

## EXCLUSIVE NEGOTIATING AGREEMENT

BY AND BETWEEN

CITY OF CHULA VISTA

AND

HOMEFED LLC

This EXCLUSIVE NEGOTIATING AGREEMENT (“Agreement”) is entered into effective as of December \_\_, 2022 (“Effective Date”) by and between the CITY OF CHULA VISTA, a chartered municipal corporation (“City”) and HOMEFED LLC, a Delaware limited liability company (“HomeFed”), with reference to the following facts:

### RECITALS

A. City owns certain real property comprised of approximately 383 acres located in the Otay Ranch and Eastlake communities (adjacent to Planned Villages 9, 10 and 11), in the City of Chula Vista, California, as depicted in **Attachment No. 1** (the “Property”).

B. City wishes to foster the development of the University/Innovation District Project at the Property, as more particularly described in the “Term Sheet” attached hereto as **Attachment No. 2** (the “Project”).

C. In furtherance of the Project, the City approved the Sectional Planning Area Plan for the Property and on November 13, 2018 approved that certain certified EIR14-01 (SCH No. 2014121097) for the Project.

D. Given the complexity and long-term development horizon for the Project and certain anticipated costs and performance efficiencies, City wishes to explore an arrangement with a land developer to serve as the master developer for the Project, as described in the Term Sheet.

E. HomeFed has unique qualifications to serve as the master developer for the Project because of HomeFed’s (i) proven track record of successful and award-winning development, (ii) familiarity with Otay Ranch and the Project, given its extensive and long-term land holdings near and adjacent to the Property, (iii) financial strength and stability of HomeFed as a wholly-owned subsidiary of Jefferies Financial Group Inc., which is a publicly traded company, and (iv) effective relationship with City staff based on mutual trust, cooperation and respect. Accordingly, City recognizes HomeFed as uniquely qualified for purposes of this Agreement and, potentially, as a uniquely qualified sole-source candidate to act as the master developer of the Project.

F. Because HomeFed owns a significant amount of real property in the vicinity of and adjacent to the Property, HomeFed shares the City’s interest in exploring and negotiating the possible terms and conditions under which HomeFed would act as the master developer for the Project, and is willing to invest substantial time and resources towards the negotiation of a Master Developer Agreement (an “MDA”) with the City; provided that City is willing to negotiate exclusively with HomeFed for a specified time period on the terms and conditions provided herein.

G. HomeFed and City have negotiated the terms of the Term Sheet and agree that the Term Sheet sets forth certain primary terms to be included in the MDA.

H. Due to the unique nature of the proposed Project, its potential for fostering economic development and educational advancement, and for providing a valuable amenity for the citizens of the City of Chula Vista, and HomeFed's unique "master developer" qualifications (described above), City is willing to enter into this Agreement with HomeFed on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the above recitals, the mutual covenants contained herein, and other good and valuable consideration, which the parties hereby acknowledge as adequate and sufficient, CITY AND HOMEFED HEREBY AGREE AS FOLLOWS:

## **AGREEMENT**

### **1. Nature of Agreement.**

1.1 Purpose. The general purpose of this Agreement is to negotiate mutually-agreed terms and conditions of an MDA for the Project. The MDA will ultimately be subject to consideration and approval by the City Council of the City of Chula Vista (the "City Council"); provided that the City Manager (or her designee) shall have sole discretion when, or whether, an MDA will be submitted to the City Council for their consideration.

1.2 Exclusivity. During the term of the Agreement, City agrees not to solicit alternative proposals for master developer services or similar services with respect to the Property, or to negotiate with any other person or entity regarding the planning and development of infrastructure and horizontal improvements to prepare the Property for sale and/or lease to third parties for vertical development of the Property. For purposes of this Section, "negotiate" shall mean to conduct communications or conferences of any kind with a view to reaching an MDA. Notwithstanding the foregoing, HomeFed acknowledges that (a) City may receive from time to time, unsolicited alternative proposals with respect to engineering, planning, predevelopment, infrastructure development, and horizontal and vertical development of the Property; and (b) City reserves the right to conduct a preliminary evaluation of and to factor in any unsolicited alternative proposal received when considering whether or not to approve the terms and/or conditions upon which to approve the final MDA with HomeFed. Upon receipt of such an unsolicited proposal, City shall promptly provide a copy of the proposal to HomeFed, and if requested by either party, City and HomeFed shall meet to review the proposal. Notwithstanding the foregoing, upon receipt of any proposal labeled "confidential" or sent to the City on the condition of confidentiality of some or all of its contents, the City shall return any and all confidential contents to the sender and not consider such contents unless the proposal is resubmitted with no confidentiality requirement, at which point the City will provide a copy of the proposal to HomeFed pursuant to the immediately preceding sentence.

1.3 Term. The initial term of this Agreement shall commence on the Effective Date and terminate one hundred twenty (120) days thereafter, unless earlier terminated in accordance with the provisions hereof (the "Initial Negotiation Period"). No later than ten (10) business days prior to the expiration of the Initial Negotiation Period, either party may, by written notice to the other party, extend the term of this Agreement for one (1) additional ninety (90) day period (the "First Extended Negotiation Period"), provided that (i) neither HomeFed nor City has exercised its right to terminate this Agreement as herein provided and (ii) the party electing to extend the term of this Agreement is in full compliance with all material terms and conditions hereof. At the end of the First Extended

Negotiation Period, the City Manager, in her sole discretion and on behalf of the City, may extend the term of this Agreement for up to one (1) additional ninety (90) day period (the “Second Extended Negotiation Period”; the Initial Negotiation Period, the First Extended Negotiation Period, and the Second Extended Negotiation Period are each sometimes referred to as a “Negotiation Period”), provided that at the end of the First Extended Negotiated Period (i) neither HomeFed nor City has exercised its right to terminate this Agreement as herein provided, (ii) both HomeFed and City are in full compliance with all material terms and conditions hereof, and (iii) both HomeFed and City concur with such Second Extended Negotiation Period. If not extended as provided in this Section 1.3 or earlier terminated pursuant to Section 4 below, this Agreement shall terminate and be of no further force or effect upon expiration of the then-current Negotiation Period.

## **2. Master Developer Agreement Terms and Conditions.**

2.1 MDA Terms. Upon mutual execution of this Agreement, City staff and HomeFed shall in good faith attempt to negotiate the terms and conditions of an MDA. If the terms of an MDA can be negotiated to the mutual satisfaction of the City Manager and HomeFed, the City Manager will present the proposed MDA to the City Council for its review and consideration.

2.2 Term Sheet. The Term Sheet was negotiated by the City and HomeFed and sets forth the key terms to be included, in substance, in the MDA. The Term Sheet shall form the basis for the initial draft of, and shall guide the negotiations of, the MDA, subject to the terms of Section 3 below. The parties acknowledge that the Term Sheet does not contain a complete or exhaustive description or list of the terms and provisions to be included in the MDA.

## **3. Retention of Discretion to Approve the Project and MDA.**

3.1 City Approval Discretion. This Agreement contemplates that an MDA may be presented to the City Council for approval. The parties understand that City is reserving the right to exercise its discretion as to all matters which it is, by law, entitled or required to exercise its discretion, including, but not limited to the following:

3.1.1 Approval by City of the MDA. The parties understand that the City has the complete and unfettered discretion to reject an MDA without explanation or cause. HomeFed acknowledges and agrees that City may require or impose additional material terms, conditions and obligations on HomeFed, as Master Developer, under the MDA that are not currently set forth in the Term Sheet. If HomeFed does not agree to any such terms, conditions or obligations, HomeFed reserves the right to terminate this Agreement and/or not to proceed with the execution and delivery of the MDA.

3.1.2 Review and approval by City of all discretionary findings and conclusions. City’s execution and delivery of the MDA, any development or construction work at the Property, and any agreement by City to dispose of the Property or other City acquired parcels shall be conditioned upon the successful review and approval of all necessary findings and conclusions which the City Council is required to make, including all necessary findings and determinations required under CEQA, state and local land use provisions, and other applicable federal, state and local laws. As to any matter with respect to which City may be required to exercise its unfettered discretion in advancing the Project to completion, nothing contained herein or in the MDA shall obligate City to exercise its discretion in any particular manner, and any exercise of discretion reserved hereunder or

required by law shall not be deemed to constitute a breach of City duties under this Agreement.  
[Placeholder -address SLA]

#### **4. Termination Rights.**

##### **4.1 Termination by City.**

4.1.1 City shall have the right to terminate this Agreement in the event of any of the following:

(a) HomeFed fails to timely perform any of its obligations hereunder or is otherwise in default under this Agreement, after expiration of the notice and cure periods specified in Section 7.14; or

(b) The parties reach an impasse in their negotiations of the MDA which cannot be resolved after good faith efforts, in the reasonable discretion of the City; or

(c) The validity of this Agreement or either party's authority to enter into this Agreement is challenged by an unrelated third party in a court or administrative proceeding.

##### **4.2 Termination by HomeFed.**

4.2.1 HomeFed shall have the right to terminate this Agreement in the event of any of the following:

(a) City fails to timely perform any of its obligations hereunder or is otherwise in default under this Agreement after expiration of the notice and cure periods specified in Section 7.14; or

(b) The parties reach an impasse in their negotiations of the MDA which cannot be resolved after good faith efforts, in the reasonable discretion of HomeFed; or

(c) The validity of this Agreement or either party's authority to enter into this Agreement is challenged by an unrelated third party in a court or administrative proceeding.

#### **5. Additional Terms and Obligations.**

5.1 Each Party to Bear its Own Cost. Each party shall bear its own costs incurred in connection with the negotiation of an MDA and the implementation of this Agreement.

5.2 No Brokers or Real Estate Commissions. City has engaged CBRE to serve as Development Advisor and Broker in connection with the negotiation of the MDA and the eventual sale of portions of the Property to third party end users. Unless otherwise agreed to by HomeFed in the MDA or by separate written agreement, all fees and commissions of CBRE relating to the Project or Property are the responsibility of the City. Except for the foregoing, each party warrants and represents to the other that such party has not engaged the services of any broker or finder in connection with the Property, the Project or the MDA. Each party agrees to indemnify, hold harmless, and defend the other against claims for commissions or fees made through such party, in connection with entering into this

agreement or either party performing its obligations under this Agreement. No fees or commissions are being earned by the City, HomeFed, or CBRE as a result of or in connection with the negotiation or execution of this Agreement.

**6. No Pre-Commitment.** By its execution of this Agreement, City is not committing itself or agreeing to undertake any activity requiring the subsequent exercise of discretion by City, or any department thereof including, but not limited to, the approval and execution of an MDA; the proposal, amendment or approval of any land use regulation governing the Property; the incurrence of financial obligations or commitment of financial resources for the development of the Property, the provision of financial assistance for the acquisition, development, or operation of any public or private interest in real property; the authorization or obligation to use the City's eminent domain authority; or any other related activity. This Agreement does not constitute a disposition of property or exercise of control over property by City and does not require a public hearing. City execution of this Agreement is merely an agreement to enter into a period of exclusive negotiations according to the terms hereof, reserving final discretion and approval by City as to any proposed MDA and all proceedings and decisions in connection therewith.

**7. General Provisions.**

7.1 Notice/Address for Notice. All notices, demands, or requests provided for or permitted to be given pursuant to this Agreement must be in writing, with a copy delivered by electronic mail. All notices, demands and requests to be sent to any party shall be deemed to have been properly given or served if personally served or deposited in the United States Mail, addressed to such party, postage prepaid, registered or certified, with return receipt requested, at the address identified in this Agreement as the places of business for each of the designated parties. The parties addresses for Notice are as follows:

HomeFed's Address for Notice:

HOMEFED LLC  
Attn: Chris Foulger, President  
1903 Wright Place, Suite 220  
Carlsbad, CA 92008-6584  
Telephone: (760) 602-3765  
Email: CFoulger@hfc-ca.com

With a copy to:

Aaron J. Sobaski, Esq.  
Sheppard, Mullin, Richter & Hampton LLP,  
650 Town Center Drive, 10th Floor  
Costa Mesa, CA 92626  
Telephone: (714) 424-2848  
Email: ASobaski@sheppardmullin.com

City's Address for Notice:

CITY OF CHULA VISTA  
276 Fourth Avenue  
Chula Vista, CA 91910  
Attn: Maria V. Kachadoorian, City Manager  
Telephone: (619) 691-5031  
Email: MKachadoorian@chulavistaca.gov

With a copy to:

Eric Crockett, Deputy City Manager & Economic Development Director  
276 Fourth Avenue  
Chula Vista, CA 91910  
Telephone: (619) 476-5002  
Email: ECrockett@chulavistaca.gov

Glen R. Googins, City Attorney  
276 Fourth Avenue  
Chula Vista, CA 91910  
Telephone: (619) 691-5039  
Email: GGoogins@chulavistaca.gov

7.2 Authority. Each party represents that it has full right, power and authority to execute this Agreement and to perform its obligations hereunder, without the need for any further action under its governing instruments, and the parties executing this Agreement on the behalf of such party are duly authorized agents with authority to do so.

7.3 Counterparts. This Agreement may be executed in multiple copies, each of which shall be deemed an original, but all of which shall constitute one Agreement after each party has signed such a counterpart.

7.4 Entire Agreement. This Agreement together with all attachments attached hereto and other agreements expressly referred to herein, constitutes the entire agreement between the parties with respect to the subject matter contained herein. All attachments referenced herein shall be attached hereto and are incorporated herein by reference. All prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, are hereby superseded.

7.5 Further Assurances. The parties agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Agreement and the intentions of the parties.

7.6 No Third Party Beneficiaries. There are no other parties to this Agreement, express or implied, direct or indirect. City and HomeFed acknowledge that it is not their intent to create any third party beneficiaries to this Agreement.

7.7 Assignment. City would not have entered into this Agreement but for HomeFed's unique qualifications and experience. Therefore, HomeFed's rights and obligations under

this Agreement may not be assigned without the prior written approval of City, which may be withheld or conditioned in City's sole discretion.

7.8 Joint and Several Liability. If either party consists of more than one person or entity, the liability of each such person or entity shall be joint and several.

7.9 Time is of the Essence. Time is of the essence for each of the parties' respective obligations under this Agreement.

7.10 Confidentiality. Developer acknowledges and agrees that City is a public entity with a responsibility and, in many cases, legal obligation to conduct its business in a manner open and available to the public, including being subject to the California Public Records Act ("CPRA"; Govt. Code Section 6250 *et seq.*). Accordingly, any information provided by HomeFed to City with respect to the Property, the Project or HomeFed may be disclosed to the public either purposely, inadvertently, or as a result of a public request or judicial order. With respect to any public records request for information pertaining to the financial condition of HomeFed, its members, lenders or other interested parties, or other information designated in writing by HomeFed as proprietary and confidential in nature, City agrees to (1) notify developer of such request; (2) exercise its best efforts to keep such information confidential, to the extent permitted by law; and (3) if determined to be appropriate in the City's sole and unfettered discretion, assert all appropriate defenses or exemptions to such request, as provided by law.

7.11 Governing Law/Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action arising under or relating to this Agreement shall be brought only in the federal or state courts located in San Diego County, State of California, and if applicable, the City of Chula Vista, or as close thereto as possible. Venue for this Agreement, and performance under it, shall be the City of Chula Vista. HomeFed shall also comply with applicable Chula Vista Municipal Code sections.

7.12 Attachments. All attachments referenced herein shall be attached hereto and are incorporated herein by reference. The following attachments are attached hereto: Attachment No. 1 – Depiction of the Property; Attachment No. 2 – Term Sheet.

7.13 Indemnification. HomeFed shall indemnify, protect, defend and hold harmless City, its elected and appointed officials, employees, volunteers, contractors, representatives, and agents, from and against any and all losses, liabilities, damages, claims or costs (including attorneys' fees) arising from HomeFed's negligent acts, errors, or omissions with respect to its obligations hereunder or the Property, excluding any such losses arising from the sole negligence or sole willful misconduct of City, its elected and appointed officials, employees, volunteers, contractors, representatives, and agents. This indemnity obligation shall survive the termination of this Agreement.

7.14 Defaults and Remedies.

7.14.1 Breach and Default. If any party breaches its obligations under this Agreement, then the non-breaching party shall serve written notice of such breach upon the breaching party. The written notification shall set forth the nature of the actions required to cure such breach if curable. The breaching party shall have fifteen (15) days from the date of the written notification to cure such breach. If such breach is not cured within this 15-day period (which shall constitute a

“Default” hereunder), the non-breaching party shall have the right to terminate the Agreement pursuant to Section 4.1 or 4.2, as applicable, as well as the remedies permitted under Section 7.14.2, below.

7.14.2 Remedies. In the event of an uncured Default by either party to this Agreement, the parties shall have the right to terminate this Agreement pursuant to Section 4.1 or 4.2, as applicable, as well as the remedies of specific performance, mandamus and injunction. Neither party shall have the remedy of monetary damages nor an award of costs of litigation or attorneys’ fees against the other based upon breach or Default of this Agreement. Each party acknowledges that it is aware of the meaning and legal effect of California Civil Code Section 1542, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with debtor or released party.

California Civil Code Section 1542 notwithstanding, it is the intention of the Parties to be bound by the limitation on damages and remedies set forth in this Section and the Parties hereby release any and all claims against each other for monetary damages or other legal or equitable relief related to any breach of this Agreement, whether or not any such released claims were known to either of the Parties as of the date of this Agreement. The Parties each waive the benefits of California Civil Code Section 1542 and all other statutes and judicial decisions of similar effect with regard to the limitations on damages and remedies and waivers of any such damages and remedies contained in this Section.

7.14.3 Administrative Claims Requirements and Procedures. No suit or arbitration shall be brought arising out of this Agreement against City unless a claim has first been presented in writing and filed with City and acted upon by City in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista Municipal Code (“Chapter 1.34”), as Chapter 1.34 may from time to time be amended, the provisions of which are incorporated by this reference as if fully set forth herein, and such policies and procedures used by City in the implementation of Chapter 1.34. Upon request by City, HomeFed shall meet and confer in good faith with City for the purpose of resolving any dispute over the terms of this Agreement.

***[Balance of Page Intentionally Left Blank; Agreement Continues on Following Page]***



IN WITNESS WHEREOF, the parties hereto hereby execute this Agreement as of the Effective Date set forth above, thereby indicating their agreement to all the terms and conditions hereof.

**CITY:**

**CITY OF CHULA VISTA,**  
a chartered municipal corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Kerry K. Bigelow, City Clerk

APPROVED AS TO FORM:

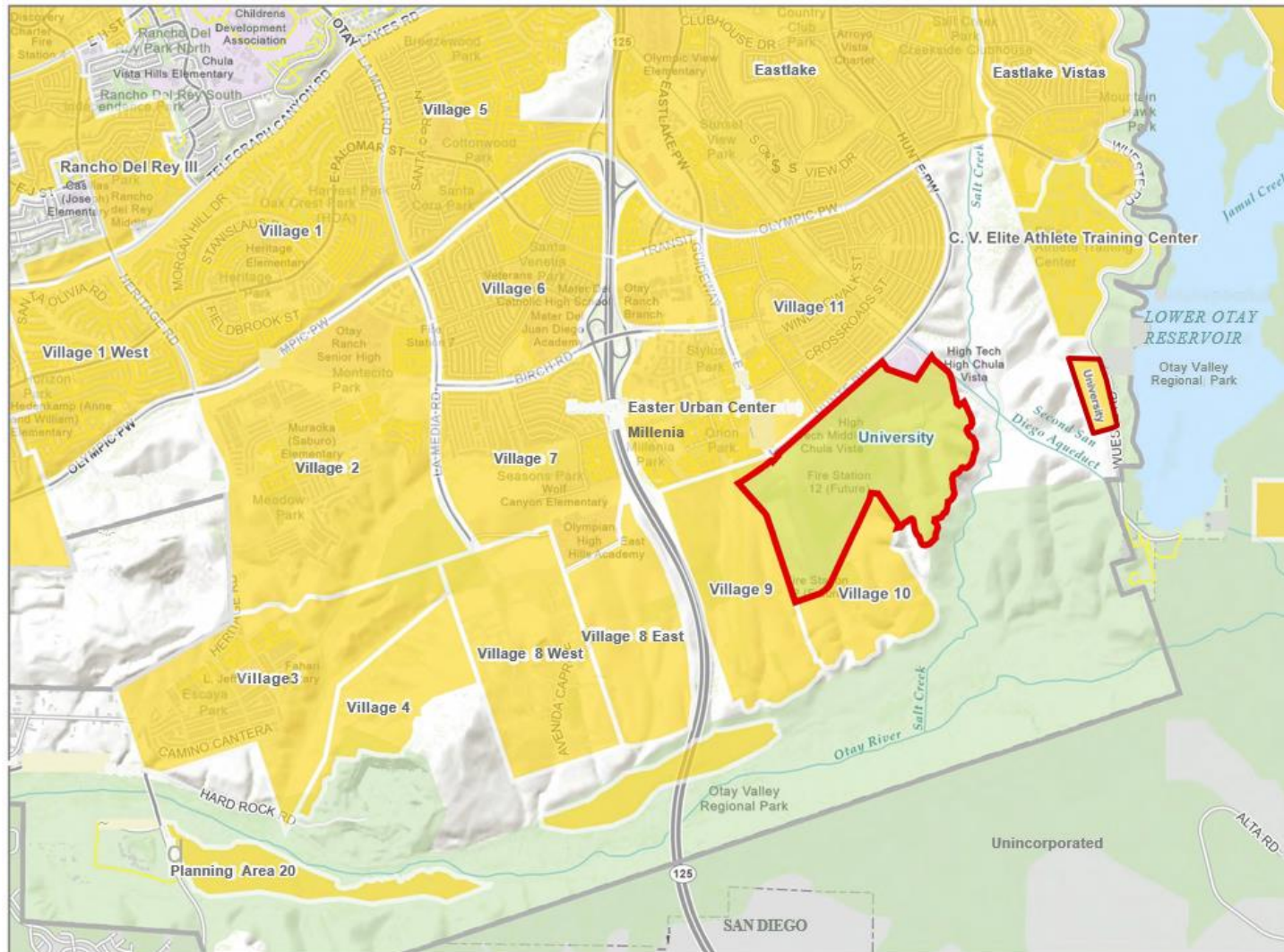
\_\_\_\_\_  
Glen R. Googins, City Attorney

**HOMEFED:**

**HOMEFED LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Chris Foulger, President

**ATTACHMENT NO. 1**  
**DEPICTION OF THE PROPERTY**



Attachment No. 1-1

**Attachment No. 2 to Exclusive Negotiating Agreement  
dated as of December 2, 2022,  
Term Sheet for the  
University/Innovation District  
Master Developer Agreement**

The purpose of this term sheet ("**Term Sheet**") is to set forth the basic terms upon which the City of Chula Vista, a chartered municipal corporation ("**City**") and HomeFed LLC, a Delaware limited liability company ("**HomeFed**") would consider entering into an agreement pursuant to which Developer would serve as the developer of certain "Project Infrastructure" on certain "City Land" in order to advance the development of the "University/Innovation District Project," all as more particularly set forth below. The parties acknowledge and agree that neither the presentation of this term sheet by City, nor any ultimate acceptance of its terms by one or both parties, either as initially presented, or as subsequently revised, shall constitute an offer or an acceptance of such terms that is in any form or manner binding on either Party (defined below). Rather, this term sheet is presented for discussion purposes only, neither Party shall be bound in any way by any of the terms or provisions of this term sheet, and any eventual agreement between the Parties dealing with any of the matters described herein shall be via a separate written development agreement (or other form of agreement), as agreed to by the Parties in their respective sole discretion (a "**Master Developer Agreement**"). City and HomeFed may sometimes be referred to herein collectively as the "**Parties**" or individually as a "**Party**".

**Certain Definitions.**

"**City Land**" means approximately 383 acres of undeveloped land located in the City of Chula Vista, California, owned in fee, or under the control of City pursuant to the terms of one or more Irrevocable Offers of Dedication, as more particularly described on **Exhibit A** attached to the Exclusive Negotiating Agreement between the Parties to which this Term Sheet is attached.

"**Developer Management Fee**" means a fee that may be earned by HomeFed to be paid by City and/or City's designee in consideration of HomeFed's design and implementation of any City-authorized work, in accordance with the terms and conditions set forth in Section 5, below.

"**Existing Entitlements**" means any and all land use entitlements and approvals for development with respect to the City Land including, without limitation, (i) the SPA Plan (defined below) and (ii) that certain certified EIR14-01 (SCH No. 2014121097) for the University/Innovation District Project approved on November 13, 2018, as it may be amended from time to time.

"**General Contractor Fee**" means a fee that may be earned HomeFed to be paid by City and/or City's designee in consideration of HomeFed's oversight and management of the Land Development Work necessary to implement any City-authorized Project Phase Development Plan in accordance with the terms and conditions set forth in Section 5, below.

**“Land Development Work”** means any and all services associated with pre-development and improvement of City Land and installation of infrastructure required to deliver graded pads to the City in a “rough graded” and “developable” condition (terms to be further defined in the Master Developer Agreement). This includes, without limitation, design and/or planning; secondary CEQA and technical studies, permitting or future entitlements, rough grading, erosion control, storm drainage, streets and sidewalks, sanitary sewers, potable water, fire water, reclaimed water, dry utilities, walls and fences, certain common area and site specific landscaping and related surface improvements, and other services. Land Development Work may also include design and construction work required for any necessary “off-site” improvements that support or serve development or use of the City Land.

**“Project Phase”** means a land development phase identified in a Feasibility Plan, Preliminary Plan, or Final Project Phase Development Plan, as applicable, as more particularly set forth in Section 3, below. It is initially contemplated that the overall Project may include 4 to 6 Project Phases of between 50 to 100 acres each, and that each Project Phase contains balanced land uses and intensities as described in Section 3.a.i. below.

**“Qualified Land Development Costs”** means the sum of all documented and City-approved Land Development Work “hard” and “soft” costs as more particularly described on Exhibit B attached hereto, including any allocable share of such costs related to necessary “off-site” improvements, but excluding HomeFed’s internal operating costs, any equitable share of “on-site” infrastructure improvements that would have been required to be performed by HomeFed as “off-site” improvement work in connection with the development of any HomeFed parcels, to be determined in connection with the Feasibility Plan and/or Preliminary Plan for the applicable Project Phase, and any General Contractor Fees or Master Developer Fees paid to HomeFed.

**“SPA Plan”** means that certain Sectional Planning Area Plan for the University/Innovation District Project, approved on November 13, 2018, as it may be amended, modified, or supplemented, from time to time, and as interpreted by the City.

**“University”** means a City-approved higher education facility or facilities which could be a single institution, bi-national, and/or multi-institutional consortium, which will provide a source of high-quality jobs, be physically well connected and synergistic with surrounding neighborhoods and the region and serve as an engine of economic growth for the City and the region.

**“University Innovation District” or “UID”** means a multi-faceted commercial district, intended to be developed in conjunction with the University featuring various technology- or innovation-driven industries, housing, and other uses that are synergistic with the University and the surrounding area.

**“University Project” or “UID Project”** means a specific proposal for the development of one or more University and/or UID project components on City Land. University Projects include, without limitation: (1) actual University or University supporting facilities (e.g., classrooms, admin/professor offices, student unions/activity centers, back of the house, faculty or student housing, etc.) (2) University-related Innovation District projects; and (3) other industrial, office, retail facilities supporting university or UID uses.

**Infrastructure Framework Plan.** To facilitate the development of the Project Phase Development Plans, the Parties contemplate that the City will engage HomeFed to prepare an Infrastructure Framework Plan (“IFP”) for the City Land prior to commencement of work on any Feasibility Plan (defined below). HomeFed will commence work to prepare the IFP following a written notice from the City instructing HomeFed to prepare the IFP. HomeFed and City will work together to develop the scope of work for the IFP and will meet periodically to review progress and address questions regarding the IFP, on a basis to be set forth in the Master Developer Agreement. Further, prior to commencing work on the IFP, HomeFed will provide the City with an estimated budget, scope of work, and anticipated consulting work for the preparation of the IFP. The IFP will describe the backbone roads, associated infrastructure plans (water, sewer, power, drainage), and mass grading plan contemplated for the entire City Land. The IFP will be provided at a preliminary tentative map level and will be supported by cost estimates. All third party costs incurred by HomeFed to prepare the IFP (based on the budget, scope of work, and consultant contracts approved by the City) will be considered reimbursable soft costs. HomeFed will be eligible to receive a Developer Management Fee with respect to the preparation of the IFP.

**Project Phase Development Plans.**

**Feasibility Plan.** Within ninety (90) days of receipt of written notice from the City Manager to proceed with the planning for development of a Project Phase (“**City Notice**”), HomeFed shall prepare and submit to City for its review and approval (in the City’s sole and absolute discretion) an initial proposed land use breakdown and financial pro forma for the proposed Project Phase (together, a “**Feasibility Plan**”).

Each Feasibility Plan shall include a description of the estimated boundary of the proposed Project Phase and include a high-level description of the proposed Project Phase components (such as UID, market-rate residential broken down by detached single family, attached/townhome single family, and multifamily, affordable multifamily rental housing, commercial/retail/mixed use, industrial/distribution, and park/open space) by approximate gross square footage or acres. Each Project Phase shall initially provide for total Other Uses (defined below) not in excess of 25% of the combined gross square footage of University-UID uses within the Project Phase in compliance with the SPA Plan (all as interpreted by the City), or if the SPA Plan is amended, such other threshold as will comply with the SPA Plan as amended. As used herein “**Other Uses**” means uses described under the caption “Land Use Type E: Other Uses” in Section 3.6.1.E of the SPA Plan.

Each Feasibility Plan shall include a financial proforma that includes an estimate of the cost to develop and install the infrastructure improvements required for the proposed development of the Project Phase and the public infrastructure and other horizontal improvements needed to prepare the portion of the Project Phase land designated for University/UID uses for vertical development (developable pad) (“**Horizontal UID Infrastructure**”). Each Feasibility Plan shall demonstrate that the non-University and non-UID uses within the Project Phase are estimated to produce sufficient revenues (from net land sale revenues) to enable the City to pay the cost to develop the Horizontal UID Infrastructure planned for such Project Phase. If approved by the City, the Feasibility Plan may

additionally take other reasonably-quantifiable revenues (in addition to net land sale revenues) into account in the financial feasibility analysis for the applicable Project Phase.

HomeFed shall consult with the City prior to submittal of any Feasibility Plan that does not meet the goals described in (i) and (ii) above.

HomeFed shall be responsible for the cost of preparing each Feasibility Plan and any revisions to any Feasibility Plan made at the request of the City or in response to comments by or discussions with the City. The City shall have no obligation to pay HomeFed for its costs incurred to prepare any Feasibility Plan, regardless of whether or not such Feasibility Plan is approved by the City. HomeFed shall not engage third party consultants or contractors in connection with the preparation of the Feasibility Plan without the prior written approval of the City.

**Preliminary Project Phase Development Plan.** If City Manager approves the Feasibility Plan for a Project Phase, within one hundred and eighty (180) days of receipt of City Manager's notice of approval, HomeFed shall prepare and submit to City for its review a Preliminary Project Phase Development Plan ("**Preliminary Plan**") for the development of the Project Phase that is consistent with the approved Feasibility Plan. Each Preliminary Plan shall include, at a minimum, the following components: (1) a general site plan identifying developable pads and possible/proposed allocations of densities/uses throughout the Project Phase consistent with Existing Entitlements, (2) preliminary description of the necessary Land Development Work for the proposed Project Phase; (3) a preliminary estimate of the cost of such work; (4) estimates of the General Contractor Fee and Developer Management Fee for the Project Phase; (4) an estimated timetable for completion of the work; (5) an estimated value of the improved commercial/retail, University, innovation, and residential (broken down by student/faculty, affordable (non-University), and market-rate) land upon completion of the work; (6) a list and description of required entitlements to complete development of the phase, and (7) a high-level plan describing the remaining Project Phases, including then-current estimates of (i) the number of remaining phases, (ii) total acreage of each phase, (iii) square footage of land use types and densities, (iv) proportion of University/UID uses at each future phase, and (v) Land Development Costs for each future phase. Unless otherwise directed by the City following review of the Feasibility Plan for a Project Phase, each Preliminary Plan shall be designed by HomeFed to generate a rate of return to the City (from land sales and, if approved by the City, other revenues), that will be adequate to pay the cost of the Horizontal UID Infrastructure within such Project Phase. City will review and provide comments to HomeFed regarding the Preliminary Plan prepared by HomeFed and the Parties will cooperate to finalize the Preliminary Plan to inform the preparation of the Final Project Phase Development Plan described in Section 3.c. below.

**Final Project Phase Development Plan.** Following approval of the Preliminary Plan by the City, over the next sixty (60) days the Parties will exchange comments, propose modifications, and otherwise meet and confer with the goal of creating a mutually acceptable final Project Phase Development Plan for the proposed Project Phase (the "**Final Project Phase Development Plan**"). Each Final Project Phase Development Plan shall include a plan of finance consistent with the terms of Section 7 hereof.

Each Party shall have the right to approve or disapprove each proposed Final Project Phase Development Plan in their sole discretion. Any Final Project Phase Development Plan will be subject to City Council approval. Notwithstanding the foregoing, if with respect to any Final Project Phase Development Plan, the City commits to provide funding for all associated Qualified Land Development Costs and all associated General Contractor and Master Developer Fees earned by HomeFed in connection therewith, HomeFed shall be deemed to have approved such plan and shall serve as Master Developer for the applicable Project Phase (with the exception of a UID Project to be developed by a University or a UID end user)] as described in Section 4 below.

**Project Phase Implementation.**

City will trigger Developer's obligation to implement the Land Development Work associated with each approved Final Project Phase Development Plan by providing written notice to proceed to HomeFed (a "**Notice to Proceed**").

Within ninety (90) days after receipt of a Notice to Proceed, or such other timeline agreed upon by the City and HomeFed at the time of the issuance of the Notice to Proceed, taking into consideration all relevant factors, HomeFed shall provide to City for City's review and approval (i) a schedule for the applicable Project Phase ("**Project Phase Schedule**") that includes milestone deadlines for commencement and completion of specified components of the Project Phase Land Development Work, including a final completion date (the "**Completion Date**") of all required Land Development Work for the applicable Project Phase and (ii) a detailed budget for the Land Development Work, including all Qualified Land Development Costs, General Contractor Fees, and Developer Management Fees for the applicable Project Phase (the "**Project Phase Budget**").

Upon City approval of the Project Phase Schedule and Project Phase Budget, HomeFed shall prosecute diligently to completion by the Completion Date, the design, permitting and award of contracts for construction of the Land Development Work necessary to complete the public infrastructure and the Horizontal UID Infrastructure set forth in the approved Final Project Phase Development Plan for the applicable Project Phase. All contracts for the Land Development Work shall be let in accordance with a procurement and project implementation process to be approved by the City in consultation with HomeFed. HomeFed shall notify the City immediately if HomeFed determines that the total Qualified Land Development Costs for the Project Phase is likely to exceed the amounts set forth in the Project Phase Budget (including contingency line items).

If HomeFed fails to complete the agreed upon Land Development Work on a Project Phase by the required Completion Date, unless HomeFed's performance is delayed by a qualified "force majeure" event, the MDA will provide for remedies in favor of the City that may include, after written notice and a reasonable opportunity to cure, termination and liquidated damages. "Force Majeure" will be defined in the Master Developer Agreement and will apply to both Parties' obligations under the Master Developer Agreement.

**Reimbursement of Qualified Costs and Payment of Fees.**

Reimbursement of Costs. Commencing with the costs incurred by HomeFed to prepare the Preliminary Plan and thereafter with respect to a Project Phase (until and unless the

Master Developer Agreement is terminated with respect to that Project Phase), HomeFed shall be entitled to receive reimbursement of any and all Qualified Land Development Costs paid by HomeFed to non-affiliated third party consultants or contractors performing Qualified Land Development Work associated with any City-approved Project Phase Development Plan in accordance with the terms and payment protocols set forth in **Exhibit A**. Third party costs incurred by HomeFed in connection with the preparation of each Project Phase Development Plan (including the Preliminary Plan and the Final Project Phase Development Plan) shall be included within Qualified Land Development Costs consistent with **Exhibit A** attached hereto, and shall be reimbursable to HomeFed regardless of whether a proposed Final Project Phase Development Plan is acted upon by the City and/or approved by City Council. (As noted in Section 3.a., third party costs incurred by HomeFed in connection with the preparation of the Feasibility Plan are not reimbursable to HomeFed unless specifically approved in writing in advance by the City.) As an alternative to reimbursement, the Parties may mutually agree upon a process for City to direct payment to the consultant/contractor engaged by HomeFed or City may engage such consultant or contractor directly pursuant to an agreement among the City, HomeFed, and such consultant or contractor. In all cases, prior to City's obligation to make payment, City shall have reasonable opportunity to review and approve a detailed statement of costs incurred, and to determine if the work has been performed in accordance with the City-approved plans and otherwise to City's satisfaction.

**Payment of Fees.** In connection with the implementation by HomeFed of Land Development Work performed as part of any City-approved Final Project Phase Development Plan, subject to the terms and conditions of this Section, HomeFed shall also be entitled to the following fees:

(i) A General Contractor Fee in an amount equal to a percentage of the **hard cost** component of the Qualified Land Development Costs (including general conditions) 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.

(ii) A Developer Management Fee in an amount equal to a percentage of the hard and soft cost components 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 = \$ 270,000

**Total GC Fee = \$1,320,000**

**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 = \$ 25,000

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

HomeFed shall submit to City monthly a detailed statement of any and all Qualified Land Development Costs. HomeFed shall concurrently submit separate statements for any and all General Contractor and Developer Management Fees earned by HomeFed in connection therewith. City shall review, reasonably approve, such statements consistent with the terms and process outlined in **Exhibit A**. Subject to City's prior reasonable approval, City's reimbursement of HomeFed's Qualified Land Development Costs and payment of the General Contractor Fee and Development Management Fee shall be made in periodic installments. Each such installment due and payable in accordance with the Payment Protocols established in **Exhibit A**.

In the event the City fails to make a payment to HomeFed when due and, following written notice of such failure and 30 days to cure, the City still has not made the payment, unpaid past due amounts will accrue simple interest at the rate of 8% per annum. The City will also be responsible for any late fees or penalties applicable to Qualified Land Development Costs due under contracts entered into with respect to the Land Development Work (to the extent such fees or penalties are assessed as a result of the City's failure to make a payment to HomeFed or the applicable contractor or consultant).

**Project Marketing.** The Parties will cooperate in the development, modification as necessary, and implementation of a comprehensive plan for the marketing of the City Land to prospective developers/owners/operators of University/UID Projects ("**Marketing Plan**"). The initial Marketing Plan will be developed collaboratively by City and HomeFed under an initial contract with CBRE Group, Inc., a California corporation ("**CBRE**"), or any additional/subsequent consultants selected by City from time to time, and shall be implemented by such consultant(s).

HomeFed and the City will agree, from time to time in connection with the development of the Final Project Phase Development Plan for each Project Phase, the extent to which HomeFed and the City will coordinate marketing efforts for the Project Phase. If HomeFed desires to participate or coordinate with the City in connection with the City's marketing efforts, then HomeFed and the City will share the cost of such marketing efforts on such basis as the Parties may agree from time to time. Unless otherwise agreed, each Party shall bear their own internal costs in support of any project marketing efforts. Notwithstanding anything to the contrary herein, marketing costs will **not** be included as Qualified Land Development Costs for which City will be obligated to reimburse HomeFed or for purposes of calculating the General Contractor Fee or Developer Management Fee payable to HomeFed.

**Project Financing.** The Parties agree to work collaboratively to evaluate and obtain favorable financing mechanisms, including without limitation possible bond measures, private financing, Enhanced Infrastructure Financing Districts, Community Facilities Districts, Tax Increment Financing, and/or EB-5 financing, to support the development of any Land Development Work associated with the development of any Project Phase. To the extent such third party financing mechanisms, or such other monies that may be available to City, do not provide sufficient funding for the Land Development Work required for any Project Phase HomeFed will agree in the Master Developer Agreement to provide financing for all or a portion of each Project Phase, with monies advanced earning a rate of return equal to 12% per annum from the date of advancement until paid.

The final form and terms for such financing shall be subject to City approval in its sole discretion.

### **General Provisions**

**Assignment.** City will have the right to assign its rights/obligations under the Master Developer Agreement to an affiliate so long as such affiliate has the financial wherewithal (as reasonably demonstrated to HomeFed) to perform the City's obligations under the Development Agreement; any other assignment shall be subject to HomeFed's prior reasonable approval. HomeFed will not have the right to assign its rights or obligations under the Master Developer Agreement, except to wholly controlled subsidiaries of the HomeFed or its parent company, without City's prior approval in its sole discretion.

**Compliance with Laws.** Describe generally surplus lands, economic development assistance reports/findings, prevailing wage, CEQA.

**Dispute Resolution.** To the extent any dispute arises between the Parties, prior to commencing any legal action with respect to such dispute, the Parties will endeavor to resolve such dispute first through an informal meet and confer process, second through mediation with a mutually approved third party mediator.

**Default.** The Master Developer Agreement shall specify recognizable defaults, applicable notice and cure periods, and appropriate remedies.

**Force Majeure.** Identified "force majeure" events will be negotiated by the Parties and set forth in the Master Developer Agreement, and may relieve for the duration of such event an affected Party's performance of its obligations under the Master Developer Agreement so long as the affected Party is taking any and all necessary and appropriate actions to mitigate the impacts of such event and resuming performance as quickly as possible; provided financial inability shall not be considered force majeure.

City Delay. Separate from force majeure, the Master Developer Agreement will contain provisions relating to delays caused by the action or inaction of the City, which will be considered excused delays for the benefit of the HomeFed.

Termination. The Parties shall consider appropriate cure periods and circumstances under which one or both Parties can terminate the arrangement both for cause and at their discretion. Each Party shall have the right to terminate the Master Developer Agreement for an uncured default by the other Party. Each Party shall also have the right, after providing written notice to the other Party, to terminate the Master Developer Agreement at any time without cause, subject to conditions to be specified in the Master Developer Agreement (i.e. City payment of Qualified Land Development Costs, General Contractor Fee, and Developer Management Fee already incurred as of the termination date and termination by HomeFed of existing third party contracts in accordance with the terms thereof, etc.). If the City receives a proposal from a University or UID end user to develop UID Horizontal Infrastructure the City will have the right to terminate the Master Developer Agreement with respect to the component of the Project to be developed by such University or UID end user. Any such termination would exclude vested development rights to which HomeFed may have become entitled under the terms of the Master Developer Agreement, if any.

Miscellaneous/General Provisions. The Master Developer Agreement shall include appropriate general provisions/legal “boilerplate.”

Additional Understandings.

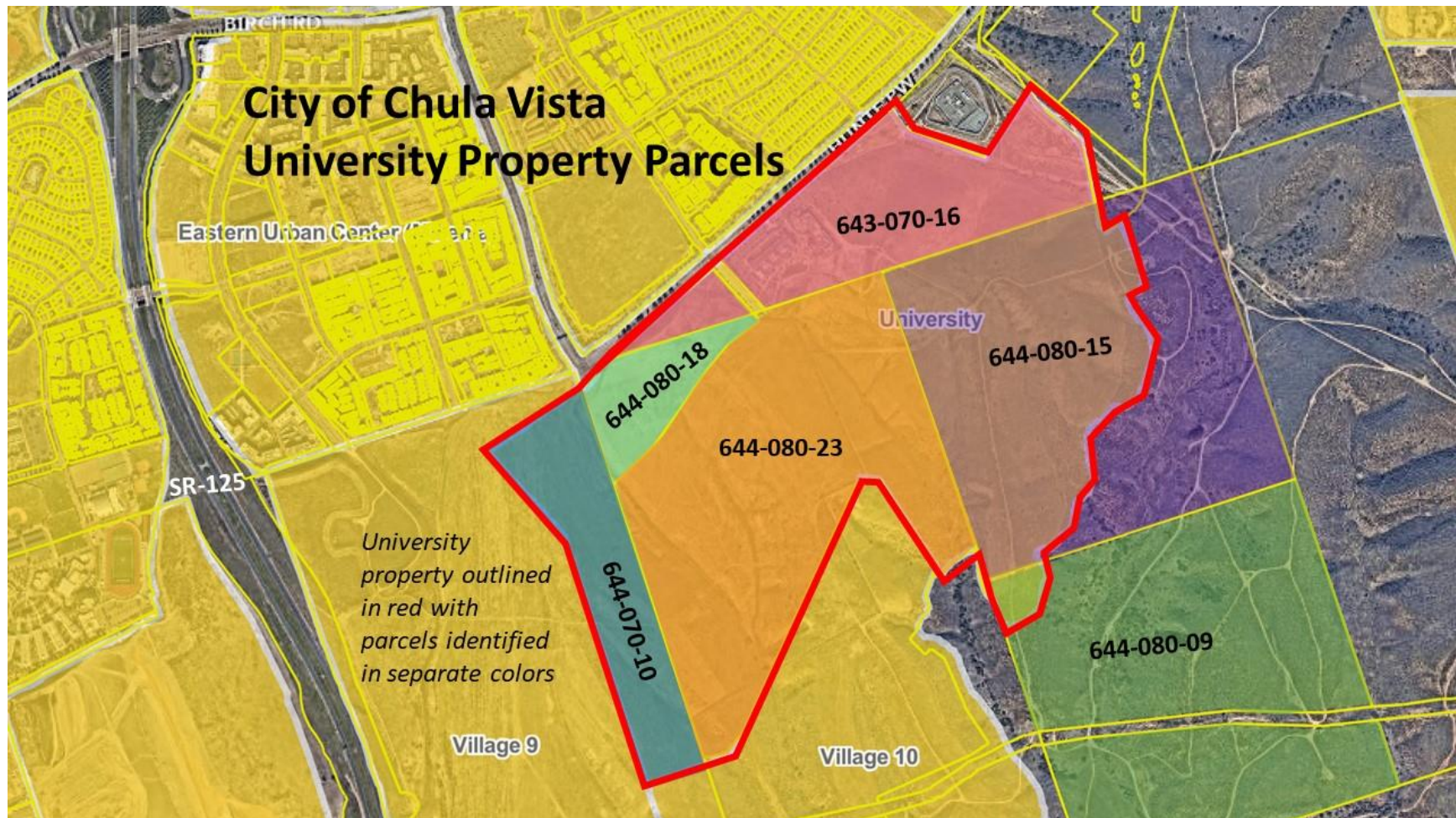
(1) In furtherance of HomeFed’s ability to draft and implement a feasible and desirable Final Project Phase Development Plan in an effective and timely manner, City shall afford HomeFed a reasonable opportunity to consult with City and provide City with its input regarding any City selection of a developer, acquirer or end-user for any major project or parcel on City Land within any proposed Project Phase.

(2) In addition to its responsibilities for creating Project Phase Development Plans and implementing the Land Development Work associated therewith, HomeFed also desires to propose terms upon which HomeFed, or an affiliate, may acquire and/or develop one or more parcels of the City Land for the development of projects consistent with the Existing Entitlements. City acknowledges this interest and, subject to the terms of Section 8.i(3), below, will negotiate with HomeFed regarding possible Master Development Agreement terms upon which HomeFed could be granted priority rights of acquisition and/or development with respect to portions of the Project that are not being developed as UID uses.

(3) The Parties acknowledge that City is currently evaluating whether some or all of the City Land may be subject to the notice of availability and good faith negotiation requirements set forth in the California Surplus Lands Act (“SLA”), both Parties agree that there shall be no negotiations between the Parties regarding possible terms for acquisition of the City Land by HomeFed unless and until the City determines, in its sole discretion, with respect to any City Land in which HomeFed may desire to acquire an interest either (a) that such City Land is exempt from the requirements of the SLA; or (b) the City has otherwise taken all legally required steps to comply with the SLA with respect to such City Land and either (1) not received a qualified notice of interest, or (2)

if a qualified notice of interest is received, decided, in its sole discretion, after good faith negotiations with any party providing a qualified notice of interest, not to transfer such land to a qualified third party.

**TERM SHEET EXHIBIT A  
CITY LAND**



## Exhibit B – MDA Term Sheet

### Section 1: Qualified Costs, Reimbursements and Fees

HomeFed shall be reimbursed and earn fees for services rendered as the Master Developer as outlined in Section 5 in the Term Sheet and the terms and payment protocols set forth below. See Section 2 for payment protocols.

#### **Qualified Land Development Costs.**

Reimbursements and fees shall be based on the Qualified Land Development Costs incurred with respect to each Project Phase. Qualified Land Development Costs are subject to pre-approval by the City through joint (City and HomeFed) finalization and approval of the Final Project Phase Development Plan. Qualified Land Development Cost categories include, but are not limited to, the following:

##### *Soft Costs:*

- a. Consultants (i.e., archeological, biological, paleontological, environmental, farm, technology)
- b. Engineering (i.e., civil, dry utilities, Geotech/soils, staking/survey, structural, traffic, wet utilities)
- c. Architectural design (i.e., building(s), land planning/design, landscape architecture)
- d. Entitlement and permitting fees (i.e., city/county, schools, utility deposits and reimbursables, unless directly waived/absorbed by City for improvement of their own land)

##### *Hard Costs:*

- a. Clearing and Grading (rough, fine/finished pads)
- b. Improvements/Materials/Equipment (i.e., base and paving, specialty paving, concrete, construction water, temporary utilities, dry utilities, erosion/sedimentation control, import/export, walls/fences/pilasters structural and non-structural, sewer, slopes, storm drain and basins, surface improvements, subgrade prep, water potable/reclaimed/fire)
- c. Land acquisition (i.e., appraisals, easement, legal, mitigation, studies/reports, title insurance)
- d. Outdoor facilities and amenities (i.e., streetscape furniture, lighting, irrigation, striping and municipal signage, traffic signals)
- e. Landscaping (i.e., startup maintenance, monuments, trails/bike paths)
- f. Labor

#### **Reimbursement**

All costs associated with improvement of land and installation of infrastructure required to deliver graded pads to the City shall be consolidated as Qualified Land Development Costs, as invoiced by Vendors directly to the HomeFed. These costs shall be passed through directly to the City without markup by HomeFed on a periodic basis, no more than monthly. City shall not be required to reimburse costs incurred by HomeFed or any affiliate of HomeFed, it being understood that City's reimbursement obligations apply to costs associated with third party contractors and consultants not affiliated with HomeFed. Costs of HomeFed and its affiliates are addressed through the General Contractor Fee and Developer Management Fee described below.



The parties acknowledge that the City will pay costs of financing the Qualified Land Development Costs but that such financing costs are not a hard or soft cost included in the calculation of the General Contractor Fee or Developer Management Fee. Costs of marketing land within the Project to builders, Universities or other vertical developers or end users are addressed in Section 6 of the Term Sheet; costs associated with marketing the Project shall not be included in the calculation of the General Contractor Fee or Developer Management Fee. In addition, HomeFed legal fees and expenses (including in-house attorneys and outside legal counsel) are not payable or reimbursable as Qualified Land Development Costs or included in the calculation of the General Contractor Fee or Developer Management Fee.

**General Contractor Fee.**

HomeFed shall be entitled to receive a General Contractor Fee in consideration of serving as City's owner representative in managing the Land Development Work. As provided in Section 5 of the Term Sheet, the General Contractor Fee shall be charged separately as a percentage of the hard cost component of the Qualified Land Development Costs during the same period. The General Contractor Fee shall be invoiced concurrent with reimbursement invoices for Qualified Land Development Costs but charged separately to maintain cost documentation transparency.

**Developer Management Fee**

HomeFed shall earn a direct fee for serving as the Development Manager, overseeing all activities related to improvement of City Land and installation of infrastructure required to deliver graded pads to the City. As provided in Section 5 of the Term Sheet, the Developer Fee shall be charged separately as percentage of both hard and soft costs component of the Qualified Land Development Costs during the same period. The Developer Management Fee shall be invoiced concurrent with reimbursement invoices for Qualified Land Development Costs but charged separately to maintain cost documentation transparency.

**Section 2: Payment Protocols**

Qualified Land Development Costs for each Project Phase will be generated monthly. Vendors will submit monthly invoices (subject to contract terms) directly to HomeFed. . .

Invoice payment protocols are proposed as follows:

1. HomeFed shall review and verify all Vendor(s) invoices. HomeFed will require vendors to submit invoices by the 5<sup>th</sup> day of each month reflecting work performed during the prior month. HomeFed will review and verify all vendor invoices received by the 5<sup>th</sup> day of each month and, on or before the 20<sup>th</sup> day of that month, HomeFed will submit to the City:
  - A consolidated Qualified Land Development Cost invoice to the City, including all associated Vendor invoices for the preceding month.
  - Submit a separate invoice for any due and payable General Contractor Fees and Developer Management Fees.
2. The City shall have 14 business days to review the invoices and notify HomeFed of its intent to proceed in one of the following ways:

University/Innovation District Master Developer Agreement

Term Sheet

Exhibit B to Exclusive Negotiating Agreement dated as of December 2, 2022

- a) City Direct Pay. City to directly pay the invoices subject to contract terms; would likely require the City to issue several individual payments to Vendors.
- b) City Pays Developer. City pays cost of both invoices directly to the Developer within 30 days; Developer issues payment to Vendor(s) subject to contract terms.
- c) City Authorizes HomeFed to provide Financing. If the City and HomeFed have agreed as part of the Final Project Phase Development Plan that HomeFed will provide financing for all or a part of the Qualified Land Development Costs for the Project Phase in accordance with Section 7 of the Term Sheet, then HomeFed will advance the funds required for payment of the invoices on the City's behalf, then interest shall accrue on such advanced amounts and be subject to repayment on the agreed-upon financing terms. The parties acknowledge that the City is responsible for payment of costs of financing the Qualified Land Development Costs, whether through HomeFed-provided financing or third party financing obtained by the City.