RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

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

Fax: 707-963-2541
Assessor's Parcel Number 025-410-003

AGREEMENT NO. 2002-109 (Rev)

RECLAIMED WATER AGREEMENT

THIS AGREEMENT is made and entered into this 13th day of August, 2002, by and among the City of St. Helena, a municipal corporation, hereafter "the City," Stone Bridge Cellars, Inc., a California corporation, hereafter "Stone Bridge" and the Napa Valley Housing Authority, a California joint powers agency, hereafter the "Housing Authority."

RECITALS

WHEREAS, Stone Bridge is the owner of a parcel of real property, hereafter "the Property," located in the unincorporated area of the County of Napa, California, outside the city limits of the City, more particularly described as an approximately 34.7 acre parcel of land, adjacent to the Silverado Trail, bearing Assessor's Parcel Number 025-410-003, as described in Exhibit A attached hereto; and

WHEREAS, Stone Bridge is proposing to subdivide the Property and create two parcels consisting of approximately 8 acres (the "Housing Authority Parcel") and 26.7 acres (the "Phelps Parcel"). After subdivision, Stone Bridge intends to convey the Housing Authority Parcel to the Housing Authority so that the Housing Authority may construct and operate a 60 bed migrant farm worker congregate farm labor camp on the Housing Authority Parcel. The Phelps Parcel will be retained for vineyard use; and

WHEREAS, the Housing Authority will require an estimated four (4) acre feet of groundwater each year to serve the needs of the farm labor camp on the Housing Authority Parcel; and

WHEREAS, the City is planning to build a tertiary wastewater treatment plant as part of a proposed upgrade of its sewer treatment plant; and

WHEREAS, the City has determined that the public interest in providing affordable workforce housing is furthered by the construction of the proposed farm labor camp.
Therefore, once the tertiary wastewater treatment plant is built, the City is willing to provide Stone Bridge with up to four (4) acre feet of treated wastewater from the plant for the irrigation of vineyards on the Phelps Parcel to offset the estimated four (4) acre feet of groundwater the farm labor camp located on the Housing Authority Parcel will use each year.

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

1. **Term.** This Agreement shall commence upon the date set forth above and remain in effect so long as a farm labor camp operates on the Housing Authority Parcel and such use is not abandoned. “Abandoned” shall mean that the Housing Authority Parcel has not been operated as a farm labor camp by an authorized local government agency for two consecutive growing seasons, excluding any season in which the farm labor camp is not operating because of improvements to the Housing Authority Parcel, regardless of intent to abandon the use.

2. **Amount Of Water.** Subject to the provisions of Section 7, the City shall deliver up to four (4) acre feet of tertiary treated wastewater to Stone Bridge each calendar year.

3. **Cost Of Water.** The City shall provide up to four (4) acre feet of tertiary treated wastewater to Stone Bridge pursuant to this Agreement free of charge.

4. **Compliance With Board Order And Requirements Of City.**
   (a) **Water Quality Control Board Order.** The parties acknowledge that any transfer and use of reclaimed water will be subject to orders and regulations adopted by the California Regional Water Quality Control Board (the “Board”). Stone Bridge acknowledges to the City that Stone Bridge is aware that the water provided pursuant to this Agreement will be wastewater that has been reclaimed as a result of sewerage treatment operations, and is suitable only for those uses, and in those areas specified in orders and regulations adopted by the Board. Stone Bridge covenants and warrants that it shall comply with all the provisions and requirements of such orders and regulations in the use of the reclaimed water.
   
   (b) **Requirements of the City.** Stone Bridge shall also comply with the additional reasonable requirements established by the City in the use of the reclaimed water, so long as such requirements (i) do not affect the quality, amount or use of the reclaimed water to be provided by pursuant to this Agreement, and (ii) do not require any material expenditures by Stone Bridge.

5. **Quality Of Reclaimed Water Provided.** The quality of the reclaimed water provided pursuant to this Agreement shall comply in all respects with the quality criteria established by the Board and the most current regulations promulgated by the Department of Health Services in the California Code of Regulations Title 22 regarding tertiary quality water, except as provided in Section 11. The City shall test the reclaimed water as required by the Board to ensure that it meets the applicable quality criteria. The results of this testing
program shall be promptly sent to Stone Bridge whenever any such results are generated or otherwise become available. The foregoing provisions notwithstanding, Stone Bridge is responsible for assuring itself that the reclaimed water is fit for Stone Bridge’s particular purposes.

6. **Installation and Maintenance of Capital Improvements.** City shall design and install at its own expense a pipeline to transport treated wastewater from the City wastewater plant across the Napa River to the Phelps Parcel. The design and installation shall be subject to the approval of the California Department of Fish & Game, the Board, and any other agencies with applicable jurisdiction. The City shall stub the pipeline far enough onto the Phelps Parcel so that further construction on the pipeline is not subject to the jurisdiction of such agencies. The City shall be responsible for ensuring that the water is delivered at a pressure suitable for Stone Bridge’s irrigation needs. In addition, City shall be responsible at City’s cost, for the ongoing operation, maintenance and repair of the pipeline transporting the reclaimed water from the City to the Phelps Parcel. Stone Bridge shall be responsible for the design, installation and maintenance of the portion of the wastewater delivery system that is on the Phelps Parcel beyond the point where the City has stubbed the pipeline. If City is required to provide Stone Bridge with water other than tertiary quality wastewater pursuant to Sections 7(d) or 11 of this Agreement, City shall design, install and maintain any pipelines required to accommodate such provision at its expense. Housing Authority agrees to reimburse both City and Stone Bridge, upon written demand, for the expenses incurred by each of them in fulfilling their respective obligations under this Section 6, since the pipeline and wastewater delivery system provide tertiary water to offset the estimated four (4) acre feet of groundwater the farm labor camp on the Housing Authority Parcel might use each year.

7. **Delivery and Availability of Reclaimed Water**

(a) **Delivery Subject to Regional Board Order.** Stone Bridge acknowledges and understands that the City’s delivery of reclaimed water is subject to the waste discharge requirements imposed by the Board, as such may be amended from time to time.

(b) **Delivery Schedule.** Stone Bridge shall cooperate with the City, at the City’s request, in establishing reasonable and mutually agreeable delivery schedules for the reclaimed water within the limits set forth in Section 2 above. At any time before or during the delivery of reclaimed water, Stone Bridge may refuse to accept transfer of reclaimed water. Any such refusal shall not waive any rights that Stone Bridge has to receive reclaimed water, nor release City from its obligations to provide reclaimed water pursuant to the terms of this Agreement. Stone Bridge shall take delivery of reclaimed water in such a manner that such delivery does not interfere with the City’s other reclamation operations. Stone Bridge recognizes that the City may need to reduce the rates at which reclaimed water is delivered to the Stone Bridge from time to time for purposes of facility improvements, inspection, maintenance and repairs of plant and equipment.

(c) **Interruption of Service.** The parties acknowledge that the City’s supply and delivery of reclaimed water and Stone Bridge’s ability to take delivery of the water may be
interrupted or curtailed due to acts of God, power failures, accident, fire, strikes, riots, war, facility failures, actions or decisions by a governmental agency (other than the City), or any other condition outside of a party’s control. Each party shall not be liable to the other for damages arising out of interruption or curtailment of service for these reasons, so long as the affected party has made commercially reasonable efforts to avoid or minimize the effect of the intervening circumstance. To the extent feasible, the party whose performance is affected by such condition shall give the other party at least 72 hours advance notice of a temporary discontinuance or reduction in its delivery (in the case of the City) or in its acceptance (in the case of Stone Bridge) of reclaimed water, except in the case of emergency, in which case notice shall be given as soon as possible.

(d) Alternative Water. Subject to Section 11 hereof, if, for any reason (including, without limitation, those referred to in (c) above and Section 15 below), City is unable to provide the quantity or quality of reclaimed water as required hereunder sufficient for the uses described in Section 12 hereof for a period of three (3) consecutive months, pending its efforts to correct such deficiency (if such deficiency is capable of being corrected), City shall provide well water from wells owned by the City meeting the quantity and quality requirements of this Agreement.

8. Measurement of Delivered Reclaimed Water. All reclaimed water delivered pursuant to this Agreement shall be measured by the City at the flow meter. All determinations relative to the measuring of reclaimed water shall be made by the City in good faith. Upon request by Stone Bridge, the accuracy of a measurement shall be investigated by the City and any error appearing therein shall be adjusted. Stone Bridge may inspect such measuring equipment for the purpose of determining the accuracy thereof.

9. Monitoring Reports. Stone Bridge shall fill out Regional Water Quality Control Board monitoring reports on the form prescribed by the Board and submit them to the City as required. Any loss of reclaimed water off-site by spray or runoff, if not permitted by the Board, shall be fully reported by Stone Bridge as required by the Board or the City stating what corrective action(s) have been taken to prevent the violation from occurring again.

10. Credit for Years Water Not Available. The tertiary wastewater treatment plant is not yet built and reclaimed water will not be deliverable to the Phelps Parcel for some period of time following completion of the farm labor camp. Therefore, the City shall credit Stone Bridge with four (4) acre feet of reclaimed water per year from the date a certificate of occupancy is issued for the farm labor camp until the date the City begins delivery of tertiary reclaimed water to Stone Bridge pursuant to this Agreement; provided that (i) Stone Bridge shall use or lose the credited reclaimed water within five (5) years from the date the City begins delivery of tertiary reclaimed water to Stone Bridge pursuant to this Agreement, and (ii) no more than thirty-two (32) acre feet may be credited. The amount of the credit for any partial year shall be prorated based on the number of days during such partial year and a 365-day year.
11. Secondary Wastewater. If upon the eighth anniversary of the date of this Agreement the City is not providing Stone Bridge with the tertiary treated wastewater required under this Agreement, then the City shall immediately begin providing Stone Bridge with groundwater from wells owned by the City or secondary treated wastewater, at City’s election, on all of the terms of this Agreement; provided, however that quality of any reclaimed water shall comply in all respects with the quality criteria established by the Board and the most current regulations promulgated by the Department of Health Services in the California Code of Regulations Title 22 regarding secondary, and not tertiary, quality water. In such event, City shall be deemed to have credited Stone Bridge with the same amount of secondary treated wastewater as the amount of tertiary wastewater credited pursuant to Section 10 (i.e., four acre feet per year since a certificate of occupancy was issued for the farm labor camp). Stone Bridge acknowledges that currently, such secondary treated wastewater is not usable for the frost protection use described in Section 12 below. City agrees that if it creates a “pilot program” or similar program for providing tertiary treated wastewater prior to completion of the tertiary wastewater facility, City shall offer such tertiary treated wastewater to Stone Bridge prior to offering the same to any other user not affiliated with City.

12. Use of Reclaimed Water; Rights Nontransferable. Stone Bridge shall use the City reclaimed water for the sole purpose of irrigating vineyards, frost protection and landscaping on the Phelps Parcel. Stone Bridge’s rights to reclaimed water deliveries hereunder are not transferable or assignable, except to the extent such rights are covenants running with and benefiting the land pursuant to Section 21. Stone Bridge shall not sell, give, transfer or distribute any of the reclaimed water provided to it pursuant to this Agreement to any other party for any use, and Stone Bridge or its successors shall be the sole party using the reclaimed water.

13. Purchase of Additional Water. This Agreement shall govern the delivery of up to four (4) acre feet of reclaimed water per year to Stone Bridge. Delivery of reclaimed water in excess of the four (4) acre feet contemplated in this Agreement, if any, shall be within the City’s sole discretion and subject to another written agreement.

14. Hold Harmless and Indemnification. Stone Bridge will indemnify and hold harmless the City, its officers, directors, agents and employees from and defend the City against any and all costs, loss, damage, liability, claim or damage of any nature whatsoever, including but not limited to property damage, personal injury or death arising out of or in any way connected with Stone Bridge’s use of the reclaimed water in any fashion not authorized by the Board, the City or this Agreement. The City will indemnify and hold harmless Stone Bridge, its officers, directors, agents and employees from and defend Stone Bridge against any and all costs, loss, damage, liability, claim or damage of any nature whatsoever, including but not limited to property damage, personal injury or death arising out of or in any way connected with the City’s actions related to providing the reclaimed water hereunder or to the City’s use of that water in any fashion not authorized by the Board or this Agreement; provided, however, that this indemnification and hold harmless agreement
by the City shall not include any costs, loss, damage, liability, or claim caused by the quality of the reclaimed water delivered hereunder if the water meets the quality criteria set forth in this Agreement and the regulations of the Board and if the quality has been properly and correctly monitored and reported.

15. Changed Requirements and Conditions Imposed by City. Changed requirements and conditions may be imposed on the City by the Board, or any other department, authority, or agency having legal jurisdiction over the City, which may cause the City to change the terms and conditions of this Agreement regarding the usage of reclaimed water by Stone Bridge. Stone Bridge agrees to such changes, and agrees that the City shall be held harmless from any liabilities arising from such changes, so long as the City has made best efforts to minimize the impact on Stone Bridge of such changed requirements and conditions.

16. Notices. Any notice, action, or demand by any party to another in connection with this Agreement shall be deemed to have been fully given or made when such notice, action, or demand is written and deposited in a sealed envelope postage prepaid, and addressed as follows:

City: City Manager  
City of St. Helena  
1480 Main St.  
St. Helena, CA 94574

Stone Bridge: Stone Bridge Cellars, Inc.  
c/o Joseph Phelps Vineyards  
200 Taplin Road  
St. Helena, California 94574

Housing Authority: Napa Valley Housing Authority  
1115 Seminary Street  
Napa, CA 94574

Any party may change its address by giving the other party written notice of its new address as herein provided.

17. Entire Agreement. This Agreement shall constitute the entire agreement between the parties relating to the rights granted and obligations assumed in this Agreement. Any oral representations or modifications concerning this Agreement shall be of no force and effect unless contained in a subsequent written modification signed by both parties.

18. Amendments. This Agreement may not be amended except by a written instrument that is signed by both parties.

19. Interpretation. This Agreement shall be construed, interpreted, and applied according to the laws of the State of California.
20. **Attorneys’ Fees.** If any party commences an action at law or in equity, arbitration or other proceeding against another party to enforce or interpret this Agreement, the prevailing party shall be entitled to recover from the losing party reasonable attorneys’ fees and costs of such proceeding, in addition to any other amounts which may be awarded.

21. **Covenants Running with the Land.** Stone Bridge and City declare that this Agreement constitutes covenants running with and benefiting the land within the meaning of California Civil Code Section 1468, shall benefit the treatment works and lands of City and Stone Bridge, and shall burden and benefit the real property described in Exhibit “A” attached hereto and incorporated herein by reference.

22. **Cumulative rights.** In addition to any other rights or remedies, any 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.

23. **Severability.** 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.

24. **Counterparts.** This Agreement may be executed in two or more counterparts and when so executed shall have the same force and effect as though all signatures appeared in one document.

[SIGNATURES ON NEXT PAGE]
IN WITNESS WHEREOF, the parties executed this Agreement the date first written above.

Stone Bridge Cellars, Inc.

By: ____________________________
Name: WILLIAM H. PHELPS
Title: Vice-President

The Napa Valley Housing Authority

By: ____________________________
Name: William Savidge
Title: Chairman

City of St. Helena

Approved as to Form:

By: ____________________________
Bonnie Long
City Manager by Bert Johansson, Acting City Manager

Diane M. Price
St. Helena City Attorney

Approved as to Form:

August 23, 2002
CERTIFICATE OF ACKNOWLEDGMENT

State of California)
County of Napa)


☑ personally known to me, OR ☐

☐ Personally known to me, OR ☑

EVELYN DEIS
Commission # 1206747
Notary Public - California
Napa County

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.

WITNESS my hand and official seal

Signature

CERTIFICATE OF ACKNOWLEDGMENT

State of __________________________ )
County of __________________________ )

On __________________________ before me, __________________________, 

personally appeared __________________________,

☑ personally known to me, OR ☐

☑ Personally known to me, OR ☐

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.

WITNESS my hand and official seal

Signature __________________________

104087XQ7011.DOC:370303
ILLEGIBLE NOTARY SEAL DECLARATION
(GC 27361.7 and CCP 2015.5)

The notary seal on the document to which this statement is attached reads as follow:

NAME OF NOTARY: Evelyne Dois
DATE COMMISSION EXPIRES: Jan 2 2003
COUNTY OF COMMISSION: Napa
COMMISSION NUMBER: 1206747

I certify (or declare) under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Today's date: 8/29/02

[Signature]
Signature of Declarant

Cortney Kallmes
Printed Name
On August 19, 2002 before me, the undersigned, City Clerk, of the City of St. Helena, personally appeared William Savidge and Bert Johansson personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

[Signature]
Delia Guijosa, City Clerk
COMMENCING in the middle of Napa River at the most Southerly corner of the 3 acre tract of land conveyed to Henry Gaver by Deed of record in Book M of Deeds at page 244, said Napa County Records; thence along the Easterly boundary of said tract, North 22-1/2° East about 3.30 chains to an angle in said boundary line; thence North 8-1/2° East 5.07 chains to a point at or near the Northeasterly corner of said 3 acre tract, and in the middle of the County Road known as the Silverado Trail; thence along the middle of said road Northwesterly about one half mile to the point where said road crosses the Northeastern boundary line of the Carne Humana Rancho; thence due East along said Rancho boundary line about 71.00 chains to the Northeast corner of the tract of land conveyed to J.O. Taplin by Deed dated September 25, 1873 of record in Book R of Deeds at page 412, said Napa County Records; thence due South along the East line of said last named tract 40.18 chains to the Southeast corner thereof; thence along the Southerly line of said tract South 77° West 125.29 feet to the Southwestern line of the Silverado Trail; thence North 61° 48' West along said Southwestern line 33.46 feet; thence South 28° 12' West 131.20 feet; thence South 38° 12' West 333.60 feet to the center of the Napa River; thence up the center of said river, in a Northwesterly direction to the point of commencement.

EXCEPTING THEREFROM, those certain 1.04 acre and 0.148 acre tracts of land described in the Deed to Charles E. Mather of record in Book 350 at page 440 of Official Records of Napa County.

ALSO EXCEPTING THEREFROM that portion described in the instrument to the County of Napa, recorded October 18, 1979 in Book 1143 at page 438 of Official Records of Napa County.

ALSO EXCEPTING THEREFROM all that portion described in the Deed from First American Title Company of Napa to Stonebridge Cellars, Inc., a Colorado corporation recorded November 3, 1988 in Book 1618 at page 570 of Official Records of Napa County.

APN 025-410-003

Said southeasterly boundary line was modified by Deeds recorded December 29, 1989 in Book 1707 at page 208 and in Book 1707 at page 210 of Official Records of Napa County.
CITY OF ST. HELENA

RESOLUTION NO. 2002-109

APPROVING A RECLAIMED WATER AGREEMENT WITH STONE BRIDGE CELLARS, INC. AND THE NAPA VALLEY HOUSING AUTHORITY

RECITALS

A. Stone Bridge Cellars, Inc. is the owner of a parcel of real property, hereafter "the Property," located in the unincorporated area of the County of Napa, California, outside the city limits of the City, adjacent to the Silverado Trail.

B. Stone Bridge is proposing to subdivide the Property and create two parcels: the "Housing Authority Parcel" and the "Phelps Parcel". After subdivision, Stone Bridge intends to convey the Housing Authority Parcel to the Housing Authority so that the Housing Authority may construct and operate a 60 bed migrant farm worker congregate farm labor camp on the Housing Authority Parcel. The Phelps Parcel will be retained for vineyard use.

C. The Housing Authority will require an estimated four (4) acre feet of groundwater each year to serve the needs of the farm labor camp on the Housing Authority Parcel.

D. The City is planning to build a tertiary wastewater treatment plant as part of a proposed upgrade of its sewer treatment plant.

E. The City has determined that the public interest in providing affordable workforce housing is furthered by the construction of the proposed farm labor camp. Therefore, once the tertiary wastewater treatment plant is built, the City is willing to provide Stone Bridge with up to four (4) acre feet of treated wastewater from the plant for the irrigation of vineyards on the Phelps Parcel to offset the estimated four (4) acre feet of groundwater the farm labor camp located on the Housing Authority Parcel will use each year, on the terms and conditions set forth in the attached Reclaimed Water Agreement.

RESOLUTION

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

The attached Reclaimed Water Agreement among the City of St. Helena; Stone Bridge Cellars, Inc.; and the Napa Valley Housing Authority is hereby approved.
Approved at a Regular Meeting of the St. Helena City Council on August 13, 2002, by the following vote:

AYES: Councilmembers Toller, Bowers, Potter, Savidge, Mayor Slavens
NOES: None
ABSENT: None
ABSTAIN: None

APPROVED:

Ken Slavens
Mayor

ATTEST:

Delia Guijosa
City Clerk