

**MASTER DEVELOPMENT AGREEMENT
CLEARFIELD STATION**

THIS MASTER DEVELOPMENT AGREEMENT (“MDA”) is made and entered into as of the ____ day of _____, 2020 (“Effective Date”), by and between Clearfield City, a Utah municipal corporation (“City”), and Clearfield Station Partners, LLC a Utah limited liability company (“Master Developer”), and Utah Transit Authority, a large public transit district of the State of Utah (“UTA”). This MDA concerns a long term, mixed use, master planned transit-oriented development (“TOD”) known as Clearfield Station (“Project”).

RECITALS

WHEREAS, UTA is the owner of that certain real property located generally between State Street and the Frontrunner commuter rail corridor, and approximately between 1100 South and 1450 South, in Clearfield, Davis County, Utah, as more particularly described in Exhibit “A” (“Property”), and as generally depicted in the Master Development Plan (“MDP”), attached hereto as Exhibit “B”; and

WHEREAS, the Parties desire to develop, design and construct Property in accordance with this MDA in a manner that is in harmony with the long-range policies, goals, and objectives of the City’s general plan, the Clearfield Connected Station Area Plan, and the MDP, as well as any applicable zoning and development regulations; and

WHEREAS, the City is willing to grant Master Developer vested rights in and to the development and use of Property as more fully set forth in this MDA in order to promote the City’s goals and objectives and to ensure that Property is developed in a unified and consistent fashion; and

WHEREAS, Development of the Project as a master-planned, transit-oriented development pursuant to this MDA and the MDP is acknowledged by the Parties to be consistent with the Municipal Land Use, Development, and Management Act, as set forth in Title 10, Chapter 9a of the Utah Code, as amended (“Act”); as well as with the City’s land use ordinances as set forth in Title 11 of the Clearfield City Code; and

WHEREAS, the Parties acknowledge that development of the Property pursuant to this MDA and the MDP will result in significant planning, economic and fiscal benefits to UTA and to the City and its residents by, among other things, requiring orderly development of Property as a master-planned, transit-oriented development and increasing revenues to the City based on improvements to be constructed on the Property; and

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WHEREAS, Master Developer, UTA and City have each cooperated in the preparation of this MDA and the MDP and understand that this MDA is a “development agreement” within the meaning of the Act; and

WHEREAS, the City Council has determined that it is in the best interests of the City, its residents, and the general public to enter into this MDA; and

WHEREAS, the Parties desire to enter into this MDA to specify the rights and responsibilities of the Master Developer to develop Property as part of Project, and the rights and responsibilities of the City to approve and regulate the development of Project, and to provide certain City services for the benefit of the Project;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City, UTA and Master Developer hereby agree to the following:

TERMS

I. GENERAL PROVISIONS

A. Incorporation

The foregoing Recitals are hereby incorporated. All exhibits are hereby incorporated into this MDA and by reference are made part hereof. The Master Development Plan is expressly made a part of this Agreement and is incorporated herein.

B. Definitions

As used in this MDA, the words and phrases specified below shall have the following meanings:

“Act” means the Municipal Land Use, Development, and Management Act, as set forth in Title 10, Chapter 9a of the Utah Code as amended.

“Anchor Commercial Tenant” means a single commercial tenant that is a minimum of ~~15,000~~ square commercial feet, and located in the Village Station Square as shown in the MDP.

“Bonding Authority” means Clearfield City.

Commented [CS1]: This change is made to clean up the document and provide greater consistency. Caught during and/or after the Planning Commission discussion.

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“Building Permit” means a permit issued by the City to allow construction, erection or structural alteration of any building, structure, private or public infrastructure, Project Infrastructure, or any off-site infrastructure.

“Buildout” means the substantial completion of all of the development on all of the Property for the entire Project.

“CC&R’s” means the Conditions, Covenants and Restrictions regarding certain aspects of use, management, design and/or construction on all or a portion of the Property to be recorded in the real property records of Davis County.

“City Laws” means the ordinances, policies, standards and procedures of the City related to zoning, subdivisions, development, public improvements and other similar or related matters, including but not limited to the City Code, that have been and may be adopted in the future.

“City Code” means the Clearfield City Code, including its land use regulations adopted pursuant to the Act and other applicable laws and ordinances.

“Clearfield Station Group” means the design review committee who collaborates in oversees the design and construction of the Project consisting of a member of Stack, Hamilton Partners, UTA, Arch Nexus, Psomas, and City staff, and an elected official.

“Construction Steps” means the development of a portion of the Project as set forth in Exhibit “C.”

“Council” means the elected City Council of the City.

“Default” means a material breach of this MDA.

“Development Application” means an application to the City for development of a portion of the Project, including a Subdivision and Site Plan, from the City required for development of such portion of the Project.

“Development Standards” means a set of standards approved by the City as set forth in the MDP and the City Laws controlling certain aspects of the design and construction of the development of the Property including but not limited to setbacks, height limitations, parking and signage, and design and construction standards for buildings, roadways and infrastructure. The Parties acknowledge and agree that the standards set forth in the MDP with regard to right-of-way widths differ from corresponding standards set forth in the City Laws. The Parties further acknowledge and agree that notwithstanding anything to the contrary in this MDA, with regard to right-of-way widths, pavement widths, and any other

Commented [CS2]: A question was asked regarding the difference between these two terms and their application throughout the document.

Answer:
The term “City Code” refers to the Clearfield City Municipal Code in its entirety. It calls out the land use regulations since they are likely most relevant, but as used in the MDA, the term “City Code” is a reference to our adopted Clearfield City Municipal Code in its entirety.

The term “City Laws” includes the “City Code,” but also includes the policies, standards and procedures of the City related to zoning, subdivisions, development, public improvements and other similar or related matters that the City currently has in place, or if in the future, might be adopted by the City.

Page 9 #2: Further explanation or redraft to be provided by Tim

Commented [CS3]: This proposed edit is made at the request of an elected official.

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design standard directly related to or affected by right-of-way width, the standards set forth in the MDP shall control.

“Final Plat” means the recordable map or other graphical representation of land prepared in accordance with the Act and the City’s subdivision ordinance which has been approved by the City, effectuating a Subdivision of any portion of the Property.

“Impact Fees” means those fees, assessments, exactions or payments of money imposed by the City as a condition on development activity pursuant to the Utah Impact Fees Act, subject to any adjustments or reimbursements as specifically set forth in this MDA, as described in Exhibit “D.”

“Master Developer” means Clearfield Station Partners, LLC, or its assignees or transferees as permitted by this MDA.

“Master Development Plan” or “MDP” means the plan for the Project, as approved and mutually agreed upon by the Parties, attached hereto as Exhibit “B-1” and Exhibit “B-2” which sets forth the design guidelines, illustrative master plan, development standards, allowable uses, etc., for the proposed future development of the Property. The MDP may be amended from time to time upon mutual agreement of the Parties and as provided by Clearfield City Code 11-11F-9.

“Master Development Agreement” or “MDA” means this Master Development Agreement including all of its Exhibits.

“MU Zone” means the “Mixed-Use” zoning classification which is set forth in Title 11, Chapter 11 of the City Code.

“Notice” means any notice to or from any party to this MDA that is either required or permitted to be given to another party as provided in Section 5.4.

“Office Space” means buildings which provide general office uses as set forth in the MDP.

“Owner’s Association(s)” means one or more associations formed pursuant to Utah law to perform the functions of an association of property owners.

“Planning Commission” means the City’s Planning Commission established by City Laws.

“Project” means the development to be constructed on Property pursuant to this MDA and the MDP with the associated public and private facilities, intended uses, densities, Phases and all of the other aspects approved as part of this MDA including its Exhibits.

“Project Infrastructure” means those items of public or private infrastructure, at the minimum level of service required by the City under the then-current, generally applicable standards (except to the extent of any conflicts between generally applicable City standards and the Development Standards, in which case the Development Standards shall control; however, if the Development Standards do not specifically address an infrastructure issue, then the City standards shall be applied), which are a condition of the approval of a Development Application because they are necessary for development of a portion of the Property, such as local roads, including street lights, utilities, sidewalks, park strip and median planting/irrigation/site furnishings, curb and gutter located on or around that portion of the Property, including but not limited to those Project Infrastructure items required in connection with specific Phases of the Project.

“Property” means the real property subject to this MDA and the MDP as more fully described in Exhibit “A.”

“Responsible Party” means Clearfield City, unless otherwise stated herein, who shall be responsible for contracting for the design and construction of the Project Infrastructure from bond proceeds as detailed in Exhibit “E,” “Responsibility for Project Infrastructure and Funding.”

“Site Plan” means a site plan as contemplated and required in the City Code with respect to a parcel(s) of the Property, reflecting the location, design and configuration of development and improvements thereon.

“Soft Costs” mean expenses incurred by Master Developer for the design, planning, engineering, soils, and environmental costs of Phase 1.

“Subdeveloper” means an entity other than Master Developer which acquires rights to develop one or more parcels subject to this MDA and the MDP.

“Subdivision” means the dividing of land into two (2) or more lots, parcels, sites, plots or other division for the purpose of development pursuant to the Act and City Laws.

“Transit Critical Infrastructure” means infrastructure that supports and satisfies the necessary and sufficient conditions for operations to occur at a transit station, such as the station platform, bus loop, drop-off areas, parking, transit plaza, and facilities appurtenant to transit activity.

Commented [CS4]: A question was asked regarding the term “the Act” within this definition.

Answer:

The term “Act” is defined within the MDA as follows: “Act” means the Municipal Land Use, Development, and Management Act, as set forth in Title 10, Chapter 9a of the Utah Code as amended.

The “Act” is the state law that provides the authority for the City to enact ordinances requiring that a subdivision plat comply with our lawfully adopted requirements.

“Transportation Demand Management Strategies” means

“Transportation Facilities” means any conveyance, premises, or place used for or in connection with public passenger transportation by air, railroad, motor vehicle, or any other method. It includes aircraft, railroad cars, buses, and air, railroad, and bus terminals and stations and all appurtenances thereto.

Commented [CS5]: UTA (Tim): Can this term be defined?

It is used on page 19, F 3(b)

Commented [CS6]: A question was asked regarding this term on page 10, Section III.

Answer:
Term is defined and added to the definition section.

C. Effect of this MDA

The City Council is authorized to enter into development agreements with any person or entity. This MDA is such an agreement intended to work in conjunction with the MDP. In the event of a conflict between this MDA and the MDP, then this MDA shall be controlling. This MDA with its incorporated Exhibits shall be the sole agreement between the parties for the development of the Property.

D. Conditions Precedent to the Efficacy of this Agreement

As a condition precedent to the obligations of the Parties herein, this MDA is contingent upon Bonding Authority obtaining bond proceeds sufficient to fund Project Infrastructure as detailed in Exhibit “E,” “Responsibility for Project Infrastructure and Funding.” The figures listed in Exhibit “E” are an estimate only and are subject to change based on construction conditions and should not be construed as creating a limit to the amount of bond proceeds utilized for a particular Project Infrastructure.

Commented [CS7]: There is expressed concern that the bonding risk is disproportionately high given the lack of commercial construction assurance.

E. Term of Agreement

Subject to conditions precedent, the term of this MDA shall be from the Effective Date and continue until the obligations are fulfilled hereunder by all parties, unless earlier terminated by either party as provided herein.

II. DEVELOPMENT OF PROJECT

Development of the Project shall be in accordance with this MDA, the MDP and City Laws, except to the extent of any City Laws which are inconsistent with the terms, Development Standards and provisions of this MDA or the MDP, in which case the MDA and MDP shall take precedence.

Commented [CS8]: A request was made that this section be more consistent with the MDP language, especially MDP 5.1-Land Use.

A. Construction to follow MDP

1. The Parties acknowledge and agree that final approved designs and drawings are not yet completed for any portion of the Project. Under the MDP, it is anticipated the Buildout will shall include:

a. Up to aA maximum of 1,0800 residential units.

i. Any increase from the above shall only occur in the Mixed-Use Residential zones shown in the MDP and will require the explicit approval of the Clearfield City Council in the form of an amendment or addendum to this MDA and the MDP and shall not occur in the designated Commercial, Office and townhome land use areas as shown in the MDP.

b. Approximately 67,500 square feet of Commercial Space (part of which may be developed initially as flexible space for office or commercial uses, but not industrial) with the intended climbing gym Anchor Commercial Tenant; or approximately 37,500 in the event another Anchor Commercial Tenant is chosen.

i. It is anticipated that subsequent to entering this MDA, a Purchase and Sale Agreement will be executed between the Master Developer and a climbing gym to be the Anchor Commercial Tenant. Regardless of if Master Developer enters into a Purchase and Sale Agreement with climbing gym, Master Developer shall enter into a Purchase and Sale Agreement with another Anchor Commercial Tenant with a minimum square footage of 15,000 square feet prior to commencing Construction Step 2 on the Project. Purchase and Sale Agreement shall include a settlement deadline of not to exceed 24 months beyond the date the Agreement is executed.

ii. Mixed-Use Residential Commercial Overlay. By the buildout of the project, in addition to the other Commercial Space, Mixed Use Residential Commercial Overlay areas may shall contain additional commercial areas up to of at least 14,500 square feet two tenant spaces.

c. Approximately 450,000 - 600,000 square feet of Office Space.

d. The City has evaluated the need for affordable housing and found that there is not a requirement for units to be sold or leased at subsidized rates.

Commented [CS9]: This change is made at the request of the Planning Commission.

Commented [CS10]: This edit is made in response to a suggestion from an elected official.

Commented [CS11]: This number of proposed residential units is likely to receive additional discussion

Commented [JA12R11]: Per the discussion on 11/3 – allow for up to 1000, but add language that acknowledges that parking would be contained on the site of the residential complex (not on the street), which could necessitate some type of structured parking.

Commented [CS13]: Suggested language change by elected officials

Commented [CS14]: This edit is made in response to a suggestion from an elected official.

2. The Parties acknowledge that the MDP satisfies the requirement under the City Code for approval of a concept plan for the development of the Property as referenced in the MU Zone, but not the amended plat required for a subdivision or site plan required under the City Code.

3. The City acknowledges that Master Developer and/or Subdevelopers, as applicable, may submit multiple applications from time-to-time to develop and/or construct portions of the Project in Phases in accordance with the phasing requirements of this MDA and the MDP.

B. Construction Steps

The Project is divided into two distinct stages, as follows and as shown in Exhibit “C” (“Construction Steps”):

1. Construction Step 1: Project Infrastructure (Horizontal Improvements). This stage consists of the construction of Transit Critical Infrastructure, as well as roadways and underground utilities necessary to serve the buildings that will be developed. This stage will be undertaken by the City as described more fully in Section III of this Agreement.

2. Construction Step 2: Parcel / Lot Development (Vertical Improvements). This stage consists of the construction of various buildings and spaces that will primarily be privately owned (office, retail and other commercial buildings, mixed-use residential buildings, townhouses, etc. as described in Section II(A)(1) of this Agreement and in the MDP). This stage will be undertaken by Master Developer.

a. **Sequencing.** An underlying principle of the sequencing is that the timing of the programmatic uses detailed in the MDP will be based on anticipated market demand. As such, lot-specific phasing or sequencing is not mandated in this MDA.

Commented [CS15]: A request was made that this language be reviewed again to make sure it is consistent with the sequencing included in the MDP.

Nevertheless, this MDA and the MDP requires a balanced approach to the buildout of the site. As determined by the City, from beginning to end, there shall be a balance to the amount of residential development as compared to office/commercial development. To accomplish this, each multi-family residential complex shall be paired with the construction of an office/commercial component. In other words, a second multi-family residential complex shall not be developed until an office/commercial building has been developed (and not a third multi-family until a second commercial, and so on). Amendments to this Agreement shall follow City Code 11-11F-9.

Commented [CS16]: There will likely be additional discussion regarding this issue and the concern that this project may likely have very little balance at inception and for some time thereafter.

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Any variation from this balanced approach (seeking additional residential development before the requisite commercial is in place) will-shall require the explicit approval of the Clearfield City Council in the form of an amendment or addendum to this MDA and the MDP.

Commented [CS17]: This change is made at the request of the Planning Commission.

C. Financing

The City acknowledges that Master Developer intends to obtain one or more loans and/or other financing in connection with the development of the Project, and the City agrees to cooperate with Master Developer (and/or any Subdeveloper, as applicable) in providing such documents or other information as may be reasonably requested by Master Developer or a lender in connection with any such financing.

D. Zoning and Vested Rights

1. UTA and Master Developer shall have a vested right to develop and construct the Project on the Property, with the uses, densities and other characteristics of the Project in accordance with the MU Zone, the MDP, Development Standards and other matters specifically addressed in the MDP, subject to compliance with the terms and conditions of this MDA as well as applicable City Laws, except as otherwise specifically provided in this MDA or MDP.

2. The Parties understand and agree that the Project shall be required to comply with future changes to City Laws which are in effect as of the filing date of a Development Application that do not prohibit, limit, delay or otherwise interfere with the vested rights granted pursuant to the terms of this MDA and which are not inconsistent with the terms and provisions of this MDA or the MDP. The following are examples for illustrative purposes only and are a non-exhaustive list of the type of future laws that may be enacted by the City that would be applicable to the Project, subject to the standard set forth in the immediately preceding sentence:

Commented [CS18]: A question was asked if this section could be drafted to be more clear.

a. Compliance with State and Federal Laws. Future laws which are generally applicable to all properties in the City and which are required to comply with State and Federal laws and regulations affecting the Project; or

Answer:
Although Tim provided an explanation as to the application and meaning of this paragraph/section during the recent work meeting, the City is asking if this section could be redrafted to better demonstrate the explanation that was verbally provided by Tim.

b. City Construction and Development Standards. Future laws that are updates or amendments to existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AASHTO Standards, the Manual of Uniform Traffic Control Devices or similar standards that are generated by a nationally or statewide recognized construction/safety organization, or by the State or Federal governments and are required to meet legitimate concerns related to public health, safety or welfare; or

c. Taxes. Taxes, or modifications thereto, so long as such taxes are lawfully imposed and charged uniformly by the City to all properties, applications, persons and entities similarly situated; or

d. Fees. Except as otherwise provided in this MDA, Master Developer and/or any Subdeveloper, as applicable, shall pay to the City all fees (including, but not limited to, land use application fees, engineering fees, plan review fees, building permit fees, hookup fees and inspection fees) as are generally applicable to all development within the City and which are adopted pursuant to State law, in amounts specified in the City Laws.

E. Approval Process for Development Applications

Approval processes for Development Applications shall be as provided in the City Laws. A Development Application shall be approved by the City if the improvements to be constructed pursuant to the Development Application (i) conform to this MDA and the MDP, and (ii) comply with the City Laws, except as otherwise provided in this MDA or the MDP.

F. Impact Fees

1. Developer agrees to pay Impact Fees as are generally applicable to all development within the City and which are adopted pursuant to State law. All Impact Fees owing to the City hereunder shall be charged at such times in the course of development of Property as the City customarily charges similar Impact Fees to other developers within the City in accordance with applicable law (i.e. at the time of building permit).

2. All Impact Fees charged in connection with the construction of improvements shall be calculated in accordance with the applicable Impact Fee schedules as set forth in Exhibit “D,” “Impact Fees Costs.”

3. Except as otherwise specifically provided herein, Master Developer and UTA do not waive any right, whether pursuant to statute or otherwise, including §11-36a-603 of the Utah Code relating to the refunding of Impact Fees, to challenge any Impact Fee charged, or sought to be charged, by the City.

III. PUBLIC IMPROVEMENTS

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Subject to compliance with Master Developer’s obligations as set forth in this MDA, the City shall provide all of the standard municipal services to the Project, including, but not limited to, culinary water, sanitary sewer collection, storm drainage, ~~Transportation facilities~~ and public safety facilities and services and police services, at the same levels of service and on the same terms as are generally provided by the City to and for the benefit of the City’s other similarly situated residents, institutions and businesses. The Parties acknowledge and agree that the City does not provide fire protection/suppression services or emergency medical services (such services are provided by the North Davis Fire District).

Commented [CS19]: A question was asked regarding the definition of this term.

Answer:
This term was added to the definition section to provide a more accurate scope of meaning.

A. Funding and Construction of Project Infrastructure

1. It is the Parties’ intent that funding for Project Infrastructure as shown in Exhibit “E” shall be obtained through the Bonding Authority. The purpose of Exhibit “E” is to define what Infrastructure shall be paid for from the bond proceeds and/or eligible for reimbursement from Bonding Authority, the priority in which the funds shall be allocated, and what Infrastructure shall be the responsibility of Master Developer. Transit Critical Infrastructure shall have the highest priority, and be designed according to the UTA TOD Policy and TOD Design Guidelines, in order for the Project to function as a TOD. As additional infrastructure needs are discovered or arise, Exhibit “E” may be amended from time to time to reflect the additional infrastructure and related funding as agreed upon in writing by the parties.

2. The Parties understand and agree that the City shall have the responsibility to design, construct and install or cause to be designed, constructed and installed, all portions of the Project Infrastructure that is funded from bond proceeds as detailed in Exhibit “E,” and in coordination with Master Developer and the Clearfield Station Group, who shall meet together regularly to discuss the design and construction of Project and to address issues as they arise. The parties also understand that these activities will be subject to the City’s procurement policies unless otherwise described herein.

3. Costs incurred by Master Developer in the construction and installation of Project Infrastructure eligible for reimbursement as shown in Exhibit “E” shall be reimbursed by the Bonding Authority within thirty (30) days of receiving an invoice from Master Developer, but only after bond proceeds are available. If additional infrastructure is required by City not listed in Exhibit “E,” it shall be paid for from bond proceeds or be reimbursed from same.

4. City agrees to reimburse Master Developer for Soft Costs incurred in the design of the Project Infrastructure (horizontal improvements) from bond proceeds (once available). In the event the City does not bond, or does not obtain bond proceeds as envisioned herein, City agrees to reimburse Master Developer for its Soft Costs.

5. The Parties understand and agree that in order to secure the most advantageous bond financing, Bonding Authority intends to pledge tax revenues other than the property tax increment that will be generated by the Project, though property tax increment is the intended revenue source for servicing the debt. It is imperative, therefore, that Master Developer carry out the construction of the Project as expeditiously as possible (subject to market demands), in order to generate the property tax increment that is anticipated. The Parties also understand that Bonding Authority's risk is that tax increment proceeds in a given year may be insufficient to cover that year's debt service. Beginning in the City's fourth fiscal year from the date the bond proceeds are disbursed, and in the event that the annual tax increment generated by Project is insufficient to service the annual bond debt payment, Master Developer and UTA respectively agree to contribute to City their pro-rated share of the deficiency, respectively, corresponding to improvements funded from bond proceeds that subsequently are not owned by the City (e.g., a private plaza or station plaza) ("UTA Tax Increment Subsidy" and "Developer Tax Increment Subsidy," respectively). The current estimate of the pro-rata share of UTA is 5.6% and that of Master Developer is 3.5%, and such estimates shall be adjusted to reflect the actual percentage upon final design. UTA and Master Developer shall not be obligated to pay further Tax Increment Subsidies once the Clearfield City Community Development and Renewal Agency ("CDRA") has generated Ninety Million Dollars (\$90,000,000.00) in assessed taxable value. The Clearfield Station Group shall collaborate on future accretive investment within the Project if there is a surplus of tax increment. If a Tax Increment Subsidy becomes necessary for a given fiscal year, City shall provide ninety days (90) notice to UTA and Master Developer of their payment obligations.

B. Dedication of Rights-of-Way and Infrastructure

A plat (or plat amendment) that dedicates rights-of-way is required prior to any construction or installation of Project Infrastructure. Project Infrastructure shown in Exhibits "E" and "F" shall be built to City standards (except to the extent of any conflicts between generally applicable City standards and the Development Standards, in which case the Development Standards shall control; however, if the Development Standards do not specifically address an infrastructure issue, then the City standards shall be applied) and dedicated to the City (if not already installed by the City) in connection with each applicable Phase of the Project, thereby making it accessible for public use. All Project Infrastructure that is dedicated to the City as described in Exhibit "E" shall thereafter be under the exclusive control of the City. The dedication of Project Infrastructure shall have no limitations as to future control, maintenance, modification, or abandonment of all or part of the dedicated Project Infrastructure by the City.

1. Approval of Infrastructure as a Part of a Development Approval. Any Development Application for a Subdivision or a Site Plan shall include a plan for constructing the applicable portions of the Project Infrastructure and shall demonstrate that the proposed Project Infrastructure is compatible with the overall development of the Project, as then contemplated, at Buildout.

C. Utilities

1. Culinary Water. Subject to the appropriate funding being secured as described in III(A), and as detailed in Exhibit “E,” and in coordination with the Clearfield Station Group, the City shall be responsible for the design, installation and construction of Project Infrastructure sufficient to extend the City’s culinary water system throughout the Project, including Project Infrastructure necessary for each individual water connection for the various buildings, open spaces, etc., throughout the Project.

a. Attached hereto as Exhibit “F,” the “Utility and Drainage Plan,” which includes a culinary water plan (“Culinary Water Plan”) generally depicting the various culinary water improvements anticipated to be constructed in connection with the Project (including certain offsite improvements, such as the upsizing of a water line in State Street and 1000 East, and installing a water line in the Depot Street extension). The Culinary Water Plan is a general depiction only, showing approximate locations. Final locations shall be determined through additional design engineering.

b. This Section is not intended to and does not create any affirmative construction obligations in connection with undeveloped Phases of the Project.

c. The Parties acknowledge and agree that water lines and other improvements which extend from a water meter to a particular building or other end use shall be and remain private, and the City shall neither pay for, own nor maintain such lines and improvements.

d. The abandonment of the existing culinary water pipeline as depicted in Exhibit “F” shall be pursuant to environmental guidelines.

e. Offsite improvements to the City’s water system for both culinary water and for fire flow, such as the pipeline underneath State Street and 1000 East that will encroach into a right of way owned by the Utah Department of Transportation (“UDOT”), are subject to approval from UDOT.

2. Sanitary Sewer. Subject to the appropriate funding being secured as described in III(A), and as detailed in Exhibit “E,” and in coordination with the Clearfield Station Group, the City shall be responsible for designing and installing the necessary Project Infrastructure to extend the City’s sanitary sewer collection system throughout the Project. The City shall identify and implement a gravity-flow sanitary sewer solution that is sufficient to meet the requirements of the Project and City Laws. Ongoing maintenance of said gravity-flow sanitary sewer facilities shall be the responsibility of the City (public portions only; not private lateral lines, which are defined

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as the service line starting at the City's main line connection, extending to a particular building or other end user).

a. The Parties acknowledge and agree that the City does not act as a sanitary sewer treatment provider (North Davis Sewer District provides sewer treatment facilities in the area).

b. Master Developer shall be responsible for all applicable connection, permit and impact fees associated with said sewer connections within the Project as are generally applicable to all developments in the City, as described in Exhibit "D." Moreover, the City shall not be responsible for costs associated with making said connections.

c. City shall be responsible for installing the Project Infrastructure necessary for each individual sewer connection for the various buildings throughout the Project.

d. Attached hereto as Exhibit "F," the "Utility and Drainage Plan," which includes a sanitary sewer plan ("Sanitary Sewer Plan") generally depicting the various sanitary sewer improvements anticipated to be constructed in connection with the Project (including certain offsite improvements, such as the installation of sanitary sewer line in 1000 East). The Sanitary Sewer Plan is a general depiction only, showing approximate locations. Final locations shall be determined through additional design engineering.

e. This Section is not intended to and does not create any affirmative construction obligations in connection with undeveloped Phases of the Project.

3. Storm Drainage. Subject to the appropriate funding being secured as described in III(A), and as detailed in Exhibit "E," and in coordination with the Clearfield Station Group, the City shall be responsible for installing the necessary Project Infrastructure to extend the City's storm drainage system throughout the Project. Master Developer shall be responsible for all applicable connection, permit and impact fees associated with said storm drain connections within the Project as are generally applicable to all developments in the City, as described in Exhibit "D." City agrees it currently owns, maintains and will continue to maintain the existing 48" and 24" storm sewer line that exists in the Project.

a. Attached hereto as Exhibit "F," the "Utility and Drainage Plan," which includes a storm drainage plan ("Storm Drainage Plan") generally depicting the various storm drainage improvements anticipated to be constructed in connection with the Project. The Storm Drainage Plan is a general depiction only, showing approximate locations. Storm water will be discharged from the Property via an outfall from Pond 3 to an existing 36" storm drain in the

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southwest corner of the Property, leading to a regional detention basin. Final locations shall be determined through additional design engineering. The Storm Drainage Plan does not depict any onsite / private storm water retention or detention facilities that may be required, for which Master Developer will be responsible for construction, ownership, and maintenance.

b. This Section is not intended to and does not create any affirmative construction obligations in connection with undeveloped Phases of the Project.

c. If the City's existing 24" and 48" storm sewer line that runs through the Property requires relocation, the cost thereof shall be paid from the bond proceeds described in III(A) (anticipated within Depot Street right of way). Master Developer shall not be responsible for any fees, permit fees, or impact fees related to its relocation. Any such relocation shall be in accordance with the City's standards and shall be located so that it will not detrimentally impact the Project as depicted by the MDP.

4. **Other Utilities.** The City will coordinate with Master Developer, and UTOPIA, and other telecommunications providers for the design, location, and installation of state-of-the-art fiber/internet infrastructure to be installed in the Project area. It is understood that such fiber provider(s) will be required to purchase or lease any conduits and real property necessary for communication sheds or structures from Master Developer.

a. The City will cooperate with Master Developer during the installation of both electrical service and natural gas service by Rocky Mountain Power and Dominion Energy, respectively. Master Developer agrees that new overhead utilities are strictly prohibited within the Project, provided however, Master Developer will not be required to underground existing utility poles. If excess bond proceeds remain after the completion of Construction Step 1 Project Infrastructure, then the Clearfield Station Group may consider utilizing the excess bond proceeds for the purpose of undergrounding existing utility lines on State Street and/or 1000 East.

D. Open Space, Parks and Trails

Subject to the appropriate funding being secured as described in III(A), and as detailed in Exhibit "E," and in coordination with the Clearfield Station Group, the City shall install the necessary Project Infrastructure to provide open space, plazas, parks and trails throughout the Project.

1. Master Developer and the City agree that Open space shall consist of meaningful areas that promote the goals and objectives of the Master Developer and City, as shown in the

Commented [CS20]: A question was asked if the "sheds and structure" are being considered for the UTOPIA, as well as the need for more specificity as to what expectations are for making the site UTOPIA ready (i.e., conduit in, or lines stubbed to the curb?)

Answer:
This is anticipated to be addressed by the City during the design and Construction Stage 1: Project Infrastructure (Horizontal Improvements) stage of development. See proposed edits.

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MDP, but shall not include roads (but shall include landscaped areas within rights-of-way) or parking lots.

2. Attached hereto as Exhibit “G-1,” “Open Space Plan,” ~~is,~~ is an open space, parks and trails plan (the “Open Space Plan”) generally depicting the open and civic spaces acreage. The figures are for general reference ~~only, and~~ only and are not intended to be minimum requirements.

3. Pursuant to City ordinances, the Parties acknowledge and agree that the open space, parks and trail improvements identified on Exhibit “G-1” as ‘Public,’ shall be owned and maintained by the City. The improvements identified thereon as ‘Private’ shall remain privately owned and maintained by their respective owner.

4. Landscaping and landscape buffers shall be consistent with the MDP.

5. Open Space Maintenance. The Responsible Party, as listed in Exhibit “G-2,” “Maintenance Responsibility Plan,” shall be responsible for the ongoing maintenance of the designated open space areas. Open spaces shall be maintained at a high level to ensure the perpetual beautification of Project. The aesthetic shall be consistent with the MDP and shall comport at all times with an attractive, cultivated, and orderly appearance. Any party derelict in maintaining its portion of open space shall be notified and subject to the provisions of Section V, as well as subject to enforcement action pursuant to City Code.

E. Roads and Rights of Way

Subject to the appropriate funding being secured as described in III(A), and as detailed in Exhibit “E,” and in coordination with the Clearfield Station Group, the City shall install the necessary Project Infrastructure to provide transportation facilities throughout the Project.

1. Attached hereto as Exhibit “H,” “Road Network Plan,” is a road network plan (“Road Network Plan”) generally depicting the various road improvements anticipated to be constructed in connection with the Project. The Road Network Plan is a general depiction only, showing approximate locations. It is provided for the purpose of designating which improvements are to be public and which are to be private. Final locations shall be determined upon design of Project Infrastructure, as generally depicted in the MDP.

2. The Parties acknowledge and agree that the road improvements identified on Exhibit “H” as ‘Public’ shall be owned and maintained by the City.

Commented [CS21]: A comment was received that the Master Developers goals should not be different than the City, and if we could more specifically reference the City goals.

Answer:

The proposed language is added to demonstrate that the goals and objectives are consistent with those of the City, and that the MDP provides what those open spaces will look like.

3. This Section is not intended to and does not create any affirmative construction obligations in connection with undeveloped Phases of the Project.

4. Master Developer agrees that any roads constructed in connection with the Project shall be constructed according to typical City standards ~~and as set forth in this MDA and MDP~~, except with regard to right-of-way widths, pavement widths, and any other design standards directly related to or affected by right-of-way width, which ~~are shall be as~~ set forth in the MDP. The Parties acknowledge and agree that the standards set forth in the MDP with regard to right-of-way widths differ from corresponding standards set forth in the City Laws. The Parties further acknowledge and agree that notwithstanding anything to the contrary in this MDA, with regard to right-of-way widths, and pavement widths, the standards set forth in the MDP shall control.

5. Depot Street. The Parties understand and agree that as an off-site public improvement intended to mitigate additional traffic impact from the Project and to further facilitate use of the Project, City agrees to install or cause to be installed an extension of Depot Street southward from approximately 1100 South in Clearfield, ultimately connecting with the Project's roadways at the northern portion of the Project. ~~The Clearfield Station Group shall collaborate in oversee~~ the design of the Depot Street extension. The Depot Street extension shall be a 'Public' road.

a. The Parties acknowledge that a reimbursement agreement between City and Ironwood Development Group, L.C. requires the City to collect an estimated share of the cost of improving Depot Street from approximately 830 South to approximately 1100 South from owners of certain real property deemed to be benefitted by the improvement, including Property. The City agrees to waive any collection of reimbursement from Parties pursuant to the Ironwood agreement. City affirms that Parties are not responsible for costs related to the improvements under the Ironwood agreement and releases and indemnifies Parties therefrom, which costs the City intends to collect and to make reimbursement to Ironwood from funds generated by RDA #9 to the north of Project.

b. Parties understand and agree that any land acquisition costs necessary for the extension of Depot Street, as described above, shall be the responsibility of the City and included in the bond package as described in this Agreement, unless other funding sources are identified (e.g. grants). To the extent that the City owns any lands, or acquires any lands, that are required in connection with the Depot Street extension, the City shall dedicate such lands for the Depot Street extension without payment, and at no cost to Master Developer.

c. Parties acknowledge that the intent is to accomplish the extension of Depot Street in approximately the same timing (and in the same contract) as the construction of the rest of the Project Infrastructure, pending successful acquisition of the necessary rights-of-way.

Commented [CS22]: A question was asked why we are saying that we will use "typical City Standards" in the first sentence and then use the rest of the paragraph to say it will not and that the standards are governed by the document.

Answer:
The proposed edits are intended to clarify that roads will be constructed to "typical City standards" except with regard to right-of-way widths, pavement widths, and any other design standards directly related to or affected by right-of-way width, which are set forth in the MDP.

Commented [CS23]: A question was asked regarding the Developer or the City being the driving force behind design issues.

Answer:
This edit was made throughout the document to ensure that the design is a collaborative process between the Developer and the City.

It was also noted that UDOT may also have final or total say in some design aspects.

Answer:
While this is true, UDOT may also present design options that will ultimately have to be decided upon by the Clearfield Station Group in a collaborative manner.

6. New Primary Intersection at State Street. The Parties understand and agree that in order to facilitate better traffic flow both within and adjacent to the Project, City shall either construct or cause to be constructed a new intersection that includes signalization at the junction of Station Boulevard and State Street. The Clearfield Station Group shall collaborate in oversee the design of the improvements. The costs thereof, including the acquisition of right-of-way (if any), will be included in the bond package as described in this Agreement, unless other funding sources are identified (e.g. grants). The Parties acknowledge that approval from the Utah Department of Transportation is required in order to accomplish these improvements.

7. Southern Ingress/Egress on 1000 East and Extension of 1450 South from 1000 East to State Street; Signalization. The Parties understand and agree that in order to facilitate better traffic flow both within and adjacent to the Project, City shall either construct or cause to be constructed a new entrance/exit for the Project as depicted in Exhibit “H.”

The Parties understand and agree that as an off-site public improvement intended to mitigate additional traffic impact from the Project and to further facilitate traffic flow in the area, the City shall install or cause to be installed an extension of 1450 South eastward from 1000 East to State Street in Clearfield, ultimately connecting State Street to the east with the Project’s roadways. This extension of 1450 South shall be generally in conformance with the design in the MDP and is subject to approval from UDOT and the City. The Clearfield Station Group shall collaborate in oversee the design of the improvements. The costs thereof, including the acquisition of right-of-way, will be included in the bond package as described in this Agreement, unless other funding sources are identified (e.g. grants). Parties acknowledge that the intent is to accomplish the extension of 1450 South in approximately the same timing (and in the same contract) as the construction of the rest of the Project Infrastructure, pending successful acquisition of the necessary rights-of-way.

8. Modifications to 1000 East and State Street Intersection. The Parties understand and agree that in order to facilitate better traffic flow both within and adjacent to the Project, City shall construct a new median in State Street and cause traffic movement in a “right in, right out” pattern as detailed in Exhibit “H.”

a. Said intersection shall be generally in conformance with the conceptual design in the MDP, subject to approval from the Utah Department of Transportation (“UDOT”) and the City. The Clearfield Station Group shall oversee the design of the improvements, the costs thereof, including the acquisition of right-of-way (if any), will be included in the bond package as described in this Agreement, unless other funding sources are identified (grants).

9. The City acknowledges and agrees that it will seek to secure easements or other rights from third parties in connection with certain off-site improvements for the benefit of the Project at its own expense, the costs thereof, including the acquisition of any easements or rights-of-way will be included in the bond package as described in this Agreement, unless other funding sources are identified (e.g. grants). Master Developer shall cooperate with City in its efforts to obtain such easements or other rights associated therewith.

a. The City acknowledges its right of eminent domain to acquire property necessary for roads and related purposes as well as its willingness to consider the exercise of such right if warranted by the circumstances; however, the Parties also acknowledge and agree that the City's exercise of eminent domain powers is a future legislative decision of the City Council as constituted when that issue arises.

10. Vacation of Designated Rights of Way. The City has certain rights-of-way located on Property which are not compatible with the MDP and Exhibit "H." These rights-of-way will require formal vacation by the City pursuant to Utah Code Ann. §10-9a-609.5.

a. The rights-of-way, or portions thereof, on Property subject to vacation are:

- (i) Express Drive;
- (ii) Box Car Drive (partial vacation);
- (iii) Station Boulevard; and
- (iv) Switch Lane.

b. ~~The City Council shall hold a public hearing and determine whether good cause exists for the vacation and whether any public interest will be materially injured by the proposed vacation.~~ In the event the rights-of-way are thereafter vacated pursuant to Utah Code Ann. §10-9a-609.5, City shall convey the same to Master Developer.

F. UTA Park & Ride Facilities

1. UTA Park & Ride Parking Facilities. The Parties acknowledge and agree that the social and economic viability of Project includes the need to provide adequate parking to service both the surrounding land uses and patrons using the UTA Frontrunner. Accordingly, as detailed in Exhibit "I," "Parking Stages Plan," the Clearfield Station Group shall collaborate in oversee the design, construction, and installation of the necessary Project Infrastructure to provide designated parking stalls that are reserved for use by UTA patrons as Park & Ride Facilities. The location of said facilities shall be planned in various areas throughout the development, and in successive stages, as depicted in Exhibit "I."

Commented [CS24]: A questions was asked regarding the ability of a contract to legally commit the City to convene a Public Hearing.

Answer:
After review of this paragraph, it was determined that this line is not necessary given the reference to Utah Code Ann. §10-9a-609.5 above (which does in fact require a Public Hearing). See proposed language change.

2. **Number of Stalls.** The quantity of stalls shall be determined by UTA to satisfy park & ride demand, and shall not exceed seven hundred (700) stalls, which shall be subject to a parking Construction, Operation and Easement Agreement. Park & Ride Facilities shall be located and oriented in such a way that they are compliant with UTA’s TOD Design Guidelines and policies.

3. **Funding of Park & Ride Facilities.** All UTA Park & Ride Facilities that are depicted in Stages 1 thru 3 of Exhibit “I,” except for the south parking structure, shall be funded by the initial bond package and shall be prioritized as a use of those bond proceeds as Transit Critical Infrastructure. Excess bond proceeds remaining after Construction Step 1 may be applied toward the southern parking structure. Prior to development occurring as depicted in Parking Stage 4 and Stage 5, funding for UTA Park & Ride Facilities in those Stages shall be secured, which funding may come from a variety of funding sources (i.e., the Bonding Authority securing a second bond, Transportation Reinvestment Zone funds, grants, and so on), provided, however, UTA shall not be obligated to, but may choose to, contribute to the funding of the southern parking structure.

a. **Phasing of UTA Park & Ride.** The locations and quantities of UTA Park & Ride Facilities shall be phased with the ongoing Development of Project, as depicted in Exhibit “I.” At each Parking Stage, the location and quantity of stalls shall reflect actual demand for park & ride stalls by UTA patrons.

b. **Ownership of Parking Structure.** UTA shall own the Parking Structure and operate its use pursuant to a Construction, Operation and Easement Agreement.

c. **Transportation Demand Management Strategies.** UTA will consult with City its implementation of Transportation Demand Management Strategies for the Parking Structure.

G. Resolution of Disputes Regarding Project Infrastructure

If the City determines that the proposed Project Infrastructure is not compatible with the overall development of the Project, as then contemplated, at Buildout, in accordance with applicable City Laws, the MDP and this MDA, then any such dispute shall be subject to the “Meet and Confer” provisions of Section 5(A)(2), included below.

H. Restrictions on Certificates of Occupancy

No certificates of occupancy may be issued by the City for any Phase until completion of all items of Project Infrastructure specifically required pursuant to an approved Building Permit application in accordance with this MDA, the MDP, and the City Laws, except landscaping.

Commented [CS25]: The following questions were asked:
1- Although a NTE of 700 stalls is number was provided, why is there not a minimum requirement?
2- Does UTA have a minimum number of required stalls?
3- How do we enter into a contract without a firm number of stalls to build? –this cannot be provided at a future date.
4- How can the developer scope the parking without knowing a firm number?
Answers:

Commented [JA26R25]: The point of this section is to provide the developer with certainty as to how much parking needs to be provided for UTA. Right now that number is 700 (not for current demand, but for projected demand), and UTA agrees that this is an absolute maximum. So 700 is the firm number. It is quite possible, however, that the number of stalls required could come down (but not up) as UTA considers additional data.

Commented [CS27]: A question was asked regarding this document.
Answer:
At this point, the document does not exist and will need to be perfected between the parties prior to the construction of the UTA Parking Structure.

Commented [CS28]: A question was asked if this a document to be added as an exhibit.
Answer:
This is not a current document, but rather a process that the parties will go through prior to the construction of the UTA Parking Structure. To do so now would be premature, in that the UTA Parking Structure will not be constructed for some years.
Suggested adding it as a term to be defined by UTA to explain the TDM process.

I. CC&R's

As applicable, the owner(s) of all or a portion of the Property, and or the Owner's Association(s) created with respect thereto, shall be responsible for the implementation and enforcement of CC&R's if and as they deem necessary or appropriate. The CC&R's may be adopted and amended without any requirement of approval thereof by the City; however, Master Developer shall submit all CC&R's to the City for review and comment prior to adoption or amendment. All CC&R's shall be subject to the terms and provisions of this MDA and must not be in conflict with the MDA, the MDP, or City Laws.

IV. CONSTRUCTION STANDARDS AND REQUIREMENTS

A. Permits

1. **Building Permits.** Before beginning construction or development of any buildings, structures or other work or improvements upon any portion of the Property, Master Developer or a Subdeveloper, as applicable, shall secure, or cause to be secured, any and all permits which may be required by the City or any other governmental entity having jurisdiction over the work. Upon satisfactorily meeting all pertinent requirements as set forth in this MDA, the MDP and City Laws, the City agrees to grant to Master Developer, or a Subdeveloper, as applicable, those permits and approvals necessary to permit the Master Developer or Subdeveloper to implement and complete the development of the Project. The City shall reasonably cooperate with the Master Developer or a Subdeveloper in seeking to secure such permits from other governmental entities.

2. **Grading.** Master Developer and/or a Subdeveloper may apply for and obtain a grading permit following preliminary approval by the Planning Commission of a Site Plan or a Subdivision Plat if Master Developer and/or a Subdeveloper has submitted and received approval of a site grading plan from the City Engineer. Any grading performed by Master Developer and/or a Subdeveloper pursuant to only a grading permit prior to the establishment of finished grades by a final approval shall be at the risk of Master Developer or the Subdeveloper. If there are any discrepancies between the grade elevations created by the grading permit activities and the final, approved elevations, the City shall have no responsibility or liability for any such discrepancy. Nothing herein shall prevent Master Developer from obtaining a demolition permit, at any time Master Developer reasonably deems necessary.

V. DEFAULT

A. Notice

If UTA, Master Developer or a Subdeveloper, or the City is believed to be in Default for failing to perform its respective obligations hereunder or to comply with the terms hereof, the party believing that a Default has occurred shall provide written Notice to the party that is believed to be in Default, and to UTA. If the City provides any Notice of Default to any Subdeveloper it shall also provide a courtesy copy of such Notice to Master Developer and UTA at the same time.

1. Contents of Notice of Default. The Notice of Default shall:

- a. Specify the nature of or claimed event of Default;
- b. Identify with particularity the provisions of any applicable law, rule, regulation or provision of this MDA or the MDP that is claimed to be in Default;
- c. Identify why the Default is claimed to be material; and
- d. If elected by the party delivering the Notice of Default, in its discretion, the Notice of Default may propose a method and period of time for curing the Default, which period of time shall be not more than sixty (60) days.

2. Remedies. Upon service of a Notice of Default:

- a. The Parties shall attempt to resolve the Default through a “Meet and Confer” meeting within 10 calendar days.
- b. If no resolution is reached, the Parties may elect any rights or remedies available at law or equity.
- c. In no event shall the City have any obligation to pay Master Developer, UTA, or any successor in interest, for consequential damages, lost profits, or lost opportunity costs arising by reason of an alleged or established Default of the City, and Master Developer and UTA hereby irrevocably waive any right to assert any claim for the same. Notwithstanding any other provision contained herein, the City’s aggregate liability for out-of-pocket costs actually paid by Master Developer by reason of the City’s Default, including but not limited to attorney’s fees, legal expenses and court costs, shall not exceed five million dollars (\$5,000,000.00).
- d. Extended Cure Period. If any Default cannot be reasonably cured within sixty (60) days then such cure period may be extended by the non-defaulting party so long as the defaulting party is pursuing a cure with reasonable diligence.

3. Cumulative Rights. The rights and remedies set forth herein shall be cumulative.

4. Service of Notices. All notices required or permitted under this MDA shall be given in writing by certified mail, postage prepaid; or personally; or by nationally-recognized overnight courier service to the street address used by the respective party. Any party may change its address for Notice under this MDA by giving written Notice to the other party in accordance with the provisions of this Section.

a. Appointment of Representatives. To further the commitment of the parties to cooperate in the implementation of this MDA, the City, UTA and Master Developer each shall designate and appoint a representative to act as a liaison between the City and its various departments and the Master Developer.

(i) City: the initial representatives shall be ~~the City Administrator~~~~Manager and Assistant City Administrator~~~~Manager, currently~~ JJ Allen and Summer Palmer, 55 South State Street, Clearfield, Utah 84015.

(ii) UTA: the initial representatives shall be ~~Director of Real Estate & TOD and the Project Manager for TOD, currently~~ Jordan Swain and Paul Drake, -669 West 200 South, Salt Lake City, Utah 84101.

(iii) Master Developer: the initial representatives shall be ~~a representative from Stack~~ (Trevor Evans (~~Stack~~), 2801 N. Thanksgiving Way, Ste. 100, Lehi, Utah 84043; and ~~a representative from Hamilton Partners~~ (-Ken Shields (~~Hamilton Partners~~), 222 South Main Street, Ste. 1760, Salt Lake City, Utah 84101.

(iv) The parties may change their designated representatives by Notice.

Commented [CS29]: This change is made at the request of the Planning Commission.

VI. MISCELLANEOUS PROVISIONS

A. Amendment. ~~This MDA, and all Exhibits thereto, is the entire agreement between the Parties regarding the subject matter included herein. Any amendment to this MDA shall be in writing, and may not be amended or modified except either as provided herein or by a subsequent written amendment signed by all Parties, and . Any amendment to this MDA shall be recorded against the Property.~~

B. Headings. The captions used in this MDA are for convenience only and are not intended to be substantive provisions or evidences or intent.

Commented [CS30]: It was suggested that this paragraph was unnecessarily complicated and could be rewritten to accomplish the same goal.

Answer:
See suggested edits

C. No Third Party Rights / No Joint Venture. This MDA does not create a joint venture relationship, partnership or agency relationship between the City, UTA and Master Developer. Further, the parties do not intend this MDA to create any third-party beneficiary rights. The parties acknowledge that this MDA refers to a private development and that the City has no interest in, responsibility for or duty to any third parties concerning any improvements to the Property, except as otherwise specifically provided in this MDA.

D. Assignability. The rights and responsibilities of Master Developer under this MDA may be assigned in whole or in part by Master Developer with the consent of the City as provided herein, which consent shall not be unreasonably withheld, conditioned or delayed. City understands and agrees that the Project is large and diverse, and that Master Developer is likely to assign a portion or portions of its development rights under this MDA to one or more Subdevelopers in order to facilitate the development of various phases and/or portions of the Project. Notwithstanding anything to the contrary herein, Master Developer shall have the right to assign its rights under this MDA to any "Affiliate" of Master Developer without obtaining the City's consent therefor. As used in this Section, "Affiliate" shall mean any person or entity controlling, controlled by or under common control with Master Developer (as used herein "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies and decision-making of such person or entity, through the ownership of voting interests).

1. Partial Assignment. If any proposed assignment is for less than all of Master Developer's rights and responsibilities then the assignee shall be responsible for the performance of each of the obligations contained in this MDA to which the assignee succeeds. Upon any such approved partial assignment, Master Developer shall be released from and have no liability with respect to any future obligations as to those obligations which are assigned but shall remain responsible for the performance of any obligations that were not assigned.

2. Grounds for Denying Assignment. The City may only withhold its consent if the assignee's ability to perform the obligations of Master Developer proposed to be assigned is in question, and the City provides a specific description of its objections in writing. Any refusal of the City to consent to an assignment shall be subject to the "Meet and Confer" process.

E. No Waiver. Failure of any party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future date any such right or any other right it may have.

F. Severability. If any provision of this MDA is held by a court of competent jurisdiction to be invalid for any reason, the parties consider and intend that this MDA shall be deemed amended

Commented [CS31]:

UTA (Tim): Please review the below comment that was received by staff from an elected official and consider providing an explanation, or probably better yet, taking a shot at redrafting the "assignability" paragraph.

This is generally difficult to understand and seems to be inconsistent and unnecessarily complex. For example, the first sentence implies consent of the City but in a subsequent sentence, it says that action can be taken without City consent. The last sentence is roughly constructed and if you pick it apart, it is lacking some grammatical structure. Not sure why the parenthetical statement needs to be in parentheses since it seems to be a major objective of the sentence and not an aside. Also, it mentions a "subdeveloper" but then goes to great lengths to make an attempt (unsuccessfully in my mind) to describe what an "Affiliate" means. It is not clear what the difference between a subdeveloper and an affiliate means and what assignment criteria are applied to each. This paragraph needs to be reworked to say what is meant to say. Also it should be clearly stated that a subdeveloper, affiliate or any other entity is as completely bound to this document as the original party. That, I suppose, can be assumed but I think it should be explicitly stated.

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to the extent necessary to make it consistent with such decision and the balance of this MDA shall remain in full force and effect.

G. Force Majeure. Any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefor; inability to obtain reasonable financing in the event of significant changes in the credit markets, acts of nature, governmental restrictions, regulations or controls, judicial orders, enemy or hostile government actions, wars, civil commotions, fires or other casualties or other causes beyond the reasonable control of the party obligated to perform hereunder shall excuse performance of the obligation by that party for a period equal to the duration of that prevention, delay or stoppage.

H. Time is of the Essence. Time is of the essence to this MDA and every right or responsibility shall be performed within the times specified.

I. Mutual Drafting. Each party has participated in negotiating and drafting this MDA and therefore no provision of this MDA shall be construed for or against either party based on which party drafted any particular portion of this MDA.

J. Applicable Law. This MDA is entered into in the State of Utah and shall be construed in accordance with the laws of the State of Utah irrespective of Utah's choice of law rules.

K. Venue. Any action to enforce this MDA shall be brought only in the Second Judicial District Court for the State of Utah, Farmington Department.

L. Recordation and Running with the Land. This MDA shall be recorded against the Property in the real property records of Davis County. This MDA shall be deemed to run with the land and shall be deemed binding upon the Parties, and all of their successors and assigns.

M. Authority / Good Standing.

1. Master Developer represents and warrants to the City and UTA that (i) Master Developer is duly formed and validly existing under the laws of Utah and is qualified to do business in the State of Utah; (ii) the individuals executing this MDA on behalf of Master Developer are duly authorized and empowered to bind Master Developer; and (iii) this MDA is valid, binding and enforceable against Master Developer in accordance with its terms.

2. City represents and warrants to Master Developer and UTA that (i) City is a Utah municipal corporation; (ii) City has power and authority pursuant to enabling legislation, the Act, City Laws, and the City Code, to enter into and be bound by this MDA; (iii) the individual(s)

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executing this MDA on behalf of City are duly authorized and empowered to bind the City; and (iv) this MDA is valid, binding and enforceable against the City in accordance with its terms.

3. UTA represents and warrants to the City and Master Developer that (i) UTA is a large public transit district organized under the Utah Public Transit District Act; (ii) UTA has power and authority pursuant to authority and approval from the Act and other enabling legislation in the Utah Code, to enter into and be bound by this MDA; (iii) the individual(s) executing this MDA on behalf of UTA are duly authorized and empowered to bind UTA; and (iv) this MDA is binding and enforceable against UTA in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have executed this MDA by and through their respective, duly authorized representatives as of the day and year first herein above written.

CLEARFIELD CITY, a municipal corporation

(signature block of Clearfield representatives)

CLEARFIELD STATION PARTNERS, LLC
a Utah Limited Liability Company

(signature block of Clearfield Station Partners, LLC representatives)

UTAH TRANSIT AUTHORITY
a large public transit district organized under the Utah Public Transit District Act

(signature block of Utah Transit Authority representatives)

TABLE OF EXHIBITS

- Exhibit “A” Description of Property
- Exhibit “B-1” Master Development Plan
- Exhibit “B-2” Illustrative Master Plan
- Exhibit “C” Construction Steps
- Exhibit “D” Impact Fee Costs
- Exhibit “E” Responsibility for Project Infrastructure and Funding
- Exhibit “F” Utility and Drainage Plan
- Exhibit “G-1” Open Space Plan
- Exhibit “G-2” Maintenance Responsibility Plan
- Exhibit “H” Road Network Plan
- Exhibit “I” Parking Stages Plan