

**REIMBURSEMENT AGREEMENT WITH HOMEFED VILLAGE III MASTER, LLC
FOR THE CONSTRUCTION OF NEIGHBORHOOD PARK P-1 IN OTAY RANCH
VILLAGE 3**

This Reimbursement Agreement for the Construction of Neighborhood Park P-1 in Otay Ranch Village 3 (“Reimbursement Agreement” or “Agreement”), dated this ____ day of _____ 20____, the “Effective Date,” is made and entered into by and between the CITY OF CHULA VISTA, a California municipal corporation and charter city (City), and HOMEFED VILLAGE III MASTER, LLC, a Delaware limited liability company (referred to herein as “Master Developer” or “HomeFed”). City and Master Developer when referenced herein shall be referred to as a “Party,” or collectively, the “Parties.” This Reimbursement Agreement is entered into with reference to the following Recitals:

RECITALS

- A. WHEREAS, City Council approved Resolution 2016-257 approving the Agreement Regarding Construction of Neighborhood Park P-1 in Otay Ranch Village 3 and a portion of Community Park P-2 in Otay Ranch Village 4, dated December 6, 2016 (the “Parks Agreement”); and
- B. WHEREAS, the provision of turnkey Neighborhood Park P-1 (Project) are identified in Section 3 of the Parks Agreement; and
- C. WHEREAS, subject to the execution and approval by City Council of a separate amendment to the Parks Agreement, the City and HomeFed agree to each contribute matching fund amounts, up to but not to exceed five hundred thousand dollars (\$500,000.00) each for a combined total not to exceed one million dollars (\$1,000,000.00), in addition to the Neighborhood Park Budget pursuant to the Parks Agreement to cover only those costs needed to construct the park amenities included in Exhibit A, attached hereto and incorporated herein by this reference; and
- D. WHEREAS, subject to the execution and approval by City Council of said separate amendment to the Parks Agreement, the City and HomeFed agree that HomeFed’s additional contribution of \$500,000.00 is in excess of their fee obligation pursuant to the City’s Parkland Acquisition and Fee Program and is not eligible for credit against said fee program; and
- E. WHEREAS, pursuant to Resolution 2006-191, the City has collected funds from the Eastlake III Senior Project (Olympic Pointe) which may be utilized on any park or public facility serving the Eastern Territories of Chula Vista (the “Olympic Pointe Park Funds”); and
- F. WHEREAS, the Project is eligible for funds from the Olympic Pointe Park Funds; and
- G. WHEREAS, subject to the execution and approval by City Council of said separate amendment to the Parks Agreement, the City desires to apply a portion of the Olympic

Pointe Park Funds to satisfy the City's contribution of five hundred thousand dollars (\$500,000.00) toward the Neighborhood Park P-1 budget; and

- H. WHEREAS, currently, the City has sufficient Olympic Pointe Park Funds available to reimburse HomeFed for the City's contribution toward the Neighborhood Park P-1 budget; and
- I. WHEREAS, HomeFed desires to enter into this Reimbursement Agreement with the City, so that it may obtain reimbursement for the City's contribution toward the Neighborhood Park P-1 budget.

NOW THEREFORE, in consideration of the Recitals, mutual obligations of the Parties, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Master Developer agree as follows:

ARTICLE I. DEFINITIONS

1.1 Definitions

In addition to terms defined in the Recitals, the following terms shall have the indicated definitions throughout this Agreement:

"Bid Documents" means the documents prepared by Master Developer to let a Parks construction contract pursuant to CVMC Chapter 2.56.

"City's Park Contribution" means a portion of the Olympic Pointe Park funds, not to exceed five hundred thousand dollars (\$500,000.00), to be contributed in an amount equal to the Developer's Extraordinary Park Contribution.

"Budget" means the total of Development Fees (defined below) assessed for residential building permits in Village 3.

"Commence Construction" means a construction permit or other such approval necessary to commence construction has been issued by the City and construction staging has begun.

"Community Park" means Park P-2 as shown on Exhibit C-2 and as more particularly described in the Village 4 Sectional Planning Area (SPA) Plan.

"Community Park Budget" means the share of the Budget allocated to construction of the Community Park (P-2) in Village 4, proportional to the ratio of community park acres to total required parkland acres for Village 3.

"Completion of Construction" means that a park has been completed to the reasonable satisfaction of City's Director of Public Works or designee, exclusive of the Maintenance Establishment Period.

“Construction Costs” means all of the costs of providing a Park, including: design costs; labor and materials; project management, administration and supervision (including in-house time); and maintenance costs during any required establishment and warranty period.

“CVMC” means the Chula Vista Municipal Code.

“Development Fees” means the ‘development’ portion of the Parkland Acquisition and Development (PAD) fees that the Master Developer would have paid pursuant to CVMC 17.10.

“Developer’s Extraordinary Park Contribution” means an amount not to exceed five hundred thousand dollars (\$500,000.00), to be contributed in an amount equal to the City’s Park Contribution, above and beyond the Developer’s PAD fee obligation pursuant to CVMC Chapter 17.10

“Maintenance Establishment Period” means the period of time between Completion of Construction and turnover of a Park to the City in which the contractor is responsible for maintaining a Park to ensure that the plant material is fully established before a Park opens for public use. The duration of this period and maintenance operations will be specified in the contract documents for the specific Park project, subject to adjustment as determined by the City’s Director of Public Works, or designee, in their sole discretion.

“Master Developer” means HOMEFED VILLAGE III MASTER, LLC. Master Developer, who will construct park improvements, has or shall, convey interests in portions of Village 3 to home builders or developers..

“Neighborhood Park” means Park P-1 (7.5 net acres) as particularly described in the Village 3 North and a Portion of Village 4 Sectional Planning Area (SPA) Plan.

“Neighborhood Park Budget” means the share of the Budget allocated to construction of the Neighborhood Park (P-1) in Village 3 North and a Portion of Village 4, proportional to the ratio of neighborhood park acres to total required parkland acres for Village 3.

“Park Improvements” means the improvements per the City-approved park construction documents.

“Park Master Plan” means the Master Plan as defined in the Chula Vista Landscape Manual (Part 3 – Public City Requirements, Section 1 – Submittals) and as recommended by the Parks and Recreation Commission and approved by the City Council.

“Turnkey” means designed and constructed by the Master Developer consistent with the provisions of the Chula Vista Landscape Manual, relevant SPA Plans, Master Park Plans, and related Development Services Department specifications and policies in effect on the date of this Agreement, and ready for use without any further improvements required as determined by the Director of Development Services.

ARTICLE II. SUBJECT OF THE AGREEMENT - GENERALLY

The above-listed Recitals are true and correct and are hereby incorporated by this reference. All attachments to this Reimbursement Agreement as Exhibits are also incorporated herein by this reference.

- 2.1 Neighborhood Park P-1.** Except as expressly provided in this Reimbursement Agreement, HomeFed shall deliver in “Turnkey” condition Neighborhood Park P-1 in accordance with the terms and conditions of the Parks Agreement, which are incorporated herein by this reference, and in accordance with all the terms and conditions of this Reimbursement Agreement.
- 2.2 City Payment.** City shall reimburse HomeFed, subject to the terms and conditions herein, for the City’s Park Contribution toward the Neighborhood Park P-1 budget. Parties acknowledge and agree that any funds added to the Neighborhood Park P-1 budget shall be used to provide those amenities identified in Exhibit A (collectively “Improvements”) and shall be completed pursuant to the Parks Agreement prior to any reimbursement to HomeFed.
- 2.3 Amendments to Exhibit A.** Subject to the execution and approval by City Council of a separate amendment to the Parks Agreement, the City and HomeFed agree to amend Exhibit A should the Neighborhood Park P-1 budget not cover the entirety of Improvements from being completed. In such a case, the Project shall be revised through deductive changes approved by the City Director of Development Services (DDS), such that the Project, as revised, can be completed in accordance with the Neighborhood Park P-1 budget.

ARTICLE III. PROJECT COSTS

- 3.1 Estimated Cost.** The Estimated Cost of the Project is Five Million Seventy Eight Thousand Eight Hundred Seventy-Four Dollars (**\$5,078,874.00**).
- 3.2 Adjustments to Estimated Cost.** Estimated Cost is subject to change in the methods identified below and those established elsewhere in this Reimbursement Agreement.
- 3.2.1 *Annual Adjustments to Estimated Cost.*** Without further amendments to this Reimbursement Agreement, the Estimated Cost may be increased annually by the inflation rate identified in CVMC section 17.10.110 or future amendments to the PAD approved by the City Council.
- 3.2.2 *Revisions to the Estimated Cost.*** In the event that the City Director of Development Services (DDS) reviews the Project and determines that the cost of design and construction will exceed the then current Estimated Cost as adjusted by the inflation factor and the City Council approves an amendment to the Estimated Cost to reflect the increase in cost, the Estimated Cost shall be increased to reflect to revised estimate.

- 3.2.3 *Adjustments Based on Other Cost Increases.* The Estimated Cost may be increased due to: (i) acts of God, acts of any governmental authority, the elements, war, litigation, shortages of material, labor strikes, inflation, later commonly accepted or adopted higher standards and specifications of construction, concealed or unknown conditions encountered in the completion of Project, or other cause beyond HomeFed's control, (ii) actual bids received being greater than estimated, or (iii) other factors not the result of unreasonable conduct by HomeFed. The Estimated Cost may be increased by the amount of such increases, subject to approval by City Council.
- 3.2.4 *Failure to Obtain Approval of Increase.* In any case where City approval is required for an increase in the Estimated Cost and such approval is not obtained, HomeFed shall have no obligation to incur costs in excess of the Estimated Cost. In such a case, the Project shall be revised through deductive changes approved by the DDS, such that the Project, as revised, can be completed for the Estimate Cost.
- 3.2.5 *Amendments to Exhibit A.* Subject to the execution and approval by City Council of a separate amendment to the Parks Agreement, the City and HomeFed agree to amend Exhibit A should an increase in the Estimated Cost not cover the entirety of Improvements from being completed. In such a case, the Project shall be revised through deductive changes approved by the DDS, such that the Project, as revised, can be completed for the Estimate Cost.

3.3 Notification of Increased Costs. If, at any time, HomeFed anticipates that the amount expended on the Project will exceed the Estimated Cost, HomeFed shall immediately, not more than ten (10) Working Days from becoming aware of the potential increase, notify the City in writing. This written notification shall include an itemized cost estimate and a list of recommended revisions (e.g., deductive changes) which HomeFed believes will bring the construction cost to within the Estimated Costs. The City may either: (i) approve an increase in the Estimated Cost; or (ii) delineate a project which may be constructed for the Estimated Cost; or (iii) any combination of (i) and (ii).

ARTICLE IV. RECORDS AND AUDITS

4.1 Retention of Records. HomeFed shall maintain data and records related to this contract for a period of not less than three (3) years following receipt of final payment under this Reimbursement Agreement.

4.2 Audit of Records. At any time during normal business hours and as often as the City deems necessary, HomeFed and any or all of HomeFed contractors and subcontractors shall make available to the City for examination at reasonable locations within the City/County of San Diego all of the data and records with respect to all matters covered by this Reimbursement Agreement. HomeFed and all contractors and subcontractors will permit the City to make audits of all invoices, materials, payrolls, records of personnel, and other data and media relating to all matters covered by this Reimbursement Agreement. If records are not made available within the City/County of San Diego, then HomeFed shall pay all the City's travel related costs to audit the

records associated with this Reimbursement Agreement at the location where the records are maintained. Such costs will not be Reimbursable Costs.

4.2.1 *Costs.* HomeFed and HomeFed's agents shall allow City to audit and examine books, records, documents, and any and all evidence and accounting procedures and practices that City determines are necessary to discover and verify all costs of whatever nature, which are claimed to have been incurred, anticipated to be incurred, or for which a claim for additional compensation or for Extra Work have been submitted under this Reimbursement Agreement.

ARTICLE V. PROVISIONS OF THE REIMBURSEMENT PAYMENT

5.1 Payment of the Reimbursement Amount

5.1.1 *Means of Payment.* The City's Park Contribution shall be made by means of a reimbursement of fifty percent (50%) Construction Costs for P-1 in excess of the Neighborhood Park Budget, pursuant to the Parks Agreement and the First Amendment to the Parks Agreement, that are incurred by HomeFed.

5.1.2 *Maximum Reimbursement Amount.* The maximum reimbursement payment amount (Reimbursement Amount) pursuant to this Reimbursement Agreement shall be five hundred thousand dollars (\$500,000.00). Expenses City incurs, that are not charged to HomeFed, shall be deducted from the maximum Reimbursement Amount.

5.1.3 *Funds for Payment of Reimbursement Amount.* HomeFed acknowledges and agrees that the source of funds for the payment of the Reimbursement Amount shall be limited to those Olympic Pointe Park Funds collected by the City. No other City fund, or monies held by, owed to, or in trust for the City, shall be used by the City or sought to be collected by HomeFed, its employees, agents, contractors or subcontractors.

5.1.4 *Prerequisites to Payment of the Reimbursement Amount.* Payment of the Reimbursement Amount shall be pursuant to the terms, provisions, conditions, articles, and agreements of the Parks Agreement and the First Amendment to the Parks Agreement.

5.1.5 *Time of Payment.* Within thirty (30) Calendar Days following the date on which City accepts the completed Project pursuant to the terms, provisions, conditions, articles, and agreements of the Parks Agreement, the City shall reimburse HomeFed for the Reimbursement Amount. If a payment date falls on a weekend or holiday, the Payment Date shall be extended to the next business day.

ARTICLE VI. MISCELLANEOUS PROVISIONS

6.1 **Notices.** All notices and demands given pursuant to this Agreement shall be written. They shall be deemed served (i) immediately, upon personal delivery; (ii) the next business day, if sent prepaid by recognized overnight service such as FedEx for delivery the next business day; or (iii) three (3) business days after deposit in the United States mail,

certified or registered mail, return receipt requested, first-class postage prepaid. Until notice of a change of address is properly given, notice shall be given:

If to City: City of Chula Vista
Attn: City Manager
276 Fourth Avenue
Chula Vista, California 91910

With a copy to: Office of the City Attorney
Attn: City Attorney
276 Fourth Avenue
Chula Vista, California 91910

If to Master Developer: HomeFed Village III Master, LLC
193 Wright Place, Suite 220
Carlsbad, California 92008
Attn: General Manager

With a copy to: Allen Matkins Leek Gamble Mallory & Natsis, LLP
501 West Broadway, 15th Floor
San Diego, California 92101
Attn: Jeff Chine

- 6.2 **Captions.** Captions in this Agreement are inserted for convenience of reference. They do not define, describe or limit any term of this Agreement.
- 6.3 **Entire Agreement.** This Agreement embodies the entire agreement and understanding between the parties regarding the subject matter hereof. No prior or contemporaneous oral or written representations, agreements, understandings and/or statements regarding its subject matter shall have any force or effect. This Agreement is not intended to supersede or amend any other agreement between the parties unless expressly noted. However, all previous written agreements, such as supplemental subdivision improvement agreements, by and between the parties relating to park obligations, as well as City's Parks and Recreation Master Plan and Landscape Manual, remain in full force and effect except to the extent they conflict with this Agreement.
- 6.4 **Scope.** This Agreement applies only to the Master Developer Property; it shall not relieve developers other than the Master Developer (and its subsidiary entities, merchant builders and other buyers of portions of the Master Developer Property) from any responsibility to meet park development obligations per CVMC 17.10.
- 6.5 **Severability.** If any provision of this Agreement or its particular application is held invalid or unenforceable, the remaining provisions of this Agreement, and their application, shall remain in full force and effect, unless a party's consideration materially fails as a result.
- 6.6 **Recordation.** The City may record this Amendment in the Office of the County Recorder of San Diego County, California.

- 6.6 **Preparation of Agreement.** No inference, assumption or presumption shall be drawn from the fact that a party or its attorney drafted this Agreement. It shall be conclusively presumed that all parties participated equally in drafting this Agreement.
- 6.7 **Authority.** Each party warrants and represents that it has legal authority and capacity to enter into this Agreement, and that it has taken all necessary action to authorize its entry into this Agreement. Each individual signing this Agreement on behalf of an entity warrants that his/her principal has duly authorized him/her to sign this Agreement on its behalf so as to bind his/her principal.
- 6.8 **Modification.** This Agreement may not be modified, terminated or rescinded, in whole or in part, except by written instrument duly executed and acknowledged by the parties hereto, their successors or assigns.
- 6.9 **Successors.**
- 6.9.1 In the event that Master Developer transfers or assigns its interest in the Master Developer Property in whole or in part, to any person or entity during the Term of this Agreement, any such transferee or assignee shall be bound by the terms and conditions of this Agreement, as applicable to the portion of the Master Developer Property acquired by the transfer or assignment. Notwithstanding the foregoing, no assignment or transfer shall relieve the Master Developer from any of its obligations under this Agreement without prior written consent by the City, which consent shall not be unreasonably withheld.
- 6.9.2 Master Developer's design, construction and payment obligations hereunder may be performed or reimbursed, in whole or in part, by a community facilities district or similar financing district, subject to approval by City.
- 6.9.3 Once all Parks and their associated improvements have been constructed and dedicated, as required by the Parks Agreement, all Park dedication and improvement requirements for the Master Developer Property shall be deemed complete and the obligation shall be removed from title, as to Master Developer and any merchant builders developing within the Master Developer Property.
- 6.10 **Term.** Unless terminated earlier in accordance with this Agreement, this Agreement shall remain in effect until, but shall automatically terminate upon, completion in full of the Reimbursement Payment in accordance with the terms of this Agreement; provided, however, that the provisions of Section 6.13 (Indemnification) shall survive termination of this Agreement.
- 6.11 **Governing Law and 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 shall be the City of San Diego.

- 6.12 Administrative Claims, Requirements and Procedures.** No suit or arbitration shall be brought arising out of this Agreement against the City unless a claim has first been presented in writing and filed with the City and acted upon by the City in accordance with the procedures set forth in Chapter 1.34 of the CVMC, 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.
- 6.13 Indemnification.** Master Developer shall indemnify, protect and hold the City, its officers, employees, agents and independent contractors, free and harmless from any liability, costs, injury, including death, or damage of any kind or nature, relating to, arising out of, or alleged to be the result of the acts, omissions, negligence or willful misconduct of Master Developer or Master Developer's employees, subcontractors or other persons, agencies or firms for whom Master Developer is legally responsible, (collectively, "Master Developer"), relating to or arising from Master Developer's activities contemplated under this Agreement, excepting only those claims for damages arising from the active negligence or willful misconduct of the City. Master Developer shall defend, at its own expense, including attorneys' fees, the City, its officers, agents, employees and independent contractors in any legal action based upon such alleged acts or omissions of Master Developer. The City may, in its discretion, participate in the defense of any such legal claim, action or proceeding at its own expense with the understanding that Master Developer's attorneys shall be lead counsel and City's attorneys shall, to the maximum extent feasible, cooperate with Master Developer's attorneys.
- 6.14 Non-liability of City Officials and Employees.** No member, official, employee or consultant of the City shall be personally liable to Master Developer or its successor-in-interest in the event of any default or breach by City, or for any amount which may become due to Master Developer or to its successor-in-interest, or on any obligations under the terms of this Agreement.
- 6.15 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be the original and all of which shall constitute one and the same document.

[End of page. Signature page follows this page.]

IN WITNESS WHEREOF, this Reimbursement Agreement is executed as of the day and year first set forth above.

CITY

CITY OF CHULA VISTA, a California charter city and municipal corporation

By: _____
Gary Halbert, City Manager

HOMEFED/MASTER DEVELOPER

HOMEFED VILLAGE III MASTER, LLC, a Delaware limited liability company

By:  _____ *

ATTEST:

By: _____
Kerry Bigelow, City Clerk

OTAY LAND

HOMEFED OTAY LAND II, LLC, a Delaware limited liability company

By:  _____

APPROVED AS TO FORM:

By: _____
Glen R. Googins, City Attorney

By:  _____

* Signatories to provide signature authority for signatory.

Exhibit A

**OTAY RANCH VILLAGE 3, PARK 1
 ESCAYA PARK PRELIMINARY MASTER PLAN
 SELECTED PARK AMENITIES PAID
 FOR BY ADDITIONAL PARK FUNDS**

Description	Direct Cost
1. 10' EAST WALK AT SOCCER FIELDS	
6" nom. gray light vehicular pavement	\$ 80,500
drinking fountain	\$ 4,460
benches	\$ 7,700
additional walkway lighting	\$ 58,221
SUBTOTAL	\$ 150,881
2. LARGE GROUP SHADE STRUCTURE	
24' x 34' shade structure	\$ 102,000
4" nom. gray pedestrian pavement	\$ 18,900
additional picnic tables	\$ 2,780
trash/recycle receptacles	\$ 2,360
hot ash receptacles	\$ 915
barbecue	\$ 1,180
SUBTOTAL	\$ 128,135
3. SMALL GROUP PICNIC AREA AT SOCCER FIELDS	
4" nom. gray pedestrian pavement	\$ 8,820
additional picnic tables	\$ 5,560
trash/recycle receptacles	\$ 2,360
hot ash receptacles	\$ 915
barbecue	\$ 1,180
SUBTOTAL	\$ 18,835
4. ADDITIONAL TREES	
park trees, 24" box	\$ 61,750
SUBTOTAL	\$ 61,750
5. SODDED TURF	
sodded turf (increase over hydroseed)	\$ 128,706
SUBTOTAL	\$ 128,706
6. 10' WEST WALK LOOP WITH LIGHTING	
6" nom. gray light vehicular pavement	\$ 83,869
additional walkway lighting	\$ 58,178
SUBTOTAL	\$ 142,047



OTAY RANCH VILLAGE 3, PARK 1
ESCAYA PARK PRELIMINARY MASTER PLAN
SELECTED PARK AMENITIES PAID
FOR BY ADDITIONAL PARK FUNDS

Description	Direct Cost
7. OVERLOOK PICNIC AREA	
additional picnic tables	\$ 5,560
benches	\$ 7,700
trash/recycle receptacles	\$ 2,360
4" Concrete paving, integral color, pedestrian	\$ 11,724
decomposed granite paving	\$ 3,500
SUBTOTAL	\$ 30,844
8. SPORTS FIELD LIGHTING	
Musco lights	\$ 180,000
Musco controls	\$ 10,500
Caltrans concrete pull boxes	\$ 2,700
Musco lighting branch	\$ 9,160
SUBTOTAL	\$ 202,360
SUBTOTAL OF ADDITIONAL AMENITIES	\$ 863,558
SOFT COSTS AND INSPECTION FEES	\$ 136,442
TOTAL COST OF ADDITIONAL AMENITIES	\$ 1,000,000

