

CITY OF HEALDSBURG

RESOLUTION NO. 102-2012

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HEALDSBURG DECLARING RESULTS OF MAJORITY PROTEST PROCEEDINGS AND ESTABLISHING THE HEALDSBURG TOURISM IMPROVEMENT DISTRICT AND APPROVING THE OWNERS' ASSOCIATION AGREEMENT BETWEEN THE CITY OF HEALDSBURG AND HEALDSBURG CHAMBER OF COMMERCE

WHEREAS, the Property and Business Improvement District Law of 1994 (Streets and Highways Code §36600 et. seq.) authorizes cities and counties to establish property and business improvement districts upon petition by a weighted majority of the lodging business owners located within the boundaries of the district; and

WHEREAS, lodging business owners who will pay more than fifty percent (50%) of the proposed assessment, as weighted according to the amount of the assessment to be paid by the petitioner, within the boundaries of the Healdsburg Tourism Improvement District ("HTID") have petitioned the City Council to establish the HTID; and

WHEREAS, included with the petitions was a Management District Plan summary that describes the proposed assessment to be levied on lodging businesses within the HTID to pay for sales promotion and marketing activities, and other improvements and activities set forth in the Management District Plan; and

WHEREAS, the assessed lodging businesses within the HTID will be benefited by the activities and improvements set forth in the Management District Plan; and

WHEREAS, on May 21, 2012 at 6:00 p.m. at 401 Grove Street, Healdsburg, CA 95448, the City Council adopted a Resolution of Intention, Resolution No. 50-2012; and

WHEREAS, the public meeting and public hearing to consider the establishment of the HTID have been properly noticed in accordance with Streets and Highways Code §36623; and

WHEREAS, on June 18, 2012 at 6:00 p.m. at 401 Grove Street, Healdsburg, CA 95448, the City Council held a public meeting regarding the establishment of the HTID, and on October 1, 2012 the City Council held a public hearing and heard and received objections and protests, if any, to the establishment of the HTID and the levy of the proposed assessment; and

WHEREAS, the City Clerk has determined that there was no majority protest. A majority protest is defined as written protests received from owners of businesses in the proposed district which would pay fifty percent (50%) or more of the assessments proposed to be levied. Protests are weighted based on the assessment proposed to be levied on each lodging business; and

WHEREAS, the 1994 Act permits the City to designate a private nonprofit entity, known as the “owners’ association,” to administer or implement the improvements and activities specified in the management district plan; and

WHEREAS, if the City elects to have the “owners association” implement the management plan it must enter into a contract with the owners association to administer and carry out the programs and activities; and

WHEREAS, the City Council of the City of Healdsburg wishes to designate the Healdsburg Chamber of Commerce as the Owners’ Association to administer and implement the improvements and activities specified in the management district plan; and

WHEREAS, the Owners’ Association shall form a HTID subcommittee, comprised of lodging operators paying the assessment, to direct the administration and implementation of the management district plan.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL THAT:

1. The recitals set forth herein are adopted by the City Council as findings and they are true and correct.
2. The Healdsburg Tourism Improvement District is hereby established for a five-year term. The Management District Plan dated October 2012, on file with the City Clerk, is hereby adopted.
3. The assessments levied for the HTID shall be applied towards sales, promotions and marketing programs to market Healdsburg lodging businesses as tourist, meeting and event destinations as set forth in the Management District Plan.
4. The revenue from the levy of the assessments on lodging businesses within the HTID may not be used to provide for activities or improvements outside the HTID or for any purpose other than those specified herein, in the Management District Plan, and in the Resolution of Intention.
5. Assessments levied on lodging businesses pursuant to this resolution shall be levied on the basis of benefit. Because the services provided are intended to increase room rentals, an assessment based on room rentals is the best measure of benefit.
6. The amount of assessment, if passed on to each transient, shall be disclosed in advance, separately stated from the amount of rent charged and any other applicable taxes, and each transient shall receive a receipt for payment from the business.

7. The assessments for the entire District will total approximately \$320,000 in year one.

8. The activities and improvements set forth will be funded by the levy of an assessment on lodging businesses within the HTID as described in the Management District Plan dated October 2012 that is on file with the City Clerk.

9. Bonds shall not be issued to fund the HTID.

10. The boundaries of the HTID shall be the boundaries of the City of Healdsburg as shown on the attached map, incorporated herein as Exhibit A.

11. The assessments shall be used for the purposes set forth above and any funds remaining at the end of any year may be used in subsequent years in which the HTID assessment is levied as long as they are used consistent with the requirements set forth herein.

12. The assessments to fund the activities and improvements for the HTID will be collected at the same time and in the same manner as are transient occupancy taxes, and in accordance with Streets and Highways Code §36631.

13. Healdsburg Chamber of Commerce shall be the Owners' Association pursuant to Streets and Highways Code §36614.5.

14. As Owners' Association, the Healdsburg Chamber of Commerce, pursuant to Streets and Highways Code §36650, shall cause to be prepared a report for each fiscal year, except the first year, for which assessments are to be levied and collected to pay the costs of the improvement and activities described in the report. The first report shall be due after the first year of operation of the district.

15. The HTID established pursuant to this resolution will be subject to any amendments to the Property and Business Improvement District Law of 1994 (California Streets and Highways Code §36600 et. seq.).

16. The City Clerk, or his or her designee, is directed to take all necessary actions to complete the establishment of the HTID and to levy the assessments.

17. The City Council authorizes the City Manager to execute the Owners' Association agreement between the City of Healdsburg and Healdsburg Chamber of Commerce for the implementation of the management district plan, attached as Exhibit B.

18. This Resolution shall take effect immediately upon its adoption by the City Council.

The foregoing Resolution of Formation was introduced and adopted at a regular meeting of the City Council of the City of Healdsburg on the 1st day of October, 2012 by the following vote:

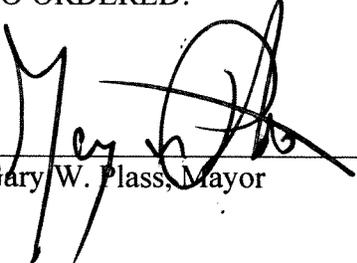
AYES: Councilmembers: (5) Babb, Chambers, Jones, Wood and Mayor Plass

NOES: Councilmembers: (0) None

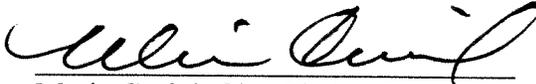
ABSENT: Councilmembers: (0) None

ABSTAINING: Councilmembers: (0) None

SO ORDERED:

  
\_\_\_\_\_  
Gary W. Plass, Mayor

ATTEST:

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

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. 102-2012 adopted by the City Council of the City of Healdsburg on the 1<sup>st</sup> day of October, 2012.

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

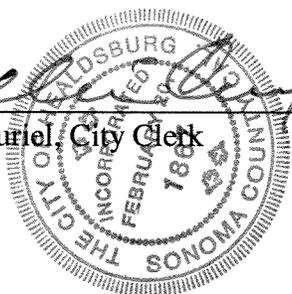
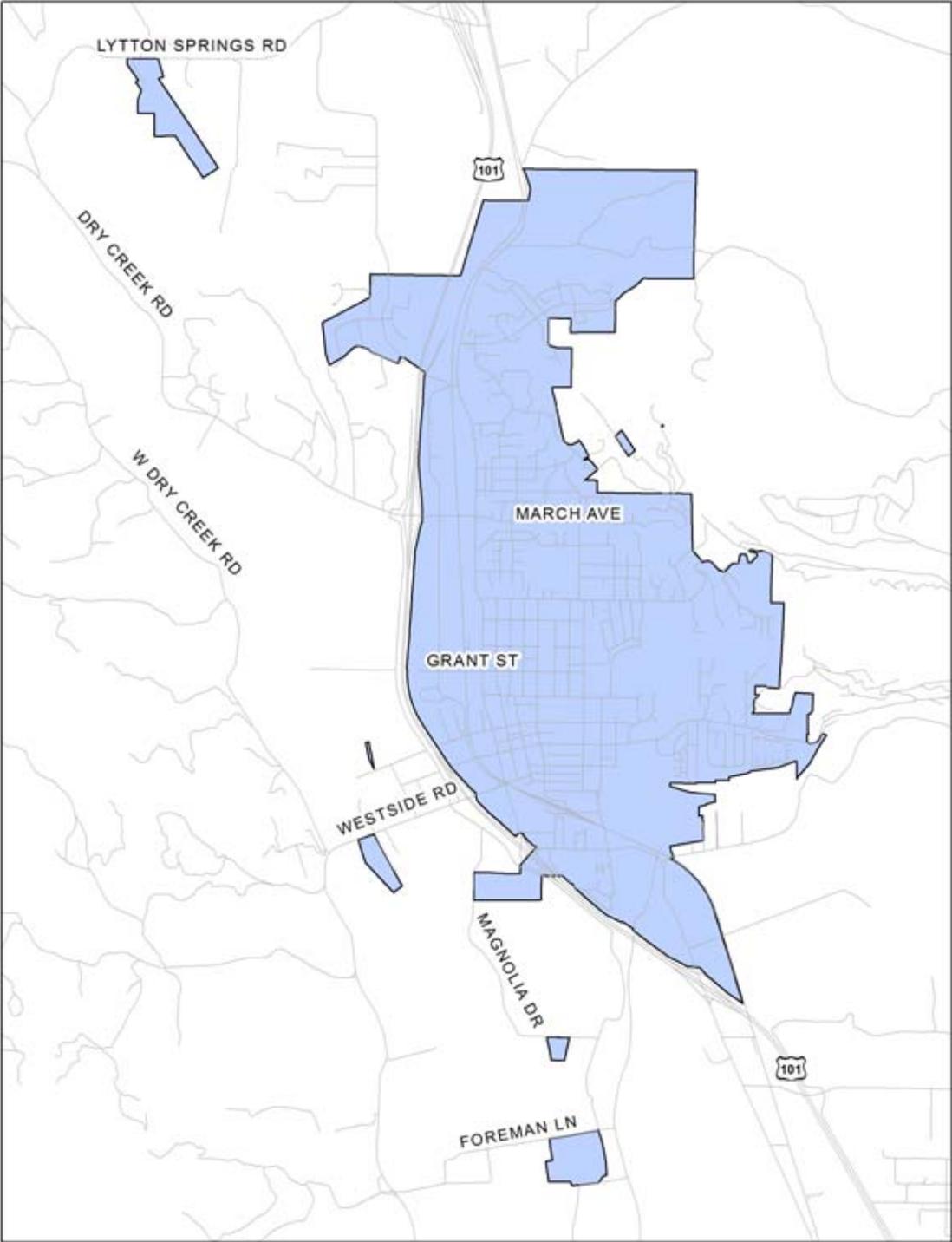


Exhibit A  
District Map



CITY OF HEALDSBURG  
OWNERS' ASSOCIATION AGREEMENT

AGREEMENT

This Agreement is made and entered into this 2nd day of October, 2012, by and between the City of Healdsburg, a California Municipal Corporation, 401 Grove Street, Healdsburg, California, 95448, hereinafter referred to as "City," and Healdsburg Chamber of Commerce, a California 501(c)6 nonprofit organization, 217 Healdsburg Avenue, Healdsburg, California, 95448, hereinafter referred to as "Chamber."

RECITALS

WHEREAS, on April 16, 2012 lodging operators in the City submitted petitions and a draft management plan to the City Council requesting the establishment of an assessment district pursuant to the Property and Business Improvement District Law of 1994 (Cal. Strts. & Hwys Code §§ 36600 et seq.) ("Act"); and

WHEREAS, on October 1, 2012, after reviewing and considering the petitions and draft management plan and complying with all required procedural steps, the City Council adopted a resolution establishing the Healdsburg Tourism Improvement District ("HTID") and approved a final management plan entitled the "Healdsburg Tourism Improvement District Management District Plan" ("Plan"); and

WHEREAS, the Plan designates the Chamber as the "owners' association" that will implement the programs and activities described in the Plan; and

WHEREAS, pursuant to Section 36651 of the Act, the City is required to contract with the owners' association designated by the Plan;

WHEREAS, the Chamber represents and warrants that it is fully qualified to implement the programs and activities by virtue of specialized experience and training, education and expertise of its principals and employees. Chamber further represents that it is willing to accept responsibility for implementing the programs and services in accordance with the terms and conditions of the Plan and as set forth in this Agreement; and

WHEREAS, the legislative body of the City on October 1, 2012 by Resolution No.\_\_\_\_-2012 authorized execution of this Agreement on behalf of the City in accordance with the City Municipal Code and/or other applicable law;

NOW, THEREFORE, City and Chamber, for the consideration hereinafter described, mutually agree as follows:

## 1. DESCRIPTION OF SERVICES OR SCOPE OF WORK

The services to be performed under this Agreement (the "Services") are as follows: to provide general administrative support for the HTID and implement the programs and activities identified in the Plan. The Services are further described in the Plan, which is attached to and made a part of this Agreement as Exhibit A.

## 2. TERM

The Agreement term will commence on October 2, 2013 and expire on February 1, 2018 unless the Agreement term is amended or the Agreement is terminated in accordance with its terms.

## 3. ASSESSMENTS AND OPERATIONS

A. Distribution. City agrees to forward assessments collected under the Act to the Chamber on a monthly basis in accordance with the following terms and conditions:

1. Delinquency Retention Fund. The parties agree that the City shall establish a fund ("Retention Fund") to reimburse the City for the costs of collecting any delinquent assessments including, but not limited to, the costs of conducting hearings and appeals and any legal action, including attorneys' fees, required to enforce the Act ("Enforcement Costs"). The Retention Fund shall be funded solely from assessments collected by the City under the Act. The City shall deposit into the Retention Fund the initial \$5,000 (Five Thousand Dollars) collected from assessments under the Act and shall draw upon the Fund as necessary to reimburse the City for its Enforcement Costs. Each month the City shall deposit into the Retention Fund assessments equal to any amounts withdrawn from the previous month for Enforcement Costs so as to maintain a balance in the Fund equal to \$5,000. Upon disestablishment of the HTID, amounts remaining in the Retention Fund shall be distributed as provided by Section 36670 of the Act.

2. City Collection Costs. The City shall retain an amount equal to 5% (Five Percent) of the assessments due each month to reimburse the City for the costs of administering the HTID ("Collection Costs").

3. Transient Occupancy Tax. Lodging operators subject to the Act will be required to submit assessments at the same time, and for the same time periods, as provided for under the City's Transient Occupancy Tax ordinance. Amounts submitted by lodging operators for the Tax and the assessment shall first be deemed as payment of all amounts due the City under its Transient Occupancy Tax ordinance for the applicable time period with the remainder being deemed as assessments to be distributed as provided in Paragraph 3.A.4 below.

4. Distribution Priority. Each month, assessments collected by the City shall first be used to reimburse the Retention Fund, if necessary, then to pay the City its Collection Costs, with the remainder distributed to the Chamber for the costs of implementing the Services.

B. Audits. Chamber must maintain adequate records to permit inspection and audit of Chamber's records under this Agreement. Chamber will make such records available to City during normal business hours upon reasonable notice. In accordance with California Government Code Section 8546.7, this Agreement and the Chamber's books and records related to this Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

C. Governance. Within 30 (thirty) days following execution of this Agreement by the parties, the Chamber's board of directors shall appoint a subcommittee consisting of a majority of owners of lodging businesses in the City ("HTID Subcommittee"). The City Council shall also be permitted to make one appointment to the HTID Subcommittee. The board of directors shall delegate to the HTID Subcommittee responsibility for overseeing the Chamber's implementation of the Services and shall maintain the Subcommittee throughout the term of this Agreement. As required by Section 36614.5 of the Act, the Chamber and the HTID Subcommittee shall comply with the Ralph M. Brown Act at all times when matters within the subject matter of the HTID are heard, discussed, or deliberated, and with the California Public Records Act, for all documents relating to activities of the HTID.

#### 4. TIME OF COMPLETION

Chamber shall devote such time to the implementation of the Services as may be reasonably necessary to meet the standards of performance provided in Section 7 below and to satisfy Chamber's obligations hereunder.

#### 5. INDEPENDENT CONTRACTOR

Chamber and City agree that the Chamber will perform the Services as an independent contractor and not as an employee or agent of the City. Persons employed or utilized by Chamber in the performance of the Services will not be employees or agents of the City. Chamber is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

#### 6. SUBCONTRACTING

Chamber may subcontract portions of the Services. The Chamber will be solely responsible for payment for such subcontract services. No contractual relationship will exist between any such subcontractors of the Chamber and the City.

## 7. STANDARD OF PERFORMANCE

A. Chamber will perform the Services in the manner and according to the standards observed by a competent practitioner of the profession in which Chamber is engaged in the geographical area in which Chamber practices its profession and will prepare all work products required by this Agreement in accordance with those standards. Chamber will comply with all federal, state and local laws and regulations applicable to performance of the Services, including, but not limited to, the Americans with Disabilities Act, and any copyright, patent or trademark law. Chamber's failure to comply with any law(s) or regulation(s) applicable to the implementation of the Services hereunder shall constitute a breach of contract.

B. Chamber shall assign only competent personnel to implement the Services.

## 8. OTHER GOVERNMENTAL REGULATIONS

To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Chamber and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

## 9. USE OF RECYCLED PRODUCTS

Chamber shall endeavor to prepare all reports, written studies, and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

## 10. INDEMNITY

To the maximum extent permitted by law, Chamber shall, at its own expense, indemnify, defend with counsel acceptable to the City, (which acceptance will not be unreasonably withheld), and hold harmless City and its officers, officials, employees, agents and volunteers ("Indemnitees") from and against any and all liability, loss, damage, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, civil penalties and fines, expenses and costs (including, without limitation, claims expenses, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature, whether actual, alleged or threatened, arising out of or in connection with the Services or Chamber's failure to comply with any of the terms of this Agreement, regardless of any fault or alleged fault of the Indemnitees.

The Chamber's obligation to indemnify, defend and hold harmless under this provision shall not be excused because of the Chamber's inability to evaluate Liability, or because the Chamber evaluates Liability and determines that the Chamber is not or may not be liable. The Chamber must respond within 30 calendar days to any tender for defense and indemnity by the City, unless the time for responding is extended by an authorized

representative of the City in writing. If the Chamber fails to accept tender of defense and indemnity within 30 calendar days, in addition to any other remedies authorized by law, so much of the money due or that may become due the Chamber under this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the matter subject to tender, or until the Chamber accepts the tender, whichever occurs first.

The Chamber waives any and all rights to express or implied indemnity against the Indemnitees concerning any Liability of the Chamber arising out of or in connection with the Services or Chamber's failure to comply with any of the terms of this Agreement .

Notwithstanding the foregoing, to the extent that the Services include design professional services subject to Cal. Civil Code § 2782.8, as amended from time to time, Chamber's duty to indemnify shall only be to the maximum extent permitted by Civil Code § 2782.8.

In the event that Chamber or any employee, agent, or subcontractor of Chamber providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Chamber shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Chamber or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

## 11. INSURANCE

A. Before commencing performance of the Services, Chamber, at its own cost and expense, must: (1) procure "occurrence coverage" insurance of the kinds and in the amounts specified below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Services hereunder by the Chamber or its agents, representatives, employees, or subcontractors; and (2) submit to the City certificates of insurance and endorsements evidencing insurance coverage that meets the requirements of this section. Chamber must maintain the insurance policies required by this section throughout the Agreement term. The cost of such insurance must be borne by the Chamber. Chamber may not allow any subcontractor to commence work on the Services until Chamber and/or the subcontractor(s) as obtained all insurance required by this Agreement for the subcontractor(s) and submitted certificates of insurance and endorsements evidencing such coverage to the City.

B. Chamber must, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Chamber. The Statutory Workers' Compensation Insurance coverage must be for Statutory Limits and Employer's Liability Insurance must be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence. The insurance must be endorsed to waive all rights of subrogation

against the City and its officials, officers, employees, and volunteers for loss arising from or related to the Services.

C. Chamber, at its own cost and expense, must maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than TWO MILLION DOLLARS (\$2,000,000.00) per occurrence, combined single limit coverage for risks associated with Services. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Services or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

D. Required commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage must be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement may be attached limiting the coverage.

E. Except for Workers' Compensation Insurance and professional liability insurance, all other insurance coverages required pursuant to this Agreement must include or be endorsed to include the following:

1. City and its officials, officers, employees, agents, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Chamber, products and completed operations of Chamber; premises owned, occupied, or used by Chamber; and automobiles owned, leased, or used by the Chamber. The coverage may contain no special limitations on the scope of protection afforded to City or its officials, officers, employees, agents, or volunteers.

2. Required insurance coverage must be primary insurance with respect to the City and its officials, officers, employees and volunteers. No insurance or self-insurance maintained by the City may be called upon to contribute to a loss under the coverage.

3. Any failure of Chamber to comply with reporting provisions of the policy shall not affect coverage provided to City and its officials, employees, agents, and volunteers.

4. Required insurance coverage may not be suspended, voided, canceled, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

F. All insurance required under this Agreement must be placed with insurers with a Bests' rating of no less than A:VII unless otherwise approved by the City.

G. The City may approve a variation in the foregoing insurance requirements, upon a determination that the coverages, scope, limits, and forms of such insurance are either not commercially available, or that the City interests are otherwise fully protected.

## 12. NON-DISCRIMINATION

During the performance of this Agreement, Chamber will not discriminate against any employee of the Chamber or applicant for employment because of race, religion, creed, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation. Chamber will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, creed, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation.

## 13. LICENSES AND PERMITS

### A. BUSINESS LICENSE

To the extent the business license requirements of the Healdsburg Municipal Code apply, Chamber and any subcontractors subject to the requirements must acquire at their sole expense a business license from City in accordance with the Code. Such licenses must be kept valid throughout the Agreement term.

### B. OTHER LICENSES AND PERMITS

Chamber represents and warrants to City that Chamber and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice in their respective professions. Chamber expressly represents and warrants to City that Chamber and its employees, agents, and any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions.

## 14. OWNERSHIP OF WORK PRODUCTS AND TREATMENT OF DOCUMENTS

All plans, specifications, reports, designs and other documents prepared by Chamber pursuant to this Agreement shall be and remain the property of the City. Any modification or reuse of such documents by the City without Chamber's prior written

consent will be at the City's sole risk. Except as may be otherwise required by law, Chamber will disclose no data, plans, specifications, reports or other documents pertaining to the Services without the prior written consent of the City.

## 15. ALTERNATIVE DISPUTE RESOLUTION

If any dispute arises between the parties that cannot be settled after engaging in good faith negotiations, City and Chamber agree to resolve the dispute in accordance with the following:

A. Each party shall designate a senior management or executive level representative to negotiate any dispute.

B. The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.

C. If the issue remains unresolved after ten (10) days of good faith negotiations, the parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.

D. The mediation process shall provide for the selection within 15 days of both parties of a disinterested third person as mediator, shall be commenced within 30 days, and shall be concluded within 15 days from the commencement of the mediation.

E. The parties shall equally bear the costs of any third party mediator in any alternative dispute resolution process.

F. The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative remedy prior to either party initiating legal action. This alternative dispute resolution process is not intended to, nor shall be construed to, change the time periods for filing claims or action specified by Government Code section 900, et seq.

## 16. TERMINATION AND REMEDIES

A. This Agreement shall terminate upon the earlier of (i) the City Council's approval of a request by the Chamber to terminate the Agreement pursuant to a modification of the Plan under Section 36635 of the Act, (ii) disestablishment of the HTID pursuant to the Act, or (iii) February 1, 2018. City may terminate this Agreement in the event Chamber materially breaches any term of the Agreement as provided in Section 16.B below.

B. If Chamber materially breaches any term of this Agreement, in addition to any other remedies the City may have at law or equity, the City may:

1. Terminate the Agreement by notice to the Chamber specifying the termination effective date;

2. Retain, and/or recover from the Chamber at no additional cost to the City, the plans, specification, drawings, reports and other design documents and work products prepared by Chamber, whether or not completed;

3. Complete the unfinished Services itself or have the unfinished Services completed, and/or;

4. Charge Chamber or deduct from monies that may be due or become due the Chamber under this Agreement, the difference between the cost of completing the unfinished Services pursuant to this Agreement and the amount that would otherwise be due Chamber had Chamber completed the Services in accordance with this Agreement.

#### 17. BINDING EFFECT AND ASSIGNMENT PROHIBITION

This Agreement is binding upon City, Chamber, and their successors. Except as otherwise provided herein, neither City nor Chamber may assign, sublet or transfer its interest in this Agreement or any part thereof without the prior written consent of the other, and any purported assignment without such consent will be void.

#### 18. REPRESENTATIVES

A. City representative for purposes of this Agreement will be Marjie Pettus, City Manager. Chamber representative for purposes of this Agreement will be the Executive Director. The parties' designated representative will be the primary contact person regarding the performance of the Services. The parties intend that their designated representatives will cooperate in all matters regarding this Agreement and in such a manner so as to achieve performance of the Services in a timely and expeditious fashion. Chamber shall not substitute or replace primary representative without approval of the City.

#### B. Notices:

Any written notice to Chamber shall be sent to:

Executive Director  
Chamber of Commerce  
217 Healdsburg Avenue  
Healdsburg, CA 95448

Any written notice to City shall be sent to:

Marjie Pettus  
City of Healdsburg  
401 Grove Street  
Healdsburg, CA 95448

#### 19. INTEGRATION AND AMENDMENT

This Agreement represents the entire and integrated agreement between City and Chamber and supersedes all prior negotiations, representations or agreements, whether written or oral. If a discrepancy, disagreement, ambiguity, inconsistency or difference in interpretation of terms arises as to terms or provisions of this Agreement and any Exhibit(s) attached to this Agreement, this Agreement shall control and shall be deemed to reflect the intent of the Parties with respect to the subject matter hereof. This Agreement may only be amended by a writing signed by a representative authorized to bind the Chamber and a representative authorized to bind the City.

#### 20. CONFLICT OF INTEREST PROHIBITION

City and Chamber will comply with the requirements of the City's Conflict of Interest Code adopted pursuant to the provisions of California Government Code Section 87300 and following, the Political Reform Act (California Government Code Section 81000 and following), the regulations promulgated by the Fair Political Practices Commission (Title 2, Section 18110 and following of the California Code of Regulations), California Government Code Section 1090 and following, and any other ethics laws applicable to the performance of the Services and/or this Agreement. Chamber may be required to file with the City Clerk a completed Form 700 before commencing performance of the Services unless the City Clerk determines that completion of a Form 700 is not required, pursuant to the City's Conflict of Interest Code. Form 700 forms are available from the City Clerk.

The Chamber may not perform Services for any other person or entity that, pursuant to any applicable law or regulation, would result in a conflict of interest or would otherwise be prohibited with respect to the Chamber's obligations pursuant to this Agreement. The Chamber agrees to cooperate fully with the City and to provide any necessary and appropriate information requested by the City or any authorized representative concerning potential conflicts of interest or prohibitions concerning the Chamber's obligations pursuant to this Agreement.

Chamber may not employ any City official, officer or employee in the performance of the Services, nor may any official, officer or employee of the City have any financial interest in this Agreement that would violate California Government Code Section 1090 and following. Chamber hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Chamber was an employee, agent, appointee, or official of the City in the previous twelve months,

Chamber warrants that it did not participate in any manner in the forming of this Agreement. Chamber understands that, if this Agreement is made in violation of Government Code Section 1090 and following, the entire Agreement is void and Chamber will not be entitled to any compensation for Chamber's performance of the Services, including reimbursement of expenses, and Chamber will be required to reimburse the City for any sums paid to the Chamber under this Agreement. Chamber understands that, in addition to the foregoing, penalties for violating Government Code Section 1090 may include criminal prosecution and disqualification from holding public office in the State of California.

Any violation by the Chamber of the requirements of this provision will constitute a material breach of this Agreement, and the City reserves all its rights and remedies at law and equity concerning any such violations.

#### 21. APPLICABLE LAW AND VENUE

The laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and the interpretation of this Agreement. Any action or proceeding that is initiated or undertaken to enforce or interpret any provision, performance, obligation or covenant set forth in this Agreement shall be brought in a state court in Sonoma County.

#### 22. RECOVERY OF ATTORNEY'S FEES

If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret any term of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

#### 23. SEVERABILITY

If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged will remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

#### 24. COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

IN WITNESS HEREOF, the parties have caused their authorized representative to execute this Agreement on this 16th day of July, 2012.

**City**

By: \_\_\_\_\_  
Marjie Pettus, City Manager

**CHAMBER**

By: \_\_\_\_\_  
Carla Howell, Executive Director

**ATTEST:**

By: \_\_\_\_\_  
Maria Curiel, City Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Michael Gogna, City Attorney

Exhibits: Exhibit A – Healdsburg Tourism Improvement District Management District Plan

1974410.1

# HEALDSBURG TOURISM IMPROVEMENT DISTRICT MANAGEMENT DISTRICT PLAN

October 2012

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## I. INTRODUCTION AND OVERVIEW

Developed by the Healdsburg Chamber of Commerce (the Chamber) and Healdsburg lodging businesses, the Healdsburg Tourism Improvement District (HTID) is a benefit assessment district proposed to help fund marketing and sales promotion efforts for Healdsburg lodging businesses. This approach has been used successfully in other destination areas throughout the country to improve tourism and drive additional room nights.

**Location:** The proposed HTID includes all lodging businesses located within the boundaries of the City of Healdsburg. As used herein, the term “lodging business” includes: any structure or portion of any structure that is occupied or intended or designed for occupancy by transients for sleeping purposes, including any inn, home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure or portion thereof that is used for occupancy by transients, even if such use is on a part-time basis. The term “lodging business” does not include campgrounds.

**Services:** Marketing and sales promotions to increase tourism and to market Healdsburg lodging businesses as a tourist, meeting, and event destinations.

**Budget:** The total HTID annual budget for each year of its five year operation is anticipated to be approximately \$320,000.

**Cost:** Annual assessment rates are two percent (2%) of gross room rental revenue on lodging businesses. Based on the benefit received, assessments will not be collected on:

1. Stays by any federal or state officer or employee when on official business;
2. Stays by any officer or employee of a foreign government who is exempt from transient occupancy taxes by reason of express provision of federal law or international treaty;
3. Stays by any person who has signed an agreement in writing for occupancy in a hotel for more than thirty (30) consecutive days, or who has actually occupied the hotel for more than thirty (30) day consecutive days; and
4. Room rental revenue resulting from stays pursuant to contracts executed prior to January 1, 2013.

**Formation:** TID formation requires submittal of petitions from lodging businesses representing more than 50% of the total annual assessment followed by a City Council hearing and an opportunity for a written protest. The assessed lodging business owners will receive notice of the public hearing by mail. If there is a majority written protest, the TID will not be formed.

**Duration:** The proposed HTID will have a five-year life beginning January 1, 2013. The HTID assessment will be implemented beginning January 1, 2013 with the final assessment being made in December 2017. Once per year beginning on the anniversary of the formation of the district there is a 30 day period in which owners paying more than 50% of the assessment may protest and terminate the district.

## II. WHY A TOURISM Improvement DISTRICT FOR Healdsburg?

There are several reasons why now is the right time to form a TID in Healdsburg; the most compelling reasons are as follows:

### *1. The Need to Increase Occupancy*

The formation of the HTID is a proactive effort to provide supplemental funding beyond that provided by the City. The funding will ensure that adequate financing exists for the investment required to increase occupancy in the lodging industry and be competitive in the conference segment of the tourism market. The investment will cover an expanded marketing and promotional budget needed to reach this market segment.

### *2. An Opportunity for Increasing City Tax Revenues*

As occupancy rates increase, so too will the City's TOT revenue. With stable public/private funding for tourism marketing efforts, annual occupancy rates should increase significantly as new marketing and sales promotion programs are implemented. Greater occupancy will also produce an increase in sales tax revenues from tourist spending. This represents a substantial return to the City. The formation of the HTID in partnership with the Chamber creates a stable funding source tied directly to tourism promotion.

### *3. Stable Funding for Tourism Promotion*

The HTID will provide a stable source of funding for consistent tourism promotion efforts. The HTID will provide funding for tourism promotion free of the political and economic circumstances that can reduce or eliminate government funding for tourism promotion.

### III. WHAT IS A TOURISM IMPROVEMENT DISTRICT?

Tourism Improvement Districts (TIDs) utilize the efficiencies of private sector operation in the market-based promotion of tourism districts. TIDs allow lodging and tourism-related business owners to organize their efforts to increase tourism. Tourism-related business owners within the district fund a TID, and those funds are used to provide services that the businesses desire and that benefit the lodging businesses within the District.

#### **Tourism Improvement District services may include, but are not limited to:**

- Marketing of the Destination
- Tourism Promotion Activities
- Sales Lead Generation

In California, Tourism Improvement Districts are formed pursuant to the Property and Business Improvement District Law of 1994 (PBID Law). This law allows for the creation of a special benefit assessment district to raise funds within a specific geographic area. *The key difference between TIDs and other special benefit assessment districts is that funds raised are returned to the private non-profit corporation governing the district.*

#### **There are many benefits to Tourism Improvement Districts:**

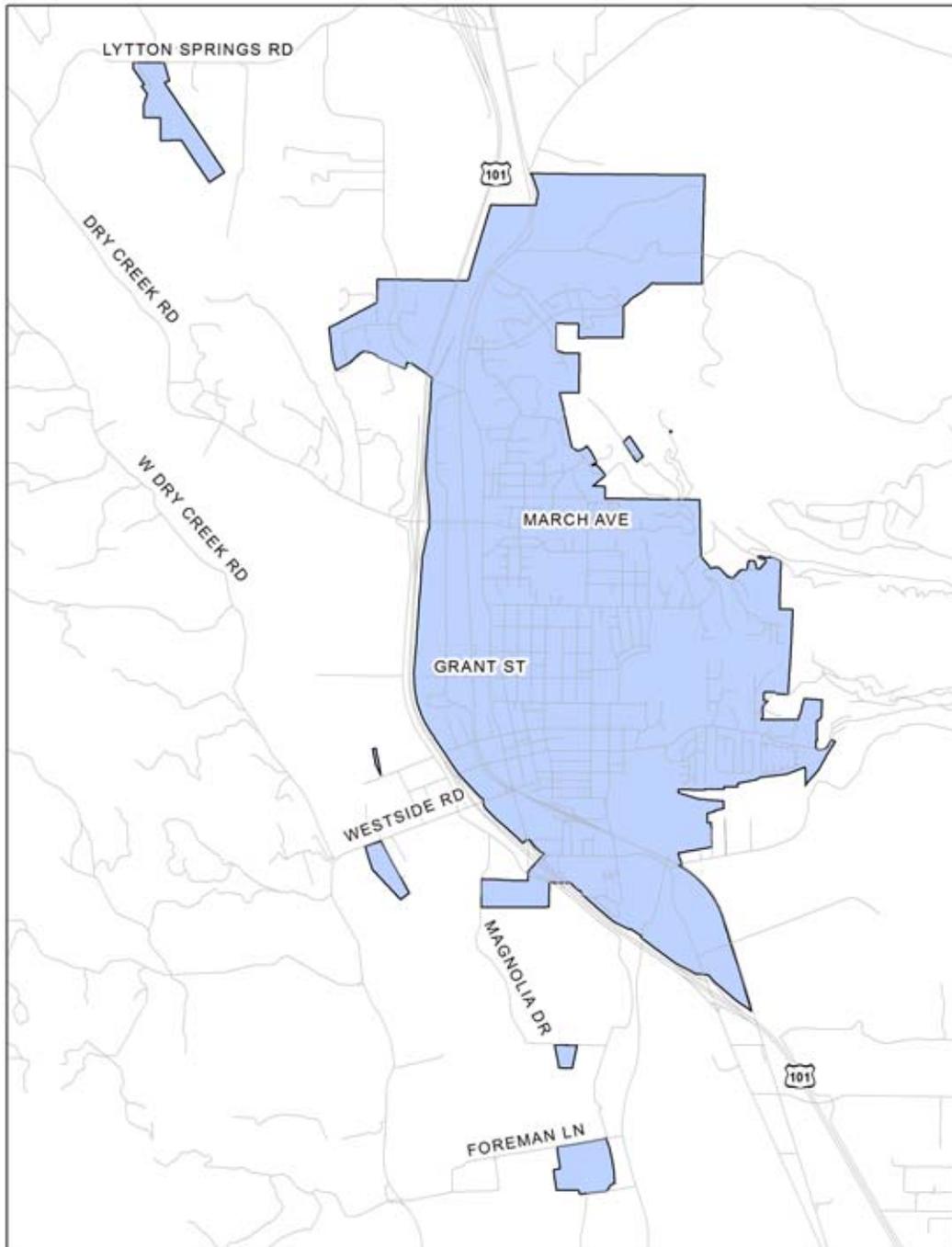
- Funds cannot be diverted for other government programs;
- Tourism Improvement Districts are customized to fit the needs of each tourism district;
- They allow for a wide range of services, including those listed above;
- Tourism Improvement Districts are ***designed, created and governed by those who will pay*** the assessment;
- They provide a stable funding source for tourism promotion.

The Property and Business Improvement District Law of 1994 is provided in Appendix 1 of this document.

#### IV. HEALDSBURG TID BOUNDARY

The HTID will include all lodging businesses, existing and in the future, available for public occupancy within the boundaries of the City of Healdsburg.

Please see the map below. A complete listing of lodging businesses within the HTID can be found on Appendix 2 of this Plan.



## **V. SERVICE PLAN AND BUDGET**

### **A. Assessment**

Annual assessment rates are two percent (2%) of gross room rental revenue on lodging businesses. Based on the benefit received, assessments will not be collected on:

1. Stays by any federal or state officer or employee when on official business;
2. Stays by any officer or employee of a foreign government who is exempt from transient occupancy taxes by reason of express provision of federal law or international treaty;
3. Stays by any person who has signed an agreement in writing for occupancy in a hotel for more than thirty (30) consecutive days, or who has actually occupied the hotel for more than thirty (30) day consecutive days; and
4. Room rental revenue resulting from stays pursuant to contracts executed prior to January 1, 2013.

The term “gross room rental revenue” as used herein means the actual consideration charged, whether or not received, for the occupancy of space in a lodging business valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credit, and property and services of any kind or nature without any deduction therefrom whatsoever. Gross room rental revenue shall not include any federal, state or local taxes collected, including but not limited to transient occupancy taxes.

Bonds shall not be issued.

The amount of assessment, if passed on to each transient, shall be disclosed in advance as the “Healdsburg Tourism Assessment,” separately stated from the amount of rent charged and any other applicable taxes, and each transient shall receive a receipt for payment from the business.

### **B. Determination of Special and Specific Benefit**

State law requires that assessment funds be expended on a specific benefit conferred directly to the payors that is not provided to those not charged, and which does not exceed the reasonable cost to the City of conferring the benefit.

The specific benefit the district will provide to assessed lodging businesses, and will not provide to non-assessed lodging businesses, is room night sales. The programs and services provided with the district funds will be designed specifically to drive room night sales at assessed lodging businesses. Only assessed lodging businesses will be featured in marketing materials, receive sales leads generated from district-funded activities, be featured in advertising campaigns, and benefit from other district-funded services. Non-assessed lodging businesses will not receive these and any other district-funded services.

### **C. Time and Manner for Collecting Assessments**

The HTID assessment will be implemented beginning January 1, 2013 and will continue for five years. The City of Healdsburg will be responsible for collecting the assessment on a monthly basis (including any delinquencies, penalties and interest) from each lodging business located in the boundaries of the HTID. The City shall take all reasonable efforts to collect the assessments from

each lodging business. The City of Healdsburg shall forward the assessments to the Healdsburg Chamber of Commerce which will have the responsibility of managing HTID programs as provided in this Management District Plan.

#### **D. Delinquencies**

1. Original Delinquency. Any lodging business which fails to remit any assessment imposed pursuant to this Plan within the time required shall pay a penalty of ten percent (10%) of the amount of the assessment owing in addition to the amount of the assessment.
2. Continued Delinquency. Any lodging business which fails to remit any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten percent (10%) of the amount of the assessment in addition to the amount of the assessment and the ten percent (10%) penalty first imposed.
3. Fraud. If the City determines that the nonpayment of any remittance due under this Plan was willful, a penalty of fifty percent (50%) of the amount of the assessment shall be added thereto in addition to the penalties stated above. Any willful failure to remit to the City assessments pursuant to this Plan shall be deemed fraud and may be prosecuted by any agency authorized to prosecute fraud.
4. Interest. In addition to the penalties imposed, any lodging business which fails to remit any assessment imposed pursuant to this Plan shall pay interest at the rate of one-half of one percent per month or fraction thereof on the amount of the assessment, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
5. Penalties Merged with Assessment. Every penalty imposed and such interest as accrues shall become a part of the assessment herein required to be paid.

#### **E. Annual Budget**

A summary of the annual service plan budget for the HTID is provided on the next page. The total five year improvement and service plan budget is projected at approximately \$320,000 annually, or \$1,600,000 through 2017.

#### **F. Annual Service Plan:**

In this plan, the City has set out the overarching message of the marketing program and some of its elements, and has left development of the remaining details to the City-appointed owners' association, which is answerable to the City Council. A service plan budget has been developed to deliver services throughout the District. An annual service plan and budget will be developed and approved by the Owners' Association. Please see the budget exhibit below.

## Healdsburg Tourism Improvement District Annual Budget, Years One through Five

Category	Percent of Budget	Dollar Amount
<b>Sales and Marketing</b>	80%	\$256,000
<b>Administration</b>	10%	\$32,000
<b>City Collection Costs</b>	5%	\$16,000
<b>Contingency/Renewal</b>	5%	\$16,000
<b>Total Annual Budget</b>	<b>100%</b>	<b>\$320,000</b>

The City Council hereby directs the implementation of a coordinated program of promotions. By adopting this Management District Plan, the City Council establishes programs that include the messages specified herein. This Management District Plan sets forth the following contemplated activities:

### **Sales and Marketing**

A sales and marketing program will promote Healdsburg as a tourist and meeting destination. The sales and marketing program will have a central theme of promoting Healdsburg as a desirable place to visit, and may include the following activities:

- Internet marketing efforts to increase awareness and optimize internet presence;
- Print ads in magazines and newspapers targeted at potential visitors;
- Television ads targeted at potential visitors;
- Radio ads targeted at potential visitors;
- Attendance of trade shows;
- Sales blitzes;
- Familiarization tours;
- Preparation and production of collateral promotional materials such as brochures, flyers and maps;
- Attendance of professional industry conferences and affiliation events;
- Lead generation activities designed to attract tourists and group events to Healdsburg;
- Director of Sales and General Manager meetings to plan and coordinate tourism promotion efforts;
- Education of hospitality staff on service and safety (related to alcohol and food) designed to create a visitor experience that will bring repeat visits; and
- Education of lodging business management and the owners' association on marketing strategies best suited to meet Healdsburg's needs.

### **Administration and Operations**

The administrative and operations portion of the budget shall be utilized for Owners' Association staffing costs, office costs, and other general administrative costs.

**City Collection Fee**

The City of Healdsburg shall be paid a fee equal to 5% of the amount of assessment collected to cover their costs of collection and administration. A total of \$5,000 shall be collected from the January 2013 assessments and placed in reserve for use by the City in the event of legal or other actions associated with delinquencies and/or collection processes and procedures.

**Contingency/Renewal**

A prudent portion of the budget will be set aside in a contingency fund, to be used for unforeseeable costs in carrying out the sales and marketing programs. If at the expiration of the district there are contingency funds remaining, and business owners wish to renew the district, the remaining contingency funds may be used for renewal costs.

**G. Expiration**

If there are funds remaining at the end of the District and lodging businesses choose not to renew, any remaining funds will be spent consistent with this Plan or returned to assessed businesses in equal proportions to the assessment paid by each business.

**H. Adjustments**

The City approved marketing plan shall remain consistent with the budget herein. Although actual revenues will fluctuate due to market conditions, the proportional allocations of the budget shall remain the same. However, the City and the Owners' Association shall have the authority to adjust budget allocations between the categories by no more than fifteen percent (15%) per year.

## **VI. HTID GOVERNANCE**

### **A. Owners' Association**

The City Council, through adoption of this Management District Plan, has the right, pursuant to Streets and Highways Code §36651, to identify the body that shall implement the proposed program, which shall be the owners' association of the HTID as defined in Streets and Highways Code §36614.5. The Healdsburg Chamber of Commerce will serve as the Owner's Association for the HTID. The Owners' Association shall create a HTID subcommittee, comprised of representatives of assessed lodging businesses plus one Council appointed city representative, to direct the Owners' Association in matters pertaining to the expenditure of funds and the implementation of activities and improvements.

### **B. Brown Act and California Public Records Act Compliance**

The owner's association is subject to government regulations relating to transparency, namely the Ralph M. Brown Act and the California Public Records Act, designed to promote public accountability. The owners' association of a TID is considered a legislative body under the Ralph M. Brown Act (Government Code §54950 et seq.). Thus, meetings of the Owners' Association must be held in compliance with the public notice and other requirements of the Brown Act. The Owner's Association is also subject to the record keeping requirements of the California Public Records Act.

### **C. Annual Report**

The Owners' Association shall present an annual report at the end of each year of operation to the City Council pursuant to Streets and Highways Code §36650 (see Appendix 1).

## **APPENDIX 1 – THE PROPERTY AND BUSINESS IMPROVEMENT DISTRICT LAW OF 1994**

\*\*\* This document is current through the 2012 Supplement \*\*\*  
(All 2011 legislation)

### **§ 36600. Citation of part**

This part shall be known and may be cited as the "Property and Business Improvement District Law of 1994."

### **§ 36601. Legislative findings and declarations**

The Legislature finds and declares all of the following:

(a) Businesses located and operating within the business districts of this state's communities are economically disadvantaged, are underutilized, and are unable to attract customers due to inadequate facilities, services, and activities in the business districts.

(b) It is in the public interest to promote the economic revitalization and physical maintenance of the business districts of its cities in order to create jobs, attract new businesses, and prevent the erosion of the business districts.

(c) It is of particular local benefit to allow cities to fund business related improvements, maintenance, and activities through the levy of assessments upon the businesses or real property that benefits from those improvements.

(d) Assessments levied for the purpose of providing improvements and promoting activities that benefit real property or businesses are not taxes for the general benefit of a city, but are assessments for the improvements and activities which confer special benefits upon the real property or businesses for which the improvements and activities are provided.

### **§ 36602. Purpose of part**

The purpose of this part is to supplement previously enacted provisions of law that authorize cities to levy assessments within a business improvement area. This part does not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes.

### **§ 36603. Preemption of authority or charter city to adopt ordinances levying assessments**

Nothing in this part is intended to preempt the authority of a charter city to adopt ordinances providing for a different method of levying assessments for similar or additional purposes from those set forth in this part. A property and business improvement district created pursuant to this part is expressly exempt from the provisions of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 (Division 4 (commencing with Section 2800)).

### **§ 36603.5. Part prevails over conflicting provisions**

Any provision in this part that conflicts with any other provision of law shall prevail over the other provision of law.

### **§ 36604. Severability**

This part is intended to be construed liberally and, if any provision is held invalid, the remaining provisions shall remain in full force and effect. Assessments levied under this part are not special taxes.

### **§ 36605. [Section repealed 2001.]**

### **§ 36606. "Assessment"**

"Assessment" means a levy for the purpose of acquiring, constructing, installing, or maintaining improvements and promoting activities which will benefit the properties or businesses located within a property and business improvement district.

### **§ 36607. "Business"**

"Business" means all types of businesses and includes financial institutions and professions.

### **§ 36608. "City"**

"City" means a city, county, city and county, or an agency or entity created pursuant to Article 1 (commencing with *Section 6500*) of *Chapter 5 of Division 7 of Title 1 of the Government Code*, the public member agencies of which includes only cities, counties, or a city and county, or the State of California.

### **§ 36609. "City council"**

"City council" means the city council of a city or the board of supervisors of a county, or the agency, commission, or board created pursuant to a joint powers agreement and which is a city within the meaning of this part.

### **§ 36610. "Improvement"**

"Improvement" means the acquisition, construction, installation, or maintenance of any tangible property with an estimated useful life of five years or more including, but not limited to, the following:

- (a) Parking facilities.

- (b) Benches, booths, kiosks, display cases, pedestrian shelters and signs.
- (c) Trash receptacles and public restrooms.
- (d) Lighting and heating facilities.
- (e) Decorations.
- (f) Parks.
- (g) Fountains.
- (h) Planting areas.
- (i) Closing, opening, widening, or narrowing of existing streets.
- (j) Facilities or equipment, or both, to enhance security of persons and property within the area.
- (k) Ramps, sidewalks, plazas, and pedestrian malls.
- (l) Rehabilitation or removal of existing structures.

**§ 36611. "Property and business improvement district"; "District"**

"Property and business improvement district," or "district," means a property and business improvement district established pursuant to this part.

**§ 36612. "Property"**

"Property" means real property situated within a district.

**§ 36613. "Activities"**

"Activities" means, but is not limited to, all of the following:

- (a) Promotion of public events which benefit businesses or real property in the district.
- (b) Furnishing of music in any public place within the district.
- (c) Promotion of tourism within the district.
- (d) Marketing and economic development, including retail retention and recruitment.
- (e) Providing security, sanitation, graffiti removal, street and sidewalk cleaning, and other municipal services supplemental to those normally provided by the municipality.
- (f) Activities which benefit businesses and real property located in the district.

**§ 36614. "Management district plan"; "Plan"**

"Management district plan" or "plan" means a proposal as defined in Section 36622.

**§ 36614.5. "Owners' association"**

"Owners' association" means a private nonprofit entity that is under contract with a city to administer or implement activities and improvements specified in the management district plan. An owners' association may be an existing nonprofit entity or a newly formed nonprofit entity. An owners' association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. Notwithstanding this section, an owners' association shall comply with the Ralph M. Brown Act (Chapter 9 (commencing with *Section 54950*) of *Part 1 of Division 2 of Title 5 of the Government Code*), at all times when matters within the subject matter of the district are heard, discussed, or deliberated, and with the California Public Records Act (Chapter 3.5 (commencing with *Section 6250*) of *Division 7 of Title 1 of the Government Code*), for all documents relating to activities of the district.

**§ 36615. "Property owner"; "Business owner"; "Owner"**

"Property owner" means any person shown as the owner of land on the last equalized assessment roll or otherwise known to be the owner of land by the city council. "Business owner" means any person recognized by the city as the owner of the business. "Owner" means either a business owner or a property owner. The city council has no obligation to obtain other information as to the ownership of land or businesses, and its determination of ownership shall be final and conclusive for the purposes of this part. Wherever this part requires the signature of the property owner, the signature of the authorized agent of the property owner shall be sufficient. Wherever this part requires the signature of the business owner, the signature of the authorized agent of the business owner shall be sufficient.

**§ 36616. "Tenant"**

"Tenant" means an occupant pursuant to a lease of commercial space or a dwelling unit, other than an owner.

**§ 36617. Alternate method of financing certain improvements and activities; Effect on other provisions**

This part provides an alternative method of financing certain improvements and activities. The provisions of this part shall not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes. Every improvement area established pursuant to the Parking and Business Improvement Area Law of 1989 (Part 6 (commencing with Section 36500) of this division) is valid and effective and is unaffected by this part.

**§ 36620. Establishment of property and business improvement district**

A property and business improvement district may be established as provided in this chapter.

**§ 36620.5. Requirement of consent of city council**

A county may not form a district within the territorial jurisdiction of a city without the consent of the city council of that city. A city may not form a district within the unincorporated territory of a county without the consent of the board of supervisors of that county. A city may not form a district within the territorial jurisdiction of another city without the consent of the city council of the other city.

**§ 36621. Initiation of proceedings; Petition of property or business owners in proposed district**

(a) Upon the submission of a written petition, signed by the property or business owners in the proposed district who will pay more than 50 percent of the assessments proposed to be levied, the city council may initiate proceedings to form a district by the adoption of a resolution expressing its intention to form a district. The amount of assessment attributable to property or a business owned by the same property or business owner that is in excess of 40 percent of the amount of all assessments proposed to be levied, shall not be included in determining whether the petition is signed by property or business owners who will pay more than 50 percent of the total amount of assessments proposed to be levied.

(b) The petition of property or business owners required under subdivision (a) shall include a summary of the management district plan. That summary shall include all of the following:

- (1) A map showing the boundaries of the district.
- (2) Information specifying where the complete management district plan can be obtained.
- (3) Information specifying that the complete management district plan shall be furnished upon request.

(c) The resolution of intention described in subdivision (a) shall contain all of the following:

(1) A brief description of the proposed activities and improvements, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property or businesses within the district, a statement as to whether bonds will be issued, and a description of the exterior boundaries of the proposed district. The descriptions and statements do not need to be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements and activities and the location and extent of the proposed district.

(2) A time and place for a public hearing on the establishment of the property and business improvement district and the levy of assessments, which shall be consistent with the requirements of Section 36623.

**§ 36622. Contents of management district plan**

The management district plan shall contain all of the following:

(a) If the assessment will be levied on property, a map of the district in sufficient detail to locate each parcel of property and, if businesses are to be assessed, each business within the district. If the assessment will be levied on businesses, a map that identifies the district boundaries in sufficient detail to allow a business owner to reasonably determine whether a business is located within the district boundaries. If the assessment will be levied on property and

businesses, a map of the district in sufficient detail to locate each parcel of property and to allow a business owner to reasonably determine whether a business is located within the district boundaries.

**(b)** The name of the proposed district.

**(c)** A description of the boundaries of the district, including the boundaries of benefit zones, proposed for establishment or extension in a manner sufficient to identify the affected lands and businesses included. The boundaries of a proposed property assessment district shall not overlap with the boundaries of another existing property assessment district created pursuant to this part. This part does not prohibit the boundaries of a district created pursuant to this part to overlap with other assessment districts established pursuant to other provisions of law, including, but not limited to, the Parking and Business Improvement Area Law of 1989 (Part 6 (commencing with Section 36500)). This part does not prohibit the boundaries of a business assessment district created pursuant to this part to overlap with another business assessment district created pursuant to this part. This part does not prohibit the boundaries of a business assessment district created pursuant to this part to overlap with a property assessment district created pursuant to this part.

**(d)** The improvements and activities proposed for each year of operation of the district and the maximum cost thereof.

**(e)** The total annual amount proposed to be expended for improvements, maintenance and operations, and debt service in each year of operation of the district.

**(f)** The proposed source or sources of financing, including the proposed method and basis of levying the assessment in sufficient detail to allow each property or business owner to calculate the amount of the assessment to be levied against his or her property or business. The plan also shall state whether bonds will be issued to finance improvements.

**(g)** The time and manner of collecting the assessments.

**(h)** The specific number of years in which assessments will be levied. In a new district, the maximum number of years shall be five. Upon renewal, a district shall have a term not to exceed 10 years. Notwithstanding these limitations, a district created pursuant to this part to finance capital improvements with bonds may levy assessments until the maximum maturity of the bonds. The management district plan may set forth specific increases in assessments for each year of operation of the district.

**(i)** The proposed time for implementation and completion of the management district plan.

**(j)** Any proposed rules and regulations to be applicable to the district.

**(k)** A list of the properties or businesses to be assessed, including the assessor's parcel numbers for properties to be assessed, and a statement of the method or methods by which the expenses of a district will be imposed upon benefited real property or businesses, in proportion to the benefit received by the property or business, to defray the cost thereof, including operation and maintenance. The plan may provide that all or any class or category of real property which is exempt by law from real property taxation may nevertheless be included within the boundaries of the district but shall not be subject to assessment on real property.

**(l)** Any other item or matter required to be incorporated therein by the city council.

### **§ 36623. Procedure to levy assessment**

(a) If a city council proposes to levy a new or increased property assessment, the notice and protest and hearing procedure shall comply with *Section 53753 of the Government Code*.

(b) If a city council proposes to levy a new or increased business assessment, the notice and protest and hearing procedure shall comply with *Section 54954.6 of the Government Code*, except that notice shall be mailed to the owners of the businesses proposed to be assessed. A protest may be made orally or in writing by any interested person. Every written protest shall be filed with the clerk at or before the time fixed for the public hearing. The city council may waive any irregularity in the form or content of any written protest. A written protest may be withdrawn in writing at any time before the conclusion of the public hearing. Each written protest shall contain a description of the business in which the person subscribing the protest is interested sufficient to identify the business and, if a person subscribing is not shown on the official records of the city as the owner of the business, the protest shall contain or be accompanied by written evidence that the person subscribing is the owner of the business or the authorized representative. A written protest that does not comply with this section shall not be counted in determining a majority protest. If written protests are received from the owners or authorized representatives of businesses in the proposed district that will pay 50 percent or more of the assessments proposed to be levied and protests are not withdrawn so as to reduce the protests to less than 50 percent, no further proceedings to levy the proposed assessment against such businesses, as contained in the resolution of intention, shall be taken for a period of one year from the date of the finding of a majority protest by the city council.

### **§ 36624. Changes to proposed assessments**

At the conclusion of the public hearing to establish the district, the city council may adopt, revise, change, reduce, or modify the proposed assessment or the type or types of improvements and activities to be funded with the revenues from the assessments. Proposed assessments may only be revised by reducing any or all of them. At the public hearing, the city council may only make changes in, to, or from the boundaries of the proposed property and business improvement district that will exclude territory that will not benefit from the proposed improvements or activities. Any modifications, revisions, reductions, or changes to the proposed assessment district shall be reflected in the notice and map recorded pursuant to Section 36627.

### **§ 36625. Resolution of formation**

(a) If the city council, following the public hearing, decides to establish the proposed property and business improvement district, the city council shall adopt a resolution of formation that shall contain all of the following:

(1) A brief description of the proposed activities and improvements, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property, businesses, or both within the district, a statement about whether bonds will be issued, and a description of the exterior boundaries of the proposed district. The descriptions and statements do not need to be detailed and shall be sufficient if they enable an owner to generally identify the

nature and extent of the improvements and activities and the location and extent of the proposed district.

(2) The number, date of adoption, and title of the resolution of intention.

(3) The time and place where the public hearing was held concerning the establishment of the district.

(4) A determination regarding any protests received. The city shall not establish the district or levy assessments if a majority protest was received.

(5) A statement that the properties, businesses, or properties and businesses in the district established by the resolution shall be subject to any amendments to this part.

(6) A statement that the improvements and activities to be provided in the district will be funded by the levy of the assessments. The revenue from the levy of assessments within a district shall not be used to provide improvements or activities outside the district or for any purpose other than the purposes specified in the resolution of intention, as modified by the city council at the hearing concerning establishment of the district.

(7) A finding that the property or businesses within the area of the property and business improvement district will be benefited by the improvements and activities funded by the assessments proposed to be levied.

(b) The adoption of the resolution of formation and, if required, recordation of the notice and map pursuant to Section 36627 shall constitute the levy of an assessment in each of the fiscal years referred to in the management district plan.

#### **§ 36626. Resolution establishing district**

If the city council, following the public hearing, desires to establish the proposed property and business improvement district, and the city council has not made changes pursuant to Section 36624, or has made changes that do not substantially change the proposed assessment, the city council shall adopt a resolution establishing the district. The resolution shall contain all of the information specified in paragraphs (1) to (8), inclusive, of subdivision (b) of Section 36625, but need not contain information about the preliminary resolution if none has been adopted.

**§ 36626.5. [Section repealed 1999.]**

**§ 36626.6. [Section repealed 1999.]**

**§ 36626.7. [Section repealed 1999.]**

#### **§ 36627. Notice and assessment diagram**

Following adoption of the resolution establishing district assessments on properties pursuant to Section 36625 or Section 36626, the clerk of the city shall record a notice and an assessment diagram pursuant to Section 3114. No other provision of Division 4.5 (commencing with Section 3100) applies to an assessment district created pursuant to this part.

### **§ 36628. Establishment of separate benefit zones within district; Categories of businesses**

The city council may establish one or more separate benefit zones within the district based upon the degree of benefit derived from the improvements or activities to be provided within the benefit zone and may impose a different assessment within each benefit zone. If the assessment is to be levied on businesses, the city council may also define categories of businesses based upon the degree of benefit that each will derive from the improvements or activities to be provided within the district and may impose a different assessment or rate of assessment on each category of business, or on each category of business within each zone.

### **§ 36628.5. Assessments on businesses or property owners**

The city council may levy assessments on businesses or on property owners, or a combination of the two, pursuant to this part. The city council shall structure the assessments in whatever manner it determines corresponds with the distribution of benefits from the proposed improvements and activities.

### **§ 36629. Provisions and procedures applicable to benefit zones and business categories**

All provisions of this part applicable to the establishment, modification, or disestablishment of a property and business improvement district apply to the establishment, modification, or disestablishment of benefit zones or categories of business. The city council shall, to establish, modify, or disestablish a benefit zone or category of business, follow the procedure to establish, modify, or disestablish a parking and business improvement area.

### **§ 36630. Expiration of district; Creation of new district**

If a property and business improvement district expires due to the time limit set pursuant to subdivision (h) of Section 36622, a new management district plan may be created and a new district established pursuant to this part.

### **§ 36631. Time and manner of collection of assessments; Delinquent payments**

The collection of the assessments levied pursuant to this part shall be made at the time and in the manner set forth by the city council in the resolution levying the assessment. Assessments levied on real property may be collected at the same time and in the same manner as for the ad valorem property tax, and may provide for the same lien priority and penalties for delinquent payment. All delinquent payments for assessments levied pursuant to this part shall be charged interest and penalties.

**§ 36632. Assessments to be based on estimated benefit; Classification of real property and businesses; Exclusion of residential and agricultural property**

(a) The assessments levied on real property pursuant to this part shall be levied on the basis of the estimated benefit to the real property within the property and business improvement district. The city council may classify properties for purposes of determining the benefit to property of the improvements and activities provided pursuant to this part.

(b) Assessments levied on businesses pursuant to this part shall be levied on the basis of the estimated benefit to the businesses within the property and business improvement district. The city council may classify businesses for purposes of determining the benefit to the businesses of the improvements and activities provided pursuant to this part.

(c) Properties zoned solely for residential use, or that are zoned for agricultural use, are conclusively presumed not to benefit from the improvements and service funded through these assessments, and shall not be subject to any assessment pursuant to this part.

**§ 36633. Time for contesting validity of assessment**

The validity of an assessment levied under this part shall not be contested in any action or proceeding unless the action or proceeding is commenced within 30 days after the resolution levying the assessment is adopted pursuant to Section 36626. Any appeal from a final judgment in an action or proceeding shall be perfected within 30 days after the entry of judgment.

**§ 36634. Service contracts authorized to establish levels of city services**

The city council may execute baseline service contracts that would establish levels of city services that would continue after a property and business improvement district has been formed.

**§ 36635. Request to modify management district plan**

The owners' association may, at any time, request that the city council modify the management district plan. Any modification of the management district plan shall be made pursuant to this chapter.

**§ 36636. Modification of plan by resolution after public hearing; Adoption of resolution of intention; Modification of improvements and activities by adoption of resolution after public hearing**

(a) Upon the written request of the owners' association, the city council may modify the management district plan after conducting one public hearing on the proposed modifications. The city council may modify the improvements and activities to be funded with the revenue derived from the levy of the assessments by adopting a resolution determining to make the modifications after holding a public hearing on the proposed modifications. If the modification includes the levy of a new or increased assessment, the city council shall comply with Section

36623. Notice of all other public meetings and public hearings pursuant to this section shall comply with both of the following:

(1) The resolution of intention shall be published in a newspaper of general circulation in the city once at least seven days before the public meeting.

(2) A complete copy of the resolution of intention shall be mailed by first class mail, at least 10 days before the public meeting, to each business owner or property owner affected by the proposed modification.

(b) The city council shall adopt a resolution of intention which states the proposed modification prior to the public hearing required by this section. The public hearing shall be held not more than 90 days after the adoption of the resolution of intention.

### **§ 36637. Reflection of modification in notices recorded and maps**

Any subsequent modification of the resolution shall be reflected in subsequent notices and maps recorded pursuant to Division 4.5 (commencing with Section 3100), in a manner consistent with the provisions of Section 36627.

### **§ 36640. Bonds authorized; Procedure; Restriction on reduction or termination of assessments**

(a) The city council may, by resolution, determine and declare that bonds shall be issued to finance the estimated cost of some or all of the proposed improvements described in the resolution of formation adopted pursuant to Section 36625, if the resolution of formation adopted pursuant to that section provides for the issuance of bonds, under the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500)) or in conjunction with Marks-Roos Local Bond Pooling Act of 1985 (Article 4 (commencing with *Section 6584*) of *Chapter 5 of Division 7 of Title 1 of the Government Code*). Either act, as the case may be, shall govern the proceedings relating to the issuance of bonds, although proceedings under the Bond Act of 1915 may be modified by the city council as necessary to accommodate assessments levied upon business pursuant to this part.

(b) The resolution adopted pursuant to subdivision (a) shall generally describe the proposed improvements specified in the resolution of formation adopted pursuant to Section 36625, set forth the estimated cost of those improvements, specify the number of annual installments and the fiscal years during which they are to be collected. The amount of debt service to retire the bonds shall not exceed the amount of revenue estimated to be raised from assessments over 30 years.

(c) Notwithstanding any other provision of this part, assessments levied to pay the principal and interest on any bond issued pursuant to this section shall not be reduced or terminated if doing so would interfere with the timely retirement of the debt.

**§ 36641. [Section repealed 2001.]**

**§ 36642. [Section repealed 2001.]**

**§ 36643. [Section repealed 2001.]**

**§ 36650. Report by owners' association; Approval or modification by city council**

(a) The owners' association shall cause to be prepared a report for each fiscal year, except the first year, for which assessments are to be levied and collected to pay the costs of the improvements and activities described in the report. The owners' association's first report shall be due after the first year of operation of the district. The report may propose changes, including, but not limited to, the boundaries of the property and business improvement district or any benefit zones within the district, the basis and method of levying the assessments, and any changes in the classification of property, including any categories of business, if a classification is used.

(b) The report shall be filed with the clerk and shall refer to the property and business improvement district by name, specify the fiscal year to which the report applies, and, with respect to that fiscal year, shall contain all of the following information:

(1) Any proposed changes in the boundaries of the property and business improvement district or in any benefit zones or classification of property or businesses within the district.

(2) The improvements and activities to be provided for that fiscal year.

(3) An estimate of the cost of providing the improvements and the activities for that fiscal year.

(4) The method and basis of levying the assessment in sufficient detail to allow each real property or business owner, as appropriate, to estimate the amount of the assessment to be levied against his or her property or business for that fiscal year.

(5) The amount of any surplus or deficit revenues to be carried over from a previous fiscal year.

(6) The amount of any contributions to be made from sources other than assessments levied pursuant to this part.

(c) The city council may approve the report as filed by the owners' association or may modify any particular contained in the report and approve it as modified. Any modification shall be made pursuant to Sections 36635 and 36636.

The city council shall not approve a change in the basis and method of levying assessments that would impair an authorized or executed contract to be paid from the revenues derived from the levy of assessments, including any commitment to pay principal and interest on any bonds issued on behalf of the district.

**§ 36651. Designation of owners' association to provide improvements and activities**

The management district plan may, but is not required to, state that an owners' association will provide the improvements or activities described in the management district plan. If the management district plan designates an owners' association, the city shall contract with the designated nonprofit corporation to provide services.

### **§ 36660. Renewal of district; Transfer or refund of remaining revenues; District term limit**

(a) Any district previously established whose term has expired, may be renewed by following the procedures for establishment as provided in this chapter.

(b) Upon renewal, any remaining revenues derived from the levy of assessments, or any revenues derived from the sale of assets acquired with the revenues, shall be transferred to the renewed district. If the renewed district includes additional parcels or businesses not included in the prior district, the remaining revenues shall be spent to benefit only the parcels or businesses in the prior district. If the renewed district does not include parcels or businesses included in the prior district, the remaining revenues attributable to these parcels shall be refunded to the owners of these parcels or businesses.

(c) Upon renewal, a district shall have a term not to exceed 10 years, or, if the district is authorized to issue bonds, until the maximum maturity of those bonds. There is no requirement that the boundaries, assessments, improvements, or activities of a renewed district be the same as the original or prior district.

### **§ 36670. Circumstances permitting disestablishment of district; Procedure**

(a) Any district established or extended pursuant to the provisions of this part, where there is no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of the district, may be disestablished by resolution by the city council in either of the following circumstances:

(1) If the city council finds there has been misappropriation of funds, malfeasance, or a violation of law in connection with the management of the district, it shall notice a hearing on disestablishment.

(2) During the operation of the district, there shall be a 30-day period each year in which assesses may request disestablishment of the district. The first such period shall begin one year after the date of establishment of the district and shall continue for 30 days. The next such 30-day period shall begin two years after the date of the establishment of the district. Each successive year of operation of the district shall have such a 30-day period. Upon the written petition of the owners or authorized representatives of real property or the owners or authorized representatives of businesses in the area who pay 50 percent or more of the assessments levied, the city council shall pass a resolution of intention to disestablish the district. The city council shall notice a hearing on disestablishment.

(b) The city council shall adopt a resolution of intention to disestablish the district prior to the public hearing required by this section. The resolution shall state the reason for the disestablishment, shall state the time and place of the public hearing, and shall contain a proposal to dispose of any assets acquired with the revenues of the assessments levied within the property and business improvement district. The notice of the hearing on disestablishment required by this section shall be given by mail to the property owner of each parcel or to the owner of each business subject to assessment in the district, as appropriate. The city shall conduct the public hearing not less than 30 days after mailing the notice to the property or business owners. The

public hearing shall be held not more than 60 days after the adoption of the resolution of intention.

**§ 36671. Refund of remaining revenues upon disestablishment of district; Calculation of refund; Use of outstanding revenue collected after disestablishment of district**

(a) Upon the disestablishment of a district, any remaining revenues, after all outstanding debts are paid, derived from the levy of assessments, or derived from the sale of assets acquired with the revenues, or from bond reserve or construction funds, shall be refunded to the owners of the property or businesses then located and operating within the district in which assessments were levied by applying the same method and basis that was used to calculate the assessments levied in the fiscal year in which the district is disestablished. All outstanding assessment revenue collected after disestablishment shall be spent on improvements and activities specified in the management district plan.

(b) If the disestablishment occurs before an assessment is levied for the fiscal year, the method and basis that was used to calculate the assessments levied in the immediate prior fiscal year shall be used to calculate the amount of any refund.

## **APPENDIX 2 – LODGING BUSINESSES TO BE ASSESSED WITHIN THE HTID**

All Seasons Suites  
America's Best Value Inn & Suites  
Bella Luna Inn  
Belle de Jour Inn  
Calderwood Inn  
Camellia Inn  
Dry Creek Inn  
Duchamp Hotel  
Healdsburg Modern Cottages  
George Alexander House  
Grandma's Victorian Cottage  
Grape Leaf Inn  
H2 Hotel  
Haydon Street Inn  
Healdsburg Guesthouse  
Healdsburg Inn on the Plaza  
Holcomb House  
Honor Mansion  
Hotel Healdsburg  
Hotel Les Mars  
L & M Motel  
Piper Street Inn  
The Roost  
Travelodge  
Two Thirty Five  
Bella Villa Messina