

AMENDMENT NO. 1

Michael/David Winery, LLC  
Industrial Waste Connection Memorandum of Understanding

THIS AMENDMENT NO. 1 TO INDUSTRIAL WASTE CONNECTION MEMORANDUM OF UNDERSTANDING, is made and entered this 18 day of February, 2014, by and between the CITY OF LODI, a municipal corporation (hereinafter "CITY"), and MICHAEL/DAVID WINERY, LLC (hereinafter "WINERY").

WITNESSETH:

1. WHEREAS, WINERY and CITY entered into an Industrial Waste Connection Memorandum of Understanding (MOU) on October 18, 2006, as set forth in Exhibit A (attached).
2. WHEREAS, WINERY requested to amend said MOU to delete the time of year restriction in paragraph 2b of the MOU.
3. WHEREAS, WINERY agrees to pay treatment charges plus a 50 percent surcharge at the current rates for industrial customers based upon an annual BOD of 3,800 mg/L and a volume of 1,500,000 gallons in the amount of \$8,950.16 per year as specified in paragraph 2c of the MOU.
4. Whereas, WINERY requests to increase industrial treatment capacity to 1,500,000 gallons per year and to pay capacity charges in the amount of \$13,725.15 per year as provided for in paragraph 2c of the MOU.
5. WHEREAS, CITY agrees to the foregoing amendments to the MOU.


NOW, THEREFORE, the parties agree to amend the Industrial Waste Connection Memorandum of Understanding as set forth above.


IN WITNESS WHEREOF, CITY and WINERY have executed this Amendment No. 1 on March 3, 2014 (Feb 28)

CITY OF LODI, a municipal corporation  
Hereinabove called "CITY"

MICHAEL/DAVID WINERY, LLC  
Hereinabove called "WINERY"

By:   
D. STEPHEN SCHWABAUER  
Interim City Manager

By:   
CEO

Attest:   
RANDI JOHL-OLSON, City Clerk

Approved as to Form:

  
JANICE D. MAGDICH  
Interim Deputy City Attorney

FAX  
333 6807

**Michael/David Winery  
Industrial Waste Connection Memorandum of Understanding**

THIS AGREEMENT is entered into this 18<sup>th</sup> day of October 2006, (the "Effective Date"), between MICHAEL/DAVID WINERY, LLC ("Winery") and the CITY OF LODI, a municipal corporation organized and existing under the laws of the State of California ("City").

**RECITALS**

This Agreement is predicated upon the following findings:

A. Winery is the owner of a Wine Production Facility located at 4580 W. Highway 12, San Joaquin County, California which is outside the corporate limits of the City of Lodi. Winery intends to submit an application to truck in their Industrial effluent to the City's Industrial Waste Water Treatment Plant. ("Project")

B. As more fully detailed in Ordinance No. 1764, the City, through its general plan is committed to encouraging agricultural uses in the area surrounding the City and discouraging urban uses. Providing industrial sewer service to wineries encourages agricultural uses by making them more economical.

**NOW WHEREFORE**, the parties agree as follows:

1. **Definitions.** Unless otherwise defined in this agreement, all capitalized terms will have the definitions ascribed to them in Lodi Municipal Code Section 13.12.020.
  - a. **"Downtown Lodi"** means the area bordered by Church Street, Lodi Avenue, Union Pacific Railroad and Lockeford Street.
2. **Terms of Connection.** Any delivery of trucked effluent permitted pursuant to the Agreement shall be subject to the following minimum terms:
  - a. **Permit:** Winery shall comply with the terms of the Industrial System Discharge Permit to be issued by the City which will include but not be limited to limitations on maximum flow, BOD, ph, TDS and suspended solid concentrations and prohibitions on discharge of hazardous waste in conformance with the City's NPDES Permit. Winery will only be allowed to dispose of Industrial Waste water. No sanitary waste will be delivered to the City's Industrial Waste Water Treatment Plant.
  - b. **Volume:** The volume of trucked effluent shall not exceed 525,000 gallons between September 1 and May 31.
  - c. **Rate/Surcharge:** Winery's charge for trucked effluent will be as established by the City for Industrial Waste system customers plus a 50% surcharge at the current rates. Current annual charge based on 700,000 gallons with a BOD of 8,170 mg/L is \$3,008.00 including the surcharge.

- d. Capacity Charge: Winery shall pay a one-time capacity charge of \$16,492.00 upon delivery of the first load of trucked effluent. Additional one time capacity charges at the current City rates will apply for each increment of effluent over 700,000 gallons.
  - e. Downtown Tasting Room: Winery shall open and operate a tasting room in Downtown Lodi during the entire term of its trucked effluent disposal agreement with the City. The tasting room shall be operated within the following minimum requirements:
    - i) The wine tasting room must be established and open for business before delivery of trucked effluent.
    - ii) The tasting room shall be at least 500 square feet and have wine available for tasting and sale, wine related merchandise for sale and be open a minimum of 40 hours per week, including Saturday and Sunday.
    - iii) If Downtown Tasting Room closes, this Agreement will terminate and the City will not consider a new agreement to treat winery's effluent for 12 months from the closure date.
  - f. The agreement cannot be assigned and is only for the use of Winery.
3. Binding Effect of Agreement. Winery's obligations under paragraph two of this Agreement will only be triggered if all approvals necessary to secure that the trucked effluent disposal agreement is secured.
4. Reimbursement. Winery shall reimburse the City for all costs incurred by the City in connection with the Project. The City will provide Winery with an estimate of these costs in advance of delivery of trucked effluent. Winery shall deposit the estimate with the City within 30 days of receiving the estimate. City will bill all costs against the deposit. In the event the deposit is exceeded, Winery shall pay the difference to the City within 30 days of notice. Any excess will be refunded to Winery within 30 days.
5. Delivery. Winery shall be solely responsible for delivering the trucked effluent to Lodi's Industrial Waste Water Treatment Plant.
6. Relationship of Parties.
- a. It is understood that the contractual relationship between the City and Winery is such that Winery is an independent contractor and not the agent of the City; and nothing herein shall be construed to the contrary.
  - b. City and Winery agree that nothing contained herein or in any document executed in connection herewith shall be construed as making Winery and City joint venturers or partners.

c. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. No other person shall have any right of action based upon any provision in this Agreement.

7. No Entitlements Granted. Nothing in this Agreement shall provide Winery with any right to secure approval of any connection or other entitlement. In addition, Winery agrees that it will have no rights to: select the Environmental Review Consultant, if one is required; or direct the work, response times, recommendations or approvals of the Consultant.

8. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the principal offices of the City and Winery and its representative and Winery's successors and assigns. Notice shall be effective on the date it is delivered in person, or the date when the postal authorities indicate the mailing was delivered to the address of the receiving party indicated below:

**Notice to City:** City of Lodi  
City Manager  
221 W. Pine Street  
Lodi, CA 95240

**Notice to Winery:** Michael/David Winery, LLC  
4580 West Highway 12  
Lodi, CA 95242

9. Indemnification, Defense and Hold Harmless.

a. Winery agrees to and shall indemnify, defend and hold the City, its council members, officers, agents, employees and representatives harmless from liability for damage or claims of damage, for personal injury, including death, and claims for property damage which may arise from this agreement.

b. Winery's obligation under this section to indemnify, defend and hold harmless the City, its council members, officers, agents employees, and representatives shall not extend to liability for damage or claims for damage arising out of the sole negligence or willful act of the City, its council members, officers, agents, employees or representatives. In addition, Winery's obligation shall not extend to any award of punitive damages against the City resulting from the conduct of the City, its council members, officers, agents, employees or representatives.

c. With respect to any action challenging the validity of this Agreement or any environmental, financial or other documentation related to approval of this Agreement, Winery further agrees to defend, indemnify, hold harmless, pay all damages, costs and fees, if any incurred to either the City or plaintiff (s) filing such an action should a court award plaintiff(s)

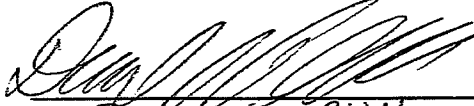
damages, costs and fees, and to provide a defense for the City in any such action.

**IN WITNESS WHEREOF** this Agreement has been executed by the parties on the day and year first above written.

CITY OF LODI, a municipal corporation

MICHAEL/DAVID WINERY, LLC

  
\_\_\_\_\_  
BLAIR KING  
City Manager

  
\_\_\_\_\_  
By: David J. Phillips  
Its: President

ATTEST:

  
\_\_\_\_\_  
for *Susan J. Blackston*  
SUSAN J. BLACKSTON  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
D. STEPHEN SCHWABAUER  
City Attorney