

**Four Party Agreement Between  
City of Chula Vista, Flat Rock Land Company, LLC, Homefed Otay Land II, LLC and  
Sports Facilities Advisory, LLC  
For the Preparation of a Sports Complex Feasibility Study**

1. Parties.

This agreement (Agreement), effective as of this 21st day of May, 2019 (the “Effective Date”), is between the City of Chula Vista (City), a municipal corporation of the State of California, the entity designated on the attached Exhibit A as “Consultant,” i.e., Sports Facilities Advisory, LLC (SFA), whose business form and address are indicated on the attached Exhibit A, Flat Rock Land Company, LLC and Homefed Otay Land II, LLC the entities collectively designated on the attached Exhibit A as “Applicants,” whose business forms and addresses are indicated on the attached Exhibit A, and is made with reference to the following facts:

2. Warranties and Representations.

2.1. Applicants warrant that Applicants are the owners of land (the “Property”) commonly known as, or generally located as, described on Exhibit A, Paragraph 1, or have an option or other entitlement to develop said Property.

2.2. Applicants desire to have a feasibility study completed on the Property to determine its potential for a sports complex as described on Exhibit A, Paragraph 2.

2.3. In order for the City to process the Applicants request, Work of the general nature and type described in Exhibit A, Paragraph 4, (Work) will need to be completed.

2.4. City does not presently have the “in-house” staff or resources to process the request within the time frame requested for review by the Applicants.

2.5. This Agreement proposes an arrangement by which the Applicants shall retain, and be liable for the costs of retaining, Consultant, who shall perform the services required of Consultant by this Agreement solely to, and under the direction of, the City.

2.6. Additional facts and circumstances regarding the background for this Agreement are set forth on Exhibit B.

3. Agreement.

NOW, THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, it is mutually agreed to by and between the City, Consultant, and Applicants as follows:

3.1. Employment of Consultant by Applicants.

Consultant is hereby engaged by the Applicants, not the City, and at Applicants' sole cost and expense, to perform to, and for the primary benefit of, City, and solely at City's direction, all of the services described on the attached Exhibit A, Paragraph 4, entitled "General Nature of Consulting Services," (General Services), and in the process of performing and delivering said General Services, Consultant shall also perform to and for the benefit of City all of the services described in Exhibit A, Paragraph 5, entitled "Detailed Scope of Work," (Detailed Services), and all services reasonably necessary to accomplish said General Services and Detailed Scope of Work, and shall deliver such documents required (Deliverables) herein, all within the time frames herein set forth, and in particular as set forth in Exhibit A, Paragraph 6, and if none are set forth, within a reasonable period of time for the diligent execution of Consultant's duties hereunder. Consultant understands and agrees that time is of the essence for this Agreement.

The Consultant does hereby agree to perform said General and Detailed Services to and for the primary benefit of the City for the compensation herein fixed to be paid by the Applicants.

In delivering the General and Detailed Services hereunder, the Consultant shall do so in a good, professional manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions and in similar locations, at its own cost and expense except for the compensation and/or reimbursement, if any, herein promised, and shall furnish all of the labor, technical, administrative, professional and other personnel, all supplies and materials, machinery, equipment, printing, vehicles, transportation, office space and facilities, calculations, and all other means whatsoever, except as herein otherwise expressly specified to be furnished by the City or Applicants, necessary or proper to perform and complete the work and provide the Services required of the Consultant.

### 3.2. Compensation of Consultant.

Applicants shall compensate Consultant for all services rendered by Consultant without regard to the conclusions reached by the Consultant, and according to the terms and conditions set forth in Exhibit C adjacent to the governing compensation relationship indicated by a "checkmark" next to the appropriate arrangement, by paying said amount to the City, within 30 days of Consultant's billing, or in accordance with the security deposit provisions of Paragraph 3.3 of this Agreement and Exhibit C, if checked, and upon receipt of such payment by the City, City shall promptly, pay said amount to the Consultant in accordance with the Bill Processing provisions in Exhibit C, if checked, City is merely acting in the capacity as a conduit for payment, and shall not be liable for the compensation unless it receives same from the Applicants. Applicants shall not make any payments of compensation or otherwise directly to the Consultant.

3.2.1. Additional Work. If the Applicants, with the concurrence of City, determine that additional services ("Additional Services") are needed from Consultant of the type Consultant is qualified to render or reasonably related to the Services Consultant is otherwise required to provide by this Agreement, the Consultant agrees to provide such

*Four Party Agreement Between City of Chula Vista, Sports Facilities Advisory, LLC, Flat Rock Land Company, LLC and Homefed Otay Land II, LLC for the Preparation of a Sports Complex Feasibility Study*

*City Clerk Agreement No. \_\_\_\_\_*

Additional Services on a time and materials basis paid for by Applicants at the rates set forth in Exhibit C, unless a separate fixed fee is otherwise agreed upon in writing for said Additional Services between the parties.

3.2.2. In the event that the City shall determine that Additional Services are required to be performed above and beyond the scope of work herein provided, City will consult with Applicants regarding the Additional Services, and if thereupon the Applicants fail or refuse to arrange and pay for said Additional Services, the City may, at its option, suspend any further processing of Applicant's request until the Applicant's deposit the City's estimate of the costs of the Additional Services which the City determines is or may be required. Applicants shall pay any and all additional costs for the additional Services.

3.2.3. Reductions in Scope of Work. City may independently, or upon request from Consultant, from time to time reduce the Services to be performed by the Consultant under this Agreement. Upon doing so, City and Consultant agree to meet in good faith and confer for the purpose of negotiating a corresponding reduction in the compensation associated with said reduction. Upon failure to agree, the Fixed Fee may be unilaterally reduced by the City by the amount of time and materials budgeted by Consultant for the Services deleted.

### 3.3. Security for Payment of Compensation by Applicant.

3.3.1. Deposit. As security for the payment of Consultant by Applicants, Applicants shall, upon execution of this Agreement, deposit the amount indicated on Exhibit C as "Deposit Amount" with the City, the conditions of such deposit being as indicated on Exhibit C and as herein below set forth:

#### 3.3.1.1 Other Terms of Deposit.

3.3.1.1.1. All interest earned on the Deposit Amount, if any, shall accrue to the benefit of, and be used for such purposes as determined by the City. City may, in lieu of deposit into a separate bank account, separately account for said deposit in one or more of its various bank accounts, and upon doing so, shall proportionately distribute to the Deposit, the average interest earned during the period on its general fund.

3.3.1.1.2. Any unused balance of Deposit Amount, including any unused interest earned, shall be returned to the Applicants not later than 30 days after the termination of this Agreement and any claims resulting therefrom.

3.3.1.1.3. Applicants shall be notified within 30 days after of the use of the Deposit in any manner. Nothing herein shall invalidate use of the Deposit in the manner herein authorized.

3.3.1.1.4. At such time as City shall reasonably determine that inadequate funds remain on Deposit to secure future compensation likely due Consultant or City, City may make demand of Applicants to supplement said Deposit Amount in such amount as

City shall reasonably specify, and upon doing so, Applicants shall, within 30 days pay said amount (Supplemental Deposit Amount) to City. Said Supplement Deposit Amount or Amounts shall be governed by the same terms governing the original Deposit.

3.3.2. Withholding of Processing. In addition to use of the Deposit as security, in order to secure the duty of Applicants to pay Consultant for Services rendered under this Agreement, City shall be entitled to withhold processing of Applicants' request upon a breach of Applicants' duty to compensate Consultant.

#### 4. Non-Service Related Duties of Consultant.

4.1.1 Insurance. Required Insurance. Consultant must procure and maintain, during the period of performance of Required Services under this Agreement, and for twelve months after completion of Required Services, the policies of insurance described on the attached Exhibit A, Section 10 incorporated into the Agreement by this reference (the "Required Insurance"). The Required Insurance shall also comply with all other terms of this Section.

4.1.2 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions relating to the Required Insurance must be disclosed to and approved by City in advance of the commencement of work.

4.1.3 Standards for Insurers. Required Insurance must be placed with licensed insurers admitted to transact business in the State of California with a current A.M. Best's rating of A V or better, or, if insurance is placed with a surplus lines insurer, insurer must be listed on the State of California List of Eligible Surplus Lines Insurers (LESLI) with a current A.M. Best's rating of no less than A X. For Workers' Compensation Insurance, insurance issued by the State Compensation Fund is also acceptable.

4.1.4 Subcontractors. Consultant must include all sub-consultants/sub-contractors as insureds under its policies and/or furnish separate certificates and endorsements demonstrating separate coverage for those not under its policies. Any separate coverage for sub-consultants must also comply with the terms of this Agreement.

4.1.5 Additional Insureds. Applicants, City, its officers, officials, employees, agents, and volunteers must be named as additional insureds with respect to any policy of general liability, automobile, or pollution insurance specified as required in Exhibit A, Section 10 or as may otherwise be specified by City's Risk Manager. The general liability additional insured coverage must be provided in the form of an endorsement to the Consultant's insurance using ISO CG 2010 (11/85) or its equivalent; such endorsement must not exclude Products/Completed Operations coverage.

4.1.6 General Liability Coverage to be "Primary." Consultant's general liability coverage must be primary insurance as it pertains to the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers,

officials, employees, or volunteers is wholly separate from the insurance provided by Consultant and in no way relieves Consultant from its responsibility to provide insurance.

4.1.7 No Cancellation. No Required Insurance policy may be canceled during the required insured period under this Agreement, except after thirty days' prior written notice to the City by certified mail, return receipt requested. Prior to the effective date of any such cancellation Consultant must procure and put into effect equivalent coverage(s).

4.1.8 Waiver of Subrogation. Consultant's insurer(s) will provide a Waiver of Subrogation in favor of the City for each Required Insurance policy under this Agreement. In addition, Consultant waives any right it may have or may obtain to subrogation for a claim against City.

4.1.9 Verification of Coverage. Prior to commencement of any work, Consultant shall furnish City with original certificates of insurance and any amendatory endorsements necessary to demonstrate to City that Consultant has obtained the Required Insurance in compliance with the terms of this Agreement. The words "will endeavor" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives" or any similar language must be deleted from all certificates. The required certificates and endorsements should otherwise be on industry standard forms. The City reserves the right to require, at any time, complete, certified copies of all required insurance policies, including endorsements evidencing the coverage required by these specifications.

4.1.10 Claims Made Policy Requirements. If General Liability, Pollution and/or Asbestos Pollution Liability and/or Errors & Omissions coverage are required and are provided on a claims-made form, the following requirements also apply:

- a. The "Retro Date" must be shown, and must be before the date of this Agreement or the beginning of the work required by this Agreement.
- b. Insurance must be maintained, and evidence of insurance must be provided, for at least five (5) years after completion of the work required by this Agreement.
- c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the effective date of this Agreement, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of the work required by this Agreement.
- d. A copy of the claims reporting requirements must be submitted to the City for review.

4.1.11 Not a Limitation of Other Obligations. Insurance provisions under this section shall not be construed to limit the Consultant's obligations under this Agreement, including Indemnity.

4.1.12 Additional Coverage. To the extent that insurance coverage provided by Consultant maintains higher limits than the minimums appearing in Exhibit A, Section 10 City requires and shall be entitled to coverage for higher limits maintained.

4.2 Reserved.

4.3. Public Statements.

All public statements and releases to the news media shall be the responsibility of the City and the Applicants. The Consultant shall not publish or release news items, articles or present lectures on the Project, either during the course of the study or after its completion, except on written concurrence of the City and Applicants.

4.4. Communication to Applicants.

Consultant shall not communicate directly to the Applicants except in the presence of the City, or by writing an exact copy of which is simultaneously provided to City, except with the express consent of City. The Consultant may request such meetings with the Applicants to ensure the adequacy of Services performed by Consultant.

5. Non-Compensation Duties of the Applicants.

5.1. Documents Access.

The Applicants shall provide to the Consultant, through the City, for the use by the Consultant and City, such documents, or copies of such documents requested by Consultant, within the possession of Applicants reasonably useful to the Consultant in performing the Services herein required of Consultant, including but not limited to those described in Exhibit A, Paragraph 7.

5.2. Property Access.

Upon execution of the Applicant's property access agreement, the Applicants shall grant permission to the City and Consultant to enter and access the Property, to take any borings, make any tests, conduct any surveys or reconnaissance necessary to deliver the Services of Consultant, subject to the approval of the Applicants which shall not be unreasonably denied. Consultant shall promptly repair any damage to the subject property occasioned by such entry and shall indemnify, defend, and hold the City and Applicants, and their agents, and employees harmless from all loss, cost, damage, expenses, claims, and liabilities in connection with or arising from any such entry and access.

5.3. Communication to Consultant.

Applicants shall not communicate directly to the Consultant except in the presence of the City, or by writing an exact copy of which is simultaneously provided to City, except with the

express consent of City. The Applicants may request such meetings as they desire with the Consultant to ensure the adequacy of services performed by Consultant.

6. Administrative Representatives.

Each party designates the individuals (Administrators) indicated in Exhibit A, Paragraph 8, as said party's contract administrator who is authorized by said party to represent them in the routine administration of this Agreement.

7. Conflicts of Interest.

7.1. Consultant is Designated as an FPPC Filer.

If Consultant is designated on Exhibit A, Paragraph 9, as an "FPPC filer," Consultant is deemed to be a "Consultant" for the purposes of the Political Reform Act conflict of interest and disclosure provisions, and shall report its economic interests to the City Clerk on the required Statement of Economic Interests in such reporting categories as are specified in Paragraph 9 of Exhibit A, or if none are specified, then as determined by the City Attorney.

7.2. Decline to Participate.

Regardless of whether Consultant is designated as an FPPC Filer, Consultant shall not make, or participate in making or in any way attempt to use Consultant's position to influence a governmental decision in which Consultant knows or has reason to know Consultant has a financial interest other than the compensation promised by this Agreement.

7.3. Search to Determine Economic Interests.

Regardless of whether Consultant is designated as an FPPC Filer, Consultant warrants and represents that Consultant has diligently conducted a search and inventory of Consultant's economic interests, as the term is used in the regulations promulgated by the Fair Political Practices Commission, and has determined that Consultant does not, to the best of Consultant's knowledge, have an economic interest which would conflict with Consultant's duties under this Agreement.

7.4. Promise Not to Acquire Conflicting Interests.

Regardless of whether Consultant is designated as an FPPC Filer, Consultant further warrants and represents that Consultant will not acquire, obtain, or assume an economic interest during the term of this Agreement which would constitute a conflict of interest as prohibited by the Fair Political Practices Act.

7.5. Duty to Advise of Conflicting Interests.

Regardless of whether Consultant is designated as an FPPC Filer, Consultant further warrants and represents that Consultant will immediately advise the City Attorney if Consultant learns of an economic interest of Consultant's which may result in a conflict of interest for the purpose of the Fair Political Practices Act, and regulations promulgated thereunder.

7.6. Specific Warranties Against Economic Interests.

Consultant warrants and represents that neither Consultant, nor Consultant's immediate family members, nor Consultant's employees or agents (Consultant Associates) presently have any interest, directly or indirectly, whatsoever in the property which is the subject matter of the Project, or in any property within 10 radial miles from the exterior boundaries of the property which is the subject matter of the Project, or (Prohibited Interest).

Consultant further warrants and represents that no promise of future employment, remuneration, consideration, gratuity or other reward or gain has been made to Consultant or Consultant Associates by Applicants or by any other party as a result of Consultant's performance of this Agreement. Consultant promises to advise City of any such promise that may be made during the term of this Agreement, or for 12 months thereafter.

Consultant agrees that Consultant Associates shall not acquire any such Prohibited Interest within the term of this Agreement, or for 12 months after the expiration of this Agreement.

Consultant may not conduct or solicit any business for any party to this Agreement, or for any third party which may be in conflict with Consultant's responsibilities under this Agreement.

8. Default of the Consultant for Breach.

This Agreement may be terminated by the City for default if the Consultant breaches this Agreement or if the Consultant refuses or fails to pursue the Services under this Agreement or any phase of the Services with such diligence which would assure its completion within a reasonable period of time. Termination of this Agreement because of a default of the Consultant shall not relieve the Consultant from liability of such default.

9. City's Right to Terminate Payment for Convenience, Documents.

9.1. Notwithstanding any other section or provision of this Agreement, the City shall have the absolute right at any time to terminate this Agreement or any Services to be performed pursuant to this Agreement.

9.2. In the event of termination of this Agreement by the City in the absence of default of the Consultant, the City shall pay the Consultant for the reasonable value of the Services actually performed by the Consultant up to the date of such termination, less the aggregate of all



sums previously paid to the Consultant for Services performed after execution of this Agreement and prior to its termination.

9.3. The Consultant hereby expressly waives any and all claims for damage or compensation arising under this Agreement, except as set forth herein, in the event of such termination.

9.4. In the event of termination of this Agreement, and upon demand of the City, the Consultant shall deliver to the City, all field notes, surveys, studies, reports, plans, drawings and all other materials and documents prepared by the Consultant in performance of this Agreement, and all such documents and materials shall be the property of the City; provided however, that the Consultant may retain copies for their own use and the City shall provide a copy, at Applicants' cost, of all such documents to the Applicants.

9.5. Applicants shall have no right to terminate Consultant, and shall not exercise any control or direction over Consultant's work.

10. Administrative Claims Requirement and Procedures.

No suit 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 Chula Vista Municipal Code, the provisions of which are incorporated by this reference as if set fully set forth herein.

11. Hold Harmless and Indemnification.

11.1.1 Consultant to Indemnify City - General. To the maximum extent allowed by law, Consultant shall protect, defend, indemnify and hold harmless Applicants, City, its elected and appointed officers, agents, employees and volunteers (collectively, "Indemnified Parties"), from and against any and all claims, demands, causes of action, costs, expenses, (including reasonable attorneys' fees and court costs), liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence, or willful misconduct of Consultant, its officials, officers, employees, agents, and contractors, arising out of or in connection with the performance of the Required Services, the results of such performance, or this Agreement. This indemnity provision does not include any claims, damages, liability, costs and expenses arising from the sole negligence or willful misconduct of the Indemnified Parties. Also covered is liability arising from, connected with, caused by or claimed to be caused by the active or passive negligent acts or omissions of the Indemnified Parties which may be in combination with the active or passive negligent acts or omissions of the Consultant, its employees, agents or officers, or any third party.

11.1.2 Modified Indemnity Where Agreement Involves Design Professional Services. Notwithstanding the forgoing, if the services provided under this Agreement are design professional services, as defined by California Civil Code section 2782.8, as may be amended

from time to time, the defense and indemnity obligation under Section 1, above, shall be limited to the extent required by California Civil Code section 2782.8.

11.1.3 Costs of Defense and Award. Included in Consultant's obligations under this Section 11 is Consultant's obligation to defend, at Consultant's own cost, expense and risk, any and all suits, actions or other legal proceedings that may be brought or instituted against one or more of the Indemnified Parties. Subject to the limitations in this Section 11, Consultant shall pay and satisfy any judgment, award or decree that may be rendered against one or more of the Indemnified Parties for any and all related legal expenses and costs incurred by any of them.

11.1.4. Consultant's Obligations Not Limited or Modified. Consultant's obligations under this Section 11 shall not be limited to insurance proceeds, if any, received by the Indemnified Parties, or by any prior or subsequent declaration by the Consultant. Furthermore, Consultant's obligations under this Section 11 shall in no way limit, modify or excuse any of Consultant's other obligations or duties under this Agreement.

11.1.5. Enforcement Costs. Consultant agrees to pay any and all costs Indemnified Parties incur in enforcing Consultant's obligations under this Section 11.

11.1.6 Survival. Consultant's obligations under this Section 11 shall survive the termination of this Agreement.

## 11.2. Applicants to Indemnify City re. Compensation of Consultant.

Applicant's agree to defend, indemnify and hold the City harmless against and from any and all claims, losses, damages, expenses or expenditures of City, including its elected officials, officers, employees, agents, or representatives of the City (City Indemnitees), in any way resulting from or arising out of the refusal to pay compensation as demanded by Consultant for the performance of Services required by this Agreement.

## 12. Business Licenses.

Applicant's agree to obtain a business licenses from the City and to otherwise comply with Chula Vista Municipal Code, Title 5. Applicants further agree to require Consultant to obtain such business license and to comply with Chula Vista Municipal Code, Title 5.

## 13. Miscellaneous.

### 13.1. Consultant not authorized to Represent City.

Unless specifically authorized in writing by City, neither Consultant nor Applicants shall have authority to act as City's agent to bind City to any contractual agreements whatsoever.

### 13.2. Notices.

All notices, demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing. All notices, demands and requests to be sent to any party shall be deemed to have been properly given or served if personally served or deposited in the United States mail, addressed to such party, postage prepaid, registered or certified, with return receipt requested, at the addresses identified for the parties in Exhibit A.

### 13.3. Entitlement to Subsequent Notices.

No notice to or demand on the parties for notice of an event not herein legally required to be given shall in itself create the right in the parties to any other or further notice or demand in the same, similar or other circumstances.

### 13.4. Integration.

This Agreement, together with any other written document referred to or contemplated herein, embody the entire Agreement and understanding between the parties relating to the subject matter hereof. Neither this Agreement nor any provision hereof may be amended, modified, waived or discharged except by an instrument in writing executed by the party against which enforcement of such amendment, waiver or discharge is sought.

### 13.5. Capacity of Parties.

Each signatory and party hereto hereby warrants and represents to the other party that it has legal authority and capacity and direction from its principal to enter into this Agreement; that all resolutions or other actions have been taken so as to enable it to enter into this Agreement.

### 13.6. Governing Law/Venue.

This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action arising under or relating to this Agreement shall be brought only in the federal or state courts located in San Diego County, State of California, and if applicable, the City of Chula Vista, or as close thereto as possible. Venue for this Agreement and performance hereunder, shall be the City of San Diego.

### 13.7. Modification.

No modification or waiver of any provision of this Agreement shall be effective unless the same shall be in writing and signed by the parties hereto, and then shall be valid only in the specific instance and for the purpose for which given.

13.8. Counterparts.

This Agreement may be executed in more than one counterpart, each of which shall be deemed to be an original but all of which, when taken together shall constitute but one instrument.

13.9. Severability.

In the event that any provision of this Agreement shall for any reason, be determined to be invalid, illegal, or unenforceable in any respect, the parties hereto shall negotiate in good faith and agree to such amendments, modifications, or supplements to this Agreement or such other appropriate action as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein.

13.10. Headings.

The captions and headings in this Agreement are for convenience only and shall not define or limit the provisions hereof.

13.11. Waiver.

No course of dealing or failure or delay, nor the single failure or delay, or the partial exercise of any right, power or privilege, on the part of the parties shall operate as a waiver of any rights herein contained. The making or the acceptance of a payment by either party with knowledge of the existence of a breach shall not operate or be construed to operate as a waiver of any such breach.

13.12. Remedies.

The rights of the parties under this Agreement are cumulative and not exclusive of any rights or remedies which the parties might otherwise have unless this Agreement provides to the contrary.

13.13. No Additional Beneficiaries.

Despite the fact that the required performance under this Agreement may have an effect upon persons not parties hereto, the Parties specifically intend no benefit therefrom, and agree that no performance hereunder may be enforced by any person not a party to this Agreement. Notwithstanding the foregoing, this is a four party agreement and the City is an express third party beneficiary of the promises of Consultant to provide Services paid for by the Applicants.

14. Ownership, Publication, Reproduction and Use of Material.

All reports, studies, information, data, statistics, forms, designs, plans, procedures, systems and any other materials or properties produced under this Agreement shall be the sole

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and exclusive property of City. No such materials or properties produced in whole or in part under this Agreement shall be subject to private use, copyrights or patent rights by Consultant in the United States or in any other country without the express written consent of City. City shall have unrestricted authority to publish, disclose (except as may be limited by the provisions of the Public Records Act), distribute, and otherwise use, copyright or patent, in whole or in part, any such reports, studies, data, statistics, forms or other materials or properties produced under this Agreement.

15. Entire Agreement.

This Agreement supersedes any and all other agreements, either oral or written with respect to the subject matter contained herein.

*[Remainder of page intentionally left blank]*

**Signature Page To  
the Agreement Between  
City of Chula Vista, Sports Facilities Advisory, LLC, Flatrock Land Company, LLC, and  
Homefed Village III Master, LLC  
For the Preparation of a Sports Complex Feasibility Study  
(Page 1 of 2)**

NOW THEREFORE, the Parties hereto, having read and understood the terms and conditions of this Agreement, do hereby express their consent to the terms hereof by setting their hand hereto as of the Effective Date.

**City of Chula Vista**

By: \_\_\_\_\_  
Mary Casillas Salas, Mayor

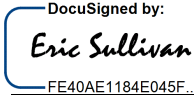
Attest:

\_\_\_\_\_  
Kerry K. Bigelow, MMC , City Clerk

Approved as to Form:

\_\_\_\_\_  
Glen R. Googins, City Attorney

**Consultant: Sports Facilities Advisory, LLC**

By:  \_\_\_\_\_ \*  
FE40AE1184E045F...  
Member  
Title: \_\_\_\_\_

*\* Signatory to Provide Company Signature Authorization*

J:\Attorney\MichaelSh\LandOfferAgt\PBA-ParksFeasibilityAgt\Agreements\4PartyConsultAgrmnt-ParksFeasibility-SFAFlatrockHomeFedIII-4.4.19-RevFinal.doc

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**Applicants:**

**Flat Rock Land Company, LLC**

By: Jeff O'Connor \*

President  
Title: \_\_\_\_\_

**Homefed Otay Land II, LLC**

By: Erin Rube \*

Vice President  
Title: \_\_\_\_\_

*\* Signatory to Provide Company Signature Authorization*

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**Exhibit A**

Effective Date: The Agreement shall take effect upon full execution of the Agreement, as of the Effective Date stated on page 1 of the Agreement.

City: City of Chula Vista  
276 Fourth Avenue  
Chula Vista, CA 91910

Consultant: Sports Facilities Advisory, LLC

Business Form of Consultant:  
 Sole Proprietorship  
 Partnership  
 Corporation  
 Limited Liability Company

Address: 600 Cleveland Street, Suite 910  
Clearwater, FL 33755  
(727) 474-3845

Applicant: Flat Rock Land Company, LLC

Business Form of Applicants:  Sole Proprietorship  
 Partnership  
 Corporation  
 Other: A Delaware Limited Liability Company

Address: 1903 Wright Pl, Suite 220  
Carlsbad, CA 92008

Applicant: Homefed Otay Land II, LLC

Business Form of Applicants:  Sole Proprietorship  
 Partnership  
 Corporation  
 Other: A Delaware Limited Liability Company

Address: 1903 Wright Pl, Suite 220  
Carlsbad, CA 92008

1. Property (Commonly known address or General Description):

The approximate 100-acre site is generally located east of Heritage Road and south of the Otay River within Planning Area 20 West of the Otay Ranch Planned Community.

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2. Project Description (Project):

Preparation of a Sports Complex Feasibility Study to determine the viability of the site to house a Sports Complex.

3. Entitlements applied for: N/A at this time.

4. General Nature of Consulting Services (General Services): Preparation of a Feasibility Study

5. Detailed Scope of Work (Detailed Services):

The City would like to understand the market demand, feasibility, and economic benefit of a “tournament type” multi-purpose sports complex. SFA will prepare a market demand analysis, economic feasibility study, and competitive analysis through a comprehensive five (5) step process as detailed below:

**Step 1: Kick-off Meeting, Existing Data Review, & Local Market Study**

To begin the project, SFA will organize a formal kick-off conference telephone call with the appropriate City staff. This conference call will include:

- Introductions of all key team members from City and from SFA
- Review of the project goals, scope of work, and major steps within the scope.
- Data collection discussion. In this discussion, we will discuss available data, data that can be obtained through online research, and information about the market that the City will share based on its knowledge, presence, and experience.
- Project communication – next steps, ongoing meeting schedule, set dates onsite

Coming out of the kick-off call, SFA will review and assess any available existing parks operating and program information the City has from existing operations. This may include program descriptions, schedules, organization/staffing information, operations resources, user group information and other pertinent data from existing events and programs in the market. Additionally, any information on the hotel inventory, occupancy rates, and other economic factors for Chula Vista tourism will be provided to assist in the subject feasibility analysis.

In addition to reviewing the City data, SFA will conduct local market research to further understand local opportunities and constraints. The custom market research will include a drive time analysis of demographic factors like population and density, income and spending, growth trends, etc. Additionally, SFA will consider market specific sports and recreation factors such as participation trends, an analysis of existing service providers, and a review of local organizations. This competitive analysis will include a detailed list of existing service providers, events, and rates that impact the potential project.

This market research will include a comprehensive list of all of the major sports tourism facilities and events in the region that could potentially impact the success of a new multi-use sports

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center development in Chula Vista. SFA will focus on both the immediate community need and the larger regional/national opportunity. This level of research will be used to facilitate an effective onsite strategy meeting in Step 2.

Deliverable #1:

SFA will produce a summary report of local market research and a list of facilities to tour during the Business Development Planning & Strategy Session.

### **Step 2: Market/Site Tour, Business Development Planning & Strategy Session, Community Engagement**

In Step 2, SFA will send 2-3 resources onsite for two (2) days of meetings. This includes a site tour, Business Development Planning & Strategy Session (BDPS), and engagement of local stakeholders. This BDPS will help to provide insights into the project history, scope, needs, purpose, goals, and constraints. This step will also assist SFA in learning potential contributions from program users and partners.

The BDPS will encompass discussions related to existing programs, project goals, and plans for site development, as well as and not limited to, topics such as the business model, the program plan, design/space considerations, alliances with sports and other user groups, utilization, funding/financing, competition analysis and market share, and the management and staffing plan.

While in the market, SFA will visit complimentary and competitive facilities in the greater San Diego area. This may include municipal, privately owned, and school facilities in the area. As a result, SFA will provide an overview and assessment of competition and the resulting market opportunity. SFA will also use this as an opportunity to uncover local partnership opportunities and identify potential stakeholders for the process. Additionally, SFA will tour potential sites for the project while in the market. This information will be used by SFA to make site selection recommendations in the Feasibility Report.

During the BDPS, SFA will facilitate discussions around funding strategies and opportunities. This will help SFA to formulate the right capital strategy and engage the right financial partners to analyze potential finance solutions for Chula Vista. While in the market SFA will engage with the community to gather valuable input from local user groups. This will be accomplished through a series of stakeholder and town hall meetings to give the local public a structured forum for input, control messaging, and to level-set expectations for what the development may/may not include. Stakeholders may include schools, sports organizations, health/wellness organizations, and other groups that may support the up-front capitalization and/or ongoing success of the project.

Deliverable #2: Completion of site tour, BDPS, stakeholder and community meetings.

### **Step 3: Detailed Financial Forecast (Pro Forma) & Economic Impact Analysis**

In this step, SFA will complete more in-depth research/analysis to produce a 5-year cash flow forecast. SFA's pro forma will be a detailed, institutional-grade financial forecast, that can be

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used to support decision-making and financing. The pro forma will serve as the core deliverable from which the economic impact and feasibility report is developed.

The pro forma will provide insight into the financial potential of the project and will include, but not be limited to, projections related to construction and start-up costs, revenues/expenses by product/program, and facility utilization. The financial forecast will also address the wide range of key performance indicators and contributing factors that influence operations and the overall financial performance of the facility. This includes local programming for parks and recreation use and local sports organizations, in addition to the regional opportunity for tournaments and events.

The pro forma will provide detailed financial details related to and based on:

- The ideal business model to best meet the definitions of success for the facility
- Realistic and/or recommended debt-to-equity mix and debt service
- Right-sized program spaces and space requirements
- Construction and start-up costs based on recent, comparable projects
- Recommended parking
- Revenue by product/program
- Direct/variable costs (Cost of Goods Sold)
- Facility and operating expenses
- Management and staffing model
- Utilization projections

In addition to the operational forecast, SFA will project the economic impact of the facility on an annual basis. Economic impact is defined as new off-site spending that will occur in the market as a result of tournaments and events held at the facility. This information will be used to project economic activity from out-of-the City visitors who would not be in the market but for the events that will be held at the complex.

The results, primarily quantified as room nights generated and direct spending, will be used by elected officials and private developers alike to understand the impact that the venue will have on the lodging, dining, retail, entertainment, and transportation industries as well as on the tax base of the municipalities that benefit from new spending.

SFA's economic impact projections will be developed based on projections for tournaments and events throughout the pro forma and reflective of several key drivers of economic impact, including:

- Number of Events
- Number of Teams
- Number of Participants
- Number of Affiliated Spectators
- Percent of Participants and Affiliated Spectators from outside Chula Vista
- Length of Stay

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- Average Daily Rate (ADR)
- Average Daily Expenditures (ADE)

Through this financial analysis, SFA will quantify the demand for local hotel rooms and other accommodations in the market. Additionally, SFA’s analysis will demonstrate the tax impact to the City and local businesses.

Once the pro forma and economic impact are complete, SFA will work with the City on determining potential funding strategies and solutions. Based on the size of the City’s desired structure, project size, potential partners, net operating income, and other critical factors, SFA will provide no less than two (2) potential funding solutions as requested in the Request for Proposal (RFP). These funding strategies will be used as assumptions in the pro forma and have a narrative overview in the Feasibility Study.

Deliverable #3: Completion of Pro Forma and Economic Impact Draft Report.

#### **Step 4: Feasibility Study**

The Feasibility Study will serve as a narrative summary addressing the opportunity to execute the tournament model and the financial viability of the project. The report will be prepared with the understanding that it will be used for City decision-making and may become part of a package used to secure funding for the new complex. This report will be developed for the eye of a broad audience including sophisticated funding sources. The report will include:

- Executive summary
- Market overview
- Demographic and socioeconomic overview
- Drive-time analysis
- Sports participation analysis
- Existing service provider overview
- Facility program and construction cost estimate
- Overview of programs, products, and revenue streams
- Summary of financial performance
- Funding Strategy Overview
- Conclusion with key findings and next steps

Specifically, this detailed report will provide an overview of the market, ideal facility program, finance solutions, and financial outcomes for the project. Once complete, SFA will travel back to the market to deliver a detailed presentation of findings and recommended next steps. This may include conversations around design, financing, development, and future operations. Important to note, SFA has the ability to support project finance for municipalities. This includes, but is not limited to, standing behind their work and research with real-world results, aligning stakeholders, sourcing capital, identifying creative structures, and securing letters of intent for usage.

Deliverable #4: Completion of draft Feasibility Study.

**Step 5: Site Planning & Complex Design**

To supplement the SFA Team, SFA has partnered with DeLorenzo International to support site planning and conceptual design. DeLorenzo International is a landscape architectural and land planning firm located just minutes away from Otay Ranch in Old Town, San Diego. To support site planning, SFA will provide DeLorenzo International with a detailed program plan for highest and best use of space. DeLorenzo will attend all four (4) public/agency meetings to ensure a consistent vision for the program throughout the process and to provide local knowledge and design input.

DeLorenzo International will provide two (2) to three (3) initial programming studies for the sports complex illustrating the scale layout of the proposed site amenities including fields, parking, restrooms/concessions, and other ancillary uses. The team will utilize the Applicant’s conceptual grading plan in AutoCAD as the plan base. DeLorenzo International will revise each of the concepts to refine the site plan and incorporate SFA, agency, and public comments.

The final Feasibility Report will include conceptual site plans for the project and recommendations related to enhancing facility design. DeLorenzo will be involved in the final presentation to help determine the best next steps for the City of Chula Vista.

Deliverable #5 Completion of Final Feasibility Study, Pro Forma, and Economic Impact Analysis with conceptual site plans and recommendations related to enhancing facility design.

6. Schedule, Milestone, Time-Limitations within which to Perform Services.

Date for Commencement of Consultant Services:

Same as Effective Date of Agreement

Dates or Time Limits for Delivery of Deliverables:

Deliverable	Due Date
Deliverable from Step 1	Week 3
Deliverable from Step 2	Week 5
Deliverable from Step 3	Week 10
Deliverable from Step 4	Week 12
Deliverable from Step 5	Week 12

7. Documents to be provided by Applicants to Consultant:

- site plans  grading plans  architectural elevations  project description .
- other: Proposed General Plan Amendment revised text, including new/revised policies and supporting graphics.

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8. Contract Administrators.

City: Scott Donaghe  
 276 Fourth Avenue, Building C  
 Chula Vista, CA 91910

Applicants: Flat Rock Land Company, LLC  
 1903 Wright Pl, Suite 220  
 Carlsbad, CA 92008  
 Homefed Otay Land II, LLC  
 1903 Wright Pl, Suite 220  
 Carlsbad, CA 92008

Consultant: Eric Sullivan  
 Sports Facilities Advisory, LLC  
 600 Cleveland Street, Suite 910  
 Clearwater, FL 33755

9. Statement of Economic Interests, Consultant Reporting Categories, per Conflict of Interest Code:

- (X) Not Applicable. Not an FPPC Filer.
- ( ) Category No. 1. Investments and sources of income.
- ( ) Category No. 2. Interests in real property.
- ( ) Category No. 3. Investments, interest in real property and sources of income subject to the regulatory, permit or licensing authority of the department.
- ( ) Category No. 4. Investments in business entities and sources of income which engage in land development, construction or the acquisition or sale of real property.
- ( ) Category No. 5. Investments in business entities and sources of income of the type which, within the past two years, have contracted with the City of Chula Vista (Redevelopment Agency) to provide services, supplies, materials, machinery or equipment.
- ( ) Category No. 6. Investments in business entities and sources of income of the type which, within the past two years, have contracted with the designated employee's department to provide services, supplies, materials, machinery or equipment.

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( ) Category No. 7. Business positions.

10. Insurance Requirements:

	Type of Insurance	Minimum Amount	Form
<input type="checkbox"/>	General Liability: Including products and completed operations, personal and advertising injury	\$2,000,000 per occurrence for bodily injury, personal injury (including death), and property damage. If Commercial General Liability insurance with a general aggregate limit is used, either the general aggregate limit must apply separately to this Agreement or the general aggregate limit must be twice the required occurrence limit  Additional Insured Endorsement or Blanket AI Endorsement for Applicants and City*  Waiver of Recovery Endorsement	Insurance Services Office Form CG 00 01  <i>*Must be primary and must not exclude Products/Completed Operations</i>
<input type="checkbox"/>	Automobile Liability	\$1,000,000 per accident for bodily injury, including death, and property damage	Insurance Services Office Form CA 00 01 Code 1-Any Auto Code 8-Hired Code 9-Non-Owned
<input type="checkbox"/>	Workers' Compensation Employer's Liability	\$1,000,000 each accident \$1,000,000 disease policy limit \$1,000,000 disease each employee Waiver of Recovery Endorsement	
<input type="checkbox"/>	Professional Liability (Errors & Omissions)	\$1,000,000 each occurrence \$2,000,000 aggregate	

Other Negotiated Insurance Terms: ENTER ANY ADDITIONAL TERMS OR "NONE"

**Exhibit B**

*(Reserved)*

**Additional Recitals**

WHEREAS, \_\_\_\_\_; and

WHEREAS, \_\_\_\_\_.

(End of Recitals)



**Exhibit C**

Compensation Schedule and Deposit: Terms and Conditions.

( ) Single Fixed Fee Arrangement.

For performance of all of the General and Detailed Services of Consultant as herein required, Applicant shall pay a single fixed fee in the amounts and at the times or milestones set forth below:

Single Fixed Fee Amount:

\*For purposes of payment the first draft \_\_\_\_\_ shall completely address and analyze all issues identified in the detailed scope-of-work (described in Exhibit "A", Section 5) to the satisfaction of the Assistant City Manager/Development Services Director or designee. Payment shall not be made until the City's Assistant City Manager/Development Services Director or designee determines that a complete draft ELA document has been submitted.

\*\* Pursuant to section's 3.2.1 and 3.2.1.1, the Assistant City Manager/Development Services Director or designee in his discretion independently or if the Applicant, with the concurrence of the City determines that additional services are needed from the Consultant, from time to time, may negotiate additional services to be performed by the Consultant under this Agreement in order to cover unforeseen issues that may be identified during the preparation of the \_\_\_\_\_. The cost of additional services in connection with the \_\_\_\_\_ shall not exceed 30% of the total contract amount (\$\_\_\_\_\_).

(X) Phased Fixed Fee Arrangement.

For the performance of each phase or portion of the General and Detailed Services of Consultant as are separately identified in Exhibit C, under the category labeled "Phased Fixed Fee Arrangement", Applicants shall pay the fixed fee associated with each phase of Services, in the amounts and at the times or milestones set forth herein below (Phase Fixed Fee Arrangement). Consultant shall not commence Services under any Phase, and shall not be entitled to the compensation for a Phase, unless Applicants, in consultation with the City, shall have issued a notice to proceed to Consultant as to said Phase.

<b>Deliverable No. and Description of Milestone Event</b>		<b>Amount</b>	<b>Approx. %</b>
1	Execution of Contract	\$12,187.50	17%
2	Deliverable from Step 1	\$12,187.50	17%
3	Deliverable from Step 2	\$12,187.50	17%
4	Deliverable from Step 3	\$12,187.50	17%
5	Deliverable from Step 4	\$12,187.50	17%
6	Deliverable from Step 5	\$12,187.50	17%
Consultant Services Total		\$73,125.00	100%
25% Contingency Fee for tasks as determined at the sole discretion of the City’s Director of Development Services		\$18,281.25	
Maximum Reimbursable for Travel		\$7,500.00	
Maximum Services and Fees		\$98,906.25	

( ) Time and Materials

For performance of the General and Detailed Services of Consultant as herein required, Applicants shall pay Consultant for the productive hours of time and material spent by Consultant in the performance of said Services, at the rates or amounts set forth herein below according to the following terms and conditions:

( ) Not-to-Exceed Limitation on Time and Materials Arrangement

Notwithstanding the expenditure by Consultant of time and materials in excess of said Maximum Compensation amount, Consultant agrees that Consultant will perform all of the General and Detailed Services herein required of Consultant for \$\_\_\_\_\_ including all Materials, and other “reimbursables” (Maximum Compensation).

( ) Limitation without Further Authorization on Time and Materials Arrangement

At such time as Consultant shall have incurred time and materials equal to \_\_\_\_\_ (Authorization Limit), Consultant shall not be entitled to any additional compensation without further authorization issued in writing and approved by the City Council. Nothing herein shall preclude Consultant from providing additional Services at Consultant’s own cost and expense.

Consultant’s Rate Schedule

Category of Employee of Consultant	Name	Hourly Rate
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Principal-in-Charge  
 Sr. Associate  
 Sr. Associate  
 Associate  
 Analyst  
 Support Staff

\*Other individuals from the Consultant firm may be substituted in place of the names listed solely at the discretion of the Assistant City Manager/Development Services Director.

( ) Hourly rates may increase by 6% for services rendered after \_\_\_\_\_.

Materials Separately Paid For by Applicant –

	<u>Cost or Rate</u>
( ) Materials	NA
Reports	
Copies	
( ) Travel	NA
( ) Printing	NA
( ) Postage	NA
( ) Delivery	NA
( ) Long Distance Telephone Charges	NA
( ) Other	NA

**Deposit**

(X) **Deposit Amount: \$98,906.25** – As agreed by the Applicants, 100% of the Deposit (\$98,906.25) is to be made prior to execution of this Agreement. In addition, Applicants agree to deposit, within 10 days if City requests to do so, a sum for any Additional Services which shall separately be paid for by the Applicants pursuant to Section 3.2.1.

( ) Use of Deposit to Pay Consultant.

Notwithstanding the sole duty and liability of Applicant to pay Consultant, if this paragraph is “checked,” upon City’s receipt of billing by Consultant, and determination by City in good faith that Consultant’s billing is proper, a judgment for which Applicant agrees to hold City harmless and waive any claim against City, City shall pay Consultant’s billing from the amount of the Deposit. If Applicant shall protest the propriety of a billing to City in advance of payment, City shall consider Applicant’s protest and any evidence submitted prior to the due date for the payment of said bill by Applicant in making its good faith determination of propriety.

( ) Use of Deposit as Security Only; Applicants to Make Billing Payments.

Upon determination by City made in good faith that Consultant is entitled to compensation which shall remain unpaid by Applicant 30 days after billing, City may, at its option, use the Deposit to pay said billing.

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( ) Bill Processing:

A. Consultant's Billing to be submitted for the following period of time:

- ( ) Monthly
- ( ) Quarterly
- (X) Other: Milestone

B. Day of the Period for submission of Consultant's Billing:

- ( ) First of the Month
- ( ) 15th Day of each Month
- ( ) End of the Month
- (X) Other: Upon Completion of Milestone

C. City's Account Number: 60800260

D. Security for Performance

- ( ) Performance Bond, \$ \_\_\_\_\_
- ( ) Letter of Credit, \$ \_\_\_\_\_
- ( ) Other Security:  
Type: \_\_\_\_\_  
Amount: \$ \_\_\_\_\_

(X) Retention. If this space is checked, then notwithstanding other provisions to the contrary requiring the payment of compensation to the Consultant sooner, the City shall be entitled to retain, at their option, the following Retention Percentage until the City determines that the Retention Release Event, listed below, has occurred:

- (X) Retention Percentage: Ten Percent (10%)
- ( ) Retention Amount: \$ \_\_\_\_\_

Retention Release Event:

- (X) Completion of All Consultant Services to the satisfaction of the Assistant City Manager/Development Services Director
- ( ) Monthly
- ( ) Quarterly
- ( ) Other: In accordance with the milestones provided herein.