the Project, and to give effect to applicable state and municipal law, including the limitation that, to the extent this Agreement does not address a matter, the Parties remain subject to Title 10, Chapter 20 and City’s ordinances governing land use regulations.

NOW, THEREFORE, in consideration of the foregoing and the promises, conditions covenants and terms described herein, the Parties agree as follows:

AGREEMENT

1. **Incorporation of Recitals.** The recitals set forth above are incorporated fully into this Agreement as if fully set forth herein.

2. **Definitions.** Capitalized terms used herein shall have the meaning given them in this Agreement and if not otherwise defined herein, within State Code or the City’s ordinances, shall have the plain and ordinary meaning within the context they appear. If there is a conflict between the Agreement text, any exhibit, code requirements, or other documents, the more specific terms shall apply or as otherwise reasonably required by Enoch City. Certain such terms and phrases are referenced below; others are defined where they appear in the text of this Agreement.

- a. “Administrative Amendment” means any amendment to this Development Agreement that is not a Substantial Amendment, as that term is defined herein. City’s building official may approve any Administrative Amendment to this Development Agreement in behalf of the City. The term “Administrative Amendment” specifically includes, but is not limited to, changes to the Master Plan which are necessary (i) to

assure that development is occurring on land best suited for that purpose, (ii) to accommodate the final design of recreational facilities, amenities, and areas, (iii) to allow the location and construction of roads to serve the subject property in accordance with development standards, and (iv) to refine the proposed boundaries of various residential densities, commercial, or mixed use areas. Administrative Amendments may include refinements to amenity locations, minor roadway alignment adjustments, and boundary refinements between planning areas, provided the modification remains consistent with the intent of the approved Master Plan and applicable City standards.

- b. "Agreement" means this Development Agreement, including all exhibits hereto, which are specifically incorporated herein by this reference. All rights and obligations of this Agreement shall be binding upon all successors in interest to the parties to this Agreement. This Agreement is intended to run with the land subject to Sections 14, 15, and 33 and shall be recorded with the Iron County Recorder against the property legally described in Exhibit "A".
- c. "City" means Enoch City, a political subdivision of the State of Utah.
- d. "City Engineer" means the City Engineer or such other licensed engineer designated by City to review and approve public improvement plans and related engineering matters.
- e. "Complete Land Use Application" means a land use application that is submitted in a form that complies with the requirements of Enoch City's applicable ordinances and for which all applicable fees have been paid, consistent with Utah Code Ann. §10-20-902.
- f. "Conceptual Plan" means a preliminary planning document, drawing, or exhibit intended solely to illustrate the general layout, character, density, land use relationships, circulation patterns, open space, and anticipated components of the Development as proposed by Developer. The Conceptual Plan is for illustrative and reference purposes only, is not a final engineering or construction document, and shall not, by itself, create any vested right, entitlement, or obligation on the part of the City to approve any particular use, density, configuration, phase, improvement, or application. The Conceptual Plan is subject to further review, revision, refinement, and approval by the City through the Master Plan, phased development applications, and all other applicable land use, zoning, subdivision, engineering, and permitting processes required by City ordinances and applicable law.
- g. "Developer" means BOOTS DEVELOPMENT LLC, a Utah limited liability company, or its successors and assigns. As a Member of Developer, Kent Frei has authority to act for Developer and sign this Development Agreement.
- h. "The Development", "Swiss Master Development Plan", and "Project" mean the Swiss Master Development Plan planned Project and further legally described in

Exhibit “A” and depicted in Exhibit B, which is attached hereto and incorporated herein, with those portions within the boundaries of Enoch City to be governed according to its ordinances and this Agreement.

- i. “Development Activity” means any construction, expansion, and excavation of a Development Area, building, structure, lot, or use, any change in use of a building or structure, or any changes in the use of land that creates additional demand and need for public facilities.
- j. “Development Area” means an area within the Project that holds the potential of being developed by Developer, or Developer’s successors or assigns, into one or more separate areas within the Project for residential development, such as subdivisions, or multiple lots within a subdivision phase. Development Areas are not necessarily designated in the Master Plan, but may be designed and designated as such at a later date.
- k. “Electrical Power Supplier” means Rocky Mountain Power or any other electrical power supplier who may provide electrical power service to the area of the City where Development is located now or in the future.
- l. “Final Plat” means a final plat of a residential subdivision to be constructed as a Project Area or Phase within a Development Area which, after approval by the City, is to be recorded in the Official Records on file in the Office of the Recorder of Iron County, State of Utah.
- m. “Land Use Application” means any application for development within the Project submitted to City by Developer or any Sub-Developer subsequent to the execution of this Agreement.
- n. “Master Plan” means the general development configuration of the Project which shall be substituted for the Conceptual Plan currently attached hereto as Exhibit “B” and incorporated into this Agreement, as approved by the City. The Master Plan shall show the general configuration of the 279.54 acres involved in this project, including the general location of amenities, improvements, roads, open space, uses, and development, as it may be modified in accordance with this Agreement, state law and City Ordinances. The Master Plan shall be submitted prior to approval of the first phase of the Development.
- o. “Modification Application” means the application and process prescribed for modifying this Agreement or the Master Plan under Section 8.
- p. “Design Standards” means those development and design standards set forth in this Agreement, those set forth in the City’s Land Use Ordinances, and the applicable Covenants, Conditions, and Restrictions which will be created hereafter.
- q. “Project Area” or “Phase” means the area of the Project where Developer has specific

authorization through final plat approval by the City to commence Development Activity on The Property. It is anticipated that Developer will complete this Project in phases based upon market conditions. Each Project Area or Phase will require authorization from City to ensure compliances with this Agreement.

- r. "Planning Commission" means the Enoch City Planning Commission.
- s. "Project Improvements" public means facilities and improvements required to serve the Project and attributable to Development Activity within the Project, including without limitation streets, sidewalks, curb/gutter, water lines, sewer lines, storm drainage, and related appurtenances, to the extent required by City standards..
- t. "The Property" or "Subject Property" means the real property included within the legal description attached hereto as Exhibit "A", which is incorporated into this Development Agreement by this reference. No other property may be added to the legal description of the Project for the purposes of this Development Agreement, except by written amendment.
- u. "Residential Property" means those portions of the Property that will be located within a proposed Project Area or Phase, which is designed, intended to include, or partially include, by a "dwelling unit" as that term is current defined in Enoch City Ordinance 12.200.206(73). It is intended that the Project will have Residential Properties including town home lots and single-family residential properties comprising an overall project density of 3.02 residential units per acre in Enoch City.
- v. "Sub-Developer" means any person, entity, group or association responsible to design, engineer, entitle, construct and market a Development Area, or any part thereof, with or without structures or Dwellings thereon.
- w. "Substantial Amendment" means any amendment to this Agreement or the Master Plan that is not an Administrative Amendment, including any amendment that: (i) increases the Maximum Residential Density approved for the Project; (ii) adds a new land use category not previously approved; (iii) materially reduces required public improvements, open space, amenities, or public service commitments; (iv) materially changes the approved proportion between Low Density Residential Product and High Density Residential Product; (v) materially changes approved phase sequencing; (vi) materially increases impacts on traffic, drainage, utilities, fire protection, parks, or other public facilities; or (vii) otherwise requires legislative approval under City ordinance or Utah law."

3. Summary of Swiss Master Development Plan. Swiss Master Development Plan is planned as a phased master planned PUD project community which upon full build out will include a residential community development on 279.54 acres of land located in northern Enoch City, northwest of the Pine View Estates Subdivision. The Project will include single-family residential housing with 1.5 acre, 10,000 sq. ft., and 9,000 sq. ft. lots, as well as higher density housing through 4-plexes, twin lots, and townhomes. The project will also include two

commercial development pods, two ponds, and required open space. It is anticipated that the Project will be split into multiple Development Areas, which may be further divided into Project Areas or Phases. Developer will oversee and/or coordinate the design and construction of all on-site infrastructure and amenities necessary for the Project. Developer may construct Development Areas, Project Areas, and Phases, or use a sub-developer. Sub-developers shall be bound by and shall cause its employees and agents to act in accordance with the terms of this Agreement. Maximum Density overall project density of four (4) residential units per acre in Enoch City.

4. Applicable Laws and Regulations. The Project shall comply with applicable federal, state, and local laws and regulations, including City's Land Use Regulations and applicable building and safety codes. Nothing in this Agreement is intended to authorize any use or density that is prohibited under City's land use regulations, except as authorized by this Agreement, unless and until processed and approved in the manner required by Utah law and City ordinances.

5. City Master Plan and Utility Infrastructure. Developer shall design, construct, install, each Phase and complete the Project in substantial conformance with the City's adopted Master Plan, the approved Project Master Plan to be adopted and approved by Developer and City, and substituted in Conceptual Plan referenced in Exhibit "B", all applicable phase approvals, and the City's utility infrastructure requirements, engineering standards, plans, specifications, standard drawings, ordinances, and other applicable development requirements, as the same may apply to the Project. Developer shall be responsible, at its sole cost unless otherwise expressly provided in this Agreement, for coordinating with the City regarding the timing, design, capacity, location, engineering, and installation of all required water, culinary, secondary, sewer, storm drainage, roadway, power, communication, and other public utility improvements necessary to serve the Project. No development, plat, permit, or phase of construction shall proceed unless adequate utility infrastructure is available or is being provided in a manner approved by the City, and Developer shall ensure that all improvements are properly engineered, sized, phased, and constructed in accordance with applicable City engineering standards so as to be compatible with the City's existing and planned public infrastructure systems and to avoid adverse impacts on public facilities or service levels.

6. Findings and Authority. The Enoch City Council, having received the recommendation of the Enoch City Planning Commission regarding the Project, authorizes and approves this Development Agreement, and finds as follows:

- a. This Development Agreement has been reviewed and approved by City in accordance with the requirements of the Enoch City ordinances and State law.
- b. This Agreement is consistent with City's General Plan and applicable zoning and development standards, as modified by the PUD approvals, and advances City planning and housing objectives while requiring Developer to construct necessary project-related improvements.
- c. The development of the Swiss Master Development Plan pursuant to this Agreement

is expected to result in significant planning and economic benefits to and will further the health, safety, orderly development, and general welfare of City and its residents.

7. Reliance by the Parties. City acknowledges that Developer is relying on the execution and continuing validity of this Development Agreement, the Master Plan, the conditions set forth in this Agreement, and the land use entitlements derived from this Agreement. In reliance of this Development Agreement, Developer has expended substantial funds in the planning, design and engineering for Swiss Master Development Plan, and will continue to expend substantial funds in the planning and actual construction of the Project. Conversely, Developer acknowledges that City is relying on the execution and continuing validity of this Agreement and Developer's faithful performance of its covenants and obligations under this Agreement and the Master Plan in granting the land use entitlements contained herein.

8. Purpose; Authorization to Develop. The Parties desire that the City have reasonable certainty concerning the manner in which the Project will be developed, and that the Developer will have reasonable certainty in proceeding with the development of the Project. Throughout this Agreement, Developer, and Developer's successors and assigns agree to comply with the terms of the Master Plan as accepted by the City, and this Agreement, and in exchange, City authorizes Developer and Developer's successors and assigns the right to develop Swiss Master Development Plan as set forth in the Master Plan and this Agreement.

9. Binding Effect of Approvals. City may enact or amend land use regulations at any time, and nothing in this Agreement limits City's authority to do so. However, to the extent Developer submits Complete Land Use Applications, Developer is entitled to substantive review and approval in accordance with Utah Code Ann. §10-20-902, subject to the exceptions stated in that statute and other applicable Utah law, as follows:

- a. Zoning. The authority granted to Developer and Developer's successors and assigns, to develop Project with the uses and densities approved herein, will not be prohibited by subsequent City action which is inconsistent with the approvals granted by this Development Agreement. All future Land Use Applications shall be processed under applicable Land Use Regulations and Utah law.
- b. Building Permits. Any person or entity applying for a building permit within the Project shall be subject to the building, electrical, mechanical, plumbing, fire codes and other safety codes and City ordinances relating to the construction of any structure in effect when a person or entity files with City a complete application for such a permit.
- c. Development Application Denials; Meet and Confer. Complete Land Use Applications shall be processed in accordance with applicable Utah law, City ordinances, and this Agreement. If the City denies any Development Application, subdivision plat, site plan, permit, or other approval required for a Phase, the City shall provide written notice of the denial and, upon written request and to the extent reasonably available, provide the written decision, staff report, minutes, or recording

relating to the denial. Upon written request made within fifteen (15) days after notice of denial, the City and Developer shall meet and confer in good faith within fifteen (15) business days, or as soon thereafter as reasonably practicable, to review the denial and determine whether the issues may be resolved through revisions to the application or additional information. Nothing in this Section waives or extends any appeal deadline except as expressly provided by applicable ordinance or by a written tolling agreement executed by the parties.

10. Process for Modifying the Swiss Master Development Plan Master Plan.

- a. Intent. City and Developer acknowledges that the Swiss Master Development Plan Master Plan contains generalized depictions regarding long-term development of the Project and that refinements may be necessary as engineering, market conditions, and phasing evolve. City recognizes that owners of the Subject Property may need to change the configuration of uses shown or described in the Master Plan to reflect future changes, and so long as such changes do not require the City to relocate, without compensation, public infrastructure which have been constructed or which adversely impact other public infrastructure depicted and planned in the Master Plan, as reasonably determined by City, the City will work with Developer to facilitate such changes.
- b. Requested Modifications. After approval of this Development Agreement, Developer may request modifications to the Master Plan and/or this Agreement as follows:
 - i. *Administrative Amendment.* Developer may request an Administrative Amendment to the Master Plan or this Agreement only if the requested change qualifies under applicable Utah law, this Agreement, and City ordinances. An Administrative Amendment may approve minor refinements to the configuration of uses, roads, utilities, open space or phase boundaries, and provided that the requested changes are not a Substantial Amendment. Transfers of density from one part of the Project to another shall be considered an Administrative Amendment, except as set forth in paragraph 11.m. below. An amendment to the Master Plan that seeks to add additional property to the Project, but only increases the allowed number of units proportional to the acreage added, and thus maintains the same average overall density for the Project, shall be considered an Administrative Amendment. Any requested modification that qualifies as an Administrative Amendment shall be submitted to, reviewed by, and processed through the City's administrative staff in accordance with the procedures and direction established by the City.
 - ii. *Legislative Amendment.* Any proposed modification that is not an Administrative Amendment, including but not limited to any amendment that increases Maximum Residential Density (except as allowed as an Administrative Amendment due to an addition of land to the Project), adds land uses, materially changes the approved housing mix, materially changes phase sequencing, materially reduces open space or required public improvements, or materially

increases traffic, drainage, utility, or public service impacts, shall be a Substantial Amendment and shall require approval by the City Council in accordance with applicable law.

- c. Submittal of Modification Application. If Developer or its successors and assigns, desire to amend the Master Plan or this Development agreement, Developer shall provide City's designated staff or building official with a written request for the modification noting whether Developer is pursuing an Administrative Amendment or Substantive Amendment, a copy of the proposed modification (to the Master Plan and/or this Development Agreement), and a supplemental summary containing a brief description of the changes made by the proposed amendment explaining the purpose and impacts of the requested change (including impacts on density, uses, public improvements, open space, engineering changes, and utilities).
- d. City Acceptance of Modification Application. City shall review the Modification Application for completeness and, within a reasonable time consistent with City ordinances, notify Developer of missing information or objections. No Modification Application shall be deemed approved by lapse of time alone, but City shall make reasonable efforts to provide a response to Developer within fifteen (15) business days; approvals must be in writing and signed by the authorized City representative(s).
 - i. If City's building official determines the requested amendment is within the scope of an Administrative Amendment, complies with engineering standards and does not require legislative approval, the building official will notify Developer in writing that the Administrative Amendment is approved by City.
 - ii. If the proposed amendment is not within the scope of an Administrative Amendment, the proposed modification must be approved by the City Council. If City determines applicable law requires further public hearing or procedure to be followed, the Parties agree to follow said procedures as expeditiously as possible.
 - iii. If Developer has requested a Substantive Amendment and/or if City has determined that a requested amendment does not qualify as an Administrative Amendment, City's legislative body will review requested modifications as expeditiously as possible. If City's legislative body denies a Substantive Amendment, City shall specify in writing with sufficient detail the reasons for denying the Substantive Amendment. Developer and City shall utilize the same meet and confer process as contained in 9(c) *supra*.
- e. Mediation. If City denies a requested Administrative Amendment or Substantial Amendment, and the Parties have met and conferred in good faith and if not resolved, either Party may request mediation with a mutually acceptable mediator, with mediation costs shared equally.

- f. Arbitration. If the City and Developer are unable to resolve the issues via mediation pursuant to the preceding Subsections, then upon mutual stipulation of the Parties, the Parties shall attempt within seven (7) days to appoint a mutually acceptable land use planning expert to arbitrate the terms of the Modification Application. The party requesting the arbitration shall pay the fees to initiate the arbitration. If the Parties are unable to agree on a single acceptable arbitrator, they shall each, within seven (7) additional days, appoint their own individual land use planning expert. These two land use planning experts shall, between them, choose the single arbitrator within the next seven (7) calendar days. The chosen arbitrator shall within fifteen (15) days, review the positions of the Parties regarding the Modification Application and issue a decision. The arbitrator shall ask the prevailing party to draft a proposed arbitration award for consideration and objection by the other side. Upon adoption by the arbitrator, after consideration of such objections, the arbitrator's award shall be final and binding upon both Parties and shall constitute an approved modification of the Master Plan. As part of the arbitrator's decision, the arbitrator shall determine the payment of the arbitrator's costs based on the success or failure of each party's position in the arbitration. All arbitrations arising under this Agreement shall be conducted in compliance with Utah Arbitration Act (Utah Code Ann. § 78B-11-102 *et seq*). If a stipulation to arbitration is not mutually agreed, then either Party may pursue available legal remedies. Nothing in this Section waives any defenses, immunities, (including but not limited to any protections afforded the City under the governmental immunities act) or statutory requirements applicable to City.

11. General Conditions of the Swiss Master Development Plan Master Plan. As part of the Master Plan, Developer will abide by the standards set forth in City ordinances. More specifically, the following general development conditions and guidelines for the Project shall apply to the Subject Property:

- a. Maximum Development Area. The Project and the entitlements granted by this Agreement shall be limited to the Subject Property described in Exhibit "A". No additional property may be added without a written amendment approved under Section 35.
- b. Maximum Residential Density. The Subject Property shall contain a maximum density of 4 residential units per acre or 1106 Units, exclusive of any internal accessory dwelling units constructed according to then-applicable ordinance. Modification increasing density beyond that which is identified in this section is a Substantial Amendment and must be approved by the City.
- c. Open Space. The Project must contain no less than twenty percent (20%) open space in the Master Plan, or 55.91 acres, subject to refinement through Phase approvals. Open space intended to be private (including HOA-owned trails, parks, structures and drainage basins) shall be clearly designated on plats and governing documents, and shall be maintained by the owner/HOA unless accepted by City in writing. Any land under HOA ownership containing trails, parks, HOA facilities, structures or drainage

basins that are without residential structures, not including roads or residential single-family lots, are included in calculation open space acreage. The parcel to be donated to the City for recreational use pursuant to paragraph 12.c. below shall also apply toward this requirement.

- d. Landscaping. Landscaping for single family residential lots shall comply with all City ordinances, including 12.300.323, and applicable phase approvals at the time of Application for any project phase, and, except for improvements dedicated to the City, any open space shall be maintained by the HOA in accordance with HOA standards, which shall in no event be less than the minimum standards required by the City. Landscaping requirements shall be set by the underlying zones unless otherwise agreed in the Master Plan or approved by the City in any specific phase, and U.C.A. §10-20-807.

Lot Widths and Setbacks. Notwithstanding the requirements of City ordinances, for residential Lots in the Project, Lot widths shall be a minimum of forty-five feet (45'), and shall have minimum front yard setbacks of twenty feet (20'), and minimum side yard setbacks of five feet (5'). All other provisions of City ordinances regarding minimum lot dimensions and setbacks shall apply.

- e. Multi-Family Development Specific Standards. The following Master Plan conditions shall apply to any portion of the Project that includes multi-family housing:
- i. *Fences*. Any multi-family housing in the Project shall have a six-foot (6') sight-obscuring perimeter fence. Fences shall be set back a minimum of 10 feet from the right-of-way line of a dedicated street. The fenced setback area shall be landscaped. Where the front of a unit faces a dedicated public street, a fence is not required if the property is landscaped parallel with the face of the structures or the required setback.
 - ii. *Parking*. The Project will include one (1) off-street parking space per bedroom, which parking spaces include limited, common, private or public driveways, carports, garages, and parking lots. The Project will also include one (1) additional off-street parking space for every three (3) residential units. Private driveways will be a minimum of nine feet (9') by eighteen feet (18') to count as one (1) parking space.
 - iii. *Landscaping*. Any multi-family housing must have landscaping completion for any phase, or financial assurances approved by the City, prior to approval to develop the next subsequent phase of any multi-family housing and shall be completed within one (1) year of receiving a certificate of occupancy whichever is earlier. Landscaping shall be completed in accordance with City Ordinances, including 12.300.323.
- f. Single Family Residential Standards. The following Master Plan conditions shall apply to any portion of the project that includes single family residences.

- i. *Parking.* Parking spaces for single family residences in the Project shall include off-street parking in accordance with City Ordinances.
 - ii. *Curb and Gutter.* All streets, curb and gutter shall be in accordance with City's Ordinances and engineering standards.
- g. Development Areas, Districts, Densities, and Uses. The maximum residential density referred to above may be allocated throughout the Project in multiple different Districts and Development Areas containing varying levels of residential uses. The locations and layout of various districts, residential areas, open space, uses, infrastructure, and various amenities is generally identified on the Master Plan which shall be submitted and approved by the City prior to approval of the first phase of development for the Project. However, it is intended by the Parties that there be a level of flexibility in the final location and size of uses of these areas within the Subject Property. Accordingly, the boundaries, intensity of use and size of Districts and Development Areas and may be modified pursuant to the provisions of this Agreement. Any adjustment must be processed as an Administrative Amendment or Substantial Amendment under Section 10, and must remain within the maximum density and land use approvals established by this Agreement and applicable City ordinances.
- h. Phasing and Concurrent Housing Mixture Development. City acknowledges that Developer intends either to develop individual Development Areas itself or convey Development Areas to various Sub-Developers for development. Accordingly, City may receive multiple land use applications for areas within the Subject Property. The Project shall be developed in phases substantially in accordance with a Phasing Plan approved by the City and attached as Exhibit "C" (the "Phasing Plan") to be established prior to, or concurrent with, submission of the Master Plan, as the same may be amended only in accordance with this Agreement. The approved housing mix shown on the Master Plan as hereafter submitted, including the proportion between Low Density Residential Product and High- Density Residential Product, is a material term of this Agreement.

For purposes of this Agreement, "Low Density Residential Product" means single-family detached residential lots or units shown on the Master Plan, and "High Density Residential Product" means townhomes, multifamily units, or any other residential product designated on the Master Plan as high density or having a density greater than the approved single-family detached areas.

Low Density Residential Product and High Density Residential Product shall be developed contemporaneously. The cumulative percentage of approved, permitted, or occupied High Density Residential Product shall not exceed the cumulative percentage of approved, permitted, or occupied Low Density Residential Product, respectively, by more than seventy-five (75%) percent, or a 3-1 ratio, (i.e., development of 75 high density multi-family residences shall require a minimum 25

low density residences). For purposes of measuring compliance under the preceding sentence, the final plat approval for High Density Residential Product shall be measured against recorded final plats for Low Density Residential Product; or such other milestone as shown in the Master Plan and Phasing Plan as noted in Exhibit “C”.

If approval of a final plat for High Density Residential Product would cause the Project to exceed the permitted proportional relationship established by this Section or Exhibit “C”, the City Administrator may deny, condition, continue, or withhold such approval until the Developer restores compliance. The concurrency requirements of this Section may be restated in applicable phase approvals, plats, permits, or other written approvals for clarity of administration and enforcement.

- i. The parties shall coordinate the timing of utility extensions and public improvements so that each phase proceeds in a logical sequence and the public facilities required to serve the phase are installed, accepted, or financially secured in accordance with applicable law and City standards before recordation of a final plat or issuance of building permits for that phase.
- j. Nothing in this Section shall obligate the City to approve a phase, plat, permit, or certificate of occupancy that does not otherwise comply with applicable law, City Ordinances and Engineering standards, or this Agreement.
- k. City may require (as part of Phase approvals) that required public improvements, utilities, and public facilities needed to serve the Phase be constructed, accepted, or financially secured in accordance with City subdivision and public improvement standards before recordation of a Final Phase Plat and/or issuance of building permits for that Phase. Unless a phasing sequence is required in this executed development agreement, City shall accept and process Complete Land Use Applications consistent with Utah Code Ann. §10-20-902.
- l. Restrictive Covenants. Several Sub-Developers and contractors, in addition to the Developer may be designing and constructing Public Facilities and private improvements upon different Development Areas at the same time. The Parties recognize the importance of ensuring consistency and continuity in the Project as it develops. Therefore, Developer shall prepare and record applicable covenants, conditions and restrictions (“CC&Rs”), the Master Plan, and development guidelines for the Project or that Phase, establishing a mechanism (HOA or similar) for ownership and maintenance of private open space, private amenities, stormwater facilities not accepted by City, private roads (if any), and other private improvements. CC&Rs shall not conflict with City ordinances or this Agreement.
- m. Variance in Residential Planning Area Densities; Transfers of Units. The Parties acknowledge that the location of approved residential density may require some limited adjustment as engineering and market conditions evolve. Any proposed transfer of residential units or density between Residential Planning Areas,

Development Areas, or phases shall be expressly identified in the applicable application and shall include an updated density accounting statement and shall be allowed and approved as an Administrative Amendment, provided the Maximum Residential Density of the Project is not exceeded. Notwithstanding this, no transfer of density, boundary adjustment, or change in intensity of use may be approved as an Administrative Amendment if the proposed change: (1) materially alters the approved proportion between Low Density Residential Product and High Density Residential Product; (2) materially advances or delays the phasing of High Density Residential Product relative to Low Density Residential Product; (3) materially increases demands on traffic, drainage, utilities, fire flow, parks, schools, or other public facilities; (4) materially reduces open space, amenities, or required public improvements; or (5) otherwise constitutes a Substantial Amendment under this Agreement or Utah law. No density variance or transfer shall be deemed automatically approved. The City may approve a density transfer only if the City determines, in writing, that the proposed transfer: (A) does not increase the Maximum Residential Density approved for the Project; (B) remains consistent with the Master Plan as modified by any approved amendment; (C) does not violate the phasing and concurrency requirements of Section 8.9(g); (D) is supported by adequate public facilities and infrastructure; and (E) complies with applicable law and City ordinances. Each final plat seeking to use transferred density shall contain, in a conspicuous note approved by the City, the total Maximum Residential Density for the Project, the number of units proposed on the plat, the source and destination of any transferred density, and the balance of remaining units available after approval of the plat.

- n. Phase Application Package. Each application for approval of a Phase, to the extent applicable to the Phase and unless waived in writing by the City because not relevant to the particular Phase, shall include: (i) a preliminary and/or final plat or site plan; (ii) engineered public improvement plans, profiles, and specifications; (iii) grading, drainage, stormwater, and erosion-control plans; (iv) water, sewer, storm drain, roadway, sidewalk, trail, and utility plans; (v) a fire flow and fire access analysis and any hydrant plan required by the applicable fire authority; (vi) geotechnical, soils, or drainage reports required by City ordinance, the City Engineer, or other applicable law; (vii) landscaping, open space, amenity, fencing, lighting, and sign plans; (viii) proposed CC&Rs, HOA or association documents, and maintenance provisions applicable to the Phase; (ix) easement documents, off-site improvement plans, and access approvals required to serve the Phase; (x) a phasing schedule identifying the public improvements to be completed or financially secured to serve the Phase; and (xi) such other application materials expressly required by City ordinance, City engineering standards, or this Agreement. A Phase application shall not be considered complete unless the materials required by this Section, to the extent applicable, have been submitted
- o. Retained Right to Appeal Adverse Land Use Decisions. Any decision by City which is adverse to the Developer, its successors and/or assigns, regarding a development application, subdivision plat or amendment, certificate of compliance, conditional use, variance, building permit or any other approval required from City may be

appealed as provided in City's Land Use Ordinance and applicable State law.

12. General Rights and Responsibilities of Developer.

- a. Right of Development and Assignment. Developer's right to proceed with development under this Agreement is expressly conditioned on Developer obtaining all required City approvals and financial assurances. No right shall be deemed vested, and no standard shall be deemed fixed, solely by reason of (i) the execution of this Agreement or (ii) the submission of an application. Any vesting (if permitted and intended under this Agreement) shall occur only upon satisfaction of applicable conditions precedent, which may include, as applicable to the phase or approval at issue: (a) City acceptance of the applicable application as a Complete Application, (b) issuance of the final discretionary approval for the applicable phase (e.g., final plat/site plan) in writing, (c) payment of applicable fees, and (d) completion of required public improvements for the applicable phase and City acceptance thereof, or the posting of financial security in a form and amount acceptable to the City when security is authorized in lieu of completion. It is expressly understood by the City that Developer may assign all or portions of its rights under this Agreement provided that such assignees agree to be bound by the terms of this Agreement, including following the Master Plan, this Agreement and the City's Land Use Ordinances and Enoch City's engineering standards.
- b. Donation of Land for Public Recreation Use. Developer agrees to donate and dedicate to the City, a total of twenty-five (25) acres of land that the City may use for public parks or other recreational spaces. The land to be donated will be a single contiguous parcel, with access to current or future public streets, and identified by Developer in a location of Developer's choosing and approved by the City, which approval shall not be unreasonably withheld. The designation, donation and dedication of such parcel will occur not later than five (5) years following the date of this Agreement, and may be conveyed to the City by special warranty deed or through dedication by plat. In the event that Developer acquires additional land which is added to the Project by amendment to the approved Master Plan, and the donation required hereunder has not yet occurred, Developer may redesignate a substitute parcel to serve as the donation under this paragraph. The parcel so designated and donated shall apply toward the minimum requirement for open space in the Project as set forth in paragraph 11.c. above.
- c. Dedication of Public Facility Improvements. Except those facilities which are designated as private and approved by the City as such, Developer, its successors and/or assigns shall dedicate and convey all Public Facilities in the Project to the City at such time as those improvements are inspected by the City and accepted as complete in accordance with the terms herein, and subject to infrastructure warranties. Said dedication shall reserve for the benefit of Developer, its successors and/or assigns, all capacity in said Public Facility improvements that is necessary for the Project; provided, however, that the City may manage said Public Facilities so as to achieve operating efficiencies as the City may determine. This Subsection shall not

apply to any upsizing of Public Facility improvements required, and paid for, by the City. If the City requires and pays for any upsizing of any Public Facility improvements, all additional capacity in excess of that required for the Project shall be dedicated and reserved for the benefit of the City. The Parties agree that upon completion of construction (as determined by the City's Engineer) and dedication of any Public Facility improvement to the City, the City will accept said dedications. City's acceptance of any dedication shall be in compliance with the City's Ordinances and engineering standards adopted at the time of submission of a final application by Developer (and may be conditioned upon receipt of as-built drawings, testing results, warranty/security, and other closeout documentation required by City standards) as well as infrastructure warranties as required by City Ordinances and this Agreement. Dedication and acceptance of public facilities shall be free of liens and encumbrances. Until acceptance, Developer shall be responsible for operation and maintenance of the improvements.

- d. Improvement Completion Assurance; Warranty; Inspections and Closeout. Before recordation of a final plat or issuance of building permits for a Phase, as applicable under City ordinance and Utah law, Developer shall complete or provide improvement completion assurance for the public improvements and Project Improvements required to serve that Phase, in a form and amount authorized by Utah law and City ordinance. If an off-site, upstream, or cross-phase improvement is required to serve a Phase, the required assurance shall include that improvement notwithstanding that the improvement is located outside the boundaries of the Phase then being platted or built. No public improvement shall be deemed accepted until inspected and accepted in writing by the City after submission of applicable test results, as-built drawings, warranties, operation and maintenance information, and other closeout documentation required by City standards. Developer shall remain solely responsible for operation, maintenance, repair, and replacement of public improvements and Project Improvements until final written acceptance by the City. Developer shall provide warranty security for accepted public improvements in the amount and for the duration required by City ordinance and applicable law. The City may grant partial releases or phase-specific releases of improvement security in its reasonable discretion upon substantial completion of the applicable improvements, provided adequate security remains in place for unfinished work, corrective work, and warranty obligations.”
- e. Development Access. All roadways accessing or which are located within the Property as shown on the Master Plan in Exhibit “B” will be constructed by Developer, unless otherwise stipulated by City or mutually constructed by Developer and City. Except as specifically noted in the Master Plan, all roadways accessing or servicing the Development Property are intended to be public roadways, shall be constructed to City standards, and upon completion of construction shall be dedicated to the City, subject to approval and acceptance by the City. Upon dedication and acceptance, the City shall be responsible for the maintenance, repair, and replacement of all such roadways in accordance with the City's standard practices and procedures for maintaining similar infrastructure throughout the City, subject to the use or

applicability of any required warranty bond or other assurance in place. The Developer shall provide one fully developed and fully accessible public roadway to serve as ingress to and egress from the Development from the commencement of development. Upon the construction of 80 residential structures, a second fully developed and fully accessible public roadway shall be available to serve the Development.

13. General Rights and Responsibilities of City

- a. Reserved Legislative Powers. Nothing in this Agreement shall be construed to limit City's authority to enact or amend land use regulations or to take other actions authorized by law, and City does not waive any such authority by entering into this Agreement. Any vesting or entitlement is only as provided under applicable Utah law and the express written approvals issued by City.
- b. Public Facility Costs. Developer, its successors and/or assigns shall bear the entire cost of designing, constructing, and installing the Public Facilities known as Project Improvements needed to service the Subject Property, as determined under City standards and applicable Land Use Approvals, including any required bonding or financial security required by City ordinance for subdivisions and public improvements.
- c. Compliance with City Requirements and Standards. Except as provided herein, Developer acknowledges it shall comply with all applicable ordinances, resolutions, policies and procedures and construction guidelines of City necessary for approval of subdivision plats, site plans, conditional use permits, building permits, construction permits, grading permits, etc. for Development Activities conducted within the Subject Property in effect at the time the land use approval is sought, subject to vesting statutes for Complete Land Use Applications.
- d. Engineering Review and Coordination. All public improvements and Project Improvements, including water, sewer, stormwater, roads, utilities, drainage facilities, fire-flow infrastructure, off-site improvements required to serve the Project, and all engineering plans and specifications related thereto, shall be coordinated with and subject to review and written approval by the City Engineer and, where applicable, the City's Public Works Director throughout design, construction, testing, closeout, and dedication. City review or approval shall not relieve Developer, its engineer, contractors, or sub-developers from responsibility for design adequacy, code compliance, construction means and methods, or completion of the work in accordance with this Agreement and applicable law. The City Engineer is not the Developer's engineer, and Developer shall retain, at its expense, such licensed design professionals as are necessary for the Project.
- e. Public Financing Cooperation. City and Developer may, subject to applicable law, cooperate in exploring and pursuing the creation of public infrastructure districts (PIDs) or special assessment areas (SAAs) in connection with financing sewer

infrastructure and other public facilities within the Swiss Master Development Plan (the “Public Financing Cooperation”). Developer may submit requests and/or applications for City sponsorship or support in connection with such financing options; however, City makes no representation, warranty, or guarantee that (a) City will approve, sponsor, or participate in any PID, SAA, or other public financing, or (b) any application or financing proposal will be approved, accepted, issued, or successfully completed by any governmental entity, authority, or third party.

14. Specific Rights and Responsibilities of the Parties. The following Section will address and outline the specific rights and responsibilities of the Parties as to the construction and the perpetual operation and maintenance of various types of Public Facilities that will be located within or near the Subject Property for the benefit of the Project and its residents as well as members of the public at large in some instances.

a. Sanitary Sewer Service and Facilities

- i. The Subject Property will be served by the public sewer system and public culinary water supply which shall be constructed in accordance with City standards, subject to available capacity and applicable fees. All sewer lines located in the streets of the City subdivision will be public sewer lines. Such lines may also convey wastewater from public and private lanes in the City limits. Developer shall design and construct all on-site and Project-related sewer and water improvements required to serve each Phase, consistent with City specifications and subject to City Engineer review and approval. If a lift station or other specialized facility is required to serve a Phase, Developer shall construct it at Developer’s expense, and (unless City expressly accepts it in writing) the lift station shall be privately owned and maintained by Developer/HOA with an easement granted to City for access as needed to protect the public system. Upon dedication of the public infrastructure, the same shall be free of all liens and encumbrances.

b. Transportation and Roads

- i. *Developer Obligations (Roads).* Developer shall design, fund, construct, or improve all roads within the Subject Property and identified in the Master Plan in accordance with City standards and the approved Phase plans.
 1. Dedication of Roads. Following completion of the construction of any roadway improvements shown in the Master Plan to City standards and satisfaction of closeout requirements, Developer and its successors and/or assigns shall dedicate public roads as reflected in the Master Plan to the City. Dedication may occur via the recording of a Final Plat for a subdivision or via a separate road dedication plat, as the circumstances may require, free of liens and encumbrances, but only as agreed upon and accepted by the City.

ii. *City Obligations (Roads).*

1. Acceptance of Dedication and Maintenance of Streets & Roads. City shall accept via dedication and maintain all public roads in the Project, so long as such streets are constructed to City's Specifications and Engineering Standards, and are dedicated without liens or encumbrances.
- c. Fire Protection and EMS Services. Swiss Master Development Plan is located within the service area of the Cedar City Fire Department (CCFD) and Gold Cross Ambulance. Developer will work with CCFD to ensure that all necessary fire protection water lines, hydrants, sprinkler systems, detection systems and apparatuses are present and installed in compliance with the CCFD specifications and standards and the International Fire Code within the Subject Property at the time of constructing a residential phase.
- d. Police Protection & Public Safety. Swiss Master Development Plan is located within the jurisdictional boundaries of the Enoch City Police Department and will receive service from said department.
- e. Electrical Power.
- i. *Developer Obligations (Power).* Developer will work with Rocky Mountain Power or its assigns to design, and assist with construction, if necessary, of an electrical power transmission system to service the Subject Property.
 - ii. *City Obligations (Power).* City may, but is not obligated to, assist in obtaining easements or rights-of-way for public purposes if requested and if consistent with City policies and applicable law.
- f. Storm Water Drainage: Developer shall design and construct stormwater drainage, including pipe, inlet and outlet structures, manholes, and detention/retention basin. All stormwater facilities, including detention/retention facilities required for the Project shall be constructed in accordance with City engineering standards and shall be finished in a manner such that they are free of debris and weeds, and shall be landscaped appropriately in accordance with City Ordinances. Unless City expressly accepts said improvements in writing, stormwater detention/retention facilities shall be privately owned and maintained by Developer/HOA, with appropriate easements. City shall maintain public stormwater components that are within public streets (e.g., curb, gutter, inlets) only after acceptance of the related public improvements. Developer shall grant, and shall cause any applicable HOA or owners association to grant, easements reasonably acceptable to the City for access, inspection, emergency maintenance, and enforcement with respect to privately maintained stormwater facilities. The CC&Rs and association documents shall require the HOA or other responsible entity to inspect, maintain, repair, replace, and keep private stormwater

facilities in safe and functional condition at all times. If the City determines that a privately maintained stormwater facility is not being properly maintained or poses a risk to public health, safety, property, or the public stormwater system, the City shall give written notice to the party responsible for maintenance describing the deficiency and providing a reasonable cure period, except in an emergency the City may act immediately. If the deficiency is not cured within the time stated in the notice, the City may enter the property, perform or contract for the necessary work, and recover its actual reasonable costs from the responsible party, including through assessment rights, reimbursement obligations, or lien rights to the fullest extent allowed by law and the governing documents. Nothing in this subsection obligates the City to accept any privately constructed stormwater facility for ownership or maintenance.

- g. Non-City Agency Review. If any aspect of a Development Application is governed by or requires approval, certification, permit, concurrence, or technical review from a non-City agency or utility provider, including UDOT, public utilities, the fire authority, environmental agencies, or any other governmental or quasi-governmental entity, Developer shall timely notify the City of such submittals and promptly provide the City copies of the submissions and resulting approvals, comments, and conditions. The City may condition final City approval on Developer's compliance with required non-City agency conditions. The City shall not be responsible for delay caused by a non-City agency or utility provider. To the extent allowed by applicable ordinance, the City may grant a reasonable extension of any applicable project deadline where delay is caused primarily by a non-City agency and Developer is proceeding with reasonable diligence.

15. Term. The purpose of this Agreement is to ensure the planned and organized development of the Project through its full buildout. Accordingly, the term of this Agreement shall commence on the date this Agreement has been recorded in the Official Records on file in the Office of the Recorder of Iron County, State of Utah and shall continue for thirty (30) years, unless earlier terminated pursuant to Section 17, and shall automatically extend (without further action by the Parties) as reasonably necessary to allow completion of any Phase or public improvement obligations that are in progress and being pursued with reasonable diligence. City may require periodic status updates (no more than annually) regarding phasing and remaining obligations. The report shall identify, by Phase and by housing type, at a minimum: (i) final plats approved and recorded; (ii) residential lots and units approved; (iii) building permits issued; (iv) certificates of occupancy issued; (v) public improvements completed and accepted; (vi) public improvements under construction; (vii) public improvements covered by financial assurance; (viii) status of required off-site improvements; (ix) status of HOA or other association formation and maintenance obligations; and (x) demonstration of compliance with Section 11(h), including the then-current proportion between Low Density Residential Product and High Density Residential Product. City may review the report and Project progress at least once every twelve (12) months to determine compliance with this Agreement. City's failure to conduct an annual review shall not constitute a default or waiver by City. Failure by Developer to provide the annual report after written notice and reasonable opportunity to cure shall constitute a Default under this Agreement.

16. Successors and Assigns. This Agreement shall run with the land and be binding upon and inure to the benefit of the Parties and their permitted successors and assigns. Developer may convey portions of the Subject Property; however, no transferee shall be deemed substituted for Developer as to obligations applicable to the transferred property unless the transferee executes a written assumption agreement in a form acceptable to City, and City receives written notice of the transfer. Developer shall remain liable for obligations accrued prior to an approved assumption and for any obligations expressly stated to survive transfer, unless City expressly releases Developer in writing. Any HOA, sub-association, or other entity responsible for private roads, private utilities, stormwater facilities, detention or retention basins, open space, trails, parks, landscaping, private amenities, or other private improvements shall be bound by this Agreement and by any maintenance, repair, replacement, reimbursement, access, and enforcement obligations relating to such improvements, notwithstanding any transfer of property, completion of a Phase, or expiration or termination of this Agreement. Developer shall cause the CC&Rs, plats, and other governing documents to reflect and implement these continuing obligations.

17. Default. Failure by a Party to perform any of the Party's obligations under this Agreement within a ninety (90) day period (the "Cure Period") after written notice thereof from the other Party shall constitute a default ("Default") by such failing Party under this Agreement; *provided, however*, that if the failure cannot reasonably be cured within ninety (90) days, the Cure Period shall be extended for the time period reasonably required to cure such failure so long as the failing Party commences its efforts to cure within the initial ninety (90) day period and thereafter diligently proceeds to complete the cure. Said notice shall specify the nature of the alleged Default and the manner in which said Default may be satisfactorily cured, if possible. Upon the occurrence of an uncured Default under this Agreement, the non-defaulting Party may institute legal proceedings to either: i) enforce the terms of this Agreement, or ii) terminate this Agreement. If the Default is cured, then no Default shall exist and the noticing Party shall take no further action.

- a. Breach by Developer - In the event Developer, its successors or assigns violates the terms of this Agreement, City may:
 - i. Elect to consider terminating this Agreement due to a Default by Developer, in which case the City shall give to Developer notice of City's intent to terminate this Agreement and the matter shall be scheduled for consideration and review by the City Council at a duly noticed public meeting no earlier than fifteen business (15) days in advance of said notice. Developer shall have the right to offer written and oral evidence prior to or at the time of said public meeting. If the City Council determines that a Default has occurred and is continuing, and elects to terminate this Agreement, City shall send written notice of termination of this Agreement to Developer by certified mail and this Agreement shall thereby be terminated. The Parties may thereafter pursue any and all remedies at law or equity.
 - ii. Without declaring a Default hereunder or electing to seek an injunction, and after ninety (90) days written notice to correct the violation (or such longer

period as may be established in the discretion of City or a court of competent jurisdiction if Developer has used its reasonable best efforts to cure such violation within such ninety (90) days and is continuing to use its reasonable best efforts to cure such violation), City may take such actions as shall be deemed appropriate under law until such conditions have been rectified by Developer.

- iii. During any default by Developer, City may immediately withhold approval of subsequent plats or permits for the affected Phase until compliance is achieved, or draw upon any financial assurance posted for public improvements (if applicable). City shall not be liable for any direct or consequential damages during any such delay or for any financial assurance demand.

- b. Claims Against the City; Administrative Exhaustion; No Monetary Damages. Any claim by Developer that the City has improperly denied, conditioned, delayed, or failed to act upon a land use application, or has otherwise breached this Agreement in connection with a land use decision, shall be pursued first through the applicable administrative appeal process required by City ordinance and Utah law. All available administrative remedies shall be exhausted before Developer seeks judicial review or other court relief. Except to the extent a monetary remedy is expressly required by applicable law, the Parties agree that declaratory relief, injunctive relief, mandamus, or specific performance are the only intended remedies for a claim by Developer against the City arising out of this Agreement, and Developer waives all claims for monetary damages against the City, including actual, future, speculative, incidental, economic, consequential, special, exemplary, or punitive damages. Nothing in this Agreement shall be construed to eliminate, shorten, or circumvent the City's administrative appeal process, judicial review standards, or any defense, immunity, or limitation available to the City under applicable law. City is a governmental entity under the Governmental Immunity Act of Utah, Utah Code Sections 63G-7-101 et seq. Nothing in this Agreement shall be construed as a waiver of any defense, immunity, limitation of liability, notice requirement, or other protection available to City under the Governmental Immunity Act of Utah or other applicable law. All such defenses, immunities, limits, and protections are expressly reserved.

18. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by any Party for the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

19. Notice and Filings. All notices, filings, consents, approvals and other communications provided for herein or given in connection herewith shall be validly given, filed, made, delivered or served in writing and delivered personally, sent by certified United States Mail, postage prepaid, or by a national express overnight delivery service, freight prepaid, if to:

If to City:

ENOCH CITY

c/o Enoch City Recorder
900 E Midvalley Rd,
Cedar City, Utah 84721

If to Developer:

BOOTS DEVELOPMENT LLC
385 Michael Circle
Santa Clara, UT 84765

or to such other addresses as either party hereto may from time to time designate in writing and deliver in a like manner. Notices, filings, consents, approvals and communication given by personal delivery or overnight delivery shall be effective upon receipt and if given by mail shall be deemed delivered 72 hours following deposit in the U.S. mail, postage prepaid and addressed as set forth above.

20. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all parties may be physically attached to a single document.

21. Headings. The descriptive headings of the Sections of this Agreement are inserted for convenience only and shall not control the meaning or construction of any of the provisions hereof.

22. Further Acts. Each of the Parties shall execute and deliver all such documents and perform all such acts as reasonably necessary to carry out the matters contemplated by this Agreement.

23. Time is of the Essence; Force Majeure. Except as otherwise provided in this Section, time is of the essence for this Agreement. If either party is delayed, hindered in, or prevented from the performance of any act required hereunder by reason or inability to procure materials, acts of God, failure of power, riots, insurrection, war or other reason of a like nature (other than labor disputes) not the fault of the Party delayed in performing work or doing acts required under this Agreement, then performance of such act will be excused for the period of delay and the time for the performance of any such act will be extended for a period equivalent to the period of such delay.

24. Binding Effect. All of the provisions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto, except as may be otherwise provided in this Agreement.

25. No Partnership or Third-Party Benefits. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, or other arrangement between Developer and the City. No term or provision of this Agreement is intended to, or shall be for the benefit of any person, firm, organization, or corporation not a party hereto, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.

26. Entire Agreement. This Agreement, together with its exhibits and the Swiss Master Development Plan Master Plan and Plat shall constitute the entire agreement between the Parties pertaining to the subject matter hereof. All other prior and contemporaneous agreements, representations, and understandings of the Parties, oral or written, are hereby superseded and merged herein.

27. Names and Plans. Developer shall be the sole owner of all names, titles, plans, drawings, specifications, ideas, programs, designs and work products of every nature developed, formulated or prepared by or at the request of Developer in connection with the Subject Property and the planned Project.

28. Good-Standing: Authority. The Parties warrant and represent as follows:

- a. Developer hereby represents and warrants to the City that: (i) Developer is a registered limited liability company in good standing with the State of Utah; (ii) the individual(s) executing this Agreement on behalf of Developer are duly authorized and empowered to bind Developer; and (iii) this Agreement is valid, binding, and enforceable against Developer in accordance with its terms.
- b. City hereby represents and warrants to Developer that: (i) the City is a Utah political subdivision of the State of Utah; (ii) the City has power and authority pursuant to enabling state legislation and City's Land Use Ordinances to enter into and be bound by this Agreement; (iii) the individual(s) executing this Agreement on behalf of the City are duly authorized and empowered to bind City; and (iv) this Agreement is valid, binding, and enforceable against the City in accordance with its terms.

29. Severability. If any provisions of this Agreement are declared void or unenforceable, such provision shall be severed from this Agreement, and the Agreement shall otherwise remain in full force and effect.

30. State and Federal Law; Invalidity. The Parties agree, intend and understand that the obligations imposed by this Agreement are only such as are consistent with City ordinances, as well as state and federal law. Notwithstanding any other provision of this Agreement, this Agreement shall not preclude the application of changes mandated by state or federal laws or regulations applicable to the Subject Property. The Parties further agree that if any provision of this Agreement becomes, in its performance, inconsistent with state or federal law or is declared invalid, this Agreement shall be deemed amended to the extent necessary to make it consistent with state or federal law, as the case may be, and the balance of the Agreement shall remain in full force and effect.

31. Governing Law. This Agreement is entered into in Utah and shall be construed and interpreted under the laws of Utah, and venue for all actions brought hereunder or arising herefrom shall be instituted in the Fifth Judicial District Court, Iron County, Utah for all actions brought under this Agreement.

32. Continued Cooperation. By executing this Agreement, the Parties hereto expressly agree to continue to operate in good faith to effectuate its purpose, by giving all consents, executing all documents and providing input and assurances within a reasonable time period after said actions are requested of any Party.

33. Recordation. No later than 10 days after this Agreement has been executed by City and Developer, it shall be recorded in its entirety in the Official Records on file in the Office of the Recorder of Iron County, State of Utah.

34. Institution of Legal Action. After compliance with any required meet-and-confer or mediation provisions in this Agreement, either Party may pursue legal action to enforce this Agreement in the Fifth District Court in and for Iron County, Utah. Each party shall bear their own costs and attorney fees unless otherwise required by law.

35. Amendment of Agreement. This Agreement shall not be modified or amended except in written form mutually agreed to and signed by each of the Parties. No change shall be made to any provision of this Agreement unless this Agreement is amended pursuant to a vote of the City Council taken with the same formality as the vote approving this Agreement.

(Signature Pages to Follow)

DATED effective the first date set forth above.

CITY:

ENOCH CITY

a political subdivision of the State of Utah

Attest:

Lindsay Hildebrand, City Recorder

STATE OF UTAH)
) ss:
COUNTY OF IRON)

____ and Lindsay Hildebrand, being first duly sworn, depose and say that they are the City Mayor and City Recorder of Enoch City, a Utah municipal corporation; that they have read the foregoing Development Agreement for Swiss Master Development Plan and know the contents thereof; and that they signed said document for its intended purpose under the authority given by the Enoch City Council.

NOTARY PUBLIC

DATED effective the first date set forth above.

DEVELOPER:

BOOTS DEVELOPMENT LLC
a Utah limited liability company

Kent Frei, Member

STATE OF UTAH)
) ss:
COUNTY OF WASHINGTON)

Kent Frei, being first duly sworn, deposes and says that he is a member/manager of Boots Development LLC, a Utah limited liability company and that he has read the foregoing Development Agreement for Swiss Master Development Plan and knows the contents thereof; and that he signed said agreement for its intended purpose on behalf of Boots Development LLC.

NOTARY PUBLIC

EXHIBIT “A”
(To Development Agreement for Swiss Master
Development Plan)

Legal Description of Subject Property

EXHIBIT “B”

(To Development Agreement for Swiss Master
Development Plan)

Swiss Master Development Applicable Plan

Basic Separation of Duties

See the following page for instructions and definitions.

	Yes	No	MC*	N/A
1. Does the entity have a board chair, clerk, and treasurer who are three separate people?	✓			
2. Are all the people who are able to receive cash or check payments different from all of the people who are able to make general ledger entries?			✓	
3. Are all the people who are able to collect cash or check payments different from all the people who are able to adjust customer accounts? If no customer accounts, check "N/A".			✓	
4. Are all the people who have access to blank checks different from those who are authorized signers?			✓	
5. Does someone other than the clerk and treasurer reconcile all bank accounts OR are original bank statements reviewed by a person other than the clerk to detect unauthorized disbursements?	✓			
6. Does someone other than the clerk review periodic reports of all general ledger accounts to identify unauthorized payments recorded in those accounts?	✓			
7. Are original credit/purchase card statements received directly from the card company by someone other than the card holder? If no credit/purchase cards, check "N/A".			✓	
8. Does someone other than the credit/purchase card holder ensure that all card purchases are supported with receipts or other supporting documentation? If no credit/purchase cards, check "N/A".	✓			
9. Does someone who is not a subordinate of the credit/purchase card holder review all card purchases for appropriateness (including the chief administrative officer and board members if they have a card)? If no credit/purchase cards, check "N/A".	✓			
10. Does the person who authorizes payment for goods or services, who is not the clerk, verify the receipt of goods or services?	✓			
11. Does someone authorize payroll payments who is separate from the person who prepares payroll payments? If no W-2 employees, check "N/A".	✓			
12. Does someone review all payroll payments who is separate from the person who prepares payroll payments? If no W-2 employees, check "N/A".	✓			

* MC = Mitigating Control

Fraud Risk Assessment

Continued

*Total Points Earned: ____/395 *Risk Level: Very Low Low Moderate High Very High
> 355 316-355 276-315 200-275 < 200

	Yes	Pts
1. Does the entity have adequate basic separation of duties or mitigating controls as outlined in the attached Basic Separation of Duties Questionnaire?	X	200
2. Does the entity have governing body adopted written policies in the following areas:		
a. Conflict of interest?	X	5
b. Procurement?	X	5
c. Ethical behavior?	X	5
d. Reporting fraud and abuse?	X	5
e. Travel?	X	5
f. Credit/Purchasing cards (where applicable)?	X	5
g. Personal use of entity assets?	X	5
h. IT and computer security?	X	5
i. Cash receipting and deposits?	X	5
3. Does the entity have a licensed or certified (CPA, CGFM, CMA, CIA, CFE, CGAP, CPFO) expert as part of its management team?		20
a. Do any members of the management team have at least a bachelor's degree in accounting?	X	10
4. Are employees and elected officials required to annually commit in writing to abide by a statement of ethical behavior?	X	20
5. Have all governing body members completed entity specific (District Board Member Training for local/special service districts & interlocal entities, Introductory Training for Municipal Officials for cities & towns, etc.) online training (training.auditor.utah.gov) within four years of term appointment/election date?		20
6. Regardless of license or formal education, does at least one member of the management team receive at least 40 hours of formal training related to accounting, budgeting, or other financial areas each year?	X	20
7. Does the entity have or promote a fraud hotline?	X	20
8. Does the entity have a formal internal audit function?	X	20
9. Does the entity have a formal audit committee?		20

*Entity Name: Enoch City Corp.

*Completed for Fiscal Year Ending: 2026 *Completion Date: 6/5/26

*CAO Name: Ryan Robinson *CFO Name: Ashley Horton

*CAO Signature: [Signature] *CFO Signature: [Signature]

*Required