

## MEMORANDUM OF UNDERSTANDING

This **MEMORANDUM OF UNDERSTANDING** (this “MOU”) reflects the basis on which negotiations will be undertaken between is entered into as of \_\_\_\_\_, 2014, by and between the **CITY OF CHULA VISTA**, a California municipal corporation and charter city (“City”), and **HOMEFED CORPORATION**, a California corporation (“HomeFed”) (the City and HomeFed are sometimes referred to herein individually as a “Party” and collectively as the “Parties”).

### RECITALS

A. The City owns or expects to own in fee approximately 375 acres of real property located in the eastern portion of the City (“City Property”).

B. The City is in the process of preparing a Sectional Planning Area (“SPA Plan”) for the City Property and a Program Environmental Impact Report (“PEIR”) for the SPA Plan. The SPA Plan will govern the land uses and development permitted at the City Property, will establish the Economic and Public Benefit Goals and the University Development Goals for development of the City Property, and will set forth the requirements for issuance of land use entitlements for development of the City Property.

C. The City and HomeFed desire to plan for and implement the development of approximately 85 acres of the City Property with various commercial and/or industrial uses that meet the Economic and Public Benefit Goals (defined below) (“Innovation District”). The City and HomeFed further desire to plan for and implement the development of approximately 290 acres of the City Property as a university campus that meets the University Development Goals (defined below) (“University Campus”). The specific locations of the City Property included in the Innovation District and University Campus, respectively, have not yet been determined. The proposed development of the University Campus and Innovation District is referred to generally as the “Project.”

D. The City intends to engage an affiliate of HomeFed, defined below as UDA, (1) as master planner and developer of the Innovation District on terms that will allow for periodic acquisition by UDA of parcels in the Innovation District for development that is consistent with the Economic and Public Benefit Goals, and (2) as master developer of all or portions of the University Campus pursuant to its Preferred Rights (defined below) and consistent with the University Development Goals, provided HomeFed funds certain initial start-up and ongoing planning and implementation activities for the Project.

E. The City expects to create and form a nonprofit corporation that will lead the recruitment efforts for a university, prepare a comprehensive proposition for founding or attracting a higher education institution(s), solicit proposals and evaluate feasibility, and implement development of the University Campus in a manner that is consistent with the SPA Plan and the PEIR and satisfies the University Development Goals. The City expects that HomeFed will participate with the nonprofit corporation in evaluating feasibility and proposals for, and implementing development of, the University Campus.

F. The City and HomeFed desire to negotiate the terms of a “Master Agreement” and other binding contracts to provide for the development of the Project. These agreements will provide for the formation of separate legal entities (described below as UDA, CVUP, and the Land Trust) to perform certain functions relative to the ownership, conveyance, marketing, development and operation of the Project, development of the City Property with Eligible Projects (defined below), the funding of the foregoing activities, and other matters as set forth in this MOU.

G. This MOU represents a statement of intent by the City and HomeFed and, as further provided in Section 9 below, it is not, and shall not be construed as, a binding agreement. The particular business terms and legal obligations of the Parties will be detailed in a Master Agreement to be negotiated by the City’s and HomeFed’s authorized representatives and presented to the City Council and the HomeFed Board of Directors or other authorized representative(s) of HomeFed for approval and execution.

**1. Definitions.**

**“Economic and Public Benefit Goals”** means goals for development of the Innovation District to achieve high quality job generation and/or other public goals of the City. The Economic and Public Benefit Goals will be set forth in and governed exclusively by the SPA Plan and the PEIR.

**“Eligible Project”** means, with respect to the Innovation District, developments that satisfy the Economic and Public Benefit Goals. With respect to the University Campus, “Eligible Project” means a development that satisfies the University Development Goals and is approved by CVUP.

**“University Development Goals”** means goals for development of the University Campus to achieve the City’s desire for development of a university campus for an estimated 20,000 students on approximately 290 acres as follows:

1. Provide education opportunities and accessibility for residents of Chula Vista and the region
2. Serve as an economic engine and contribute to the growth of the city and region
3. Prepare students for post-university careers that allow for lasting personal and professional growth
4. Provide a source of high-quality jobs and contribute to diversifying the city’s economy
5. Develop into a financially viable university entity
6. Become an integral part of the fabric of the community providing cultural enrichment for residents of Chula Vista and the region
7. Develop into an institution that is physically well integrated and connected to the surrounding neighborhood and region

8. Serve the shifting demographics of the San Diego region, and the United States in general
9. Attract a wide range of educational and industry partners, regionally, nationally, and internationally

## **2. Planning Activities; Master Agreement.**

a. SPA; PEIR. The City will continue to prepare and process for City Council consideration the SPA Plan and the corresponding PEIR, all at the City's expense. The City currently estimates that the SPA Plan and PEIR will be completed and considered by the City Council by midsummer 2015. The SPA Plan will specify the required land use entitlements and conditions of approval for the development and use of the City Property, provided conveyance of University Campus City Property will be further subject to CVUP approval. The City will involve HomeFed in the SPA Plan preparation process. The City will give HomeFed the opportunity to review the Draft PEIR, prior to distribution for public comment. The City will pay the cost of preparing and processing the SPA Plan and PEIR through City Council approval of the SPA Plan and certification of the PEIR. As between the City and HomeFed, the City shall also be responsible for all costs, including attorneys' fees, associated with any legal challenges to the SPA Plan or PEIR, including those brought pursuant to the California Environmental Quality Act ("CEQA"), to the extent the City incurs such costs. The Master Agreement will address the basis, if any, on which the City will be obligated to defend the SPA and/or PEIR from third party challenges.

b. Master Agreement. The Parties will negotiate the terms of the Master Agreement. The Master Agreement is anticipated to be completed and, if acceptable to the Parties, executed, 30 days following the later of (1) City Council approval of the SPA Plan, or (2) City Council certification of the PEIR. The Master Agreement and the development of the City Property pursuant to the Master Agreement shall be subject to the SPA Plan and the PEIR. Approval of the Master Agreement will be subject to compliance with CEQA and other applicable law.

**3. Separate Legal Entities to be Formed.** The Parties contemplate the formation of three new legal entities to undertake specified tasks in furtherance of the Project, as follows:

a. Land Trust, Inc. Land Trust, Inc. ("Land Trust") will be a nonprofit corporation formed by the City to accept conveyance from the City and to hold title to all or portions of the City Property from time to time as provided in the Master Agreement and subject to applicable laws governing the conveyance, ownership, use and development of City-owned property.

(1) Land Trust Board. The initial board of directors of the Land Trust shall be appointed by the City Council from a pool of qualified applicants/nominees compiled by the City Manager (or his designee) and HomeFed's CEO (or his designee), after the City Manager and HomeFed's CEO solicit interested persons, jointly screen applications, select and conduct interviews of candidates interested in and qualified by their background and experience to serve on the Land Trust board. The City Manager and HomeFed's CEO shall mutually agree on the reasonable and required qualifications for applicants interested in serving as Land Trust board members. The Land Trust board of directors shall consist of up to five directors. In the event the City Manager and HomeFed's CEO are unable to agree on the initial pool of nominees from qualified applicants, the San Diego Foundation will be asked to submit a pool of nominees to the City Council, including any nominees agreed to by both the City Manager and HomeFed's CEO. Subsequent Land Trust

directors will be selected by the City Council from a pool of nominees submitted by the San Diego Foundation. No current or former (i) elected or appointed officials or employees of the City or (ii) officers, directors or employees of HomeFed will be eligible to serve on the Land Trust board of directors. The Land Trust will be subject to all applicable federal, state and local statutes, rules and regulations applicable to the City and other local public agencies including, without limitation, the Ralph M. Brown Act, the California Public Records Act, the California Political Reform Act and Government Code Section 1090, *et seq.* (collectively, the “Public Entity Requirements”).

(2) Purpose. The sole purpose of the Land Trust will be to take title to, hold, and eventually convey, in phases, the City Property to UDA or other third parties as provided in Section 4(b), for development of the Project. The City will convey City Property owned by the City to the Land Trust upon approval of the SPA Plan and PEIR. As the City acquires additional City Property after approval of the SPA Plan and PEIR, the City will convey such additional City Property to the Land Trust. The Master Agreement will specify the mechanism by which the precise location of the Innovation District portion of the City Property will be fixed for purposes of the Master Agreement. With respect to the Innovation District, the City expects the Land Trust will convey property from time to time to UDA for development of the Innovation District in accordance with the Master Agreement. The Land Trust will convey University Campus property to UDA and/or other third parties, all in accordance with Sections 4(b) and 5 and any additional requirements set forth in the Master Agreement. The authority and obligation of the Land Trust to receive and convey City Property shall be ministerial based on expressly defined criteria set forth in the Master Agreement and reflected in Land Trust charter documents.

No transfers of City Property shall be allowed by the Land Trust under the Master Agreement except for Eligible Projects.

b. Chula Vista University Partnership, Inc. Chula Vista University Partnership, Inc. (“CVUP”) will be formed as a nonprofit corporation for the purposes of (i) facilitating development of the University Campus and ensuring implementation of the University Development Goals, (ii) preparing a comprehensive plan for founding or attracting an institution of higher education, (iii) seeking and attracting potential projects for the University Campus, (iv) adopting the University Recruitment Guiding Principles (defined below), (v) recommending revisions to the University Recruitment Guiding Principles, subject to approval by the City, (v) evaluating proposed projects to determine in its discretion whether such projects meet the University Development Goals, and (vi) seeking philanthropic capital to help fund university development.

(1) CVUP Board. The initial board of directors of CVUP shall be appointed by the City Council from a pool of qualified applicants/nominees compiled by the City Manager (or his designee) and HomeFed’s CEO (or his designee), after the City Manager and HomeFed’s CEO solicit interested persons, jointly screen applications, select and conduct interviews of candidates interested in and qualified by their background and experience to serve on the CVUP board. In the event the City Manager and HomeFed’s CEO are unable to agree on the initial pool of nominees, the San Diego Foundation will be asked to submit a pool of nominees to the City Council, including any nominees from qualified applicants agreed to by both the City Manager and HomeFed’s CEO. The CVUP board of directors will thereafter be responsible for appointing future directors independently from the City or HomeFed or UDA; provided that all CVUP directors (including the initial board members) shall meet reasonable and required qualifications agreed to by the City Manager and HomeFed’s CEO, which qualifications are expected to include the requirement that CVUP directors be recognized civic and/or business leaders or have significant experience in the

higher education field. No current (i) elected or appointed officials or employees of the City or (ii) officers, directors or employees of HomeFed will be eligible to serve on the CVUP board of directors. The required qualifications for CVUP directors will be incorporated into the CVUP bylaws and/or other documents governing the operation of CVUP. The CVUP board of directors shall act independently from any influence of the City, HomeFed or UDA. Subject to further review, CVUP may be subject to applicable Public Entity Requirements.

(2) U3 Advisors to Manage CVUP. The Parties contemplate that upon approval of this Memorandum of Understanding by the City and HomeFed, the City will engage U3 Advisors, at City expense, to advise it with respect to aspects of development of the University Campus (the “U3 Agreement”). The U3 Agreement will include quantifiable performance obligations on the part of U3 Advisors. U3 Advisors will be required to develop “University Recruitment Guiding Principles” during the first year of the U3 Agreement for eventual consideration by the CVUP board of directors. The University Recruitment Guiding Principles, once adopted by CVUP will set forth criteria that will be used by CVUP in its search for a suitable university end user. The University Recruitment Guiding Principles will also identify the universities CVUP will target for recruitment for the University Campus. The University Recruitment Guiding Principles will be subject to approval by the City Council.

Upon formation of CVUP following final approval of the SPA and certification of the PEIR, the parties expect CVUP will engage U3 Advisors to provide principal staff support to CVUP. In order to provide continuity and consistency of effort, the City and HomeFed expect U3 Advisors’ engagement by CVUP to be for an initial three-year term, and for the cost associated with that engagement to be funded by UDA pursuant to UDA’s funding obligations under Section 3(c), and subject to the budgets adopted thereunder. The Parties expect that the agreement between CVUP and U3 Advisors will include quantifiable performance obligations on the part of U3 Advisors. Failure to perform such obligations will entitle the CVUP board of directors to terminate the U3 Advisors contract. During the Exclusive Term (defined in Section 4(a) below), if the contract with U3 Advisors is terminated, the City and UDA will recommend a replacement staffing/managing agent to the CVUP board or will recommend the hiring of CVUP employees, as the Parties deem appropriate. U3 Advisors will agree to act for CVUP in all respects independent of the City, HomeFed, and UDA.

c. University Development Associates. HomeFed will form University Development Associates (“UDA”) to act as the development entity responsible to control, entitle, and develop the Innovation District, and to participate in development of the University Campus, in accordance with the SPA Plan and the Master Agreement. Concurrently with execution of the Master Agreement, HomeFed shall commit not less than Five Million Dollars (\$5,000,000) to UDA on a basis satisfactory to the City for the purpose of funding the activities of UDA, including without limitation UDA’s obligation set forth in Section 4(a) to fund activities of the City, Land Trust and CVUP with respect to the Project during the entire Exclusive Term.

(1) Land Use Plans; Tentative Map. In cooperation and consultation with CVUP, UDA will prepare a site plan and tentative map, as and when appropriate, for the Innovation District. The Master Agreement and related budgets will address UDA’s involvement and obligations in the development of site plan(s) for the Innovation District, and specifically the location of the various properties making up the Innovation District. UDA may undertake similar planning efforts with respect to the University Campus pursuant to arrangements with CVUP.. The cost of those efforts may be reflected in approved budgets, or may constitute Recoverable Costs (as defined below) whether or not a university end user is recruited to undertake the planning efforts with respect

to the parcels within the City Property making up the University Campus. The Parties contemplate that the articles of incorporation for CVUP will include provisions about CVUP's ongoing communications and good faith collaborations with the City and UDA with respect to the planning and development of the City Property that may ultimately comprise the University Campus parcels.

(2) Ownership of Data. UDA will own all plans, including record drawings, specifications, estimates, and other documents ("Project Materials") that UDA, or its consultants or architects, prepares or causes to be prepared in relation to the Project, but shall have no interest in Project Materials prepared or caused to be prepared by the City, Land Trust, or CVUP, whether or not funded by UDA. UDA will retain all rights to all copyrights, designs and other intellectual property embodied in the Project Materials that UDA, or its consultants or architects, prepares or causes to be prepared in relation to the Project, but shall have no interest in Project Materials prepared or caused to be prepared by the City, Land Trust, or CVUP, whether or not funded by UDA.

(3) Assignment of HomeFed Rights to UDA. The Master Agreement will provide for the assignment of certain HomeFed rights thereunder relating to the development of the City Property (in particular HomeFed's exclusive right to develop the Innovation District during the Exclusive Term and HomeFed's preferred development rights with respect to the University Campus) to UDA.

d. Ongoing Evaluation of Legal Restrictions. During the negotiation of the Master Agreement, the Parties will continue to evaluate the application of various laws to the Land Trust, CVUP and UDA and the Parties' activities hereunder, including issues relating to conflicts of interest, private enurement, delegation of authority and other legal requirements and restrictions, and to the extent such application makes implementation of the terms of the MOU impractical, unlawful, or imprudent, the Parties will negotiate alternative terms in good faith.

**4. UDA Rights to Develop City Property.** The Parties contemplate that the Master Agreement will provide the following basic terms related to UDA and the development of the City Property:

a. Exclusive Rights re Innovation District. Subject to compliance with the obligations described below, UDA shall have the exclusive right to acquire the Innovation District property from the City to develop such property with Eligible Projects ("Exclusive Rights") for an initial term of ten (10) years ("Exclusive Term") so long as UDA remains in compliance with all of the Ongoing UDA Requirements described below during the entire Exclusive Term. The Exclusive Term shall be subject to extension by the Parties for two (2) consecutive five (5) year periods upon the request of UDA and subject to its compliance for the extended period with the Ongoing UDA Requirements. Any such extension will be considered part of the Exclusive Term. The Ongoing UDA Requirements will include at least the following:

(1) Commencing with the execution of the Master Agreement, UDA will continuously fund, in advance on a basis to be specified in the Master Agreement, specified activities of the City, to include City non-executive staff time, related non-personnel expenses, and consultant charges ("City Expenses"), relating to the Project. UDA will also fund all activities of the Land Trust and CVUP, to the extent those activities are not funded by philanthropic and other sources, relating to the Project. UDA's funding obligations will be based on an initial three-year budget and subsequent annual or longer budgets and business/work plans for the City approved by the City

Manager and UDA for each of the City Expenses, Land Trust, and CVUP. CVUP or Land Trust approval, as the case may be, will be required for any budget addressing CVUP or Land Trust expenses to be paid by UDA following the initial three-year budget. The Master Agreement will provide express guidelines and categories of expenses to be funded by UDA, to form the basis for the annual budgets of the Land Trust, CVUP, and the City. In no event will UDA be obligated to approve a budget providing for City Expenses in excess of \$200,000.00 per year, exclusive of City review and processing expenses for specific UDA-proposed projects. UDA expenses to be funded from the commitment described in this section will be identified in the budgets or as otherwise specified in the Master Agreement. With respect to CVUP, the Parties anticipate that UDA will fund the following categories of expense to the extent that philanthropic and other sources of funding are insufficient to cover such expenses:

(a) Executive Management and Staff. U3 Advisors is anticipated to provide executive management and staffing services to CVUP during the first three years of CVUP operations.

(b) Stipends for CVUP board members (if any).

(c) All administrative costs, including copiers, paper and other office supplies, and mailings, etc.

(d) All consultant costs, including costs of studies and reports and solicitation of interest from university end users.

(2) UDA's obligation to provide funding pursuant to this Section 4(a)(1) during the initial ten-year Exclusive Term shall be subject to a cap of Five Million Dollars (\$5,000,000) and in connection with any extension of the initial term shall be subject to the maintenance of the activities of the City, the Land Trust, CVUP and UPDA on such basis as is identified in the Master Agreement, which effort may be subject to an additional cap as identified in the Master Agreement. UDA must use reasonable efforts to satisfy periodic planning, entitlement, permitting and development goals to be described in the Master Agreement to be funded from UDA's initial \$5 million commitment.

(3) UDA will continue to meet certain minimum "maintenance of efforts" requirements, which will include maintaining minimum UDA operational capabilities including minimum capitalization and staffing requirements, maintaining a presence in the City (i.e. availability for in-person meetings with City and CVUP staff).

b. Preferred Rights re University Campus. To the extent described in this Section 4(b), UDA shall have a preferred right to acquire and/or develop the University Campus property from the Land Trust and develop such property with Eligible Projects under the Master Agreement during the Exclusive Term so long as UDA is in compliance with all of the Ongoing UDA Requirements at the time the University Campus property is conveyed to it from the Land Trust. If CVUP decides to select a master developer to develop the University Campus project or any portion thereof, CVUP will first negotiate in good faith with UDA regarding such development for up to six months ("Negotiation Period"). If during the Negotiation Period CVUP and UDA are unable to reach an agreement regarding development of the University Campus or such portion, CVUP will have no further obligation to negotiate with UDA or HomeFed regarding the University Campus or such portion, as the case may be. In such event, CVUP will be free to negotiate with

other developers, end users or others to perform such development. From time to time, UDA may incur expenses for planning, development or other items which add value to the University Campus. To the extent the City Manager determines in advance of the expenditure that such items shall be recoverable, such expenses shall be treated as “Recoverable Costs” under the Master Agreement, to be paid to UDA upon eventual development of the University campus or portion so affected. Upon such designation, CVUP and the Land Trust will cause Recoverable Costs to be paid to UDA upon conveyance of affected University Campus Property. The term “Preferred Rights” herein shall mean and refer solely to the rights described under this Section 4(b).

c. The City may enter into arrangements with CVUP regarding the basis on which the City Property within the University Campus will be reconveyed to and fully revested in the City following termination of the Master Agreement. Notwithstanding anything to the contrary set forth in this MOU, CVUP shall have and will retain the right to negotiate with any end user directly for the development of the University Campus and such end user will have no obligation to negotiate with or provide any rights or preference to HomeFed, UDA or any affiliate of either of them as a result of this MOU or the Master Agreement. All actions of CVUP related to the City Property and the Master Agreement must be in furtherance of the City Council-approved University Development Goals and University Recruitment Principles and all applicable City land use requirements and development standards (including the SPA and PEIR). Notwithstanding the prior approval of University Development Standards and/or University Recruitment Standards, the City and HomeFed may, at any time, mutually agree to evaluate, develop and/or implement different development plans and standards for the University Campus. In no event will HomeFed or UDA have a lienable interest in City Property comprising the University Campus solely by reason of the Master Agreement.

d. Responsibilities of CVUP. CVUP will have the exclusive right to approve proposed University Campus projects as consistent with the University Development Goals. CVUP will also have the exclusive right to direct the conveyance of University Campus property from the Land Trust to UDA or a university end user, consistent with UDA’s Preferred Rights and the City Council’s approval authority over land use entitlements and CEQA compliance. CVUP will have the following responsibilities in exercising said exclusive rights and carrying out the purposes of CVUP set forth in Section 3(b) herein:

(1) CVUP will develop proposed University Recruitment Guiding Principles for approval by the City Council. The Master Agreement may address rights and remedies of UDA in the event it disapproves of the University Recruitment Guiding Principles as adopted or amended by CVUP with the approval of the City.

(2) CVUP will undertake to identify existing or proposed higher education institutions satisfying the University Recruitment Guiding Principles, and will lead efforts to recruit such institutions.

(3) Pursuant to its exclusive right to approve University Campus projects, CVUP will evaluate proposed developments of the University Campus based on the approved University Development Goals and University Recruitment Guiding Principles. Once CVUP determines that a proposed development of the University Campus constitutes an Eligible Project,



and that the development's end user satisfies the University Recruitment Guiding Principles, as applicable, it shall have the authority to approve the development, subject to the City Council's non-delegable project approval authority.

(4) All actions of CVUP related to the City Property and the Master Agreement must be in furtherance of the City Council-approved University Development Goals and University Recruitment Guiding Principles and all applicable City land use requirements and development standards (including the SPA Plan and PEIR). In no event will HomeFed or UDA have a lienable interest in City Property comprising the University Campus by reason of the Master Agreement.

e. Termination of Master Agreement and Exclusive Term. In the event of a material breach of the Ongoing UDA Requirements described in Section 4(a) (and following lapse of any notice or cure rights in the Master Agreement), City may terminate the Master Agreement for cause. In the event City elects to terminate the Master Agreement for cause, the Exclusive Term will automatically expire. Upon termination of the Master Agreement by the City other than for cause, under such circumstances as may be identified in the Master Agreement, the City will first use diligent efforts to seek a new master developer. The new master developer shall be bound by the Economic and Public Benefit Goals and the University Development Goals when developing projects on the City Property. If no new master developer is selected by the City Council, the Land Trust will be obligated to promptly convey all City Property then held by the Land Trust to the City. The City may also enter into other arrangements with the Land Trust regarding the basis on which the City Property will be reconveyed to the City following termination of the Master Agreement. HomeFed will also have the right to terminate the Master Agreement for cause in the event the City breaches its material obligations under the Master Agreement, following lapse of applicable notice and cure rights under the Master Agreement. .

The Master Agreement will set forth specific events of default, rights of termination with and without cause, and remedies for breach, including specific performance, which remedies shall in every case limit the City's exposure to an appropriate portion of the Innovation District property, prorated for partial HomeFed performance of its \$5 million funding obligation, but in no event money damages. HomeFed's exposure will in every case be limited to the amount of its \$5 million funding obligation during the initial Term and, following any extension, such additional funding commitment to fund City, UDA, CVUP and Land Trust activities up to the Ongoing UDA Requirements as set forth in the Master Agreement.

**5. Conveyance of City Property to UDA.** Conveyance of any portion of the City Property from the Land Trust to UDA will be conditioned upon satisfaction of the following requirements described below in subdivisions a., b. and c., and other requirements described in the Master Agreement (collectively, "Conditions Precedent").

a. Conditions Precedent to Conveyance of Innovation District Property. The following conditions precedent described in subsections (1) through (5) will constitute Conditions Precedent to the Land Trust's obligation to convey Innovation District property to UDA.

(1) Issuance by the City of land use entitlements for an Eligible Project.

(2) The City Manager reasonably approves evidence that UDA has available financing (which may include self-financing or internal financing) to construct the entire proposed Eligible Project.

(3) The City has been given adequate security for completion of all public improvements required by the Eligible Project.

(4) The City reasonably approves evidence of UDA's insurance as required by the Master Agreement.

(5) Confirmation by the City that all statutory reporting, documentation, notice, hearing, and other requirements imposed on the City with respect to the conveyance of real property and/or granting of subsidies for development shall have been satisfied by the City, UDA and/or Land Trust, as applicable. This includes compliance with CEQA, SB 470, and AB 562.

b. Conditions Precedent to Conveyance of University Campus Property. In the event CVUP in its discretion negotiates the terms of a development agreement or other agreement with HomeFed or UDA regarding the conveyance, development and operation of an Eligible Project at the University Campus, the Parties expect the following conditions precedent described in subsections (1) through (7) will constitute Conditions Precedent to the Land Trust's obligation to convey University Campus property to such developing entity. As noted in Section 4(c), CVUP will retain all rights to cause conveyance of all or part of the University Campus to university end users (or other developers, in the event negotiations with UDA do not result in an executed development agreement within the Negotiation Period) for development of an Eligible Project thereon.

(1) Issuance by the City of land use entitlements for an Eligible Project.

(2) CVUP delivers confirmation to the Land Trust that the proposed development constitutes an Eligible Project for the University Campus in accordance with the Master Agreement.

(3) CVUP reasonably approves evidence that UDA has available financing (which may include self-financing or internal financing) to construct the entire proposed Eligible Project.

(4) The City has been given adequate security for completion of all public improvements required by the Eligible Project.

(5) CVUP reasonably approves evidence of insurance as required by the Master Agreement or other development agreement relating to the University Campus.

(6) All statutory reporting, documentation, notice, hearing, and other requirements imposed on the City with respect to the conveyance of real property and/or granting of subsidies for development shall have been satisfied by the City, UDA, other transferee(s) and/or Land Trust, as applicable. This includes compliance with CEQA, SB 470, and AB 562.

(7) To the extent UDA has incurred any Reimbursable Cost, payment to UDA of such Reimbursable Cost.

c. Additional Conditions Precedent. Each and every conveyance of City Property by the Land Trust to UDA or any third party shall be subject to the following additional conditions and requirements:

(1) Each such conveyance and the ultimate development of the City Property (and each portion thereof) will be subject to the terms of the Master Agreement, SPA and PEIR, or subsequent, superseding agreements, planning documents or CEQA documents, as applicable.

(2) Each conveyance will be on an “as is” basis and the grantee will agree to release and indemnify the City and the Land Trust (and CVUP, as applicable) and assume all liabilities, arising from the condition of the land (environmental and physical such as soils, groundwater, etc.), insurance obligations, assumption of risk, etc.

(3) Payment of any and all customary and reasonable costs incurred by the Land Trust, City, CVUP and/or UDA with respect to the conveyance of any portion of the City Property to UDA. Neither the City nor the Land Trust shall be put to any expense (including customary closing costs) in connection with any conveyance to UDA, HomeFed or any other entity of any portion of the City Property.

(4) In the event UDA desires (at any time before or after closing) to record CC&Rs, reciprocal easement agreement(s) or other recorded covenants and/or restrictions against any portion of the City Property, the form and content of all such instruments shall be subject to approval of the City Manager and City Attorney.

**6. Profit Participation.** Each Eligible Project will be subject to a 90/10 profit allocation to be described more fully in the Master Agreement. In the event the Parties desire to modify the SPA Plan to permit different uses, this profit participation or other terms of conveyance shall be subject to such terms of conveyance as may be determined by the parties at the time in their discretion.

**7. Limited City Financial Contribution to Project.** The Parties expressly acknowledge that the City’s financial contribution to the Project will be limited to (1) the cost to prepare and process the SPA Plan and PEIR through City Council approval of the SPA Plan and certification of the PEIR, including all costs (including attorneys’ fees) incurred by the City in accordance with its rights and duties under the Master Agreement associated with any legal challenges to the SPA Plan or PEIR, including those brought pursuant to the California Environmental Quality Act (“CEQA”).and (2) the contribution of land in the Innovation District at no cost to UDA and the University Campus to UDA or other third party at no cost.

**8. Ongoing Evaluation of Legal Restrictions.** Implementation of this MOU is subject to all applicable laws and the Parties will continue to evaluate the impact of applicable laws to the transactions contemplated by this Agreement and in the event such applicable laws limit, make impractical or unlawful any of the provisions contemplated by this MOU the Parties will negotiate in good faith alternate terms. The Master Agreement is intended to address the terms of this MOU in light of applicable legal requirements and restrictions.

**9. Non-Binding Effect.** This MOU is intended to serve as a general basis for one or more definitive agreements between the Parties with respect to the matters referenced herein. This

MOU reflects the current mutual intentions of the Parties with respect to the future negotiations of a Master Agreement but at this time lacks various material terms which the Parties expect to be included in an enforceable agreement regarding the use, development, conveyance and/or implementation of the Project at the City Property. Notwithstanding anything to the contrary in this MOU, the Parties shall not have any legal obligation under or by virtue of this MOU, including any obligation to enter into the Master Agreement or other contract, to provide any services, to disclose any information, to make any investment or pay any consideration or compensation, whether or not expressly described herein; provided that the Parties expect to cooperate in good faith along the lines described in this MOU. HomeFed and the City each acknowledge and agree with the other that any funds expended or costs incurred by such Party prior to the time the Master Agreement is executed and delivered are incurred without expectation or right of reimbursement from the other Party.

This MOU is acknowledged by the following officers of the Parties, respectively.

**CITY OF CHULA VISTA,**

a California municipal corporation and charter city

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

Gary Halbert, City Manager

**HOMEFED CORPORATION,**

a California corporation

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

Paul Borden, HomeFed CEO