



**Meeting Date: October 20, 2014**

**Agenda Item No: 8.A.**

**Prepared By: David Mickaelian, Assistant City Manager**

## **REQUEST FOR CITY COUNCIL ACTION**

### **SUBJECT:**

Fitch Mountain Acquisition

### **STRATEGIC INITIATIVE:**

Initiative 1: Quality of Life

### **RECOMMENDED ACTION(S):**

Fitch Mountain Acquisition - Consider adopting:

1. Resolution approving an amendment to Transfer Agreement with Sonoma County Agricultural Preservation and Open Space District (District) dated February 4, 2013; delegate authority to the City Manager to take all necessary and appropriate action to complete both phases of the acquisition and transfer agreement and execute all documents to be recorded, including, but not limited to, a conservation easement, a recreation covenant, an irrevocable offer of dedication to the District, a Grant Deed to Landpaths, a Road Easement Grant Deed to F.R.A.N.C.E.Z. LLC, and certificates of acceptance.
2. Resolution approving a Professional Services Agreement with LandPaths, for an amount not to exceed \$133,000 per year for three years to manage and provide stewardship services for Fitch Mountain Open Space Preserve for the City of Healdsburg and authorizing the City Manager to execute the Agreement and related documents and to take such actions as necessary to implement the Professional Services Agreement.

### **BACKGROUND:**

Fitch Mountain is one of the most prominent physical landmarks found in the north part of Sonoma County. The mountain is surrounded by the City of Healdsburg and provides a scenic backdrop for the City and other communities along the Russian River as well as for area visitors. The heavily wooded mountain can be seen from a great distance in all directions, including a long stretch of Highway 101.

On December 20, 2012 City Council adopted Res. 118-2012 approving a Transfer Agreement with the Sonoma County Agricultural Preservation and Open Space District which in effect would transfer Fee Title to the City of Healdsburg for approximately 198 acres of Fitch Mountain. In addition a Conservation Easement and Recreation Covenant was approved. The property that is in the agreement consists of approximately 198.7 acres on the top and sides of Fitch Mountain. It makes up the entirety of the wooded area on the mountain that has not been developed. The property that was part of the 2012

Transfer Agreement consists of eight primary lots, seven of which are on the east face of the mountain and range from 3 to 12 acres in size. The eighth lot is approximately 146 acres, of which approximately 130 acres is already encumbered with a District 'forever wild' conservation easement established in 1994. Small, unbuildable lots are found around the edges of the eighth lot, on the north side of the mountain. The entire property is in the unincorporated county, but is within the City's Sphere of Influence, Urban Growth Boundary, and Urban Service Area.

Site features on the property include oak woodland, Madrones, mixed conifer forest, an intermittent creek and the mountain's 991-foot peak. The property is accessed from Hilltop Road and Woods Road in Healdsburg, and there are three miles of unimproved dirt roads on the property. There are no structures on the site, although it surrounds two water tanks. The site has been used historically by recreational hikers and other users. Other surrounding land uses include residences on the south, east, and north. The Villa Chanticleer, a Healdsburg city park and conference center, borders on the west.

The City of Healdsburg has recognized the property's importance by designating it as Open Space and as a Major Scenic Ridgeline in the City's General Plan. The mountain offers spectacular views of the Russian River, Alexander and Dry Creek Valleys and the Mayacamas Mountain range. The acquisition will further the protection of the scenic resources and valuable wildlife habitat on the edge of an urban area while making the property available to the public for recreational use in perpetuity.

**LandPaths** - LandPaths is a Sonoma County-based nonprofit organization specializing in connecting people of all ages with the county's natural and agricultural lands. The organization stewards public and privately owned wild lands for the benefit of public use and resource conservation. LandPaths has extensive experience in coordinating volunteers, performing trail maintenance and construction, watershed restoration, transitioning ranchlands into parkland, and managing open space preserves around the Sonoma County. In addition, LandPaths offers programs that provide public access on protected lands and has developed a number of educational programs that re-introduce the public to open spaces. LandPaths has partnerships with California State Parks, California Fish and Game, Sonoma County Agricultural Preservation and Open Space District (District), North Coast Water Quality Control Board, local municipalities (including the City of Healdsburg), county school districts and private landowners. LandPaths currently manages over 150 acres of Open Space for the City of Healdsburg and has so since 2008.

## **DISCUSSION/ANALYSIS:**

As part of the Transfer Agreement a Boundary Survey of the property was required by the City to ensure there were no encroachments into any of the parcels for which the City and LandPaths were to take Fee Title. The City required that property be free on any liens and encroachments that would prohibit title insurance. Based on what was found during the due diligence period a new two phased acquisition process is being adopted. The Transfer Agreement approved by City Council December 2012 contemplated acquisition of the entirety of the Property in a single closing, which was to occur in May 2013. A survey performed by the District in early 2013 revealed the existence of 23 encroachments on the Property. The encroachments ranged from gardens and brush removal to structural improvements. Some of the encroachments affect land subject to the Original Easement, which prohibits such uses of the Property. For liability reasons, the City made clear it will not accept fee title to any portion of the Property with encroachments, nor will the City accept the Property with pending easement violations. After extensive negotiations with the Seller in 2013 and 2014, District staff has secured a new purchase agreement with the Seller which addresses these matters by accomplishing the acquisition in two phases. (See attached "Two-Phase Project" map.) That agreement was executed by the District General Manager on September 17, 2014.

## **Two Phase Acquisition**

Under the first phase (Phase 1), the majority of the Property (172.92 acres) will be conveyed to the City, then LandPaths. After three years the property will be transferred back to the City. The Phase 1 parcels are all that is needed for park development purposes and they suffer three encroachments, which are required to be resolved prior to the Phase 1 closing. As part of Phase 1, the City will also be granted a road and utility easement from the end of Hilltop Drive through the Phase 2 parcels to access the Phase 1 parcels. This easement ensures that there will be legal access to the Phase 1 Property from the eastern side.

The second phase (Phase 2) consists of 25.75 acres. The Seller has until June of 2016 to resolve the numerous encroachments on these parcels. If the Seller resolves the encroachments, and all other conditions to closing are satisfied, then those parcels will be purchased according to prices established in the current purchase agreement and conveyed together to the City in a second closing. The parcels that remain subject to encroachments or are otherwise unacceptable to the City will not be purchased. The District's conservation easement and recreation conservation covenant will be amended at the Phase 2 closing to include any additional acreage acquired by the City at that time.

### **Conservation Easement**

The proposed Original Easement only covers a 130-acre portion of the acquisition. The District is amending and replacing the original conservation easement (which was not executed) so that the entirety of the property acquired through this transaction (from 172.92 acres up to 198.7 acres) is subject to a single, more modern easement. Not only does the new easement language provide greater clarity and specificity about the resources to be protected, it is also more restrictive than the old easement language. Examples of this include (1) all park development is limited to no more than 10% of the easement area; (2) the height of all structures or improvements is limited to less than 18 feet; and (3) impervious surfaces may not exceed 0.5 acres of the Property. No such limitations were included in the provisions of the Original Easement. Finally, the new conservation easement language modernizes and clarifies the intent of the easement which improves administration and enforcement by District stewardship staff.

### **Amendment to Transfer Agreement**

The Transfer Agreement with the City of Healdsburg must be amended to reflect the proposed restructuring of the acquisition. Under the proposed amendment, the City will accept the Phase 1 and Phase 2 properties at two separate closings, subject to all of the same conditions of the original agreement. The amendment also accomplishes various technical revisions to the original agreement resulting from the potential for two closings, such as the need to revise the legal descriptions of the Property subject to the District's conservation easement and recreation covenant to include only those portions of the Property that will be acquired in each phase of the transaction. The amendment makes no change to the agreed-upon forms for the conservation easement or recreation covenant to be retained by the District, except it does update acreage-specific clauses to reconcile the documents with the phasing of the acquisition. The amendment also makes no change to the District's original \$250,000 funding commitment to the City to support operations, maintenance, trail planning, and resource management for the Property during the first three years.

### **LandPaths**

As part of the scope of work, LandPaths will provide specific services for the City of Healdsburg ("Fitch Mountain Management") to protect and manage approximately 172-acre *Fitch Mountain Parcels* as an open space amenity for the public. LandPaths' role as holder of fee title for three years is one of several critical components of a successful transaction bringing the Fitch Mountain Parcel ("FMP") acquisition to fruition. As fee-title owner of the property LandPaths will lead all aspects of the Fitch Mountain Parcel project for a term of three years. During these three years, LandPaths' work will center on (1) Public

Engagement with Fitch Mountain, (2) Fee-title Ownership, (3) Property Management. LandPaths will coordinate all work related to FMP during the first three years with key partners, the City of Healdsburg and the District. An overview of the LandPaths work is as follows:

**1. Public Engagement:** Create a positive community experience, engaged and excited about FMP as a new public open space in the Healdsburg area.

- Lead Public Outings / Education Events on the property.
- Conduct Public Outreach, including a listening campaign about Fitch Mountain and open space in the Healdsburg area. Outreach will include 2 meetings (min) with the Fitch Mountain Association (“FMA”) leadership, 6 meetings (min) with local merchants, 4 meetings (min) with individual community leaders, and meet up to 4 times with groups of neighbors to address concerns beyond FMA. Outreach will also include 2 advertised outings to elicit input within the first year following close of escrow.
- Host Community Event highlighting open space resources, ideally creating an annual event in conjunction with City of Community Services Department.
- Serve as Point of Contact: Field and respond to all public agency and private inquires related to all aspects of the FMP project in a timely manner.

**2. Fee Title Ownership :** Maintain in good legal standing all fee-title obligations including:

- Liability insurance
- Taxes and other fees
- Legal counsel

**3. Property Management:** Engage Community in active stewardship role each including:

- Coordinate stewardship efforts by public agencies and community groups interested in executing site enhancement (principally but not exclusively *fire management*) on FMP.
- Install Property signage in conjunction with City approval.
- Conduct Road & trail maintenance in keeping with established erosion control and native habitat sensitivity.
- Coordinate development of Interim Fire Management Plan & Implement Immediate Fire reduction work with City of Healdsburg and Cal Fire.
- Development of Emergency Action Plan (EAP) with City and County Emergency Services.
- Address immediate site needs: Non-native removal and erosion control treatments as needed using

hand tools by community volunteers; species including French and Scotch broom.

### **Related Documents:**

As part of the property acquisition transaction, the City will accept a Grant Deed from the seller but will deed back a specific road easement. The City will also accept a road easement from the seller, will grant an irrevocable offer of dedication to the District that may be accepted if there is an uncured material breach of the Conservation Easement, and will accept an irrevocable offer of dedication from LandPaths that the City will accept at the end of the three-year term of the LandPaths Professional Services Agreement. The first proposed Resolution authorizes the City Manager to execute all related required documents for the transaction and to take necessary actions (such as recording documents and purchasing title insurance) to implement the intent of the Resolution.

### **ENVIRONMENTAL ANALYSIS:**

**California Environmental Quality Act (C.E.Q.A.)** The District General Manager posted a notice of exemption on December 11, 2012 in accordance with Public Resources Code section 21152 which found this project is Categorical Exempt from C.E.Q.A pursuant to State Guidelines Sections 15313, 51316(a), 15317, and/or 15325(a),(c) and (f).

### **FISCAL IMPACT:**

The amendment makes no change to the District's original \$250,000 funding commitment to the City to support operations, maintenance, trail planning, and resource management for the Property during the first three years. In addition \$100,000 has been identified in the Community Benefits Grant Fund. This acquisition will have a long term fiscal impact to the Community Services Department. There are sufficient funds in place to contract with LandPaths over the next three years. Those funds have been identified through the District and City to complete a long term management plan that will include vegetation management, operations, and trails master plan. In addition the City and District are working collaboratively with the Coastal Conservancy to secure additional funds for public access.

### **ALTERNATIVES:**

Council could direct staff to negotiate different terms with either the District or LandPaths. If this was the case, Council would need to direct staff as to what those terms and conditions would be during Closed Session.

### **ATTACHMENTS:**

- |                          | Description                                  |
|--------------------------|--|
| <input type="checkbox"/> | Fitch Mountain Transfer Agreement Resolution |
| <input type="checkbox"/> | Amended Transfer Agreement                   |
| <input type="checkbox"/> | Conservation Easement                        |
| <input type="checkbox"/> | Rec Covenant                                 |
| <input type="checkbox"/> | Two-Phase Project Map                        |
| <input type="checkbox"/> | LandPaths Resolution                         |
| <input type="checkbox"/> | LandPaths Scope of Work                      |

CITY OF HEALDSBURG

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HEALDSBURG APPROVING A FIRST AMENDMENT TO TRANSFER AGREEMENT WITH THE SONOMA COUNTY AGRICULTURAL PRESERVATION AND OPEN SPACE DISTRICT, AND EXHIBITS THERETO, BY WHICH FEE TITLE TO CERTAIN PROPERTY WILL BE TRANSFERRED DIRECTLY TO THE CITY, SUBJECT TO A CONSERVATION EASEMENT AND RECREATION COVENANT IN FAVOR OF THE DISTRICT; AUTHORIZING THE CONVEYANCE OF TITLE THERETO TO LAND PARTNERS THROUGH STEWARDSHIP FOR A THREE-YEAR TERM, AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID FIRST AMENDMENT AND RELATED DOCUMENTS, INCLUDING BUT NOT LIMITED TO GRANT DEEDS, CERTIFICATES OF ACCEPTANCE, CONSERVATION EASEMENT, RECREATION COVENANT AND IRREVOCABLE OFFER TO DEDICATE, AND TO TAKE ALL NECESSARY ACTIONS TO IMPLEMENT THE TRANSFER AGREEMENT AS AMENDED,

WHEREAS, the Sonoma County Agricultural Preservation and Open Space District ("District") and the City of Healdsburg ("City") share an interest in preserving that certain real property comprising approximately 198.7 acres of land in unincorporated Sonoma County near Healdsburg, California, (APNs: 087-044-036; 087-045-001, 087-045-002, 087-045-004, 087-045-006, 087-045-007, 087-045-008; 087-053-005; 087-110-007, 087-110-008, 087-110-009, 087-110-010, 087-110-011, 087-110- 012; 087-120-001; 087-130-002, 087-130-003, 087-130-004;087-140-037, 087-130-038; 087-171-025, 087-130-026; 087-181-024, 087-130-025; 087-191- 022; 087-220-001) (the "Property"); and

WHEREAS, the Property is referred to as the Fitch Mountain Open Space Preserve; and

WHEREAS, the District preserves land through the acquisition of conservation easements to the fullest extent possible, rather than through fee acquisitions; and

WHEREAS, the District has indicated a willingness to purchase the Property if the City is willing to own, operate and maintain the Property in a manner that preserves wildlife habitat, protects the Property's natural resources and scenic values, maintains the open space character of the Property while allowing for passive outdoor recreational and educational uses; and

WHEREAS, the City has indicated a willingness to own, operate, and maintain parks, open space, recreation facilities and programs inside and adjacent to its boundaries; and

WHEREAS, the City has expressed an interest in owning the Property for the purposes of preserving and protecting the Property's wildlife habitat, natural resources, scenic values, and maintaining the open space character of the Property while allowing passive outdoor recreational and educational uses; and

WHEREAS, on December 11, 2012, the Board of Directors of the District authorized execution of a Purchase Agreement with F.R.A.N.C.E.Z., LLC (Seller) for the District's purchase of the Property; and

WHEREAS, on December 20, 2012, the City Council adopted Resolution No. 118-2012. approving a Transfer Agreement with the District for the Property, as well as related agreements included as exhibits thereto ("Transfer Agreement") that would allow the City to take title to the Property for the purposes described above; and

WHEREAS, included in the Transfer Agreement were a Conservation Easement and a Recreation Covenant that defined the types of activities and uses allowed on the Property in perpetuity; and

WHEREAS, the purpose of the Conservation Easement is to preserve and protect forever the Conservation Values of the Property, as described in the Conservation Easement; and

WHEREAS, the Conservation Values are intended to protect the property's wildlife habitat, natural resources, open space character, scenic values, while allowing for passive outdoor recreational and educational uses; and

WHEREAS, the Conservation Easement describes passive outdoor recreational and educational uses as those recreational and educational activities typically associated with natural, undeveloped open space lands, and that are generally non-structured and require minimal or no developed facilities or improvements. Such activities include walking, biking, jogging, hiking, dog walking, bird watching, nature viewing, picnicking, and public events that avoid impact to significant cultural and natural resources; and

WHEREAS, the Conservation Easement also has provision for indemnification, liabilities and remedies for breach of its terms and conditions; and

WHEREAS, the Recreation Covenant permits the City to use, operate and maintain the Property as a public park and open space preserve in perpetuity, available to the public for passive outdoor public recreation and educational uses in a manner consistent with the Conservation Easement; and

WHEREAS, the Recreation Covenant also has provision for remedies for breach of its terms and conditions which include a formula for liquidated damages if a breach is not cured; and

WHEREAS, upon execution of the Transfer Agreement the District agreed to contribute up to \$250,000 toward operation and maintenance of the Property during the first

three years; and

WHEREAS, the Transfer Agreement contemplated acquisition of the entirety of the Property in a single closing, to occur in May 2013; and

WHEREAS, a survey of the Property in 2013 disclosed the existence of 23 encroachments on the Property, which were unacceptable to the City; and

WHEREAS, the original Purchase Agreement lapsed; and

WHEREAS, following extensive negotiations between the Seller and the District in 2013 and 2014, on September 17, 2014, Seller and District entered into a new Purchase Agreement that addresses the encroachments by dividing the proposed acquisition into two phases; and

WHEREAS, under Phase 1, 172.92 acres of the Property will be purchased by the District and conveyed to the City, with an anticipated closing date of November 17, 2014; and

WHEREAS, the Phase 1 parcels are sufficient for park development purposes and suffer only three encroachments, all of which are required to be resolved prior to the Phase 1 closing; and

WHEREAS, the Phase 2 parcels consist of 25.75 acres, and will be purchased by the District and conveyed to the City by June 2016, but only if Seller resolves the encroachments thereon to City's satisfaction; and

WHEREAS, the original Conservation Easement appended to the original Purchase Agreement has been amended and restated to provide greater specificity about the resources to be protected and to coincide more closely with language in the Recreation Covenant, and will replace the original Conservation Easement previously approved by the City; and

WHEREAS, City staff has evaluated the First Amendment to the Transfer Agreement by considering all of the obligations and potential liability, available City resources related to managing the Property, fire safety, public access, and projected costs to operate and maintain the Property, as described in the staff report accompanying this Resolution; and

WHEREAS, subject to the terms and conditions of the proposed First Amendment to the Transfer Agreement, the City is willing to accept title to the Property and to devote it to use as an open space preserve with passive outdoor recreational and educational uses, subject to the proposed Conservation Easement and Recreation Covenant held by the District; and

WHEREAS, execution of the First Amendment to the Transfer Agreement is dependent on the City and LandPaths entering into an agreement for LandPaths to take title to (for a period of three years), operate and maintain Phase 1 of the Property, and to work with the City to develop a Management Plan for such Property; and

WHEREAS, based on all of the information provided at the time of its consideration of

this Resolution, the City Council finds that the purposes of the acquisition of the Property include (1) the preservation of wildlife habitat; (2) the creation of a park where the land is in a natural condition and for which no management plan yet exists; and (3) maintenance of the open space character of the Property; and

WHEREAS, the City Council finds that acquisition of the Property and conveyance of title thereto to LandPaths for a term of three years are in the best interest of the public; and

WHEREAS, based on the findings above, the City Council finds that approval of the First Amendment to the Transfer Agreement and the implementing agreements and related documents is exempt from the provisions of the California Environmental Quality Act, pursuant to the categorical exemptions found in CEQA Guidelines Sections 15313, 15316(a), and 15317.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Healdsburg hereby approves the First Amendment to the Transfer Agreement with the Sonoma County Agricultural Preservation and Open Space District, including the Exhibits attached thereto, by which fee title to certain property will be transferred directly to the City as provided therein, subject to a Conservation Easement and Recreation Covenant in favor of the District; and authorizing the City Manager to execute said First Amendment to Transfer Agreement and to take specified action to administer the Agreement, including executing and recording as applicable the Conservation Easement, Recreation Covenant and Irrevocable Offer to Dedicate, and such Grant Deeds and Certificates of Acceptance as are necessary, and to take all other actions as necessary, to implement the intent of this Resolution.

PASSED, APPROVED, and ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2014 by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ABSTAINING: Councilmembers:

SO ORDERED:

ATTEST:

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Resolution No.  
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I, MARIA CURIEL, City Clerk of the City of Healdsburg, do hereby certify that the foregoing is a full, true, and correct copy of Resolution No. \_\_\_\_\_ adopted by the City Council of the City of Healdsburg on the \_\_\_\_ day of \_\_\_\_\_, 2014.

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Maria Curiel, City Clerk

2341450.1

**FIRST AMENDMENT TO AGREEMENT BETWEEN  
THE SONOMA COUNTY AGRICULTURAL PRESERVATION AND OPEN  
SPACE DISTRICT AND THE CITY OF HEALDSBURG FOR  
THE ACQUISITION AND PRESERVATION OF FITCH  
MOUNTAIN**

This Amendment (“Amendment”) modifies that certain Agreement for the Acquisition and Preservation of Fitch Mountain (“Original Agreement”) entered into as of February 4, 2013, by and between the Sonoma County Agricultural Preservation and Open Space District (the "District") and the City of Healdsburg ("City").

**RECITALS**

A. By action of their respective governing boards on December 10, 2012 and December 11, 2012, the District and City approved the Original Agreement, which was intended to preserve that certain real property comprising approximately 198.7 acres of land in unincorporated Sonoma County near Healdsburg, California, as more specifically described therein and hereinafter referred to as the “Property”; and

B. On December 11, 2012, the District and the Seller of the Property, F.R.A.N.C.E.Z LLC (“Seller”) entered into a purchase agreement to effectuate the purchase and sale of the Property (“Original Purchase Agreement”); and

C. On March 27, 2013, consistent with notice received from the City, District notified Seller that conditions to closing described in the Original Purchase Agreement at Paragraphs 4a, 4b, 4c, and 4d were not satisfied; and

D. The conditions at issue included a number of possible encroachments affecting certain portions of parcels comprising approximately 30.73 acres of the real property subject to the Original Purchase Agreement; and

E. The Seller failed to resolve the encroachments to District and City’s satisfaction and the Original Purchase Agreement expired on or around May 10, 2013; and

F. Since that time, the District has negotiated a new purchase agreement with the Seller, which agreement became effective on June 16, 2014 and was later amended on September 17, 2014 (“Purchase Agreement”), pursuant to which the Property will be acquired in two phases, subject to the terms and conditions of the Purchase Agreement, attached hereto as Exhibit “B-1”;

G. In the first phase (“Phase 1”), the Seller will convey all that certain real property comprising approximately 172.92 acres of land in unincorporated Sonoma County near Healdsburg, California (Assessor Parcel Nos. 087-110-012 as modified by that certain lot line adjustment to be accomplished by Seller prior to the Phase 1 Closing, 087-044-036; 087-

045-001, 002, 004, 006, 007, & 008; 087-053-005; 087-110-007, 009, 010; 087-120-001; 087-130-002, 003, & 004; 087-140-037 & 038; 087-171-025; 087-181-025; 087-220-001), including all appurtenances thereto, which include, but are not limited to, a road easement which traverses portions of Seller's property that are not subject to the Phase 1 Closing (as defined in the Purchase Agreement), including APNs 087-110-008 and 087-110-011. The easement shall be a 40-foot wide road and utility easement for public recreational use and public park access, including all activities reasonably related thereto, the width of which may be modified pursuant to a judgment in Sonoma County Superior Court Case No. 225412 ("Stratton Claim"), provided that prior to the Phase 1 Closing a survey satisfactory to both District and City demonstrates that the road easement is no less than 25-feet wide at any given point. The foregoing real property and appurtenances are more particularly described in **Exhibit "A-1"** and are depicted in **Exhibit "J"** as the "Phase 1 Real Property" and the "Phase 1 Road Easement" (collectively hereinafter the "Phase 1 Real Property"); and

H. City acknowledges that, at the Phase 1 Closing (as defined in the Purchase Agreement), Seller will retain an access road and utility easement up to 40 feet in width over APN 087-110-010 and APN 087-110-009 benefitting APN 087-110-011 and APN 087-110-008 in the location depicted on **Exhibit "J"** as "Seller's Reserved Access Easement" and that the reservation of this easement will be accomplished via a deed restriction or easement deed in a form acceptable to District and City; and

I. In the second phase ("Phase 2"), the Seller will convey any or all of that certain real property comprising approximately 25.75 acres of land in unincorporated Sonoma County near Healdsburg, California (Assessor Parcel Nos. 087-110-012 (ptn), 087-110-011, 087-110-008, 087-181-024, 087-191-022, 087-171-026) as more particularly described in **Exhibit "A-1"** and as depicted in **Exhibit "J"** as the "Phase 2 Real Property" (the "Phase 2 Real Property"); and

J. Subject to the terms and conditions of this Amendment, City remains willing to take title to the Property, or any lesser portion thereof as may be conveyed under the terms of the Purchase Agreement, and to devote it to use as an open space preserve with low-intensity public outdoor recreational values, subject to a conservation easement held by the District; and

In consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the District and City agree as follows:

#### A G R E E M E N T

1. The foregoing recitals are true and correct.
2. **Exhibit "A"** to the Original Agreement is hereby replaced with **Exhibit "A-1,"** attached hereto.
3. **Exhibit "B"** to the Original Agreement is hereby replaced with **Exhibit "B-1,"**

attached hereto.

4. **Exhibit “C”** to the Original Agreement is hereby replaced with **Exhibit “C-1,”** attached hereto.

5. **Exhibit “J”** is hereby added to the Original Agreement.

6. The parties agree to modify the legal descriptions for the following instruments to include only the Phase 1 Real Property for the purposes of the Phase 1 Closing (as defined in the Purchase Agreement): the Covenant (**Exhibit “D”** to the Original Agreement), the Irrevocable Offer of Dedication to the District from the City (**Exhibit “E”** to the Original Agreement), and the Irrevocable Offer of Dedication to the City from Landpaths (**Exhibit “F”** to the Original Agreement).

7. The “Interim Period” as defined in Paragraph 2 of the Original Agreement shall be redefined as the period between the Effective Date of this Agreement and the Phase 1 Closing date (as defined in the Purchase Agreement).

8. The “Closing Date” as defined in Paragraph 2 of the Original Agreement shall be redefined as the Phase 1 Closing date (as defined in the Purchase Agreement).

9. All references to the “Property” in the Original Agreement shall be construed to include the Phase 1 Real Property and the Phase 2 Real Property.

10. All terms used in this Amendment as defined terms shall have the definition supplied herein or, if none is supplied, such definition shall be as supplied in the Original Agreement.

11. Paragraph 3(a) of the Original Agreement shall be modified as follows:

a. Due Diligence. During the first 140 days of the term of the Purchase Agreement as to the Phase 1 Real Property and during the first 700 days of the term of the Purchase Agreement as to the Phase 2 Real Property (jointly hereinafter the “Due Diligence Period”), the City will undertake whatever measures it deems necessary or appropriate to facilitate a timely transfer of the Property, as contemplated herein, including completion of any due diligence investigations of the Property that it deems necessary and appropriate. During the applicable Due Diligence Period for any portion of the Property, if the City discovers conditions or circumstances that were not known, anticipated or foreseen at the time of execution of this Agreement that create an unreasonable risk of harm to persons or property, or create unreasonable liability for the City as owner of the Property (collectively “Unacceptable Conditions”), the City shall notify the District of such Unacceptable Conditions as soon as

practicable, but not later than ten (10) days after their discovery or, as to conditions discovered prior to the effective date of the Purchase Agreement (June 16, 2014), not later than September 19, 2014. The Parties shall thereafter attempt, in good faith, to address and resolve the same. The City's obligation to accept fee title to the Property shall be subject to either (1) no such conditions or circumstances having been discovered by the City during or prior to the applicable Due Diligence Period, or (2) such conditions or circumstances having been addressed and resolved to the satisfaction of the City. Should City fail to notify the District any Unacceptable Conditions prior to the expiration of the applicable Due Diligence Period, City's obligation to accept fee title shall be subject to only such conditions as are explicitly provided in this Agreement.

12. Paragraph 4(c) of the Original Agreement shall be modified as follows:

c. Conditions to Closing. District shall notify the City of any unsatisfied condition to closing specified in the Purchase Agreement that District discovers within five (5) days of its discovery or, as to conditions discovered prior to the effective date of the Purchase Agreement (June 16, 2014), not later than September 19, 2014. Any and all notices that District is required to give to Seller pursuant to Paragraph 5 of the Purchase Agreement shall be given concurrently to City. District shall not accept any exceptions to title, or decide to proceed with the purchase and take the Property subject to such exceptions, without obtaining City's express consent thereto. If District desires to waive a condition to closing that the City does not want to waive, then the parties will meet and confer about the matter within five (5) days of District's notice of its intended waiver. The City and District may pursue all remedies available under the Purchase Agreement for the satisfaction or waiving of a condition, provided, however, that if City and District cannot reach agreement with regard to the satisfaction or waiving of a condition to closing, City agrees District may, in its sole discretion, refuse to consummate the purchase of the Property, in which case District may terminate this Agreement.

13. A new Paragraph 16 shall be added as follows:

16. *Phase 2 Particulars.*

a. Obligation to Accept Phase 2 Property in Accordance with Purchase Agreement. The City agrees to accept any and all of the Phase 2 Real Property when all conditions to closing provided in Paragraph 5 of the Purchase Agreement are satisfied or waived by the City with respect to any or all of the parcel(s) which comprise the Phase 2 Real Property. In connection with this provision, the City agrees that its obligation to accept any of the Property shall not be limited by Paragraph 5(a) of the Purchase Agreement, which is intended for the sole benefit of the District.

b. Update to Legal Descriptions. The City and District agree to amend the legal descriptions for the real property subject to the following instruments to ensure that all Phase 2 Real Property is encompassed within such instruments once it is acquired pursuant to the Purchase Agreement: the Conservation Easement, the Covenant, the Irrevocable Offer of Dedication to the District from the City, and the Irrevocable Offer of Dedication to the City from Landpaths. The City further agrees to update its Acceptance of the Irrevocable Offer of Dedication to the City from Landpaths to refer to the more recently recorded Offer to Dedicate made to it by Landpaths in accordance with this section.

14. Except to the extent the Original Agreement is specifically amended or supplemented hereby, the Original Agreement, together with exhibits is, and shall continue to be, in full force and effect as originally executed, and nothing contained herein shall, or shall be construed to modify, invalidate, or otherwise affect any provision of the Original Agreement or any right of either party arising thereunder.

15. This Amendment shall be governed by and construed under the internal laws of the State of California, and any action to enforce the terms of this Amendment or for the breach thereof shall be brought and tried in the County of Sonoma.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date of the last signature below, however the Effective Date of this Amendment is September 2, 2014.

APPROVED:

SONOMA COUNTY AGRICULTURAL  
PRESERVATION AND OPEN SPACE  
DISTRICT

President, Board of Directors

Date: \_\_\_\_\_

ATTEST:

Clerk of the Board of Directors

APPROVED:

THE CITY OF  
HEALDSBURG

City Manager

Date: \_\_\_\_\_

ATTEST:

City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

County Counsel

City Attorney

RECORDING REQUESTED BY AND RETURN TO:

Clerk of the Board of Directors  
Sonoma County Agricultural  
Preservation and Open Space District  
575 Administration Drive, Room 102A  
Santa Rosa, CA 95403

DEED AND AGREEMENT  
BY AND BETWEEN  
The City of Healdsburg  
AND  
THE SONOMA COUNTY AGRICULTURAL PRESERVATION  
AND OPEN SPACE DISTRICT  
CONVEYING A CONSERVATION EASEMENT  
AND  
ASSIGNING DEVELOPMENT RIGHTS

The City of Healdsburg (GRANTOR) and the Sonoma County Agricultural Preservation and Open Space District, a public agency formed pursuant to the provisions of Public Resources Code sections 5500 et seq. ("DISTRICT"), agree as follows:

RECITALS

A. GRANTOR is the owner in fee simple of that certain real property located in Sonoma County and more particularly described in Exhibit A, attached hereto and incorporated herein by this reference ("the Property").

B. In 1990 the voters of Sonoma County approved the creation of DISTRICT and the imposition of a transactions and use tax by the Sonoma County Open Space Authority ("the Authority"). The purpose for the creation of DISTRICT and the imposition of the tax by the Authority was to provide for the preservation of agriculture and open space through the acquisition of interests in appropriate properties from willing sellers. The District was created and the tax imposed in order to further the state policy for the preservation of agricultural and open space lands, to meet the mandatory requirements imposed on the County and each of its cities by Government Code sections 65560 et seq., and to advance the implementation of the open space elements of their respective general plans. In order to accomplish those purposes, DISTRICT and the Authority entered into a contract whereby, in consideration of the Authority's financing of DISTRICT's acquisitions, DISTRICT agreed to and did adopt an acquisition program that was in conformance with the Authority's voter approved Expenditure Plan. In 2006, the voters of Sonoma County approved an extension of the transaction and use tax, a transfer of the taxing authority to the County of Sonoma, and an update of the Expenditure Plan. The DISTRICT's acquisition program remains in full compliance with the updated voter-approved Expenditure Plan.

C. In 1994, DISTRICT acquired a conservation easement over a portion of the Property (“the 1994 Easement”). The 1994 Easement was recorded in the Office of the Sonoma County Recorder on September 15, 1994 as Document No. 1994-0106860. The 1994 Easement expressly acknowledged the property owner’s right to convey the Property to the City of Healdsburg or other willing park or open space entity for purposes of a public park. GRANTOR and DISTRICT now desire to amend the 1994 Easement (1) to reflect that conveyance for park purposes, (2) to expand the 1994 Easement to encompass the entirety of the Property, (3) to clarify permitted natural resource management and recreation and educational uses, and (4) to clarify procedural provisions of the Easement. This Conservation Easement provides protections equal or greater than those provided by the 1994 Easement and constitutes an amendment to the 1994 Easement, executed in accordance with Civil Code sections 815 through 816.

D. On [ ], DISTRICT's Board of Directors, pursuant to Government Code section 65402 and Sonoma County Ordinance No. 5180, determined, by its Resolution No. [ ], that the acquisition of this Conservation Easement in the Property was consistent with the Sonoma County General Plan (specifically the Plan's Open Space and Resource Conservation Element) because the Conservation Easement will preserve the largely open, scenic character of an important scenic landscape (OSRC-2), will protect and enhance natural habitats and diverse plant and animal communities (OSRC -7), and will provide opportunities for public outdoor recreation in a location convenient to urban areas (OSRC 17.1). By that same resolution, the DISTRICT’s Board of Directors determined that its acquisition of this Conservation Easement is consistent with the voter-approved Expenditure Plan.

E. This Conservation Easement will further the goals, objectives and policies of the following adopted local plans. Under the City of Healdsburg’s General Plan Land Use Section 1.4, a portion of the Property is identified as Conserved Open Space. The General Plan’s Scenic Resources Section 19.1 identifies Fitch Mountain as a scenic resource. Finally, in the General Plan’s Biological Resources Section 15.3 Fitch Mountain is identified as having considerable botanical and wildlife habitat. In addition, the City of Healdsburg’s Park and Open Space Master Plan calls for the City to manage properties acquired by the Open Space District on Fitch Mountain for nature preserves for wildlife and passive public use. The DISTRICT’s Connecting Communities and the Land, A Long-Range Acquisition Plan also identifies Fitch Mountain as a priority for preservation. Under the ‘Recreation and Education’ category, the Property fulfills the goal of providing hiking trails and scenic vistas in many directions. It is a Property of regional importance because of its high visibility and strategic location adjacent to Healdsburg and the Highway 101 urban corridor. Under the ‘Greenbelts and Scenic Hillsides’ category, the Property will protect a prominent, scenic, highly visible, and unique Property. Under the ‘Water, Wildlife, and Natural Areas’ category, the Property supports multiple wildlife species within a designated Priority Oak Woodland.

F. In 1994, DISTRICT acquired a conservation easement over a portion of the Property (“the 1994 Easement”). The 1994 Easement was recorded in the Office of the Sonoma County Recorder on September 15, 1994 as Instrument No. 1994-0106860. GRANTOR and DISTRICT now desire to amend, replace, and supersede the 1994 Easement with this Conservation Easement (1) to enhance natural resource protections; (2) to clarify permitted

natural resource management and recreation and educational uses; and (3) to clarify procedural provisions of the easement. This Conservation Easement provides protections equal to or greater than those provided by the 1994 Easement and supersedes the 1994 Easement in conformance with the requirements of California Public Resources Code Section 5540.

G. DISTRICT has the authority to acquire conservation easements by virtue of Public Resources Code section 5540 and possesses the ability and intent to enforce the terms of this Easement.

THEREFORE, in consideration of the foregoing recitations and of the mutual covenants, terms, conditions, and restrictions herein set forth and other valuable consideration receipt of which is hereby acknowledged, GRANTOR and DISTRICT agree as follows:

## EASEMENT

### PART ONE: GRANT OF EASEMENT

**1. Grant and Acceptance of Conservation Easement and Assignment of Development Rights.** Pursuant to the common and statutory law of the State of California including the provisions of Civil Code sections 815 to 816, inclusive, GRANTOR hereby grants to DISTRICT and DISTRICT accepts a conservation easement over the Property in perpetuity under the terms and conditions set forth herein (“the Easement”). GRANTOR hereby irrevocably assigns to DISTRICT all development rights associated with the Property, except those rights which are specifically reserved by GRANTOR through this Easement.

**2. Conservation Values.** The Property is situated adjacent to the City of Healdsburg. It encompasses the upper slopes and the peak of the 991-foot high Fitch Mountain, a very prominent natural landmark. The Property is heavily forested, with few small clearings. Critical resources on the Property (collectively “the Conservation Values”), include open space, natural resources and wildlife habitat, scenic qualities, and recreational and educational opportunities. These include, but are not limited to the following:

**2.1 Natural Resources.** The Property has an extensive forested area, including oak woodland, and mixed oak/Douglas fir and redwood forest, which provides habitat for a wide variety of species. The Property has also been identified in the County’s General Plan as an area with special species habitat. Protection of the Property will help protect the water quality and quantity of Russian River watershed. The Russian River is significant for natural resources because, among other things, it provides habitat for endangered steelhead and threatened Coho salmon.

**2.2 Scenic Values.** The Property encompasses the entire 991-foot peak of Fitch Mountain and its surrounding upper slopes. Fitch Mountain is very visible from a significant length of County-designated Scenic Corridor Highway 101. The Russian River, a County-designated Waterway Trail, wraps around the base of Fitch Mountain on the north, east, and south sides. Fitch Mountain thus provides a prominent backdrop for recreational river users. In addition, Fitch Mountain is the most prominent natural feature seen from the city of Healdsburg,

which borders it on the west side. The green forested area provides a natural backdrop to the city and contributes to its ambiance. Looking out from the Property, visitors may see Mt. St. Helena, the Mayacama Mountains, the Alexander Valley, and many other prominent features of Sonoma County.

**2.3 Recreation and Education.** The Property provides opportunities for passive outdoor public recreation and educational uses providing that such uses are compatible with the protection of the Property's natural resources. The Property provides opportunities for recreational activities and wildlife viewing in a natural area adjacent to the Healdsburg urban area.

**3. Conservation Purpose.** It is the purpose of this Easement to preserve and protect forever the Conservation Values of the Property, as described in Section 2. This purpose shall hereinafter be referred to as "the Conservation Purpose of this Easement." GRANTOR and DISTRICT intend that this Easement will confine the use of the Property to activities that are consistent with the Conservation Purpose of this Easement and will prohibit and prevent any use of the Property that will materially impair or interfere with the Conservation Values of the Property. GRANTOR and DISTRICT intend that all Conservation Values of the Property will be fully preserved and protected in perpetuity. In the event, however, that the preservation and protection of one Conservation Value becomes irreconcilably inconsistent with the preservation and protection of another Conservation Value, the following priorities shall be followed: preservation and protection of natural resources and scenic views shall take precedence over preservation and protection of recreation and educational uses.

## **PART TWO: RESERVED AND RESTRICTED RIGHTS**

**4. Affirmative Rights of DISTRICT.** DISTRICT shall have the following affirmative rights under this Easement:

**4.1 Protecting Conservation Values.** DISTRICT shall have the right to preserve, protect and document in perpetuity the Conservation Values of the Property.

**4.2 Property Inspections.** DISTRICT shall have the right to enter upon the Property and to inspect, observe, and study the Property for the purposes of (i) identifying the current activities and uses thereon and the condition thereof, (ii) monitoring the activities and uses thereon to determine whether they are consistent with the terms, conditions and Conservation Purpose of this Easement, (iii) enforcing the terms, conditions and Conservation Purpose of this Easement, and (iv) exercising its other rights under this Easement. Such entry shall be permitted at least once a year at reasonable times, upon one week's prior notice to GRANTOR, and shall be made in a manner that will not unreasonably interfere with GRANTOR's use and quiet enjoyment of the Property pursuant to the terms and conditions of this Easement. Each entry shall be for only so long a duration as is reasonably necessary to achieve the purposes of this Section 4.2, but shall not necessarily be limited to a single physical entry during a single twenty-four hour period. Notwithstanding the foregoing, should DISTRICT's General Manager have a reasonable belief that GRANTOR is in breach of this Easement, DISTRICT shall have the right at any time, upon twenty-four hours' prior notice to GRANTOR, to enter upon the Property for

the purpose of determining whether such breach has occurred. The rights of entry provided by this Section 4.2 shall extend to the officers, agents, consultants, and volunteers of DISTRICT.

**4.3 Enforcement.** DISTRICT shall have the right to enforce the rights herein granted and to prevent or stop, by any legal means, any activity or use on the Property that is inconsistent with the terms, conditions or Conservation Purpose of this Easement and to require restoration of such areas or features as may be damaged by such activities or uses.

**4.4 Approval of Certain Uses.** DISTRICT shall have the right to review and approve proposed uses and activities on the Property as more specifically set forth in Section 5 and Section 6.

**4.5 DISTRICT Signage.** DISTRICT shall have the right to erect and maintain a sign or other appropriate marker in a location on the Property acceptable to GRANTOR, visible from a public road, bearing information indicating that the Property is protected by DISTRICT and acknowledging the sources of DISTRICT funding for the acquisition of this Easement. The wording and design of the sign or marker shall be determined by DISTRICT with consent of GRANTOR. No such sign or marker shall exceed thirty-two (32) square feet in size nor be artificially illuminated. DISTRICT shall be responsible for the cost of erecting and maintaining such sign or marker.

**5. GRANTOR's Reserved and Restricted Rights.** GRANTOR shall confine use of the Property to activities and uses that are consistent with the Conservation Purpose of this Easement. Any activity or use that is inconsistent with the Conservation Purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly reserved, restricted or prohibited as set forth below. GRANTOR and DISTRICT acknowledge that the following list does not constitute an exhaustive recital of consistent and inconsistent activities and uses, but rather (i) establishes specific allowed activities and uses, (ii) establishes specific prohibited activities and uses, and (iii) provides guidance for determining the consistency of similar activities and uses with this Easement, in accordance with the procedures set forth in Section 6.

**5.1 General Requirements for All Uses.**

5.1.1 Compliance with Governmental Regulations. All activities and uses on the Property shall be undertaken in a manner consistent with all applicable federal, state, and local statutes, ordinances, rules, and regulations.

5.1.2 Compliance with Terms, Conditions and Conservation Purpose of this Easement. All activities and uses on the Property shall be undertaken in a manner consistent with the terms, conditions and Conservation Purpose of this Easement.

5.1.3 Protection of Conservation Values. All activities and uses on the Property shall be undertaken in a manner that protects and preserves the Conservation Values.

5.1.4 Protection of Soil and Water. No activity or use on the Property shall be undertaken in a manner that results in significant soil degradation or pollution, or significant degradation or pollution of any surface or subsurface waters.

5.1.6 Notice and Approval Procedures. Whenever in this Section 5, prior notice to or approval by DISTRICT is required, such notice shall be given or approval shall be obtained in accordance with Section 6 of this Easement.

5.1.7 Management Plan. GRANTOR intends to develop and implement, or cause to be developed and implemented, a Management Plan and a Trails Master Plan for the Property (both plans referred to hereinafter as “Management Plan”). The Management Plan may include designation of trails, nature and location of proposed park improvements, nature and location of proposed park uses, and other provisions for operation and management of the Property as a public park and open space preserve as GRANTOR deems appropriate. The Management Plan will be subject to review and approval by DISTRICT in accordance with Section 6.1 of the Easement. The Management Plan shall not be implemented on the Property until it has been approved by District. DISTRICT’s review and approval of the Management Plan shall be based on the Management Plan’s consistency with the terms, conditions and Conservation Purpose of this Easement

Once the Management Plan is approved by DISTRICT, uses and improvements described in that approved Management Plan shall be deemed to be consistent with the Conservation Purpose of this Easement and shall be permitted on the Property without further notice to or approval by DISTRICT required notwithstanding any other provision in this Easement. All such uses and improvements shall be undertaken in accordance with the terms and conditions of this Easement and in compliance with all applicable laws and regulations.

The Management Plan may be amended, revised or updated from time to time provided that such amendment, revision or update shall be subject to DISTRICT’s approval in accordance with Section 6.1 of this Easement. DISTRICT’s review and approval of amendments, revisions and updates to the Management Plan shall be based on the amendment, revision or update’s consistency with the terms, conditions and Conservation Purpose of this Easement.

**5.2 Land Uses.** Use of the Property is restricted solely to natural resource protection preservation, restoration and enhancement, and recreational and educational uses as defined in this Section 5.2. Residential, commercial, or industrial use of or activity on the Property is prohibited except for commercial use as reserved in Section 5.2.4.

5.2.1 Natural Resource Protection, Preservation, Restoration and Enhancement. GRANTOR reserves the right to protect, preserve, restore and enhance the natural resources of the Property in accordance with sound, generally accepted conservation practices and the provisions of Section 5.5.

(a) Mitigation. The Property shall not be available to mitigate for environmental impacts of projects located on or off site.

5.2.2 Recreational and Educational Use. Subject to the provisions of Section 5.6, GRANTOR shall make the Property available to the public for passive outdoor recreational and educational uses. All outdoor recreational and educational uses and activities on the Property shall be designed and undertaken in a manner compatible with natural resource protection. As used in this Section 5.2.2, “passive outdoor recreational and educational uses” shall mean those recreational and educational activities typically associated with natural, undeveloped open space lands, and that are generally non-structured and require minimal or no developed facilities or improvements, such as walking, biking, jogging, hiking, dog walking, bird watching, nature viewing, picnicking, and public events that avoid impact to significant cultural and natural resources. No sound amplification is permitted on the Property. No artificial lighting is permitted on the Property except for safety lighting located within the “Park Improvement Areas” designated, as described below, that is described within an approved Management Plan. Permitted passive outdoor recreational and educational uses include, but are not limited to:

(a) Walking, bicycling, jogging, hiking, bird watching, nature study, picnicking, and other such passive recreational and educational uses similar in nature.

(b) Public or private special events, such as park celebration events, fundraising events, weddings, picnics, and other activities that promote the scenic values while respecting the conservation values of the property shall be permitted only as follows:

- i. Events with up to 25 people in attendance may occur on the Property without limitation on the number of events per year.
- ii. Events with up to 50 people in attendance may occur within the Park Improvement Areas designated within a Management Plan reviewed and approved in accordance with Section 6.1 (“Park Improvement Areas”), without limitation on the number of events per year.
- iii. Events with up to 150 people in attendance may occur on the Property within the “Park Improvement Areas” no more than 12 times per year. GRANTOR shall document date, event size, type and location of each such event. Such documentation shall be made available to DISTRICT upon request.

iv. Special events shall not result in any permanent alteration of the Property nor have any detrimental impact on the natural resources of the Property.

(c) Subject to the limitations of Section 5.2.2 (b)(iv), camping for groups of up to 25 people may be permitted as a special event within the Park Improvement Areas designated within the Management Plan only if and to the extent that GRANTOR can demonstrate that such uses are consistent with the preservation of natural resources and the Conservation Purpose of this Easement.

(d) Dogs shall be permitted on the Property only on trails designated by GRANTOR. All dogs shall remain on-leash at all times.

(e) GRANTOR may charge a nominal fee to cover costs directly associated with recreational and educational programs and use of the Property. DISTRICT reserves the right to request, and GRANTOR shall provide documentation of such costs.

5.2.3 Limited Agricultural Use (Grazing). GRANTOR reserves the right to graze livestock for purposes of vegetation and fire management in accordance with Section 5.5.4. Such grazing shall be undertaken in accordance with sound, generally accepted conservation practices, and in a manner that preserves the natural resources and open space character of the Property.

5.2.4 Commercial. GRANTOR reserves the right to use the Property for the following commercial uses in connection with use of the Property as a public park. Any revenue generated from commercial activities and uses shall be used toward the cost of operating, maintaining, restoring, and enhancing the Property, and towards recreational and educational programs that take place on the Property. If revenues exceed the cost of operating, maintaining, restoring and enhancing the Property, excess revenues may be used for purposes of operation, maintenance, restoration and/or enhancement of park and open space properties owned by the City of Healdsburg and preserved by DISTRICT under a recorded conservation easement.

(a) Recreation and Education. Nominal fees may be charged for permitted recreational and educational uses in accordance with Section 5.2.2.

(b) Special Events and Fundraising. GRANTOR may use the Property for special public and private events in accordance with Section 5.2.2.(b).

(c) Ancillary Uses. Subject to DISTRICT approval, GRANTOR may, in connection with use of the Property for public recreational and educational

purposes, undertake other minor ancillary commercial uses found to be consistent with the Management Plan and with Conservation Values of this Easement.

**5.3 Subdivision and Parcels.** GRANTOR and DISTRICT acknowledge and agree that the Property is now and shall always remain under one common ownership. GRANTOR shall not further divide the Property, whether by subdivision, conveyance, lot line adjustment, or any other means, nor shall GRANTOR gain or seek to gain recognition, by certificate of compliance under the Subdivision Map Act or otherwise, of additional parcels which may have previously been created on the Property by prior patent or deed conveyances, subdivisions, or surveys, nor shall GRANTOR place or convey any portion of the Property into ownership separate from the whole of the Property.

5.3.1 Exceptions. This prohibition against division of the Property shall be inapplicable to:

(a) Conveyance to Government or Non-Profit Entity. Subject to prior written approval by DISTRICT, GRANTOR may voluntarily convey a portion of the Property to a government or non-profit entity exclusively for conservation or public access purposes.

(b) Leases. Subject to prior written approval by DISTRICT, GRANTOR reserves the right to lease a portion(s) of the Property for the permitted grazing, recreational and educational uses described in Section 5.2.

5.3.2 Historic Parcels. GRANTOR acknowledges that one or more additional historic parcels may exist on the Property, previously created by patent or deed conveyances, subdivisions, lot line adjustments, surveys, recorded or unrecorded maps or other documents. GRANTOR waives all rights to recognition of such historic parcels, whether through certificate of compliance under the Subdivision Map Act or otherwise.

**5.4 Structures and Improvements** GRANTOR may repair, replace, construct, place and maintain structures and improvements on the Property only as provided below. At no time shall structures and improvements on the Property result in impervious surfaces on, cumulatively, more than .5 acres of the Property. Furthermore, no structure or improvement shall exceed 18 feet in height. Furthermore, at least ninety percent (90%) of the Property, by acreage, shall, at all times, remain undeveloped and free of any structure or improvement of any kind.

5.4.1 Maintenance, Repair or Replacement of Structures and Improvements. GRANTOR may maintain, repair or replace structures and improvements existing at the date hereof or constructed subsequently pursuant to the provisions of this Easement, as follows:

(a) If the maintenance, repair or replacement does not increase the height of the structure or improvement, increase the land surface area it occupies

or change its location or function, no notice to or approval by DISTRICT shall be required.

(b) Any maintenance, repair or replacement that increases the height of the structure or improvement, increases the land surface area it occupies, or changes its location or function shall be treated as new construction and shall be subject to the provisions of Sections 5.4.2 through Section 5.4.6.

5.4.2 Improvements for Recreational and Educational Uses. GRANTOR reserves the right to construct or place improvements associated with permitted public outdoor recreational and educational uses as set forth in this Section 5.4.2.

(a) Minor Improvements. GRANTOR may construct or place minor improvements associated with permitted public outdoor recreational and educational uses, including, but not limited to benches, drinking fountains, refuse and recycling containers and other similar minor improvements without further notice to or approval from DISTRICT.

(b) Trails and Pathways. GRANTOR may construct or place paved or permeable trails and pathways with prior written approval of DISTRICT.

(c) Other Improvements. GRANTOR may construct or place other improvements associated with public outdoor recreational and educational uses permitted under Section 5.2.2., that have not been approved in the Management Plan, including, but not limited to restrooms, safety lighting, public art location, play structures, picnic tables and other similar improvements only with prior written approval of DISTRICT. All such improvements shall be located within one or more "Park Improvement Areas" designated within a Master Plan reviewed and approved in accordance with Section 6.1.

5.4.3 Access Roads. Subject to prior written approval of DISTRICT, GRANTOR may construct new roads and reconstruct or expand existing roads provided that such roads (i) either are required for emergency vehicle access, or for permitted public recreation and educational use, and (ii) are the minimum necessary for such uses and activities. Roads shall be constructed and maintained so as to minimize erosion and sedimentation and ensure proper drainage, utilizing Best Management Practices for roads as recommended by California Department of Fish and Game or other similar or successor entity. Roads constructed subsequent to this Easement may not be paved with asphalt, concrete or other impervious surface unless such paving is required by any federal, state or local law, code, ordinance or regulation. Roads that are abandoned, permanently closed and/or decommissioned shall be revegetated with native species, stabilized and ensured of proper drainage.

5.4.4 Fences and Gates. GRANTOR may construct, place and erect fencing and gates only as necessary for either permitted natural resource protection, preservation, restoration or enhancement, or permitted public recreational and educational use of the

Property. Fencing must be the minimum necessary for such use. All fencing and gates must (a) preserve the scenic values of the Property; (b) not impede wildlife movement except in cases where necessary to protect the allowed natural resources preservation, restoration and enhancement, or recreational and educational uses described in this Easement and (c) comply with the DISTRICT's then current guidelines for fences on conservation lands. Notwithstanding the provisions of Section 5.4.1, in the event of destruction or deterioration of any fences and gates, whether existing at the date hereof or constructed subsequently in accordance with the provisions of this Easement, GRANTOR may maintain and/or replace such fencing and gates only pursuant to the provisions of this Section 5.4.4. In the event any fence or gate, or portion thereof, becomes obsolete or unnecessary for the uses described in this Section 5.4.4, GRANTOR shall remove such fencing or gate from the Property.

5.4.5 Utilities and Energy Resources. Subject to prior written approval of DISTRICT, GRANTOR may expand existing or develop or construct new underground utilities, including but not limited to electric power, septic or sewer, communication lines, and water storage and delivery systems provided that such utilities are directly required for permitted public recreational and educational uses of the Property and are reasonably scaled to serve only those uses.

5.4.6 Signs. GRANTOR reserves the right to construct signs as set forth in this Section 5.4.6. No sign shall be artificially illuminated.

(a) Without prior written notice or approval of DISTRICT, GRANTOR reserves the right to construct or place two signs not to exceed 16 square feet in size each in connection with permitted public recreation and educational uses.

(b) Without prior written notice or approval of DISTRICT, GRANTOR reserves the right to construct or place signs less than 6 square feet in size to (i) mark the boundary of the Property; (ii) provide directional, interpretive and educational information; and (iii) set forth park and/or local area rules or regulations applicable to use of the Property as a public park, provided that the size and number of such signs shall be limited to that which is reasonably necessary to accomplish the permitted uses herein, and further provided that such signs are sited and constructed in a manner that does not create a significant visual impact.

(c) Subject to prior written approval of DISTRICT, GRANTOR may construct or place additional signs necessary or appropriate for permitted public recreation and educational uses, provided that any such additional signs are sited and constructed in a manner that does not create a significant visual impact.

**5.5. Land and Resource Management.** All land and resource management activities shall be designed and implemented in accordance with sound, generally accepted conservation practices.

5.5.1 Surface Alteration. Alteration of the contour of the Property in any manner whatsoever is prohibited, including, but not limited to, excavation, removal or importation of soil, sand, gravel, rock, peat or sod, except as reasonably necessary in connection with the uses allowed under Section 5 of this Easement. In connection with allowed uses, movement of over 12 cubic yards of material in any calendar year that is not included in an approved Management Plan is subject to prior District consent.

5.5.2 Water Resources. Draining, filling, dredging, diking, damming or other alteration, development or manipulation of watercourses, subsurface water, springs, ponds and wetlands is prohibited except as reasonably necessary in connection with (i) the maintenance, replacement, development and expansion of water storage and delivery systems allowed under Section 5.4.5, and (ii) the preservation, restoration and enhancement of natural resources allowed under Section 5.5.5. Subject to the limitations of this Section 5.5.2, GRANTOR reserves all rights and entitlements to use of surface and subsurface water as may exist under state or federal law.

5.5.3 Mineral Exploration. Exploration for, or development and extraction of, minerals and hydrocarbons by any surface or sub-surface mining or any other method is prohibited.

5.5.4 Fire Management. GRANTOR reserves the right to undertake vegetation management activities for the purpose of fire control provided the techniques used minimize harm to native wildlife and plants and are in accordance with all applicable laws, and subject to District approval of a Fire Management Plan. Fire management methods are limited to:

- (a) Brush removal and mowing of the Property, or other methods of similar nature and intensity; and
- (b) Prescriptive burning undertaken in a manner consistent with the standards and requirements of the local fire protection agency having Jurisdiction; and
- (c) Limited grazing consistent with Section 5.2.3.

5.5.5 Natural Resource Preservation, Restoration and Enhancement. GRANTOR reserves the right to undertake natural resource conservation and restoration activities, including, but not limited to, bank and soil stabilization, practices to reduce erosion, enhancement of water quality, and plant and wildlife habitat, and activities that promote biodiversity. GRANTOR may remove or control invasive, non-native plant and animal species that threaten the Conservation Purpose of this Easement or impede the

growth of native species, provided the techniques used minimize harm to native wildlife and plants and are in accordance with all applicable laws.

5.5.6 Native Vegetation and Tree Removal. Harvesting, cutting, removal or destruction of any native vegetation and trees is prohibited, except as reasonably necessary (i) to control insects and disease, (ii) to prevent personal injury and property damage, (iii) within footprint of permitted public recreational and educational improvements, (iv) for the purpose of fire management, in accordance with Section 5.5.4; and (v) for natural resource management, including native seed collection and plant propagation for use on the Property as set forth in Section 5.5.5 of this Easement.

5.5.7 Native Animal Removal. Killing, hunting, trapping, injuring or removing native animals is prohibited except (i) under imminent threat to human life or safety; and (ii) as reasonably necessary to promote or sustain biodiversity in accordance with restoration and enhancement activities in connection with Section 5.5.5, using selective control techniques consistent with the policies of the Sonoma County Agricultural Commissioner and other governmental entities having jurisdiction.

5.5.8 Off-road Motorized Vehicle Use. Use of motorized vehicles off roadways is prohibited, except for the minimum necessary in connection with permitted construction, maintenance, emergency access and property management activities.

5.5.9 Dumping. Dumping, releasing, burning or other disposal of wastes, refuse, debris, non-operative motorized vehicles or hazardous substances is prohibited.

5.5.10 Outdoor Storage. Outdoor storage is prohibited except as provided in this section.

(a) Materials Required For Permitted Uses. GRANTOR may store materials and supplies required for permitted uses outdoors, provided such storage shall be located so as to minimize visual impacts.

(b) Storage of Construction Materials. GRANTOR may store needed construction and other work materials outdoors during construction of permitted structures and improvements on the Property while work is in progress and for a period not to exceed thirty (30) days after completion or abandonment of construction. Construction shall be deemed abandoned if work ceases for a period of 180 days.

**5.6. Public Access Limitations.** GRANTOR and DISTRICT understand and agree that the Property will be developed for and will continue to be a public park and open space preserve in perpetuity. GRANTOR, however, reserves the right to exclude the public from the Property on a temporary basis to the extent necessary for public health or safety or for preservation of the Conservation Values of the Property. Nothing in this Easement shall be construed to preclude GRANTOR's right to grant access to third parties to the Property consistent with the terms, conditions and Conservation Purpose of this Easement.

**5.7. Easements.** GRANTOR may continue the use of existing easements of record granted prior to this Easement. The granting of new temporary or permanent easements, and the modification or amendment of existing easements is prohibited without the prior written approval of the DISTRICT. It is the duty of GRANTOR to prevent the use of the Property by third parties that may result in the creation of prescriptive rights.

### **PART THREE: PROCEDURES AND REMEDIES**

**6. Notice and Approval Procedures.** Some activities and uses permitted by this Easement require that prior written notice be given by GRANTOR to DISTRICT, while other activities and uses permitted by this Easement require the prior written approval of DISTRICT. Unless and until such notice is given or approval is obtained in accordance with this Section 6, any such activity or use shall be deemed to be prohibited on the Property. GRANTOR shall use the procedures in this Section 6 and Section 19 of this Easement to provide notice to DISTRICT or to obtain DISTRICT's approval. All notices and requests for approval shall include all information necessary to permit DISTRICT to make an informed judgment as to the consistency of the GRANTOR's request with the terms, conditions and Conservation Purpose of this Easement. Forms for notices and requests for approval shall be available at DISTRICT's offices.

**6.1 Approval, Amendments, Revisions and Updates of Master Plan.** GRANTOR and DISTRICT acknowledge that within three years of the execution of this Easement it is GRANTOR's intent to prepare, or cause to be prepared, a Management Plan for the Property to define and guide future use and development of the Property. For purposes of this Easement, it is agreed that the Management Plan and any amendments, revisions or updates (collectively "Revisions") will be deemed sufficient for its purpose provided the plan identifies (a) all major components of proposed park use (including recreational, educational, and resource management use), (b) the nature of each proposed use and its intended location, (c) all proposed structures, and (d) all actions to be taken to protect natural resources. If GRANTOR desires to construct or place improvements for recreational and educational uses pursuant to Section 5.4.2(b), GRANTOR shall designate one or more areas for such improvements within the Management Plan ("Park Improvement Areas"). Park Improvement Areas shall not, cumulatively, exceed ten percent (10%) of the Property, by acreage. Pursuant to Section 5.1.7 of this Easement, such Management Plan and Revisions require DISTRICT's approval prior to their implementation. The Grantor reserves the rights to include any permitted uses and / or activities allowed under this Easement in the Management Plan.

**6.1.1 Standards for Approval.** DISTRICT's approval of the Management Plan and any Revisions shall be based solely upon its reasonable determination as to whether the Management Plan and Revisions are consistent with the terms, conditions and Conservation Purpose of this Easement. DISTRICT acknowledges that, in light of the public processes required for development of the Property for recreation and educational

use and natural resource preservation, time is of the essence and DISTRICT's approval shall not be unreasonably withheld or delayed. GRANTOR shall use the following procedure to obtain DISTRICT's approval for the Management Plan and any Revisions:

6.1.2 Procedure for Approval. GRANTOR may, at its discretion, at any time, submit a Management Plan or Revisions to DISTRICT for its review and approval. DISTRICT shall have forty-five (45) days from the receipt of the Management Plan or Revisions, plus fourteen (14) days from any subsequent or follow up submittal, to review the Management Plan or Revisions and either approve the Management Plan or Revisions or notify GRANTOR of any objection thereto. DISTRICT's response, whether tentative approval or objection, shall be in writing and delivered to GRANTOR in accordance with Section 19. If DISTRICT has any objections to the Management Plan or Revisions, it shall state such objections in sufficient detail to enable GRANTOR to modify the Management Plan or Revisions so as to bring it into compliance with the terms, conditions and Conservation Purpose of this Easement.

6.1.3 California Environmental Quality Act. In connection with any environmental review of the Management Plan or Revisions under the California Environmental Quality Act ("CEQA") or any successor statute then in effect, GRANTOR shall provide DISTRICT with notification of and opportunity to comment on any draft environmental document made public under the statute, prior to adoption or certification of that environmental document.

6.1.4 District Approval of Master Plan. Upon DISTRICT's approval and GRANTOR's adoption of a Management Plan or Revisions, all uses and improvements described therein and all development reasonably necessary to implement those described uses and improvements, shall be deemed to be consistent with the terms, conditions and Conservation Purpose of this Easement and shall be permitted on the Property with no further notice to or approval by DISTRICT required. All such uses, development, improvements and activities shall at all times remain subject to the substantive limitations of Section 5. Any update or amendment to the approved Management Plan or Revisions shall be subject to District approval.

**6.2 Uses/Activities Requiring Notice or Approval to DISTRICT.** In the absence of a Master Plan approved by DISTRICT, or for uses and activities not described in a Master Plan approved by DISTRICT, the following procedures shall be followed for giving notice or obtaining DISTRICT approval where such notice or approval is required by this Easement. Unless and until such notice is given or approval is obtained in accordance with this Section 6.2, any such activity or use shall be deemed to be prohibited on the Property.

6.2.1 Standards for Approval. In any instance in which DISTRICT approval is required, DISTRICT's approval shall be based solely upon its reasonable determination as to whether the activity or use is consistent with the terms, conditions and Conservation Purpose of this Easement and whether the request is complete and accurate. DISTRICT acknowledges that, in light of the public processes required for development of the

Property for recreation and educational use and natural resource preservation, time is of the essence and DISTRICT's approval shall not be unreasonably withheld or delayed.

6.2.2 Procedure for Giving Notice to DISTRICT. For any activity or use that requires prior written notice to DISTRICT, GRANTOR shall deliver such notice to DISTRICT at least forty-five (45) days prior to the commencement of such activity or use. That forty-five (45) day time period provides DISTRICT an opportunity to evaluate whether the proposed activity or use is consistent with the terms, conditions and Conservation Purpose of this Easement before the activity or use is begun.

6.2.3 Procedure for Obtaining Prior Approval from DISTRICT. For any activity or use that requires prior written approval from DISTRICT, GRANTOR shall file a request for such approval ("GRANTOR's request") at least forty-five (45) days prior to the intended commencement of such activity or use. DISTRICT shall have forty-five (45) days from the receipt of a complete request for approval to review the request and to approve, conditionally approve, disapprove or notify GRANTOR of any objection thereto. Disapproval or objection, if any, shall be based on DISTRICT's determination that the proposed activity or use is inconsistent with the terms, conditions or Conservation Purpose of this Easement or that GRANTOR's request is incomplete or contains material inaccuracies. If, in DISTRICT's judgment, the proposed activity or use would not be consistent with the terms, conditions or Conservation Purpose of this Easement or the request is incomplete or contains material inaccuracies, DISTRICT's notice to GRANTOR shall inform GRANTOR of the reasons for DISTRICT's disapproval or objection. Only upon DISTRICT's express written approval, given by DISTRICT's General Manager, may the proposed activity or use be commenced, and then only in accordance with the terms and conditions of DISTRICT's approval.

6.2.4 DISTRICT's Failure to Respond. Should DISTRICT fail to respond to GRANTOR's request for approval within forty-five (45) days of the receipt of GRANTOR's request, GRANTOR may, after giving DISTRICT ten (10) days written notice by registered or certified mail, commence an action in a court of competent jurisdiction to compel DISTRICT to respond to GRANTOR's request. In the event that such legal action becomes necessary to compel DISTRICT to respond and GRANTOR prevails in that action, DISTRICT shall reimburse GRANTOR for all reasonable attorney fees incurred in that action. In the alternative, GRANTOR may commence a proceeding in arbitration under Section 13.

6.2.5 Uses Not Expressly Addressed. In the event GRANTOR desires to commence an activity or use on the Property that is neither expressly reserved nor expressly prohibited in Section 5, GRANTOR shall seek DISTRICT's prior written approval of such activity or use in accordance with the procedure set forth in Section 6.2. The exercise of any activity or use not expressly reserved in Section 5 may constitute a breach of this Easement and may be subject to the provisions of Section 10.

## **7. Costs and Liabilities Related to the Property.**

**7.1 Operations and Maintenance of the Property.** GRANTOR agrees to bear all costs and liabilities of any kind related to the operation, upkeep, and maintenance of the Property and does hereby indemnify and hold DISTRICT harmless therefrom. Without limiting the foregoing, GRANTOR agrees to pay any and all real property taxes, fees, exactions, and assessments levied or imposed by local, state or federal authorities on the Property. GRANTOR further agrees to maintain general liability insurance covering acts on the Property. Except as specifically set forth in Section 8.2 below, DISTRICT shall have no responsibility whatever for the operation of the Property, the monitoring of hazardous conditions thereon, or the protection of GRANTOR, the public, or any third parties from risks relating to conditions on the Property. Except as otherwise provided in Section 8.1, GRANTOR hereby agrees to indemnify and hold DISTRICT harmless from and against any damage, liability, claim, or expense, including attorneys' fees, relating to such matters.

**7.2 Hazardous Materials.**

**7.2.1 No DISTRICT Obligation or Liability.** Notwithstanding any other provision of this Easement to the contrary, the parties do not intend and this Easement shall not be construed such that it creates in DISTRICT:

(a) The obligations or liabilities of an “owner” or “operator” as those words are defined and used in environmental laws, as defined below, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 United States Code, sections 9601 et seq.) (“CERCLA”);

(b) The obligations or liabilities of a person described in 42 United States Code section 9607(a)(3) or any successor statute then in effect;

(c) The right to investigate and remediate any hazardous materials, as defined below, on or associated with the Property; or

(d) Any control over GRANTOR’s ability to investigate and remediate any hazardous materials, as defined below, on or associated with the Property.

**7.2.2 Warranty of Compliance.** GRANTOR represents, warrants, and covenants to DISTRICT that GRANTOR’s use of the Property shall comply with all environmental laws, as defined below.

**7.2.3 Definitions.** For the purposes of this Easement:

(a) The term "hazardous materials" includes, but is not limited to, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Hazardous Materials Transportation Act, as amended (49 United States Code sections 1801 et seq.), the Resource Conservation and Recovery Act of 1976, as amended (42 United States Code sections 6901 et seq.), sections 25117 and 25316

of the California Health & Safety Code, and in the regulations adopted and publications promulgated pursuant to them, or any other federal, state, or local environmental laws, ordinances, rules, or regulations concerning the environment, industrial hygiene or public health or safety now in effect or enacted after the date of this Easement.

(b) The term "environmental laws" includes, but is not limited to, any federal, state, local or administrative agency statute, regulation, rule, ordinance, order or requirement relating to environmental conditions or hazardous materials.

## **8. Indemnification.**

**8.1 GRANTOR's Indemnity.** GRANTOR shall hold harmless, indemnify, and defend DISTRICT, its agents, employees, volunteers, successors and assigns, from and against all damages, liabilities, claims and expenses, including reasonable attorneys' fees, arising from or in any way connected with (i) injury to or the death of any person, or physical damage to any property resulting from any act, omission, condition or other matter related to or occurring on or about the Property, except to the extent that such damage, liability, claim or expense is the result of the negligence, gross negligence, or intentional misconduct of DISTRICT (it being the intent of this provision to limit GRANTOR's indemnity to the proportionate part of DISTRICT's damage, liability, claim or expense for which GRANTOR is responsible); and (ii) the obligations specified in Section 7; and (iii) any approvals given under Section 6. In the event of any claim, demand, or legal complaint against DISTRICT, the right to the indemnification provided by this Section 8.1 shall not apply to any cost, expense, penalty, settlement payment, or judgment, including attorneys' fees, incurred prior to DISTRICT's written notice of such claim, demand, or legal complaint to GRANTOR, unless GRANTOR has acquired knowledge of the matter by other means, nor to any costs, expenses, or settlement payment, including attorneys' fees, incurred subsequent to that notice unless such cost, expense, or settlement payment shall be approved in writing by GRANTOR, which approval shall not be unreasonably withheld.

**8.2 DISTRICT's Indemnity.** DISTRICT shall hold harmless, indemnify, and defend GRANTOR, its heirs, devisees, successors and assigns, from and against all damages, liabilities, claims and expenses, including reasonable attorneys' fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property and attributable to DISTRICT, except to the extent that such damage, liability, claim or expense is the result of the negligence, gross negligence, or intentional misconduct of GRANTOR (it being the intent of this provision to limit DISTRICT's indemnity to the proportionate part of GRANTOR's damage, liability, claim or expense for which DISTRICT is responsible). In the event of any claim, demand, or legal complaint against GRANTOR, the right to the indemnification provided by this Section 8.2 shall not apply to any cost, expense, penalty, settlement payment, or judgment, including attorneys' fees, incurred prior to GRANTOR's written notice of such claim, demand, or legal complaint to DISTRICT, nor to any costs, expenses, or settlement payment, including attorneys' fees, incurred subsequent to that notice unless such cost, expense, or settlement payment shall be approved in writing by DISTRICT, which approval shall not be unreasonably withheld. DISTRICT hereby also agrees to hold

harmless, indemnify and defend GRANTOR from and against all damages, liabilities, claims and expenses, including attorneys' fees, asserted against GRANTOR by any officer, agent, employee, or volunteer of DISTRICT, for personal injury and/or property damage arising out of any inspection or visit to the Property by any such officer, agent, employee or volunteer on behalf of DISTRICT, except to the extent that such injury is attributable to the negligence, gross negligence or intentional misconduct of GRANTOR.

**9. Baseline Documentation for Enforcement.** In order to establish the present condition of the Property, DISTRICT has prepared a Baseline Documentation Report which will be maintained on file with DISTRICT and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement. A copy of the Baseline Documentation Report has been reviewed and approved by GRANTOR. The parties agree that the Baseline Documentation Report provides an accurate representation of the Property at the time of the execution of this Easement. The Baseline Report will be supplemented through periodic monitoring reports as the DISTRICT performs its regular monitoring of the Property.

**10. Remedies for Breach.**

**10.1 DISTRICT's Remedies.** In the event of a violation or threatened violation by GRANTOR of any term, condition or restriction contained in this Easement, DISTRICT may, following notice to GRANTOR, institute a suit to enjoin and/or recover damages for such violation and/or to require the restoration of the Property to the condition that existed prior to such violation. The DISTRICT's notice to GRANTOR shall contain a general description of the condition claimed by DISTRICT to be a violation and shall contain a reasonable and specific cure period by which the violation is to cease and the Property is to be restored to the condition that existed prior to the violation. The notice shall be provided in accordance with Section 19. If DISTRICT reasonably determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values protected by this Easement, DISTRICT (a) may pursue any and all remedies available under law without waiting for the cure period to expire, and (b) shall have the right, upon the giving of 24 hours' notice, to enter the Property for the purpose of assessing damage or threat to the Conservation Values protected by this Easement and determining the nature of curative or mitigation actions that should be taken. DISTRICT's rights under this Section 10 shall apply equally in the event of either actual or threatened violations of the terms of this Easement. GRANTOR agrees that DISTRICT's remedies at law for any violation of the terms of this Easement are inadequate and that DISTRICT shall be entitled to injunctive relief, both prohibitive and mandatory and including specific performance, in addition to such other relief, including damages, to which DISTRICT may be entitled, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

**10.2 DISTRICT's Discretion.** Enforcement of the terms of this Easement shall be at the sole discretion of DISTRICT, and any forbearance by DISTRICT to exercise its rights under this Easement in the event of any violation or threatened violation of any term of this Easement shall not be deemed or construed to be a waiver by DISTRICT of such term or of any subsequent violation or threatened violation of the same or any other term of this Easement. Any failure by

DISTRICT to act shall not be deemed a waiver or forfeiture of DISTRICT's right to enforce any terms or conditions of this Easement in the future.

**10.3 Liquidated Damages.** Inasmuch as the actual damages that would result from the loss or deprivation of the Conservation Values of the Property caused by a violation by GRANTOR of the terms of this Easement are uncertain and would be impractical or extremely difficult to measure, GRANTOR and DISTRICT agree that the damages allowed to DISTRICT by Civil Code section 815.7(c) shall be measured as follows:

(a) For an improvement prohibited by this Easement, an amount equal to the product of (i) the market value of the improvement, (ii) the length of time that the improvement exists on the Property (in terms of years or portion thereof) after notice of violation has been given, and (iii) the then current annual interest rate for post judgment interest; and

(b) For an activity or change in use prohibited by this Easement, whether or not it involves an improvement, an amount equal to any economic gain realized by GRANTOR because of the activity or change in use; and

(c) For an activity or change in use prohibited by this Easement, whether or not it involves an improvement and where there is no measurable economic gain realized by GRANTOR, the product of (i) the cost of restoration, as set forth in a written estimate by a qualified person selected by DISTRICT, (ii) the length of time that the prohibited activity or use continues (in terms of years or portion thereof) after notice of the violation has been given, and (iii) the then current annual interest rate for post judgment interest.

All liquidated damages assessed under this Section 10.3 shall be paid to DISTRICT.

**10.4 GRANTOR's Compliance.** If DISTRICT, in the notice to GRANTOR, demands that GRANTOR remove an improvement, discontinue a use or both and claims the damages allowed by Civil Code section 815.7(c), then GRANTOR may mitigate damages by fully complying with DISTRICT's notice within the cure period provided therein. If GRANTOR so complies, then in the event of litigation arising out of the notice, brought either by GRANTOR or by DISTRICT, if GRANTOR prevails, then GRANTOR shall be entitled to economic damages, if any, resulting from its compliance with DISTRICT's notice. Neither DISTRICT nor GRANTOR shall be entitled to damages where DISTRICT has not claimed damages in its notice.

**10.5 Remedies Nonexclusive.** The remedies set forth in this Section 10 are in addition to, and are not intended to displace, any other remedy available to either party as provided by this Easement, Civil Code sections 815 et seq. or any other applicable local, state or federal law.

## **11. Limitations on Liability.**

**11.1 Acts Beyond GRANTOR's Control.** Nothing contained in this Easement shall be construed to entitle DISTRICT to bring any action against GRANTOR for any injury to or

change in the Property resulting from causes beyond GRANTOR's control, including, but not limited to, fire, flood, storm, and earth movement, or a tortious or criminal act of a third party which GRANTOR could not have prevented in the exercise of due care, or from any prudent action taken by GRANTOR under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes so long as such action, to the extent that GRANTOR has control, is designed and carried out in such a way as to further the Conservation Purpose of this Easement.

**11.2 Lawful Exercise of Pre-Existing Rights.** Nothing contained in this Easement shall be construed to entitle DISTRICT to bring any action against GRANTOR for any injury to or change in the Property resulting from a third party's lawful exercise of its own rights under a valid and enforceable easement, encumbrance, reservation or restriction recorded on the Property prior to and existing as of the time of the recordation of this Easement and surviving as of the time of the injury or change in the Property.

**11.3 Retention of Remedies Against Third Parties.** Nothing contained in this Easement shall, in any way, limit any remedy against third parties available to GRANTOR or to DISTRICT under this Easement, Civil Code sections 815 et seq. or any other applicable local, state or federal law.

**11.4 No Intended Third Party Beneficiaries.** This Agreement is made and entered into for the purposes described herein and for the benefit of the GRANTOR and the DISTRICT, and their respective successors and assigns. The parties hereto do not intend to create any third party beneficiaries to this Agreement. It is the intent of the parties that no other person or entity shall have any right of action or remedy based upon, nor any right to seek enforcement of, any provision in this Agreement, except as may otherwise be provided by law

**12. Arbitration.** If a dispute arises between the parties concerning the consistency of any activity or use, or any proposed activity or use, with the terms, conditions or Conservation Purpose of this Easement, or any other matter arising under or in connection with this Easement or its interpretation, either party, with the written consent of the other, may refer the dispute to arbitration by a request made in writing upon the other. Provided that GRANTOR agrees not to proceed with any activity or use that is the subject of the dispute pending resolution of the dispute, the parties shall select a single arbitrator to hear the matter. If the parties are unable to agree on the selection of a single arbitrator, then each party shall name one arbitrator and the two arbitrators thus selected shall select a third arbitrator who shall be a retired United States District Court or California Superior Court judge; provided, however, if either party fails to select an arbitrator within fourteen (14) days of delivery of the request for arbitration, or if the two arbitrators fail to select a third arbitrator within fourteen (14) days after the appointment of the second arbitrator, then in each such instance, a proper court, on petition of any party, shall appoint the second or third arbitrator or both, as the case may be, in accordance with California Code of Civil Procedure sections 1280 et seq., or any successor statutes then in effect. The arbitration shall be conducted in accordance with said statute, including, without limitation, the provisions of Section 1283.05 of the Code of Civil Procedure which are incorporated into, made a part of, and made applicable to any arbitration pursuant to this Section. The Conservation Purpose of this Easement, the terms and conditions of this Easement, and the applicable laws of

the State of California shall be the bases for determination and resolution, and a judgment of the arbitration award may be entered in any court having jurisdiction thereof. The prevailing party shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for all its costs and expenses related to such arbitration, including, but not limited to, the fees and expenses of the arbitrators, but excluding attorneys' fees, which sum shall be determined by the arbitrators and any court of competent jurisdiction that may be called upon to enforce or review the award.

### **13. Extinguishment and Condemnation.**

**13.1. Extinguishment.** Subject to the requirements and limitations of California Public Resources Code section 5540, or successor statute then in effect, if circumstances arise in the future that render the Conservation Purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the compensation to which DISTRICT shall be entitled from any sale, exchange or involuntary conversion of all or any portion of the Property after such termination or extinguishment, shall be determined, unless otherwise provided by California law at the time, in accordance with Section 13.2. All proceeds paid to DISTRICT shall be used by DISTRICT for the purpose of the preservation of agriculture and open space within Sonoma County.

**13.2 Condemnation.** If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation; whether by public, corporate, or other authority, so as to terminate this Easement in whole or in part, either GRANTOR or DISTRICT (or both, on such conditions as they may agree) may commence appropriate actions to recover the full value of the Property (or portion thereof) subject to the condemnation or in-lieu purchase and all direct or incidental damages resulting therefrom. Any expense incurred by GRANTOR or DISTRICT in any such action shall first be reimbursed out of the recovered proceeds; the remainder of such proceeds shall be divided between GRANTOR and DISTRICT in accordance with Section 13.3.

**13.3 Property Interest and Fair Market Value.** This Easement constitutes a real property interest immediately vested in DISTRICT. For the purpose of this Section 13, the parties stipulate that, in the event of condemnation of the Property or any portion thereof, the fair market value of the Property for purposes of just compensation shall be determined as though this Easement did not exist. Unless otherwise agreed upon by the parties in writing at the time of condemnation all compensation received shall be paid to DISTRICT, except such sums as are directly attributable to improvements made on the Property by GRANTOR after the date of this Easement, which sums shall be paid to GRANTOR, provided that the improvements were not made or funded by DISTRICT and further provided that the improvements do not constitute a breach of this Easement.

### **PART FOUR: MISCELLANEOUS**

**14. Approvals.** Whenever in this Easement the consent or approval of one party is required for an act of the other party, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

**15. Interpretation and Construction.** To the extent that this Easement may be uncertain or ambiguous such that it requires interpretation or construction, then it shall be interpreted and construed in such a way that best promotes the Conservation Purpose of this Easement. This Easement is intended and shall be construed to supersede the 1994 Easement.

**16. Easement to Bind Successors.** The Easement herein granted shall be a burden upon and shall continue as a restrictive covenant and equitable servitude running in perpetuity with the Property and shall bind GRANTOR, GRANTOR's heirs, personal representatives, lessees, executors, successors, including but not limited to purchasers at tax sales, assigns, and all persons claiming under them forever. The parties intend that this Easement shall benefit and burden, as the case may be, their respective successors, assigns, heirs, executors, administrators, agents, officers, employees, and all other persons claiming by or through them pursuant to the common and statutory law of the State of California. Further, the parties agree and intend that this Easement creates an easement encompassed within the meaning of the phrase "easements constituting servitudes upon or burdens to the property," as that phrase is used in California Revenue & Taxation Code section 3712(d), or any successor statute then in effect, such that a purchaser at a tax sale will take title to the Property subject to this Easement.

**17. Subsequent Deeds and Leases.** GRANTOR agrees that a clear reference to this Easement will be made in any subsequent deed, or other legal instrument, by means of which any interest in the Property (including, but not limited to, a leasehold interest) is conveyed and that GRANTOR will attach a copy of this Easement to any such instrument. GRANTOR further agrees to give written notice to DISTRICT of the conveyance of any interest in the Property at least ten (10) days prior to any such conveyance. These obligations of GRANTOR shall not be construed as a waiver or relinquishment by DISTRICT of rights created in favor of DISTRICT by Section 16 of this Easement, and the failure of GRANTOR to perform any act required by this Section 17 shall not impair the validity of this Easement or limit its enforceability in any way.

**18. Warranty of Ownership.** GRANTOR warrants that it is the owner in fee simple of the Property, and that on the date it executed this Easement the Property is not subject to any liens or deeds of trust.

**19. Notices.**

**19.1 Method of Delivery.** Except as otherwise expressly provided herein, all notices, (including requests, demands, approvals or communications) under this Easement shall be in writing and either served personally or sent by first class mail, postage prepaid, private courier or delivery service or telecopy addressed as follows:

To GRANTOR:           Assistant City Manager  
                                  City of Healdsburg  
                                  401 Grove St.

Healdsburg, CA 95448  
Fax:

To DISTRICT: General Manager  
Sonoma County Agricultural Preservation and Open Space District  
747 Mendocino Avenue, Suite 100  
Santa Rosa, CA 95401  
Fax :

Or to such other address as such party from time to time may designate by written notice pursuant to this Section 19.

**19.2 Effective Date of Notice.** Notice shall be deemed given for all purposes as follows:

- (a) When personally delivered to the recipient, notice is effective on delivery.
- (b) When mailed first class postage prepaid to the last address designated by the recipient pursuant to Section 19.1, notice is effective one business day following the date shown on the postmark of the envelope in which such notice is mailed or, in the event the postmark is not shown or available, then one business day following the date of mailing. A written declaration of mailing executed under penalty of perjury by the GRANTOR or DISTRICT or an officer or employee thereof shall be sufficient to constitute proof of mailing.
- (c) When mailed by certified mail with return receipt requested, notice is effective on receipt as confirmed by the return receipt.
- (d) When delivered by overnight delivery with charges prepaid or charged to the sender's account, notice is effective on delivery as confirmed by the delivery service.
- (e) When sent by telex or fax to the last telex or fax number of the recipient known to the party giving notice, notice is effective on receipt as long as (i) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery or (ii) the receiving party delivers a written confirmation of receipt. Subject to the foregoing requirements, any notice given by telex or fax shall be considered to have been received on the next business day if it is received after 5 p.m. (recipient's time) or on a non-business day.

**19.3 Refused or Undeliverable Notices.** Any correctly addressed notice that is refused or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was refused or considered undeliverable by the postal authorities, messenger, or overnight delivery service.

**20. Amendment.** If circumstances arise under which an amendment or modification of this Easement would be appropriate, GRANTOR and DISTRICT shall be free to jointly amend this

Easement, provided that any amendment shall be consistent with the Conservation Purpose of this Easement, shall ensure protection of the Conservation Values of the Property, shall not affect the Easement's perpetual duration and shall be consistent with Public Resources Code section 5540 and any successor statute then in effect. Any such amendment shall be in writing, executed by GRANTOR and DISTRICT, and recorded in the Office of the Sonoma County Recorder.

**21. No Forfeiture.** Nothing contained in this Easement shall result in a forfeiture or reversion of GRANTOR's title in any respect.

**22. Termination of Rights and Obligations.** A party's rights and obligations under this Easement shall terminate upon transfer of the party's interest in the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

**23. Enforceable Restriction.** This Easement and each and every term contained herein is intended for the benefit of the public and constitutes an enforceable restriction pursuant to the provisions of Article XIII, section 8 of the California Constitution and California Public Resources Code section 5540, or any successor constitutional provisions or statutes then in effect.

**24. Applicable Law and Forum.** This Easement shall be construed and interpreted according to the substantive law of California, excluding the law of conflicts. Any action to enforce the provisions of this Easement or for the breach thereof shall be brought and tried in the County of Sonoma.

**25. Pronoun Number and Gender.** Whenever used herein, unless the provision or context otherwise requires, the singular number shall include the plural and the plural the singular, and the masculine gender shall include the feminine and neuter.

**26. GRANTOR and DISTRICT.** Wherever used herein, the terms GRANTOR and DISTRICT, and any pronouns used in place thereof, shall mean and include the above-named GRANTOR and its heirs, successors, and assigns, including any persons claiming under them, and the above-named DISTRICT and its successors and assigns, respectively.

**27. DISTRICT's General Manager.** Wherever used herein, the term DISTRICT's General Manager, and any pronoun used in place thereof, shall mean and include the General Manager of DISTRICT and his duly authorized representatives.

**28. Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in a written amendment prepared, executed and recorded in accordance with Section 20.

**29. Severability.** In the event any provision of this Easement is determined by the appropriate court to be void and unenforceable, all remaining terms and conditions shall remain valid and binding. If the application of any provision of this Easement is found to be invalid or

unenforceable as to any particular person or circumstance, the application of such provisions to persons or circumstances, other than those as to which it is found to be invalid, shall not be affected thereby.

**30. Estoppel Certificates.** DISTRICT shall, at any time during the existence of this Easement, upon not less than thirty (30) days' prior written notice from GRANTOR, execute and deliver to GRANTOR a statement in writing certifying that this Easement is unmodified and in full force and effect (or, if modified, stating the date of execution and date of recording of the respective amendment) and acknowledging that there is not, to DISTRICT's knowledge, any default by GRANTOR hereunder, or, if DISTRICT alleges a default by GRANTOR, specifying such default. DISTRICT's obligation to deliver the statement of certification is conditioned on GRANTOR's reimbursing DISTRICT for all costs and expenses reasonably and necessarily incurred in its preparation as determined by DISTRICT's General Manager.

**31. No Liens, Encumbrances, or Conveyances.** GRANTOR warrants that after it has executed this Easement, it will not record any lien, encumbrance, or otherwise convey any right, title, or interest in and to the Property until such time as this Easement has been accepted and recorded by DISTRICT.

**32. Effective Date.** This Easement shall be effective as of the date of its acceptance by DISTRICT pursuant to California Public Resources Code sections 5500 et seq.

IN WITNESS WHEREOF, GRANTOR and DISTRICT have executed this Easement this day of \_\_\_\_\_, 20\_\_.

GRANTOR:

By: \_\_\_\_\_  
City Manager, City of Healdsburg

ATTEST:

\_\_\_\_\_

DISTRICT:

SONOMA COUNTY AGRICULTURAL PRESERVATION AND OPEN SPACE  
DISTRICT

By: \_\_\_\_\_  
President of the Board of Directors

ATTEST:

\_\_\_\_\_  
Clerk of the Board of Directors

**NOTE: ACKNOWLEDGMENTS MUST BE ATTACHED FOR ALL SIGNATORIES.**

2009197.1

RECORDING REQUESTED BY AND RETURN TO:

Clerk of the Board of Directors  
Sonoma County Agricultural  
Preservation and Open Space District  
575 Administration Drive, Room 102A  
Santa Rosa, CA 95403

RECREATION CONSERVATION COVENANT  
(California Civil Code §§815 *et seq.*)

THIS AGREEMENT is entered into by and between the Sonoma County Agricultural Preservation & Open Space District (“the District”) and the City of Healdsburg, a municipal corporation (“the Owner”).

*Recitals*

A. The District was formed for the purpose of preserving open space in the County of Sonoma and is funded by a voter approved sales tax the expenditure of which is directed and limited by the Sonoma County Agricultural Preservation & Open Space 2006 Expenditure Plan (“the 2006 Expenditure Plan” or “the Plan”) in order to implement the Sonoma County Open Space, Clean Water and Farmland Protection Measure (Sonoma County Ordinance No. 5677R).

B. Among the categories of open space identified for protection in the 2006 Expenditure Plan are “fee interests for outdoor public recreation where the public use would not be inconsistent with the open space designations” listed in the Plan.

C. In a companion transaction of even date, the Owner has conveyed a conservation easement (“the Conservation Easement”) to the District limiting the use of the lands described in Exhibit “A” (“the Property”) to natural resource preservation and passive public outdoor recreation consistent with certain identified open space values.

D. This agreement creates a conservation covenant (“the Covenant” or “this Covenant”) within the meaning of Restatement Third, Property (Covenants) §1.6(1) and pursuant to the authority of Civil Code §§815 *et seq.* and the common law of California, in order to assure that the Property will be used, maintained and operated by the Owner and its successors in interest as a public park and open space preserve in perpetuity, available to the public for passive public outdoor recreation in a manner consistent with the Conservation Easement and the provisions herein.

*Agreement*

FOR VALUABLE CONSIDERATION the Owner hereby undertakes the following obligations for the benefit of the District:

1. *The Covenant.* Pursuant to the provisions of Civil Code §§815 *et seq.* and the common law of California, the Owner hereby conveys this Covenant to the District for the purpose of assuring the continued and perpetual public recreational use of the Property and in order to complement the Conservation Easement.

2. *Obligation to Provide for Passive Outdoor Public Recreation and Educational Uses*

A. The Owner hereby agrees to use, operate and maintain the Property as a public park and open space preserve in perpetuity, available to the public for passive outdoor public recreation and educational uses in a manner consistent with the Conservation Easement and the provisions herein. Such use, operation and maintenance of the Property as a public park and open space preserve shall commence no later than sixty (60) months from the date of recordation of this Covenant and shall include, at a minimum, general availability of the property for public hiking, picnicking and nature study.

B. The Owner shall not engage in activities that impede public access to or to impede the public use of the Property for passive outdoor public recreation and educational uses except as otherwise provided in Section 5.6 of the Conservation Easement.

C. The Owner's use, operation and maintenance of the Property for passive outdoor public outdoor recreation and education shall be in accordance with a management plan prepared and approved pursuant to Sections 5.1.7 and 6.1 of the Conservation Easement. A management plan shall be completed no later than thirty-six (36) months from the date of recordation of this Covenant and shall include, at a minimum, provision for public hiking, picnicking and nature study. The management plan may be amended from time to time provided that such amendment shall be subject to District's approval, in accordance with the procedures and standards set forth in Sections 5.1.7 and 6.1 of the Conservation Easement.

### *3. Enforcement.*

A. In the event of an uncured breach by the Owner of any of its obligations under this Covenant, the District may institute a suit for appropriate equitable relief, or institute a suit to recover damages, or accept the offer of dedication set forth in Paragraph 7, or accept the offer of dedication set forth in Paragraph 8, or pursue any combination of the foregoing. Prior to taking any of these actions, the District shall provide the Owner with a notice to cure. The notice shall be a written notification generally describing the condition or event claimed by the District to be a breach of the Owner's obligations that is either mailed or otherwise delivered by the District to the Owner. The notice shall include a reasonable period in which the breach must be cured to the reasonable satisfaction of the District. The remedies provided by this subparagraph A shall be available to the District immediately upon expiration of the cure period.

B. Enforcement of the obligations created by this Covenant shall be at the sole discretion of the District. Any forbearance by the District to exercise its rights under this Covenant shall not be deemed or construed to be a waiver or forfeiture by the District.

C. The actual damages incurred by the District and allowed by Civil Code section 815.7(c) resulting from the Owner's breach of the obligations imposed by this Covenant are uncertain and would be impractical or extremely difficult to measure. Accordingly, the parties agree that the District's damages shall be measured by the fair market value of the

Property, unencumbered and without regard to the Conservation Easement or this Covenant, multiplied by the length of time in years, including fractions thereof, during which the breach remains uncured after notice of the breach has been given pursuant to subparagraph A of this Paragraph 3, multiplied by the then current annual interest rate for post judgment interest. In no case, however, shall liquidated damages exceed forty percent (40%) of the fair market value of the Property, unencumbered and without regard to the Conservation Easement or this Covenant, for any single breach. The Owner's liability for damages is discharged if the Owner cures the breach within the time specified in the District's notice described in subparagraph A of this Paragraph 3.

D. The remedies set forth in this Paragraph 3 are not intended to displace any other remedy available to either party as provided by this Covenant, the Conservation Easement, Civil Code Sections 815 *et seq*, the common law, or any other applicable local, state or federal law.

E. Nothing contained in this Paragraph 3 shall be construed to entitle the District to bring any action against the Owner for any failure to perform resulting from causes beyond the Owner's control, including, without limitation, wildfire, flood, storm, and earth movement, or from any prudent action taken by the Owner under emergency conditions to prevent, abate, or mitigate a failure to perform resulting from such causes so long as such action, to the extent that the Owner has control, is designed and carried out in such a way as to further the purpose of this Covenant.

4. *Conveyances; Leasing; Approval of Grantees.* No conveyance of the fee interest in the Property nor any lease thereof nor any other transfer of the possessory interest in the Property may occur without the District's consent and determination that the prospective buyer, lessee or the transferee of any possessory interest is reasonably qualified to perform the obligations created by this Covenant and the Conservation Easement. Neither the District's determination nor its consent shall be unreasonably withheld. All leases or other transfers of a possessory interest in the property shall be in writing, shall acknowledge this Covenant and the Conservation Easement and shall terminate no later than the date the District accepts the offer

made in Paragraph 7 or the offer made in Paragraph 8 of this Covenant. A failure to comply with these requirements is a material breach of this Covenant and subject to remedies set forth in Paragraph 3.

5. *Third Party Beneficiaries.* The District and the Owner do not intend and this Covenant shall not be construed to create any rights in third parties.

6. *Integration.* This Agreement is the final and complete expression of the agreement between the parties and any and all prior or contemporaneous agreements written or oral are merged into this written instrument.

7. *Irrevocable Offer of Dedication -- Lease.* Pursuant to Public Resources Code §5565.5, the Owner hereby grants to the District and its assignees an irrevocable offer of dedication of a 99 year lease of the Property, which lease shall contain such terms as are attached hereto as Exhibit "B." This offer of dedication may only be accepted by the District, or its assignees, in the event of an uncured breach of the Owner's obligations under this Covenant.

8. *Irrevocable Offer of Dedication -- Fee.* The Owner hereby grants to the District and its assignees an irrevocable offer of dedication of the fee interest in the Property, in the form and substance attached hereto as Exhibit "C," pursuant to Public Resources Code §5565.5. This offer of dedication may only be accepted by the District, or its assignees, in the event of an uncured breach of the Owner's obligations under this Covenant.

9. *Inspection.* The District may, within its sole discretion and from time to time, inspect the Property to determine if the Owner is in compliance with this Covenant.

10. *Covenant to Bind Successors.* This Covenant shall be a burden upon and shall continue as a restrictive covenant and equitable servitude running in perpetuity with the Property and shall bind Owner and its successors in interest, including but not limited to purchasers at tax sales, assigns, and all persons claiming under them forever. The parties intend that this Covenant shall benefit and burden, as the case may be, their respective successors, assigns, heirs,

executors, administrators, agents, officers, employees, and all other persons claiming by or through them pursuant to the common and statutory law of the State of California. Further, the parties agree and intend that this Covenant creates an easement encompassed within the meaning of the phrase “easements constituting servitudes upon or burdens to the property,” and an irrevocable offer of dedication encompassed within the meaning of the phrase “unaccepted, recorded, irrevocable offers of dedication,” as those phrases are used in California Revenue & Taxation Code section 3712(d) and (e), or any successor statute then in effect, such that a purchaser at a tax sale will take title to the Property subject to this Covenant.

[SIGNATURES AND ACKNOWLEDGEMENTS]

EXHIBIT A  
(Legal Description)

## EXHIBIT B

### Stipulated Terms of 99-Year Lease

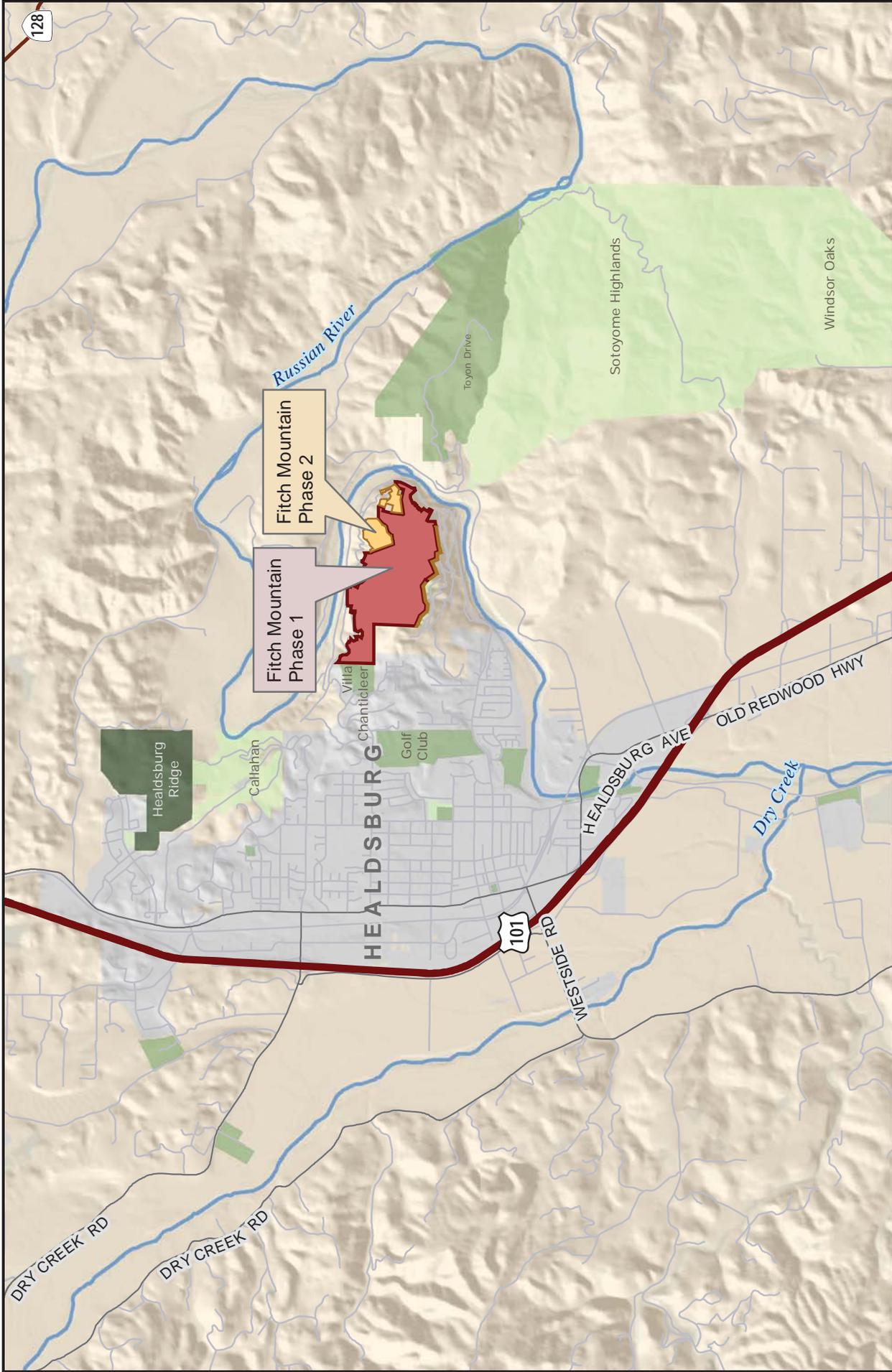
1. Term: Up to 99 Years
2. Price: No monetary consideration shall be paid to City for the Lease. However, following District's Acceptance of City's Offer of Dedication, as described in Section 7 of the Covenant, District or its assignees will assume all responsibility for any taxes or assessments, including taxes or assessments for possessory interests, levied against the Property in connection with the District's Leasehold interest.
3. Termination: District may terminate at will (with or without cause).
4. Use: District's right to possession of the Property shall be exclusive.
5. District Right to Sublet: District may assign or sublet the Property for public park and open space preserve purposes.
6. District Right to Receive Revenues: District shall receive all revenues, regardless of source, generated on the Property during the term of the Lease.
7. Effect on Covenant: The lease shall suspend City's obligations under the Covenant for the duration of the lease to the extent City requires a possessory interest in the Property to satisfy such obligations. The City shall not interfere with the operation or maintenance of the Property as a public park and open space preserve, as contemplated in the Covenant and Conservation Easement, by District or by any assignee or sublessee of District.
8. Liability: The District or its assignees or its lessees shall assume all liability for the Property associated with obligations the District assumes under the lease, which obligations shall extend to those necessary to ensure the Property is used, operated and maintained as a public park and open space preserve, available to the public for passive outdoor public recreation and educational uses in a manner consistent with the Conservation Easement and the Management Plan, except for any claim, damage, liability or loss which arises out of the City's ownership, operation or management of the Property prior to the District's acceptance of the Irrevocable Offer of Dedication, as described in Section 7 of the Covenant.

## EXHIBIT C

### IRREVOCABLE OFFER OF DEDICATION (Public Resources Code §5565.5)

FOR VALUABLE CONSIDERATION, the City of Healdsburg (“City”) hereby grants and makes to the Sonoma County Agricultural Preservation and Open Space District (“District”) an irrevocable offer of dedication of the fee interest in the real property (“the Property”) that is located at [INSERT] and is more particularly described in Exhibit “A” attached hereto and incorporated herein as though fully set forth. This offer may be accepted by the District at any time that its Board of Directors determines, in its sole discretion, that there exists an uncured material breach of that certain Recreation Conservation Covenant entered into between the City and District on [DATE], [ATTACHED].

(Legal Description)



# Fitch Mountain Acquisition Two Phase Project Location Map

- District Fee Title
- District Conservation Easement
- Other Public and Protected Land



Map Date: 10/3/2014  
 Source: SCWA (streams); County GIS (parcels, cities, roads); ESRI (base map)  
 This map is for illustrative purposes only and is not intended to be a definitive property description.

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CITY OF HEALDSBURG

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HEALDSBURG APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH LANDPATHS, FOR AN AMOUNT NOT TO EXCEED \$133,000 PER YEAR FOR THREE YEARS TO MANAGE AND PROVIDE STEWARDSHIP SERVICES AT THE FITCH MOUNTAIN OPEN SPACE PRESERVE FOR THE CITY OF HEALDSBURG AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT AND RELATED DOCUMENTS AND TO TAKE SUCH ACTIONS AS NECESSARY TO IMPLEMENT THE AGREEMENT AND THE RELATED AMENDED TRANSFER AGREEMENT WITH THE SONOMA COUNTY AGRICULTURAL PRESERVATION AND OPEN SPACE DISTRICT

WHEREAS, the City's Parks and Recreation Department requires the resources and expertise to manage approximately 172 acres of the Fitch Mountain Open Space District property (Property); and

WHEREAS, the City of Healdsburg has worked successfully with Land Partners Through Stewardship (LandPaths) over the past six years in providing stewardship services at the Healdsburg Ridge Open Space Preserve; and

WHEREAS, the City of Healdsburg desires to continue the contract with LandPaths to manage the Fitch Mountain Open Space Preserve; and

WHEREAS, LandPaths has extensive experience in managing open spaces and has managed both public and privately owned wild lands, and implemented trail construction and environmental restoration projects; and

WHEREAS, the scope of the proposed Professional Services Agreement (PSA) with LandPaths includes implementing the stewardship plan for the Fitch Mountain Open Space Preserve, and continuing to work with volunteers to patrol and maintain the trail system and develop other programs as needed; and

WHEREAS, the term of the PSA is three years and coincides with the signing date of the matching grant agreement with the Sonoma County Agricultural Preservation and Open Space District; and

WHEREAS, the cost of the services shall not exceed \$133,000 per year for three years; and

WHEREAS, the City will be obligated to pay LandPaths the annual amounts set forth in the Professional Services Agreement but will be reimbursed for those amounts by the Open Space District for the first two years of the contract. The third and final year of payment will come from Community Benefit Funds which has been allocated by Council; and

WHEREAS, during the term of the PSA LandPaths will take fee title to the Property, subject to an Irrevocable Offer of Dedication that returns title to the City at the end of the term; and

WHEREAS, the transfer of title to LandPaths during the term of the PSA is contemplated in the City's Transfer Agreement, as amended, with the Sonoma County Agricultural Reservation and Open Space District for the Property, and is in furtherance thereof, and is in the public interest.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Healdsburg hereby approves a professional services agreement with LandPaths substantially in the form attached hereto with such minor edits as are approved by the City Attorney, to manage and provide stewardship services at the Fitch Mountain Open Space Preserve for the City of Healdsburg in an amount not to exceed \$133,000 per year with the allowance for change orders up to 10% of the annual contract amount per year for a period of three years, and authorizes the City Manager to execute said agreement and such related documents, and to take such other actions as are necessary, to implement the intent of this Resolution.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Healdsburg at its regular meeting held on October 20, 2014, by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ABSTAINING: Councilmembers:

SO ORDERED:

ATTEST:

\_\_\_\_\_  
James W. Wood, Mayor

\_\_\_\_\_  
Maria Curiel, City Clerk

## *Fitch Mountain Scope of Work*

LandPaths proposes to work in partnership with the City of Healdsburg (“Fitch Mountain Public Private Partnership”) to protect and manage the 197-acre *Fitch Mountain Parcels* as an open space amenity for the public. LandPaths’ role as holder of fee title for 3 years is one of several critical components of a successful transaction bringing the Fitch Mountain Parcel (“FMP”) acquisition to fruition. As fee-title owner of the property LandPaths will lead all aspects of the Fitch Mountain Parcel project for a term of three years. During these three years, LandPaths’ work will center on (1) Public Engagement with Fitch Mtn, (2) Fee-title Ownership, (3) Property Management. LandPaths will coordinate all work related to FMP during the first three years with key partners, the City of Healdsburg and the SCAPOSD.

1. **Public Engagement:** Create a positive community experience, engaged and excited about FMP as a new public open space in the Healdsburg area.
  - a. Lead Public Outings / Education Events on the property; 4 outings/events minimum (“min”) per year
  - b. Conduct Public Outreach, including a listening campaign about Fitch Mountain and open space in the Healdsburg area. Outreach will include 2 meetings (min) with the Fitch Mountain Association (“FMA”) leadership, 6 meetings (min) with local merchants<sup>1</sup>, 4 meetings (min) with individual community leaders, and meet up to 4 times with groups of neighbors to address concerns beyond FMA. Outreach will also include 2 advertised outings to illicit input within the first year following close of escrow.
  - c. Host Community Event highlighting open space resources, ideally creating an annual event in conjunction with City of Healdsburg Parks & Recreation
  - d. Co-manage press through jointly agreed upon statements and full cooperation between LandPaths and City TBD
  - e. Regular Communication with Partner NGO affiliations, including Friend of Fitch/Friends of Healdsburg Open Space; quarterly email and web page communication on Fitch Mtn highlights and engagement opportunities
  - f. Serve as Point of Contact: Field and respond to all public agency and private inquires related to all aspects of the FMP project<sup>2</sup> in a timely manner
  
2. **Fee Title Ownership :** Maintain in good legal standing all fee-title obligations including;
  - a. Liability insurance
  - b. Taxes and other fees
  - c. Legal counsel
  - d. Organizational Good standing

3. **Property Management:** For the purposes of a) future public use, b) habitat and watershed protection and enhancement, and c) viewscape preservation for Healdsburg and the 101 corridor.
  - a. Engage Community in active stewardship role each year via a) 4 hosted work days, b) training 10 (min) trail patrol volunteers, c) note in quarterly communication on stewardship opportunities for community volunteers.
  - b. Lead quarterly (or as determined by both partners) project meeting with the City of Healdsburg
  - c. Coordinate stewardship efforts by public agencies, other NGO's and community groups interested in executing site enhancement (principally but not exclusively *fire management*) on FMP
  - d. Install Property signage in conjunction with City approval
  - e. Conduct Road & trail maintenance in keeping with established erosion control and native habitat sensitivity
  - f. Coordinate development of Interim Fire Management Plan & Implement Immediate Fire reduction work with City of Healdsburg and CalFire
  - g. Development of Emergency Action Plan (EAP) with City and County Emergency Services
  - h. Address immediate site needs: Non-native removal and erosion control treatments as needed using hand tools by community volunteers; species including French and Scotch broom
  - i. Additional site stewardship, as identified by key partners
  - j. Plan, design, expedite environmental review and receive relevant permitting and city land approval for construction of initial trail linkage(s) necessary to make trail and fireroad access via Villa Chanticleer functional, ecologically sound and safe
  
4. **Provide City with a SCAPOSD-approved Work Plan** providing for immediate stewardship work on Fitch Mountain Parcels.

LandPaths 2014/2015 Rate Sheet

Staff Title	Hourly Rate	Role
Executive Director	\$115*	Oversight, innovation
Managing Director	\$ 80*	Management, innovation, evaluation, research on trends and impact strategies
Program Director	\$ 75*	Innovation, outreach, <i>Outings</i> coordination and facilitation (bilingual), <i>Outings</i> Advisory Team, evaluation  <i>IOOBY</i> Teacher outreach, volunteer leadership development, curriculum development and stewardship planning
Project Manager	\$ 55*	Innovation, outreach, <i>Outings</i> coordination and facilitation (bilingual)
Program Coordinator	\$ 45*	Innovation, <i>Outings</i> coordination and facilitation, <i>Outings</i> Advisory Team  Lead and assist <i>IOOBY</i> school class visits and field-based learning, evaluation tracking, safety plan, and educational and stewardship supplies coordination
Program Assistant	\$ 35*	<i>Outings</i> Registration and processing, data entry, data reporting

\*Hourly rates may increase in accordance with Bay Area CPI – *All Urban Consumers San Francisco-Oakland-San Jose*