



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Authorizing the City Manager to Execute Amendment No. 1 to the Industrial Waste Connection Memorandum of Understanding with Jessie's Grove Winery

MEETING DATE: March 7, 2012

PREPARED BY: City Manager

RECOMMENDED ACTION: Adopt Resolution Authorizing the City Manager to execute Amendment No. 1 to the Industrial Waste Connection Memorandum of Understanding with Jessie's Grove Winery.

BACKGROUND INFORMATION: In 2006, the City Council approved a Memorandum of Understanding (MOU) with Jessie's Grove Winery to deliver trucked effluent to White Slough as if it were connected to the City's industrial wastewater system in exchange for opening a downtown wine tasting room.

The winery began trucking effluent shortly after execution of the MOU in March, 2006. On April 12, 2007, the cellardoor opened at 21 School Street, fulfilling a requirement of the MOU for a downtown tasting room.

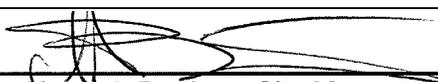
The agreement has achieved the desired results. An attractive downtown tasting room has opened. The cellardoor is achieving a reputation as an outlet for four well-known local wineries and a location for pre- and post-dinner events.

Jessie's Grove Winery is now requesting that the MOU be amended to allow them to relocate their tasting room facility from the cellardoor to the new "Olde Ice House Cellars" which is being established at 11 E. Locust Street. The amendment is necessary as the previous agreement limited the location of a Downtown tasting room to the area west of the Union Pacific Railroad, south of Lockeford Street, east of Church Street and north of Lodi Avenue. The proposed location is just east of the railroad. All other terms and conditions would continue to apply.

Staff believes the new location will provide an expanded benefit to the original concept. We would recommend that the eastern location be set at properties that have frontage on Main Street. Attached is the written request from Jessie's Grove Winery and previous MOU.


 Konradt Bartlam, City Manager

Attachments

APPROVED: 
 Konradt Bartlam, City Manager

AMENDMENT NO. 1

Jessie's Grove Winery
Industrial Waste Connection Memorandum of Understanding

THIS AMENDMENT NO. 1 to INDUSTRIAL WASTE CONNECTION MEMORANDUM OF UNDERSTANDING, is made and entered this 7th day of March, 2012, by and between the CITY OF LODI, a municipal corporation (hereinafter "CITY"), and JESSIE'S GROVE WINERY, LLC (hereinafter "Winery").

WITNESSETH:

1. WHEREAS, Winery and City entered into a Industrial Waste Connection Memorandum of Understanding ("MOU") on March 15, 2006 as set forth in Exhibit A (attached).
2. WHEREAS, Winery submitted a written request to amend said MOU as set forth in Exhibit B (attached).
3. WHEREAS, both parties desire to amend the definition of "Downtown Lodi" in said MOU as follows:

"Downtown Lodi means the area west of the Union Pacific Railroad, south of Lockeford Street, east to the properties having frontage on Main Street and north of Lodi Avenue."

IN WITNESS WHEREOF, City and Winery have executed this Amendment No. 1 on _____, 2012.

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

JESSIE'S GROVE WINERY, LLC
hereinabove called "WINERY"

KONRADT BARTLAM
City Manager

NAME:
TITLE:

Attest:

RANDI JOHL, City Clerk

Approved as to Form:

D. STEPHEN SCHWABAUER
City Attorney 

Jessie's Grove Winery
Industrial Waste Connection Memorandum of Understanding

THIS AGREEMENT is entered into this 15 day of March, 2006, (the "Effective Date"), between JESSIE'S GROVE 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 1973 West Turner Road, 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 Wastewater 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 THEREFORE, 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 240,000 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 300,000 gallons with a BOD of 8,170 mg/L is \$1,290.00 including the surcharge.

- d. Capacity Charge: Winery shall pay a one-time capacity charge of \$9,925.00 upon delivery of first load of trucked effluent. Additional one time capacity charges at the current City rates will apply for each increment of effluent over 300,000 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 the 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: Jessie's Grove Winery, LLC
1973 West Turner Road
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

JESSIE'S GROVE WIN

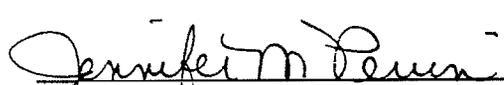


BLAIR KING
City Manager



By: Gregory L. Brown
Its: PRESIDENT

ATTEST:



for **SUSAN J. BLACKSTON**
City Clerk

APPROVED AS TO FORM:



D. STEPHEN SCHWABAUER
City Attorney



Jessie's Grove
VINEYARDS • WINERY

RECEIVED
FEB 12 2012
CITY MANAGER'S OFFICE

EXHIBIT B

To Rad Bartlam:
City Manager of Lodi

Jessie's Grove Winery would like to put a petition before the Lodi City Council. We propose to move our Downtown Tasting Room from its current location "The Cellar Door" at **21 N. School Street**, to the "Olde Ice House Cellars" located at **11 E. Locust Street**.

This will affect our current contract for our Industrial Waste Water Connection MOU permit. This permit currently defines the Cellar Door, at **21 N. School St.**, as our established location to entitle us to link our Winery's Industrial Waste Water Connection with the City of Lodi.

In our MOI agreement, there would need to be an amendment to include Main Street as part of "Downtown Lodi." The MOI is currently defined as being bordered by Church St; Lodi Ave; Union Pacific Railroad and Lockford St. Our new location would be immediately east of the Union Pacific Railroad tracks on the corner of Locust and Main St. Notably, our site on Locust and Main, is one block North of Toasted Toad Cellars - also on Main Street. To bring additional value to the eastern edge of the Downtown corridor, I would petition the Lodi City Council to consider moving the downtown line boundary - east - past Main St. and over to Stockton Street.

All other terms and conditions would be concurrent to that of our MOU.

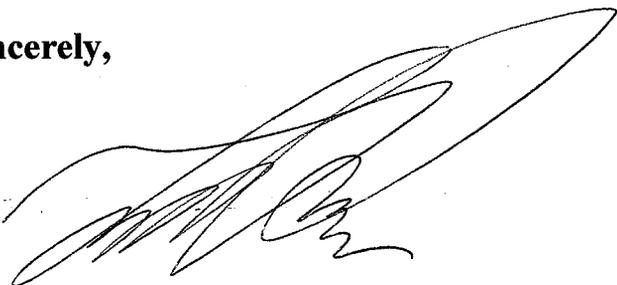
We would like to express that the Olde Ice House Cellars is soon to become the new winery production facility of Dancing Fox Winery and will house common cased wine storage and barrels for both Dancing Fox and Jessie's Grove Wineries. There will be over **14,000** sq. ft. of floor space of which **45 %** will be for barrel storage and **31 %** for case

goods storage. There will be common use spaces dedicated and most importantly to this letter – there will be **850** sq. ft. constructed for a beautiful retail Tasting Room. Jessie's Grove will be contracting the lease on this space and will soon be announcing the intent of other small wineries which wish to also be represented there.

The entire Olde Ice House Cellars project is projected for completion in April of this year.

Jessie's Grove intends to continue its partnership with the Downtown Business Group and Chamber of Commerce and to participate in all downtown winery tasting events. The revitalization of the historic Union Ice House into the "Olde Ice House Cellars" is in tune with the expansion of downtown synergy and draw of community focus.

Sincerely,

A handwritten signature in black ink, appearing to read 'Greg Burns', written in a cursive style with a large, sweeping flourish at the end.

Greg Burns
Owner/Winemaker
Jessie's Grove Winery
1973 W. Turner Rd.
Lodi, Ca **95242**

RESOLUTION NO. 2012-16

A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING CITY MANAGER TO EXECUTE
AMENDMENT NO. 1 TO MEMORANDUM OF
UNDERSTANDING WITH JESSIE'S GROVE WINERY

WHEREAS, in 2006, the City Council approved a Memorandum of Understanding (MOU) between the City of Lodi and Jessie's Grove Winery to deliver trucked effluent to White Slough as if it were connected to the City's industrial wastewater system in exchange for opening a downtown wine tasting room; and

WHEREAS, Jessie's Grove Winery has requested that the MOU be amended to allow it to relocate its tasting room facility from the Cellardoor to the new "Olde Ice House Cellars," which is being established at 11 E. Locust Street; and

WHEREAS, an amendment redefining the area where the tasting room can be located is required, as the previous agreement limited the location of a Downtown tasting room to the area west of the Union Pacific Railroad, south of Lockeford Street, east of Church Street and north of Lodi Avenue; and

WHEREAS, staff recommends that the eastern boundary be amended to include properties that front on Main Street.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute Amendment No. 1 to the Memorandum of Understanding with Jessie's Grove Winery.

Dated: March 7, 2012

I hereby certify that Resolution No. 2012-16 was passed and adopted by the City Council of the City of Lodi in a regular meeting held March 7, 2012, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Johnson, Katzakian, Nakanishi,
and Mayor Mounce

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None


RANDI JOHL
City Clerk