CITY OF ST. HELENA

RESOLUTION NO. 2011-6

APPROVING A WATER USE AGREEMENT WITH THE
ST. HELENA MONTESSORI SCHOOL,
880 COLLEGE AVENUE CAMPUS

RECITALS

A. Resolution 2009-51 approved a Use Permit, Design Review, and Demolition Permit for the Montessori School and Nimbus Arts Center Located at 880 College Avenue, APN 009-070-042; and

B. St. Helena Montessori School has attempted to develop a small water system to supply the project with potable water but has discovered the groundwater contains Arsenic at levels higher than current regulations allow. and

C. Condition of Approval 14 of the Use Permit for the project states, "...If the small water system is not approved and operational, the applicants must request and be approved for a water use agreement prior to issuance of building permits."; and

D. St. Helena Montessori School has requested to enter into such a water agreement to allow them to connect to the City water system;

E. Calculations provided by the project engineer indicate a total annual potable water use of 1,564,025 million gallons a year or 4.79 acre-feet per year; and

F. The on site well will provide non-potable water for all landscape and irrigation needs on the property.

RESOLUTION

NOW, THEREFORE, the City Council of the City of St. Helena resolves as follows:

1. Approve the attached Water Use Agreement with the St. Helena Montessori School, 880 College Avenue campus.

Approved at a Regular Meeting of the St. Helena City Council on January 11, 2011 by the following vote:

AYES: Councilmembers Nevero, Sanchez, Mayor Britton
NOES: None
ABSENT: None
ABSTAIN: Councilmembers White, Crull

APPROVED:

[Signature]
Delford Britton
Mayor

ATTEST:

[Signature]
Delfa Guijosa
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): 009-070-042

WATER SERVICE AGREEMENT

(St. Helena Montessori School and Nimbus Arts WATER AGREEMENT)

THIS AGREEMENT, entered into on January 11, 2011 between the City of St. Helena, a municipal corporation (City), and St. Helena Montessori School and Nimbus Arts (Customer), provides as follows:

RECATIALS

A. Customer is the owner of real property (the Property) located at _880 College Ave, St. Helena, Napa County, known as Assessor's Parcel Nos. 009-070-042, located inside the City Limits, more particularly described in Exhibit A attached hereto.

B. On May 12, 2009, the City of St. Helena approved Use Permit No. 2009-51 which authorized a pre-school through eighth grade school and an Art Center. As an alternate in the conditions of approval of the Use Permit, Customer is required to execute a water agreement with the City limiting city potable water use on the Property.

C. City has an overburdened water system and is concerned about guaranteeing unlimited water to the Property in perpetuity.

D. The parties hereto wish to enter into this Water Agreement to fulfill the Resolution No. 2009-51 and condition of approval allowing such an agreement.

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

1. City shall provide water to the Property at the currently approved Annual Limitation of 1,560,000 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 the City's last water meter reading of a calendar year and the last water meter reading of the following calendar year. At present, City's last meter reading in a calendar year is in mid-December; a Water Year will run from mid-February to the following mid-December.

2. Customer agrees to the following hierarchy of non-potable water sources:
   A. Well Water from on-site private well for landscaping and irrigation purposes.
   B. Raw water from City raw water station, if well water is not available.

3. 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 allowed by the Use Permit. Under no circumstances shall City potable water be used for landscape, vineyard or agricultural irrigation.

4. Customer shall furnish and install at its expense, a City Standard 2-inch compound water meter with automatic read function to serve the site. New meter shall be placed in a new meter box also furnished and installed by the Customer at its expense.

5. Customer shall install at its expense, on all new construction and existing facilities, only low volume flush toilets and urinals, showerheads and faucets. All existing faucets and showerheads shall be equipped with flow restrictors.

6. 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.

7. Customer shall monitor its water usage on a bimonthly basis and employ all measures necessary to ensure that the Annual Limitation is not exceeded. In the event the City Director of Public Works reasonably determines that the Annual Limitation inevitably will be exceeded or that the Annual Limitation has been exceeded, 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.
8. 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. 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 Paragraph 10 of this Agreement.

9. Customer agrees that if any future request or application for approval of amendments or modifications to any of the use permits for the Property shall be submitted to the City of St. Helena. In addition, Customer agrees to provide City with copies of all supporting documents or other information submitted in connection with such requests or applications.

10. In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default of this Agreement; to enforce any covenants or agreements herein or to enjoin any threatened or attempted violation thereof; to recover damages for any default; or to obtain any other remedy consistent with the purpose of this Agreement.

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 Name 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.

Executed the day and year first above written.

//
//
//

CUSTOMER: St. Helena Montessori School and Nimbus Arts

Dated: 11-23-11

By: ____________________________

[Signature]

Peter G. White, Director SHMS
Dated: 11/23/11

By: 
Elena Heil, Director NA

CITY:

CITY OF ST. HELENA,
a municipal corporation,

Dated: 11-23-11

By: 
Gary Broad
Its: City Manager

APPROVED AS TO FORM:

[Signature]

John Truxaw, City Attorney

STATE OF CALIFORNIA

COUNTY OF NAPA

On November 23, 2011, before me, Delia H. Guijosa, a Notary Public in and for the State of California, 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 executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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

(seal)
STATE OF CALIFORNIA )
) ss.

COUNTY OF NAPA )

On November 23, 2011, before me, Delia H. Guijosa, a Notary Public in and for the State of California, personally appeared Peter G. White 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 executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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.

Delia H. Guijosa
Notary's Signature

STATE OF CALIFORNIA )
) ss.

COUNTY OF NAPA )

On November 23, 2011, before me, Delia H. Guijosa, a Notary Public in and for the State of California, personally appeared Elena Hall 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 she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person 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.

Delia H. Guijosa
Notary's Signature