

GARDEN GROVE CITY COUNCIL

RESOLUTION NO. 9201-13

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE, CALIFORNIA, APPROVING OPERATING COVENANT AGREEMENT BETWEEN THE CITY OF GARDEN GROVE AND AAA OIL, INC. DBA CALIFORNIA FUELS AND LUBRICANTS

THE CITY COUNCIL OF THE CITY OF GARDEN GROVE, CALIFORNIA, DOES HEREBY FIND AS FOLLOWS:

A. AAA Oil, Inc. dba California Fuels and Lubricants (the "Company") owns and operates a petroleum products distribution business (the "Business") in the City of Garden Grove. The Company's Business is one of the ten largest sales tax generators in the City and generates similar amounts of sales tax revenue as some of the automobile dealers in the City.

B. The Company has advised the City that it intends to make a substantial investment in additional trucks, tanks, and other equipment for the Business and to expand the scope of the Business's operations, and desires to continue to locate and operate its expanded Business in the City.

C. The City and the Company propose to enter into that certain Operating Covenant Agreement attached hereto at Exhibit "A" (the "Agreement"). Pursuant to the proposed Agreement, the Company would agree to be bound by certain operating covenants and restrictive covenants with respect to the Business and the real property on which the Business is located (the "Site"), including, but not limited to, (i) committing to invest no less than two million dollars (\$2,000,000) in the Business; (ii) continuously operating the Business on the Site and designating the Site as the point of sale for all of the Business's sales until at least June 30, 2025; (iii) timely paying all taxes; (iv) maintaining the Site in accordance with specified standards; and (v) complying with all applicable laws and other governmental requirements. In consideration for Company's agreement to be bound by such operating covenants and restrictive covenants, and of the additional sales tax revenues to be paid by the Company for the benefit of the City, which the City would not otherwise realize, the City would agree to make certain Covenants Consideration payments to the Company in amounts measured by the incremental additional sales tax revenues generated by the Company's expanded Business over a period of up to ten (10) years. The total Covenants Consideration would be capped at a maximum of two million dollars (\$2,000,000). The Company would be prohibited from allocating or using any Covenants Consideration paid to the Company under the Agreement for construction and/or development on the Site.

D. The Company has represented to the City that the Company's planned capital investment in, and expansion of, the Company's Business would not be feasible without the Covenants Consideration to be paid by the City pursuant to the Agreement, and that the Company anticipates and expects that such Covenants

Consideration payments foreseeably would result in benefits to the Company in an amount commensurate with their value at the time of each payment.

E. The Company and the City anticipate that Company's expanded Business, as operated in accordance with the Agreement, would generate additional sales tax revenues to the City and create significant employment opportunities and other tangible and intangible benefits to the City.

F. The City Council has duly considered the terms of the proposed Agreement, the value of the assistance to be provided by the City pursuant to the Agreement, the benefits the City will derive from the Agreement, the report of City Staff, and other evidence and testimony provided at the August 13, 2013, City Council meeting.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GARDEN GROVE, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. The City Council hereby makes the following findings:

- A. The Company's significant capital investment to expand the Business, the conduct and operation of the expanded Business on the Site, the imposition of the operating covenants and restrictive covenants upon the Business and the Site, and the City's payment of the Covenant Consideration in accordance with the proposed Operating Covenant Agreement constitute valid public purposes under Article XVI, Section 6 of the California Constitution as necessary for the economic enhancement of the City and to contribute to the City's general fund that supports services for the health, safety and welfare of the residents of the City.
- B. The proposed Agreement is in the vital and best interest of the City and the welfare of its residents and is in accordance with the public purposes and provisions of applicable state and local laws. Without limiting the foregoing, the Company's expanded Business, as operated in accordance with the Agreement, will generate additional sales tax revenues to the City, will create significant employment opportunities for residents of the City, will ensure proper maintenance of the Site, and will provide other tangible and intangible benefits to the City.
- C. The purpose and intention of the City in paying the Covenant Consideration pursuant to the Agreement is solely to induce the Company to make a significant capital investment in order to expand its Business within the City, and to continue to locate and operate the expanded Business on the Site until at least June 30, 2025, so as to increase the amount of sales tax revenues generated in the City, to

further the continued maintenance of the Site and the well-being of the citizens at large, and to increase local employment opportunities.

- D. The Company's planned capital investment in the Business and planned expansion of the Company's Business within the City would not be feasible without the Covenants Consideration to be paid by the City pursuant to the Agreement.
- E. The benefits provided by the continued operation of the Company's Business on the Site in accordance with the Agreement will result in substantially more benefits to the City than the costs to the City of providing the Covenants Consideration provided for in the Agreement.
- F. The Covenants Consideration to be paid by the City pursuant to the Agreement foreseeably will result in benefits to the Company in an amount commensurate with its value at the time of each payment, and the total aggregate amount of the Covenants Consideration payments to be made by the City pursuant to the Agreement will not exceed the minimum amount the Company is required to invest in trucks, tanks, and equipment to expand its Business within the City pursuant to the Agreement.
- G. The amount of each payment required to be made by the City under the Agreement is a fair exchange for the consideration actually furnished pursuant to the Agreement by the Company during each fiscal year of the City in which payment is made; each payment to be made by the City under the Agreement has been calculated so that it will not exceed the resources available to make such payment; and in no event shall the City be immediately indebted to Developer for the aggregate payments provided for pursuant to the Agreement.
- H. The Agreement does not include or require any activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. The Agreement does not require any change or significant intensification in land use or density and prohibits the Company from allocating or use using any Covenant Consideration paid by the City pursuant to the Agreement for construction and/or development on the Site. The Company is not required to secure any other discretionary government approvals pursuant to the Agreement that would trigger California Environmental Quality Act (CEQA) review. Therefore, in light of the whole record, it can be seen with certainty that the project has no potential to cause a significant effect on the environment. As such, the City Council finds that approval of the

Agreement is exempt from the provisions of CEQA pursuant to CEQA Guidelines Section 15061(b)(3).

SECTION 2. The Operating Covenant Agreement between the City of Garden Grove and AAA Oil, Inc., attached hereto at Exhibit "A", is hereby approved.

SECTION 3. The City Manager is hereby authorized to execute the Agreement, the Memorandum of Agreement, and any other related attachments, including any minor modifications as appropriate, and any other pertinent documents necessary to effectuate and/or implement the Agreement.

SECTION 4. The City Manager (or his/her duly authorized representative) is further authorized to implement the Agreement and take all further actions and execute all documents referenced therein and/or necessary and appropriate to carry out the Agreement. The City Manager (or his/her duly authorized representative) is hereby authorized to the extent necessary during the implementation of the Agreement to make technical or minor changes thereto after execution, as necessary to properly implement and carry out the Agreement, provided the changes shall not in any manner materially affect the rights and obligations of the City.

SECTION 5. The City Clerk shall certify to the adoption of this Resolution.

Adopted this 13<sup>th</sup> day of August 2013.

ATTEST:

/s/ BRUCE A. BROADWATER  
MAYOR

/s/ KATHLEEN BAILOR, CMC  
CITY CLERK

STATE OF CALIFORNIA    )  
COUNTY OF ORANGE    ) SS:  
CITY OF GARDEN GROVE )

I, KATHLEEN BAILOR, City Clerk of the City of Garden Grove, do hereby certify that the foregoing Resolution was duly adopted by the City Council of the City of Garden Grove, California, at a meeting held on the 13<sup>th</sup> day of August 2013, by the following vote:

AYES:    COUNCIL MEMBERS:   (5) BEARD, JONES, NGUYEN, PHAN, BROADWATER  
NOES:    COUNCIL MEMBERS:   (0) NONE  
ABSENT: COUNCIL MEMBERS:   (0) NONE

/s/ KATHLEEN BAILOR, CMC  
CITY CLERK

Recorded in Official Records, Orange County  
Hugh Nguyen, Clerk-Recorder



MEMORANDUM

2013000536943 1:26 pm 09/16/13  
63 405 M10 F13 8  
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RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Garden Grove  
11222 Acacia Parkway  
Garden Grove, California 92840  
Attention: City Clerk

This document is exempt from the payment of a recording fee pursuant to Government Code Sections 6103 and 27383.

MEMORANDUM OF AGREEMENT

This **MEMORANDUM OF AGREEMENT** (the "Memorandum") is entered into as of August 13, 2013 by and between the **CITY OF GARDEN GROVE**, a municipal corporation (the "City"), **AAA OIL, INC., dba California Fuels and Lubricants**, a California corporation ("Company"), and **JAIME DUENAS**, an individual, and **ROGELIO DUENAS**, an individual (collectively, the "Owners of the Site").

RECITALS

A. The Owners of the Site are the fee simple owners of that certain real property located at 11621 and 11671 Westminster Avenue in the City of Garden Grove (the "Site"). The Site is commonly known as Assessors Parcel Number 100-130-38, and is more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference.

B. The Company owns and operates a petroleum products distribution business (the "Business") on the Site, and has a leasehold interest in the Site pursuant to a lease agreement between the Company and the Owners of the Site.

C. The City and the Company have entered into that certain Operating Covenant Agreement, dated August 13, 2013 (the "Agreement"), pursuant to which, in exchange for certain Covenants Consideration to be paid by the City, the Company is required to comply with certain specified Covenants affecting the Site for the duration of the Operating Period (which includes the period through and including June 30, 2025). The Owners of the Site have expressly consented to entry into the Agreement by the Company and to execution and recordation of this Memorandum. A copy of the Agreement, as it may be amended from time to time, is available for review at the Office of the City Clerk of the City.

D. City, Company, and the Owners of the Site desire to execute this Memorandum to provide notice of the existence of the Agreement and all rights and obligations under the Agreement to all appropriately interested persons, including without limitation any and all future

owners and/or lessees of the Site or any part thereof or any interest therein, and this Memorandum in no way modifies the provisions of the Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City, the Company, and the Owners of the Site hereby agree and confirm as follows:

1. Definitions. All capitalized words used herein, unless otherwise defined, shall have the meanings ascribed to them in the Agreement.

2. Effect of Agreement. The Agreement imposes certain Covenants on Company, which pertain to or affect the Site, and which are intended to be equitable servitudes running with the Site for the benefit of, and enforceable by, the City, and binding on upon all persons having any right, title or interest in the Site, or any part thereof, and their heirs, successors, and assigns, as further set forth below, including without limitation the following:

a. Investment to Expand Business. As more specifically set forth in Section 4 of the Agreement, Company is required to invest no less than Two Million Dollars (\$2,000,000) of its own funds on additional trucks, tanks, and/or other equipment for purposes of expanding the Business on the Site.

b. Operating Covenant; Continuous Operation. As more specifically set forth in Section 4 of the Agreement, Company is required to continuously conduct and operate, or cause to be conducted and operated, the Required Operations on the Site during the entire Operating Period (which means the period commencing on the Date of this Agreement and continuing until and expiring on June 30, 2025). "Required Operations" means, collectively, the following on and with respect to the Site: (i) Company retaining and continuing to own a leasehold and/or ownership interest in all or such lesser portion of the Site sufficient to allow the Business to be conducted; (ii) Company's operation of the Business on the Site; and (iii) Company not transferring or otherwise relocating all or any portion of the retail sales operation or the point of sale as reported to the SBE for the Business to another facility or location outside of the City. Failure of Company to continuously conduct and operate, or cause to be conducted and operated, the Required Operations on the Site during the entire Operating Period shall entitle City to terminate the Agreement and demand repayment by Company of all previously paid Covenants Consideration in accordance with Subsection 6.b. of the Agreement.

c. Designation of Site as Point of Sale. As more specifically set forth in Section 4 of the Agreement, at all times during the Operating Period, Company is required to designate the Site as the point of sale for Sales Tax purposes in all Business and related sales.

d. Payment of Taxes. As more specifically set forth in Section 4 of the Agreement, Company is required to pay or cause to be paid any and all taxes applicable to or arising out of Company's operation of the Business and ownership, lease, operation and/or use of the Site and/or equipment and facilities on the Site (including, without limitation, all taxes attributable to sales occurring on the Site), except Company retains its right to protest and contest County of Orange decisions related to the value of its interest in the Site and/or SBE decisions related to the

amount of Sales Tax due; and Company is required to make or cause to be made timely Sales Tax payments to the SBE.

e. Maintenance of Site. As more specifically set forth in Section 4 of the Agreement, during the Operating Period, Company is required, at no cost to the City, to keep and maintain, or cause to be kept and maintained, the Site, including all landscaping on the Site and all facilities and equipment pertaining to the Business that are located on the Site, in a first class condition, free from accumulation of debris, weeds, graffiti and waste materials, in good order and repair, and in a safe condition.

f. Compliance With Governmental Requirements. As more specifically set forth in Section 4 of the Agreement, subject to Company's right to contest the same, Company is required to, at all times, comply with all applicable laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the State of California, the County of Orange, the City or any other political subdivision in which the Site is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over the City, the Company, or the Site, including all applicable federal, state and local occupation, safety and health laws, rules, regulations and standards, applicable federal and state labor standards, applicable prevailing wage requirements, the City zoning and development, building, plumbing, mechanical and electrical codes, and all other provisions of the City of Garden Grove and its Municipal Code, and all applicable disabled and handicapped access requirements, including, without the limitation, the Americans With Disability Act, 42 U.S.C. §12101 et seq., Government Code §4450 et seq., and the Unruh Civil Rights Act, Civil Code §51 et seq. ("Governmental Requirements").

3. Agreement and Memorandum Run with the Site. The Site and Company's interest therein shall be held, sold, conveyed, hypothecated, encumbered, used, occupied, leased and improved subject to the Covenants set forth in the Agreement and the provisions of this Memorandum, which are intended to be covenants running with the land and enforceable by the City, and its successors and assigns, as equitable servitudes against the Site for the benefit of the City, and binding on upon all persons having any right, title or interest in the Site, or any part thereof, and their heirs, successors, and assigns. All covenants, without regard to technical classification or designation shall be binding for the benefit of City and such covenants shall run in favor of City for the entire period during which such covenants shall be in force and effect, without regard to whether City is or remains an owner of any land or interest therein to which such covenants relate.

4. Provisions. To the extent of any inconsistency between the Agreement and this Memorandum, the Agreement shall control.

5. Successors and Assigns. This Memorandum shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

6. Governing Law. This Memorandum shall be governed in accordance with the laws of the State of California.

7. Recordation. City, Company, and the Owners of the Site hereby confirm and acknowledge that this Memorandum shall be recorded in the Official Records of Orange County, California, following execution.

8. Counterparts. This Memorandum may be executed in counterparts, each of which shall be deemed an original and which together shall constitute a single agreement.

IN WITNESS WHEREOF, the City, the Company, and the Owners of the Site have executed this Memorandum as of the date first written above.

*[SIGNATURES FOLLOW ON NEXT PAGE]*



IN WITNESS WHEREOF, the undersigned have executed this Memorandum of Agreement on the respective dates set forth below.

**CITY:**

**CITY OF GARDEN GROVE**, a municipal corporation

Dated: Aug 22, 2013

By: Matthew J. Fertal  
Matthew J. Fertal  
City Manager

**ATTEST:**

Kathleen Bailer  
City Clerk

**APPROVED AS TO FORM:**

Thomas F. Nixon  
Thomas F. Nixon  
City Attorney

**COMPANY**

**AAA OIL, INC.**, a California corporation

Dated: August 6th, 2013

By: Jaime Duenas  
Jaime Duenas  
President

By: Efrain Davalos, Jr.  
Efrain Davalos, Jr.,  
Secretary

**OWNERS OF THE SITE**

**JAIME DUENAS**, an individual, and  
**ROGELIO DUENAS**, an individual

Dated: August 6th, 2013

By: Jaime Duenas  
Jaime Duenas

Dated: August 6th, 2013

By: Rogelio Duenas  
Rogelio Duenas

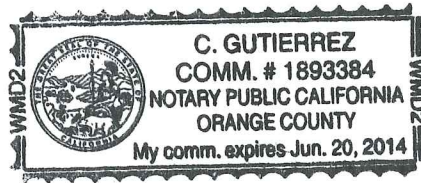
STATE OF CALIFORNIA )  
 )  
COUNTY OF ORANGE ) SS.

On August 6th, 2013 before me, C. Gutierrez, Notary Public, personally appeared Jaime Ouevas, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

[Signature]  
SIGNATURE OF NOTARY PUBLIC



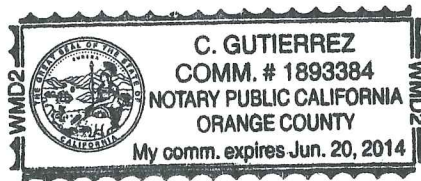
STATE OF CALIFORNIA )  
 )  
COUNTY OF ORANGE ) SS.

On August 6th, 2013 before me, C. Gutierrez, Notary Public, personally appeared Efrain Davalos Jr., who proved to me on the basis of satisfactory evidence to be the person(s) whose names(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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

[Signature]  
SIGNATURE OF NOTARY PUBLIC

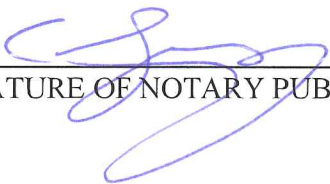


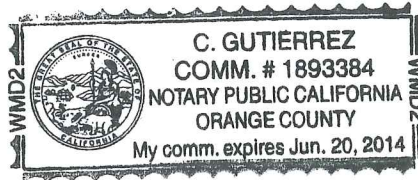
STATE OF CALIFORNIA )  
 )  
COUNTY OF ORANGE ) SS.

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WITNESS my hand and official seal

  
SIGNATURE OF NOTARY PUBLIC

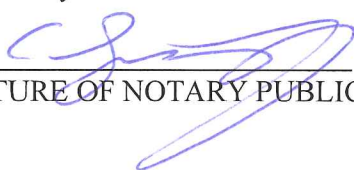


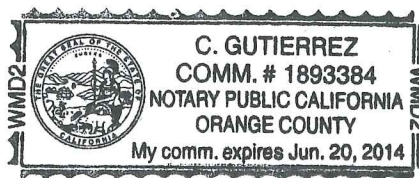
STATE OF CALIFORNIA )  
 )  
COUNTY OF ORANGE ) SS.

On August 6th, 2013 before me, C. Gutierrez, Notary Public, personally appeared Rosalia Duenas, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

  
SIGNATURE OF NOTARY PUBLIC



**EXHIBIT "A"**

**LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTH LINE OF SECTION 4, TOWNSHIP 5 SOUTH, RANGE 10 WEST, IN THE RANCHO LAS BOLSAS, AS SHOWN ON A MAP RECORDED IN BOOK 51, PAGE 12 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, DISTANT THEREON NORTH 89 DEG. 14R45" EAST 351 FEET FROM THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION AND RUNNING THENCE NORTH 0 DEG. 49' 15" WEST PARALLEL WITH THE WEST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 4, 495 FEET; THENCE EASTERLY PARALLEL WITH THE SOUTH LINE OF SAID SECTION 4, 529 FEET, MORE OR LESS, TO THE EASTERLY LINE OF THE WEST 20 ACRES, OF THE SOUTH 30 ACRES OF THE SOUTH WEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION; THENCE SOUTHERLY ALONG SAID EASTERLY LINE 495 FEET TO THE SOUTH LINE OF SAID SECTION; THENCE WESTERLY ALONG SAID SOUTH LINE 529 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THE WEST 320 FEET.

APN: **100-130-38**