

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Chula Vista
276 Fourth Avenue
Chula Vista CA 91910
Attn: City Clerk

No fee for recording pursuant to
Government Code Section 27383

THIS SPACE ABOVE FOR RECORDER'S USE

**AGREEMENT REGARDING CONSTRUCTION OF PARKS
[OTAY RANCH VILLAGE EIGHT WEST]**

This Agreement Regarding Construction of Parks (“**Agreement**”) is made as of _____, 2020, by and between HomeFed Village 8, LLC, a Delaware limited liability company and Otay Land Company, LLC, a Delaware limited liability company (collectively, “**Developer**”), and the City of Chula Vista, a California municipal corporation and charter city (“**City**”), with reference to the following facts:

- A. Developer owns certain real property generally known as Otay Ranch Village Eight West (“Village 8 West” or “Project”), as shown on **Exhibit A**, and located in the City of Chula Vista (the “**Property**”). The Developer intends to develop the Property as generally depicted on **Exhibit B** attached hereto.
- B. Village 8 West will be developed in accordance with its Sectional Planning Area (SPA) Plan, adopted by Chula Vista City Council Resolution 2013-270 and amended by City Council Resolution 2020-033 (Project); and
- C. The Developer shall comply with the City’s Parklands and Public Facilities Ordinance [Chula Vista Municipal Code (“**CVMC**”) Chapter 17.10 (“**PLDO**”)], as amended.
- D. The PLDO’s requirements have been and will be imposed on the Project through conditions of approval of the Tentative Subdivision Map for Village 8 West (CVT 19-03) approved by Chula Vista City Council Resolution 2020-034 for the Project (“**Tentative Map**”) and supplemental subdivision improvement agreements.
- E. The PLDO is utilized to determine the parkland required for the Project, whereby 460 square feet is required per single-family dwelling unit (DU) and 341 square feet is required per multi-family DU. For the purposes of the Agreement, 561 single family DU times 460 square feet plus 1,773 multiple-family residences times 341 square feet divided by 43,560 square feet equals 19.8 acres.

- F. The Village 8 West Sectional Planning Area (SPA) Plan anticipates that the Project will provide sufficient area and facilities to meet its recreational needs on site through the provision of a Town Square Park, a Neighborhood Park and a Community Park consistent with the Project's parks master plan and the Parkland Acquisition requirements of the PLDO.
- G. The Developer has agreed to provide a mechanism to fund the perpetual maintenance of 8.3 acres of neighborhood parks planned within the Project, as required by the Fiscal Impact Analysis prepared by DPFG dated January 16, 2020 and included in the Project's Supplemental PFFP. Based on an estimated annual cost of \$14,000 per acre to maintain parks, the Developer or their Assignees are responsible for an annual park maintenance cost of approximately \$116,200/year. The parks maintenance budget shall be adjusted to reflect adjustments in escalation of cost on an annual basis and in accordance with the approved Association annual budget. The cost saving to the City General Fund is reflected in the fiscal model summary and is a requirement of the Project.
- H. The Project is a common interest development and, by its approval of this Agreement, the legislative body of the City has determined that both publicly-owned and privately-owned parks developed within the Project are eligible to satisfy park dedication and improvement and/or in lieu fee requirements under the PLDO.
- I. The parties intend by this Agreement to implement the requirements of the SPA Plan, the PLDO, and the conditions of approval of the Tentative Map by establishing a Town Square Park, a Neighborhood Park, and a Community Park that satisfy park requirements for the Project. The City typically owns and pays all or part of the cost to maintain parks using General fund dollars. In analyzing the anticipated fiscal impacts of Village 8 West with the 2020 SPA Amendment, an ongoing fiscal deficit was identified. In order to address that deficit, the Developer agreed to provide a mechanism to fund the maintenance of the Town Square Park and Neighborhood Park, in perpetuity. The Developer proposes to fund such ongoing maintenance activities through a Homeowner's Association (the "Association"). In order to fund the ongoing maintenance of the Town Square Park and Neighborhood Park, the Association must retain fee title ownership of the subject properties. The Community Park within the Project will be owned and maintained by the City.
- J. In order to secure full public access and enjoyment of the Town Square Park and the Neighborhood Park, the Developer will grant a Public Access Easement over both parks, in conjunction with the Project's Final Map. The Town Square Park and Neighborhood Park will be open for park use consistent with CVMC Section 2.66.270. At no time, will the Association modify Town Square Park or Neighborhood Park hours of operation without the approval of the Director of Development Services, or his/her designee. Pursuant to the Cota Vera Conditions, Covenants and Restrictions ("CCRs"), each Owner, and the Association acknowledge and agree that such Town Square Park and Neighborhood Park shall be required to remain open to the general public, and that the Association shall be obligated to maintain, operate and program such Town Square Park and Neighborhood Park in accordance with this Agreement. In no event shall the Association or any Owner seek to have the City-accepted Public Access Easement vacated.

- K. The Developer will also be required to grant on the first Final Map an irrevocable offer of dedication (“IOD”) to the City for a total of 15.11 acres (14.8 usable acres) of the Community Park as provided in the conditions of approval for the Tentative Map. Such IOD is subject to the review and approval of the Development Services Director, or his/her designee. The allocation of parkland credits associated with the 14.8 usable acres will be divided as described in Sections 2 and 2.1. The City will be responsible for construction and maintenance of the Community Park.
- L. This Agreement does not increase or decrease any park obligations but instead clarifies responsibility for the PLDO requirements attributable to the Project by addressing the amount of land required, as well as requirements for park design, park construction, bonding, the level of amenities to be provided, event programming and identifies a maintenance funding mechanism, as required by the Project’s conditions of approval – Tentative Map condition number 43.d (Resolution 2020-234).

NOW THEREFORE, in consideration of the mutual promises described herein, and other good and valuable consideration, the parties agree as follows:

1. **Definitions.** Unless otherwise indicated, for purposes of this Agreement, the following terms shall mean:

1.1 **“Association”** means the property homeowners association that will own, operate and maintain the Town Square Park and the Neighborhood Park.

1.2 **“Bid Documents”** means the documents prepared by Developer to let a Parks construction contract as described in Section 2.4B.

1.3 **“Budget”** means the total of Development Fees (defined below) assessed for residential building permits in Village 8 West, as assigned to each Park.

1.4 **“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.

1.5 **“Community Park”** means the Community Park containing approximately 15.11 gross acres (14.8 usable acres) shown conceptually on **Exhibit “E,”** to be dedicated to the City on the Village 8 West Final “A” Map No. ____ (Lot A). The Community Park will be constructed, operated and maintained by the City.

1.6 **“Community-Oriented Retail Vendors”** means retail and/or commercial vendors approved by Association which may operate within temporary spaces in the Town Square Park or Neighborhood Park. Temporary spaces shall be approved by Association and may include temporary containers, carts, pop-up canopies, etc. Association shall coordinate with vendors to ensure vendors comply with all City requirements, including business license requirements.

1.7 **“Complete Construction”** or **“Completion of Construction”** means that construction of the Town Square Park and/or the Neighborhood Park,

individually, has been completed to the reasonable satisfaction of City's Director of Development Services, or his/her designee, exclusive of any warranty period.

1.8 **"Concessions"** means the sale of food and beverages or other items to the public by Association or by an Association-approved Community-Oriented Retail Vendor from a designated area or building within the Town Square Park and Neighborhood Park.

1.9 **"Construction Costs"** means all of the costs of providing the Park Improvements for the Town Square Park and Neighborhood Park, including: master planning; design development costs; labor and materials; project management, administration and supervision, City plan check and inspection, and maintenance costs during any required establishment and warranty period.

1.10 **"CVMC"** means the City of Chula Vista Municipal Code.

1.11 **"Development Fees"** means the 'development' portion of the Parks Acquisition and Development (PAD) fees paid at building permit issuance, pursuant to CVMC 17.10.

1.12 **"IOD"** means an Irrevocable Offer of Dedication.

1.13 **"Maintenance Establishment Period"** means the period of time between Completion of Construction and turnover of the park to Developer, Association or City, in which the contractor is responsible for maintaining the park improvements which includes ensuring that plant materials are fully established before the park is open for public use. The duration of this period and maintenance operations will be specified in contract documents for the specific park project, subject to adjustments as determined by the City.

1.14 **"Neighborhood Park"** means the Neighborhood Park containing approximately 5.5 usable acres shown conceptually on **Exhibit "D";** however, the final usable acres to be determined during final design of the Neighborhood Park. Neighborhood Park shall be owned, operated and maintained by the Association and a Public Access Easement shall be recorded over the entirety of the Neighborhood Park designated Lot D on the Village 8 West Final "A" Map No. ____.

1.15 **"Park Credit"** means the Parkland Acquisition and Development ("PAD") credits granted to the Developer by the City in satisfaction of the Project meeting its PLDO obligations. Such credits are transferrable to other owners within Village 8 West for application toward PAD fees at building permit issuance.

1.16 **"Park Hours of Operation"** means The Town Square Park and Neighborhood Park shall be open for park use consistent with CVMC Section 2.66.270. At no time, shall Association modify Town Square Park or Neighborhood Park hours of operation without prior Director of Development Services, or his/her designee, approval.

1.17 **"Park Improvements"** mean the improvements per the City approved park construction documents.

1.18 “**Parks**” mean the Town Square Park, the Neighborhood Park and the Community Park.

1.19 “**Public Access Easement**” means an irrevocable easement granted by Developer at no charge to the City for public use and access over, through and across the Town Square Park and the Neighborhood Park. Said easement shall not be subject to vacation provided it is still needed for the purposes for which it was granted.

1.20 “**Resource Management Plan**” means the Otay Ranch Resource Management Plan.

1.21 “**Town Square Park**” means the Town Square Park containing approximately 2.8 acres as shown conceptually on **Exhibit “C”**; however, the final usable acres shall be determined during final design of the Town Square Park and shall be a minimum of 2.0 usable acres. Town Square Park shall be owned, operated and maintained by the Association and a Public Access Easement shall be recorded over the entirety of the Town Square Park designated Lots B and C on the Village 8 West Final “A” Map No. _____.

1.22 “**Turnkey**” means a park is designed, all improvements are constructed, and Maintenance Establishment Period is complete consistent with the provisions of the Chula Vista Landscape Manual, the Landscape Water Conservation Ordinance, the City’s Parks and Recreation Master Plan, the Village 8 West SPA Plan, and related Development Services Department specifications and policies in effect on the date of this Agreement. Reasonable modifications (to reflect that the Town Square Park and the Neighborhood Park will be privately-owned and maintained and accessible to the public through recordation of Public Access Easements) may be approved by the Director of Development Services, or his/her designee.

1.23 “**Usable Acres**” means park acreage eligible to meet parkland obligations as described in the PLDO and City of Chula Vista Parks & Recreation Master Plan.

2. **Satisfying PLDO.** Developer shall fully satisfy the *land dedication* requirements of the PLDO for the Project by granting a Public Access Easement over the Town Square Park and the Neighborhood Park and granting the IOD (as defined below) for 12.3 usable acres within the Community Park. However, the final usable acres allocated to Village 8 West shall be determined during final design.

Developer shall fully satisfy the *park development* requirements of the PLDO for the Project by providing the Turnkey Town Square Park and Neighborhood Park and by paying in-lieu fees for the Project’s proportionate share of the Community Park development improvements as provided in the PLDO (“**Park Development Fees**”).

2.1 **Village 9 Future Obligation.** The remaining 2.5 usable acres within the Community Park IOD will be used to partially satisfy the future PLDO requirement for Otay Ranch Village 9, currently owned by Otay Land Company, LLC, as provided in the conditions of approval for the Village 8 West Tentative Map and the

Village 9 Tentative Map. However, the final usable acres allocated to Village 9 shall be determined during final design.

2.2 **Town Square Park.** Developer shall construct the Town Square Park with the Park Improvements consistent with the SPA Plan and **Exhibit "F"** "Town Square Park Planning Process" attached hereto through the following steps on the following terms:

- A. Park Design and Approval of Construction Documents. Developer shall obtain City approval of the design of the Town Square Park consistent with the SPA Plan and Exhibit "F."
- B. Level of Improvements. City and Developer acknowledge that the Town Square Park shall be owned and maintained by Association and, as such, Park Improvements may deviate from standard Park Improvements typically required in City Parks. The Park Improvements for the Town Square Park provided pursuant to this Agreement shall be in Turnkey condition and consistent with the SPA Plan. Developer may elect to provide amenities beyond those associated with a typical City park. If Developer provides any such additional amenities, the cost and associated park development fee credits shall be subject to approval by Director of Development Services, or his/her designee. As adjacent land uses are defined, Developer may propose that facilities planned within the Town Square Park be modified or rearranged to complement adjacent land uses. Such changes are subject to review and approval by the Director of Development Services, or his/her designee.
- C. Construction/Timing. Developer shall start the design for the Town Square Park not later than issuance of building permit for the 153rd residential unit (or equal to 50% of the Development Fees attributed to the Town Square Park budget).

Developer shall start construction of the Town Square Park once the City has approved the Bid Documents and Budget for the Town Square Park, and not later than the issuance of the building permit for the 550th residential unit (or equal to 100% of the Development Fees attributed to the Town Square Park budget), or as approved by the Development Services Director or his/her designee.

Developer shall pursue that construction diligently to completion and in accordance with the timeframes set forth in the Bid Documents, which have been reviewed and approved by the Director of Development Services, or his/her designee.

- D. Boundary Adjustments. The parties agree that minor adjustments to the Town Square Park boundaries may be appropriate during preparation of the Park Master Plan for the Town Square Park to

optimize the interface with adjacent development. All such adjustments shall be subject to City review and approval. Nothing in this Section shall be construed as allowing any reduction in the overall acreage of the Town Square Park, but additional acreage provided may result in a credit at City's discretion.

2.3 **Neighborhood Park.** Developer shall construct the Neighborhood Park with the Park Improvements on the following terms:

- A. Park Design and Approval of Construction Documents. Developer shall obtain City approval of the design of the Neighborhood Park consistent with the SPA Plan and the Chula Vista Landscape Manual.
- B. Level of Improvements. City and Developer acknowledge that the Neighborhood Park shall be owned and maintained by Association and, as such, Park Improvements may deviate from standard Park Improvements typically required in City Parks, subject to review and approval of Director of Development Services, or his/her designee. The Park Improvements for the Neighborhood Park provided pursuant to this Agreement shall be in Turnkey condition and consistent with the SPA Plan. Developer may elect to provide amenities that are different and/or beyond those associated with a typical City park. If Developer provides any such additional amenities, the cost and associated park development fee credits shall be subject to approval by Director of Development Services, or his/her designee. As adjacent land uses are defined, Developer may propose that facilities planned within the Neighborhood Park be modified or rearranged to complement adjacent land uses. Such changes are subject to review and approval by the Director of Development Services, or his/her designee.
- C. Construction/Timing. Developer shall start the design for the Neighborhood Park not later than the 550th unit building permit or the commencement of construction of the Town Square Park, whichever is earlier.

Developer shall start construction of the Neighborhood Park once the City has approved the Bid Documents and Budget, and not later than the issuance of the 905th residential unit (or equal to 100% of the Development Fees attributed to the Neighborhood Park budget), or as approved by the Development Services Director or his/her designee.

Developer shall pursue that construction diligently to completion and in accordance with the timeframes set forth in the Bid Documents, which have been reviewed and approved by the City's Director of Development Services, or his/her designee.

- D. Boundary Adjustments. The parties agree that minor adjustments to Neighborhood Park boundaries may be appropriate during preparation of the Park Master Plan for the Neighborhood Park to optimize the interface with adjacent development. All such adjustments shall be subject to City review and approval. Nothing in this Section shall be construed as allowing any reduction in the overall acreage of the Neighborhood Park, but additional acreage provided may result in a credit at City's discretion.

2.4 **Estimated Construction Costs.** The total estimated Construction Costs for the Town Square Park and the Neighborhood Park is approximately \$6,323,405 based on October 2019 PAD Fees, or fees applicable at the time the construction contract is awarded. During the design of the Town Square Park and the Neighborhood Park, Developer shall work with City to determine the allocation of the total of estimated improvement costs between the Town Square Park and the Neighborhood Park to determine the feasibility of potentially allocating more improvement costs to the Town Square Park and less to the Neighborhood Park (up to 10% of the Neighborhood Park budget), while still meeting the design intent of the SPA and the City Park and Recreation Master Plan.

- A. Documentation of Construction Costs. Developer shall within sixty (60) days of Completion of Construction provide City for its review and approval all documentation City reasonably requires evidencing the completion of and Construction Costs for each Turnkey Park.
- B. Competitive Bid or Solicitation. Developer may award a contract for construction of the Town Square Park and the Neighborhood Park by competitive bid or solicitation. Developer or its affiliate may act as a design-build entity or prime contractor for the Town Square Park and the Neighborhood Park where Developer provides written notice to City of its intent to act as a design-build entity or prime contractor and provides information demonstrating its competence and qualifications to perform the developer-performed public work, City determines, in City's sole discretion, that Developer is competent and qualified to complete the developer-performed public work and authorizes Developer to proceed with the developer-performed public work; and Developer competitively bids all subcontracts for the developer-performed public work.

(i) Bid and Award. Developer shall prepare, or cause to be prepared, bid documents and contract documents ("**Bid Documents**") for construction of the Town Square Park and the Neighborhood Park in accordance with all applicable local codes, City design guidelines, and project-specific design guidelines, subject to City approval. The Bid Documents shall include, without limitation, detailed plans and technical specifications, bonding requirements, insurance requirements, mandates for timely completion, and remedies for untimely completion. Developer shall solicit, or cause to be solicited, sealed competitive bids for prime contracts (except for prime contracts awarded to Developer or its affiliate pursuant to Section 2.4B) and

subcontracts for construction of the Town Square Park and the Neighborhood Park on a guaranteed maximum price, lump sum price, or per unit, line item basis and in accordance with industry standard procurement practices as determined by City. Developer may combine into one bid solicitation the construction of a Park and other development work, but the bid and contract documents must clearly separate the Park work from other development work to be performed, in a manner and form as approved by City. Developer shall award contracts (except for prime contracts awarded to Developer or its affiliate pursuant to Section 2.4B), and shall award, or shall cause the applicable entity or contractor to award, subcontracts for construction of each Park to the lowest responsive and responsible bidder, or the bidder that is determined by Developer to be the “best qualified contractor,” subject to City approval. When determining the “best qualified contractor,” Developer shall consider, without limitation, a bidder’s demonstrated competence, qualifications, ability to achieve timely completion, capacity, skill, compliance with bid documents, costs, and other relevant criteria. If Developer awards a prime contract or subcontract to a bidder other than the lowest responsive and responsible bidder for an item or unit of work, then all Park Development Credits shall not exceed the amount of the lowest responsive bid for that item or unit of work. This not-to-exceed limitation may be waived where: (a) the amount of the bid does not exceed the engineer’s estimate or other approved estimate for the applicable Park by more than 10 percent; and (b) the City approves the waiver. All approvals of City required hereunder shall be by the Director of Development Services, or his/her designee.

2.5 **Park Credits.** City shall grant credits to Developer in satisfaction of Project meeting its PLDO obligations:

- A. Acquisition Credits. Developer is entitled to credits against the Park Acquisition Fees for the Town Square Park, the Neighborhood Park, and the Community Park, in accordance with Section 2. These credits are valued in accordance with the established costs for acquisition of parkland at the time of the Agreement and may be transferred to other owners within Village 8 West for application toward PAD fees at building permit issuance.
- B. Development Credits. Subject to adjustment pursuant to Section 2.4, Developer is entitled to credits against the Park Development Fees for the Town Square Park and Neighborhood Park in the amount of such Estimated Construction Costs. Credits shall be based on the Park Development Fees in effect under CVMC 17.10.110, at the time the contract is executed for such Turnkey Park. Credits may be transferred to other owners within Village 8 West and applied toward PAD fees as building permits are issued for residences within the Project. Developer will receive credit against Park Development Fees for each Park as follows:

- (i) 50% credit with City’s acceptance of
Estimated Construction Cost.
- (ii) 25% credit with contract for construction

(iii) 25% at Completion of Construction

C. Adjustments. After completion of the Town Square Park and Neighborhood Park and determination of the actual Construction Costs pursuant to Section 2.4, if the amount of the credits against the Park Development Fees that have been applied to building permits issued for residences within the Project exceed the actual Construction Costs, Developer will pay the balance of the Park Development Fees to the City within 60 days of a written notice to Developer. Developer will be entitled to apply to Park Development Fees any unused credits based on the actual Construction Costs. If Developer determines that actual Construction Costs may exceed the estimated Construction Costs, then Developer may propose to pay the additional actual Construction Costs or modify the Park Master Plan to reduce costs consistent with the estimated Construction Costs, subject to the approval of the Director of Development Services, or his/her designee.

2.6 **Community Park IOD.** Developer shall grant an IOD on the first Village 8 West Final "A" Map for a total of 15.11 gross acres (14.8 usable acres) of Community Park land as provided in the condition of approval for the Tentative Map. Such IOD shall be free and clear of all encumbrances and easements that would prevent use of the Community Park for public park purposes, subject to the review and approval of the Development Services Director, or his/her designee. The City shall be responsible for construction and maintenance of the Community Park.

2.7 **Additional Parkland.** If the Project includes more than 561 single family residences and more than 1,773 multi-family residences and that development results in additional parkland park acquisition or in lieu fee obligations in accordance with the PLDO, Developer shall satisfy the additional obligations to the satisfaction of the Director of Development Services, or his/her designee.

2.8 **Resource Management Plan.** The Otay Ranch Phase 2 Resource Management Plan Update (RMP), Section 6.1.2, requires the conveyance of fee title to land within the Otay Ranch Preserve to the Otay Ranch Preserve Owner Manager or its designee at a ratio of 1.188 acres for each acre of "development area," as defined in RMP. Because the Town Square Park and the Neighborhood Park will have a Public Access Easement granting the public access for public park purposes, the City agrees that the Town Square Park and the Neighborhood Park will be considered "Common Area" for purposes of the RMP, and therefore, in accordance with the RMP, Section 6.1.2, Developer will not be required to convey land within the Otay Ranch Preserve with respect to the acreage within the Town Square Park and the Neighborhood Park.

2.9 **Vacation.** Should the Public Access Easement be vacated in the future, and the public is no longer able to use the Town Square Park and/or the Neighborhood Park for public park purposes, then the Applicant for the vacation shall be required to satisfy the RMP conveyance and PAD Fee requirements with respect to affected acreage within the Town Square Park and/or the Neighborhood Park prior to or concurrently with any Public Access Easement vacation.

3. **Rentals, Concessions and Events.** Rentals, concessions, and special events are contemplated in the Town Square Park and Neighborhood Park. Unless specifically permitted in the Village 8 West SPA Plan, activities within all parks within Village 8 West shall be subject to CVMC Chapter 2.66 Park and Facilities Rules.

3.1 **Rentals and Concessions in the Town Square Park and Neighborhood Park.** The Association shall have full decision-making power over rentals and concessions in the Town Square Park and Neighborhood Park, as well as control over and right to receive any revenues derived therefrom. Both Association members and the public shall have access to rental opportunities within the Town Square Park and Neighborhood Park. Members of the public shall coordinate directly with the Association for such rentals and the payment of any rental fees. Association members or the public may secure rentals on a first come-first served basis. Association shall establish rental fees, consistent with City fees for similar amenities. Rental fees for Association members may be discounted at the discretion of the Association.

3.2 **Events and Programming in the Town Square Park and Neighborhood Park.** The Association shall have full decision-making power over events and programming within the Town Square Park and Neighborhood Park. The City shall have the opportunity to request and receive approval from Association for up to a combined total of twelve (12) City-sponsored events per year at the Town Square Park and the Neighborhood Park, subject only to availability, reasonable insurance and public health and safety requirements. City shall coordinate directly with the Association to schedule any City-sponsored event. City shall be responsible for repairing any damages to Neighborhood Park or Town Square Park resulting from any City-sponsored event. In addition, City shall be responsible for all custodial and trash removal following any City-sponsored event. All events shall be consistent with the Village 8 West SPA Plan and the requirements of the CVMC Section 2.66.

4. **Maintenance.** Developer shall be responsible for maintenance of the Town Square Park and the Neighborhood Park to the satisfaction of the Director of Development Services, or his/her designee, until the Association or other entity assumes responsibility in writing for maintenance of the Town Square Park and/or Neighborhood Park pursuant to CC&Rs. CC&Rs shall stipulate that maintenance by Association shall be to the satisfaction of the Director of Development Services, or his/her designee. Association shall submit annual park maintenance and reserve budgets, including life cycle replacement guidelines to City for review by Director of Development Services, or his/her designee, for review. Upon such assumption of Town Square Park and Neighborhood Park maintenance responsibilities by Association, Developer shall be released from any further obligation to maintain the Town Square Park and the Neighborhood Park. City shall maintain the Community Park from and after the City's acceptance of the IOD for the Community Park.

5. **Delays.** The City may approve extensions for the date for Commencement and/or Completion of Construction of the Town Square Park and the Neighborhood Park due to City delays in approving park plans or due to force majeure.

6. **California Labor Code.** As set forth in *Lincoln Landing Project – City of Hayward*, Public Works Case No. 2017-025 (Apr. 18, 2019), the construction of the Town Square Park and the Neighborhood Park is not a “public work” as defined in the California Labor Code for purposes of prevailing wage requirements and is therefore not subject to prevailing wage requirements.

7. **Changes.** The City reserves its right to amend the PLDO, SPA Plan and City Parks and Recreation Master Plan, subject to state and federal law, and to the statutory development agreements affecting Village 8 West, including the Restated and Amended Pre-Annexation Development Agreement originally between Otay Project, L.P., and the City of Chula Vista, dated May 12, 1997, and recorded as document number 1997-0219970 in the Official Records of San Diego County Recorder, as amended. The parties agree that, should any changes in state or federal law result in one or more provisions of this Agreement no longer being enforceable, the parties shall meet and confer regarding amending the Agreement accordingly. The required PLDO fee obligations and values are subject to periodic updates.

8. **City Action.** If the City finds that the proposed design of a the Town Square Park and/or the Neighborhood Park is inconsistent with the SPA Plan, Developer shall have the opportunity to re-design the Town Square Park and/or the Neighborhood Park and submit the revised design for the Director of Development Services, or his/her designee, consideration.

9. **General Provisions.**

9.1 **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 Developer: HomeFed Village 8, LLC
Otay Land Company, LLC
1903 Wright Place, Suite 220
Carlsbad, California 92008

Attn: Chris Foulger and Kent Aden

With a copy to: Sheppard Mullin Richter & Hampton
501 West Broadway, Suite 1900
San Diego, California 92101
Attention: David M. Hymer

9.2 **Captions.** Captions in this Agreement are inserted for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement.

9.3 **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.

9.4 **Scope.** This Agreement applies only to the Property; it shall not relieve developers other than Developer (and its subsidiary entities, merchant builders and other buyers of portions of the Property) from any responsibility to meet park development obligations per the PLDO.

9.5 **Contents of Agreement.** All recitals set forth above and all exhibits attached hereto are part of this Agreement.

9.6 **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.

9.7 **Recordation.** The City may record this Agreement in the Office of the County Recorder of San Diego County, California.

9.8 **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.

9.9 **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 party warrants and represents that each individual signing this Agreement on behalf of such entity has been duly authorized to sign this Agreement on its behalf so as to bind his/her principal.

9.10 **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.

9.11 **Successors.**

A. Transfers. In the event that Developer transfers or assigns its interest in the 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 Property acquired by the transfer or assignment. Notwithstanding the foregoing, except as provided in Section 3 with respect to maintenance of the Town Square Park and the Neighborhood Park, no assignment or transfer shall relieve the Developer from any of its obligations under this Agreement without prior written consent by the City, which consent shall not be unreasonably withheld.

B. Compliance. Developer's compliance with this Agreement shall be deemed to satisfy Developer's PLDO and SPA Plan obligations relating to Parks. Once the Town Square Park and the Neighborhood Park and their associated improvements have been constructed and once the Community Park has been dedicated, as required by this Agreement and the required PAD fees have been paid to City, all Park dedication and improvement requirements for the Property shall be deemed complete.

C. No Further Obligation. Notwithstanding any other provision of this Agreement:

(i) When any individual lot has been finally subdivided and sold, leased, or made available for lease to a member of the public or any other ultimate user, and a certificate of occupancy has been obtained for the building(s) on the lot, that lot and its owner shall have no further obligations under and shall be released from this Agreement.

(ii) Upon the conveyance of any lot, parcel, or other property, whether residential, commercial, or open space, to a homeowners' association, property owners' association, or public or quasi-public entity, that lot, parcel, or property and its owner shall have no further obligations under and shall be released from this Agreement.

9.12 **Term.** This Agreement shall remain in effect in perpetuity, provided however that the provisions of Sections 2.2 through 2.4 will terminate upon Completion of Construction of the Town Square Park and the Neighborhood Park.

9.13 **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, and performance hereunder, shall be the City of Chula Vista.

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

9.15 **Remedies.** The rights of the Parties under this Agreement are cumulative and not exclusive of any rights or remedies that the Parties might otherwise have unless this Agreement provides to the contrary, including the rights of the City to enforce the CC&Rs as provided in Section 16.9 thereof. Should the Developer and/or its Assignee fail to maintain the Town Square Park and the Neighborhood Park in accordance with this Agreement or should they take any action that unreasonably restricts public access to the Town Square Park and the Neighborhood Park in violation of the Public Access Easement, the City may provide written notice of such failure to the Developer or the Association setting forth in detail the alleged failure. The Developer or the Association shall have ten (10) business days from receipt of such notice to cure, or if it is not possible to cure within such ten (10) business day period, to commence curing such failure. If the Developer or the Association fails to cure, or fails to commence to cure as provided herein, the City may perform the maintenance and charge the cost thereof to the Developer or the Association.

9.16 **Indemnification.** 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 Developer or Developer's employees, subcontractors or other persons, agencies or firms for whom Developer is legally responsible, relating to or arising from Developer's activities contemplated under this Agreement, excepting only those claims for damages arising from the active negligence or willful misconduct of the City. 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 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 Developer's attorneys shall be lead counsel and City's attorneys shall, to the maximum extent feasible, cooperate with Developer's attorneys. Developer's obligations under this Section shall terminate with respect to any liability, costs, injury, including death, or damage of any kind arising with respect to the Town Square Park and the Neighborhood Park after the Association acquires title to such Town Square Park and Neighborhood Park and with respect to any Community Park after the City accepts the IOD for such Community Park.

9.17 **Non-liability of City Officials and Employees.** No member, official, employee or consultant of the City shall be personally liable to 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 Developer or to its successor-in-interest, or on any obligations under the terms of this Agreement.

9.18 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, but all of which together will constitute one instrument.

[Remainder of page intentionally left blank]

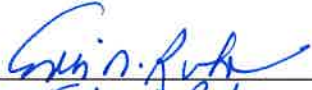
SIGNATURE PAGE TO AGREEMENT REGARDING CONSTRUCTION OF PARKS
[OTAY RANCH VILLAGE 8 WEST]

IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the date set forth above.


CITY OF CHULA VISTA

HomeFed Village 8, LLC, a Delaware limited liability company

By: _____
Mary Casillas Salas,
Mayor

By: 
Name: Erin N. Rube
Its: Vice President

Otay Land Company, LLC, a Delaware limited liability company

By: _____
Name: 
Its: Vice President

Attest:

By: _____
Kerry Bigelow, City Clerk

Approved as to form by

Glen Googins, City Attorney

Exhibit "A"
PROPERTY

CITY OF
CHULA VISTA

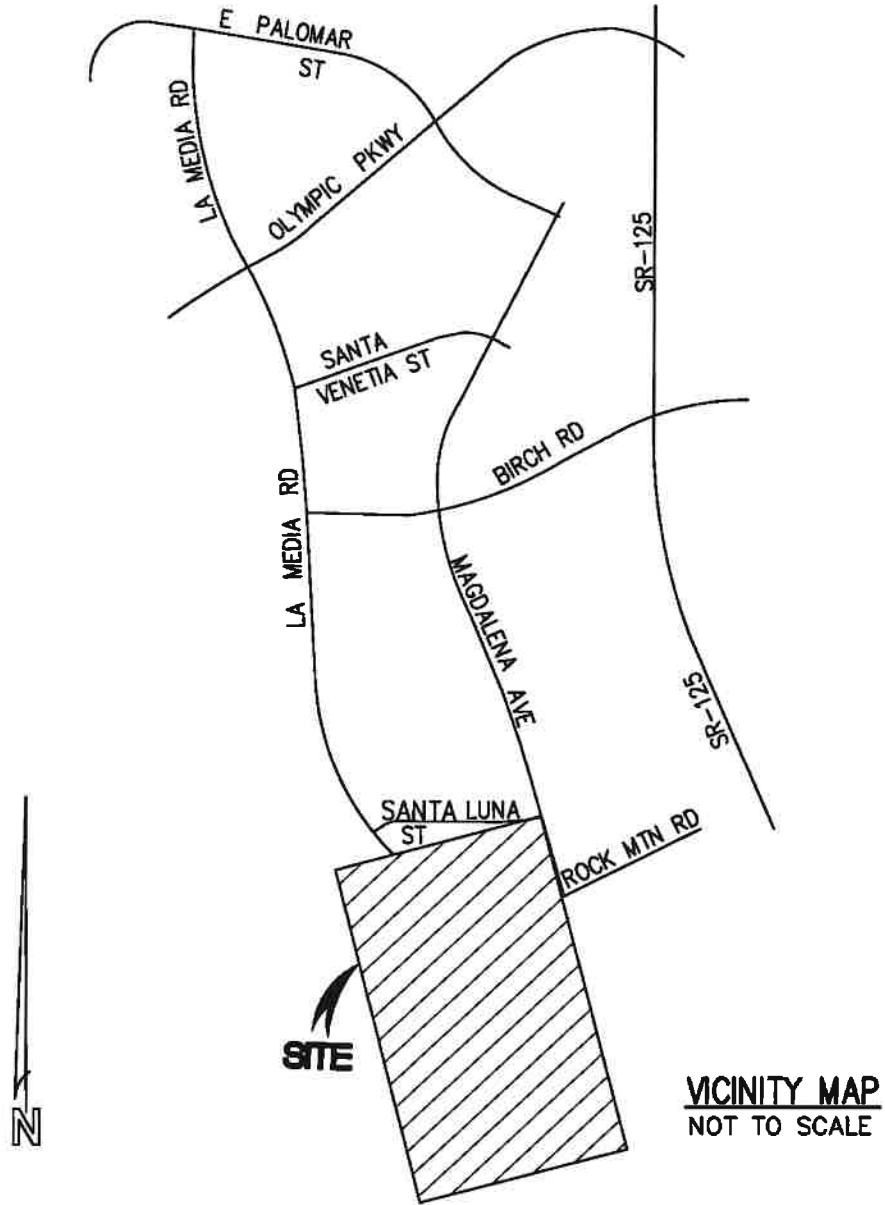


EXHIBIT "B"

VILLAGE 8 WEST SITE UTILIZATION PLAN

Site Utilization Plan

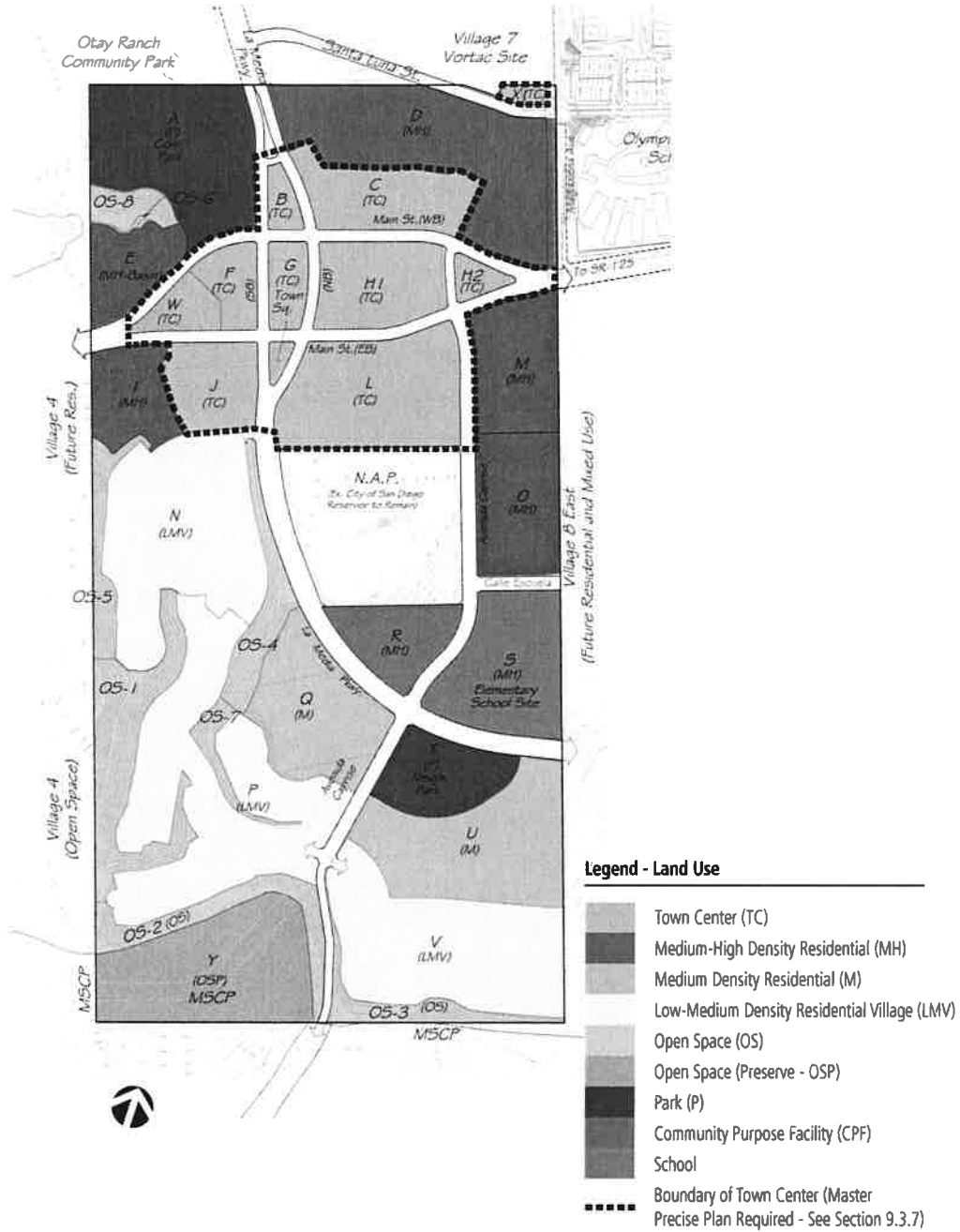


EXHIBIT "C"

TOWN SQUARE PARK CONCEPTUAL PLAN

LEGEND

●●●●● PLAZA / PASSIVE USE

○ OPEN PLAY

⊗ PLAY AREA

✻ PICNIC AREA

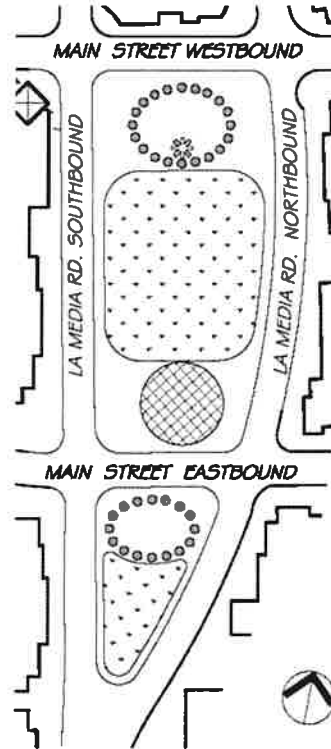


EXHIBIT "D"
NEIGHBORHOOD PARK CONCEPTUAL PARK

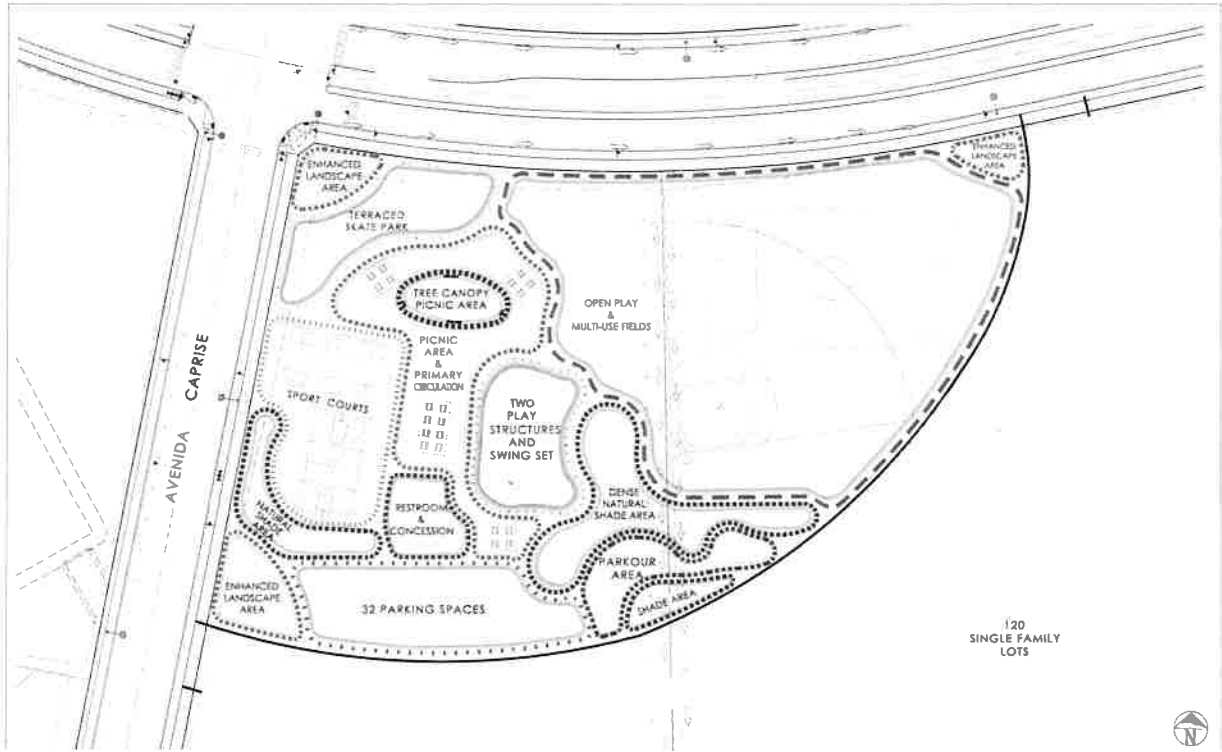


EXHIBIT "E" COMMUNITY PARK CONCEPTUAL PARK

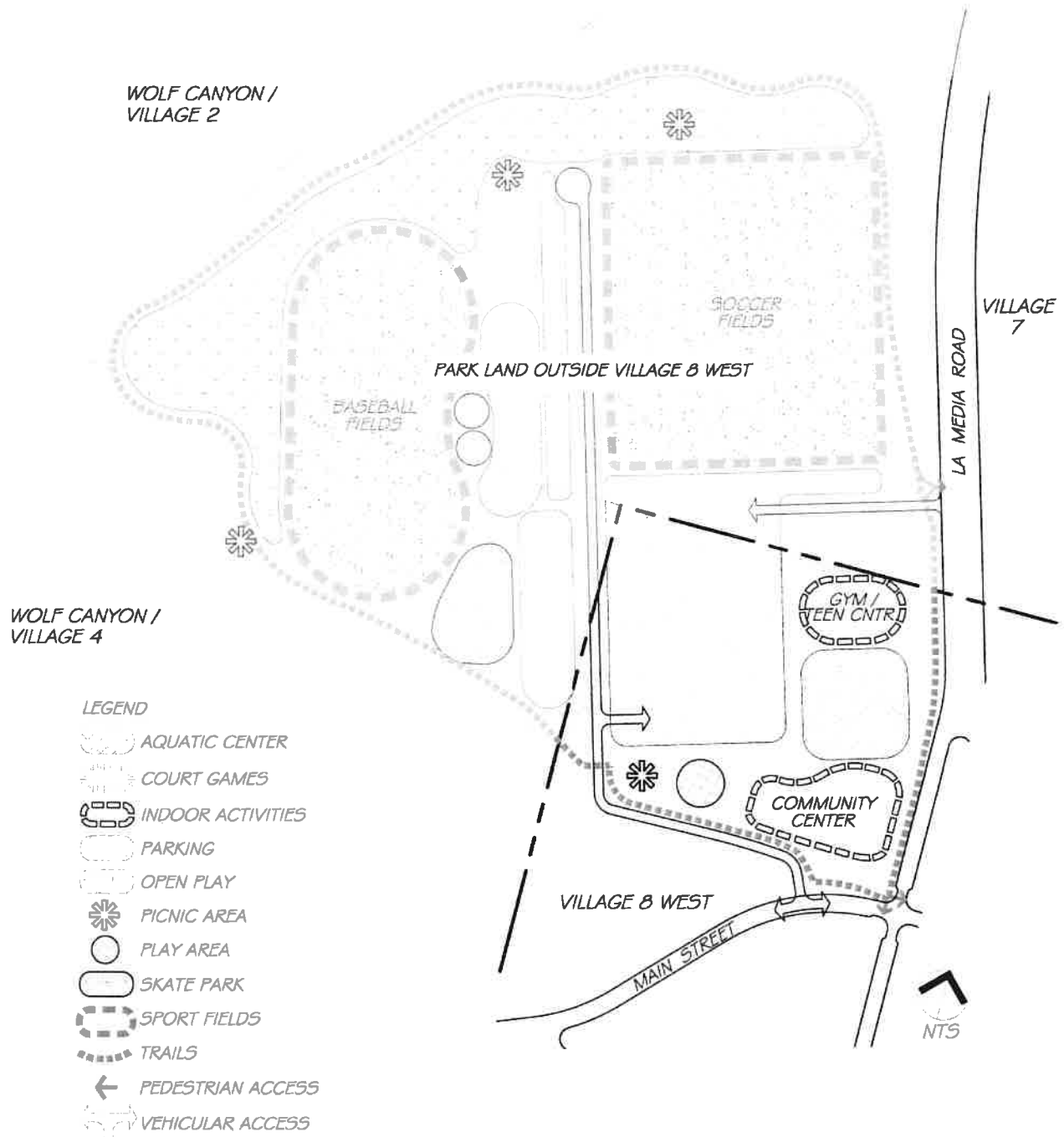


Exhibit "F"

**PARKS MASTER PLANNING PROCESS:
TOWN SQUARE PARK**

Developed by: HomeFed Village 8, LLC
Consultant: Tributary
Built for: Chula Vista Residents, with full public access
Owned & Maintained by: Côtà Vera Homeowner's Association
Planning Areas: Tentative Map Parcels G-1 and G-2; Final Map Lots B and C
Size: 2.8 acres

Tasks: **Anticipated Schedule:**

1. Park Master Plan

A. Submittal package, includes: 1st Submittal to City: **Mid-September 2020**

1. Narrative description of the park's program & design concept
2. Illustrative site plan, including the proposed locations for the following:
 - Surrounding streets & relation to off-site improvements
 - All circulation routes
 - Event staging areas
 - Comfort station
 - Shade structures
 - Picnic areas
 - Play structures
 - Amenities such as benches, tables, drinking fountains & all other features described within the park's program
 - Lighting concept
 - Dog park
 - Project signage
 - Accentuated paving areas & proposed applicable patterns
3. Plant material legend, providing plant material options for each use area & hydrozone
4. Preliminary construction materials schedule, conveying the proposed hardscape, fencing, wall & amenity materials & colors
5. Sketches, elevations, sections and/or 3-D modeling, as required to convey the proposed landforms & uses of key areas
6. Hydro-zone map
7. Preliminary cost estimate

B. City of Chula Vista Review

Comments Due: **3 weeks**

C. Consultant Review, Resubmit & Initiate Design Development

2nd Submittal to City: 2 weeks

1. Address all comments from the City, as approved by Developer
2. Coordinate directly with City staff on those items (includes meetings as necessary)
3. Consultant to initiate Design Development upon written notification from City staff that Park Master Plan is docketed for the Parks & Recreation Commission meeting

D. Parks and Recreation Commission Meeting **November 19, 2020**

E. City Council Meeting **December 15, 2020**

2. Construction Documents (95% and 100%) **Submit to City: 8 weeks**

- A. Prepare a 95% Construction Document set including:
1. Precise grading plan (by the Civil engineer)
 2. Architecture (under a separate building permit)
 3. Landscape hardscape materials plan & support documentation
 4. Landscape amenities plan & support documentation
 5. Recycled water irrigation plan & support documentation
 6. Planting plans & support documentation
 7. Lighting plans & support documentation
 8. Specifications
 9. Cost estimate
- B. Facilitate plan submittals & approvals through the Otay Water District (OWD), County of San Diego Department of Environmental Health (DEH) & City of Chula Vista
- C. City of Chula Vista Review **Comments due: 3 weeks**
- D. Prepare a 100% Construction Document set **Submit to City: 2 weeks**
1. Address final comments and prepare a set of plans and specifications ready for signature by City staff
- E. Submit Mylars to City of Chula Vista **Submit to City: 1 week**
1. Upon written direction from City staff, prepare mylars and submit for signature
 2. Consultant shall obtain approvals and signatures from OWD and DEH prior to submitting mylars to City for signature

3. Construction Administration **Issue Bid Documents: 3 weeks**

- A. Developer to prepare and issue bid documents
- B. Consultant to review & respond to contractor bid clarifications
- C. Review & respond to the contractor's product submittals
- D. Coordinate field inspections with OWD & City of Chula Vista
- E. Attend site meetings (as required), during all phases of construction
- F. Facilitate as-built drawing preparation, submittals & approvals as required
- G. Attend pre-maintenance & post maintenance site reviews

H. Provide final substantial conformance documentation