

GARDEN GROVE CITY COUNCIL

RESOLUTION NO. 9338-16

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE, CALIFORNIA, APPROVING AMENDED AND RESTATED 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 and is one of the City's largest sales tax generators.

B. On or about August 13, 2013, the City and the Company entered into that certain Operating Covenant Agreement (the "Original Agreement"). Pursuant to the Original Agreement, the Company agreed 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, the City agreed to make certain Covenants Consideration payments to the Company over a period of up to ten (10) years, up to a maximum of two million dollars (\$2,000,000).

City recognizes that retention of the Business will continue to contribute to the economic vitality of the City, continue to provide additional jobs in the City, continue to expand the City's tax base, and otherwise improve economic and physical conditions in the City.

C. In order to ensure retention of the Business in Garden Grove for the long term, to facilitate the retention and expansion of jobs in the City, to allow CFL to gain competitiveness within the fuel provision industry, and to incentivize CFL to make significant additional capital investments to expand its Business in the City, the City and the Company desire to amend and restate the Original Agreement to provide for an additional capital investment in the Business by the Company, to extend the length of the Covenants Consideration Accrual Period and Operating Period, and to revise the method of calculating the Covenants Consideration. Accordingly, the City and the Company propose to enter into that certain Amended and Restated Operating Covenant Agreement attached hereto at Exhibit "A" (the "Agreement"). Pursuant to the proposed Agreement, the Company would agree to

be bound by certain expanded operating covenants and restrictive covenants with respect to the Business and the Site, including, but not limited to, (i) committing to invest no less than an additional eight million dollars (\$8,000,000) to expand the Business in Garden Grove; (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, 2036, and agreeing not to solicit or accept economic incentives from other public or private entities to relocate the Business outside of the City during this period; (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 amount of sales tax revenues generated by the Company's Business from March 1, 2016 through June 30, 2036, in accordance with the following structure:

Portion of Annual Sales Tax Revenues Generated by Business	Percentage Retained by City	Percentage Payable to Company
First \$200,000	100%	0%
Next \$1,800,000	30%	70%
Next \$1,000,000	40%	60%
Next \$2,000,000	50%	50%
Next \$2,000,000	45%	55%
Amount in Excess of \$7,000,000	35%	65%

The Company would be prohibited from allocating or using any Covenants Consideration paid to Company under the Agreement for construction and/or development on the Site.

D. The Company has represented to the City that the proposed additional 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, ensure the long-term maintenance of the Site in a first-class condition, and create significant employment opportunities and other tangible and intangible benefits to the City.

F. The City retained Tierra West Advisors, Inc. to review, analyze, and prepare an economic analysis of the Agreement in accordance with Government Code 53083. A copy of the report prepared by Tierra West Advisors, Inc. (the "Summary Report") is attached hereto as Exhibit "B" and was made available to the public and on the City's website prior to January 26, 2016 Public Hearing. The Summary Report describes the Company, describes the start and end dates for the economic development subsidy under the Agreement, describes the economic development subsidy called for under the Agreement, including the estimated total amount of the expenditure of public funds as a result of the economic development study, includes a statement of the public purposes for the economic development subsidy under the Agreement, contains an estimate of the projected tax revenue to the City as a result of the economic development subsidy, and contains an estimate of the number of jobs that will be created by the economic development subsidy under the Agreement. The Summary Report concludes that, over the more than 20-year term of the Agreement, it is estimated that the Company will receive an approximately \$6.6 million total subsidy, that the City will receive approximately \$6.9 million in sales tax revenues attributable to the Company's Business, and that approximately 130 to 235 new jobs will be created in Garden Grove as a result of the Agreement.

G. Prior to approval of the Agreement, the City made the information required by Government Code Section 53083(a) available in written form and on the City's website.

H. On January 26, 2016, the City Council held a notice public hearing regarding the Agreement and the City's obligations thereunder to pay the Covenants Consideration as required by Government Code Section 53083(b).

I. The City Council has duly considered the terms of the proposed Agreement, the Summary Report prepared Tierra West Advisors, Inc., the value of the assistance to 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 January 26, 2016 Public Hearing.

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 recitals set forth above are true and correct and are incorporated herein by reference.
- B. 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.
- C. 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.
- D. The purpose and intention of the City in paying the Covenant Consideration pursuant to the Agreement is solely to induce 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, 2036, 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.
- E. 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.
- F. 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.

- G. 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 is not anticipated to exceed the minimum additional amount the Company is required to invest to expand the Business within the City pursuant to the Agreement.
- H. 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 Company for the aggregate payments provided for pursuant to the Agreement.
- I. 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 Amended and Restated 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 26th day of January 2016.

ATTEST:

/s/ BAO NGUYEN
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 26th day of January 2016, by the following vote:

AYES: COUNCIL MEMBERS: (3) BEARD, PHAN, NGUYEN
NOES: COUNCIL MEMBERS: (0) NONE
ABSENT: COUNCIL MEMBERS: (2) BUI, JONES

/s/ KATHLEEN BAILOR, CMC
CITY CLERK

Exhibit "A"

Amended and Restated Operating Covenant Agreement

AMENDED AND RESTATED OPERATING COVENANT AGREEMENT

This Amended and Restated Operating Covenant Agreement ("Agreement"), dated for purposes of identification only as of January 26, 2016, is made and entered into by and between the CITY OF GARDEN GROVE, a California municipal corporation (the "City"), and AAA OIL, INC., dba California Fuels and Lubricants, a California corporation ("Company"). City and Company are sometimes referred to in this Agreement collectively as "Parties," and individually as a "Party."

RECITALS

A. Company is the lessee of a portion of that certain real property located at 11621 and 11671 Westminster Avenue in the City of Garden Grove and more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Site"), on which Company currently operates a petroleum products distribution business (the "Business") and which is the current point of sale for the Business for purposes of the Bradley Burns Uniform Local Sales and Use Tax Law (the "Sales and Use Tax Law"). Company's Business is one of the largest sales tax generators in the City. The Site is owned by Duenas Management, LLC (the "Owner of the Site"). During the Operating Period hereunder, Company and/or Owner may purchase additional or alternate property within the City of Garden Grove to be the Company's point of sale for purposes of the Sales and Use Tax Law for the Business. In such event, the "Site" hereunder shall mean and refer to such additional or alternative property upon satisfaction of each of the following conditions precedent: (1) commencement of fee title ownership of such additional or alternative property within the City of Garden Grove by Company and/or Owner; (2) designation of the property as the point of sale for purposes of the Sales and Use Tax Law for the Business; and (3) recordation against the property of a memorandum of agreement in accordance with Section 31 of this Agreement.

B. City and Company are parties to that certain Operating Covenant Agreement, dated as of August 13, 2013 (the "Original Agreement") whereby Company has agreed to make capital investments to expand its Business and to continue to locate and operate its Business on the Site during the operating period described in the Original Agreement. City recognizes that retention of the Business will continue to contribute to the economic vitality of the City, continue to provide additional jobs in the City, continue to expand the City's tax base, and otherwise improve economic and physical conditions in the City. Through this Agreement, the Parties desire to amend and restate the Original Agreement to provide for an additional capital investment in the Business by the Company, to extend the length of the Covenants Consideration Accrual Period and Operating Period, and to revise the method of calculating the Covenants Consideration.

C. Pursuant to the Original Agreement, Company agreed to invest over two million dollars (\$2,000,000) in additional trucks, tanks, and other equipment for the Business and to expand the scope of the Business's operations. In order to further expand the Business's operations, Company intends to invest at least eight million dollars (\$8,000,000) in the Business in addition to the commitment made in the Original Agreement. Company and City anticipate that Company's expanded Business, as operated in accordance with this Agreement, will

generate additional Sales Tax Revenues and will also create significant employment opportunities and other tangible and intangible benefits to the City.

D. The City has determined that the imposition of certain operating covenants and restrictive covenants with respect to the Business and the Site constitutes a valid public purpose, and therefore the City desires to obtain such operating covenants and restrictive covenants with respect to the Business and the Site and, subject to the terms hereof, Company is willing to enter into and be bound by such operating covenants and restrictive covenants.

E. 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, and in order to induce the Company to retain the Business in Garden Grove, the City has agreed to make certain payments to the Company (referred to herein as "Covenants Consideration") through June 30, 2036. The City and the Company agree the amount of each payment required to be made by the City hereunder is a fair exchange for the consideration actually furnished pursuant to this Agreement by Company during each fiscal year of the City in which payment is made, that each payment to be made by the City hereunder has been calculated so that it will not exceed the resources available to make such payment, and further that in no event shall the City be immediately indebted to Company for the aggregate payments herein provided.

F. The purpose and intention of the City in paying the Covenant Consideration is solely to induce Company to make the above-described 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, 2036, so as to increase the amount of Local 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.

G. The Covenants Consideration to be paid by the City is solely the result of arms-length negotiations by and between the City and the Company, and apart from such negotiations and this Agreement, which is the result thereof, is not otherwise required to be provided.

H. The Company anticipates and expects that the Covenants Consideration to be paid by the City pursuant hereto foreseeably will result in benefits to the Company in an amount commensurate with its value at the time of each payment.

AGREEMENT

1. Definitions. Capitalized terms within this Agreement shall have the meanings set forth below, or if not defined in this Section 1, shall have the meaning ascribed thereto when such terms are first used herein:

a. **Additional Capital Investment.** "Additional Capital Investment" means the purchase or lease of additional trucks, tanks, equipment, and/or other depreciable assets used in operation of the Business and/or additional real estate required for expansion of the Business. For purposes of this definition, the amount of Additional Capital Investment attributable to an operating lease for an asset shall be the net present value of the lease payments under said lease.

- b. Agreement Approvals. "Agreement Approvals" is defined in Section 7.
- c. Annual Covenants Consideration Amount. "Annual Covenants Consideration Amount" is defined in Section 5.
- d. Books and Records. "Books and Records" is defined in Section 4.
- e. Breach. "Breach" is defined in Section 6.
- f. Business. "Business" refers to the operation on the Site of a facility for the sale and distribution of petroleum products and products ancillary to the sale and distribution of petroleum products that generate Sales Tax Revenues.
- g. City. "City" means the City of Garden Grove, California, a municipal corporation.
- h. City Indemnitees. "City Indemnitees" means the City and its elected and appointed officials, officers, employees, representatives, agents, consultants, attorneys, volunteers, successors and assigns.
- i. Company. "Company" means AAA Oil, Inc., dba California Fuels & Lubricants, a California Corporation, and any other corporation, limited liability company, partnership, or sole proprietorship that engages in the sale and/or distribution of petroleum products or of products ancillary to the sale and distribution of petroleum products, and (i) which is owned and/or controlled by either or both Jaime Duenas or Efrain Davalos, Jr., or their successors or assigns, (ii) which purchases a controlling interest in, or merges with, the Company, or (iii) which operates on the Site.
- j. Covenants. "Covenants" means the covenants, obligations, and promises of the Company set forth in this Agreement.
- k. Covenants Consideration. "Covenants Consideration" means the amount paid by City pursuant to Section 5.
- l. Covenants Consideration Accrual Period. "Covenants Consideration Accrual Period" means the period commencing on the Effective Date and continuing until and expiring on June 30, 2036 or upon the earlier termination of this Agreement.
- m. Default. "Default" is defined in Section 6.
- n. Effective Date. The "Effective Date" shall mean and refer to March 1, 2016.
- o. Enforced Delay. "Enforced Delay" is defined in Section 17.
- p. Environmental Claims. "Environmental Claims" mean any claims by third parties for personal injury (including sickness, disease or death), or for injury to property or natural resources or the environment, including, without limitation, lost profits, consequential

damages, diminution of property value or loss of use of property, or for any violation or alleged violation of, or noncompliance with, the requirements of any Environmental Law.

q. Environmental Cleanup Liability. "Environmental Cleanup Liability" means any cost or expense incurred to investigate, monitor, remove, remediate, treat, clean up, abate or otherwise respond to any release or threatened release of Hazardous Materials, including, without limitation, the cost of obtaining site closure from applicable governmental agencies and the cost of restoring the affected property upon completion of responsive action.

r. Environmental Compliance Costs. "Environmental Compliance Costs" mean any cost or expense necessary to enable the affected property to comply with all applicable Environmental Laws.

s. Environmental Law. "Environmental Law" shall mean any applicable federal, California, regional or local law, statute, ordinance, rule, regulation or order for the protection of human health or the environment, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601, et seq.); the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 et seq.); the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.); the Clean Air Act (42 U.S.C. § 7401 et seq.); the Safe Drinking Water Act (42 U.S.C. § 300f et seq.); the Emergency Planning and Community Right To Know Act of 1986 (42 U.S.C. § 11001 et seq.); the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.); the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 et seq.); the Hazardous Materials Transportation Act (49 U.S.C. § 5101 et seq.); the Carpenter Presley Tanner Hazardous Substance Account Act (Health and Safety Code § 25300 et seq.); the Hazardous Waste Control Law (Health and Safety Code § 25100 et seq.); the Hazardous Waste Disposal Land Use law (Health and Safety Code § 25220 et seq.); the Porter Cologne Water Quality Control Act (Water Code § 13000 et seq.); Hazardous Materials Release Response Plans and Inventory (Health and Safety Code § 25500 et seq.); Underground Storage of Hazardous Substances (Health and Safety § 25280 et seq.); The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) (Health and Safety Code § 25249.5 25249.13); the Asbestos Notification Law (Health and Safety Code § 25915 et seq.); the California Occupational Safety and Health Act (Labor Code § 6300 et seq.); Chapters 10 and 11, Division 4.5, Title 22, California Code of Regulations; and any law or regulation implementing, amending or succeeding any of the foregoing, and any similar laws or regulations at any time in effect having any of the purposes designated above.

t. Fiscal Year. "Fiscal Year" means each one year period commencing July 1 and ending June 30 during the Covenants Consideration Accrual Period.

u. Governmental Requirements. "Governmental Requirements" is defined in Section 4.

v. Hazardous Materials. "Hazardous Materials" mean any pollutant, contaminant, hazardous or toxic substance, material or waste which is or becomes identified, listed or regulated as such under any Environmental Law by the United States government, the State of California or any regional or local governmental authority having jurisdiction over the Property.

- w. Notice of Default. "Notice of Default" is defined in Section 6.
- x. Operating Period. "Operating Period" means the period commencing on the Effective Date and continuing until and expiring on June 30, 2036 or upon earlier termination of this Agreement.
- y. Owner of the Site. "Owner of the Site" means Duenas Management, LLC and each of its successors in interest to all or any portion of the Site.
- z. Overpayments. "Overpayments" is defined in Section 5.
- aa. Prior Payments. "Prior Payments" is defined in Section 6.
- bb. Quarter. "Quarter" means any three (3) month period commencing on January 1, April 1, July 1, and October 1.
- cc. Quarterly Covenants Consideration Amount. "Quarterly Covenants Consideration Amount" is defined in Section 5.
- dd. Quarterly Payment. "Quarterly Payment" is defined in Section 5.
- ee. Required Operations. "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.
- ff. Sales and Use Tax Law. "Sales and Use Tax Law" means the Bradley Burns Uniform Local Sales and Use Tax Law, commencing with Section 7200 of the Revenue and Taxation Code of the State of California, as amended, or its equivalent.
- gg. Sales Tax. "Sales Tax" means all sales and use taxes levied under the authority of the Sales and Use Tax Law, excluding any Sales Tax that is to be refunded to Company because of an overpayment of Sales Tax.
- hh. Sales Tax Revenues. "Sales Tax Revenues" means that portion of the Sales Tax, if any, paid by Company upon taxable sales and uses attributable to the operations of the Company and allocated and paid to the City pursuant to the Sales and Use Tax Law. "Sales Tax Revenues" shall not include (i) penalties, assessments, collection costs and other costs, fees or charges resulting from late or delinquent payment of Sales Tax and which are levied, assessed or otherwise collected from Company; (ii) any Sales Tax levied by, collected for or allocated to the State of California, the County of Orange, the Garden Grove Sanitary District, or a district or any entity (including an allocation to a statewide or countywide pool) other than the City; (iii) any administrative fee charged by the SBE; (iv) any Sales Tax subject to any sharing, rebate, offset, or other charge imposed pursuant to any applicable provision of federal, state or local (except the City's) law, rule, or regulation to the extent such Sales Taxes are not received and

retained by the City for its own use; (v) any Sales Tax attributable to any transaction not consummated within the Covenants Consideration Accrual Period; (vi) any Sales Tax (or other funds measured by Sales Tax) required by law or agreement to be paid over to another public entity or set aside and/or pledged to a specific use other than for deposit into or payment from the City's general fund, including retroactively.

ii. SBE. "SBE" means the California State Board of Equalization, or any successor agency.

jj. Site. "Site" is defined in Recital "A."

2. Representations and Warranties of the City. The City represents and warrants to Company that, as of the Effective Date:

a. City is a general law city duly organized and existing under the laws of the State of California.

b. The individuals executing this Agreement on behalf of the City are duly authorized by appropriate action of the City Council to execute this Agreement on behalf of the City.

c. To the City's actual current knowledge, the City's entry into this Agreement and the performance of the City's obligations under this Agreement do not violate any contract or agreement to which the City is a party.

d. To the City's actual current knowledge, there are no pending claims or lawsuits against the City that will delay or prevent the performance of the City's obligations under this Agreement.

e. The representations and warranties of the City set forth in this Section 2 are material consideration to Company, and the City acknowledges that Company is relying upon the representations of the City set forth in this Section 2 in undertaking its obligations under this Agreement.

3. Representations and Warranties of the Company. The Company represents and warrants to City that, as of the Effective Date:

a. Company is a California corporation duly organized and existing under the laws of the State of California and in good standing to do business in the State of California, with corporate and/or partnership powers adequate for the making and performing of this Agreement and for carrying on the business now conducted or proposed to be conducted by it.

b. Company is solely owned by Jaime Duenas and Efrain Davalos, Jr.

c. The individuals executing this Agreement on behalf of Company are duly authorized by appropriate action of Company to execute this Agreement on behalf of the Company.

d. Company has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement, and the execution, delivery and performance of this Agreement have been duly authorized by Company and no other action by Company is requisite to the valid and binding execution, delivery and performance of this Agreement, except as otherwise expressly set forth in this Agreement.

e. Company is the lessee of the Site under a valid lease agreement between the Company and the Owner of the Site; Company has the right, pursuant to such lease agreement, to conduct the Required Operations on the Site for the entire Operating Period; and there are no defaults under said lease agreement. Company acknowledges, and expressly and affirmatively assumes all risk, that termination of Company's leasehold interest in the Site or other actions by the Owner of the Site, or its successors and assigns, which impair the ability of Company to continuously conduct the Required Operations on the Site for the entire Operating Period, may cause Company to be in Default under this Agreement.

f. To Company's actual current knowledge, Company's entry into this Agreement and/or the performance of Company's obligations under this Agreement do not conflict with any provision of any law or regulation to which Company is subject, and do not violate any contract, agreement or other legal obligation of Company.

g. To Company's actual current knowledge, there are no pending or threatened lawsuits or other actions or proceedings which would delay, prevent or impair the timely performance of Company's obligations under this Agreement.

h. Company has not filed any petition seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any law relating to bankruptcy or insolvency, nor has any such petition been filed against Company. No general assignment of Company's property has been made for the benefit of creditors, and no receiver, master, liquidator, or trustee has been appointed for Company or any of its property. Company is not insolvent and the consummation of the transactions contemplated by this Agreement shall not render Company insolvent. Company has now and will have throughout the term of this Agreement, sufficient capital or net worth to meet its current obligations, including all obligations under this Agreement.

i. Company is a sophisticated investor and business operator and its decision to enter into this Agreement is based upon its own independent investigations, evaluations, and assessments. Company has not relied in entering into this Agreement upon any oral or written information from City or its employees, agents, consultants, advisors, or representatives, other than the express representations and warranties of City specifically set forth herein. Company acknowledges no employee, agent, consultant, advisor or representative of City has been authorized to make, and Company has not relied upon, any statements or representations made thereby, other than those specifically contained in this Agreement.

j. The representations and warranties of Company set forth in this Section 3 are material consideration to the City, and Company acknowledges that the City is relying upon the representations of Company set forth in this Section 3 in undertaking its obligations under this Agreement.

4. Operating Covenants and Restrictive Covenants.

a. Additional Investment to Expand Business. Company hereby covenants and agrees that, between the period that commenced on January 1, 2015 and continuing up and through December 31, 2024, it will make an Additional Capital Investment of no less than Eight Million Dollars (\$8,000,000) for purposes of expanding the Business on the Site, excluding funds spent by Company, if any, on construction and/or development on the Site. Such Additional Capital Investment shall be wholly in addition to the Two Million Dollar (\$2,000,000) investment in the Business required pursuant to the Original Agreement, which Company represents has already been made. Company hereby agrees that it will not allocate or use any Covenant Consideration paid to Company by City for construction and/or development on the Site. Upon request of City, Company shall provide documents evidencing its compliance with this Subsection 4.a.

b. Operating Covenant: Continuous Operation. Company hereby covenants and agrees that it shall continuously conduct and operate, or cause to be conducted and operated, the Required Operations on the Site during the entire Operating Period. Such continuous operations shall be subject to the Enforced Delay provisions of Section 17 hereof. 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 this Agreement and obligate Company to repay to City all previously paid Covenants Consideration in accordance with Subsection 6.b. of this Agreement.

c. Designation of Site as Point of Sale. At all times during the Operating Period, Company shall designate the Site as the point of sale for Sales Tax purposes in all Business and related sales.

d. Covenant Against Solicitation and Acceptance of Economic Incentives During the Term of the Operating Period. Company covenants and agrees that, during the Operating Period, Company shall not directly or indirectly solicit or accept any "Financial Assistance" from any other public or private person or entity, if such Financial Assistance is given for the purpose of causing or would result in Company's breach of any of the covenants or terms and conditions of this Agreement. For purposes of this Section, "Financial Assistance" means any direct or indirect payment, subsidy, rebate, or other similar or dissimilar monetary or non-monetary benefit, including, without limitation, payment of land subsidies, relocation expenses, public financings, property or sales tax relief, rebates, and/or exemptions or credits.

e. Payment of Taxes. Company shall 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. Company shall make or cause to be made timely Sales Tax payments to the SBE.

f. Maintenance of Site. During the Operating Period, Company shall, at no cost to the City, 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.

g. Compliance With Governmental Requirements. Subject to Company's right to contest the same, Company shall, 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 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"). Nothing in this Agreement is a representation or warranty by City, and Company hereby expressly acknowledges and agrees that the City has not previously affirmatively represented to the Company or its agents, in writing or otherwise, that any tenant improvement or construction or erection of improvements performed on the Site on or after the date of this Agreement is not a "public work," as defined in Section 1720 et seq. of the California Labor Code, including but not limited to Sections 1771 and 1781. Company hereby agrees that Company shall have the obligation to provide any and all disclosures or identifications required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar law. In addition to any other Company indemnifications of City or the City Indemnitees set forth in this Agreement, Company shall indemnify, protect, defend and hold harmless the City and its officers, employees, contractors and agents, with counsel reasonably acceptable to City, from and against any and all loss, liability, damage, claim, cost, expense and/or "increased costs" (including reasonable attorneys fees, court and litigation costs, and fees of expert witnesses) which, in connection with the construction (as defined by applicable law) and/or operation of the Business, results or arises in any way from any of the following: (1) the noncompliance by Company of any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, if applicable, the requirement to pay state prevailing wages and to hire apprentices); (2) the implementation of Section 1781 of the Labor Code, as the same may be amended from time to time, or any other similar law; and/or (3) failure by Company to provide any required disclosure or identification as required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar law. It is agreed by the Parties that, in connection with any construction (as defined by applicable law) on the Site occurring on or after the date of this Agreement, Company shall bear all risks of payment or non-payment of prevailing wages and hiring of apprentices under California law and/or the implementation of Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law. "Increased costs," as used in this Subsection 4.f., shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be amended from time to time. The foregoing indemnity shall survive termination of this Agreement.

h. Maintenance and Audits of Books and Records. For the entire duration of the Operating Period, and for an additional period thereafter of not less than three (3) years, Company shall maintain all books, records, documents, and/or other information relating to Company's compliance with the Covenants, including, but not limited to, records reflecting all sales made by Company, records reflecting the point of sale for Sales Tax purposes of all sales made by Company, records reflecting all federal, state, and/or local taxes paid by Company, records pertaining to Company's compliance with Governmental Regulations, records evidencing Company's investment in expansion of its Business operations, and records reflecting Company's use of all Covenants Consideration payments ("Books and Records"). Within thirty (30) days of written request by the City, Company shall provide City with any and all such Books and Records reasonably determined necessary by City to evidence Company's compliance with the Covenants. In addition to the foregoing, from time to time, and anticipated to be at least once every year, City may request Company to make any and all Books and Records available to an independent auditor or examiner, to be selected by City, for auditing and examination purposes. If such an audit and examination reveals any inaccurate reporting or payment of Sales Tax or other violations of the Covenants, which results in any Overpayments, such Overpayments may be recaptured by City as provided in Subsection 5.g.

5. Covenants Consideration.

a. Covenants Consideration; Determined on an Annual Basis. In consideration of Company's compliance with the Covenants, subject to availability and appropriation by the Garden Grove City Council of sufficient funds, commencing as of July 1, 2016, City agrees to pay Company Covenants Consideration in an amount, calculated as illustrated in Table 1, below, and determined on an annual basis, equal to a portion of all Sales Tax Revenues generated by the Business during each Fiscal Year in excess of Two Hundred Thousand Dollars (\$200,000) (the "Annual Covenants Consideration Amount"). In the event there is insufficient Sales Tax Revenues to trigger the payment of Covenants Consideration in any Fiscal Year, such insufficiency shall not carry forward to any future years. Notwithstanding the foregoing, for the portion of the Quarter commencing on the Effective Date and continuing through March 31, 2016, and for the Quarter commencing April 1, 2016 and continuing through June 30, 2016, City shall also pay Company Covenants Consideration in an amount calculated in accordance with the last two paragraphs of Section 5.b, respectively.

Table 1

Portion of Annual Sales Tax Revenues Generated by Business	Percentage Payable to Company as Covenants Consideration
First \$200,000	0%
Next \$1,800,000	70%
Next \$1,000,000	60%
Next \$2,000,000	50%
Next \$2,000,000	55%
Amount in Excess of \$7,000,000	65%

b. Covenants Consideration: Quarterly Payments. For each Fiscal Year, the City shall pay the Annual Covenants Consideration Amount to Company in four (4) separate quarterly Covenants Consideration payments corresponding to the amount of Sales Tax Revenues generated during each Quarter of the Fiscal Year (the "Quarterly Payments"). The amount of each Quarterly Payment for the first three (3) quarters of any Fiscal Year shall be determined by the City by multiplying (i) the amount of Sales Tax Revenues generated by the Business during the applicable Quarter by (ii) the percentages set forth in Table 2, below (the product of which is referred to herein and in Exhibit "B" as the "Quarterly Covenants Consideration Amount").

Table 2

Portion of Quarterly Sales Tax Revenues Generated by Business	Percentage Payable to Company as Covenants Consideration
First \$50,000	0%
Next \$450,000	70%
Next \$250,000	60%
Next \$500,000	50%
Next \$500,000	55%
Amount in Excess of \$1,750,000	65%

If Sales Tax Revenues for the applicable Quarter are less than or equal to fifty thousand dollars (\$50,000), then no Quarterly Payment attributable to such Quarter is due. Except for the portion of the Quarter commencing on the Effective Date and continuing through March 31, 2016, and for the Quarter commencing April 1, 2016 and continuing through June 30, 2016, the Quarterly Payment corresponding to the fourth Quarter of any Fiscal Year shall be in the amount equal to the Annual Covenants Consideration Amount, minus the aggregate sum of the previous Quarterly Payments for the Fiscal Year. However, if, and to the extent that, the aggregate sum of the previous Quarterly Payments for the Fiscal Year made by the City exceeds the Annual Covenant Consideration Amount for such Fiscal Year, then the City shall recapture such sum from the Company as provided in Subsection 5.g. More specific computational steps for computing the Annual Covenants Consideration Amount and the amount of the Quarterly Payments are set forth in Exhibit "B," which is attached hereto and incorporated herein by reference. Payment of the Covenants Consideration payment determined by City to be owing to Company for each Quarter shall be made by City within thirty (30) days after the City and/or the sales tax consultant retained by the City verifies that the City has received all Sales Tax Revenues for the applicable Quarter. Company expressly understands that nothing contained in this Agreement shall obligate or otherwise commit City to pay the Covenant Consideration for the applicable period unless and until City receives reasonably satisfactory verification that City has received all Sales Tax Revenues for such period.

For the portion of the Quarter commencing on the Effective Date and continuing through March 31, 2016, the Quarterly Payment amount shall be determined by the City by multiplying (i) one-third (1/3) of the amount of Sales Tax Revenues generated by the Business during the Quarter by (ii) the percentages set forth in Table 2, above.

For the Quarter commencing April 1, 2016 and continuing through June 30, 2016, the Quarterly Payment amount shall be determined by the City by multiplying (i) the amount of Sales Tax Revenues generated by the Business during the Quarter by (ii) the percentages set forth in Table 2, above.

c. Conditions Precedent to Payment of Covenants Consideration. The City's obligation to make any Covenants Consideration payments pursuant to this Section 5 is conditioned upon all of the following conditions precedent, which shall be satisfied on or before the date of the applicable disbursement: (i) this Agreement shall remain in full force and effect and not have been terminated; (ii) sufficient funds for such payments shall have been appropriated and be available to City for such payments; (iii) there shall be no Default by the Company under the Agreement which remains uncured on the date such Covenants Consideration payment, or applicable portion thereof, would otherwise be made to the Company; and (iv) City and/or the sales tax consultant retained by the City has verified that the City has received all Sales Tax Revenues for the period to which such Covenants Consideration period is attributed.

d. Termination of Covenants Consideration. The Covenants Consideration payments shall terminate upon the earlier to occur of (1) termination of this Agreement, or (2) expiration of the Covenants Consideration Accrual Period.

e. Source of Funds for Covenants Consideration. The Covenants Consideration shall be paid from any source of funds legally available to City. The determination of the source of funds shall be in the sole and absolute discretion of the City. In this regard, Company acknowledges and agrees that neither the Sales Tax Revenues nor any other general or special funds of the City are pledged or otherwise encumbered, hypothecated to, or given as security for the Covenants Consideration, and that the reference to Sales Tax Revenues for purposes of calculating the Covenants Consideration payments is solely for computational purposes.

f. No Acceleration. It is acknowledged by the Parties that any payments by City provided for in this Agreement may only be paid for those periods in which Company is in compliance with the Covenants pursuant to this Agreement. Therefore, the failure of City to make any payments or the failure by City to perform any of its other obligations hereunder shall not cause the acceleration of any anticipated future Covenants Consideration payments by City to Company.

g. Recapture of Previous Overpayments. City shall be entitled to recapture previous payments made to Company hereunder, or applicable portions thereof, if, at any time during or after the term of this Agreement, (i) the SBE determines that all or any portion of the Sales Tax Revenues received by the City were improperly allocated and/or paid to the City, and if SBE requires repayment of, offsets against future Sales Tax payments, or otherwise recaptures from the City those improperly allocated and/or paid Sales Tax Revenues, or (ii) the City determines that the aggregate sum of the quarterly Covenants Consideration payments made by City to Company with respect to any Fiscal Year exceeds the Annual Covenant Consideration Amount for such Fiscal Year (collectively, "Overpayments"). City may, at City's option, choose to recapture such Overpayments by, either, (i) offsetting future Covenant Consideration payments due Company by the amount of such Overpayments, or (ii) requiring Company to repay City for such Overpayments. If City chooses to require Company to repay City for such Overpayments, then Company shall repay City within thirty (30) days after written demand from City. If Company fails to make such repayment within thirty (30) days after City's written demand, then such obligation shall accrue interest from the date of City's original written demand at the then maximum legal rate imposed pursuant to the California Code of Civil Procedure on prejudgment monetary obligations, compounded monthly, until paid.

h. Review of Records Relating to Determination of Sales Tax Revenues. In addition to, and without limiting, the City's rights pursuant to Subsection 4.g., above, following written request, each Party shall promptly make available at no cost to the other Party and/or its designees the entirety of its books and records relating to the determination of the amount of Sales Tax Revenues generated by the Company for any period within the Covenants Consideration Accrual Period, and shall direct its accountants and other consultants and contractors in possession of its books and records to do likewise; provided, however, that nothing herein shall be deemed to abridge or constitute a waiver of any Party's evidentiary rights and privileges arising pursuant to any provision of law.

i. Disclosure of Payments. Company agrees that the Covenants Consideration payments and the amounts thereof do not constitute a violation of Revenue and Taxation Code Section 7056 or any other provision of law pertaining to the disclosure of sales

tax information, shall be a matter of public record, may be disclosed to any person, and may be included on the City's warrant register. Company waives any law that is contrary to any of the agreements in this Subsection 5.i.

j. Effect of Invalidation of Agreement and/or Covenants Consideration Payments. City makes no representation or warranty to Company as to the legality of the Covenants Consideration payments or the City's authority to make such payments. In the event that a judgment is rendered against City invalidating its payment obligations set forth in this Agreement, City shall not be deemed to be in Default under this Agreement, and either City or Company may terminate this Agreement by delivery of written notice of termination to the other Party.

6. Defaults and Remedies.

a. Definitions of Breach and Default. Occurrence of any or all of the following shall constitute a breach of this Agreement ("Breach"):

- i. Company's failure or delay to perform any material term or provision of this Agreement, including, but not limited to, failure to comply with the Covenants.
- ii. Company's assignment, transfer, pledge, encumbrance, or hypothecation of any of its rights and/or obligations under this Agreement, without the express written consent of the City.
- iii. The filing of a petition in bankruptcy by or against the Company or appointment of the receiver or trustee of any property of the Company, or an assignment by the Company for the benefit of creditors, or adjudication that the Company is insolvent by a court, and a failure of the Company to cause such petition, appointment or assignment to be removed or discharged within sixty (60) days.
- iv. City's failure to comply with its obligation to make payments to Company pursuant to Section 5 hereof.

The nondefaulting party shall give written notice of any Breach to the party in Breach, specifying the Breach complained of by the nondefaulting party ("Notice of Default"). Delay in giving such Notice of Default shall not constitute a waiver of any Breach nor shall it change the time of Breach. Upon receipt of the Notice of Default, the party in Breach shall promptly commence to cure the identified Breach at the earliest reasonable time after receipt of the Notice of Default and shall complete the cure of such Breach not later than thirty (30) days after receipt of the Notice of Default, or, if such Breach cannot reasonably be cured within such thirty (30) day period, then as soon thereafter as reasonably possible, provided the party in Breach shall diligently pursue such cure to completion ("Cure Period"). Failure of the Party in Breach to cure the Breach within the Cure Period shall constitute a "Default" under this Agreement.

Any failures or delay be either Party in asserting any of its rights and remedies as to any Breach or Default shall not operate as a waiver of any Breach or Default or of any such rights or

remedies. Delays by either Party in asserting any of its rights and remedies shall not deprive either Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

b. City's Remedies. Upon the occurrence of a Default by Company, in addition to any other remedies available at law or in equity, or otherwise provided in this Agreement, City shall be entitled to any or all of the following remedies, which remedies are cumulative and not mutually exclusive:

- i. Automatic Suspension of Covenants Consideration Payments. Without City being required to seek judicial relief, Company's right to receive Covenants Consideration during the period that the Company is in Default shall be automatically suspended, and the term of the Covenants Consideration Accrual Period shall not be extended by reason of such suspension.
- ii. Termination of Agreement. City may terminate this Agreement upon written notice of termination to Company. In the event City terminates this Agreement due to Company's failure to continuously conduct and operate, or cause to be conducted and operated, the Required Operations on the Site during the entire Operating Period, in accordance with Subsection 4(b) of this Agreement, then in addition to any other rights or remedies available to City under this Agreement, City shall be entitled to recover from Company, and Company shall pay to City, all Covenants Consideration payments made by City to Company pursuant to this Agreement prior to the date of City's termination of this Agreement ("Prior Payments"). Company hereby stipulates and agrees that the amount of the Prior Payments are a reasonable estimate of the damages and costs City shall incur by reason of the events described in the preceding sentence, and that such damages and costs are, by their nature, difficult and impractical to calculate and determine.
- iii. Institution of Legal Actions. City may institute an action at law or equity to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any Default by Company, or to obtain any other remedy consistent with the purpose of this Agreement.

c. Company's Remedies. Upon the occurrence of a Default by City, in addition to any other remedies available at law or in equity, or otherwise provided in this Agreement, Company shall be entitled to any or all of the following remedies, which remedies are cumulative and not mutually exclusive:

- i. Termination of Agreement. Company may terminate this Agreement upon written notice to City.
- ii. Institution of Legal Action. Company may institute an action at law or equity to seek specific performance of the terms of this Agreement, or to

cure, correct or remedy any Default by City, or to obtain any other remedy consistent with the purpose of this Agreement; provided, however, that the remedies available to Company for City's Default shall be solely limited to rescission, injunction, specific performance, and/or the payment of monies expressly required by this Agreement, and in no event shall Company be entitled to any other direct or indirect monetary damages of any kind, including, without limitation, loss of opportunity, loss of business, loss of profits, or consequential, incidental, or special damages.

d. Effect of Termination. Except as otherwise provided herein, upon termination of this Agreement by either Party pursuant to, and if authorized by, any provision of this Agreement, all executory obligations under this Agreement that accrue or arise subsequent to the date of termination shall also terminate, but obligations that have accrued or arisen prior to such termination shall remain in full force and effect. Without limiting the generality of the foregoing, no termination of this Agreement shall operate to release or discharge City from any obligation to make Covenants Consideration payments with respect to sales occurring prior to the date of termination or discharge Company from any obligation to refund to City any Overpayments in accordance with Subsection 5.g.

e. Rights and Remedies are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default by the other Party.

f. Inaction Not a Waiver of Default. Any failures or delays by either Party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

g. Venue. In the event of any litigation under this Agreement, all such actions shall be instituted in the Superior Court of the County of Orange, California.

h. Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

7. Company's Obligations to Indemnify and Defend City.

a. Indemnity From Third Party Claims. Company agrees to and shall indemnify, defend, protect, and hold harmless the City Indemnitees, jointly and severally, from and against any and all liabilities, suits, actions, claims, demands, penalties, damages (including, without limitation, penalties, fines and monetary sanctions), losses, costs or expenses, proceedings, lawsuits, orders, judgments, fines, obligations, encumbrances, liens, expenses (including without limitation all costs and expenses reasonably incurred to investigate and defend claims, whether or not any such claim is ultimately defeated, and costs and expenses reasonably incurred for consultants, court fees, administrative fees, expert witness fees, and

attorneys' fees and remedial and response costs) of whatever kind or nature, contingent or otherwise, matured or not matured, foreseeable or unforeseeable, at law or in equity, any of which are suffered or incurred by the City Indemnitees, or assessed, levied or asserted by any person or entity (whether governmental or private) against the City Indemnitees, relating to, resulting from, arising out of or based upon, in whole or in part, the following: (i) any act, omission or negligence of the Company or any lessee or sublessee of the Company, or their respective contractors, licensees, invitees, agents, sublessees, servants or employees, wheresoever that the same may occur; (ii) any use of the Site, or any accident, injury, death or damage to any person or property occurring in, on or about the Site, or any part of the Site, or from the conduct of the Company's Business or from any activity, work or thing done, permitted or suffered by the Company or its lessees, sublessees, contractors, employees, or invitees, in or about the Site; (iii) Company's Breach of this Agreement or the Original Agreement, including, but not limited to, failure to comply with the Covenants; (iv) the presence, release, use, generation, discharge, storage, disposal, removal or remediation of any Hazardous Materials on, in, under, or emanating from the Site; (v) the violation, or alleged violation, or compliance with the requirements of any Environmental Law, or any other statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials to, from, on, in, under, about or around the Site, or (vi) any Environmental Cleanup Liability or Environmental Compliance Costs related to the Site. This indemnity shall include, without limitation, any liabilities arising from or out of or relating in any manner to any Environmental Claims or any nuisance, contamination, leak, spill, release or other adverse effect on the environment caused by or resulting from any Hazardous Material, or toxic substances or waste existing on, under, or emanating from the Site. Notwithstanding the foregoing, the indemnities described in (i) and (ii) above shall not apply to the extent of the sole negligence or willful misconduct of the City Indemnitees.

b. Defense/Indemnification of this Agreement. Company shall defend, indemnify, and hold harmless the City Indemnitees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorneys' fees and costs incurred by the City and any claim for private attorney general fees and costs claimed by or awarded to any party, against the City or any of the City Indemnitees, relating to: (1) the City's approval of this Agreement or the Original Agreement; (2) the validity or enforceability of this Agreement or the Original Agreement; and/or (3) the payments to be remitted pursuant to this Agreement or the Original Agreement, including, but not limited to, any action to attack, set aside, void, challenge, or annul the Agreement, the Original Agreement, or any of the Covenants Consideration payments on any legal basis (collectively "Agreement Approvals"). City will promptly notify Company of any claim, action or proceeding concerning the Agreement Approvals. City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification obligation. In the event of such election, Company shall pay all of the costs related thereto, including without limitation reasonable attorneys' fees and costs incurred by the City. In the event of a disagreement between the City and Company regarding litigation issues, the City shall have the authority to control the litigation and make litigation-related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Company shall not be required to pay or perform a settlement unless such settlement is approved by Company.

Within ten (10) days of the filing of any legal action regarding the Agreement Approvals, the Company shall submit a cash deposit or irrevocable letter of credit in the amount of One Hundred Thousand Dollars (\$100,000), or such lesser amount acceptable to City, in favor of the City in a form acceptable to the City, to pay the City's fees and costs in connection with the potential defense of any such action and shall thereafter replenish the funds in increments of Twenty Thousand Dollars (\$20,000), or such lesser amount acceptable to City, when requested by the City. Failure to provide funds sufficient to satisfy this indemnification obligation shall constitute grounds for the City to take action to nullify the Agreement Approvals. In the event that excess defense funds are in the possession of the City after any action is concluded, the City shall refund the excess funds to Company.

In any legal proceedings concerning this Agreement, the Company agrees that it will not challenge the obligation of the City to make any of the payments required to be made to the Company under Section 5 hereof as an impermissible debt under the California Constitution or any other applicable law. Any action by the Company in violation of this commitment shall render this Agreement void ab initio.

In the event that a judgment is rendered against City invalidating this Agreement or its payment obligations hereunder, City shall not be deemed to be in Default under this Agreement, and either City or Company may terminate this Agreement by delivery of written notice of termination to the other Party in accordance with Subsection 5.j.

c. Indemnity Obligations Survive Termination of Agreement. The obligations of Company pursuant to this Section 7 shall survive expiration or earlier termination of this Agreement.

8. Disclaimer of Representations and Warranties by City.

a. There are no representations, agreements, arrangements, or circumstances, oral or written, between the Parties relating to the subject matter contained in this Agreement that are not fully expressed herein, and City has not made and does not make any representation or warranty concerning any matter or thing affecting or relating to the Business, the Required Operations, and/or the Site.

b. City has made no representations or warranties with regard to zoning and subdivision laws, ordinances, resolutions and regulations of governmental authorities having jurisdiction over the Site, and the use and improvement of the Site.

c. City has made no representations or warranties to Company as to the legality, validity or enforceability of this Agreement or the City's authority to make the Covenants Consideration payments.

d. City has made no representations or warranties to Company as to the tax consequences of this Agreement and/or the characterization of the Covenants Consideration payments for federal and/or state income tax purposes.

9. Police Power. Nothing contained in this Agreement shall be deemed to limit, restrict, amend or modify, or to constitute a waiver or release of, any ordinances, notices, orders,

rules, regulations or requirements (now or hereafter enacted or adopted and/or as amended from time to time) of the City, or their departments, commission, agencies and boards and the officers of the City, including without limitation, any general plan or any zoning ordinances, or any of the City's duties, obligations, rights or remedies thereunder or pursuant thereto or the general policy powers, rights, privileges and discretion of the City in the furtherance of the public health, welfare and safety of the inhabitants of the City, provided, however, that the City agrees not to take any action to frustrate or hinder the intent or effect of this Agreement.

10. No Joint Venture. Nothing contained in this Agreement shall be construed to render the City in any way or for any purpose a partner, joint venture, or associated in any relationship with Company, nor shall this Agreement be construed to authorize any Party to act as agent for the other, and City neither undertakes nor assumes any responsibility pursuant to this Agreement to review, inspect, supervise, approve, or inform Company of any matter in connection with this Agreement or the Required Operations other than as expressly provided for herein.

11. Tax Consequences. Company shall be responsible for all federal, state, and/or local income taxes resulting from its receipt of the Covenants Consideration payments from the City.

12. Notices. All notices under this Agreement shall be given in writing by personal delivery, or by certified mail or registered United States Mail, return receipt requested, postage prepaid, or by facsimile and shall be deemed communicated when received if given by personal delivery or upon receipt or rejection if mailed as provided above or upon receipt by facsimile on a business day during business hours in the location where received, and if not then on the next business day, as the case may be. Mailed notices shall be addressed as set forth below, but either party may change its address by giving written notice thereof to the other in accordance with the provisions of this article:

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

with a copy to: Garden Grove City Attorney
11222 Acacia Parkway
Garden Grove, California 92840

To Company: AAA Oil, Inc., dba California Fuel and Lubricants
11621 Westminster Avenue
Garden Grove, California 92843
Attention: Jaime Duenas, President

13. Entire Agreement. Except to the extent expressly provided in Section 32, below, this Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof and supersedes all prior agreements and understandings written and oral.

14. **Modification or Amendment.** This Agreement may not be modified or amended except in a writing signed by all Parties hereto.

15. **Severability.** If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

16. **Construction.** The Parties agree that each Party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in the interpretation of this Agreement or any amendments or exhibits to this Agreement.

17. **Extensions and Delays; No Excuse Due to Economic Changes.** In addition to specific provisions of this Agreement providing for extensions of time, neither Party hereunder shall be deemed to be in Default, and times for performance and other dates specified in this Agreement shall be extended, where delays are due to war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; acts of terrorism; epidemics; quarantine restrictions; freight embargoes; acts of governmental authorities; litigation challenging the validity of this transaction or any element thereof or the right of either Party to engage in the acts and transactions contemplated by this Agreement (collectively, "Enforced Delays," and each, separately, an "Enforced Delay"), provided, however, that the Party claiming the right to an extension of time notify the other Party of the nature of the matter causing an Enforced Delay; and, provided further, that the extension of time shall be only for the period of the Enforced Delay. Notwithstanding the foregoing, deadlines for performance may not be extended as provided above due to any inability of Company to maintain financing for its operations, any inability of Company to conduct the Required Operations on the Site due to eviction, termination of the Company's lease, or other acts of the Owner of the Site, or due to City's inability to make Covenants Consideration payments due and payable to Company. In no event shall either Party be deemed in default of this Agreement because of an Enforced Delay event.

City and Company expressly acknowledge and agree that changes in either general economic conditions or changes in economic assumptions of any of them which may have provided a basis for entering into this Agreement, and which occur at any time after the execution of this Agreement, are not Enforced Delays and do not provide any Party with grounds for asserting the existence of a delay or excuse in the performance of any covenant or undertaking which may arise under this Agreement. Each Party expressly assumes the risk that changes in general economic conditions, or changes in such economic assumptions relating to the terms and covenants of this Agreement could impose an inconvenience or hardship on the continued performance of such Party under this Agreement, but that such inconvenience or hardship is not an Enforced Delay and does not excuse the performance by such Party of its obligations under this Agreement. Notwithstanding the foregoing, in the event changes in economic conditions result a material hardship on the continued performance of either Party under this Agreement, or in the terms of this Agreement being materially disadvantageous to one

Party in comparison to similar agreements between similarly situated companies and cities in Southern California, then, upon the written request of either Party, the Parties shall meet and confer in good faith to discuss potential mutually acceptable modifications to the Agreement; provided, however, that neither Party shall be obligated to agree to any modification or amendment as a result of such meet and confer process.

18. Time of the Essence. Time is of the essence with respect to this Agreement and all Parties' obligations under this Agreement.

19. Warranty Against Payment of Consideration for Agreement. The Company warrants that it has not paid or given, and will not pay or give, to any third person, any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers and attorneys.

20. Nonliability and Release of City Officials. No member, official, agent, employee, or attorney of the City shall be personally liable to the Company, or any successor in interest of the Company, in the event of any default or breach by the City or for any amount which may become due to the Company or its successors, or on any obligations under the terms of this Agreement, and no judgment or execution thereon entered in any action hereon shall be personally enforced against any such member, official, agent, employee, or attorney of the City. The Company hereby waives and releases any claim it may have personally against the members, officials, agents, employees consultants, or attorneys of the City with respect to any Default or Breach by the City or for any amount which may become due to the Company or its successors, or on any obligations under the terms of this Agreement. The Company makes such release with full knowledge of Civil Code Section 1542, and hereby waives any and all rights thereunder to the extent of this release, if such Section 1542 is applicable California Civil Code Section 1542 provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

21. Administration. This Agreement shall be administered and executed by the City Manager of the City, or his/her designated representative, following approval of this Agreement by the City. The City shall maintain authority of this Agreement through the City Manager (or his/her authorized representative). Whenever a reference is made herein to an action or approval to be undertaken by the City, the City Manager is authorized to act on behalf of City unless specifically provided otherwise or the context should require otherwise. The City Manager shall have the authority but not the obligation to issue interpretations, waive provisions, execute the Memorandum of Agreement, extend time limits, and/or enter into amendments of this Agreement on behalf of the City so long as such actions do not substantially change the Company's obligations to comply with the Covenants, or add to the costs to the City as specified herein as agreed to by the City Council. All other waivers or amendments shall require the written consent of the City Council.

22. **Successors and Assigns.** The provisions of this Agreement shall be binding upon, and inure to the benefit of, the City and the Company and their respective successors and assigns as the case or context may require. Whenever the term "Company" or "City," as the case may be, is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

23. **Assignment by Company.** Company may not assign, transfer, encumber, or hypothecate any of its rights or obligations under this Agreement without the express written consent of City, which shall not be unreasonably withheld.

24. **Attorneys' Fees.** In the event that suit is brought for the enforcement of this Agreement or, as of the result of any alleged Default, the prevailing party or parties in such suit shall be entitled, in addition to damages, injunctive relief or any other relief to which it might be entitled, to recover their reasonable costs and expenses including, without limitation, litigation costs and reasonable attorneys' fees, from the losing party or parties, and any judgment or decree rendered in such proceeding shall include an award thereof. Costs recoverable for enforcement of any judgment shall include reasonable attorneys' fees.

25. **Section Headings.** All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

26. **Interpretation.** As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by both Parties.

27. **Waiver.** Failure of a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, or the failure by a Party to exercise its rights upon the Breach or Default of the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by the other Party with the terms of this Agreement thereafter.

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

29. **Authority to Execute.** The person or persons executing this Agreement on behalf of the Company warrant and represent that they have the authority to execute this Agreement on behalf of their corporation, partnership or business entity and warrant and represent that they have the authority to bind the Company to the performance of its obligations hereunder.

30. **Counterparts.** This Agreement may be executed and acknowledged in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one (1) Agreement, binding on the Parties hereto.

31. Consent of Owner of the Site; Recordation of Memorandum of Agreement.

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 herein, 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. By execution of the "Consent of the Owner of the Site" on the signature page of this Agreement, the Owner of the Site hereby expressly acknowledge they have read and understand this Agreement, agree to the entry into this Agreement by the Company, and acknowledge and agree with the provisions of this Section 31. In addition, within fifteen (15) days of full execution of this Agreement, Company and the Owner of the Site agree to execute, and to provide to City for recordation, a Memorandum of Agreement in substantially the same form as attached hereto at Exhibit "C." The written consent of the Owner of the Site to this Agreement and the recordation of the Memorandum of Agreement are express conditions precedent to the effectiveness of this Agreement and all City obligations hereunder. Upon expiration of the Operating Period or earlier termination of this Agreement, City shall cooperate in good faith with Company and the Owner of the Site to execute and record a notice of such expiration or termination of the Agreement and the Covenants.

32. Original Agreement. Except as set forth in the following sentence, this Agreement is intended to replace and supersede in its entirety the Original Agreement and, upon the Effective Date, the Original Agreement shall be terminated in its entirety, and the City and Company shall have no further rights or obligations under the Original Agreement except as may be expressly provided therein. Notwithstanding the foregoing sentence or anything else in this Agreement to the contrary, the terms of the Original Agreement shall remain in full force and effect through February 28, 2016 and the City shall continue to be obligated under the Original Agreement to pay Company any Covenants Consideration due and payable under the Original Agreement as of the Effective Date of this Agreement. For purposes of calculating the Quarterly Payment, if any, due Company under the terms of the Original Agreement for the portion of the Quarter commencing January 1, 2016 and ending February 29, 2016, the amount of Sales Tax Revenues for the entire Quarter and the amount of the "Quarterly Baseline" shall each be multiplied by two-thirds (2/3) before calculating the "Quarterly Increment."

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the respective dates set forth below.

CITY:

CITY OF GARDEN GROVE, a municipal corporation

Dated: _____, 2016

By: _____
Scott C. Stiles
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

Omar Sandoval
Acting City Attorney

COMPANY

AAA OIL, INC., a California corporation

Dated: _____, 2016

By: _____
Jaime Duenas
President

By: _____
Efrain Davalos, Jr.
Secretary

CONSENT BY OWNER OF THE SITE

The undersigned hereby represent and warrant that Duenas Management, LLC is the sole, fee simple Owner of the Site described in Exhibit "A" hereto, and that they are the sole owners, members, and officers of Duenas Management, LLC, and hereby consent to the entering into of this Agreement by AAA Oil, Inc. and the recordation of the Memorandum of Agreement against the Site in the official records of the County of Orange

Dated: _____, 2016

By: _____
Jaime Duenas

Dated: _____, 2016

By: _____
Rogelio Duenas

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**

EXHIBIT "B"

**QUARTERLY COVENANTS CONSIDERATION PAYMENTS
 COMPUTATIONAL STEPS**

Step for Calculating Quarterly Payments for Quarters 1-3

STEP 1: Determine and verify the amount of Sales Tax Revenues for Quarter.

STEP 2: As illustrated in the following table, multiply the applicable portion of the Sales Tax Revenues for Quarter by the corresponding percentage and add the resulting amounts together to determine the Quarterly Covenants Consideration Amount.

Portion of Quarterly Sales Tax Revenues		Percentage		
First \$50,000	x	0%	=	A
Next \$450,000	x	70%	=	B
Next \$250,000	x	60%	=	C
Next \$500,000	x	50%	=	D
Next \$500,000	x	55%	=	E
Amount in Excess of \$1,750,000	x	65%%	=	F
				A+B+C+D+E+F = Quarterly Covenants Consideration Amount

STEP 3: If the Quarterly Covenants Consideration Amount is greater than zero, then Quarterly Payment equals the Quarterly Covenants Consideration Amount.

[If Quarterly Covenants Consideration Amount > 0, then Quarterly Payment = Quarterly Covenants Consideration Amount]

If the Quarterly Covenants Consideration Amount is zero, then no Quarterly Payment is due.

[If Quarterly Covenants Consideration Amount = 0, then Quarterly Payment = 0]

Steps for Calculating Quarterly Payments for Quarter 4

STEP 1: Determine and verify the amount of Sales Tax Revenues for the entire Fiscal Year.

STEP 2: As illustrated in the following table, multiply the applicable portion of the Sales Tax Revenues for the Fiscal Year by the corresponding percentage and add the resulting amounts together to determine the Annual Covenants Consideration Amount.

Portion of Quarterly Sales Tax Revenues		Percentage		
First \$200,000	x	0%	=	A
Next \$1,800,000	x	70%	=	B
Next \$1,000,000	x	60%	=	C
Next \$2,000,000	x	50%	=	D
Next \$2,000,000	x	55%	=	E
Amount in Excess of \$7,000,000	x	50%	=	F
				A+B+C+D+E+F = Annual Covenants Consideration Amount

STEP 3: Subtract the aggregate sum of the Quarterly Payments from Quarters 1, 2 and 3 from the Annual Covenants Consideration Amount to determine the Quarter 4 Quarterly Covenants Consideration Amount.

$$[Annual\ Covenants\ Consideration\ Amount - Quarter\ 1\ Quarterly\ Payment - Quarter\ 2\ Quarterly\ Payment - Quarter\ 3\ Quarterly\ Payment = Quarter\ 4\ Quarterly\ Covenants\ Consideration\ Amount]$$

STEP 5: If the Quarter 4 Quarterly Covenants Consideration Amount is greater than zero, then the Quarter 4 Quarterly Payment equals the Quarter 4 Quarterly Covenants Consideration Amount.

$$[If\ Quarter\ 4\ Quarterly\ Covenants\ Consideration\ Amount > 0, then\ Quarterly\ Payment = Quarter\ 4\ Quarterly\ Covenants\ Consideration\ Amount]$$

If the Quarter 4 Quarterly Covenants Consideration Amount is less than or equal to zero, then (i) no Quarterly Payment is due, and (ii) any Overpayment for Fiscal Year

will be recaptured from Company by either invoicing Company or offsetting future Quarterly Payments.¹

If Quarter 4 Quarterly Covenants Consideration Amount \leq 0, then Quarterly Payment = 0]

¹ In the event the Sales Tax Revenues for any Fiscal Year are less than Two Hundred Thousand Dollars (\$200,000), resulting in a negative Annual Covenants Consideration Amount, such negative amount is *not* carried forward to future Fiscal Years. However, if a negative Annual Covenants Consideration Amount results in an Overpayment for the Fiscal Year, the Overpayment shall be recaptured from the Company as described in Step 5.

EXHIBIT "C"

MEMORANDUM OF AGREEMENT

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 _____ 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 **DUENAS MANAGEMENT, LLC** (the "Owner of the Site").

RECITALS

A. The Owner of the Site is the fee simple owner 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 Amended and Restated Operating Covenant Agreement, dated _____ (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, 2036). The Owner of the Site has 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 Owner 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 Owner 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 make an Additional Capital Investment of no less than Eight Million Dollars (\$8,000,000) 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 March 1, 2016 and continuing until and expiring on June 30, 2036). "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 Owner of the Site hereby confirm and acknowledge that this Memorandum shall be recorded in the Official Records of Orange County, California, following execution. Upon recordation of this Memorandum, this Memorandum shall replace that certain Memorandum of Agreement executed by City, Company, Jaime Duenas, and Rogelio Duenas, dated August 13, 2013, and recorded September 16, 2013, as

document number 2013000536943 (the "Original Memorandum"), and the Original Memorandum shall be of no further force and effect.

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 Owner 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: _____, 2016

By: _____
Scott C. Stiles
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

Omar Sandoval
Acting City Attorney

COMPANY

AAA OIL, INC., a California corporation

Dated: _____, 2016

By: _____
Jaime Duenas
President

By: _____
Efrain Davalos, Jr.
Secretary

OWNER OF THE SITE

DUENAS MANAGEMENT, LLC, a California limited liability company

Dated: _____, 2016

By: _____
Jaime Duenas, Member

Dated: _____, 2016

By: _____
Rogelio Duenas, Member

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE) ss.

On _____ before me, _____, Notary Public, personally appeared _____, 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

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE) ss.

On _____ before me, _____, Notary Public, personally appeared _____, 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

STATE OF CALIFORNIA)
)
) ss.
COUNTY OF ORANGE)

On _____ before me, _____, Notary Public, personally appeared _____, 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

STATE OF CALIFORNIA)
)
) ss.
COUNTY OF ORANGE)

On _____ before me, _____, Notary Public, personally appeared _____, 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

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On _____ before me, _____, Notary Public, personally appeared _____, 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**

Exhibit "B"

Summary Report



January 19, 2016

Mr. Greg Blodgett
Senior Project Manager
Ms. Grace Lee
Sr. Economic Development Specialist
City of Garden Grove | Economic Development Division
11222 Acacia Parkway
Garden Grove, CA 92840

RE: AAA Oil, Inc. (Dba California Fuels and Lubricants)
AB 562 - Economic Development Strategy
Job Retention, Capital Investment and Sales Tax Sharing

Dear Mr. Blodgett and Ms. Lee:

The City of Garden Grove (City) has commissioned Tierra West Advisors, Inc. (Tierra West) to mediate, review, analyze and prepare a report pertaining to an Amended and Restated Operating Covenant Agreement, between the City and AAA Oil, Inc. Dba California Fuels and Lubricants (CFL). The Amended and Restated Operating Covenant Agreement and terms are based upon the City's economic development strategy and in compliance with the newly enacted public reporting requirements of Assembly Bill 562 (AB 562)The State Legislature and Governor Brown, due to the elimination of Redevelopment addressed the loud outcry by cities, counties and communities for the need to legislatively assist local agencies, as well as the State, to encourage employment, retain jobs and companies in local communities. The loss of redevelopment has left the City of Garden Grove with a loss of local resources to encourage economic development. In response to this financial loss, the City of Garden Grove is developing an economic development strategy and considering an economic development subsidy that will comply with the continued public reporting provisions mandated by AB 562.

CFL, located in Garden Grove, is proposing to maintain its primary office location within the City for the next 20 years and four (4) months maintain the City as the Point of Sales for all

2616 East 3rd Street
Los Angeles California 90033
T 323/265 4400
F 323/261 8676
W tierrawestadvisors.com

REAL ESTATE & DEVELOPMENT
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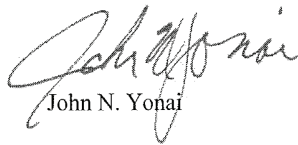
taxable sales. In order to remain competitive and promote expansion, CFL and the City are proposing to enter into the Amended and Restated Operating Covenant Agreement which includes a revenue sharing and capital investment arrangement as part of the City's Economic Development Program.

The Amended and Restated Operating Covenant Agreement is intended to provide CFL and the City the ability to address among others:

- Decline in competitiveness due to industry consolidation
- Update the existing Operating Covenant Agreement
- Extend CFL's operations in the City
- Retain City General Fund revenues to provide needed services for residents
- Retain and capture future growth in CFL product sales (leveraging on estimated future revenue and industry price increases) Increase the economic competitiveness of Garden Grove
- Increase the City's wealth and prosperity
- Diversify the City's economic base and wage levels
- Outreach and support to existing businesses
- Maintain and enhance a consistent, business-friendly environment
- Expand public-private partnership opportunities

Tierra West recognizes that the provisions of the Amended and Restated Operating Covenant Agreement and retention of CFL would not only assist CFL but also provide a strong public purpose through the City's continued expansion of economic development opportunities for businesses within the City. Simultaneously, retention of CFL in the City, will provide continued growth of the City's General Fund revenue and tax base and improve economic and physical conditions and services in the City.

Sincerely,
TIERRA WEST ADVISORS, INC.


John N. Yonai

**City of Garden Grove
Economic Development (AB562)
Amended and Restated Operating Covenant Agreement
between
City of Garden Grove
and
AAA Oil, Inc.
dba California Fuels and Lubricants**

The City of Garden Grove (City) in order to maintain sustainable economic development, community vitality and recovery from the annual loss of over \$5 million previously received by the City's Redevelopment Agency, is implementing economic development strategies that include the application of Assembly Bill (AB) 562. The City and AAA Oil, Inc., dba California Fuels and Lubricants, (CFL) propose to enter into an Amended and Restated Operating Covenant Agreement. The Amended and Restated Operating Covenant Agreement requires CFL to remain in operation in the City and the City will continue to provide revenue sharing with CFL.

The loss of redevelopment has left the City of Garden Grove as well as all cities Statewide with a loss of local resources to encourage economic development and maintain local services. The California Legislature and Governor Brown made the decision to terminate redevelopment and removed the single largest economic tool available to local agencies. Based upon the decision to terminate redevelopment statewide, the Governor and Legislature recognized the necessity of cities, counties and the State, to encourage employment and retain jobs and companies by giving economic subsidies to businesses and the importance of providing public input by requiring:

1. A public hearing prior to the granting of the subsidy
2. A report regarding the subsidy within the term
3. Where a subsidy has a term of more than 10 years, an additional public hearing at the conclusion of the subsidy.

The State approved AB 562, which went into effect on January 1, 2014, codifying a continued public reporting requirement for economic development subsidies.

This report includes the information required by AB 562 and the fiscal analysis necessary to determine the projected revenue generated by CFL to the City as part of the economic development strategy for business retention through an Amended and Restated Operating Covenant Agreement. The City provided information which was utilized to establish an estimated "Revenue Tax Base" of sales tax collected by the City from CFL. After the Revenue Tax Base was determined, projections of additional revenue generation from sales tax collections directly attributable to the business were developed. The projected revenue tax increase from CFL represents new resources as well as the retention of a portion of existing general fund revenues to the City of which a percentage of the revenue collected will be shared with CFL. This will avoid significant fiscal impacts to City revenues and community services.

AB562 requires a statement of public purpose for the economic development subsidies which can be satisfied by showing how the public is benefited at large with the proposed business retention. Community-wide benefits can be readily shown by the retention of revenues that will be used to provide municipal services. The City Council may choose to approve the Amended and Restated Operating Covenant Agreement in order to retain and expand jobs, maintain a local business, assist CFL to gain competitiveness within the fuel provision industry and incentivize the business owner to consider and complete upgrades and improvements. This report identifies the financial data necessary to allow the City Council to determine the value of entering into the proposed Amended and Restated Operating Covenant Agreement.

AB 562 Reporting Requirements

On and after January 1, 2014, each local agency shall, before approving any economic development subsidy within its jurisdiction, provide all of the following information in written form available to the public, and through its Internet Web site, if applicable:

1. The name and address of all corporations or any other business entities, except for sole proprietorships, that are the beneficiary of the economic development subsidy, if applicable.

**AAA Oil, Inc., dba California Fuels & Lubricants –
11621 Westminster Ave, Garden Grove, CA 92843**

Founded in 2004, AAA Oil, Inc., dba California Fuels and Lubricants, (CFL) is a state provider of competitively priced energy products and services. CFL delivers high-quality name brand petroleum products including but not limited to clear and dyed diesel, gasoline, all variety of lubricants, greases, DEF, propane, CNG, and LPG. CFL operates its own fleet of vehicles and provides 24/7 emergency services, fuel and lube inventory management, remote tank monitoring with a fully integrated fuel management system/fuel monitoring and tank rentals and sales. Certifications include Supplier Clearing House: Minority Business Enterprise (MBE) CPUC VON: 11090024 and National Minority Supplier Development Council (NMSDC) #SC05132.

Refined Petroleum Industry

The refined petroleum products market in the US grew 22 percent between 2006-2012 despite a sharp decline in consumption and price during the economic downturn. The local refined petroleum products industry followed similar trends, growing by an average of 6 percent per year during the 2006-2012 review period. The US refined petroleum products industry became more export-oriented with the share of exports increasing from 6 percent in 2006 to 16 percent in 2012. Strong growth is forecast for the industry as high prices and recovering volume demand will propel revenues.

2. The start and end dates and schedule, if applicable, for the economic development subsidy.

The Amended and Restated Operating Covenant, if approved, is for twenty (20) years and (4) months commencing on March 1, 2016 and ending on June 30, 2036.

Sales Tax Generation

The Bradley Burns Uniform Local Sales and Use Tax ("Bradley Burns") applies to the sales of tangible personal property in which a percentage of California's sales and use tax rate is distributed back to the jurisdiction where sales were generated to support local general funds. For many jurisdictions, including the City, this amount is one percent (1%). Sales tax is payable to the City from the State Board of Equalization. The calculations in this report indicate only the estimated amount of sales tax to be received by the City through the distribution formula used by the State Board of Equalization. CFL proposes to maintain and enhance existing business operations in the City. The City and CFL mutually agreed that a Sales Tax Base would be set at \$200,000 annually. Payment will be made quarterly with \$50,000 per quarter set as the base to offset and minimize any potential decline in current general fund revenue. Therefore, the City would receive the first \$50,000 in a quarter and revenue sharing would commence on any sales tax generated by CFL above this amount. The Annual base remains at \$200,000.

Sales projections were developed based upon review of retail sales data between the years of 2011 through 2015. According to the historical sales data, CFL generated on average of \$6.93 million in revenue per quarter or \$27.72 million annually. 2014 and 2015 data indicated steady growth in revenue with an average of \$9.13 million in sales per quarter or \$36.5 million per year.

The City and CFL previously entered into an Operating Covenant Agreement in August 2013, which provides for the City to rebate to CFL 50% of the incremental additional sales tax revenue generated by CFL above the amount of sales tax revenues generated in the Fiscal Year 2012-2013 base year, for a period of 10 years (through June 20, 2023), up to an aggregate maximum of \$2,000,000 with the remaining 50% of the incremental additional sales tax revenue retained by the City. The existing Operating Covenant Agreement also calls for a minimum of \$2,000,000 capital investment by CFL in the business. Under the current Operating Covenant Agreement, CFL has already exceeded the \$2,000,000 capital investments. In addition, the City has received 99.99% of the sales tax revenue while CFL has received less than 0.01%.

3. A description of the economic development subsidy, including the estimated total amount of the expenditure of public funds by, or of revenue lost to, the local agency as a result of the economic development subsidy.

Economic Development Strategy Implementation and Business Retention

In furtherance of the City's economic development strategies, a revenue sharing agreement in the form of the Amended and Restated Operating Covenant Agreement is being proposed. Pursuant to AB562, the revenue sharing Amended and Restated Operating Covenant Agreement is defined as an Economic Development Subsidy that is an expenditure of public funds or loss of revenue to a local agency in the amount of one hundred thousand dollars (\$100,000) or more, for the purpose of stimulating economic development within the jurisdiction of a local agency, including, but not limited to, bonds, grants, loans, loan guarantees, enterprise zone or empowerment zone incentives, fee waivers, land price subsidies, matching funds, tax abatements, tax exemptions, and tax credits. The Economic Development Subsidy shall not include expenditures of public funds by, or loss of revenue to, the local agency for the purpose of providing housing affordable to persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code. The City and CFL are currently in a revenue sharing agreement which the parties propose to amend and extend. The current Operating Covenant Agreement term began in July of 2013; the Amended and Restated Operating Covenant Agreement term will extend the current Operating Covenant Agreement by 20 years and four (4) months from March 1, 2016 and expiring on June 30, 2036.

The City is being proactive in retaining CFL as one of the major contributors to the City's general fund. The City's economic development strategies recognize the vulnerable economic recovery the Nation and City are experiencing. The potential relocation of CFL and total loss of revenue would be much more detrimental and undermine the City's delicate economic recovery and cause significant impact to its services. The City is making a significant commitment to maintain the economic momentum it has gained over the past 12 months.

The City and CFL propose to enter into an Amended and Restated Operating Covenant Agreement that would extend the commitment by CFL to remain in the City for twenty (20) years and four (4) months. The Amended and Restated Operating Covenant Agreement provides for a sales tax sharing structure that would provide CFL with up to seventy (70) percent of the sales tax revenue generated by CFL above sales tax in excess of \$200,000 generated annually, with payments distributed quarterly that are in excess of \$50,000 per quarter not to exceed two million dollars (\$2,000,000) and the City receives up to thirty (30) percent of the revenue between \$200,000 and \$2,000,000 in addition to the first \$200,000 of annual revenue which shall be paid quarterly in excess of the \$50,000. It is estimated that the Amended and Restated Operating Covenant Agreement will provide CFL with approximately \$6.6 million and the City \$6.9 million over a twenty (20) year and four (4) month period.

- The City base revenue receipts is reset to \$200,000 annually or \$50,000 quarterly

- City retains the first \$200,000 of sales tax collected annually which is accounted for in quarterly sales tax amounts of \$50,000 before sales tax sharing reimbursements commence to CFL.
- This allows the City to gradually adjust to the new terms and financial impact.
- City and CFL sharing of revenue in the Amended and Restated Operating Covenant Agreement includes the following structure:
 1. 30/70 from \$200,001 to \$2,000,000
 2. 40/60 from \$2,000,001 to \$3,000,000
 3. 50/50 from \$3,000,001 to 5,000,000
 4. 45/55 from \$5,000,001 to \$7,000,000
 5. 35/65 from \$7,000,001 and up.

In addition to the Amended and Restated Operating Covenant Agreement addressing Sales Tax sharing between the parties, CFL commits to investing \$8 million in capital assets between 2015 and 2024 as part of its growth plans within the City. CFL has already committed \$3.368 million to capital investment in 2015 as part of this Amended and Restated Operating Covenant Agreement.

4. A statement of the public purposes for the economic development subsidy.

Public Purpose

Review of the Amended and Restated Operating Covenant Agreement and proposed revenue sharing between CFL and the City is consistent with the City's economic goals and strategies and is in the best interest of the general public.

Economic goals and strategies include the following:

- Increase the economic competitiveness of Garden Grove
- Increase the City's wealth and prosperity
- Maximize public revenues and economic development financing options
- Diversify the City's economic base and wage levels
- Outreach and support to existing businesses
- Maintain and enhancing a consistent, business-friendly environment
- Expand public-private partnership opportunities
- Maintain current and provide future City public Services, capital projects and maintenance

The loss of redevelopment has had significant fiscal impact on City revenues as a result of eliminating the primary local economic tool. Retaining CFL's business operations in the City would address the need and desire to maintain revenue streams such as property and sales tax to the City. Additionally, CFL's continued presence in the City would assist in maintaining relative balance in the local economy through indirect retail sales and employment from other local businesses that are supported by CFL's location in the City.

The Amended and Restated Operating Agreement assists CFL in the following areas:

- Decline in competitiveness due to industry consolidation

- Update current Operating Covenant Tax Sharing Agreement Terms to allow CFL to remain competitive
- Early capture of future growth in product sales (leveraging on estimated future revenue or industry price increases)

CFL has identified multiple instances where larger competitors, created by significant consolidation of operators in the industry, have prevailed over CFL by providing prices at significantly lower than CFL product costs. In recent months there have been a number of smaller firms that have been purchased by larger companies. These acquisitions have made it difficult for many of the remaining smaller operations to submit competitive price quotes for new business contracts. Larger companies are positioned to offer lower bid prices, thus creating a challenging environment for operations similar to CFL to remain viable.

CFL and the City concur that the current Operating Covenant Agreement between the City and CFL is not reflective of the current industry standards or requirements for competitiveness. Tierra West has reviewed comparable agreements between companies and communities and noted substantial support for revenue sharing agreements of 65 percent and above. CFL, as well as, overall industry forecasts project significant growth in sales revenue over the next five (5) and ten (10) years. City staff and CFL agree that early capture or the ability of CFL to accelerate increases in revenue through the proposed Amended and Restated Operating Covenant Agreement will allow it to be more competitive with contract pricing and operations.

5. Projected tax revenue to the local agency as a result of the economic development subsidy.

Based upon the proposed Amended and Restated Operating Covenant Agreement, it is estimated that the City will receive \$3.1 million during the first ten (10) years of the Amended and Restated Operating Covenant Agreement and \$6.9 million over the course of the full term of the twenty (20) year and four (4) month Amended and Restated Operating Covenant Agreement.

6. Estimated number of jobs created by the economic development subsidy, broken down by full-time, part-time, and temporary positions.

AAA Oil, Inc., dba California Fuels and Lubricants (CFL), was founded in Garden Grove September 2004 with only 2 employees. Today they employ 44 people and are one of the City's top ten (10) highest sales tax producers.

CFL projects the addition of approximately 130 to 235 new jobs over a period of twenty (20) years and four (4) months. New jobs will include drivers, dispatchers, logistics office staff, accounting and IT positions. Job growth as proposed at this facility will be constant each year at a rate of change/growth that ranges from 12.5% in its lowest year of 2014 to 44.4% in the highest growth year of 2017. Notable growth in employment opportunities in the initial years and constant job growth throughout the twenty (20) year four (4) month period is consistent with the capital investment proposed by CFL.

Summary

AAA Oil, Inc., dba California Fuels and Lubricants (CFL) and the City have agreed that CFL remaining in Garden Grove is beneficial for both parties. The City has proposed that CFL agree to an Amended Operating Covenant Agreement to remain in Garden Grove for the next twenty (20) years. CFL and the City have mutually agreed to a revenue sharing structure and capital investment plan in exchange for the Amended and Restated Operating Covenant Agreement. The Amended and Restated Operating Covenant Agreement provides CFL a more competitive advantage in an industry that is consolidating and extremely competitive for smaller firms. The Amended and Restated Operating Covenant Agreement is the economic development subsidy that is consistent with the City's economic development implementation strategy and as prescribed in AB 562.

Assistance is provided in the form of a revenue sharing Amended and Restated Operating Covenant Agreement between CFL and the City. The Amended and Restated Operating Covenant Agreement provides for CFL receiving 50.0% to 70.0% of the sales tax revenue generated by CFL's sales operation with the balance of 30.0% to 50.0% remaining with the City. The proposed Amended and Restated Operating Covenant Agreement is for twenty (20) years and four (4) months. The estimated amount of the total subsidy or expenditure of public funds would be \$6.6 million over a twenty (20) year four (4) month period.

Based upon review of the Amended and Restated Operating Covenant Agreement, the structure is consistent with the City's economic goals and an implementation strategy is in the best interest of the general public. The Amended and Restated Operating Covenant Agreement and projections indicate the City will receive approximately \$6.9 million in sales tax revenue during the twenty (20) year four (4) month Amended and Restated Operating Covenant Agreement.

The Amended and Restated Operating Covenant Agreement serves a valid public purpose through the expansion of economic development opportunities for businesses in the City, continuing to expand the City's employment base, increasing capital investment in the CFL, increasing the property and personal property tax base, and continuing to generate sales tax revenue that the City utilizes to fund general governmental services for businesses and residents.

Recommendation

Retention of CFL in the City will continue to contribute to the economic vitality of the City, provide additional jobs within the City, expand the City's tax base and improve economic and physical conditions in the City. Loss or relocation of CFL out of the City will impact a vulnerable economic recovery and momentum that the City is achieving and reduce City services. As such, it is recommended that the Amended and Restated Operating Covenant Agreement be approved.

By its approval of the Amended and Restated Operating Covenant , the City Council of the City of Garden Grove finds and determines that the Amended and Restated Operating Covenant Agreement serves a valid public purpose through continuing to expand economic opportunities for businesses in the City, continuing to expand the City's employment base, and continuing to generate Sales Tax that the City will utilize to fund general governmental services such as police, fire, street maintenance, and parks and recreation programs.