

OPEN SPACE AGREEMENT

THIS AGREEMENT is entered into this 16th day of October, 1990, by and between the CITY OF FAIRFIELD, a municipal corporation, hereinafter "City", with respect to Community Facilities District No. 2, City of Fairfield, hereinafter "North Cordelia Open Space", a community facilities district created pursuant to the Mello-Roos Community Facilities Act of 1982; the COUNTY OF SOLANO, hereinafter "County", with respect to Green Valley Open Space Maintenance District, hereinafter "Green Valley Open Space", an assessment district created pursuant to the Landscaping and Lighting Act of 1972; and the SOLANO COUNTY FARMLANDS AND OPEN SPACE FOUNDATION, a California nonprofit public benefit corporation, hereinafter "Foundation".

R E C I T A L S :

A. The City and other persons were defendants in Solano County Superior Court action numbers V18471, V18472, V18473, V18474, V18475, V18476 and V18477, hereinafter "lawsuits".

B. The City and other defendants have entered into the Green Valley Settlement Agreement that, among other things, provides that funds derived from North Cordelia Open Space and Green Valley Open Space created pursuant to the settlement, will be used for the preservation of open space and agricultural lands. The selection, and to the extent feasible and appropriate, acquisition, ownership and management of this open space is to be performed by the Foundation.

C. The City and the County desire that the open space to be acquired from funds received be selected and, where feasible and appropriate, owned and managed by the Foundation because the Foundation has the ability to purchase land by installment sales contract, accept tax deductible gifts of land, and receive matching grants from other public and private sources, all of which will provide increased open space resources to the residents of the public entities.

[Handwritten notes:
Fund, Inc.
Own &
Manage
Land
Acquired]

D. The acquisition and preservation of open space lands in the Fairfield area benefits properties in North Cordelia Open Space and Green Valley Open Space, the County and the City by preserving areas for scenic beauty, for the use of natural resources, or for the production of food or fiber, for one or more of the following reasons:

- 1) Due to location, microclimate or other attributes, it is in the public interest that the land be dedicated to the production of food and fiber.
- 2) The land is unimproved and has scenic value to the public as viewed from a public street or highway or from public or private buildings.
- 3) The retention of land as open space will add to the amenities of living in adjoining or neighboring urbanized areas.
- 4) The land lies in an area which in the public interest should remain rural in character, and the retention of the land as open space will help preserve the rural character of the area.
- 5) It is in the public interest that the land remain in its natural state, including the trees and other natural growth, as a means of preventing floods or because of its value as watershed.
- 6) The land lies within an established scenic highway corridor.
- 7) The preservation of land in open space is consistent with the General Plan of the City and County.

E. The City and the County hereby find and declare that the purposes for which the Foundation is organized is a public and municipal purpose for which public funds may be spent for the benefit of the residents of the public entities.

A G R E E M E N T :

IT IS, THEREFORE, MUTUALLY AGREED BETWEEN THE COUNTY, THE CITY, AND THE FOUNDATION:

1. The parties to this Agreement agree that North Cordelia Open Space shall issue bonds to finance the acquisition of land for the preservation of open space and agricultural lands by Foundation, pursuant to the Mello-Roos Community Facilities District Act of 1982 (hereinafter "Mello-Roos bonds"). The County shall assess properties in the Green Valley Open Space annually pursuant to the Landscaping and Lighting Act of 1972 in the amount of \$80.00 per year for the tax year 1989-90, which assessment shall be increased \$2.50 annually beginning July 1, 1990. The County shall transfer the proceeds from those assessments to the City for the acquisition and maintenance of open space and administrative expenses related thereto.

2. The City shall transfer the proceeds of the North Cordelia Open Space Mello-Roos bonds to Foundation. Foundation shall use these funds to acquire, own and manage to the extent feasible and appropriate, land in Green Valley for the preservation of agricultural and open space land, unless consent to acquisition of land outside Green Valley is given by the City, the County and the Board of Directors of the Green Valley Landowners Association. As used in this Agreement, "Green Valley" means generally that area bounded by Suisun Valley Road on the east, Interstate 80 and State Highway 12 on the south, and a line in the ridgetops to the north and west, which line is to be defined pursuant to the planning process initiated by City Resolution No. 89-89.

3. The Foundation shall provide to North Cordelia Open Space and Green Valley Open Space, the special services required of an administrative nature which are reasonably related to the acquisition of open space acquired pursuant to this Agreement through persons who are specially trained and experienced and competent to perform the special services required.

4. In consideration for the services provided pursuant to Paragraph 3 of this Agreement, the assessments transferred to the City by the County from the Green Valley Open Space and the special taxes derived from the North Cordelia Open Space, to the extent they are not pledged for the payment of Mello-Roos bonds, shall be made available for the purposes of this Agreement. Such funds shall only be utilized for the purchase and maintenance of open space pursuant to Paragraphs 1 and 2 as selected by the Foundation, including reasonable administrative expenses.

5. Upon the Foundation's identification of interest in open space lands which it has selected for acquisition pursuant to Paragraphs 1 and 2, the Foundation shall provide written notice to the Fairfield City Clerk and the Clerk of the Solano County Board of Supervisors, of the location of the property, by assessor's parcel number, and the interest it has designated for acquisition. Upon this notification, the Foundation shall take all actions necessary and proper to acquire the property. Failure to comment on the noticed acquisition within 15 days of receipt of the notification by the City or County shall constitute a waiver of any contention that the property fails to meet the criteria of Paragraphs 1 and 2 of this Agreement.

6. The Board of Directors of the Foundation shall amend the Foundation's by-laws to enlarge the Board to include representation of the Green Valley Landowners' Association.

7. In the event Green Valley Open Space is not formed, then (a) the Foundation shall acquire lands for open space and agricultural preservation pursuant to Paragraph 2 of this Agreement, in the vicinity of the City of Fairfield; and (b) the Foundation shall not be required to amend its by-laws as provided in Paragraph 6 of this Agreement.

8. Pursuant to its bylaws, the Foundation shall not appear before public bodies for purposes of giving testimony on any action involving land use adjustments, including but not limited to zoning changes, annexations, tentative or final subdivision maps, or issuance of building permits, except in those circumstances where said adjustments may affect lands owned, managed, or otherwise under contract to, the Foundation.

9. Should subsequent federal legislation or administrative regulations or rulings be adopted which would result in outstanding North Cordelia Open Space Mello-Roos bonds becoming taxable if this Agreement were complied with, Foundation shall request modifications to this Agreement in a form acceptable to bond counsel which will give the Foundation the maximum amount of discretion and control of acquired property consistent with maintaining the tax-exempt status of the bonds, and other provisions of this Agreement. In such event, the Foundation shall have the option of requesting that either any subsequent issue of North Cordelia Open Space bonds be taxable, or be issued in accordance with this Agreement, as amended. Consent to such modifications shall be a ministerial act of the County and City, and shall be enforceable by writ of mandate.

Wherefore, the parties have executed this Agreement,
effective on the day first above written.

COUNTY OF SOLANO

Sam Caddle 10/2/90
Sam Caddle, Chairman 10-2-90

CITY OF FAIRFIELD, a
municipal corporation

Gary Falati
Gary Falati, Mayor

SOLANO COUNTY FARMLANDS
AND OPEN SPACE FOUNDATION

WTA
Bob Berman, President