

MEMO

TO: WESTERN WEBER PLANNING COMMISSION

FROM: CHARLIE EWERT

DATE: APRIL 17, 2025

RE: FURTHER CONSIDERATION AND POSSIBLE ACTION ON WESTBRIDGE MEADOWS REZONE APPLICATION.

In the planning commission's April 22nd meeting, the planning commission will once again review the Westbridge Meadows Master Plan application and associated draft development agreement to determine whether to forward a positive or negative recommendation for the rezone to the county commissioners. The draft development agreement for the proposal is attached hereto. A complete staff analysis of the proposal can be reviewed in the planning commission staff report dated March 11, 2025.

The planning commission held the requisite public hearing to receive public comments and considerations for the request on March 11, 2025. In that meeting, the planning commission tabled any action on the application pending receipt and review of additional information about water resource availability and setbacks/buffers from the neighboring Ogden Bay and the Weber River.

In the planning commission's April 15th meeting, the planning commission discussed water resources with the Weber Basin Conservancy District. Representatives from the district explained the state of water governance in relation to development, as well as provided valuable facts about existing and future growth/water trends, plans, and some concerns regarding water availability for new growth in the future. In that meeting the planning commission also considered the public's concerns regarding development next to adjacent sensitive lands and explored each other's thoughts on the matter. No decisions were made.

Please let me know if I can provide any additional or clarifying information.



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DEVELOPMENT AGREEMENT

Between

WEBER COUNTY, UTAH

and

Westbridge Development, LLC

for the

Westbridge Meadows Master Planned Community

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Note to staff:

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DEVELOPMENT AGREEMENT

Westbridge Meadows Master Planned Community

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between Weber County, Utah ("County") and Westbridge Development, LLC, a Utah limited liability company ("Master Developer"), known together herein as the "Parties."

RECITALS

WHEREAS, The Master Developer desires and intends to develop a master planned mixed-use community (the "Project") in the unincorporated area of Weber County known as West-Central Weber;

WHEREAS, The Master Developer's objective is to develop in a manner that complements the character of the community as specified in the Western Weber General Plan and is financially successful;

WHEREAS, The County's objective is to only approve development that supports and advances the health, safety, and welfare of the community, as generally described in the general plan and as otherwise determined appropriate by the Board of County Commissioners;

WHEREAS, Development of the Property pursuant to this Agreement will result in benefits to the County by providing orderly growth, sustainable development practices, street and pathway connectivity, provisions for open space, dark sky lighting, and assurances to the County that the Property will be developed in accordance with this Agreement;

WHEREAS, Entering into this Agreement will result in significant benefits to the Master Developer by providing assurances to Master Developer that it will have the ability to develop the Property in accordance with this Agreement;

WHEREAS, Master Developer and the County have cooperated in the preparation of this Agreement;

WHEREAS, Prior to the execution of this Agreement and the associated rezone to which this agreement is inextricably linked, the Property's zone is/was A-3 and SOZ;

WHEREAS, Master Developer has pursued a rezone of the Property to the MPDOZ, R1-15, R1-12, R1-10, R1-5, R2, R3-A, R3-S, FB and O-1 zones consistent with the terms and provisions contained in this Agreement;

WHEREAS, The parties desire to enter into this Agreement as a legislative means to specify the rights and responsibilities of the Master Developer to develop the Property as part of the Project as expressed in this Agreement and the rights and responsibilities of the County to allow and regulate such development pursuant to the requirements of the Agreement; and

WHEREAS, The Project will be located on land referred to herein as the "Property". The Property is as more specifically described in **Exhibit A – Property Legal Description** and illustrated in **Exhibit B – Property Graphic Depiction**. A Concept Plan showing the general location and layout of the Project is contained in **Exhibit C – C Plan**.

NOW, THEREFORE, in consideration of the recitals (which are incorporated into the Agreement by this reference), the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT TERMS

1. **Incorporation of Recitals and Exhibits.**

The foregoing Recitals and Exhibits A-[X] are hereby incorporated into this Agreement.

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2. **Effective Date, Expiration, Termination.**

2.1. **Effective Date.** The Effective Date of this Agreement is the latter of:

2.1.1. The last date upon which it is signed by any of the Parties hereto;

2.1.2. The recordation of this Agreement; or

2.1.3. The recordation of the rezone ordinance to which this Agreement is associated and inextricably linked.

2.2. **Expiration and Zone Reversion.**

2.2.1. **Term.** This agreement expires 30 years after the Effective Date.

2.2.1.1. If prior to the expiration of this agreement Master Developer has not been notified of any Default, or if any Default has been satisfactorily cured or is in the process of being satisfactorily cured as provided herein, then this Agreement shall be automatically extended for an additional 10 years.

2.2.1.2. **Reserved.**

2.2.2. **Zone Reversion; Expiration of Agreement Related To Development of the Property.** The expiration of this Agreement as it relates to the development of the Property or the establishment of new uses on the Property shall be as provided in Section 2.2.1 of this Agreement, unless earlier terminated or modified by written amendment as set forth herein, or unless the use is abandoned as governed by the Code. In the case of abandonment, this Agreement shall terminate on the date abandonment has been determined. Upon expiration or termination of this Agreement, the portion of the Property that has not been developed as set forth in this Agreement, including any parcel or portion of parcel that could be further developed, shall thereafter be governed as follows:

2.2.2.1. the rights and responsibilities set forth herein related to establishing new development on the Property or establishing new uses on the Property shall terminate; at which time the rights and responsibilities of the Prior Zone shall govern remaining development or the establishment of new uses on the Property; and

2.2.2.2. the portion of the Property that has not been developed as set forth in this Agreement shall automatically revert to the Prior Zone without further Notice, unless the legislative body decides to keep the existing zone or otherwise rezone the Property in any other manner. The Parties agree that should zone reversion occur, the process due and provided for the adoption of this Agreement and related rezone accomplishes the process due for the zone map to be reverted to the Prior Zone, and any future owners of any portion of the Property are hereby on notice accordingly. Existing development and uses lawfully established under this Agreement prior to expiration or termination shall be deemed nonconforming rights, as governed by the Code and the Act.

2.2.2.3. After the expiration or termination of this agreement, the legislative body may make changes to the zoning provisions established in **Section 2.2.2.1 and Section 2.2.2.2** pursuant to their typical legislative authority.

2.2.3. Expiration of Agreement Related to Ongoing Performance Responsibilities. Notwithstanding the expiration or termination of this Agreement, all ongoing operations, performance, and maintenance responsibilities such as, but not limited to, compliance with requirements pertaining to outdoor lighting, landscaping, noise, berming, buffering, screening, parks, pathways, or building or architectural designs shall remain in effect as legislatively adopted land use provisions that govern any development that has occurred on the Property pursuant to this Agreement. After the expiration or termination of this Agreement, typical legislative action shall be required to make changes thereto.

2.2.4. Preserved Legislative Powers. Nothing in this **Section 2.2** shall be interpreted to be a restriction on the County's legislative power to act otherwise if deemed appropriate at that time by the legislative body.

2.3. Termination. This Agreement may be terminated by mutual written agreement of the Parties to this Agreement. This Agreement automatically terminates, without notice, in the following circumstances:

2.3.1. The term of this Agreement expires and is not extended as provided above;

2.3.2. The Project is abandoned or the use is discontinued, as provided for by Weber County Code **Chapter 108-12**.

2.3.3. The Master Developer defaults on any provision of this Agreement and the default is not resolved as specified in **Section 13** of this Agreement; or

2.3.4. The provisions of **Section 5.4** of this agreement take effect.

3. Definitions and Interpretation.

For purposes of this Agreement, the following terms, phrases, words, and their derivations shall have the meaning given herein where capitalized; words not defined herein shall have the same meaning as provided by the Code, if applicable. When consistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall apply to all genders whenever the context requires. The words "shall" and "will" are mandatory and the word "may" is permissive. References to governmental officials or entities refer to those officials or entities and their Successors. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision.

3.1. Act means the County Land Use, Development, and Management Act, Utah Code Ann. §§17-27a-101, et seq.

3.2. Agreement means this Development Agreement between the County and Master Developer, approved by the Board of County Commissioners, and executed by the undersigned, including all of this Agreement's exhibits.

3.3. Applicant means a person or entity submitting a Development Application, a Modification Application or a request for an Administrative Decision.

3.4. Assignee means a person or entity that assumes the rights and responsibilities of Master Developer pursuant to a valid assignment, as provided in Section 11.4 of this Agreement.

- 3.5. **Board of County Commissioners** means the elected County Commission of Weber County.
- 3.6. **Building Permit** means the County's building permit or building permit review process, as specified in the Code of Ordinances of Weber County.
- 3.7. **Buildout** means the completion of all of the development on all of the Property for all of the Project.
- 3.8. **Code** means the County's Code containing its land use regulations adopted pursuant to the Act.
- 3.9. **Concept Plan** means **Exhibit C – C**, a conceptual plan for the Project which is hereby approved by the County as part of this Agreement. The Concept Plan sets forth general guidelines for the proposed future development of the Property.
- 3.10. **County** means Weber County, a political subdivision of the State of Utah.
- 3.11. **County Consultants** means those outside consultants employed by the County in various specialized disciplines such as traffic, hydrology, legal, or drainage for reviewing certain aspects of the development of the Project.
- 3.12. **Default** means a material breach of this Agreement.
- 3.13. **Design Review** means the County's design review process, as specified in the Code.
- 3.14. **Development Application** means an application to the County for development of a portion of the Project including a Subdivision, a Design Review, a Building Permit, or any other permit, certificate, or other authorization from the County required for development of the Project.
- 3.15. **Development Standards** means a set of standards approved by the County as a part of the approval of the Concept Plan and this Agreement controlling certain aspects of the design and construction of the development of the Property including setbacks, building sizes, height limitations, parking and signage; and, the design and construction standards for buildings, roadways, and other Improvements.
- 3.16. **Effective Date.** "Effective Date" has the meaning set forth in Section 2 of this Agreement.
- 3.17. **Force Majeure Event** means any event beyond the reasonable control of the affected Party that directly prevents or delays the performance by such Party of any obligation arising under this Agreement, including an event that is within one or more of the following categories: condemnation; expropriation; invasion; plague; drought; landslide; tornado; hurricane; tsunami; flood; lightning; earthquake; fire; explosion; epidemic; pandemic; quarantine; war (declared or undeclared), terrorism or other armed conflict; material physical damage to the Project caused by third parties; riot or similar civil disturbance or commotion; material or supply delay; other acts of God; acts of the public enemy; blockade; insurrection, riot or revolution; sabotage or vandalism; embargoes; and, actions of governmental or judicial authority.
- 3.18. **Impact Fees** means those fees, assessments, or payments of money imposed by the County as a condition on development activity as specified in Utah Code Ann., §§ 11-36a-101, et seq.
- 3.19. **Improvements** means those improvements of public or private infrastructure which are specified in this Agreement, by the Code, or as a condition of the approval of a Development Application because they are necessary for development of the Property, such as local roads or utilities.
- 3.20. **Master Developer** means *[name of Master Developer]* or its Assignees as provided in Section 11.4 of this Agreement.
- 3.21. **Modification Application** means an application to amend this Agreement.

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- 3.22. **Non-County Agency** means a governmental entity, quasi-governmental entity, or water or sanitary sewer authority, other than those of the County, which has jurisdiction over the approval of any aspect of the Project.
- 3.23. **Notice** means any notice to or from any Party to this Agreement that is either required or permitted to be given to another Party.
- 3.24. **Outsourc[e](ing)** means the process of the County contracting with County Consultants to provide technical support in the review and approval of the various aspects of a Development Application as is more fully set out in this Agreement.
- 3.25. **Reserved**
- 3.26. **Parcel** means any parcel of land within the Property created by any means other than a Subdivision plat, upon which development is not approved.
- 3.27. **Parties** means the Master Developer and the County, including their Successors.
- 3.28. **Pathway** means a 10-foot wide multi-use paved pathway that complies with Exhibit E – Street Cross Sections or Exhibit F – Typical Pathway Cross Section of this Agreement and any other requirements of the County Engineer.
- 3.29. **Phase or Phasing** means the development of a portion of the Project at a point in a logical sequence as determined by Master Developer but in compliance with the Code and this Agreement.
- 3.30. **Planning Commission** means the Planning Commission for the area in which the Property is located.
- 3.31. **Prior Zone** means the zone in effect prior to the rezone to which this Agreement is linked.
- 3.32. **Project** means the development to be constructed on the Property pursuant to this Agreement with the associated public and private facilities and all of the other aspects approved as part of this Agreement including its exhibits.
- 3.33. **Property** means the land area on which the Project will be sited, as more specifically described in Exhibit A – Property Legal Description and Exhibit B – Property Graphic Depiction.
- 3.34. **Proposed Taxing Entity or Proposed Tax** means the proposed inclusion of the Property within a taxing entity's area, or within the area of a specific tax, when the Property was not subject to the taxing entity or tax at the time this Agreement was executed, and when the taxing entity or tax is proposed to compensate for the provision of at least one public service or Improvement resulting from the growth and development of the Property or the general area. A Proposed Taxing Entity or Proposed Tax includes but is not limited to the proposed inclusion of the Property into a municipality, special service district, special district, assessment area, or any similar entity or tax.
- 3.35. **Public Landscaping** means landscaping Improvements within street rights-of-way, in a required Public Park Open Space, and on other properties owned by a public entity or required to be open to the public.
- 3.36. **Public Park Open Space** means the area intended to meet the minimum 10 acres per 1,000 residents of public open space, whether improved or unimproved as may be specified in this Agreement. To qualify to count as Public Park Open Space, the parcel shall be an area that is at least 5,000 square-feet and no less than 20 feet in width at any given point.
- 3.37. **Routine and Uncontested** means simple and germane to the Project or Property, having very little chance of affecting the general character of the area, and not anticipated to generate

meaningful concern from the public.

- 3.38. **Smart Watering Controller** is an automatic landscape watering controller that can connect to the internet to automatically adjust watering schedules or amounts based on local weather and environmental conditions, such as an Orbit B-Hyve smart controller or a Rainbird ESP smart controller.
- 3.39. **Subdeveloper** means an entity not "related" (as determined by Internal Revenue Service regulations) to Master Developer which purchases a Parcel for Subdivision platting prior to development thereon.
- 3.40. **Subdivision** means the division of any portion of the Project into a subdivision pursuant to the Act and/or the Code.
- 3.41. **Subdivision Application** means the application to create a Subdivision.
- 3.42. **Successor** means a person or entity that succeeds to a Party's rights and responsibilities under this Agreement by any means, whether in whole or in part, and whether directly or indirectly. It does not include a purchaser or other transferee to whom Master Developer or its Successor conveys a lot within an approved subdivision.

4. **Conflicting Provisions**

The Code shall apply to each Development Application except as the County's Vested Laws are expressly modified by this Agreement (including any written provision in an exhibit thereto). The following rules shall govern resolution of any conflicting provision herein or otherwise. County reserves the right to err interpretation more flexibly.

- 4.1. For any conflict between the exhibits and this Agreement, this Agreement shall prevail.
- 4.2. For any conflict between exhibits and each other, the most restrictive for Master Developer shall apply.
- 4.3. For any conflict within an exhibit, the most restrictive for Master Developer shall apply.
- 4.4. The Parties agree that the graphic depictions in the Community Plan are conceptual in nature and designed to illustrate the intended general layout and configuration of the important Project's streets, trails, open spaces, and other amenities to which Master Developer shall be entitled. By nature of being conceptual, these exhibits may not show all specifics necessary for the Project to comply with all of County's Vested Laws, which shall not be interpreted to be an exception to County's Vested Laws.

5. **Vested Rights and Reserved Legislative Powers.**

- 5.1. **Vested Rights.** Master Developer shall have the vested right to develop and construct the Project on the Property in accordance with the density provided in **Section 8.1** and in compliance with the minimum standards of the R1-15, R1-12, R1-10, R1-5, R2, R3-A, R3-S, FB and O-1 zones in a configuration as depicted on **Page 8 of the Community Plan**, and other matters specifically addressed in this Agreement, subject to compliance with the terms and conditions of this Agreement and other applicable Code provisions in effect as of the Effective Date. The Parties intend that the rights granted to the Master Developer under this Agreement are contractual and also those rights that exist under statute, common law, and at equity.
- 5.2. **Existing Laws.** Except as otherwise specified in this Agreement, the Parties hereby mutually volunteer to the application of the Code, except Title 102, in effect at the time of the Effective

Date herein, to the Project until this Agreement is terminated or expires. The Code is incorporated into this Agreement by reference.

- 5.3. Exceptions to Vested Rights.** The Parties understand and agree that the Project may be required to comply with future changes to the Code that do not limit or interfere with the vested rights granted pursuant to the terms of this Agreement. The following are examples for illustrative purposes of a non-exhaustive list of the type of future laws that may be enacted by the County that would be applicable to the Project:
- 5.3.1. County Discretion to Apply Future Laws.** County has full discretion to either apply or not apply any future law or adopted standard provided it does not explicitly conflict with any specific provision of this Agreement, except as may be allowed by Section 5.5 of this agreement.
 - 5.3.2. Written Agreement.** The Parties may mutually agree, in writing, to the application of future laws to the Project.
 - 5.3.3. Compliance with State and Federal Laws.** Future laws which are generally applicable to all properties in the County and which are required to comply with State and Federal laws and regulations affecting the Project.
 - 5.3.4. Safety Code Updates.** 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 (IBC), International Residential Code (IRC), the American Public Works Association (APWA) Specifications, American Association of State Highway and Transportation Officials (AASHTO) Standards, the Manual of Uniform Traffic Control Devices (MUTCD), the National Association of City Transportation Officials (NACTO) 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;
 - 5.3.5. Taxes.** Taxes, or modifications thereto, so long as such taxes are lawfully imposed and charged uniformly by the County to all properties, applications, persons and entities similarly situated;
 - 5.3.6. Fees.** Changes to the amounts of fees for the processing of Development Applications that are generally applicable to all development within the County, or a portion of the County as specified in the lawfully adopted fee schedule, and which are adopted pursuant to State law; and
 - 5.3.7. Impact Fees.** Impact Fees or modifications thereto which are lawfully adopted, imposed, and collected.
- 5.4. Future Laws.** The Parties agree that this Agreement and the associated rezone offers mutual benefits based on existing laws. As such, a future law or binding judicial decision that limits or interferes with any of Master Developer's material responsibilities herein could prevent the County from realizing such expected benefits in a manner that, had the future law or binding judicial decision existed at the time of consideration, might have dissuaded the County from executing this Agreement or granting the associated rezone. Therefore, the Parties agree that if a future law is implemented or a binding judicial decision is issued that gives Master Developer the right or ability to avoid, limit, or interfere with any responsibility specified in this Agreement, Master Developer hereby waives the new right or ability in favor of maintaining the applicability and integrity of this Agreement. In the event the new right or ability is such that Master Developer's waiver still limits or interferes with the responsibility or the applicability thereof, then

this Agreement automatically terminates as provided in Section 2. However, the termination shall be void and both Parties shall proceed as if no termination occurred if the County stipulates, in writing, to such.

- 5.5. Reserved Legislative Powers.** Master Developer acknowledges that the County is restricted in its authority to limit its police powers by contract and that the limitations, reservations, and exceptions set forth herein are intended to reserve to the County all of its police power that cannot be so limited. Notwithstanding the retained power of the County to enact such legislation under its police powers, any such legislation shall only be applied to modify the vested rights of Master Developer as referenced herein under the terms of this Agreement based upon policies, facts, and circumstances meeting the compelling, countervailing public interest exception to the vested rights doctrine in the State of Utah as codified in Utah Code §17-27a-508. Any such proposed change affecting the vested rights of the Project shall be of general application to all development activity in similarly situated unincorporated areas of the County; and unless in good faith the County declares an emergency, Master Developer shall be entitled to prior written notice and an opportunity to be heard with respect to the proposed change and its applicability to the Project under the compelling, countervailing public interest exception to the vested rights doctrine.

6. Project Description.

A project description is more fully explained in Exhibit C: Community Plan.

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-require subdevelopers to obtain ledger from Master Developer

7. Project Location and Illustration.

The Project is located on the Property as described in **Exhibit A – Property Legal Description**, and illustrated in **Exhibit B – Property Graphic Depiction**. Additional illustrations can be found in **Exhibit C – Community Plan**.

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8. Development Standards.

- 8.1. Project Density, Restrictions, and Accounting.** In exchange for the benefits offered by the Master Developer in this Agreement the follow entitlements, and management thereof, are established:

8.1.1. Maximum Residential Dwelling Units. Up to **13,200** Residential Dwelling Units can be constructed in the project, or as many as can be sited and constructed in a manner that complies with all applicable development standards and requirements for the location of the build, whichever is less.

8.1.2. Maximum Commercial Floor Area. Up to **1,200,000** square feet of commercial floor area, or as many as can be sited and constructed in a manner that complies with all applicable development standards and requirements for the location of the build, whichever is less.

8.1.3. Street Regulating Plan and Commercial Restriction. Master Developer agrees that despite the established entitlements, no structure, except those reasonably necessary for utilities, streets, or Public Park Open Space improvements, shall be erected in the Form-Based Zone until after Master Developer obtains County's approval of one or more street regulating plans pursuant to Title 104, Chapter 22 of the Code. County shall adopt any reasonably configured street regulating plan proposed by Master Developer

as long as:

- 8.1.3.1. it complies with the purpose, intent, standards and descriptions of Title 104, Chapter 22, Form-Based Zone;
- 8.1.3.2. it complies with the connectivity and block standards of Section 106-2-1.020 parts (c), (d);
- 8.1.3.3. it steps down street types and building form as they approach the edges of the FB zone, except when adjacent to the O-1 zone, in a manner that provides a visually seamless transition of building form and use into the neighborhoods of the adjoining zone(s);
- 8.1.3.4. it contains an area that is no less than 50 acres;
- 8.1.3.5. the Form-Based Zone's required street cross section or, if mutually agreeable by County and Master Developer, other "main street" cross section is implemented; and
- 8.1.3.6. no part of the Project is in Default at the time the street regulating plan is adopted.

8.1.4. Flexible Zone Edges. Except along the outer edges of the Property and except for the Open Space O-1 zone demarking the 100-foot wide Weber River corridor, pursuant to Section XXX, the zone boundaries presented in the Community Plan shall be flexible such that any boundary can be established within 600 feet of its depicted boundary, provided that the material acreage of each zone does not change.

Commented [CE7]: Reference

Commented [CE8]: Legal: Needs review against state code to verify we can say this and not have it be a map amendment.

8.1.5. Transfers, Sending and Receiving Areas.

- 8.1.5.1. FB Base density established by this agreement, Exempt from using FB zone's calculation
- 8.1.5.2. Residential Dwelling Units shall be allowed to transfer from any zone within the Property (sending area) into any other zone within the Property (receiving area) as long as at no time shall any zone in the Property contain greater than 15 percent more Residential Dwelling Units than would otherwise be allowed.

8.1.6. Used or Transferred Maximum Residential Dwelling Units. Master Developer is responsible to the County for the accounting of, disposition of, or use of all Maximum Residential Dwelling Units within the Project regardless of who owns them or to what parcel(s) they are assigned. County shall have no obligation or authority to oversee, regulate, or mediate Master Developer's sale or other transfer of Maximum Residential Dwelling Units to any other party owning land within the Project, provided that their use is in compliance with this Agreement and the Code.

8.1.7. Development Accounting Report. With any subdivision application for the creation of one or more Residential Dwelling Unit or lot for one's siting, a Development Accounting Report, on a template approved by County, which shall be prepared by Master Developer, shall be submitted. It shall provide for the following:

Commented [CE9]: Defined?

- 8.1.7.1. **Consent.** Written consent from Master Developer, free from any conditions, indicating Master Developer's agreement to the submittal and processing of the subdivision application, and that the proposal meets all applicable requirements of this Agreement and the Code.

Commented [CE10]: Create as exhibit in this Agreement? You guys have any you've used or seen and liked? We have something but interested in seeing others.

- 8.1.7.2. **Ownership.** Ownership of the property that is subject of the subdivision

application;

- 8.1.7.3. **Maximum Units.** The total number of **Maximum Residential Dwelling Units** allowed in the Project, and the total number of Residential Dwelling Units allowed in each applicable zone;
- 8.1.7.4. **Units Previously Platted in Zone.** The count and percentage of the Maximum Residential Dwelling Units previously platted within any part of the Project, and the count and percentage of the total number of Residential Dwelling Units previously platted within any part of each applicable zone;
- 8.1.7.5. **Units in Ongoing Applications.** The count and percentage of the Maximum Residential Dwelling Units, and the count and percentage of the total number of Residential Dwelling Units in each applicable zone, that are part of an ongoing subdivision application, including those on an approved final subdivision plat not yet recorded;
- 8.1.7.6. **Zone Map.** A zone map illustrating with survey-level accuracy any zone boundary in relation to property boundaries;
- 8.1.7.7. **Units Proposed to be Developed.** The count and percentage of the Maximum Residential Dwelling Units, and the count and percentage of the total number of Residential Dwelling Units in each applicable zone, proposed in the subdivision application;
- 8.1.7.8. **Units Transferred or Remaining.** The count and percentage of the Maximum Residential Dwelling Units, and the count and percentage of the total number of Residential Dwelling Units in each applicable zone, remaining to be proposed for development;
- 8.1.7.9. **Public Park Open Space.** The count and percentage of total required acreage of any Public Park Open Space proposed in the subdivision application;

Commented [CE11]: Defined?

- 8.2. **Phasing.** The Parties agree and understand that the Project will be constructed in phases. The following provide for Major Phasing and Minor Phasing.

- 8.2.1. **Major Phasing.** Major phases in the Project shall be based on **traffic study (Exhibit X)**, wherein each new phase is triggered by a certain traffic volume based on a Level of Service C of 900 South Street, 1800/1600 South Street, and 2550 South Street as follows. Level of Service C shall be determined using the Highway Capacity Manual and the AASHTO Geometric Design of Highways and Streets, or similar best practice method as determined by the County Engineer.

Commented [CE12]: Correct title and exh #

- 8.2.1.1. **Phase 1 – 900 South Level of Service C.** As long as emergency egress is installed to at least the “ribbon road” standard specified in the Community Plan, and in a manner acceptable to the local Fire Authority, Master Developer shall be allowed to construct the Project up to 800 Residential Dwelling Units, with no limit to commercial square footage. However, at no time during this phase shall a three-lane (except reasonable lane improvements at controlled intersections) 900 South Street be allowed to reduce below a Level of Service C. If it does, all further development activity shall stop until either 2550 South Street or 1800/1600 South Street is constructed to full standard (First River Street) and connecting 4700 West Street over the Weber River and to the Project’s streets. Once the

connection is made, the project will enter Phase 2 and development activity shall be allowed to resume.

8.2.1.2. Phase 2 – First River Street Level of Service C. During Phase 2 of the Project, Master Developer shall be allowed to construct the Project up to 1900 Residential Dwelling Units, with no limit on commercial square footage. However at no time shall a three-lane (except reasonable lane improvements at controlled intersections) First River Street be allowed to reduce below a Level of Service C. If it does, all further development activity shall stop until both 2550 South Street and 1800/1600 South Street, are constructed to full standard (Second River Street) and connecting 4700 West Street over the Weber River and to the Project's streets. Once this connection is made, the project will enter Phase 3 and development activity shall be allowed to resume.

8.2.1.3. Remaining Phases. For each of the remaining major phases, if 900 South Street, 1800/1600 South Street, or 2550 South Street drop below a 3-lane Level of Service C, then all further development activity shall stop until the street so affected is constructed to a five-lane standard.

8.2.1.4. Compensation. Master Developer shall pay its proportionate share to increase the levels of service of 900 South Street, 1800/1600 South Street, or 2550 South Street.

Commented [CE13]: Not sure this says what it means. Might need to be revised.

8.2.2. Minor Phasing. The County acknowledges that Master Developer, Assignees of Master Developer, and/or Subdevelopers who have purchased Parcels of the Property may submit multiple Development Applications from time-to-time to develop and/or construct portions of the Project in Phases. Allowance for Phasing is subject to the following and any other Phasing provision in this Agreement:

Commented [CE14]: Define

8.2.2.1. Construction Drawings Required. Phasing is only allowed if each Phase is based on an approved final plat that succeeds an approved preliminary plat/plan. A final plat for a Phase shall not be submitted or accepted until after a complete set of construction drawings for the entire preliminary plat has been approved by the County Engineer. The construction drawings shall include all required Improvements of this Agreement and the Code.

8.2.2.2. Streets and Pathways Phasing. Each Phase shall provide for the logical extension of Improvements of the public road and pathways system as conceptually represented in the Concept Plan;

8.2.2.3. Project Improvements Phasing. Each Phase shall provide logical extension of Improvements through and throughout the Project as approved by the County in compliance with the terms of this Agreement and other applicable provisions of the Code.

8.2.2.4. Public Park Open Space Phasing. Each Phase shall include its proportionate share of Public Park Open Space area and Improvements including, if applicable, pathways and trailheads. Each Phase shall provide for the platting and installing of a proportionate share of Public Park Open Space area and Improvements, even if such area or Improvements are not within or immediately adjacent to the subject Phase. Master Developer may propose which Public Park Open Space area and Improvements are provided for each Phase; however, the County has full discretion to require other Public Park Open Space area and Improvements if the County

determines it is in the best interest of the community *after consultation with Master Developer. Unless first agreed otherwise by the County, no less than 50 percent of any subdivision plat's required Public Park Open Space shall be contributed to one or more of the three large parks illustrated on Page 8 of the Community Plan or the Weber River Parkway. Master Developer shall maintain control over which one(s) until each of these parks contain all acreage intended or required.*

Commented [CE15]: This might be repeated in parks section. Merge and reference.

8.2.2.5. Delegation of Master Developer's Obligations. Subject to other provisions in this Section 8.2 and in Section 10.8 "Parcel Sales," County agrees that Master Developer shall have the right to delegate its obligations and responsibilities specified in this Agreement to Subdevelopers as Master Developer sees fit for the purpose of phasing the Project; provided, however, compliance with the following:

8.2.2.5.1. Any such delegation shall:

8.2.2.5.1.1. be managed and enforced between Master Developer and Subdeveloper without assistance from County;

8.2.2.5.1.2. not result in additional uncompensated administrative or financial burden on the County; and

8.2.2.5.1.3. not void or otherwise excuse Master Developer from fulfilling its obligations and responsibilities to County;

8.2.2.5.2. County may, but has no obligation to, enforce any provision of this Agreement or the Code on a Subdeveloper.

Commented [CE16]: Defined?

8.3. Street Connectivity. Master Developer hereby volunteers and agrees to follow the minimum street and pathway connectivity standards as provided in Section 106-2-1.020 of the Code. However, in a single family residential zone, County agrees to waive the maximum street-block standard. County further agrees that if open for use to the non-motorized general public, any private street, driveway, alley, or other passage way constructed to the minimum adopted standards of a pathway is allowed to double as a pathway in order to meet the Code's pathway connection requirements.

8.4. Street Right-of-Way Dedication. Master Developer agrees to dedicate or, if allowed by the County, otherwise reserve the Project's street rights-of-way as public thoroughfares at no cost to the County. The general layout of the projects more significant street rights-of-way shall be generally configured as illustrated in the Community Plan.

8.4.1. Minimum Requirements. Each street right-of-way shall meet the minimum applicable width specifications illustrated in the Community Plan.

8.4.2. Project-Specific Right-of-Way Dedication or Conveyance. Master Developer shall dedicate or otherwise convey, or cause to be dedicated or otherwise conveyed, the following:

8.4.2.1. Highway Parcels. At no cost to the County, Master Developer agrees to convey, free and clear from any encumbrances, two parcels of land (Highway Parcels) to the County. The Parties agree that the parcels are intended to reserve area and create opportunity for potential

Commented [CE17]: Edit - Need to label each proposed street by its type on the plan. Which will be collector and which will be major residential?

highways through the Project as recommended by the Western Weber General Plan. Of the two Highway Parcels, one, a 300-foot wide parcel (Freeway Parcel) as depicted in the Community Plan labeled "West Weber Corridor, shall be conveyed upon or before the recordation of the first subdivision plat in the Project; and the other, a 200-foot wide parcel (Byway Parcel) shall be conveyed upon or prior to approval and recordation of the first Final Plat in Phase 2 of the Project. Master Developer agrees to not convey any part of the either parcel's area to any other owner prior to it being conveyed to County.

- 8.4.2.1.1. Optimal Configuration.** Each parcel shall be situated and configured in a manner that optimally supports the creation of a future freeway thereon. The Byway Parcel shall connect from the Freeway Parcel to 7500 West.
- 8.4.2.1.2. West Weber Corridor Alignment and Adjustments.** Master Developer agrees to use reasonable diligence to coordinate the precise location of the Freeway Parcel with the Utah Department of Transportation. After the conveyance of the Freeway Parcel to County, County agrees to cooperate and exchange deeds with Master Developer to make any adjustment to the parcel Master Developer deems necessary, provided any such adjustment does not materially affect the cost or viability of a future freeway.
- 8.4.2.1.3. Highway Construction By Others.** The Parties agree that the construction and installation of the freeway and byway is not the responsibility of Master Developer.
- 8.4.2.1.4. Improvements within Highway Parcels.** County agrees to allow Master Developer to install phased streets, intersections, or other improvements reasonably related to street rights-of-way or underground utility conveyance systems within the Freeway Parcel and Byway Parcel as part of the development of the Project in compliance with the following:
 - 8.4.2.1.4.1.** Improvements shall be placed and configured in a manner that supports ease of and cost-savings for construction of a future freeway, as determined by the County. Unless an alternative offers better support, each crossing shall be made within 10 degrees of a 90 degree angle to the parcel.
 - 8.4.2.1.4.2.** Within the Byway Parcel, the improvements shall be installed as far north on the parcel as practicable. County agrees that area within the Byway Parcel, less any area within a Project street right-of-way, may be counted toward the Project's minimum required Public Park Open Space.
 - 8.4.2.1.4.3.** Within the Freeway Parcel, the improvements shall be installed as far to the east or to the west on the parcel as practicable to create what may become a freeway frontage road should a freeway

be constructed.

8.4.2.1.5. Disposal of a Highway Parcel. After being transferred to the County, should County desire to dispose of any part of a Highway Parcel it shall be conveyed back to Master Developer. If at that time Master Developer no longer exists, County may surplus the property.

8.4.2.2. 1800 S/1600 S Alternatives. Master Developer agrees to pursue with reasonable diligence consensus from affected landowners regarding whether the 1800 South Street right-of-way, 1600 South Street right-of-way, or some other alternative acceptable to County, is the preferred public right-of-way alignment to extend from 4700 West Street to the Project, including bridging the Weber River, as illustrated in the Community Plan. County agrees to accept any such right-of-way alignment offered by Master Developer as long as it is adequately sized and reasonably configured to accommodate a street that adheres to the General Plan and all adopted safety standards. If, after reasonable diligence, Master Developer cannot acquire such right-of-way before the street connection to the Project is required by this Agreement or by County otherwise, County agrees to allow the street connection to be deferred until it can be acquired and conveyed to the County. Installation of the street within the right-of-way shall be as provided in **Section** Error! Reference source not found..

Commented [CE18]: Add language that if current owners will not sell at a reasonable market value (maybe not absolutely fair market, but not unreasonably marked up) then either County will help secure the ROW at MD's expense, or will waive this requirements.

8.4.2.3. Railroad Crossings. At no cost to the County, Master Developer agrees to dedicate or otherwise convey to the County a street right-of-way for both 7100 West Street and 6700 West Street that extends from the Union Pacific Railroad southward to connect to a collector street within the Project, as illustrated on Page 8 of the Community Plan. These rights-of-way shall be sized and configured to support a future collector street and bridge connection from the Project over the railroad, including sufficient area for bridge ramps, sloped no greater than ten percent, and fill cross-slopes as may be required in accordance with applicable railroad and highway standards. Such dedication or conveyance shall occur at the time or prior to the dedication or conveyance of the collector street right-of-way within the Project into which the future connector is intended to intersect. County agrees Master Developer shall not be required to build the connector street.

Commented [CE19]: Payback for improvements

Commented [CE20]: Bold references throughout – ensure fields are updated prior to final.

8.4.2.4. Future Transit Right-of-Way. At no cost to the County, Master Developer agrees to convey, free and clear from any encumbrances, a 40-foot wide parcel (Transit Parcel) that spans the entire northern boundary of the Property. The Parties agree that the Transit Parcel is intended to reserve area and create opportunity for future dedicated transit lanes or rail adjacent and parallel to the Union Pacific Railroad. County agrees that the Transit Parcel is allowed to count as Public Park Open Space, provided compliance with pathway requirements in **Section 8.9.2.7.3.**

8.5. Street Improvements. Streets in or immediately adjacent to the Project shall be designed and installed by the Master Developer in accordance with their corresponding street cross sections

depicted in Exhibit E – Street Cross Sections and as more specifically provided as follows.

- 8.5.1. Street Cross Sections.** Except when in conflict with a provision in this Agreement, County agrees to allow Master Developer to build streets using the cross-sections set forth in the Community Plan provided that Master Developer plat them as private streets in favor of an HOA or similar; the operations, maintenance, and management of which shall be conducted by a professional management company. If Master Developer agrees to compensate the County for the additional resources needed to own, operate, and maintain the streets, including but not limited to personnel and personnel management, equipment, vehicles, maintenance buildings and grounds, storm drainage management, vegetation and landscaping management, materials, administrative costs, and any other quantifiable cost of any other burden related to the County's acceptance of the streets, the County agrees to own, operate, and maintain the streets that do not meet County standards, provided, however, that the thickness of all improvements meet County thickness standards. The form of compensation shall be determined by mutual agreement. Master Developer bears the burden of funding the financial analysis to determine the necessary compensation.
- 8.5.2. Traffic Study.** When required by the County Engineer, Master Developer shall provide an updated traffic study to help determine Master Developer's proportionate share of offsite street improvements. Master Developer agrees to pay said proportionate share.
- 8.5.3. Sidewalks.** Master Developer agrees that all public sidewalks in the project or along adjacent public rights-of-way shall be no less than five-feet wide.
- 8.5.4. Driveway Accesses along Collector or Arterial Streets.** Master Developer agrees that no lot will be configured to provide driveway access directly onto any collector or arterial street right-of-way. County agrees to allow these lots to front these streets if they are provided access by means other than these streets.
- 8.5.5. Street Fencing along Collector or Arterial Streets.** ~~The Parties agree that~~ Master Developer ~~agrees to~~shall install a fence or wall that is at least six-feet high where the rear or side of a lot abuts or is otherwise adjacent to and visible from a collector or arterial street. The height of the fence shall be reduced if it interrupts with the clear-view triangle of an intersection.
- 8.5.5.1. Fence or Wall Design.** Fences and walls of these streets shall be designed to provide visual breaks in the horizontal fence plane at least every 20 feet, such as a column or similar, and the fence shall have a base and a cap distinctly different from the body. Examples of such a fence or wall is provided in Exhibit G – Street Fencing/Wall Examples.
- 8.5.5.2. Fence or Wall to Match Others in Area.** If in compliance with this part or unless allowed otherwise by the Planning Director, the fence or wall material, color, and general design shall match other fences or walls installed or previously approved along the same street corridor.
- 8.5.5.3. Fence or Wall Alternative Design.** Alternative fencing along these streets may be approved by the Planning Director if it provides similar or better visual qualities and materials.
- 8.5.5.4. Prohibited Fence Material.** Vinyl fencing along these streets is prohibited.
- 8.5.5.5. Fence or Wall Maintenance.** Unless delegated to a community association, the immediately adjoining landowner is responsible for the maintenance and repair of their lot or parcel's portion of the fence or wall.

8.5.6. Street Trees. All streets shall be lined with shade trees in the parkstrip. Trees lining an adjacent and parallel sidewalk or pathway shall suffice for the street's trees.

8.5.6.1. Tree Count. Each residential lot shall have at least two trees per street frontage. If a tree cannot fit within the frontage of the lot, it shall be planted as close as is reasonably possible otherwise. For commercial lots, no less than one tree shall be planted per 50 lineal feet of parkstrip.

8.5.6.2. Tree Selection. At least three different tree varieties selected from County's adopted tree list shall be used and dispersed in a manner that avoids transmission of pests/disease, or as may otherwise be specified by an arborist certified by the International Society of Arborists, such that the trees have optimal chance of long-term survival.

8.5.6.3. Tree Size. No tree with a caliper less than two inches, as measured at the top of the root collar, shall be planted.

8.5.7. Street Tree Installation. Developer has the following two installation and maintenance alternatives options for street trees, or some combination if mutually agreeable by the Developer and Planning Director:

8.5.7.1. Planting. Tree planting shall be in accordance with best practices. Care shall be taken when planting a tree or when placing anything at the base of the tree so that the root's soils are not compacted.

8.5.7.2. Tree Watering. Master Developer agrees to provide each street tree with a watering mechanism tied either to a homeowner's association master meter, or tied directly to the meter providing secondary water to the lot fronting the street improvements.

8.5.7.3. Tree Care. Master Developer agrees to be responsible for tree health until after the HOA, community foundation, or other similar entity has taken control over maintenance of right-of-way landscaping.

8.5.7.4. Tree Replacement. Master Developer agrees to conduct a dead or ailing tree inventory each fall and each spring and remove and replace.

8.5.8. Public Landscaping. The following are required for required landscaping within public rights-of-way and along public pathways:

8.5.9. Offsite Street Improvements. Master Developer agrees to construct, or cause to be constructed, the following.

8.5.9.1. Improvements to 7500 west

8.5.9.2. Improvements to 7500 west RR crossing

8.5.9.3. 1800 S: with reimbursement

8.5.9.4. 2550 S: with reimbursement

8.5.9.5. Proportionate share intersection improvements as per traffic impact study. TIS required when needed by County Engineer.

8.5.10. Secondary Egress.

8.5.10.1. Master Developer agrees that as the project is platted and constructed, street improvements shall be installed such that at no time shall there be more than 15 lots or dwelling units on a single access street or route

Commented [A21]: Insert park strip landscaping reqs into street x sections and remove from here:

Commented [CE22]: Xeriscape in parkstrips managed by HOA or similar

Commented [CE23]: Need to finish detailing

of streets before a second egress is installed. The second egress shall not loop back on any part of the single access street or route of streets.

8.5.10.2. Reserved

- 8.6. Non-Public Landscaping to be Water-Wise.** All lots within the development will implement water-wise landscaping measures as follows...

8.7. Utilities and Services.

- 8.7.1. Burying Utilities.** Master Developer agrees to underground all utilities in a manner that complies with adopted standards, including any existing overhead utilities within the Property and within any right-of-way adjacent to the Property. Long distance high voltage power transmission lines are exempt from this requirement.

- 8.7.2. Sanitary Sewer.** Prior to issuance of the first Building Permit for the Project, Master Developer shall have the right and the obligation to construct or cause to be constructed a sewer collection and conveyance system.

- 8.7.2.1. No Service from County.** Master Developer recognizes that the County does not provide sewer services for the area and has no obligation to help Master Developer or any subdeveloper gain access to a sewer service.

8.7.2.2. Reserved.

- 8.7.2.3. Sewer Treatment.** Master Developer recognizes that County is not a provider for sewer treatment services. Master Developer shall arrange sewer treatment services for the Project with a provider prior to submittal of a Development Application. If within an existing sewer district's adopted future annexation area, Master Developer agrees to annex the Property into the sewer district boundaries, if the sewer district allows it, prior to submittal of a Development Application. If the sewer district does not allow the annexation, County agrees that Master Developer may pursue other sewer treatment options that do not involve the County.

- 8.7.3. Culinary and Secondary Water.** Master Developer recognizes that the County does not provide culinary or secondary water to the area and has no obligation to help Master Developer gain access to water services. Prior to issuance of the first Building Permit for the Project, Master Developer shall have the right and the obligation to construct or cause to be constructed culinary water and pressurized secondary water Improvements to and across the Property. Master Developer agrees to secure both culinary and secondary water from an existing culinary and secondary water provider in the area.

- 8.7.4. Stormwater and Floodwater.** Master Developer shall have the right and obligation to install a stormwater drainage and detention system sufficient to support the stormwater and drainage needs of the Project. Likewise, Master Developer shall have the right and obligation to install floodwater management facilities to control a 100 year flood event from flooding public and private improvements. The County Engineer has discretion to require the stormwater or floodwater facilities to be sized to accommodate the general area's anticipated floodwater, stormwater, and drainage needs at the area's buildout or as otherwise recommended by the stormwater master plan. Unless otherwise allowed by the County Engineer, the stormwater from the Project shall be sufficiently treated, as approved by County Engineer, before discharging into the Weber River or other water body.

Commented [CE24]: Copy/paste paragraph in "other parks" regarding landscaping. Include xeriscape and reference principles in community plan.

Commented [CE25]: When? Prior to first phase? Second? Def before too close to river and flood zones.

8.7.4.1. **Stormwater Storage Ownership and Maintenance.** The County reserves the right to require the maintenance of a floodwater or stormwater storage facility to be the responsibility of a professionally managed HOA or similar entity in the event the County Engineer determines that the proposed facility has the potential to present an inordinate demand for County services.

8.7.4.2. **Facility Upsizing.** Master Developer understands that due to the scale of the project and its proximity to the Weber River, County agrees to compensate, in a manner mutually determined appropriate by the Parties, Master Developer for the incremental or additive cost of upsizing stormwater facilities. For example, if an upsized pipe increases Master Developer's costs by 10% but adds 50% more capacity, the County shall only be responsible to compensate Master Developer for the 10% cost increase. The County has the right to choose the acceptable compensation method including but not limited to reimbursement agreements, payback agreements, pioneering agreements, and impact fee credits and reimbursements. Such compensation method and, if necessary, agreement(s) are not a part of this Agreement.

Commented [CE26]: Insert statement that facilities unlikely to need upsizing due to scale of project. Also that flood water, while originating offsite, has always been there and facilities not available for reimbursement unless the *only* benefit to the upsized is clearly unrelated to property (not sure what this would be though?)

8.7.4.3. **Project-Specific Stormwater Requirements.**

8.7.4.3.1. **Stormwater and Floodwater Master Plan.** Master developer agrees to create a stormwater and floodwater master plan for the needs of the Project. The Parties agree to collaborate in the creation of the plan. The stormwater and floodwater master plan(s) shall be deemed complete when approved by the County Engineer, who shall not withhold approval as long as the plan(s):

8.7.4.3.1.1. Meets stormwater and floodwater industry best practices and is certified by a licensed professional best suited for the work;

8.7.4.3.1.2. Does not present an unreasonable financial or management risk to the County without sufficient compensation from Master Developer, or landowners within the Property, or some combination thereof.

8.7.4.3.2. **Mass Grading.** Other than earth movement reasonably necessary to build streets and lots, Master Developer agrees that no mass grading shall begin until after the completion of the stormwater and floodwater master plan. After which, County shall allow Master Developer to grade the site as it deems necessary and in compliance with the completed plan.

8.7.4.3.3. **FEMA Map Amendment/Revision.** Master Developer acknowledges and agrees prior to any development within a flood hazard zone, Master Developer shall comply with all federal regulations required to amend the hazard zone map. County agrees to participate with reasonable diligence to complete its role in that process.

Commented [CE27]: Need FEMA terminology

8.7.4.3.4. **Floodplain Development.** Master Developer agrees that no development shall occur within a flood hazard zone.

8.7.5. **Fire and Emergency Services.**

8.8. **Parks and Open Space.** Master Developer agrees to help the County reach its goal of providing at least ten acres of Public Park Open Space per 1,000 persons. Master Developer understands that the creation and/or preservation of parks and open space is a critical part of the County's consideration for this Agreement, the associated rezone, and the additional density given. As such, At no cost to the County, Master Developer agrees to provide, or cause to be provided, the following parks, open space, and trails amenities:

8.8.1. **Reserved**

8.8.2. **Park Dedication.** Master Developer agrees to dedicate a minimum of one acre per every 34 residential lots as Public Park Open Space. Any open space provided by Master Developer in excess of the minimum required Public Park Open Space is not governed by this **Section 8.8.2.** unless more specifically provided in this Agreement. The minimum required Public Park Open Space shall comply with the following.

8.8.2.1. **Dedication Method.** Unless specified otherwise in this Agreement, the minimum Public Park Open Space acreage per lot shall be dedicated to the County by means of subdivision plat dedication. County may require it be dedicated to the [Park District] ("Park District") instead. County may allow the acreage to be transferred in fee or easement if County determines it appropriate. See also **Section 10.10** for additional provision pertaining to property transfer requirements.

8.8.2.2. **Deferred Conveyance.** County may defer dedication or conveyance, including any required Improvements, for any of the minimum required Public Park Open Space only if deferral is in the best interest of the public. This deferral shall be by means of a separate mutually acceptable agreement, recorded to the property to run with the land, and shall specify the terms of the deferral. Deferred dedication shall still count toward the minimum Public Park Open Space requirement and may be owned and operated by a professionally managed HOA, community foundation, or similar entity. Other than as is required in this Agreement, County shall have no control over the space until County receives the space.

8.8.2.3. **Publicly Accessible Private Parks.** The Parties agree that it is the intention of this Agreement for the County or another public entity to own, operate, maintain, and manage the Weber River Corridor Park and the three parks represented on Page 8 of the Community Plan and as specified elsewhere in this Agreement. County agrees that Master Developer shall have the right to establish private parks, to be owned and operated by an HOA, community foundation, or similar entity, and shall be entitled to choose their location. The acreage of a private park that is continuously open for public use may be counted toward the minimum required Public Park Open Space, provided compliance with the following.

8.8.2.3.1. The private park shall be open for use by the general public

Commented [CE28]: Need FEMA terminology

Commented [CE29]: •Phase in new fire stations
○First fire station: at 500 dwelling units, or prior to the approval of any building taller than 35 feet, developer to donate land to fire district, fund a fire station on it, and fund a ladder truck for it.
■Funding TBD - could be impact fees, assessment, tif, etc.
■Location of first fire station shall be on the western edge of the development, or as otherwise approved by the fire district.
■500 may be 1,000 if railroad is bridged where shown in the master plan.
○New fire station every six thousand dwelling units
○At least 2 acres for the siting of each new station shall be set aside in a dispersed manner that is based on approved zoning densities.

Commented [A30]: Review with Parks

Commented [A31]: Variable. Enter "reserved" for this section if not applicable. Use either donation or dedication. Or both if being proposed and acceptable to the Park District.

Commented [A32]: Variable.

from sunrise until dusk or 9:00 PM daily, whichever is earlier;
and

8.8.2.3.2. The private park shall be operated and maintained by a professional management company that is funded by the owners in the Project.

8.8.2.4. Follow Concept Plan. The configuration of Public Park Open Space shall be as generally represented in the Concept Plan. Open space shown on the Concept Plan shall be interpreted as Public Park Open Space unless clearly labeled otherwise, or unless rejected by the County and Park District.

8.8.2.5. Phasing Public Park Open Space Dedication. Each subdivision plat within the Property shall plat and dedicate no less than its pro-rata share of Public Park Open Space acreage per lot, but never less than one acre, until all proposed Public Park Open Space is platted.

8.8.2.6. Weber River Corridor Park. Unless specified otherwise herein, the width of the Weber River Corridor Park shall be no less than 100 feet from the ordinary high water edge of the Weber River, and shall span the entirety of the Property along the river.

8.8.2.7. Reserved.

8.8.2.8. Project-Specific Parks or Open Space Dedication.

8.8.2.8.1. Byway and Transit Parcel Open Space. The Byway Parcel, pursuant to **Section 8.4.2.1**, and the Transit Parcel, pursuant to **Section 8.4.2.4**, shall be allowed to count toward the minimum Public Park Open Space requirement.

8.8.2.8.2. Reserved.

8.8.3. Public Park Open Space Improvements. Master Developer agrees, unless specified in this Agreement otherwise, that no less than 60 percent of the Public Park Open Space acreage shall be improved.

8.8.3.1. Minimum Park Improvements Required. Unless agreed otherwise by County, Master Developer shall provide the following minimum Improvements for the Public Park Open Space.

8.8.3.1.1. Sports Fields.

8.8.3.1.2. Parking. Eight off-street parking spaces per acre of improved park area.

8.8.3.1.3. ADA Access. ADA accessibility from parking areas to all restrooms, ramps, benches, and along the paved pathway.

8.8.3.1.4. Restroom. One restroom building with no less than two private toilet rooms.

8.8.3.1.5. Pavilion. 325 square feet of covered pavilion area per acre of developed park. There shall be no less than two picnic tables with attached benches for every 325 square feet of pavilion area (fractions may be rounded down to the nearest whole number). Restrooms and storage/mechanical area may be

Commented [CE33]: Is this already in here elsewhere? Redundant?

Commented [CE34]: Allow a parks and parks management master plan to be approved to replace this entire section.

Commented [CE35]: Need a field acreage per dwelling to apply in here.

connected to the pavilion structure, but are not counted as pavilion area.

8.8.3.1.6. Playground. 600 square feet of playground area per each acre of developed park with typical playground ground cover. At least 10 percent of the playground area shall be playground equipment. Playground equipment area shall be measured from the outside boundary of the footprint of the playground equipment when viewed from above.

8.8.3.1.7. Park Perimeter Pathway. The perimeter of the park shall be encircled with a Pathway, the standards for which are depicted in **Exhibit F – Typical Pathway Cross Section**, or if adjacent to a street, **Exhibit E – Street Cross Sections**.

8.8.3.1.7.1. Benches. At least one pathway-adjacent bench shall be installed every 500 feet along the pathway.

8.8.3.1.7.2. Bench Shade Trees. At least one shade tree shall be installed per bench, planted adjacent to the bench in a manner that will cast the most shade onto the bench throughout the summer.

8.8.3.2. Park Detail Submittal. With each subdivision plat or improvement drawings, provide a site specific detail of the required Public Park Open Space. The detail shall provide:

8.8.3.2.1. The location, configuration, and construction detail of required Improvements; and

8.8.3.2.2. Tree location, species, average mature crown-width, and required planting and irrigation methods.

8.8.3.2.3. Other proposed landscaping and other Improvements.

8.8.3.2.4. Tabulations that demonstrate compliance with required Improvements and associated acreage.

8.8.3.3. Public Park Open Space Financial Guarantee. Public Park Open Space Improvements shall be included in the subdivision's financial guarantee regardless of ownership. Prior to the release of any financial guarantee for Public Park Open Space Improvements, Master Developer shall provide County with a letter of acceptance from the Park District or other allowed park owner, if applicable.

8.8.3.4. Public Park Open Space Water. Master Developer shall provide sufficient water (rights/shares, quantities, and pressure) to provide for the Public Park Open Space's culinary and secondary water needs. Unless allowed by the County otherwise, prior to recordation of the first plat in the Project, all of the right/shares needed to serve the entire Public Park Open Space needs shall be transferred to the Park District or other allowed park owner at the time the Public Park Open Space acreage is dedicated or otherwise transferred to the Park District or other allowed park owner. If the Park District or other allowed Park

owner requires the rights/shares to be transferred to another entity instead, such as the applicable water service provider for the Park, the Master Developer shall do so.

8.8.3.5. Natural Park Areas. For the 40 percent Public Park Open Space remaining from that referenced in **Section 8.8.3**, and except as specified in this **Section 8.8.3.5**, the County agrees to allow it to be held as natural open space with or without improvements as determined by Master Developer.

8.8.3.5.1. Weber River Corridor. As a supplement to the provisions of Section 8.8.2.6, Master Developer shall provide a pathway within the Weber River Corridor Park in a manner acceptable to the County and Parks District. Master Developer further agrees to grade the banks of the river to provide a more gradual and natural appearing slope. County agrees that this work is to be limited to work that does not require a state or federal permit (aside from routine SWPPP if applicable).

8.8.3.5.2. Other Waterways. As a supplement to the provisions of Section **Error! Reference source not found.**, County may require open space pathways and other Improvements that support the health of the open space corridor.

8.8.3.5.3. Improvements and Expense. For this acreage, County may require any restoration, reclamation, revegetation or other similar Improvements or efforts it deems necessary, provided those Improvements or efforts have the same or lower estimated expenses of what would otherwise be required if the Public Park Open Space acreage was improved to the required minimum standards of this Agreement.

8.8.3.5.4. Removal of Vegetation and Hydroseeding. At a minimum, all invasive plant species shall be removed from the Public Park Open Space acreage and, unless required otherwise, any ground not already fully vegetated shall be hydro-seeded with a native seed mix and erosion control methods shall be implemented in accordance with best practices.

8.8.3.5.5. Quality Control. For best practices quality control, all efforts shall be conducted based on the recommendations from, and under the general supervision of, a landscape architect, arborist, or a similarly qualified professional. Written confirmation that best practices were followed shall be provided to the County from the professional prior to the release of any financial guarantee for the work.

8.8.3.6. Phasing of Public Park Open Space Improvements. Unless provided otherwise in this Agreement, Public Park Open Space Improvements may be Phased with the rest of the Project's Phasing plan as long as:

8.8.3.6.1. Approved Construction Drawings. All required final construction drawings for the entire Project, including all Public Park Open Space Improvements, have been approved by the

County Engineer;

8.8.3.6.2. Successive Improvements. All Phases provide sufficient Improvements necessary for the successive construction of Improvements proposed in other Phases; and

8.8.3.6.3. Completed prior to C/O. A Phase's minimum required per-acre park Improvements specified in Section 8.8.3.1 are installed, accepted, and open for public use prior to issuance of the first certificate of occupancy in the Phase.

8.8.3.7. *Public Park Open Space Maintenance.* Master Developer agrees to operate and maintain or cause to be operated and maintained the *Public Park Open Space acreage until* [REDACTED].

Commented [A36]: Variable.

8.8.4. Project-Specific Public Park Open Space Improvements and Standards. Master Developer agrees to provide the following Project-specific Public Park Open Space Improvements.

8.8.4.1. Public Parks Open Space Master Plan.

- Entitled to create one with improvements of equal or better value than those in this agreement
- County shall participate in its creation and not unreasonably withhold approval as long as it is not likely to create a greater financial burden, in any manner, on County than County is willing to accept.

Commented [CE37]: Replaces the park improvement requirements and the trailhead improvement requirements.

8.8.4.2. Community Open Space Areas. Community open space areas not within a designated improved or natural park shall be allowed to count as improved Public Park Open Space, pursuant to **Section 8.8.3**, when in compliance with the following.

8.8.4.2.1. The area shall be open to the public.

8.8.4.2.2. The area shall be landscaped, maintained, and operated by a professionally managed HOA or similar entity.

8.8.4.2.3. Plantings are irrigated by a drip irrigation system or similar method that does not use flood or overhead sprinkler methods, except for turf grass areas.

8.8.4.2.4. Turf grass is not used except in areas intended for human activity.

8.8.4.2.5. The area shall not be on a site intended for future development or counted toward minimum landscape standards otherwise required by the Code.

8.8.4.2.6. Master Developer and the County Planning Division Director may arrange a mutually agreeable alternative to any part of this **Section 8.8.4.1** provided the alternatives create attractive public spaces and observe best-practice water-wise standards.

Commented [CE38]: Defined?

8.9. Pathways and Trailheads. Master Developer agrees to help the County's reach its goal of providing a walkable community wherein neighborhoods are interlinked to each other and to

community destinations. Master Developer understands that the creation and interconnection of trails/pathways is a critical part of the County's consideration for this Agreement, the associated rezone, and the additional density given. As such, Master Developer agrees to install or cause to be installed the pathways as generally configured on the attached Community Plan and as otherwise specified as follows.

8.9.1. Pathway and Trailhead Dedication. Master Developer agrees to dedicate the minimum area required for required pathways and trailheads.

8.9.1.1. Pathway Dedication. The minimum required pathway right-of-way and trailhead dedication shall comply with the configuration in the Community Plan and Typical Pathway Cross Section illustrated in Exhibit F. When not required within a street's right-of-way, a Pathway's right-of-way shall be counted toward the required Public Park Open Space, with no more than 30 feet of the pathway's right-of-way width counting towards

8.9.1.2. and trailhead area shall count toward the minimum required Public Park Open Space area specified in Section 8.8.2 of this Agreement. Dedication of pathway rights-of-way and trailhead area shall comply with that section, with the term "Park" being supplanted with the term "pathway" or "trailhead" as may be contextually applicable, except that the per-lot pro-rata share of pathway right-of-way shall be based on the amount of linear feet of pathway that can be constructed within such right-of-way and not solely on acreage.

8.9.1.3. Trailhead Dedication.

Commented [CE39]: Need to finish this and join paragraph below

8.9.2. Pathway Improvements. Unless specified in this Agreement otherwise, Master Developer agrees that each proposed pathway right-of-way, pursuant to Exhibit C – C, or required pathway right-of-way shall be developed as an improved pathway.

8.9.2.1. Required Pathways. Regardless of what is displayed in Exhibit C – C, a street-adjacent pathway shall be installed along each major residential, collector, and arterial street within or immediately adjacent to the Property.

8.9.2.2. Pathway Trees. Each pathway and sidewalk within the Project or along adjoining pathway rights-of-way shall be lined with shade trees. Pathway trees shall follow the same standards as set forth in Section 8.5.6. However, County agrees that if the Park District desires to have ownership, operation, or maintenance responsibility for a pathway right-of-way in or adjacent to the Project, Master Developer's responsibility for tree health ends after County has been notified, in writing, by the Park District that the Park District will assume said ownership, operation, or maintenance responsibility.

8.9.2.3. Non-Street Adjacent Pathway Landscaping. For a pathway that is not adjacent to a street, Master Developer shall place three-inch plus rock, six-inches deep, on the shoulders of each pathway, with a weed barrier beneath. Alternatively, County agrees that Master Developer may install alternative planting and landscaping as long as it is operated and maintained by a homeowner's association. Refer to

Commented [CE40]: One just off 5900 West near transit parcel and river?
One at transit parcel on west side?
One just off 1600/1800 and river?
One on south side of project near river?

Exhibit F – Typical Pathway Cross Section for a depiction of these pathways.

- 8.9.2.4. Construction Drawings to Include Landscaping.** Each subdivision's improvement plans shall provide a detailed Public Landscape plan that, at a minimum, shows landscaping materials proposed to be used, the proposed location, species, including the measurements of each tree's mature crown, and the method of vegetation irrigation.
- 8.9.2.5. Pathway Crossing of Residential Street.** Wherever a pathway intersects with a residential street, Master Developer agrees to install or cause to be installed the following in accordance with NACTO and other applicable best practice standards:
- 8.9.2.5.1. Raised Crosswalk.** A raised crossing with a zebra-style crosswalk. The raised crossing shall be constructed of concrete and be designed as a six-inch high ramped speed table with six-foot ramps or greater if required by the County Engineer. The top (horizontal) of the speed table shall be at least ten-feet wide. Notification signage shall be posted in advance of the speed table.
- 8.9.2.5.2. Curb Extensions.** Curb extensions (bulb-outs) shall be installed for pathway street crossings on both sides of the applicable street. A curb extension (bulb-out) shall be constructed to constrict a residential street width to no greater than 24 feet, or 36 feet if the street has or is planned to have an on-street bike lane. The County Engineer has discretion to modify this width if the street's design is different than the County's standard. Each curb extension shall be marked with a traffic delineator as prescribed by the County Engineer or County Roads Supervisor. If Master Developer is not responsible for other street Improvements on the opposite side of a street, the following minimum curb extension requirements shall be installed on that side.
- 8.9.2.5.2.1.** Each end of the curb extension shall at least provide a temporary means of directing drainage to the intended or expected drainage collection system or swale;
- 8.9.2.5.2.2.** The curb extension shall provide pedestrians a convenient and safe transition from the crossing to whatever historic pedestrian facility exists there. If no formal NACTO-standard pedestrian facility exists on that side, Master Developer shall post a "Crossing Temporarily Closed" sign at the entrance of the crosswalk, or as otherwise required by the County Engineer or Roads Supervisor.
- 8.9.2.5.2.3.** The County Engineer or Roads Supervisor may require other Improvements that minimize potential safety risks of the curb-

extension, such as but not limited to, additional curbing, guardrail, signage, drainage and street shoulder Improvements. If required, Master Developer hereby agrees to install such Improvements.

- 8.9.2.6. Pathway Crossing of Collector or Arterial Street.** On a collector or minor arterial street, the raised crosswalk (speed table) and curb extensions pursuant to Section 8.9.2.5 shall be installed in a manner as approved by the County or UDOT unless required otherwise by the County Engineer, UDOT, or the local fire authority. Regardless of whether a speed table or curb extension (bulb-out) is required, zebra style crosswalk is required, as is a double-sided battery powered user-activated rapid flashing beacon on both sides of the crossing in accordance with installation best practices, and crosswalk notification signage in advance of the crosswalk on both sides of the street. The rapid flashing beacons shall be hardwired to each other through underground conduit.

8.9.2.7. Project Specific Pathway Improvements and Standards.

8.9.2.7.1. Street Adjacent Pathways. A pathway that runs parallel to a street and is usually within the street's right-of-way shall be constructed in accordance with the standard illustrated in Exhibit X, Minimum Pathway Standard. A street-adjacent pathway may be reduced to no less than eight feet if the street segment, from intersection to intersection, has a pathway on both sides.

8.9.2.7.2. Weber River PKWY Trail per (reference prior OS section)

8.9.2.7.3. Transit Parcel Pathway. OS parcel for potential future transit needs a pathway.

8.9.2.7.4. Byway Parcel. OS parcel for potential future byway needs pathway –

8.9.2.7.5. Allow 1/2 of all pathways to be 10' wide compacted road base paths?

- 8.9.3. Trailhead Improvements.** Unless specified in this Agreement otherwise, Master Developer agrees that each proposed trailhead shall be developed as an improved trailhead as generally illustrated in Exhibit H – Trailhead Conceptual Design and Improvements. At a minimum, the trailhead shall provide the following:

8.9.3.1. Parking. Paved access and vehicle parking sufficient to provide spaces for at least _____ typical passenger vehicles and _____ vehicles with trailers.

8.9.3.2. Amenities. The trailhead shall at a minimum have the following amenities.

8.9.3.2.1. A bicycle fix-it stand.

8.9.3.2.2. A drinking fountain or water bottle filling station.

8.9.3.2.3. A bench.

Commented [A41]: Variable. Enter "reserved" for this paragraph and delete subsections if subsections within are "reserved."

Commented [CE42]: compacted road base?

What about compacted road base for some of the other pathway connections that are require? Might be fun if not all running through neighborhoods are asphalt.

8.9.3.3. ~~Restroom.~~ ~~At least X sewer~~ed restroom building(s) with no less than two single-use toilet facilities each.

8.9.3.4. ~~Trailhead Utilities.~~ ~~The following minimum trailhead utilities shall be installed.~~

8.9.3.4.1. ~~Water supply connections for and sufficient water rights or shares necessary to provide for the culinary and secondary water needs of the trailhead.~~

8.9.3.4.2. ~~Sewer connection sufficient for the sewer needs of the trailhead.~~

8.9.3.4.3. ~~Electrical connections sufficient for the electrical needs of the trailhead.~~

8.9.3.5. ~~Project Specific Trailhead Improvements.~~

8.9.3.5.1. ~~Reserved.~~

8.9.3.5.2. ~~Reserved.~~

Commented [A43]: Variable. Enter "reserved" for this section if not applicable.

Commented [A44]: Variable

Commented [A45]: Variable. Enter "reserved" for this section if not applicable.

Commented [A46]: Variable. Enter "reserved" for this paragraph and delete subsections if subsections within are "reserved."

Commented [A47]: Variable. Insert project-specific details.

Commented [A48]: Variable. Insert project-specific details. Add as many subsections below as may be needed.

8.10. ~~Reserved. Environmental and Air Quality Standards.~~ The Parties agree to implement the community's overall goal of minimizing development impacts on the environment to a reasonable degree practicable. As such, Master Developer agrees, on behalf of itself and all successive owners of the Project or of lots within the Project, to exceed minimum requirements of applicable building and construction codes and conventions by ensuring each dwelling unit is equipped with the following prior to receiving a final certificate of occupancy.

~~8.10.1. Energy Efficiency.~~ All buildings will be designed to an energy efficiency rating that is one climate zone colder than the area's designated climate zone. Gas heated furnaces and water heaters shall have an efficiency rating of 95 percent or greater.

~~8.10.2. Reserved.~~

~~8.10.3. Reserved.~~

~~8.10.4. Reserved.~~

~~8.10.5. Project-Specific Environmental and Air Quality Standards.~~

~~8.10.5.1. Reserved.~~

~~8.10.5.2. Reserved.~~

8.11. **Outdoor Lighting.** Master Developer agrees that all outdoor lighting within the Project will be dark-sky friendly and as such will be governed by the County's Outdoor Lighting Ordinance, Chapter 108-16 of the Code.

8.12. **Building Development or Design Requirements.** Unless otherwise provided herein, Master Developer agrees to comply with the building design standards found in the Community Plan, or in the Form-Based Zone for buildings in the Form-Based Zone. Architectural review shall be conducted by the Master Developer's or HOA's designated architectural review person(s). If desired by Master Developer, the Parties agree to cooperate and collaborate on the creation of a specific architectural theme to either be adopted into the Form Based Zone or applied to the property otherwise.

8.13. **Boundary Fence.** Master Developer agrees to install a non-scalable fence that is at least six feet high on the property boundary between the Property and the parcels owned by the State of Utah Department of Natural Resources.

9. **Amendments, Modifications, and Revisions.**

This Agreement may be amended by mutual agreement of the Parties only if the amendment is in writing and approved and signed by Master Developer and County (an "Amendment"). The following sections specify what Project changes can be undertaken without the need for amendment of the Development Agreement, and what changes require Amendment to this Agreement.

Commented [CE49]: Make sure it is clear that only County and Master Developer may amend this doc.

9.1. **Who may Submit Modification Applications.** Only the County and Master Developer or an Assignee that succeeds to all of the rights and obligations of Master Developer under this Agreement (and not including a Subdeveloper) may submit a Modification Application.

9.2. **Modification Application Contents and Process.**

9.2.1. **Contents.** Modification Applications shall:

9.2.1.1. **Identification of Property.** Identify the property or properties affected by the Modification Application.

9.2.1.2. **Description of Effect.** Describe the effect of the Modification Application on the affected portions of the Project.

9.2.1.3. **Identification of Non-County Agencies.** Identify any Non-County agencies potentially having jurisdiction over the Modification Application.

9.2.1.4. **Map.** Provide a map of any affected property and all property within one thousand feet (1000') showing the present or intended uses and density of all such properties.

9.2.1.5. **Fee.** Modification Applications shall be accompanied by a fee in an amount reasonably estimated by the County to cover the costs of processing the Modification Application.

9.2.2. **County Cooperation in Processing Modification Applications.** The County shall cooperate reasonably in promptly and fairly processing Modification Applications.

9.2.3. **Planning Commission Review of Modification Applications.**

9.2.3.1. **Review.** All aspects of a Modification Application required by law to be reviewed by the Planning Commission shall be considered by the Planning Commission as soon as reasonably possible in light of the nature and/or complexity of the Modification Application.

9.2.3.2. **Recommendation.** The Planning Commission's vote on the Modification Application shall be only a recommendation and shall not have any binding effect on the consideration of the Modification Application by the Board of County Commissioners.

9.2.4. **Board of County Commissioners' Review of Modification Application.** After the Planning Commission, if required by law, has made or been deemed to have made its recommendation of the Modification Application the Board of County Commissioners shall consider the Modification Application.

9.3. **Project Facility Repair, Maintenance, and Replacement.** Master Developer shall be permitted to repair, maintain and replace the Project and its components consistent with the terms of this Agreement without amending the Agreement.

9.4. Authorized Changes, Enlargements, or Alterations. As set forth below, County staff may review and approve certain minor changes, enlargements or adjustments ("Changes") to the Project in their respective administrative capacities. The following types of Changes are considered minor, provided that no such Changes shall directly or indirectly result in significantly greater impacts than those contemplated in the approval of this Agreement.

9.4.1. Landscaping Changes. Any changes to this Agreement's landscaping designs, guidelines, standards, plantings, materials and installation of the same anywhere in the project.

9.4.2. De Minimis Changes. Other de Minimis changes requested by the Master Developer, which are reasonably consistent with the intent of this agreement and the R1-15 Zone, and are Routine and Uncontested.

10. Miscellaneous Provisions.

10.1. Certificate of Occupancy Requirements. The following are required prior to issuance of a certificate of occupancy.

10.1.1. Installation of street trees, as specified in Section **Error! Reference source not found.** of this Agreement.

10.1.2. Installation of a smart watering controller, as specified in Section **Error! Reference source not found.** of this Agreement.

10.1.3. Reserved.

10.1.4. Reserved.

10.1.5. Installation of a furnace that is at least 95% efficient, and installation of a smart thermostat, as specified in Section 1.1.1 of this Agreement.

10.1.6. Installation of dark-sky friendly outdoor lighting, as specified in Section 8.11 of this Agreement.

10.2. Financial Guarantee Requirements. Master Developer agrees to be governed by the financial guarantee provisions in Section 106-4-3 of the Code in effect at the time of the Effective Date. In addition to required Improvements listed in the Code, Master Developer further agrees that the financial guarantee shall include all required Improvements specified in this Agreement. Prior to the release or partial release of certain financial guarantee funds, the following are required.

10.2.1. Written confirmation of implementation of landscape best practices from a qualified professional, as specified in **Section 8.8.3.5.5.**

10.2.2. Written confirmation of implementation of landscape best practices from a qualified professional, as specified in **Section Error! Reference source not found..**

10.2.3. Written letter of acceptance for Public Park Open Space Improvements, as specified in **Section 8.8.3.3.**

10.3. Financial Guarantee for Public Landscaping and Public Park Open Space. Master Developer agrees to provide a financial guarantee to the County for required landscaping on public property and for required Public Park Open Space Improvements. The financial guarantee shall follow the same standards and processes as provided in Section 10.2 of this Agreement.

10.4. Reserved

10.5. Housing Affordability – flex homes.

10.6. Future Taxes, Services, Districts, and Incorporation/Annexation.

10.6.1. District(s). Master Developer agrees to annex the Property into any local taxing district if the purpose of that district is to provide any service necessary for the development of the property pursuant to this Agreement and the Code. Annexation shall occur prior to final plat recordation. If the project will be Phased, the entire preliminary plat/plan shall be annexed into said district(s) prior to recordation of the first plat.

10.6.2. Municipal Services Tax. Master Developer agrees that the County may impose additional tax to the Property to better accommodate for the municipal services demand of the Project, provided that the tax is reasonably necessary to provide the service(s).

10.6.3. Restriction on Right to Protest Future Tax or Taxing Entity. If the Property is ever within the boundaries of a Proposed Taxing Entity or Proposed Tax, and the process for applying the Proposed Taxing Entity or Proposed Tax to the Property includes the right for affected landowners to file a protest in a manner that could hinder the application of the Proposed Taxing Entity or Proposed Tax to the Property, Master Developer hereby waives the right to file the protest, and agrees that any protest filed is void. Master Developer does so on behalf of itself and all future owners who may obtain any interest in the Property. Future owners are hereby on notice that the right is waived. This provision applies unless the County Commission agrees, in writing, with and to the protest.

10.6.4. Incorporation. [Right to incorporate. Preliminary municipality, if allowed in state code, shall require mutual agreement]

10.6.5. [Change of Land Use Authority – If county no longer is land use authority with ability to enforce default by withholding of permits and similar, need to find a way to make sure required offsite improvements get completed]

10.6.6. [Review Tom's work – something about future city accepting terms of this agreement?]

10.7. Expert Review for Development Applications. If the County subjects the Development Application to a review by County Consultants then payment of the reasonable and actual costs of the County Consultants' review shall be the responsibility of Applicant.

10.8. Parcel Sales. With no requirement to formally plat, Master Developer may obtain approval of a Subdivision that does not create any individually developable lots in the resulting Parcel(s) without being subject to any requirement in the Code to complete or provide security for the Improvements at the time of the Subdivision except that the County may require as a part of the Subdivision of the Parcel the construction of perimeter Improvements such as curb and gutter, sidewalks and fire hydrants if reasonably necessary given the location of the Parcel Sale in relation to other development and the respective timing of the completion of such developments. The responsibility for completing and providing security for completion of any Improvements in the Parcel shall be that of the Master Developer or a Subdeveloper upon a further Subdivision of the Parcel that creates individually developable lots. The provisions of the foregoing notwithstanding, no division shall be made that disproportionately splits the public spaces or public Improvements anticipated by this Agreement or the Code without first providing adequate security in a manner satisfactory to County to ensure those public improvements or spaces are provided.

10.9. Provision of Services. The County agrees to provide all County services to the Project that it

Commented [CE50]: oProvision in favor of county that survives incorporation that essentially vests county in certain committed improvements/development commitments regarding: Future freeway ROW or alignment, Project access and offsite street/ROW improvements or reservations, potential future transit corridor, Weber River Parkway/Emerald necklace open space and trail, or any other provision that will place an added and uncompensated burden on the county related to infrastructure, maintenance, or services.

provides from time-to-time to other residents and properties within the County including, but not limited to, police and other emergency services. Such services shall be provided to the Project at the same levels of services, on the same terms and at the same rates as provided to other residents and properties in the County.

10.10. Conveyance of Land to County.

10.10.1. *Any dedication or conveyance of land required by Agreement – limited time for County to determine it is wanted or to make other arrangements for public ownership, including potential deferred ownership – fall-back time for Master Developer to convey it to quasi public or private entity, with open space preservation easement in favor of County*

Commented [CE51]: See applicants draft version to craft paragraph.

10.10.2. *County's Right to Acquisition of Land. The Parties agree to work cooperatively and collaboratively together regarding any transfer of land to County required by this Agreement. In the event any such required transfer has not occurred or is highly unlikely to occur as anticipated by this agreement within three years of the expected transfer date, Master Developer agrees that County may, at its sole option, take occupation of the land without any compensation to Master Developer or the land's owner of record. County agrees that this action shall not be pursued until all other available actions or enforcement opportunities specified in this Agreement have been exhausted.*

Commented [CE52]: Trying to figure out an OS fail-safe in the event future problems come up. Specifically thinking about the later years closer to agreement expiration.

Commented [CE53]: Legal: Condemnation?

Commented [CE54]: Legal: Should this be ownership? What if the land has encumbrances? Should get county in first lien position if necessary?

10.11. Schools. Except for area within the Weber River Corridor as specified in **Section 8.8.3.5.1**, County agrees that acreage for public school grounds may be counted toward the 40 percent Public Park Open Space area intended to be natural open space. Master Developer agrees to diligently pursue, in good faith, a collaborative and cooperative relationship with the Weber School District leadership to designate and reserve properties for future school sites. Care shall be taken to find mutual community gains by locating schools adjacent to public park facilities.

11. General Provisions.

11.1. Entire Agreement. This Agreement, and all exhibits thereto, is the entire agreement between the Parties and may not be amended or modified except either as provided herein or by a subsequent written amendment signed by all parties.

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

11.3. No Third Party Rights/No Joint Venture. This Agreement does not create a joint venture relationship, partnership or agency relationship between the County and Master Developer. Further, the parties do not intend this Agreement to create any third-party beneficiary rights. The parties acknowledge that this Agreement refers to a private development and that the County has no interest in, responsibility for or duty to any third parties concerning any Improvements to the Property unless the County has accepted the dedication of such Improvements at which time all rights and responsibilities for the dedicated public improvement shall be the County's.

11.4. Assignability. The rights and responsibilities of Master Developer under this Agreement may be assigned as provided below by Master Developer with the consent of the County as provided herein.

11.4.1. Partial Assignment. Assignment is only allowed if in whole. No partial assignment of the Project or Property is allowed.

11.4.2. Sales not an Assignment. Master Developer's selling or conveying a lot in any approved Subdivision or Parcels or any other real estate interest within the Project, to

builders, users, or Subdevelopers, shall not be deemed to be an "assignment" subject to the above-referenced approval by the County. Despite the selling or conveyance, Master Developer still maintains all rights, responsibilities, and obligations of this Agreement relative to development on the sold or conveyed property.

11.4.3. Related Party Transfer. Master Developer's transfer of all or any part of the Property to any entity "related" to Master Developer (as defined by regulations of the Internal Revenue Service), Master Developer's entry into a joint venture for the development of the Project or Master Developer's pledging of part or all of the Project as security for financing shall also not be deemed to be an "assignment" subject to the above-referenced approval by the County unless specifically designated as such an assignment by the Master Developer. Master Developer shall give the County Notice of any event specified in this subsection within ten (10) days after the event has occurred. Such Notice shall include providing the County with all necessary contact information for the newly responsible Party.

11.4.4. Notice. Master Developer shall give Notice to the County of any proposed assignment and provide such information regarding the proposed Assignee that the County may reasonably request in making the evaluation permitted under this Section. Such Notice shall include the following.

11.4.4.1. All necessary contact information for the proposed Assignee.

11.4.4.2. The entry number of this Agreement on file in the Office of the Weber County Recorder, and entry number to any successive amendments thereto or other agreements that may affect this Agreement or amendments thereto.

11.4.4.3. A verbatim transcription of this Section 11.4. "Assignability," or future amendment thereof, if applicable.

11.4.5. Grounds for Denying Assignment. The County may only withhold its consent for the reasons listed herein.

11.4.5.1. If the County is not reasonably satisfied of the proposed Assignee's ability to perform the obligations of Master Developer proposed to be assigned;

11.4.5.2. If the County has reasonable concern that the assignment will separate the Project in a manner that creates unreasonable additional demand for any type of governmental service, including additional demand for coordination amongst Assignees or other administrative review services not otherwise anticipated at the time of the execution of this Agreement; or

11.4.5.3. If the County has reasonable concern that the assignment will separate the Project in a manner that negates the purpose of master planning the Project area as one complete development.

11.4.6. Assignee Bound by this Agreement. An Assignee shall be bound by the assigned terms and conditions of this Agreement.

11.5. Binding Effect. Except as otherwise specified in this Agreement, this Agreement shall be binding upon the Parties and their respective Successors, as well as all other persons or entities acquiring all or any portion of the Project, any lot, parcel or any portion thereof within the Property, or any interest therein, whether by sale, operation of law, devise, or in any manner

whatsoever.

- 11.6. **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 unless the Party has waived the right in writing.
- 11.7. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid for any reason, the parties consider and intend that this Agreement shall be deemed amended to the extent necessary to make it consistent with such decision and the balance of this Agreement shall remain in full force and affect.
- 11.8. **Appointment of Representatives.** To further the commitment of the parties to cooperate in the implementation of this Agreement, the County and Master Developer each shall designate and appoint a representative to act as a liaison between the County and its various departments and the Master Developer. The initial representative for the County shall be the Planning Division Director and the initial representative for Master Developer shall be the presiding member of [name of entity]. The parties may change their designated representatives by Notice.
- 11.9. **Mutual Drafting.** Each Party has participated in negotiating and drafting this Agreement and therefore no provision of this Agreement shall be construed for or against either Party based on which Party drafted any particular portion of this Agreement.
- 11.10. **Utah Law.** This Agreement is entered into under the laws of the State of Utah, and the Parties hereto intend that Utah law shall apply to the interpretation hereof.
- 11.11. **Authority.** Each Party represents and warrants that it has the respective power and authority, and is duly authorized, to enter into this Agreement on the terms and conditions herein stated, and to execute, deliver and perform its obligations under this Agreement.
- 11.12. **Duty to Act Reasonably and in Good Faith.** Unless otherwise expressly provided, each Party shall act reasonably in giving consent, approval, or taking any other action under this Agreement. The Parties agree that each of them shall at all times act in good faith in order to carry out the terms of this Agreement and each of them covenants that it will not at any time voluntarily engage in any actions which frustrate the purpose and intent of the Parties to develop the Project in conformity with the terms and conditions specified in this Agreement.
- 11.13. **Communication and Coordination.** The Parties understand and agree that the process described in this Agreement depends upon timely and open communication and cooperation between the Parties. The Parties agree to use best efforts to communicate regarding issues, changes, or problems that arise in the performance of the rights, duties and obligations hereunder as early as possible in the process, and not wait for explicit due dates or deadlines. Each Party agrees to work cooperatively and in good faith toward resolution of any such issues.
- 11.14. **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; 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.
- 11.15. **Incorporation of Recitals and Introductory Paragraph.** The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.
- 11.16. **Subjection and Subordination.** Each person or entity that holds any beneficial, equitable, or

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other interest or encumbrances in all or any portion of Project at any time hereby automatically, and without the need for any further documentation or consent, subjects and subordinates such interests and encumbrances to this Agreement and all amendments hereof. Each such person or entity agrees to provide written evidence of that subjection and subordination within 15 days following a written request for the same from, and in a form reasonably satisfactory to Master Developer or the County

- 11.17. Severability.** If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the Parties.
- 11.18. Other Necessary Acts.** Each of the Parties shall execute and deliver to the other any further instruments and documents as may be reasonably necessary to carry out the objectives and intent of this Agreement.
- 11.19. No Third Party Beneficiaries.** All bonds, including but not limited to performance, warranty, and maintenance bonds, and related agreements are between the County, Master Developer (or contractor if applicable), and financial institution. No other party shall be deemed a third-party beneficiary or have any rights under this subsection or any bond or agreement entered into pertaining to bonds. Any other person or entity, including but not limited to owners of individual units or lots, shall have no right to bring any action under any bond or agreement as a third-party beneficiary or otherwise.

12. Notices.

- 12.1. Written Notice.** Any notice, demand, or other communication ("Notice") given under this Agreement shall be in writing and given personally or by registered or certified mail (return receipt requested). A courtesy copy of the Notice may be sent by facsimile transmission or email.
- 12.2. Addresses.** Notices shall be given to the Parties at their addresses set forth as follows in this section.

If to the County:

Weber County Commission
2380 Washington Blvd, Ste #360
Ogden, UT 84401

With copies to:

Weber County Attorney
2380 Washington BLVD, Ste. #230
Ogden, UT 84401

Weber County Planning Director
2380 Washington BLVD, Ste. #240
Ogden, UT 84401

If to Master Developer:



12.3. Effectiveness Of Notice. Except as otherwise provided in this Agreement, each Notice shall be effective and shall be deemed delivered on the earlier of:

12.3.1. Physical Delivery. Its actual receipt, if delivered personally, by courier service, or by facsimile provided that a copy of the facsimile Notice is mailed or personally delivered as set forth herein on the same day and the sending Party has confirmation of transmission receipt of the Notice).

12.3.2. Electronic Delivery. Its actual receipt if delivered electronically by email provided that a copy of the email is printed out in physical form and mailed or personally delivered as set forth herein on the same day and the sending Party has an electronic receipt of the delivery of the Notice

12.3.3. Mail Delivery. On the day the Notice is postmarked for mailing, postage prepaid, by First Class or Certified United States Mail and actually deposited in or delivered to the United States Mail. Any Party may change its address for Notice under this Agreement by giving written Notice to the other Party in accordance with the provisions of this Section.

13. Default and Remedies.

13.1. Notice of Default. If Master Developer or a Subdeveloper or the County fails to perform their respective obligations hereunder or to comply with the terms hereof, the Party believing that a Default has occurred shall provide Notice to the other Party.

13.1.1. Contents of the Notice of Default. The Notice of Default shall:

13.1.1.1. Claim of Default. Specify the claimed event of Default, including the approximate date of when the event is determined to have begun;

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

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

13.1.1.4. Optional Proposed Cure. If the County chooses, in its discretion, propose a method and time for curing the Default which shall be of no less than sixty (60) days duration.

13.2. Dispute Resolution Process.

13.2.1. Conference. In the event of any dispute relating to this Agreement, the Parties, upon the request of either Party, shall meet within fourteen (14) calendar days to confer and seek to resolve the dispute ("Conference"). The Conference shall be attended by the following parties: (a) the County shall send department director(s) and County employees and contractors with information relating to the dispute, and (b) Master Developer shall send Master Developer's representative and any consultant(s) with technical information or expertise related to the dispute. The Parties shall, in good faith, endeavor to resolve their disputes through the Conference.

13.2.2. Mediation. If this Conference process does not resolve the dispute within the 7-day Conference period, the Parties shall in good faith submit the matter to mediation. The

Parties shall send the same types of representatives to mediation as specified for the "Conference" process. Additionally, the Parties shall have representatives present at the mediation with full authority to make a settlement within the range of terms being discussed, should settlement be deemed prudent. The mediation shall take place within forty-five (45) days of the Parties submitting the dispute to mediation. If the dispute is not able to be resolved through the mediation process in the 45-day period, the Parties may pursue their legal remedies in accordance with Utah and local law.

13.3. Remedies. If the parties are not able to resolve the Default by "Meet and Confer" then the parties may have the following remedies:

13.3.1. Code Enforcement. The Master Developer's failure to comply with this agreement constitutes a violation of the Land Use Code of Weber County, and is subject to the enforcement provisions and remedies thereof.

13.3.2. Legal Remedies. The rights and remedies available at law and in equity, including injunctive relief and specific performance, but not damages.

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

13.3.4. Withholding Further Development Approvals. The right to withhold any or all further reviews, approvals, licenses, Building Permits and/or other permits for development of the Project in the case of a Default by Master Developer until the Default has been cured.

13.3.5. Extended Cure Period. If any Default cannot be reasonably cured within sixty days, then such cure period shall be extended so long as the defaulting Party can provide substantial evidence that it is employing every effort reasonably available to pursuing a cure with reasonable diligence.

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

13.4. Venue. Any action to enforce this Agreement shall be brought only in the Second Judicial District Court for the State of Utah, Weber County.

14. Entire Agreement.

This Agreement, together with all exhibits hereto, constitutes the entire Agreement between the Parties with respect to the subject matter of this Agreement. This Agreement is specifically intended by the Parties to supersede all prior agreements between them or recorded to the property, whether written or oral.

15. Covenants Running with the Land

The provisions of this Agreement shall constitute real covenants, contract and property rights, and equitable servitudes, which shall run with all of the land subject to this Agreement. Notwithstanding anything in this Agreement to the contrary, the owners of individual units or lots, as opposed to Subdivided plats or Parcels, in the Project shall (1) only be subject to the burdens of this Agreement to the extent applicable to their particular unit or lot; and (2) have no right to bring any action under this Agreement as a third-party beneficiary or otherwise.

16. Counterparts.

This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all the Parties, notwithstanding that each of the Parties are not signatory to the original or the same counterpart. Further, executed copies of this Agreement delivered by facsimile or by e-mail shall be deemed originally signed copies of this Agreement.

IN WITNESS HEREOF, the Parties hereto, having been duly authorized, have executed this Agreement.

(Signatures on following pages)

17. **SIGNATURES**

“County”

Weber County, a body corporate and politic of the State of Utah

By: _____

[Name of Commission Chair]

Chair, Weber County Commission

Commented [A57]: Variable.

DATE: _____

ATTEST: _____

Ricky D. Hatch, CPA
Weber County Clerk/Auditor

"Master Developer"

By: _____
Print Name: _____
Title: _____

DATE: _____

Master Developer Acknowledgment

State of Utah)
)ss.
County of Davis)

On the _____ day of _____, 20__, personally appeared before me _____, who being by me duly sworn, did say that he is the _____ of _____, a limited liability company, and that the foregoing instrument was signed in behalf of said limited liability company by authority of its members or its articles of organization; and said person acknowledged to me that said limited liability company executed the same.

My Commission Expires:

Notary Public, residing in

"Owner"

Commented [A58]: Variable. Omit if Master Developer and Owner are the same.

By: _____

Print Name: _____

Title: _____

DATE: _____

Owner Acknowledgment

State of Utah)
)ss.
County of Davis)

On the ____ day of _____, 20__, personally appeared before me _____, who being by me duly sworn, did say that he is the _____ of _____, a limited liability company, and that the foregoing instrument was signed in behalf of said limited liability company by authority of its members or its articles of organization; and said person acknowledged to me that said limited liability company executed the same.

My Commission Expires:

Notary Public, residing in

18. Exhibit A – Property Legal Description

(Need from Applicant – Verify with GIS)

19. **Exhibit B – Property Graphic Depiction**

Insert aerial imagery with border around Property.

Exhibit C – Community Plan

The following pages provide the Community Plan for the Project. The Parties understand that de minimis deviations from this configuration may be allowed to better consider actual site conditions, pursuant to **Section 9.4** of this Agreement. For any conflicting provision within this Community Plan, the most restrictive for Master Developer shall apply.

Requirements of a concept plan. A concept plan shall comply with the following. The final agreement should replace this text box with the concept plan.

- **Survey.** The surveyed boundary lines of the Property and, if multiple zones, the boundaries of the zones, showing measured and/or recorded bearings, distances, and other controlling data with ties to section corners. Survey boundaries shall match the legal description(s) of Exhibit A – Property Legal Description.
- **Street and Pathway Layout and Configuration.**
 - **Connectivity Plan.** Conceptually illustrate the Project streets and how they align or connect to each other and to other streets on the perimeter of the Project. Also include in dashed lines a concept for how streets *might* align or connect with other streets outside of the Property.
 - **Street Labels.** All streets shall be labeled accordingly.
 - Minor Residential Streets shall be labeled with an "A."
 - Major Residential Streets shall be labeled with a "B."
 - Minor Collector Streets shall be labeled with a "C."
 - Major Collector Streets shall be labeled with a "D."
 - Minor Arterial Streets shall be labeled with an "E."
 - Major Arterial Streets shall be labeled with an "F."
- **Public Park Open Space.** Conceptually illustrate the Public Park Open Space acreage.
 - Label and shade, in a unique hue of green, the acreage intended to be improved park.
 - Label and shade, in a unique hue of green, the acreage intended to be natural park.
 - Label and shade, in a unique hue of green, the acreage intended to be pathway right-of-way.
 - Provide an open space table that shows:
 - Total Public Park Open Space acreage;
 - Improved park acreage;
 - Natural park acreage;
 - Pathway right-of-way acreage (except that acreage already counted within improved or natural park area); and
 - Linear feet of pathway that is not street-adjacent.
- **Lots.** Conceptually illustrate the general configuration of lot area. Unless otherwise required by the county, each lot or unit need not be illustrated, but rather each area that will contain lots and the configuration thereof.
- **Other.** Conceptually illustrate areas that are likely to be used for other purposes not specified above, such as area for utilities, water reservoirs, lift stations, pump houses, etc.

20. Exhibit D – Associated Rezone Area

Insert depiction of the rezone.

21. Exhibit E – Street Cross Sections

Notes:

- Include parkstrip/tree species width variable in each xsection.
- Each street needs to have a ½ width Project boundary variant.
- Specified materials and thicknesses are typical and may be varied by County Engineer to improve longevity due to atypical or unique site-specific characteristics.
- Arterial and collectors to avoid driveways entering street.

Minor Residential Streets shall be labeled with an "A."

As a limited connection street, Master Developer agrees to provide at least a 60-foot wide public street right-of-way for all streets that do not provide significant connection through the project or to collector or arterial streets.

Major Residential Streets shall be labeled with a "B."

Master Developer agrees to provide at least a 66-foot wide public street right-of-way for all streets that provide a continuous route through the Project, provide a continuous route that is greater than 1300 linear feet, contain a 10-foot paved pathway, or extends from a collector or arterial street and provides significant connection to other residential streets in the Project or beyond.

Minor Collector Streets shall be labeled with a "C."

Major Collector Streets shall be labeled with an "D."

Minor Arterial Streets shall be labeled with an "E."

Major Arterial Streets shall be labeled with an "F."

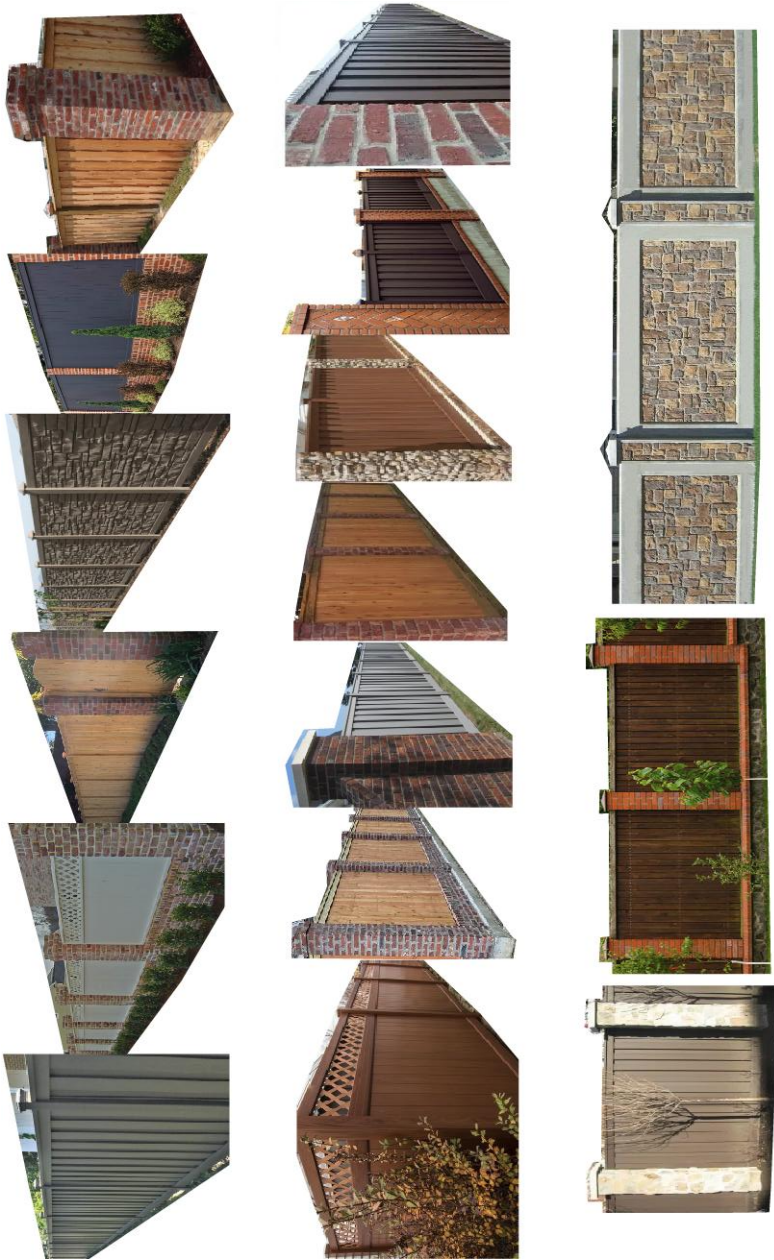
- *UDOT considerations*
- *Pathway crossing considerations*

Exhibit F – Typical Pathway Cross Section

Commented [CE59]: Insert county standard.

- If concrete, pathway joints shall be saw-cut.

22. Exhibit G – Street Fencing/Wall Examples



23. Exhibit H – Trailhead Conceptual Design and Improvements

Insert conceptual trailhead design here. Enter “reserved” in exhibit title if not applicable.

24. Exhibit I – Architectural Design Requirements

Insert building designs or specific design standards here. Enter "reserved" in exhibit title if not applicable.