

RESOLUTION NO.

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:

<b>Portion of Annual Sales Tax Revenues Generated by Business</b>	<b>Percentage Retained by City</b>	<b>Percentage Payable to Company</b>
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.

**Exhibit "A"**

**Amended and Restated Operating Covenant Agreement**

**Exhibit "B"**  
**Summary Report**