

**PAYMENT PLAN AGREEMENT**  
**BY AND BETWEEN**  
**THE NAPA SANITATION DISTRICT AND**  
**GUSTAVO WINE [GUSTAVO, LLC]**  
**RELATIVE TO THE PAYMENT OF SEWER SERVICE CHARGES**

This Payment Plan Agreement ("Agreement") is entered into as of \_\_\_\_\_ ("Effective Date") by and between the Napa Sanitation District ("NapaSan"), and Gustavo, LLC ("Gustavo") (collectively, the "Parties").

**RECITALS**

- A. Gustavo is located at 902 Enterprise Way, Suite P, in Napa, California ("Property").
- B. Gustavo is a Winery-Related Operation and an Industrial User, as defined by Napa Sanitation District Code Section 1.02.010.
- C. Gustavo discharged winery-related industrial waste to the sanitary sewer during calendar year 2015, 2016 and 2017. Gustavo was invoiced for discharged waste at a strength factor of 11.25, in accordance with District Code Section 5.01.061. Gustavo did not pay NapaSan any of the amount invoiced during this time period.

Now, therefore, in consideration of the mutual promises, conditions and covenants hereinafter set forth, the Parties agree as follows:

**AGREEMENT**

1. Deferred Payment of Sewer Service Charges. In consideration for Gustavo's commitments in Section 2, NapaSan hereby agrees, subject to the terms, conditions and limitations of this Agreement, to allow Gustavo's unpaid sewer service charges and associated accrued interest charges from January 1, 2015 up through April 30, 2017 to be paid over a period of time as herein specified. This Agreement shall be effective from the Effective Date until the obligations specified in Section 2.1 are fully satisfied through payment.
2. Gustavo Obligations.

2.1 Gustavo, on behalf of itself and its successors and assigns, agrees to pay for sewer service charges accumulated in 2015, 2016 and January through April 2017, and associated accrued late fees, the amount of \$5,065.42. Payments of \$211.06 shall be made monthly, over a single 23-month period at 0% annual interest, with a final payment of \$211.04 paid in the 24<sup>th</sup> month.

2.2 Gustavo agrees to make all payments within 30 calendar days of the date due. Failure to pay within the 30 days shall subject the amount due to interest payments of 1% per month.

2.3 In the event that Gustavo fails to make the payments in Section 2.1 above as scheduled, the payment schedule in Section 2.1 shall be terminated and the entire principal amount plus accrued interest to that date shall become immediately due and payable, and subject to monthly interest payments of 1% per month. In such event, Gustavo agrees that NapaSan may treat such amounts as delinquent charges and proceed as authorized under California Health and Safety Code Section 5473 *et seq.*, as may be amended from time to time, for the collection of delinquent and unpaid sewer charges, including placing unpaid charges on the property tax roll as allowed under District Code Section 5.01.075.

2.4 Gustavo understands and agrees that while these payments are being made, that additional sewer service charges shall be charged for the current discharge activities of Gustavo. During this effectiveness of this Agreement, Gustavo also agrees to pay all applicable sewer service charges imposed by NapaSan. Those current charges are due and payable upon receipt of invoice and are not subject to this Payment Plan. If Gustavo fails to pay any such sewer service charges when due, NapaSan may terminate the payment schedule in Section 2.1 and accelerate and declare the entire principal amount plus accrued interest to that date immediately due and payable, and subject to monthly interest payments of 1% per month. In the event that Gustavo makes payment to NapaSan that is insufficient to cover both the current sewer service charges and the payments due in this Payment Plan, the payment made shall first be applied to the current charge and the remainder applied to the amounts due under this Payment Plan.

2.5 During this effectiveness of this Agreement, Gustavo also agrees to pay all applicable sewer service charges imposed by NapaSan. If Gustavo fails to pay any such sewer service charges when due, NapaSan may terminate the payment schedule in Section 2.1 and accelerate and declare the entire principal amount plus accrued interest to that date immediately due and payable, and subject to monthly interest payments of 1% per month.

2.6 Gustavo agrees to enter into an Industrial User (IU) agreement with NapaSan that covers winery-related operations at the Property, within sixth (60) calendar days of the execution of this Agreement by both parties. Failure to enter into an IU agreement constitutes a material breach of this Agreement; NapaSan will interpret this action as if Gustavo failed to make payments identified in Section 2.1 and subject to the termination of the payment plan as described in Section 2.3.

3. Remedies. Upon Gustavo's failure to pay Sewer Service Charges when due or other breach of this Agreement, in addition to its other rights in this Agreement (including those specified in Section 2.3) , at law, or in equity, NapaSan may exercise any one or more of the following rights and remedies without prior demand:

a) accelerate and declare the entire unpaid Sewer Service Charges due together with all accrued interest thereon, if any, and all other sums owed to NapaSan immediately due and payable; and

b) proceed at law, or in equity, to require Gustavo to perform its obligations and covenants under this Agreement.

The remedies provided herein are cumulative and not exclusive of, and do not prejudice any other remedy provided by law.

4. No Offset; Gustavo's Waivers. Gustavo hereby waives any rights of offset they now have or may hereafter have against NapaSan, its successors and assigns, and agree to make the payments called for hereunder in accordance with the terms of this Agreement. Gustavo hereby waives diligence, presentment, protest, and demand, and notice of protest, notice of dishonor and notice of nonpayment of this Agreement, and expressly waive any rights to be released by reason of any extension of time or change in terms of payment, or change, alteration or release of any security given for the payments hereof, and expressly waive the right to plead any and all statutes of limitation as a defense to any demand on this Agreement.

5. No Waiver by NapaSan; Remedies Cumulative. No waiver of any breach, default or failure of condition under this Agreement, may be implied from NapaSan's failure or delay in declaring a default or exercising any of NapaSan's rights or remedies with respect to such breach, default or failure, or from any previous waiver of any similar or unrelated breach, default or failure. Without limiting the generality of the foregoing, NapaSan's failure to declare any amount due hereunder does not constitute a waiver of NapaSan's right to declare such sum due in the event of any subsequent event that triggers Gustavo's payment obligations hereunder. Any waiver of any term or provision of this Agreement, or any of the obligations secured thereby must be made in writing and is limited to the express written terms of such waiver. The rights and remedies of NapaSan are cumulative, and the exercise or failure to exercise one or more of such rights or remedies does not preclude the exercise of any right or remedy for the same default or any other default.

6. No Additional Rights Granted. This Agreement is not, and shall not be construed to be, an approval or an agreement to issue permits or a granting of any right or entitlement by NapaSan concerning the operation of a Winery-related Operation, or any other activity by Gustavo within the NapaSan jurisdictional boundaries. This Agreement does not, and shall not be construed to, exempt Gustavo from paying any fees for any permits, licenses or other approvals which may be required by NapaSan, and (other than the Sewer Service Charges in the Payment Plan) at the time required by NapaSan, concerning the operation of a winery-related operation or other Industrial Discharge by Gustavo. This Agreement does not, and shall not be construed to,

exempt Gustavo in any way from the requirement to obtain permits and/or other discretionary or non-discretionary approvals as may be necessary for the development, maintenance or operation of a Winery-related Operation, or any other project, development, discharge or construction by Gustavo within the NapaSan jurisdictional boundary. This Agreement does not, and shall not be construed to, exempt Gustavo from the application and/or exercise of NapaSan power of eminent domain, nor from the implementation of the NapaSan Enforcement Response Plan.

7. Subsequent Requests. This Agreement only covers the sewer service charges due to NapaSan in calendar years 2015, 2016, and through April 2017, and does not grant any right, privilege or obligation to Gustavo for any other discharge. For any subsequent discharge and associated sewer service charges that are not covered by this Agreement, Gustavo shall comply with all regulations and amounts applicable to such entitlements at the time of issuance or invoice.

8. Indemnification. Gustavo agrees to indemnify, defend and hold harmless NapaSan, its elected and appointed officials, employees, contractors and agents (collectively Indemnitees) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee which relates to or arises out of the this Agreement, or any other relationship between Gustavo and NapaSan. Gustavo's obligations under this Section shall survive the making and repayment of the Sewer Service Charges and the expiration or termination of this Agreement. Gustavo's indemnity obligations shall not apply to any costs, losses, claims, or liability caused solely by the willful misconduct or sole negligence of NapaSan, its officers, employees or agents.

9. Challenges to Amount of Sewer Service Charges. Gustavo agrees that by entering into this Agreement and accepting the Payment Plan for Sewer Service Charges as described herein, Gustavo knowingly and voluntarily waives all such rights to protest the imposition, payment of, or process used to determine the fees or charges identified in this Agreement.

10. Agreement Binding upon the Parties, Heirs, Successors and Assignees. All of the provisions, rights, terms, covenants, and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors and assignees, and representatives, whether by operation of law or in any manner whatsoever.

11. Attorneys' Fees and Costs. Should either Party bring any action or proceeding against the other that in any way relates to or arises due to the existence of this Agreement, then the prevailing party in that action or proceeding shall be entitled to recover from the other party, in addition to all other relief to which the prevailing party may be entitled, the litigation costs and attorneys' fees, in an amount to be determined by the court. The "prevailing party" shall be as determined by the court in accordance with the provisions of California Code of Civil Procedure section 1032. Recoverable litigation costs and attorneys' fees include those incurred by the prevailing party in the enforcement of any judgment or other judicial order, and during the defense of any appeal taken from such underlying judgment or other judicial order.

12. Severability. If any provision or clause of this Agreement, or any application of it to any person, firm, organization, partnership or corporation, is held invalid, such invalidity shall not

affect any other provision of this Agreement, and the Agreement shall be construed as if such provisions or clauses did not exist.

13. Modification. This Agreement shall be amended or modified only by an Agreement in writing signed by each of the Parties.

14. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

15. Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of Gustavo and NapaSan and their successors and assigns. No other person shall have any right of action based upon any provision in this Agreement.

16. Time is of the Essence. Time is of the essence in the performance of this Agreement.

17. Notices. All notices required to be delivered under this Agreement or applicable law shall be in writing and delivered in person, or sent by express mail or by United States mail, certified, postage prepaid.

Notice required to be given NapaSan shall be addressed as follows:

**NAPA SANITATION DISTRICT**  
1515 Soscol Ferry Road  
Napa, CA 94558  
Attn: Jeff Tucker, Chief Financial Officer

Notice required to be given to Gustavo shall be addressed as follows:


**GUSTAVO WINE**  
902 Enterprise Way, Suite P  
Napa, CA 94558  
Attn: Gustavo Brambila

Either Party may change the address stated herein by giving notice in writing to the other Party, and thereafter notices shall be addressed and transmitted to the new address.

**NAPA SANITATION DISTRICT**

**GUSTAVO WINE**

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

By:   
GUSTAVO BRAMBILA  
Its: 5/10/2017