CITY OF ST. HELENA

RESOLUTION NO. 2018-86

Approving a Raw Water Use Agreement between the City of St Helena and Spring Mountain Vineyard, Incorporated

RECITALS

A. The City is the owner of Lower Reservoir located on the northerly side of Spring Mountain Road; and
B. Spring Mountain Vineyard, Incorporated has a raw water service connection to Lower Reservoir, and has been using raw water from this source since 1990; and
C. A Raw Water Use Agreement between the City and the Vineyard was first executed in 1990, amended in 1996, and expired in 2006; and
D. The City has continued and desires to continuing supplying water to the Vineyard from this source; and
E. Spring Mountain Vineyard desires to continue receiving raw water from the City's Lower Reservoir.

RESOLUTION

The City Council of the City of St. Helena hereby resolves as follows:

1. The project is categorically exempt from the California Environmental Quality Act, pursuant to CEQA Guidelines section 15301, Existing Facilities Class 1 which exempts the operation, repair, maintenance, and permitting of existing facilities involving negligible or no expansion of use including publically owned utilities; and
2. The City Manager is authorized to execute the Raw Water Use Agreement with Spring Mountain Vineyard, Incorporated.

Approved at a Regular Meeting of the St. Helena City Council on June 26, 2018, by the following vote:

Mayor Galbraith: Yes
Vice Mayor White: Yes
Councilmember Koberstein: Yes
Councilmember Dohring: Yes
Councilmember Ellsworth: Yes
APPROVED:

[Signature]

Peter White, Vice Mayor for
Alan Galbraith, Mayor

ATTEST:

[Cindy Tzafopoulos]

Cindy Tzafopoulos, City Clerk
EXEMPT FROM RECORDING FEES PURSUANT TO GOVERNMENT CODE SECTION 27383

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

City Clerk
City of St. Helena
1480 Main Street
St. Helena, California 94574

Assessor’s Parcel No(s). 022-180-020, 022-180-021 and 009-450-001

2018 EXTENSION OF RAW WATER USE AGREEMENT

SPRING MOUNTAIN VINEYARDS, INC.

THIS 2018 EXTENSION OF RAW WATER USE AGREEMENT (“AGREEMENT”) is entered into this 26th day of June, 2018 (“Effective Date”), by and between the City of St. Helena, a California municipal corporation (“City”), on the one hand, and Spring Mountain Vineyards, Inc., a Delaware corporation (“Buyer”), on the other. City and Buyer are sometimes referred to herein individually as a “party” and collectively as the “parties.”

RECITALS

A. Buyer is the owner of that certain real property (the “Property”) generally located on the southerly side of Spring Mountain Road at 2805 Spring Mountain Road, identified by Napa County Assessor’s Parcel Nos. 022-180-020, 022-180-021 and 009-450-001, and more commonly referred to as “Spring Mountain Vineyards.” Parcel No. 022-180-021 is located in the City of St. Helena.

B. City is the owner of that certain reservoir (the “Lower Reservoir”) located on the northerly side of Spring Mountain Road and identified by Napa County Assessor’s Parcel No. 009-131-013.

C. On August 28, 1990, City adopted City Council Resolution No. 90-91 approving a Water Use Agreement between City and Buyer’s predecessor in interest, Michael Robbins (the “1990 Water Use Agreement”).

D. The 1990 Water Use Agreement was amended in 1996 by the “Amended Agreement.” That Amended Agreement terminated on June 30, 2006. Since that time, the City has had no obligation to provide raw water from the Lower Reservoir to Buyer. The City has
continued to voluntarily provide raw water to Buyer, even though the City has no ongoing obligation to do so.

E. Following the expiration of the Amended Agreement on June 30, 2006, Buyer continued to purchase water from the City substantially under the terms of that expired agreement, although the volume of water used by Buyer exceeded the 25-acre feet authorized by the 1990 Water Use Agreement and the Amended Agreement.

F. On May 24, 2016, City adopted City Council Resolution No. 2016-64 approving a Raw Water Use Agreement between City and Buyer (the “2016 Raw Water Use Agreement”).

G. Buyer desires to continue to use raw water from the Lower Reservoir to irrigate its vineyard, and City is willing to continue to sell said water to Buyer upon the terms and conditions set forth hereinafter.

H. The parties mutually desire to (i) extend and amend the 2016 Raw Water Use Agreement; (ii) strictly limit Buyer’s actual annual water usage; and (iii) set forth the respective obligations of the parties and the terms under which City will continue to sell and Buyer will continue to purchase raw water from the City from Lower Reservoir.

I. This Agreement confirms the City’s intent to continue to use the raw water for beneficial purposes pursuant to pre-1914 water rights claimed by the City associated with water in Lower Reservoir.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

AGREEMENT

1. Supply. City shall provide water from the Lower Reservoir to the Property up to a maximum of twenty-five (25) acre-feet (i.e. 8,146,275 gallons) per Water Year (“Annual Limitation”) upon the terms and conditions set forth herein. As used herein, the term “Water Year” shall mean the twelve-month period between July 1st and June 30th each year. Buyer shall in no event use more water than the Annual Limitation.

2. Term. This Agreement shall commence on the Effective Date and shall continue in full force and effect for an initial period not to exceed five (5) years. Thereafter, this Agreement shall automatically renew each year and shall continue on a year to year basis unless terminated by either party upon six (6) months written notice.


A. Within thirty (30) days of the receipt of an invoice from City, and throughout the term of this Agreement, Buyer shall pay City for water delivered pursuant to this Agreement at the price established by the City Council for raw water. Without limitation on the right of the City Council to raise or otherwise modify these prices, as of the Effective Date, the prices per gallon for raw water have been, are and shall be as follows:
The amount of water furnished shall be measured by the existing meter located directly across Spring Mountain Road from the dam at the Lower Reservoir. Any and all maintenance expenses and costs of the meter shall be the sole responsibility of Buyer, payable within thirty (30) days of the receipt of an invoice from City.

B. Without limitation on the provisions of Paragraph 1, and without in any manner excusing Buyer from strict compliance with the Annual Limitation, should Buyer for any reason exceed the Annual Limitation, Buyer shall pay City twice the price under Paragraph 3A above per gallon of water delivered in excess of the Annual Limitation. Without limitation on any other rights or remedies available to the City, and as specified in Paragraph 10.1, the City shall have the right to discontinue and terminate at its discretion the provision of raw water under this Agreement upon ten (10) days prior written notice if and when Buyer exceeds its Annual Limitation.

4. Quality. City does not warrant or guarantee the quality of water coming from the Lower Reservoir or provided to Buyer, or its suitability for any purpose or use by Buyer. Buyer expressly acknowledges, agrees and understands that the water being delivered from the Lower Reservoir pursuant to this Agreement is raw water. Buyer expressly acknowledges and agrees that said water is not treated and is not suitable or intended for human consumption.

5. Use. Buyer shall use the water delivered under this Agreement solely for vineyard irrigation purposes.


A. Buyer shall defend (with counsel approved by City, which approval shall not be unreasonably withheld), indemnify, and hold harmless City, its elected and appointed officials, employees, volunteers and agents from and against any and all loss, liability, expenses, claims, costs (including reasonable attorney’s fees), suits and damages of every kind, nature, and description, directly or indirectly arising from the performance of this Agreement or any third party legal or administrative challenge to City’s approval of this Agreement.

B. To the full extent authorized by law, Buyer hereby forever waives, releases and covenants not to sue the City, and its Council members, officials, officers, agents, representatives, insurers and employees, from any and all claims, causes of action and damages, including without limitation damages to Buyer’s road and/or Property, arising from or in any manner connected with Buyer’s (and its predecessors’) acceptance of soil from the City in 2006 or at any other time.

7. Connection Location and Charges. Buyer shall receive raw water via its current water meter and existing three and one-half inch (3.5”) diameter pipe located in Spring Mountain Road. Buyer expressly acknowledges and agrees that Spring Mountain Road was resurfaced in October 2013 and has been and is subject to a five-year moratorium on non-emergency utility

<table>
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<th>Prior Year</th>
<th>Amount ($)</th>
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<tr>
<td>11/8/2021</td>
<td>$0.00379</td>
</tr>
</tbody>
</table>

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Prior: Indicates the year preceding the current year.

Amount: Represents the price per gallon of water delivered.
construction that will lapse in October 2018. Buyer agrees that any proposed improvements relating to the utility connection will require review and approval by the City Engineer as well as an encroachment permit. Buyer is solely responsible for all applicable connection charges.

8. Emergencies. City shall have the unlimited right to shut off or reduce the supply of water to Buyer in the event of an emergency. As used in this Agreement, an “emergency” shall be defined as (1) a fire, act of god, or other natural disaster, (2) malfunction of the water system that prevents distribution to Buyer, or (3) an event declared by resolution of the city council to threaten the public health, safety or welfare.

9. Compliance with Laws. At all times during the term of this Agreement, Buyer shall be bound by and subject to all lawful resolutions, rules, regulations, directives, ordinances and orders of the City applicable to Buyer.

10. Conservation; Declaration of Water Shortage Emergency; Avoidance of City Liability.

10.1 Conservation. In the event City’s Director of Public Works, in his or her sole discretion, determines that the Annual Limitation inevitably will be exceeded or that the Annual Limitation has been exceeded, City may require Buyer to undertake additional conservation measures and may shut off raw water delivery, upon ten (10) days prior written notice.

10.2 Water Shortage Emergency. The Lower Reservoir holds approximately 161 acre feet of water at full capacity. Buyer acknowledges and understands that City desires to retain not less than twenty-five percent (25%), or 40.25 acre feet, of this capacity in the reservoir at all times. In addition, Robert Louis Stevenson Middle School (“RLS”) uses 10 acre feet per year for irrigation of athletic fields and landscaped areas. At any time City determines that delivery of the Annual Limitation specified in Paragraph 1 of this Agreement will reduce the water level in the Lower Reservoir below 40.25 acre feet (“Minimum Water Reserves”), City may declare a water shortage emergency and, upon written notice to Buyer, reduce the Annual Limitation delivered to Buyer as necessary to ensure that the water capacity in the Lower Reservoir does not dip below the Minimum Water Reserves.

10.3 State Ordered Reductions, or Potential Liability Associated with Diversion and Use. Buyer acknowledges and agrees if, at any time during the term of this Agreement, the State of California orders City to reduce the storage volume behind the dam at the Lower Reservoir, the City in its exclusive discretion may reduce the Annual Limitation pursuant to Paragraph 1 of this Agreement and/or turn off and discontinue raw water delivery in order to maintain Minimum Water Reserves and comply with the State of California order. Further, if a federal, state, or local agency or third party orders that the diversion, storage or use of water associated with Lower Reservoir is unlawful, or that the delivery of water to Buyer is unlawful, City in its exclusive discretion may shut off water delivery.

11. Modification of Use Permit with County. Buyer agrees that if any future request or application for approval of amendments or modifications to any of the use permits for the Property are filed with the County of Napa, Buyer shall concurrently submit copies of such
application(s) or request(s) to City. In addition, Buyer agrees to provide City with copies of all supporting documents or other information submitted in connection with such requests or applications.

12. Remedies; Prohibition On Damages.

A. As part of the bargained for consideration for this Agreement, the parties agree that any action or proceeding to cure, correct, or remedy any default or to enforce any covenant or promise herein shall be limited solely and exclusively to those remedies expressly provided herein. Either party may institute legal or equitable proceedings to cure, correct or remedy any default of this Agreement; or to enforce any covenants or promises herein, enjoin any threatened or attempted violation, or to enforce by specific performance, injunction, declaratory relief, writ of mandate, and/or other similar non-monetary relief, the obligations and rights of the parties under this Agreement.

B. In no event shall the City, or any of its officers, agents, representatives, officials, Council, employees, or insurers, be liable to Buyer for damages for any breach or violation of this Agreement. In the event Buyer requests damages in any action or proceeding brought for breach or violation of this Agreement or to enforce any provision hereof, then such request shall destroy the consideration supporting the City’s agreement to enter into this Agreement, and shall, in turn, entitle the City to immediately terminate and end all obligations under this Agreement, irrespective of any provision to the contrary contained herein. The enforceability and validity of the above limitations on the remedies available to the parties, including, without limitation, the specific provision prohibiting the recovery of damages, is part of the bargained for, negotiated consideration for the City’s agreement to enter into this Agreement, and it is acknowledged that the City would not have entered this Agreement if it were to be liable in damages under this Agreement.

13. Notices. All notices and other communications provided for herein shall be in writing and shall be sent to the address set forth below (or such other address as a party may hereafter designate for itself by notice to the other parties as required hereby) of the party for whom such notice or communication is intended:

If to City:

City of St. Helena
Attn: City Manager
1480 Main Street
St. Helena, CA 94574
Facsimile No.: 707-963-7748

If to Buyer:

Spring Mountain Vineyard
Attn: General Manager
2805 Spring Mountain Rd.
St. Helena, CA 94574
Facsimile No.: 707-963-2753
Any such notice or communication shall be sufficient if sent by registered or certified mail, return receipt requested, postage prepaid; by hand delivery; by overnight courier service; or by facsimile transmission or by email. Any notice given by facsimile transmission or by email shall be deemed given on the day sent, provided it is sent on a business day during normal business hours, otherwise it will be deemed sent on the next business day. Any notice given by registered or certified mail, return receipt requested, shall be deemed to have been given on the date receipt was acknowledged to the postal authorities. Any notice given by overnight courier service shall be deemed to have been given on the business day following deposit with the courier service. Buyer and City agree that any notice provided by their respective legal counsel shall be deemed to be notice given by Buyer or City, respectively. Either party may, by written notice to the other in the manner aforesaid, change the address to which notices addressed to it shall thereafter be mailed.

14. **Force Majeure.**

A. "Force Majeure Event" means a cause of non-performance or delay that is not the fault of the party who is required to perform under this Agreement and is beyond that party’s reasonable control, including the elements (including floods, earthquakes, windstorms, drought or water shortage and unusually severe weather), fire, energy shortages or rationing, riots, acts of terrorism, war or war-defense conditions, acts of any public enemy, epidemics, the actions or inactions of any governmental entity (excluding City) or that entity’s agents, litigation, labor shortages (including shortages caused by strikes or walkouts), and materials shortages.

B. If the performance of any act required by this Agreement to be performed by either City or Buyer is prevented or delayed because of a Force Majeure Event, then the time for performance will be extended for a period equivalent to the period of delay, and performance of the act during the period of delay will be excused. An extension of time for any such Force Majeure Event shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Lease may also be extended in writing by the mutual agreement of City and Buyer.

C. This Section does not excuse (1) Buyer’s obligation to pay for water provided under this Agreement when due and payable; or (2) either party’s obligation to perform an act when performance is rendered difficult or impossible solely because of the party’s financial condition. Buyer expressly agrees that adverse changes in economic conditions, either of Buyer specifically or the economy generally, or changes in market conditions or demand, shall not constitute grounds of enforced delay pursuant to this Section. Buyer expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the effective date of this Agreement.

15. **Governing Law; Venue.** This Agreement shall be construed and enforced in accordance with the laws of the State of California. Should any legal action be brought by either party because of breach of this Agreement or to enforce any provision of this Agreement, the venue for such action shall be in the Superior Court of California, County of Napa.
16. **Attorneys' Fees.** If any legal action is brought by either party to interpret or enforce any terms or provisions of this Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees and costs.

17. **Severability.** The parties hereto agree that the provisions of this Agreement are severable. If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected and shall remain in full force and effect unless amended or modified by mutual consent of the parties in writing.

18. **Binding Effect.** The provisions of this Agreement shall be binding upon and inure to the benefit of all tenants, heirs, assigns and successors in interest to the parties hereto and shall be a covenant that runs with the land.

19. **Integration.** This Agreement, together with any documents expressly incorporated herein, constitutes the entire agreement between the parties and supersedes all prior or contemporaneous agreements, representations, warranties and understandings of the parties concerning the subject matter contained herein, written or oral. No change, modification, addendum or amendment to any provision of this Agreement shall be valid unless executed in writing by each party hereto.

20. **Counterparts.** This Agreement may be executed in counterparts, and all counterparts shall constitute but one and the same document.

21. **No Waiver.** The failure of the City to exercise any right under this Agreement shall not constitute or be deemed as a waiver or breach.

Executed the day and year first above written.

BUYER:

SPRING MOUNTAIN VINEYARD, INC.

Dated: **6-25-2018**

By: 

Constantine S. Yannias, President

Dated: __________________________

By: __________________________

General Manager
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BUYER:

SPRING MOUNTAIN VINEYARD, INC.

Dated: ____________________________  
By: ____________________________  
Constantine S. Yannias, President

Dated: 6-25-2018  
By: ____________________________  
General Manager
CITY: 

Dated: 6/29/18

Dated: 6/26/18

CITY OF ST. HELENA, 
A municipal corporation, 

By: Mark T. Prestwich 
Its: City Manager 

By: Alan Galbraith 
Its: Mayor 

APPROVED AS TO FORM: 

Thomas B. Brown, City Attorney