

**LEGAL SERVICES AGREEMENT
CITY OF CHULA VISTA
AND
STRADLING, YOCCA, CARLSON & RAUTH, P.C.**

This Legal Services Agreement (“Agreement”) is entered into February 15, 2022 (“Effective Date”), by and between the City of Chula Vista (“City”) and Stradling, Yocca, Carlson & Rauth, P.C. (“Attorney”).

RECITAL

The following Recitals are a substantive part of this Agreement:

A. City desires to attract and locate a multi-institutional, bi-national university in Eastern Chula Vista on 383.7 acres of City-owned land (“University-Innovation District”) which is located adjacent to 432.9 gross acres of land that comprise Villages 9 and 10 under the ownership of HomeFed Development Corporation (“HomeFed”) the uniquely qualified developer of which City is evaluating a development partnership with to facilitate the development of the University-Innovation District on a combined-ownership area of approximately 560 developable acres across 816.6 gross acres (“Project”); and approximately 375 acres of land to the City for a University Campus and Innovation District (UCID).

B. On June 8, 2020, the University Subcommittee authorized staff to draft a Master Development Agreement (“MDA”) with HomeFed for City Council consideration to continue to make tangible and expeditious progress towards reaching an amicable term sheet and subsequent resulting agreements for the development of the Project.

C. Due to limited resources and the time and expertise that it will take to negotiate, structure and draft an MDA for the Project, the City Attorney’s Office requires additional legal resources.

D. In 2014, when the City and HomeFed were working together to negotiate the terms for a similar form of agreement for the development of the Project, the City Attorney’s Office went through an extensive Request for Qualifications/Proposals (“RFQP”) process for legal assistance, resulting in proposals from eleven (11) attorneys/law firms from around the state.

E. At that time, the City’s selection committee chose, and the City hired, the law firm of Stradling, Rocca, Carlson & Rauth to perform the required legal services The City Council approved this Agreement between the City of Chula Vista and Stradling.

F. Although that transaction did not proceed, Attorney provided exemplary services and developed a substantial in-house knowledge of the Project.

G. Attorney continues to have the high-quality expertise and experience necessary to advise the City with respect to the Project, including substantial familiarity with the Project and the workings of City government.

H. Attorney represents that they are highly qualified by virtue of experience, training, education and expertise to accomplish the services necessary under this Agreement.

I. Based upon the above-described qualifications, performance capabilities and experience, and the substantial work that Attorney has already performed for City under a separate but related contract regarding the Project, City has determined that Attorney is uniquely qualified to perform the required services pursuant to Chula Vista Municipal Code Section 2.56.070(B)(3) (City's interests are better served by an alternative procurement mechanism) and 2.56.070.B(4) (sole source exemption).

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. Term of Agreement. This Agreement shall cover services rendered from the first communication between the City and Attorney until one-year after the Effective Date. Notwithstanding the original term above, the City has the option to extend the term of this Agreement for up to five (5) one-year increments. The City Attorney shall be authorized to exercise the options to extend. If City exercises an option to extend, each extension shall be on the same terms and conditions herein unless otherwise amended in a written amendment between the parties.

2. Services to be Provided. The services to be performed by Attorney shall consist of the performance of any and all tasks and services reasonably required to advise, assist, and fully and competently represent the City in all legal matters presented to Attorney, wherein Attorney is consulted by, or appears on behalf of, the City. Attorney's services shall include, but are not limited to, any and all reasonably required legal support for the negotiation and documentation of a Master Development Agreement with HomeFed to advance the development of the City's University/Innovation District project (collectively, the "Required Services").

3. Compensation - Attorney shall be compensated for performance of the Required Services as follows:

3.1 *Amount.* The City shall compensate Attorney for the Required Services satisfactorily performed and approved at the following hourly rates:

- \$575/hour for Tom Clark, Vanessa Legbandt, and other Shareholders
- \$375/hour for Associates
- \$150/hour for Paralegals
- \$145/hour for Law Clerks

Travel time shall be billed at the same hourly rate. Except for reimbursable expenses as defined below, such hourly compensation shall be the sole and total remuneration for services rendered pursuant to this Agreement.

3.2 *Billing.* Attorney agrees to provide City with a detailed invoice for the Required Services performed each month, within thirty (30) days of the end of the month in which the Required Services were performed. Invoicing shall begin on the first of the month following the Effective Date of the Agreement. All charges must be presented in a line item format and in a manner such that each task is separately explained in reasonable detail, and with a specific time allocation recorded, for each task. The invoice shall include the amount, billing rate, basis for calculation of all fees and costs, total fees and costs incurred, total amount paid and balance remaining.

The City does not pay for the preparation of billings or for discussions concerning billing. The City will not accept and will not be responsible for block or cumulative invoice entries. Attorney shall not charge the City for more than one Attorney's time when appearing at a meeting, in Court, or for performing any task unless the City has expressly authorized in writing the use of two or more attorneys for the appearance or task.

All billing for work performed under this Agreement shall be sent to the following:

Glen R. Googins, City Attorney
City of Chula Vista Attorney's Office
276 Fourth Avenue
Chula Vista, CA 91910

With a copy to:

Eric Crockett
Deputy City Manager
City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 91910

3.3 *Reimbursements for Expenses.* Attorney shall keep accurate records of all costs, travel, and expenses. These records shall be made available to the City upon reasonable request.

The City will reimburse actual, reasonable, and necessary out of pocket expenses incurred by Attorney in performing any services under this Agreement as follows:

- a) Photocopying charges at reasonable rates.
- b) Parking Fees at the actual amount charged to Attorney.
- c) Travel/Mileage at the current federal per mile rate. Any travel fees incurred outside of San Diego County or Orange County must be authorized and approved in advance of the City.
- d) Statutory Fees, Witness fees, Reporters fees, Stenographic transcription, jury fees and the cost of serving process actually incurred by Attorney.
- e) Attorney may bill computerized legal research, word processing, overtime costs for word processing staff, mailing and messenger services at reasonable rates.
- f) Attorney may seek reimbursement for any actual, reasonable, and necessary expenses incurred on items not identified above with the prior authorization and approval by the City.

The City will not reimburse Attorney for any additional charges incurred due to “rush” deliveries or “late” charges, unless such expenses are approved in writing and in advance by the City after the need for such services is determined by the City to be reasonably beyond the control of Attorney.

To obtain reimbursement, Attorney shall submit a monthly summary of expenses, along with all supporting receipts, within thirty (30) days of the expense being incurred.

3.5 *Expert Consultations and Witnesses.* Expert consultations and witnesses, and any investigators, may be retained on terms acceptable to the City, authorized and approved in writing and in advance, for which the City shall reimburse the Attorney or pay investigators, consultants, or experts directly. In no event shall Attorney retain any service of any expert, investigator, or consultant without first receiving express authorization and approval from the City.

4. Insurance.

4.1 *Professional Errors and Omissions Insurance.* Attorney shall obtain and maintain in full force and effect at all times Professional Errors and Omissions Liability Insurance. Such insurance shall provide coverage in an amount not less than five million dollars (\$5,000,000.00) per occurrence and ten million dollars (\$10,000,000.00) aggregate. The City reserves the right to require insurance for a higher coverage than the minimum limits noted above. All insurance carriers shall hold a Best rating of “A+” or better. The insurance policy required under this paragraph shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage, or in limits, except after thirty (30) days prior written notice, by certified mail return receipt requested, given to the City. If the Attorney maintains higher limits than the minimums stated above, the City requires and shall be entitled to coverage for the higher limits maintained by the Attorney.

Said insurance policy shall provide coverage to the City for any damages or losses suffered by the City as a result of any error or omission, or neglect by Attorney which arise out of the services rendered under this Agreement. Such insurance may not be subject to a self-insured retention or deductible in an amount in excess of Twenty-Five thousand (\$25,000.00) dollars without prior written authorization and approval by the City.

Attorney shall, within ten (10) days after entering into this Agreement, and before commencing or performing any services under the Agreement, deposit with the City Attorney, a Certificate of Insurance certifying that all insurance required herein is, and will be, in full force and effect from the time the Agreement is entered into until the later of the date of expiration or termination of this Agreement. Should Attorney’s insurance policy terminate during the Agreement period, the Attorney shall renew the Certificates of Insurance at least fifteen (15) days prior to expiration and submit to the City at least ten (10) days prior to expiration. Any delay in submission of current Certificates of Insurance may result in a delay of payment.

Attorney shall not commence any work under this Agreement until Attorney has obtained and submitted all City approved insurance.

All insurance required shall be carried only by responsible insurance companies licensed to do business in California. All policies shall contain language to the effect that: (1) the insurer waives any right of subrogation against the City and the City's elected officials, officers, employees, agents, and representatives; and (2) insurance shall be primary non-contributing and any other insurance carried by the City shall be excess over such insurance. Attorney shall furnish the City with copies of all applicable policies promptly upon receipt.

Nothing in this section shall be construed to make Attorney other than an independent contractor for all purposes.

Attorney agrees to notify the City in the event that the limits shall fall below the coverage stated above or if the insurance policies noted here are allowed to lapse and substitute insurance is, or is not, obtained.

5. Indemnification. Attorney agrees to protect, hold harmless, defend, and indemnify the City, its employees, elective or appointive boards, officers, agents, agenda and affiliates, from any and all loss, claims liabilities, expenses, or damages of any nature whatsoever, including Attorneys' fees, arising out of or in any way connected with the misconduct, negligent acts, errors or omissions in the performance of the Required Services under Agreement by Attorney, Attorney's agents, officers, employees, sub-contractors, or independent contractors of Attorney, except where the loss or liability arises out of the sole negligence or willful misconduct of the City.

6. City Agent. The City Attorney, for the purposes of this Agreement, is the agent for the City. Whenever authorization or approval is required, Attorney understands that the City Attorney has the authority to provide the authorization or approval.

7. Independent Contractor. Attorney, and anyone employed by Attorney, are not and shall not be, deemed employees of the City. Attorney is solely responsible for the payment of employment taxes, workers compensation taxes, and any other taxes for employees.

8. Conflict of Interest. Attorney represents that they presently have no material financial interest other than that which may be held by the general public and shall not acquire any interest, direct or indirect, in any contract or decision made on behalf of the City which may be affected by the services to be performed by Attorney under this Agreement. Attorney further agrees that no person having any such interest shall be employed by them. If Attorney or their employees acquire a direct or indirect personal interest, such interest shall be immediately disclosed to the City and the interested individual shall abstain from any contracts or decisions under this Agreement.

In addition to the proscriptions regarding conflicts of interest imposed on Attorney by the Business and Professions Code and by California Rules of Professional Conduct, Attorney represents that no Attorney shall represent clients before any board, commission, committee or agency of the City or represent any client with interests adverse to the City. Furthermore, Attorney shall at all times avoid conflicts of interest or the appearance of a conflict of interest in performance of this Agreement. Attorney shall immediately notify the City Attorney of any circumstances, or change of circumstances, that may provide for the potential for a conflict of interest, or actual conflict of interest.

9. Non-Liability of Officials/Employees of the City. No official or employee of the City shall be personally liable for any default or liability under this Agreement.

10. Compliance with Law. Attorney shall comply with all applicable laws, ordinances, codes, and regulations of all Federal, State, and local governments. In addition, Attorney agrees to abide by all ethical and moral standards as represented by the Rules of Professional Conduct as applied to the California State Bar.

11. Work Product. All documents, or other information developed or received, by Attorney shall be the property of the City. Attorney shall provide the City with copies of items upon reasonable demand or upon termination of this Agreement.

12. Notices. Attorney must immediately advise City of any significant developments in the performance of the Required Services.

All notices shall be personally delivered or mailed, via first class mail, to the below listed address. In addition, such addresses shall be used for delivery for service of process. Attorney agrees to notify the City within ten (10) days of the date of any change of address and agree to keep an updated address with the applicable Courts on any matters that Attorney is representing the City.

a. Address of Attorney is as follows:

Stradling, Yocca, Carlson & Rauth, P.C.
660 Newport Center Drive, Suite 1600
Newport Beach, CA 92660
Attn: Thomas Clark, Esq.

b. Address of City is as follows:

Glen R. Googins, City Attorney/General Counsel
Eric Crockett, Deputy City Manager
City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 91910

13. Default/Termination of Agreement. City and Attorney shall have the right to terminate this Agreement without cause by giving fifteen (15) days written notice. However, Attorney shall not substitute out as Attorney of Record on any matters it may be representing the City without first obtaining written consent from the City, or first obtaining an appropriate Court Order, allowing Attorney to withdraw as counsel of record.

14. Limitations Upon Assignment/Subcontracting. Attorney agrees that no portion of their performance of Required Services rendered under this Agreement shall be assigned by Attorney or subcontracted to any other party without prior written authorization and approval of the City.

15. Non-Discrimination. Attorneys covenant there shall be no discrimination based upon race, color, creed, religion, sex, marital status, age, handicap, national origin, or ancestry, in any activity pursuant to this Agreement.

16. Time of Essence. Time is of the essence in the performance of this Agreement.

17. Authority to Execute. The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement as herein stated.

18. City Audit. The City is required to complete an annual audit. The Auditors may contact and require some input from Attorney concerning matters Attorney is engaged for the City. Attorney agrees to cooperate, at no charge to the City, for such cooperation or input as may be required.

19. Entire Agreement. This Agreement represents the parties' final and mutual understanding. This Agreement supersedes any previous agreements, oral or written.

20. Modification. This Agreement shall not be modified or replaced except by another signed, written Agreement, properly executed by the parties.

21. Waiver. The waiver of any breach or any provision of this Agreement does not waive any other breach of that term, or any other term, in this Agreement.

22. Partial Invalidity. If any part of this Agreement is found for any reason to be unenforceable, all other parts nonetheless shall remain in force.

23. Governing Law. This Agreement shall be interpreted and construed in accordance with the laws of the State of California. Any action commenced regarding this Agreement shall be filed in the Central Branch of the San Diego Superior Court.

24. Interpretation. This Agreement shall be interpreted as though prepared by both parties.

25. Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between the City and Attorney survive the termination of this Agreement.

26. Financial Interests. Attorney is deemed to be a "Consultant" for the purposes of the Political Reform Act conflict of interest and disclosure provisions and shall report economic interests to the City Clerk on the required Statement of Economic Interests in such reporting categories as are specified in Exhibit A, or if none are specified, then as determined by the City Attorney.

IN WITNESS WHEREOF, these parties have executed this Agreement on the day and year shown hereinabove.

CITY OF CHULA VISTA

By: _____
Glen R. Googins, City Attorney

STRADLING, YOCCA, CARLSON & RAUTH, P.C.

By: _____
Thomas Clark

**STATEMENT OF ECONOMIC INTERESTS
CITY OF CHULA VISTA
AND
STRADLING, YOCCA, CARLSON & RAUTH P.C.**

Attorney:

() Not Applicable. Not a Fair Political Practices Commission (“FPPC”) Filer.

() FPPC Filer.

If Attorneys in the performance of its services under this agreement: (1) conduct research and arrives at conclusions with respect to its rendition of information, advice, recommendations or counsel independent of the control and direction of the City or of any City official, other than normal contract monitoring; and (2) possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendations or counsel, Attorneys should not be designated as an FPPC Filer.

If Attorneys are designated as FPPC filers, specify below which disclosure categories apply:

- () 1. All investments, sources of income and business positions;
- () 2. Interests in real property;
- () 3. Investments, business positions, interests in real property, and sources of income subject to the regulatory, permit or licensing authority of the department;
- () 4. Investments and business positions in business entities and sources of income that engage in land development, construction or the acquisition or sale of real property;
- () 5. Investments and business positions in business entities and sources of income that, within the past two years, have contracted with the City of Chula Vista to provide services, supplies, materials, machinery or equipment;
- () 6. Investments and business positions in business entities and sources of income that within the past two years, have contracted with the designated employee’s department to provide services, supplies, materials, machinery or equipment;
- () 7. List interests in real property within 2 radial miles of Project Property, if any:
