

EXCLUSIVE NEGOTIATING AGREEMENT

[Phase One University Project]

Chula Vista University Innovation (UI) District

This EXCLUSIVE NEGOTIATING AGREEMENT [Phase One University Project] ("Agreement") is entered into effective as of January 23, 2018 ("Effective Date") by and between the CITY OF CHULA VISTA, a chartered municipal corporation ("City") and the University of Saint Katherine, a California public benefit corporation ("Developer"), each a "party" and collectively the "parties", with reference to the following facts:

Recitals

A. City owns certain real property comprised of approximately 375 acres located in the Otay Ranch and Eastlake communities of the City of Chula Vista, California (the "University Property").

B. City wishes to foster the development of a new university and regional technology park on the University Property, in a manner and form consistent with the goals and objectives of its General Plan and Otay Ranch General Development Plan.

C. City wishes to explore an arrangement with Developer where Developer would lease a portion of the University Property for the purpose of developing and operating a university campus with facilities for approximately 1,000 full-time students, student housing for approximately 400 students, and incidental uses as more particularly described in section 2.2 ("Project").

D. Additionally, Developer aims to become a nationally and internationally recognized residential institution of approximately 5,000 undergraduate, graduate, postgraduate and professional studies students. Developer aspires to be a high research activity (R1), doctoral degree-granting institution which will award research doctoral degrees in the humanities, social sciences, and STEM fields, as well as in medicine, dentistry, and pharmacy. Developer may also offer masters, professional practice, and doctoral degrees in other fields. Complementing its educational purpose, Developer aims to create an intensive, collaborative research environment through corporate and public partnerships, and, consequently, to contribute significantly to the innovation enterprise of Chula Vista and the Cali- Baja region.

E. Due to Developer's unique qualifications as a WSCUC-accredited, independent, coeducational, and privately endowed University that started as a new college in 2010 and has grown from 20 students to over 200 students and 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, City is willing to enter into this Agreement with Developer 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, the parties hereby acknowledge as satisfactory, CITY and DEVELOPER hereby agree as follows:

Agreement

1. NATURE OF AGREEMENT

1.1. Purpose. The purpose of this Agreement is to negotiate the terms and conditions of a mutually-agreeable Development Agreement ("DA"), which, at the City Manager's, or his designee's, sole discretion, may be presented to the City Council of the City of Chula Vista (the "City Council") for their consideration.

1.2. Exclusivity. During the term of the Agreement, City agrees not to solicit alternative development proposals for the Phase One Project (as defined in section 2.2 below), or to negotiate with any other person or entity regarding the acquisition or development of the Phase One Property (as defined in section 2.1 below). For purposes of this Section, "negotiate" shall mean to conduct communications or conferences of any kind with a view to reaching a preliminary or final settlement or agreement with respect to the disposition or development of all or any portion of the Project. Notwithstanding the foregoing, Developer acknowledges that (a) City may receive from time to time, unsolicited alternative proposals for the development of the Phase One 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 final agreements with Developer for the actual disposition and development of the Phase One Property. Upon receipt of such an unsolicited proposal, City shall promptly provide a copy of the proposal to Developer, and City and Developer thereafter shall meet to review the proposal. In the event any unsolicited proposal is 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 and not consider such contents unless the proponent removes the confidentiality requirement.

1.3. Term. The initial term of this Agreement shall commence on the Effective Date and terminate ninety (90) calendar days thereafter, unless earlier terminated in accordance with the provisions hereof (the "Initial Negotiation Period"). At the end of the Initial Negotiation Period, the City Manager, in his sole discretion and on behalf of the City, may extend the term of this Agreement for up to two (2) additional ninety (90) day periods (the "Extended Negotiation Period") provided that at the end of the Initial Negotiation Period (i) City has not exercised its right to terminate this Agreement, (ii) Developer is in full compliance with all material terms and conditions of this Agreement, and (iii) Developer agrees to such extension(s) of the Initial Negotiation Period.

2. DESCRIPTION OF PROPERTY AND PROJECT

2.1. Property Description. Unless additions or deletions are approved or required by City, for purposes of this Agreement, the Phase One Property (or "Property") shall be that certain real property consisting of approximately 10 acres located either to the north or south side of High Tech High in the City of Chula Vista and more particularly shown on Exhibit A attached hereto.

2.2. The Project. The Phase One Project (or "Project") as currently envisioned will consist of (i) a university campus with facilities appropriate for approximately 1,000 full-time

students, (ii) student housing for approximately 400 students, and (iii) uses incidental to the university, such as retail services, restaurants, athletic facilities and libraries, which uses shall be reflected in a master plan ("Campus Master Plan"). City and Developer acknowledge and agree that the Project is subject to change as the Project scope, plan, or definition are further refined per their mutual agreement and/or per conditions or requirements imposed by City in the discretionary land use approval process. City agrees to consider expansion of the Phase One Project as it deems appropriate in its sole discretion.

3. OBLIGATIONS OF DEVELOPER

3.1. Site Plans and Elevations. During the Initial Negotiation Period, Developer shall prepare and submit a proposed site plan and elevation drawings or renderings for the Project, including any alternative site plans as appropriate. The site plans and elevations should consider factors including, but not limited to, the City's adopted land use plans and policies for the Property, adjacent land ownerships and property interests parcel configurations, circulation and traffic patterns, environmental factors and plans for regional transportation facilities. The site plans shall identify the proposed Floor Area Ratio ("FAR") distributions, phasing strategies, and pedestrian and vehicular circulation patterns on the Property and, where appropriate, surrounding properties.

3.2. CEQA. City is currently processing an environmental review for the University Property in accordance with the California Environmental Quality Act ("CEQA"). Developer shall furnish such information to the City regarding the proposed Project as may be required to perform secondary or additional studies as required by CEQA.

3.3. Financial Feasibility Analysis. During the Initial Negotiation Period, Developer shall submit pro forma financial feasibility analyses for the Project in sufficient detail for City Staff to evaluate the economic feasibility of the Project. Separate construction and operating pro formas shall be submitted for the Project.

3.4. Financing. Developer shall provide the City with supporting evidence of Developer's ability to secure financing for the development of the Project.

4. CITY OBLIGATIONS AND DUE DILIGENCE

4.1. During the Initial Negotiation Period, City will conduct a due diligence investigation of the Developer's ability to develop, own and/or operate the Project in a high quality and sustainable manner. If the City Manager determines in his or her reasonable discretion that Developer does not have the ability to successfully develop, own and/or operate the Project in a high quality and sustainable manner, the City Manager may terminate this Agreement by delivering written notice thereof to Developer. City's due diligence efforts may include, without limitation, the following:

- Assessment of Institution's Academic/Institutional Record. The initial task will be to have an independent, third-party review and report on the institution's academic/institutional record, including the academic rigor of its programs and student success data.

4.1.1 Assessment of Financing. At the written request of the City, Developer agrees as a continuing obligation to provide to the City all documentation reasonably related for the City to assess the proposed financing and the capacity of Developer to qualify for financing for the Project; and

4.1.2 Assessment of Ability to Own/Manage. At the written request of the City, Developer also agrees as a continuing obligation to provide to the City all documentation reasonably related for the City to assess the capacity of Developer to effectively develop, own and/or manage the Project, including the ability to carry out any ongoing management oversight responsibilities.

4.2. City agrees to cooperate with Developer in providing equity partner(s) and/or lender(s) of Developer with appropriate and necessary information for the Developer to fulfill its obligations hereunder, which information is not otherwise privileged.

4.3. City shall cooperate with Developer's professional consultants and associates in providing them with any information and assistance, so far as such information is not otherwise privileged, reasonably within the capacity, possession or control of the City in connection with the preparation of the Developer's submissions to the City.

5. DEVELOPMENT AGREEMENT TERMS AND CONDITIONS.

5.1 DA Terms. Upon mutual execution of this Agreement, City staff ("City Staff") and Developer shall in good faith attempt to negotiate the terms and conditions of a DA. If the terms of a DA can be negotiated to City Staff's and Developer's mutual satisfaction, City Staff shall present same to the City Council for its review and consideration. Any negotiated DA shall contain substantially the following terms, plus others to be negotiated by the parties:

5.1.1 Lease of Property. City shall lease the Property (and any related environmental mitigation land) to Developer "as is" for one dollar (\$1) per year for a number of years to be determined by the parties based upon the Developer's proposed investment in the Project and other factors. The City will agree to provide Developer with all information in its possession regarding the physical condition of the Property; provided, however, City does not, and shall not, make any representations or warranties regarding the physical condition of the Property or its suitability for development of the Project.

5.1.2 Property Control. Developer will have the rights to sub-lease or encumber the Property subject to City approval and in accordance with the Campus Master Plan.

5.1.3 Financing. Project entitlements and construction will be financed through the use of Developer's funds, and other funding sources (debt, equity, grants, etc.) to be identified by the parties. Developer shall have the primary responsibility to arrange financing for the Project, including the planning and development phases.

5.1.4 Land Use Entitlements/CEQA. Developer shall be responsible for securing all necessary planning, zoning, and other entitlement and permit approvals for the Project subject to City approval and as required by law. Developer shall prepare, or to have prepared (as reasonably directed by City), all required environmental analysis documents for the

Project in accordance with CEQA and other applicable law. The parties agree to work cooperatively in the land use entitlement process for the Project.

5.1.5 Assurance of Developer's Performance. Developer will assure the performance of its DA obligations through the use of security or other mechanisms mutually acceptable to the parties.

5.1.6 Operating Covenants and Restrictions. Obligations relating to the operation and management of all or portions of the Project in a good and professional manner, subject to covenants necessary or appropriate to ensure the Project's long-term success, subject to reasonably necessary terms to protect the interests of secured lending parties.

6. RETENTION OF DISCRETION TO APPROVE THE PROJECT AND DA.

6.1. City Approval Discretion. This Agreement contemplates that the Project and a DA providing for its implementation may be presented to the City Council for approval. The parties understand that City is reserving all rights 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:

6.1.1 Approval by City of the DA. The parties understand that the City has the complete and unfettered discretion to reject a DA without explanation or cause. Developer acknowledges and agrees that City may require or impose additional material obligations on the Project in the negotiation of a DA. If Developer does not agree to any such condition, Developer reserves the right to terminate this Agreement and/or not to proceed with the Project.

6.1.2 Review and approval by City of all discretionary findings and conclusions. Any agreement by City to transfer an interest in 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 or state and local land use laws or regulations. As to any matter which City may be required to exercise its unfettered discretion in advancing the Project to completion, nothing herein, nor to be contained in the DA 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.

7. TERMINATION RIGHTS.

7.1. Parties' Right to Terminate. Notwithstanding the Initial or Extended Negotiation Periods set forth above, either party may terminate this Agreement if the other party has materially defaulted in its obligations hereunder, and the terminating party has provided defaulting party with written notification of such determination, and the defaulting party has refused to cure same. The written notification shall set forth the nature of the actions required to cure such default if curable. Defaulting party shall have fifteen (15) days from the date of the written notification to cure such default. If such default is not cured within this 15-day period, the termination shall be deemed effective. Each party shall also have the right to terminate this Agreement in the event that City or Developer determines that: (a) the Project is infeasible or not

in the public interest; or (b) the parties reach an impasse in their negotiation of the DA which cannot be resolved after good faith efforts.

8. ADDITIONAL TERMS AND OBLIGATIONS.

8.1. Each Party to Bear its Own Cost. Each party shall bear its own costs incurred in connection with the negotiation of a DA and the preparation and implementation of this Agreement. Developer acknowledges and agrees that the risk of loss of all processing, design and developmental costs incurred by the Developer prior to approval of a DA, if any, shall be absorbed entirely by Developer.

8.2. 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 Developer to City with respect to the Property, the Project, or Developer may be disclosed to the public either purposely, inadvertently, or as a result of a public request or court order. With respect to any public records request for information pertaining to the financial condition of Developer, its members, lenders or other interested parties, or other information designated in writing by Developer 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) may, in its sole and unfettered discretion, assert all appropriate defenses or exemptions to such request, as provided by law. Upon Developer's request, City agrees to negotiate the terms for a Confidentiality Agreement with respect to such information.

9. 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 or execution of a DA; the proposal, amendment, or approval of any land use regulation governing the Property; the provision of financial assistance for the development of any public or private interest in real property; the authorization or obligation to use the City's eminent domain authority; or, any other such 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 DA and all proceedings and decisions in connection therewith.

10. GENERAL PROVISIONS.

10.1. 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:

Developer's Address for Notice:

University of Saint Katherine
1637 Capalina Road
San Marcos, CA 92069
Attn: Frank Papatheofanis, MD, PhD, President
Telephone: (760) 471-1316

With a copy to:

Ryan West
Chief Operating Officer
1637 Capalina Road
San Marcos, CA 92069
Telephone: (760) 471-1316

City's Address for Notice:

CITY OF CHULA VISTA
276 Fourth Avenue
Chula Vista, CA 91910
Attn: Gary Halbert, City Manager; Eric Crockett, Director of Economic
Development
Telephone: (619) 476-5002
Facsimile: (619) 585-5689

With a copy to:

Glen R. Googins, City Attorney
276 Fourth Avenue
Chula Vista, CA 91910
Telephone: (619) 691-5039
Facsimile: (619) 409-5823

10.2. 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.

10.3. 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.

10.4. Entire Agreement. This Agreement together with all exhibits 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 exhibits 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.

10.5. 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.

10.6. No Third Party Beneficiaries. There are no other parties to this Agreement, express or implied, direct or indirect. Except as provided in section 8.13, City and Developer acknowledge that it is not their intent to create any third party beneficiaries to this Agreement.

10.7. Assignment. City would not have entered into this Agreement but for Developer's unique qualifications and experience. Therefore, Developer'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.

10.8. 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.

10.9. Time is of the Essence. Time is of the essence for each of the Parties' respective obligations under this Agreement.

10.10. 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, as same 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 same. Upon request by City, Developer shall meet and confer in good faith with City for the purpose of resolving any dispute over the terms of this Agreement.

10.11. 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. Developer shall also comply with applicable Chula Vista Municipal Code sections.

10.12. Exhibits. All exhibits referenced herein shall be attached hereto and are incorporated herein by reference.

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

foregoing, in the event of a third party challenge to the validity of this Agreement, Developer shall have the option to terminate this Agreement in lieu of its indemnity obligation.

10.14. Exclusive Remedies. In the event of default by either party to this Agreement, the parties shall have the remedies of specific performance, mandamus, injunction, and other equitable and legal remedies. Neither party shall have the remedy of monetary damages nor an award of costs of litigation and attorneys' fees against the other based upon breach 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 which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him would have materially affected his settlement with debtor.

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 damage and remedies contained in this Section.

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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 Bigelow, City Clerk

Approved as to form:

Glen R. Googins, City Attorney

DEVELOPER:

University of Saint Katherine

A California public benefit corporation

By: _____

Its: _____

EXHIBIT A

The Property

[NOTE: TO BE INSERTED]