

MEMORANDUM OF UNDERSTANDING
REGARDING POTENTIAL DEVELOPMENT OF CERTAIN PARK IMPROVEMENTS
IN CHULA VISTA, CALIFORNIA

This MEMORANDUM OF UNDERSTANDING (“MOU”) is entered into by and between the City of Chula Vista, a chartered municipal corporation (the “City”) and Landify ECT Corporation, a Delaware corporation (“ECT”) (each a “Party”, collectively, the “Parties”), effective as of this _____ day of _____, 2023 (the “Effective Date”).

RECITALS

A. WHEREAS, ECT focuses on “upcycling,” including reusing tested and clean excavated soil from urban construction sites to assist communities and local authorities in the delivery of sustainable public park projects through a collaborative development model; and

B. WHEREAS, one of the benefits of ECT’s business model is that ECT will partially self-finance the public park development projects it undertakes; and

C. WHEREAS, the City has an interest in certain parcels of land to be developed for public park purposes, including but not limited to, those sites commonly known as the Lower Sweetwater Community Park and the Otay Ranch Community Park North, as shown on Exhibit A, attached hereto (the “Proposed Park Projects”); and

D. WHEREAS, the City desires the development of the Proposed Park Projects; and

E. WHEREAS, the Lower Sweetwater Community Park is envisioned to include multipurpose fields, an outdoor basketball court, tennis/pickleball courts, play structures, a dog park, picnic tables, shade structures, as well as maintenance and restroom facilities; and

F. WHEREAS, the Otay Ranch Community Park North is envisioned to include multipurpose fields, baseball fields, an outdoor basketball court, tennis/pickleball courts, play structures, picnic tables, shade structures, as well as concessions, maintenance, and restroom facilities; and

G. WHEREAS, preliminary plans illustrating the potential developments of the Proposed Park Project sites are depicted on Exhibit B, including several enhancements as part of the City’s commitment to establishing and maintaining facilities, parks and services that enhance the quality of life for the community; and

H. WHEREAS, the City intends to initiate the necessary review and approval of each of the Proposed Park Projects pursuant to a master plan or similar process (each, a “Park Master Plan”) to be prepared by ECT; and

I. WHEREAS, the Parties desire to utilize ECT’s expertise to develop certain of the improvements in the Proposed Park Projects, consistent with the possible Park Master Plans; and

J. WHEREAS, the Parties are entering into this document to enable the Parties to undertake the required due diligence to evaluate the feasibility of the Proposed Park Projects including, among others, evaluating environmental conditions on the subject Park lands; and

K. WHEREAS, should the Parties agree that proceeding with the Proposed Park Projects is feasible and mutually desirable, then this document will facilitate ECT's proposal to construct some or all of the contemplated improvements (all such amenities and park uses to be discussed with the City and local stakeholders and approved by the City); and

L. WHEREAS, if, after receipt and satisfactory review of ECT's proposal to construct some or all of the contemplated improvements, the Parties intend to proceed with the Design, Entitlements, and Definitive Agreement(s), as described more fully below; and

M. WHEREAS, the City may identify and propose additional sites for public park development by the Parties in the future (the "Potential Park Projects").

AGREEMENT

NOW THEREFORE, in consideration of the above Recitals, and the covenants contained herein, the Parties hereby agree as follows:

Section 1.1 Intent. This document is intended to describe participation being considered by the Parties in the development of the Proposed Park Projects where external fill may be useful and a non-traditional funding mechanism for the delivery of the Proposed Parks is desired by the City. This document does not commit the City to moving forward with such Proposed Park Projects. The City retains sole discretion to decide what will be done in the Proposed Park Project areas, including the option to develop parks in the Proposed Park Project sites without using external fill. If the City decides to build parks at the Proposed Park Project sites using external fill, the City agrees to do so with ECT. Because ECT will develop certain improvements in the Proposed Park Projects without cost or expense to the City for such work, typical competitive bidding requirements would not apply.

Section 1.2 Due Diligence. Each Party shall timely provide, and shall direct its representatives, including attorneys, consultants, and financial advisors, to provide to the other Party and its representatives, reasonable access to the Proposed Park Project sites, as well as such non-confidential and non-privileged information (including, without limitation, soils and environmental reports) that each such Party reasonably deems necessary, to evaluate the feasibility of, and to advance, the Proposed Park Projects. The City shall be responsible for all internal costs incurred by staff, and consultants functioning as an extension of staff, in conducting the due diligence. ECT shall be responsible for all other costs incurred conducting the due diligence. Further, before any due diligence activities by ECT occur relating to any Proposed Park Project sites, ECT shall be required to enter into a License Agreement or Right of Entry Agreement with the City, which Agreements shall address, among other items, ECT's requirements for indemnity, insurance, restoration of properties, and removal of liens regarding such due diligence work. Also, the Parties shall endeavor to complete their due diligence in a timely manner, such that the Parties can decide whether to proceed with the Proposed Park Projects no later than six (6) months after full execution of this MOU (unless the mutually Parties agree on an extension), and for the

Potential Park Projects by such deadline as may be agreed upon by the Parties. Each of the Parties shall retain sole discretion as to whether they will proceed with the Proposed Park Projects and Potential Park Projects upon completion of the due diligence.

Section 1.3 Design. The Parties will collaboratively develop a preliminary design and site plan depicting the improvements to each of the Proposed Park Projects, which will include elevations (each, a “Preliminary Design Plan”). ECT will fund the Preliminary Design Plan at its sole and exclusive costs. The Parties will work together to refine the plans and specifications to address the City’s concerns, including community and stakeholder input, taking into account ECT’s project delivery methodology, and this process will be repeated until such time as the Parties have agreed on the plans and specifications for each of the Proposed Park Projects (each, the “Approved Plans”). Unless the Parties agree otherwise, construction (excluding buildings) on any individual component of each of the Proposed Park Projects will not commence until such time as the Parties have agreed on the Approved Plans for that particular component, and a Definitive Agreement (defined in Section 1.6 below) has been executed by the Parties.

Section 1.4 Entitlements. Once the Parties have reached agreement on the Approved Plans, ECT will take the lead, at its sole cost but with the City’s cooperation, in obtaining all other entitlements for each of the Proposed Park Projects, including building permits for construction, and any other necessary permits or approvals. Upon execution of this MOU, ECT is authorized by the City to contact any regulatory or other governmental agencies, as may be necessary in connection with obtaining information and entitlements for the Proposed Park Projects, including CalRecycle and the San Diego Regional Water Quality Control Board. ECT will do this in total transparency with the City, including copying the City on written communications with the agencies. The City will be the Lead Agency for purposes of conducting any required review and permitting for the Proposed Park Projects, including environmental review pursuant to the California Environmental Quality Act (“CEQA”). The approval of this MOU shall not commit the City to the approval of any of the Proposed Park Projects or any iteration thereof, and shall not limit the scope of any CEQA analysis, including but not limited to project mitigation measures and the consideration of project alternatives, including a no-project alternative. The provisions of this Section shall not in any way limit, hinder or affect the discretion and independent judgment of the City to review CEQA documents and impose mitigation measures, alter any of the Proposed Park Projects or deny any of the Proposed Park Projects. If the City or any other regulatory agency with jurisdiction imposes any condition of approval that materially increases the cost of constructing any component of these Proposed Park Projects, this may cause ECT to exercise its right to terminate this MOU.

Section 1.5 City Commitment. The City is under no obligation to proceed with all or any portion of the Proposed Park Projects. However, if the City decides to create a park on any of the Proposed Park Project sites using an external fill disposal fee funding model, it shall do so with ECT. This commitment shall not be construed to limit the City’s ability to proceed with site grading that would occur as part of a regular park development process, including the import, export, and rebalancing of soils.

Section 1.6 Definitive Agreement(s). Upon obtaining all entitlements and approvals for each Proposed Park Project, the Parties intend to execute one or more written construction contracts with respect to that Proposed Park Project (or component thereof). A written construction contract

for any component of such Project is referred to as a “Definitive Agreement.” Each Definitive Agreement will, among other obligations, (a) require that ECT obtain and maintain all appropriate licenses required to construct any such component of the Project, (b) define the scope of the construction that ECT will undertake, (c) require ECT to construct any such component of the Project on the terms and conditions agreed to in the Definitive Agreement, and (d) require ECT to satisfy all applicable public works requirements (including but not limited to payment of prevailing wages for construction services, insurance, indemnification, and warranties) consistent with City Codes and regulations in connection with such construction. Each Definitive Agreement will also include a construction schedule for the construction of the applicable Project component (the “Construction Schedule”). Upon execution of each Definitive Agreement, ECT will proceed, at its sole and full costs, with the construction of the Project components covered by such Agreement, in accordance with the terms of such Definitive Agreement, the Approved Plans and the Construction Schedule. The City will not be charged for the construction materials, labor, work and services provided by ECT.

Section 1.7 Potential Park Projects. Should the City identify Potential Park Project sites other than the Proposed Park Projects in the future, the processes and commitments provided in Sections 1.2 through 1.6 shall apply to those sites so identified. Such identification of Potential Park Sites shall be made in writing to the ECT representative identified in Section 1.8 below. City parks not identified pursuant to this process shall be outside the scope of this MOU.

Section 1.8 Representatives. Each Party shall designate one representative (each, a “Representative”), who will be authorized to communicate decisions and grants of approval for such Party, under this MOU. Either Party may change its Representative by giving written notice of the change to the other Party.

City Representative:

City of Chula Vista
Tiffany Allen
276 Fourth Avenue
Chula Vista, CA 91910
(619) 691-5179
tallen@chulavistaca.gov

For Legal Notice Copy to:

City of Chula Vista
City Attorney
276 Fourth Avenue
Chula Vista, CA 91910
(619) 691-5037
CityAttorney@chulavistaca.gov

ECT Representative:

Landify ECT Corporation
Jonathan Bryden
580 California Street,
12th and 16th Floors

San Francisco, California 94104
(415) 635-3555
jbryden@groupe-ect.com

For Legal Notice Copy to:

Robin Madaffer, Esq.
1620 Fifth Avenue, Suite 400
San Diego, California 92101
(619) 239-7603
robin@sdlandlaw.com

Section 1.9 Further Details to be Negotiated. The Parties acknowledge that the details of the Proposed Park Projects and Potential Park Projects described herein are intended to be the subject of further discussion and negotiation between the Parties, all of which will be reflected in the Definitive Agreement(s). The City will prepare the first draft of the Definitive Agreement; provided, at the request of the City, ECT will prepare the initial draft of the Definitive Agreement. THIS MOU IS INTENDED AS A PRELIMINARY EXPRESSION OF GENERAL INTENTIONS AND, WHILE THE PARTIES INTEND TO PROCEED WITH THE PROPOSED PARK PROJECTS AND POTENTIAL PARK PROJECTS AND AGREE TO PURSUE THEM IN GOOD FAITH, EITHER SHALL HAVE THE RIGHT TO IMMEDIATELY TERMINATE THIS MOU WITH OR WITHOUT CAUSE; PROVIDED, HOWEVER, THAT TERMINATION OF THIS MOU WILL NOT AFFECT ANY DEFINITIVE AGREEMENT THAT HAS BEEN FULLY EXECUTED AND DELIVERED BY THE PARTIES PRIOR TO SUCH TERMINATION.

Section 1.10 Notices. Any notice from one Party to the other in connection with this MOU, shall be given to the Parties' at their respective addresses set forth in Section 1.8. Notices may be given by email, U.S. mail, overnight courier that provides evidence of delivery, or personal delivery, with postage prepaid by the sending party. Notices given by email shall be deemed given when sent; notices given by overnight courier or personal delivery shall be deemed given when delivered; and notices given by U.S. mail shall be deemed given three days after deposit in a U.S. Postal Service mailbox.

Section 1.11 Exclusive Dealings. Upon execution of this MOU by both Parties, the City will not solicit or accept any offers or engage in any discussion concerning the development of any of the Lower Sweetwater Community Park (or any component thereof), until such time as this MOU is terminated, as provided herein.

Section 1.12 Governing Law. This MOU and the interpretation hereof shall be governed by the internal laws of the State of California, without regard to such state's conflict of law rules.

Section 1.13 Counterparts. This MOU may be executed in any number of counterparts, all of which, when taken together, shall be considered one and the same agreement, and shall become effective when at least one counterpart has been executed and delivered by each Party, it being agreed that both Parties need not sign the same counterpart. A Party's signature that is provided digitally or electronically, or is delivered by email, facsimile or other electronic means, shall be

valid and binding on the Party so executing or delivering its signature, and shall have the same force and effect as if such signature were an original thereof.

IN WITNESS WHEREOF, the Parties have executed this MOU as of the Effective Date set forth above.

LANDIFY ECT CORPORATION,
a Delaware corporation

CITY OF CHULA VISTA,
a municipal corporation

By: _____
Jonathan Bryden
President

By: _____
Maria V. Kachadoorian
City Manager

APPROVED AS TO FORM

By: _____
Jill D.S.Maland
Lounsbury Ferguson Altona & Peak
Acting City Attorney

Exhibit A



Exhibit B



LANDIFY

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Legend

- ECT intervention perimeter
21.3 acres
- Backfill perimeter
17.6 acres

Community Park Proposition - Layout Plan
 Lower Sweetwater, Chula Vista
 San Diego County, CA
 USA
 March 30th, 2023