



# CITY COUNCIL STAFF REPORT



**December 6, 2022**

## **ITEM TITLE**

Agreement: Approve an Exclusive Negotiating Agreement with HomeFed, LLC to Negotiate a Master Developer Agreement for the University-Innovation District

**Report Number:** 22-0306

**Location:** University-Innovation District

**Department:** Economic Development

**Environmental Notice:** The activity is not a “Project” as defined under Section 15378 of the California Environmental Quality Act State Guidelines; therefore, pursuant to State Guidelines Section 15060(c)(3) no environmental review is required. Notwithstanding the foregoing, the activity qualifies for an Exemption pursuant to Section 15061(b)(3) of the California Environmental Quality Act State Guidelines.

## **Recommended Action**

Adopt a resolution approving the Exclusive Negotiating Agreement with HomeFed, LLC directing parties to negotiate a Master Developer Agreement for the University-Innovation District.

## **SUMMARY**

On June 8, 2020, The University Subcommittee authorized staff to draft a Master Developer Agreement with HomeFed, LLC (“HomeFed”) for City Council consideration. From June 2020 to February 2022, city staff and HomeFed worked consistently to develop deal point considerations as a framework for a Master Developer Agreement. From February 2022 to present, the parties worked with CBRE to draft a robust Term Sheet, with non-exhaustive terms included within Exhibit B of the Exclusive Negotiating Agreement, that will inform the Master Developer Agreement. Through approval of an Exclusive Negotiating Agreement, this document will serve as the mechanism to timely develop a Master Developer Agreement between the City and HomeFed to serve as the Master Developer for the City’s 383-acre University-Innovation District. The Exclusive Negotiating Agreement provides for one 120-day initial negotiating period followed by two 90-day extensions to reach a Master Developer Agreement.

## **ENVIRONMENTAL REVIEW**

The proposed activity has been reviewed for compliance with the California Environmental Quality Act (CEQA) and it has been determined that the activity is not a “Project” as defined under Section 15378 of the

state CEQA Guidelines because it will not result in a physical change in the environment; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines, the activity is not subject to CEQA. Notwithstanding the foregoing, it has also been determined that the activity qualifies for an Exemption pursuant to Section 15061(b)(3) of the California Environmental Quality Act State Guidelines. Thus, no environmental review is required.

## **BOARD/COMMISSION/COMMITTEE RECOMMENDATION**

Not applicable.

## **DISCUSSION**

Since the adoption of the Otay Ranch General Development Plan in 1993, the City of Chula Vista has maintained a vision of locating a university within eastern Chula Vista. This vision is also reflected in the Otay Ranch General Development Plan and Sectional Planning Area Plan for a new University-Innovation District (“UID”). Under the adopted planning documents that govern the development of the site, the UID planning provides the ability to accommodate up to 20,000 students with an innovation district capable of building approximately 10 million square feet of mixed-use development, inclusive of 4.4 million square feet of academic space, 2 million square feet of commercial space for business innovation uses and 3.6 million square feet available for development of student/faculty and market rate housing. The City’s goals for the UID are as follows:

- Develop a university campus offering four-year degrees consistent with the City’s binational and multi-institutional university vision;
- Establish a business environment within the Innovation District that embraces the technology and/or higher education sectors to serve as a talent pipeline for the University(ies);
- Create an on-going income stream and/or one-time capital event;
- Support increases in tax revenue;
- Support equitable access to higher education;
- Foster additional economic development and education opportunities for the community at large; and
- Develop a financial model that allows development to occur with as little out-of-pocket cost to the City as possible.

## **University-Innovation District History**

After entering into a series of Land Offer Agreements throughout the years of 2007-2014, the City assembled, and currently owns, a total of approximately 383 acres of land for the UID. In November 2018, the planning effort culminated in the adoption of the UID Sectional Planning Area (“SPA”) Plan, Environmental Impact Report and related technical documents. The UID SPA Plan defines: the vision, land use character and mix, design criteria, pedestrian, bike and vehicular circulation systems, and the infrastructure requirements for an approximately 10 million square-foot University-Innovation District that will ultimately serve 20,000 students with supporting uses including office, retail, residential and research space.

Additionally, in January 2017, the City of Chula Vista acquired one of three United States Olympic Training Centers, now named the Chula Vista Elite Athlete Training Center. The Chula Vista Elite Athlete Training Center occupies 155 acres in eastern Chula Vista, and is located approximately 2 miles from the University

site. This unique and valuable City asset is potentially available to the institution(s) that develop a presence on the UID site for athletic, innovation and research uses, on terms to be negotiated with the then facility operator and the City.

With the land and entitlements via the planning documents both secured, after decades of planning, the City is finally well-positioned to work toward physical development of the UID. To turn the longstanding vision into reality, the City is in need of a strategic partnership with a Master Developer to provide the expertise to develop such a large property. This would eliminate the past reliance on waiting for an institution or industry anchor to take the initial step to develop the site, a commitment and financial obligation universities have not been willing to make or able to fund.

### **HomeFed's Historical Involvement in UID**

HomeFed, the Master Developer for neighboring Villages 8 West, 8 East, 9 and 10, is proposed to serve as the Master Developer of the UID. HomeFed's land holdings across Villages 8 West, 8 East, 9 and 10 includes approximately 1,562 gross acres (636 gross acres for adjacent Villages 9 and 10) and 11,245 housing units (5,635 units in adjacent Villages 9 and 10). HomeFed's land holdings, combined with the 383-acre University site and 155-acre Chula Vista Elite Athlete Training Facility offer approximately 1,200-acres of opportunity for a higher education institution(s) to create a 21<sup>st</sup> century world-class campus community in eastern Chula Vista that is well-supported by surrounding industry and housing.

HomeFed's historical involvement and commitment to the UID spans decades. Due to shared development goals, HomeFed's support of the University dates back to their Land Offer Agreements to the City which contributed significant acreage to develop the University on and to provide acreage for open space credits to enable the UID to be built to its maximum intensity per the UID SPA. On December 11, 2012, the City Council approved an Exclusive Negotiating Agreement ("ENA") with HomeFed for the planning and development of the University Park and Research Center. At such time, the ENA provided 90 days to explore and negotiate the terms and conditions of a Master Developer Agreement ("MDA").

On September 10, 2013, the City Council approved a first amendment to the ENA which added three additional 90 day extended negotiating periods, all of which were exercised by the parties. On June 10, 2014, the City Council approved a second amendment to the ENA for two more 90 day negotiating periods. At the end of this period, it was determined by HomeFed's Board of Directors that continuing the negotiations was not financially feasible and the agreement structure proposed did not allow the parties to move forward with finalizing a MDA.

Since 2014 and despite the previous attempt at an MDA, HomeFed has continued to remain a committed and engaged partner with mutual interest in advancing the vision of the University. While the previous agreement structure that failed was developed as a joint venture model, the parties are now proposing a for-fee development structure in this current Term Sheet which will be the basis of the framework for an MDA. Additionally, development on HomeFed's surrounding Villages 8 West and 8 East is underway with future development in the University Villages 9 and 10 to follow which provides an advantageous timing opportunity to utilize economies of scale with grading and pre-development work.

On June 8, 2020, The University Subcommittee authorized staff to draft a Master Developer Agreement with HomeFed for City Council consideration. Since that time, the deal structure has continuously evolved and the parties created several different scenarios for consideration ranging from 1) a for-fee developer model, 2) a

scenario in which an anchor would self-develop, 3) a joint venture attempting to avoid the pitfalls from the previous joint venture endeavor, and 4) a “Mutually Assured Construction” model that would have HomeFed front development costs and then recover those costs through vertical development rights within a concept proposed as the University Villages Overlay Zone. Throughout these conversations, the Overlay Zone Concept was introduced to the University Subcommittee and subsequently the City Council. The Overlay Zone concept envisioned comingling the City’s and HomeFed’s land entitlements within the University Villages to allow for the flexible redistribution of land uses through swaps between the City and HomeFed. After several months of assessing the viability and complications with implementation of this concept and trying to integrate the nuances of the Overlay into the deal structure within the Term Sheet, the parties mutually agreed to abandon the concept and move forward with a more traditional streamlined development model that preserved each party’s individual entitlements on their own land. The Overlay Zone was integrated into the development scenarios for the joint venture and Mutually Assured Construction models, the alternative two concepts were 1) the fee developer model, and 2) an anchor self-development model. In advance of an institution or industry anchor poised to self-develop, the parties determined the most viable development process by which to structure the Term Sheet is the for-fee developer model.

### **HomeFed: Uniquely Qualified to Serve as Master Developer**

The City believes HomeFed is uniquely qualified to enter into the ENA with and collaborate on a MDA due to the parties longstanding partnership and shared history with the University-Innovation District as well as the developer’s many qualifications. The parties’ shared goals date back to the Land Offer Agreements in which HomeFed contributed property and financial resources toward planning and entitlement efforts. Over the years, HomeFed has invested significantly in collaborative land planning, initially with Ayres Saint Gross and later with Duany Plater-Zybert (DPZ) on an intensive design charrette. The parties also share public-private-partnership experience of notable scale, including the development of public infrastructure and major reclamation and rehabilitation of the Otay River Valley. Additionally, the parties are founding members of the Urban Land Institute’s University Development and Innovation Council. HomeFed has a proven track record of successful and award-winning development in master planned communities. They have familiarity with Otay Ranch and the University Villages given their extensive land holdings near and adjacent to the University site. In recent years, the success of Village 3, Escaya, is a tangible demonstration of HomeFed’s capabilities as a Master Developer through the addition of 948 homes, a mixed-use village center, a private club and wellness center and a new 7.5-acre neighborhood park. Escaya was consistently one of the top selling communities in San Diego County and among the top 50 in the nation. HomeFed has the financial strength and stability as a fully owned subsidiary of Jefferies Financial Group, a publicly traded company. Further, the City recognizes HomeFed’s effective relationship with City staff which has been built on decades of mutual trust, cooperation and respect.

### **Exclusive Negotiating Agreement and Business Terms**

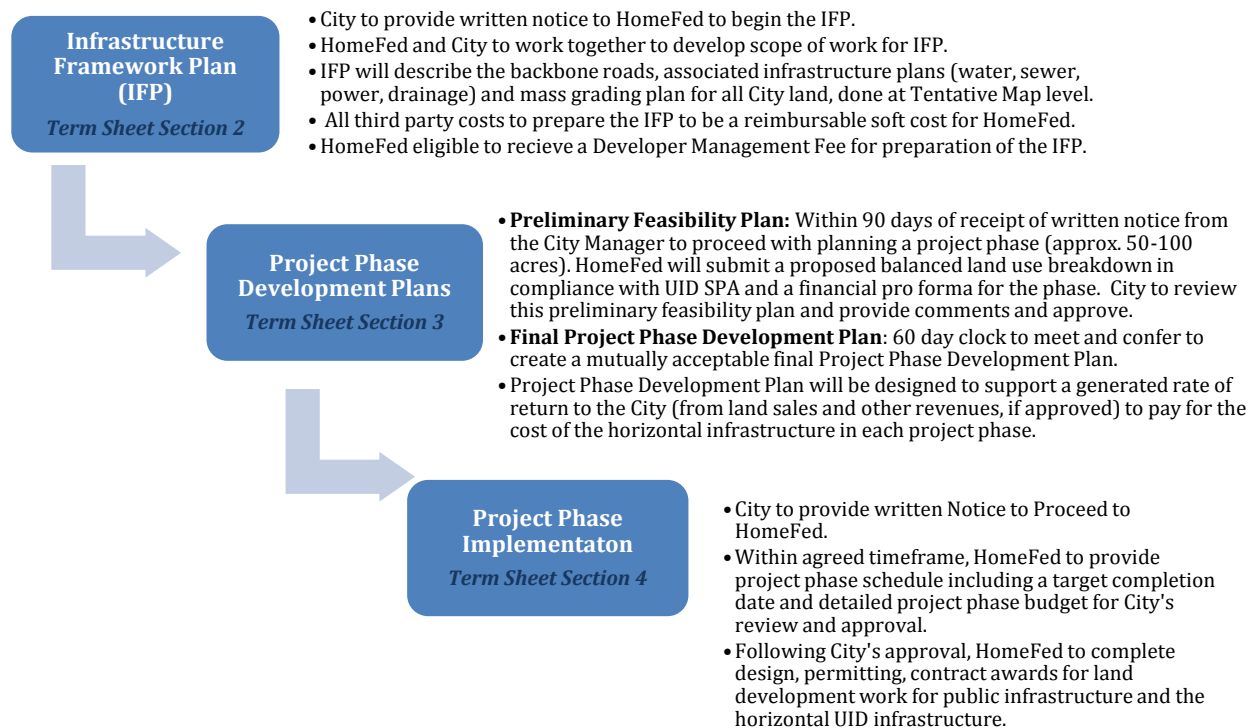
The University Villages (Villages 9, 10 and the University site) present an unprecedented opportunity that cannot be replicated in California. The project area spans 811 acres of contiguous land, adjacent to a new freeway, served by MTS’s Bus Rapid Transit (“BRT”), collectively approved for 9,353 new residential units and 12 million square feet of commercial. HomeFed and the City share a mutual responsibility to execute best practices in the development of the University Villages which is heightened due to the State’s housing crisis and the need to also be responsive to the State’s shortfall in meeting the demand and providing the necessary capacity for equitable access to higher education.

In February 2022, the City Council approved a two-party agreement with CBRE Group, Inc. to provide professional real estate advisory and consulting services to negotiate terms and conditions with HomeFed for development of the University-Innovation District. This effort included CBRE's expertise and assistance in negotiating a Term Sheet and Exclusive Negotiating Agreement within Phase I of the agreement. The agreement also included a Phase II which entailed Master Developer Agreement negotiation and completion in November 2022. Throughout negotiations, the parties worked consistently in weekly meetings to develop a robust and detailed Term Sheet and Exclusive Negotiating Agreement, outlined below.

### *Term Sheet*

The Term Sheet, included as Exhibit B within the ENA, encompasses the basic business terms upon which the parties would consider entering into an agreement in which HomeFed would serve as the Master Developer of the University-Innovation District. This includes all services for pre-development and improvement of City-owned land and installation of infrastructure required to deliver graded pads to the City in a developable condition in a phased approach. It is initially contemplated that the overall project may include 4-6 project phases of between approximately 50-100 acres each, and that each project phase contains balanced land uses and intensities to ensure that University related land uses are not outpaced by residential development. This creates a structure in which revenue can be generated by non-university related uses to enable the City to pay the cost to develop the horizontal infrastructure planned for each phase with the process outlined below.

### *Planning Process and Execution: From Concept to Construction*



General Contractor Fee

In the Term Sheet negotiations, the parties have agreed to compensate HomeFed with a General Contractor Fee, applied to hard costs, and a Developer Management Fee, applied to hard and soft costs for their work as the proposed Master Developer. The General Contractor Fee is in consideration of serving as the City’s owner representative in managing all land development work. This would be charged separately as a percentage of the hard cost component of the qualified land development costs incurred with respect to each Project Phase in accordance with the following schedule:

- (1) Above \$0 up to \$5 million in costs, 11% of such costs;
- (2) Above \$5 million up to \$10 million in costs, 10% of such costs;
- (3) Above \$10 million up to \$15 million in costs, 9% of such costs;
- (4) Above \$15 million, 8% of such costs; and
- (5) Above \$20 million, 7% of such costs.

Developer Management Fee

For overseeing all activities related to improvement of the City land and installation of infrastructure required to deliver graded pads to the City, a market rate Developer Management Fee has also been included in the Term Sheet. The Developer Management Fee would be charged separately as a percentage of both hard and soft costs (defined in the Term Sheet) of the qualified land development costs incurred with respect to each project phase in accordance with the following schedule:

- (1) Above \$0 up to \$5 million in costs, 4.5% of such costs;
- (2) Above \$5 million up to \$10 million in costs, 4% of such costs;
- (3) Above \$10 million up to \$15 million in costs, 3.5% of such costs;
- (4) Above \$15 million up to \$20 million, 3% of such costs; and
- (5) Above \$20 million, 2.5% of such costs.

For example, if the City incurs Qualified Land Development Costs for a Project Phase in the amount of \$21,000,000, comprised of \$13,000,000 of hard costs and \$8,000,000 of soft costs, subject to City’s approval of such costs, HomeFed shall be entitled to receive a General Contractor Fee and a Developer Management Fee calculated as follows:

**General Contractor Fee (applied to hard costs only):**

11% Tier up to \$5m	=	\$ 550,000
10% Tier \$5-\$10m	=	\$ 500,000
9% Tier \$10-\$13m	=	<u>\$ 270,000</u>
<b>Total GC Fee</b>	<b>=</b>	<b>\$1,320,000</b>



**Developer Management Fee (applied to hard and soft costs):**

4.5% Tier up to \$5m	=	\$ 225,000
4% Tier \$5-\$10m	=	\$ 200,000
3.5% Tier \$10-\$15m	=	\$ 175,000
3% Tier \$15-\$20m	=	\$ 150,000
2.5% Tier \$20-21m	=	<u>\$ 25,000</u>

**Total DM Fee = \$ 775,000**

***Exclusive Negotiating Agreement***

The Exclusive Negotiating Agreement outlines the terms in which the parties will engage exclusively with one another for the initial negotiation period of 120 days. Should the first 120 days elapse without completion of an MDA, two additional extended negotiation periods of 90 days each may be entered into under the City Manager's authorization. Should the terms of the MDA be negotiated to completion to the satisfaction of both parties, the City Manager will present the proposed MDA to the City Council for their review and consideration.

**AB 1486: An Impediment to Progress**

In 2019, Governor Newsom signed AB 1486 (Ting, 2019) into law. The legislation, the Surplus Land Act, is aimed to connect developers interested in building affordable housing with surplus local public land that is available and suitable for housing development. This law requires local agencies disposing of surplus land via sale or lease to declare the property surplus by a resolution of the governing body and then send a written notice of availability to a list of housing developers registered with the state. Following that, should there be expressions of interest from developers, the agency is required to enter into good faith negotiations. Unfortunately, under the auspices of this faulty and problematic one-size-fits-all legislation, the City's 383-acre University site is subject to this law which has proven to be a major impediment to advancing progress with development of the site as well as negotiations with the proposed Master Developer.

Guidelines for AB 1486 were not released until April 2021. Since that time, staff has worked with both inside and outside Counsel to strategize how to approach this legislative obstacle. In March 2022, the City began consultation with the State Department of Housing and Community Development ("HCD") to share the unique nature of the City's project and seek a determination on if the Surplus Land Act would be applicable to this site. Despite staff clearly demonstrating to HCD the City's 30-year university vision, numerous policy and planning documents and resolutions of the City Council illustrating that the property is not surplus as it has an intended economic development use, HCD informed the City that the University site is subject to the provisions of AB 1486. To comply with this law, the City drafted a Notice of Availability (NOA) for the property which was subsequently reviewed and approved by HCD. Releasing the NOA would require the City Council to adopt a resolution declaring all 383 acres of the university site as surplus property, an action staff is not willing to recommend at this time.

As an alternative strategy, since July 2022 staff has been seeking an exemption from the legislation on the basis of Government Code section 54221(f)(1)(G) which states “...surplus land that is subject to valid legal restrictions that are not imposed by the local agency would make housing prohibited...”. The City maintains that each parcel of the University-Innovation District site qualifies as “exempt surplus land” pursuant to the above exemption provision of the Act. The City’s detailed review of the grant deeds and related recorded instruments for the entire University Property (which includes all or portions of 6 separate legal parcels) demonstrates that each parcel contains the requisite legal restrictions on housing as follows:

- APN 644-070-10: An Irrevocable Offer of Dedication, recorded August 27, 2014 and accepted on May 12, 2022, made pursuant to Government Code Section 7050 that provides that the dedication is made for the following public purpose: FUTURE UNIVERSITY PURPOSES [[full document available here](#)];
- APN 644-080-18: A Land Offer Agreement, recorded September 1, 2010, that provides, among other requirements, in Sections 2.2, 2.3 and 2.4 thereof that the “University Property” transferred to City shall be subject to a “Repurchase Right” by the private property “Owner” in the event that the City determines that the property, or any portion thereof, will be developed for any permitted “Non-university Development” including non-University related housing [[full document available here](#)];
- APN 644-080-23: An Acceptance of an Irrevocable Offer of Dedication accepted June 23, 2015 for higher education uses and related compatible uses, active public recreation, quasi-public and all other uses including residential uses, industrial and commercial [[full document available here](#)];
- APN 643-070-16, 644-080-15: A Grant Deed recorded December 31, 2001 that provides as follows: “Property shall be used for educational, active public recreation, commercial, industrial and all other uses except non-university related residential.” [[full document available here](#)];
- APN 644-080-09: A Final Order of Condemnation from the Superior Court of the State of California for the County of San Diego in a judgement of condemnation entered into pursuant to California Code of Civil Procedure Section 668.5 on January 29, 2004 (case number GIC 796139-1) having such ordered, adjudged and decreed that this real property is the property of the City of Chula Vista for specific use of “open space preservation for off-site environmental requirements of Otay Ranch final maps.” [[full document available here](#)].

The above restrictions prohibit all housing on the University Property other than such housing as would be necessary to fulfill the University Property’s public purpose for university or educational uses. According to the legislative history of AB 1486, the bill updating the AC was intended to “broaden the definition of ‘exempt surplus land’ to include specified types of lands”. *2019 Cal. Legis. Serv. Ch. 664 (A.B. 1486)*. The City believes the University Property, which contains legally valid restrictions on the development of non-university related housing, is precisely one of the types of lands that is and should be explicitly exempt from the Act.

As shown by the plain language of the deeds, agreements, and recorded documents above, the legal restrictions on the University Property were not imposed by the City. Rather, they were imposed by the grantors of the parcels to prohibit the use of the University Property for any non-UID uses, including the development of residential housing except to support a complete University campus. These restrictions were conditions precedent to the transfers of the University Property parcels to the City so that the grantors could ensure that these parcels would not be used to compete with the proposed development of their adjacent residential communities.



Government Code section 54222.3 provides that the Act is not applicable to an agency's disposal of "exempt surplus land". The relevant parcels of the University Property were acquired by the City from private property owners well before the 2019 changes to the Act. As a condition to the City's acquisition, the private property owners imposed limitations on the uses of the properties. In all cases, uses are limited to University/educational purposes or open space preservation and University supporting residential uses. These conditions were imposed by prior owners/developers on the properties they transferred to the City because they wanted to get the benefits of University development, but none of them wanted the City to be able to compete with their intended residential developments of the adjacent properties that they themselves retained. All of the above limitations are "valid legal restrictions" that have been expressly set forth in grant deeds, agreements, or other documents recorded against the parcels. As such, all of these restrictions not only bind the City, but they bind anyone who might acquire the properties from the City. None of these restrictions are "nonresidential land use designations" imposed by the City itself.

For the reasons above, the City's position is that the University Property meets all essential elements of the above definition of "exempt surplus land" and therefore maintains that disposal of the University Property should not be subject to the Act. Unfortunately, on November 16, 2022 the City was notified by HCD that APNs 644-070-010, 644-080-017, 644-080-018, 644-080-15 and 643-070-16 do not qualify as exempt surplus land and are still awaiting their determination for APN 644-080-09. The City is not in agreement with this determination and is evaluating the best course of action. To acknowledge the problems presented by AB 1486, a provision has been added into Section 3.1.2 of the ENA.

#### **DECISION-MAKER CONFLICT**

Staff has reviewed the property holdings of the City Council members and has found no property holdings within 1,000 feet of the boundaries of the property which is the subject of this action. Consequently, this item does not present a disqualifying real property-related financial conflict of interest under California Code of Regulations Title 2, section 18702.2(a)(7) or (8), for purposes of the Political Reform Act (Cal. Gov't Code §87100, et seq.).

#### **CURRENT-YEAR FISCAL IMPACT**

There will be no current-year fiscal impact to the City's General Fund as a result of approving the ENA and authorizing staff to work with counsel and HomeFed to draft the MDA. Costs incurred from preparation of the MDA such as outside legal counsel have been appropriated from funds contributed by HomeFed Village III Master, LLC per the Development Agreement approved by City Council on July 13, 2021 by Ordinance No. 3505.

#### **ONGOING FISCAL IMPACT**

There is no ongoing fiscal impact by approving this resolution.

#### **ATTACHMENTS**

1. Exclusive Negotiating Agreement

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