CITY OF ST. HELENA
RESOLUTION NO. 2013-19A

APPROVING A WATER SERVICE AGREEMENT
BETWEEN THE CITY AND G3 ENTERPRISES, INC
FOR WATER SUPPLY TO
MARTINI WINERY, 254 ST. HELENA HWY SOUTH

RECITALS

A. Louis M. Martini Winery is located at 254 St. Helena Highway South, (Assessor’s Parcel Nos. 030-020-032) outside the City Limits and is currently a customer of the St. Helena Water Enterprise; and

B. Martini Winery entered into a Water Use Agreement with the City of St. Helena to provide water to the property. That agreement dated 09/07/1982 has no maximum limit of water volume to be supplied by the City annually to Martini Winery; and

C. G3 Enterprises Inc, the owner of Martini Winery, has applied to the County for an amendment to their use permit for the Martini Winery facility. The County requires that the applicant provide information regarding the City’s ability to continue to provide City water to the facility; and

D. To satisfy this requirement Martini Winery and the City desire to enter into a new Water Service Agreement. The new agreement will supersede the existing agreement; and

E. The agreement provides an annual limit and is structured to reduce that limit during water shortage emergencies reducing overall commitment of the City’s water supply; and

F. The terms of the new agreement are mutually agreed upon by the City and G3 Enterprises, Inc.

G. The new Water Services Agreement has been environmentally reviewed pursuant to the California Environmental Quality Act (CEQA), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000 et seq.) (hereafter the “Guidelines”), and the City’s environmental guidelines. The City Council finds that approval of the new Water Services Agreement is exempt from the requirements of CEQA because: (i) it can be seen with certainty that the new Water Services Agreement has no potential to cause significant effects on the environment since the proposed agreement does not change land uses or expand the amount of water G3 Enterprises, Inc. is entitled to demand under its existing service agreement, and therefore, the Agreement is exempt from CEQA pursuant to Guidelines Section 15061(b)(3), and (ii) the new Water Services Agreement involves only the licensing of existing public facilities, and therefore, the Agreement is also exempt from CEQA under a Class 1 Categorical Exemption pursuant to Guidelines Section 1530.1

RESOLUTION

NOW, THEREFORE, the City Council of the City of St. Helena resolves as follows:
1. Approve the attached Water Service Agreement between the City and G3 Enterprises, Inc. for water supply to Martini Winery, 254 St. Helena Hwy South.

Approved at a Regular Meeting of the St. Helena City Council on March 26, 2013 by the following vote:

AYES: Councilmembers Crull, White, Sculatti, Pitts, Mayor Nevero
NOES: None
ABSENT: None

APPROVED: 

[Signature]
Ann Nevero
Mayor

ATTEST: 

[Signature]
Della Gujiosa
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 Nos. 030-020-032 and 030-240-033

WATER SERVICE AGREEMENT

(MARTINI WINERY WATER AGREEMENT)

THIS AGREEMENT, entered into on March 7th, 2013, between the City of St.
Helena, a municipal corporation (City), and G3 Enterprises, Inc., a Delaware corporation
(Customer), provides as follows:

RECITALS

A. Customer is the owner of real property (the Property) located at 254 South St. Helena
Highway, St. Helena, Napa County, known as Assessor's Parcel Nos. 030-020-032 and
030-240-033, more particularly described in Exhibit A attached hereto and commonly
referred to as the Martini Winery.

B. Since 1933, City has supplied the Martini Winery with water for winery purposes. In
1981, Martini Winery submitted to Napa County Use Permit application U-298283,
which was approved in 1984 as Permit U-298283. The City and Martini entered into a

C. On April 17, 2008, Napa County approved modifications to Permit U-298283 for
extensive seismic retrofitting of the Martini Winery.

D. The County of Napa is currently considering Use Permit Modification Application No.
P09-00137 (“Use Permit Application”) to Permit U-298283, which together with
Permit U-298283, its modifications in 2008, and other permits and governmental
approvals for the Property shall be collectively referred to as the “Use Permit”. The
Use Permit Application does not request any change to the Customer’s approved
2,000,000 gallon per year wine production limit.

E. City has an overburdened water system and is concerned about guaranteeing
Customer’s demands for an unspecified volume of water to the Property under the
1982 Water Agreement. Customer shall implement water conservation measures for
winery production and augment its supply with well water to cap its need of City water
to 12,000,000 gallons per year.

F. The parties hereto wish to enter into this Water Agreement to describe the rights and
obligations of the parties regarding the provision of water by City to Customer.

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

AGREEMENT

1. City shall provide water to the Property subject to the approved Annual Limitation
of twelve million (12,000,000) gallons per year upon the terms and conditions set forth herein. As
used herein, the term Water Year shall mean the twelve-month period between July 1 and June 30.

2. City water shall be used only for those uses as authorized by the Use Permit. City
shall not be obligated to provide water service for any other use nor for any further expansion of
the uses beyond those allowed by the Use Permit. Under no circumstances shall Customer be
entitled to use more than 12,000,000 gallons in any Water Year, nor under any circumstances shall
City potable water be used for landscape, vineyard or agricultural irrigation.

3. Customer shall at its sole expense comply with all water use efficiency
requirements of Chapter 13.12 ("Water Use Efficiency and Use Guidelines") of St. Helena
Municipal Code ("SHMC"), or as that Chapter may be amended. If City finds Customer to be out
of compliance with any part of Chapter 13.12 or provisions of the water shortage emergency
requirements described in SHMC Chapter 13.04 ("Water Service System"), or as that Chapter
may be amended, Customer shall install at its sole expense and to City's satisfaction all
appropriate water-saving devices in their plumbing, appliances, or improvements, or take other
such actions to bring about full compliance, which actions shall be subject to inspection for
compliance by City. All work required by this section 3 in areas that are to be renovated or
improved pursuant to the Use Permit Application or other pending entitlements shall be completed
within a reasonable period following approval of the Use Permit application or other pending
entitlement; all other work (if any) required by this section 3 shall be completed within 12 months.

4. While water is furnished to Customer pursuant to this Agreement, Customer shall
be bound by and subject to all lawful resolutions, rules, regulations, directives, ordinances and
orders of the City pertaining to water services as may be enacted from time to time for all other
applicable users of City water, including, without limitation, provisions relating to rate charges
and water shortage emergencies.

5. Customer shall monitor its water usage on a monthly basis and employ all
measures necessary to ensure that the Annual Limitation is not exceeded. Customer shall make
available to City, upon demand and reasonable notice, all books, records and documents deemed
necessary by City to ensure compliance. At any time that the City determines pursuant to the
SHMC that a water shortage emergency condition exists as provided by SHMC Chapter 13.04 and that it is necessary to limit usage by the customers of the municipal water department, the maximum delivery ("Maximum Delivery") of 12,000,000 gallons annually will be adjusted as follows:

A. If no water shortage emergency exists, the maximum delivery shall be 12,000,000 gallons annually.

B. If the City declares a Phase 1 water shortage emergency, the maximum delivery shall be 10,800,000 gallons annually (10% less than the 12,000,000 maximum)

C. If the City declares a Phase 2 water shortage emergency, the maximum delivery shall be 9,600,000 gallons annually (20% less than the 12,000,000 maximum)

D. If the City declares a Phase 3 water shortage emergency, the maximum delivery shall be 7,200,000 gallons annually (40% less than the 12,000,000 maximum)

City may require Customer to undertake reasonable additional conservation measures and may require Customer, upon ten (10) days prior written notice, to terminate water service for nonessential uses. For purposes of this Agreement, the term "nonessential uses" shall mean uses for which non-potable water would suffice.

6. Without limitation on and in addition to City's other rights and remedies under this Agreement, in the event Customer exceeds its Annual Limitation, it shall pay to City a penalty surcharge equal to 60% of the water rate charge for each hundred cubic feet, or portion thereof, used in excess of the Annual Limitation, or the Maximum Delivery, in the case of a declared water shortage emergency. Such penalty surcharge shall be due and payable within 30 days after calculation and demand by City. In addition to the 60% surcharge, City may avail itself of all rights and remedies set forth in Paragraphs 8 and 11 of this Agreement.

7. Customer agrees that if any future request or application for approval of amendments or modifications to any of the Use Permits for the Property is submitted to the Napa County Planning Commission (the Planning Commission) or Board of Supervisors (the Board), City shall be informed on or before the date on which any such request or application is submitted. In addition, Customer agrees to provide City with copies of all supporting documents or other information submitted in connection with such requests or applications or before the date such materials are submitted to the Planning Commission or the Board. In no event shall Customer use any City water in excess of the 12,000,000 gallon annual limit under this Agreement, irrespective of any amendment or modification to any of the Use Permits, without City's written approval.

8. 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. City and Customer may institute legal or equitable proceedings to cure, correct, or remedy any default, or to enforce any covenant or promise herein, enjoin any threatened or attempted violation, or enforce by specific performance, injunction, declaratory relief, writ of mandate and/or other similar non-monetary relief, the obligations and rights of the parties hereto.

B. Without limitation and in addition to its other rights under this Agreement, the City shall have the right to enter Customer’s Property, to read the water meter on Customer’s Property, and turn off for the remaining portion of that Water Year the main water valve that conveys water to Customer’s property as may be necessary to ensure that Customer does not use water in excess of its 12,000,000 gallon annual limit in any Water Year.

B. In no event shall the City, or any of their officers, agents, representatives, officials, employees, or insurers, be liable to Customer for damages for any breach or violation of this Agreement. In the event Customer seeks damages in any action or proceeding brought for breach or violation of this Agreement or to enforce any provision hereof, and does not amend its complaint to delete such request within 15 days’ of receipt of written notice from City to delete such request for damages, which notice must specifically cite this Section 8 of this Agreement, 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.


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 Customer 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 Customer.

C. This Section does not excuse (1) Customer'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. Customer expressly agrees that adverse changes in economic conditions, either of Customer specifically or the economy generally, or changes in market conditions or demand, shall not constitute grounds of enforced delay pursuant to this Section. Customer 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.


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  
E-mail: GaryB@cityofsthelena.org

If to Customer:

G3 Enterprises, Inc.  
Attn: President and CEO  
502 E. Whitmore Avenue  
Modesto, CA 95358  
Facsimile No.: 209-341-1911  
Email: Robert.lubeck@G3enterprises.com

with a copy to:

E. & J. Gallo Winery  
Attention: General Counsel  
600 Yosemite Boulevard  
Modesto, CA 95354  
Facsimile No.: 209-341-8812
E-mail: Rich.grey@ejgallo.com

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. Customer and City agree that any notice provided by their respective legal counsel shall be deemed to be notice given by Customer 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.

11. 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 prevailing party in such action shall be entitled to all reasonable attorney's fees, court costs and necessary disbursements in connection with such action.

12. 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.

13. The provisions of this Agreement shall be binding on all tenants, heirs, assigns and successors in interest to the parties hereto and shall be a covenant that runs with the land.

14. Customer shall defend (with counsel approved by City, which approval is not to be unreasonably withheld), indemnify, and hold harmless the City, its 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 any third party legal challenge to the City's approval of this Agreement.

(Signatures on next page)
Executed on the day and year first above written.

CUSTOMER: G3 ENTERPRISES, INC.,
A Delaware corporation,

Dated: 5-13-13
By: [Signature]
Robert E. Lubeck
aka Robert Lubeck
Its: President and CEO

Dated: 5-13-13
By: [Signature]
Michael J. Ellis
Its: Vice-President Secretary

CITY: CITY OF ST. HELENA,
A municipal corporation,

Dated: May 23, 2013
By: [Signature]
Gary Broad
Its: City Manager

APPROVED AS TO FORM:

[Signature]
Thomas B. Brown, City Attorney
STATE OF CALIFORNIA  

COUNTY OF Stanislaus  

On May 13, 2013, before me, Lindsey T. Goepner, a Notary Public in and for the State of California, personally appeared Robert Lubec who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[Signature]

Notary's Signature

LINDSEY T. GOEPNER  
COMM. #1955520  
Notary Public - California  
Stanislaus County  
STATE OF CALIFORNIA )
COUNTY OF ) ss.

On May 13, 2013, before me, Lindsey T. Goeppler, a Notary Public in and for the State of California, personally appeared Michael J. Ellis who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[Signature]

Notary's Signature
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California)  
County of Napa)

On May 23, 2013 before me, DELIA H. GUIJOSA, NOTARY PUBLIC, personally appeared, Gary Broad, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[Signature]
Signature of Notary Public

(seal)

OPTIONAL INFORMATION

THIS OPTIONAL INFORMATION SECTION IS NOT REQUIRED BY LAW BUT MAY BE BENEFICIAL TO PERSONS RELYING ON THIS NOTARIZED DOCUMENT

TITLE OR TYPE OF DOCUMENT Martini Water Service Agreement

DATE OF DOCUMENT March 26, 2013 NUMBER OF PAGES

SIGNER(S) OTHER THAN NAMED ABOVE

SIGNER’S NAME _______________________________ SIGNER’S NAME _______________________________