

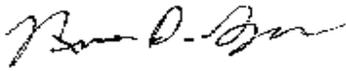
# City of Calistoga

## Staff Report

**TO:** Honorable Mayor and City Council  
**FROM:** Richard Spitler, City Manager  
**DATE:** December 16, 2014  
**SUBJECT:** Consideration of a resolution authorizing a three-year use agreement for the continued operation of the Calistoga Preschool

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APPROVAL FOR FORWARDING:




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Richard D. Spitler, City Manager

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1 **ISSUE:** Consideration of a resolution authorizing a three-year use agreement for the  
 2 continued operation of the Calistoga Preschool

3 **RECOMMENDATION:** Adopt resolution

4 **BACKGROUND:** The City Council authorized a lease of vacant public right-of-way (a  
 5 portion of the former railroad property between Eddy and Earl Streets) in 2001 to the  
 6 Napa County Office of Education (NCOE) for the purposes of establishing a preschool  
 7 facility to serve Calistoga's children. The lease was preceded by the approval of Use  
 8 Permit U 2000-5 by the Calistoga Planning Commission for the preschool.

9 NCOE has requested a three-year extension of its use of the property. According to the  
 10 attached request, over 400 preschool-age children who have attended the preschool,  
 11 primarily non-English speakers, have entered kindergarten much better prepared to  
 12 succeed in school.

13 **DISCUSSION:** The initial lease with NCOE had a five-year term that was established in  
 14 anticipation of development in the area that might necessitate the need for improvement  
 15 of this public land for parking and circulation purposes. It has been subsequently  
 16 extended several times by the City Council because such development has not yet  
 17 happened.

18 There is no anticipated need for the preschool to vacate the property in the next three  
 19 years. The proposed use agreement includes an acknowledgement that certain public  
 20 improvements may be constructed in the future within the vicinity of the property, such  
 21 as the replacement of the Washington Street sewer main and construction of the Fair  
 22 Way Extension Multi-Use Path extending over the existing drainage ditch adjacent to

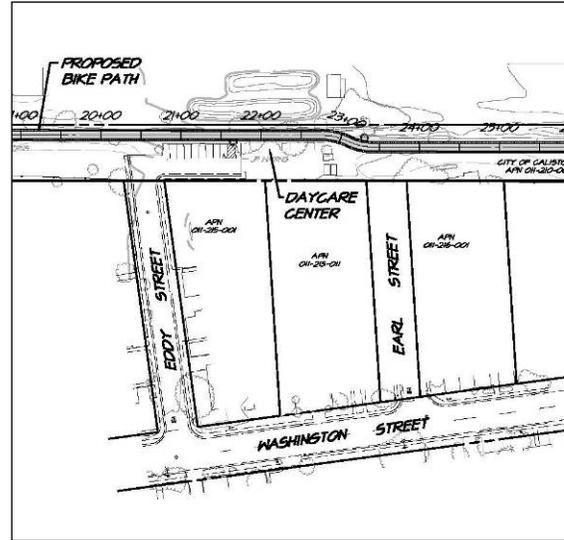
23 the property. The City will require that the  
24 project contractor for the path coordinate with  
25 Calistoga Preschool to schedule construction  
26 in the vicinity of the facility when children are  
27 not present, insofar as possible. NCOE will be  
28 responsible for constructing screening or  
29 security measures it finds desirable to address  
30 any potential impacts to the Preschool.

31 **FISCAL IMPACTS:** The terms of the  
32 agreement require that the NCOE pay the City  
33 \$1 per year for use of the property. All costs of  
34 the operation are born by NCOE.

35 **ALTERNATIVES:** The projected cost for  
36 relocating the school to another location is  
37 \$221,000, assuming that NCOE is able to locate a suitable, no-cost site.

38 **ATTACHMENTS**

- 39 1. Draft Resolution with Use Agreement attached  
40 2. NCOE extension request



RESOLUTION 2014-XXX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA, AUTHORIZING THE CITY MANAGER TO EXECUTE A USE AGREEMENT WITH THE NAPA COUNTY OFFICE OF EDUCATION FOR THE CALISTOGA PRESCHOOL

WHEREAS, In 2001, the City Council authorized the lease of unused City property to the Napa County Office of Education (NCOE) to permit the installation of a modular building to provide preschool services to Calistoga residents; and

WHEREAS, this lease has been subsequently extended several times by the City Council; and

WHEREAS, the Napa County Superintendent of Schools has requested that the NCOE be allowed to use the site for an additional three years; and

WHEREAS, the NCOE has provided an outstanding service to many families in the Calistoga area through their preschool facility and there is no anticipated need for the preschool to vacate the property in the next three years; and

WHEREAS, authorizing a use agreement will allow this beneficial service to the community to continue.

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of Calistoga hereby authorizes the City Manager to execute a 36-month use agreement with the Napa County Office of Education for use of City property for the Calistoga Preschool attached hereto as Exhibit A.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Calistoga at a meeting held this 16th day of December, 2014 by the following vote:

- AYES:
NOES:
ABSTAIN:
ABSENT:

CHRIS CANNING, Mayor

ATTEST:

KATHY FLAMSON, CITY CLERK

## **USE AGREEMENT**

This Use Agreement (the "**Agreement**") is entered into as of December 16, 2014, the Effective Date, by and between the City of Calistoga, a municipal corporation ("**City**") and the NAPA COUNTY OFFICE OF EDUCATION, a political subdivision of the State of California ("**User**") (each, a "**Party**" and collectively the "**Parties**").

### RECITALS

User desires to use the City property located within the former Southern Pacific right-of-way between Earl and Eddy Streets, depicted in the Site Plan attached hereto as Exhibit A and more particularly described in the Property Description attached hereto as Exhibit B (the "**Property**") for the purpose of providing a preschool program within the city of Calistoga and City has agreed to such use at a rate of \$1.00 (one dollar and no cents).

The parties desire to formalize their understandings regarding the use of the Property.

### TERMS

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the parties agree as follows:

1. Term. The term of this Agreement shall be for three (3) years, commencing on December 16, 2014, and terminating on December 16, 2017 (the "**Term**").
2. Payment. User covenants and agrees to pay City the sum of \$1.00 per year, with such payments sent to: City of Calistoga, 1232 Washington Street, Calistoga, CA 94515, Attention: Finance, by the first day of January each month that this Use Agreement is in effect.
3. Use of Property. User will occupy and use the Property only for the operation of a pre-school pursuant to the Use Permit U 2000-5 and conditions approved by the Calistoga Planning Commission on October 25, 2000, incorporated herein by reference.
4. Waiver and Indemnity. User hereby waives and releases City and its respective employees, officers, agents, boards, commissions, and assigns (hereinafter collectively referred to as "**Released Parties**") from any and all manner of rights, liabilities, claims, actions, causes of action, suits, proceedings, demands, damages, costs, expenses (including attorney fees and costs) or other compensation whatsoever, in law or equity, of whatever kind or nature, whether known or unknown, direct or indirect, foreseeable or unforeseeable, absolute or contingent ("**Claims**"), including without limitation any damage to User's belongings or property or for any harm, injury, or death to the User's employees, officers, agents or assigns, that User may have or which may arise in the future arising out of, directly or indirectly, or in any way connected with this Agreement or User's use of the Property, except for Claims arising out of the sole negligence or willful misconduct of City.

To the fullest extent permitted by law, User shall indemnify, defend and hold harmless the Released Parties from and against any and all Claims of any kind or nature arising out of this Agreement or User's use of the Property, except for Claims arising out of the sole negligence or willful misconduct of City.

5. Insurance. At its cost and expense, User shall maintain in full force and effect during the Term commercial general liability insurance with minimum limits of \$1,000,000 per occurrence and \$2,000,000 general aggregate for bodily injury, personal injury and property damage insuring against claims which may arise from or in connection with User's occupancy and use of the Property. Such insurance shall be endorsed to include Released Parties as additional insureds, shall be primary and noncontributory with City insurance and shall provide severability of interests between or among insureds. User shall deliver certificates of insurance evidencing such insurance prior to the first date of the Term. The insurance shall be issued by insurers licensed to do business in the state of California and which are rated A:X or better by Best's Key Rating Guide and shall be endorsed to provide at least 30 days prior notification of cancellation or material change in coverage.

6. Disclaimer of Condition of Property. City makes no warranty or representation of any kind or nature regarding the Property or the fitness of the Property for the use intended by User. User has inspected the Property, knows and accepts its condition and waives any express or implied warranty against the City.

7. Future Public Improvements within Property Vicinity. User understands that certain public improvements may be constructed in the future within the vicinity of the Property, including, but not limited to, replacement of the Washington Street sewer main and construction of the Fair Way Extension Multi-Use Path extending over the existing drainage ditch adjacent to the Property. The City will require that the project contractor for the Path will coordinate with Calistoga Preschool to schedule construction in the vicinity of the center when children are not present, insofar as possible. The User shall be responsible for constructing any screening or security measures it finds desirable to address any potential impacts to the Preschool.

8. Removal of User's Property. User understands and agrees that User is responsible for removing its belongings and personal property from the Property prior to the end of the Term or earlier termination of this Agreement. In addition, User shall repair any damage to the Property that arises out of this Agreement to the satisfaction of City and return the Property to the condition as of the Effective Date.

9. Compliance With Laws. User will comply with all applicable local, state and federal laws and regulations with respect to the terms and conditions of this Agreement, including, if applicable, the requirement to obtain a City of Calistoga business license.

10. Assignment. User may not assign this Agreement or any part of it without the prior written consent of City.

11. Amendments. This Agreement may be amended by mutual consent of City and User. Any amendment will be in writing, signed by both Parties.

12. Extension. The term of this Agreement may be amended by mutual consent of City and User. Any extension will be in writing, signed by both Parties.

13. Waivers. The waiver by either Party of any breach or violation of any term, covenant, or condition of this Agreement or of any applicable law will not be deemed to be a waiver of such term, covenant, condition or law or of any subsequent breach or violation of same or of any other term, covenant, condition or law. The acceptance by either Party of any fee or other payment which may become due under this Agreement will not be deemed to be a

waiver of any preceding breach or violation by the other Party of any term, covenant, or condition of this Agreement or any applicable law.

14. Termination. City or User may terminate this Agreement at any time upon written notice to the other Party, with such termination effective in eighteen (18) months. User will pay for use of the Property up to the effective date of the termination.

15. Notices. Any notices relating to this Agreement shall be given in writing and shall be deemed sufficiently given and served for all purposes when delivered personally, or by generally recognized overnight courier service, or five (5) days after deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, addressed as follows:

For City:

City of Calistoga  
1232 Washington Street  
Calistoga, CA 94515  
Telephone: (707) 942-2803  
Attention: City Manager

For User:

Napa County Office of Education  
2121 Imola Avenue  
Napa, CA  
Telephone: (707) 253-6810  
Attention: Napa Co. Superintendent of Schools

Either Party may change its address for purposes of this section by giving the other Party written notice of the new address in the manner set forth above.

This Agreement is executed by User and City as of the Effective Date.

**USER:**

Napa County Office of Education, a  
political subdivision of the State of California

By: \_\_\_\_\_

Name: Barbara Nemko  
Title: Napa Co. Superintendent of Schools

**CITY:**

**City of Calistoga**, a municipal corporation

By: \_\_\_\_\_

Richard Spitler, City Manager

ATTEST:

By: \_\_\_\_\_

Kathy Flamson, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_

Michelle M. Kenyon, City Attorney

EXHIBIT A

**Preschool Site Plan**

EXHIBIT A

**Preschool Legal Description**