

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To:	Matthew J. Fertal	From:	Kingsley Okereke
Dept:	City Manager	Dept:	Finance
Subject:	ADOPTIONG OF A RESOLUTION APPROVING AN OPERATING COVENANT AGREEMENT WITH AAA OIL, INC. DBA CALIFORNIA FUELS AND LUBRICANTS AT 11621 AND 11671 WESTMINSTER AVENUE, GARDEN GROVE		
		Date:	August 13, 2013

OBJECTIVE

The purpose of this report is to for the City Council to adopt a Resolution approving an Operating Covenant Agreement (the "Agreement") with AAA Oil, Inc. dba California Fuels and Lubricants ("CFL"), located at 11621 and 11671 Westminster Avenue in Garden Grove (the "Site").

BACKGROUND

CFL was formed in September 2004 by Efrain Davalos and Jaime Duenas (the "Owners") who still operate the business. CFL delivers petroleum products, such as diesel, fuel, gasoline, oils and other types of fuels and lubricants to users of such products in Orange and neighboring counties in Southern California. Clients of CFL include hospitals, municipalities, schools, trucking companies, utility companies, dealers, car rental companies, construction companies, nurseries, large manufacturers and distributors.

In 2005, CFL had two employees and generated approximately \$10,000 in annual revenue. Today, CFL has grown to 18 employees and generates approximately \$32 million in revenue. CFL is one of the top 10 highest sales tax producers in the City, generating similar amounts of sales tax as some of Garden Grove's auto dealerships. CFL leases a portion of the site at 11621 and 11671 Westminster Avenue. In conjunction with this Agreement, CFL is extending its lease through June of 2025.

In June 2013, the owners of CFL approached the City regarding the proposed Agreement because they were in need of assistance in meeting the capital requirement necessary to expand their growing business. The Owners indicated that they intend to make a substantial capital investment in additional trucks, tanks, and other equipment for CFL and to expand the scope of operations, and

that they desired to continue to locate and operate its expanded business in the City.

DISCUSSION

Pursuant to the proposed Agreement, CFL would agree to invest no less than two million dollars (\$2,000,000) within the next five (5) years to expand its business in Garden Grove and to be bound by certain other operating covenants and restrictive covenants with respect to CFL and the Site. CFL projects that the planned capital investment will help increase its sales by 10% per year. A significant increase in CFL's sales would result in a corresponding significant increase in sales tax revenues to the City. In consideration for CFL's commitments under the proposed Agreement, the City would agree to make certain Covenants Consideration payments to CFL in amounts measured by the incremental additional sales tax revenues generated by CFL above the amount of sales tax revenues generated in Fiscal Year 2012-2013 base year. The total Covenants Consideration would be capped at a maximum of two million dollars (\$2,000,000) and quarterly payments would continue until the cap is reached or by June 30, 2023, whichever occurs first. CFL has indicated that its planned capital investment and expansion would not be feasible without the Covenants Consideration to be paid by the City pursuant to the proposed Agreement.

Summary of Deal Points

The proposed Agreement establishes the rights, obligations, and responsibilities of both CFL and the City. Following is a summary of pertinent deal points contained within the proposed Agreement:

1. Investment to Expand Business.

CFL is required to invest no less than Two Million Dollars (\$2,000,000) of its own funds on additional trucks, tanks, and/or other equipment for purposes of expanding on the Site.

2. Operating Covenant; Continuous Operation.

CFL is required to continuously conduct and operate its entire Business on the Site, and to designate the Site as the point of sale for sales tax purposes in all Business and related sales, until at least June 30, 2025. If CFL fails to continuously operate its entire Business in Garden Grove or moves any of its operations to another jurisdiction during this "Operating Period," the City shall be entitled to terminate the Agreement and recover all previously paid Covenants Consideration from CFL.

3. Other CFL Obligations.

Pursuant to the Agreement, for the duration of the Operating Period, CFL is also required (i) to timely pay any and all sales, property and/or other taxes applicable to or arising out of its operation of the Business on the Site; (ii) to keep and maintain the Site, including all landscaping on the Site and all facilities and equipment pertaining to the Business that is 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; and (iii) to comply with all applicable laws and governmental regulations.

4. Maintenance and Audits of CFL's Books and Records.

For the duration of the Operating Period and for at least three (3) years thereafter, CFL is required to maintain, and the City has the right to inspect and audit, all books and records relating to CFL's compliance with its obligations under the Agreement, including records of all of its sales and sales tax payments.

5. City's Covenants Consideration Payments.

In consideration for CFL's compliance with its covenants and obligations under the Agreement, as well as the additional sales tax revenue to be paid to the City as a result of the increased sales generated by CFL's expanded operations, the Agreement provides for the City to make Covenants Consideration payments to CFL in an amount measured by the incremental increased annual sales tax revenues received by the City as a result of CFL's growth and expansion. The Covenants Consideration payable by the City is determined on an annual basis and is equal to fifty percent (50%) of the *incremental* sales tax revenues payable to the City that are generated by CFL's Business during each Fiscal Year *in excess of* the "Base Year Sales Tax Revenues" (i.e., the amount of sales tax revenues payable to the City that were generated by CFL's Business during Fiscal Year 2012-2013). The Base Year Sales Tax Revenues amount will be determined by the City once the sales tax revenue figures for the fourth quarter of Fiscal Year 2012-2013 are verified by the City's consultant.

The City will make payments quarterly once its consultant verifies the amount of sales tax revenues generated by CFL during the prior quarter. In order to be entitled to the quarterly Covenants Consideration payments, CFL must not be in default of its obligations under the Agreement. Overpayments, if any, will be recaptured by the City from CFL. The total Covenants Consideration payable by the City is capped at a maximum of two million dollars (\$2,000,000), and quarterly payments will continue until the cap is reached or by June 30, 2023, whichever occurs first.

CONSIDERATION OF AN OPERATING COVENANT AGREEMENT WITH AAA OIL, INC.
DBA CALIFORNIA FUELS AND LUBRICANTS AT 11621 AND 11671 WESTMINSTER
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City Benefits

The purpose of the proposed Agreement is to induce CFL to remain in Garden Grove and to make a significant capital investment of its own funds in its Business in order to increase the volume of sales attributable to the Site. If the anticipated expansion and sales growth occurs as a result of CFL's capital investment, the Agreement will result in the generation of significant additional sales tax revenues to the City, the creation of additional employment opportunities for residents of the City, the long-term maintenance of the Site in a first class condition, and other tangible and intangible benefits to the City.

FINANCIAL IMPACT

This is a performance based Agreement. The Covenants Consideration payments to CFL are measured by the incremental additional amount of net sales tax revenues generated by CFL's expanded operations, and are capped at a maximum of two million dollars (\$2,000,000) over ten (10) years. The incremental additional sales tax revenues generated by CFL's expanded operations will exceed the amount of required City Covenant Consideration Payments to CFL by fifty percent (50%) over the term of the Agreement.

RECOMMENDATION

Staff recommends that the City Council take the following actions:

- Adopt the attached Resolution approving the attached Operating Covenant Agreement with AAA Oil, Inc.;
- Authorize the City Manager to execute the Agreement, including any minor modifications as appropriate, and any other pertinent documents necessary to effectuate and/or implement the Agreement.


KINGSLEY OKEREKE
Finance Director

By: Grace Lee
Economic Development Specialist

Approved for Agenda Listing


Matthew Ferial
City Manager

Attachment 1: Resolution
Attachment 2: Agreement

GARDEN GROVE CITY COUNCIL

RESOLUTION NO.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Exhibit "A"

Operating Covenant Agreement

OPERATING COVENANT AGREEMENT

This Operating Covenant Agreement ("Agreement"), dated for purposes of identification only as of August 13, 2013 (the "Date of this Agreement"), 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"). The Site is owned by Jaime Duenas and Rogelio Duenas (collectively, the "Owners of the Site"). As of the Date of this Agreement, Company's Business is one of the ten largest sales tax generators in the City.

B. Company intends 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. 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.

C. 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.

D. 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 has agreed to make certain payments to the Company (referred to herein as "Covenants Consideration") over a period of up to ten (10) years, in an aggregate amount not to exceed two million dollars (\$2,000,000). For purposes of calculation only, the amounts of such payments will be measured by the incremental additional Sales Tax Revenues generated by the Company's expanded Business as a result of Company's additional capital investment in the Business. 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.

E. 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, which capital investment and expansion would not be feasible without the Covenants Consideration, and to continue to locate and operate the expanded Business on the Site until at least June 30, 2025, so as to increase the amount of 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.

F. 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.

G. 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. Agreement Approvals. "Agreement Approvals" is defined in Section 7.
- b. Annual Covenants Consideration Amount. "Annual Covenants Consideration Amount" is defined in Section 5.
- c. Annual Increment. "Annual Increment" is defined in Exhibit "B," and means the difference between the Sales Tax Revenues for a given Fiscal Year and the Base Year Sales Tax Revenues.
- d. Base Year Sales Tax Revenues. "Base Year Sales Tax Revenues" means the amount of Sales Tax Revenues generated by the Business for the period commencing July 1, 2012 and ending June 30, 2013, as reasonably determined by the City.
- e. Books and Records. "Books and Records" is defined in Section 4.
- f. Breach. "Breach" is defined in Section 6.
- g. 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.
- h. City. "City" means the City of Garden Grove, California, a municipal corporation.

i. City Indemnitees. "City Indemnitees" means the City and its elected and appointed officials, officers, employees, representatives, agents, consultants, attorneys, volunteers, successors and assigns.

j. 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.

k. Covenants. "Covenants" means the covenants, obligations, and promises of the Company set forth in this Agreement.

l. Covenants Consideration. "Covenants Consideration" means the amount paid by City pursuant to Section 5.

m. Covenants Consideration Accrual Period. "Covenants Consideration Accrual Period" means the period commencing on July 1, 2013 and continuing until and expiring on June 30, 2023 or upon the earlier termination of this Agreement.

n. Date of this Agreement. "Date of this Agreement" is defined in the Preamble.

o. Default. "Default" is defined in Section 6.

p. Enforced Delay. "Enforced Delay" is defined in Section 17.

q. 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.

r. 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.

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

t. 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.

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

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

w. 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.

x. Notice of Default. "Notice of Default" is defined in Section 6.

y. Operating Period. "Operating Period" means the period commencing on the Date of this Agreement and continuing until and expiring on June 30, 2025 or upon earlier termination of this Agreement.

z. Owners of the Site. "Owners of the Site" means Jaime Duenas and Rogelio Duenas and each of their successors in interest to all or any portion of the Site.

aa. Overpayments. "Overpayments" is defined in Section 5.

bb. Prior Payments. "Prior Payments" is defined in Section 6.

cc. Quarter. "Quarter" means any three (3) month period commencing on July 1, 2013 and thereafter on October 1, January 1, and April 1.

dd. Quarterly Baseline. "Quarterly Baseline" is defined in Section 5 and in Exhibit "B."

ee. Quarterly Covenants Consideration Amount. "Quarterly Covenants Consideration Amount" is defined in Section 5 and in Exhibit "B."

ff. Quarterly Increment. "Quarterly Increment" is defined in Section 5 and in Exhibit "B."

gg. Quarterly Payment. "Quarterly Payment" is defined in Section 5 and in Exhibit "B."

hh. 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.

ii. 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.

jj. 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.

kk. 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.

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

mm. 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 Date of this Agreement:

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 Date of this Agreement:

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 Owners 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 Owners of the Site, or their 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. Investment to Expand Business. Company hereby covenants and agrees that, within five (5) years of the Date of this Agreement, it will invest no less than Two Million Dollars (\$2,000,000) of its own funds on additional trucks, tanks, and/or other equipment for purposes of expanding the Business on the Site, excluding funds spent by Company, if any, on construction and/or development on the Site. 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. 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.

e. 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.

f. 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.

g. 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 five (5) business 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.h.

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, City agrees to pay Company Covenants Consideration in an amount, determined on an annual basis, equal to fifty percent (50%) of all Sales Tax Revenues generated by the Business during each Fiscal Year in excess of the Base Year Sales Tax Revenues (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.

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 (i) computing the amount of Sales Tax Revenues generated during the applicable Quarter, (ii) subtracting therefrom an amount equal to one-fourth (1/4) of the Base Year Sales Tax Revenues (which amount is referred to herein and in Exhibit "B" as the "Quarterly Baseline"), and (iii) multiplying the difference between the Sales Tax Revenues for the Quarter and the Quarterly Baseline (referred to herein and in Exhibit "B" as the "Quarterly Increment") by fifty percent (50%) (the product of which is referred to herein and in Exhibit "B" as the "Quarterly Covenants Consideration Amount"). If Sales Tax Revenues for the applicable Quarter are less than or equal to the Quarterly Baseline, then no Quarterly Payment attributable to such Quarter is due. 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.h. More specific computational steps and examples 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.

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. Cap on Covenant Consideration. Notwithstanding anything else herein contained, in no event shall the aggregate sum of the Covenants Consideration payments paid to Company pursuant to this Agreement exceed the sum of Two Million Dollars (\$2,000,000).

e. Termination of Covenants Consideration. The Covenants Consideration payments shall terminate upon the earlier to occur of (1) termination of this Agreement, (2) the aggregate sum of the Covenants Consideration payments paid to Company pursuant to this Agreement reaching the sum of Two Million Dollars (\$2,000,000), or (3) expiration of the Covenants Consideration Accrual Period.

f. 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.

g. 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.

h. 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.

i. 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.

j. 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.j.

k. 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 by 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.h.

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, 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; (2) the validity or enforceability of this Agreement; and/or (3) the payments to be remitted pursuant to this Agreement, including, but not limited to, any action to attack, set aside, void, challenge, or annul the 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.k.

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.** 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 Owners 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.

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 Owners 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 Owners of the Site" on the signature page of this Agreement, the Owners 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 the Date of this Agreement, Company and the Owners 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 Owners 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 Owners of the Site to execute and record a notice of such expiration or termination of the Agreement and the Covenants.

[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

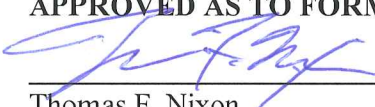
Dated: _____, 2013

By: _____
Matthew J. Fertil
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:



Thomas F. Nixon
City Attorney

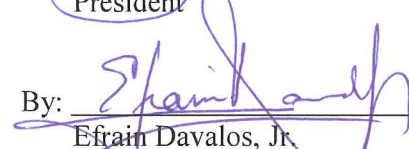
COMPANY

AAA OIL, INC., a California corporation

Dated: _____, 2013

By: 

Jaime Duenas
President

By: 

Efrain Davalos, Jr.
Secretary

CONSENT BY OWNERS OF THE SITE

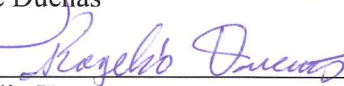
The undersigned hereby represent and warrant that they are the sole, fee simple owners of the Site described in Exhibit "A" hereto and hereby consent to the entering into of this Agreement by AAA Oil, Inc. and the recordation of the Memorandum of Agreement against the Site in the official records of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

Dated: _____, 2013

By: 

Jaime Duenas

Dated: _____, 2013

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 AND EXAMPLES

Base Year Sales Tax Revenues = Total Sales Tax Revenues generated by Business for 2012-2013 Fiscal Year (July 1, 2012 through June 30, 2013)

Quarterly Baseline = Base Year Sales Tax Revenues \div 4

Annual Increment = Sales Tax Revenues for Applicable Fiscal Year – Base Year Sales Tax Revenues

Quarterly Increment = Sales Tax Revenues for Applicable Quarter – Quarterly Baseline

Annual Covenants Consideration Amount = Annual Increment \times 50%

Quarterly Covenants Consideration Amount (Quarters 1, 2, & 3) = Quarterly Increment \times 50%

Quarterly Covenants Consideration Amount (Quarter 4) = Annual Covenants Consideration Amount – Aggregate Sum of Quarterly Covenants Consideration Amount (Quarters 1, 2, & 3)

Quarterly Payment = Amount of Covenants Consideration due Company for the applicable Quarter

Step for Calculating Quarterly Payments for Quarters 1-3

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

STEP 2: Subtract the Quarterly Baseline from the Sales Tax Revenues for Quarter to determine the Quarterly Increment.

$$[Sales\ Tax\ Revenues\ for\ Quarter - Quarterly\ Baseline = Quarterly\ Increment]$$

STEP 3: Multiply the Quarterly Increment by fifty percent (50%) to determine the Quarterly Covenants Consideration Amount.

$$[Quarterly\ Increment \times 50\% = Quarterly\ Covenants\ Consideration\ Amount]$$

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

$$[If\ Quarterly\ Covenants\ Consideration\ Amount > 0, \text{ then } Quarterly\ Payment = Quarterly\ Covenants\ Consideration\ Amount]$$

If the Quarterly Covenants Consideration Amount is less than or equal to zero, then no Quarterly Payment is due (and will be offset against Quarterly Payment for Quarter 4).

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: Subtract the Base Year Sales Tax Revenues from the Sales Tax Revenues for the entire Fiscal Year to determine the Annual Increment.

[Sales Tax Revenues for Fiscal Year – Base Year Sales Tax Revenues = Annual Increment]

STEP 3: Multiply the Annual Increment by fifty percent (50%) to determine the Annual Covenants Consideration Amount.

[Annual Increment x 50% = Annual Covenants Consideration Amount]

STEP 4: 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 ≤ 0 , then Quarterly Payment = 0]

¹ In the event the Sales Tax Revenues for any Fiscal Year are less than the Base Year Sales Tax Revenues, resulting in negative Annual Increment and Annual Covenants Consideration amounts, such negative amounts are *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.

EXAMPLE 1

All 4 Quarterly Increments Positive

Base Year Sales Tax Revenues (BYSTR): \$600,000

Quarterly Baseline (QB): $\$600,000 \div 4 = \$150,000$

Quarter 1 Sales Tax Revenues (QSTR1):

\$ 250,000

Quarter 2 Sales Tax Revenues (QSTR2):

\$ 180,000

Quarter 3 Sales Tax Revenues (QSTR3):

\$ 270,000

Quarter 4 Sales Tax Revenues (QSTR4):

\$ 300,000

Sales Tax Revenues for Applicable Fiscal Year (FYSTR):

\$1,000,000

Annual Increment (AI): $\$1,000,000 - \$600,000 = \$400,000$

Annual Covenants Consideration Amount (ACCA) = $\$400,000 \times 50\% = \$200,000$

	Quarter 1	Quarter 2	Quarter 3	Quarter 4	Notes
Sales Tax Revenues for Quarter (QSTR)	\$250,000	\$180,000	\$270,000	\$300,000	
Quarterly Increment (QI) $QI = QSTR - QB$	\$100,000	\$30,000	\$120,000		Quarterly Increment is positive number for all Quarters
Quarterly Covenants Consideration Amount (QCCA) $QCCA_{1,2,3} = QI \times 50\%$ $QCCA_4 = ACCA - QP1 - QP2 - QP3$	\$50,000	\$15,000	\$60,000	\$75,000	QCCA for 4 th Quarter: $\$200,000 - \$50,000 - \$15,000 - 60,000 = \$75,000$
Quarterly Payment (QP)	\$50,000	\$15,000	\$60,000	\$75,000	Sum of all four Quarterly Payments equals ACCA.

EXAMPLE 2

Negative Quarterly Increment(s), But Positive Annual Covenants Consideration Amount

Base Year Sales Tax Revenues (BYSTR): \$600,000

Quarterly Baseline (QB): $\$600,000 \div 4 = \$150,000$

Quarter 1 Sales Tax Revenues (QSTR1): \$150,000

Quarter 2 Sales Tax Revenues (QSTR2): \$75,000

Quarter 3 Sales Tax Revenues (QSTR3): \$200,000

Quarter 4 Sales Tax Revenues (QSTR4): \$250,000

Sales Tax Revenues for Applicable Fiscal Year (FYSTR): \$675,000

Annual Increment (AD): $\$675,000 - \$600,000 = \$75,000$

Annual Covenants Consideration Amount (ACCA) = $\$75,000 \times 50\% = \$37,500$

	Quarter 1	Quarter 2	Quarter 3	Quarter 4	Notes
Sales Tax Revenues for Quarter (QSTR)	\$150,000	\$75,000	\$200,000	\$250,000	
Quarterly Increment (QI) $QI = QSTR - QB$	\$0	(\$75,000)	\$50,000		Quarterly Increment for Q2 is negative
Quarterly Covenants Consideration Amount (QCCA) $QCCA1,2,3 = QI \times 50\%$ $QCCA4 = ACCA - QP1 - QP2 - QP3$	\$0	(\$37,500)	\$25,000	\$12,500	QCCA for 4 th Quarter: $\$37,500 - \$0 - \$0 - \$25,000 = \$12,500$
Quarterly Payment (QP)	\$0	\$0	\$25,000	\$12,500	Sum of all four Quarterly Payments equals ACCA. Q4 Quarterly Payment lower due to negative Q2 QCCA.

EXAMPLE 3

Negative Quarterly Increment(s); Resulting in Overpayment for Fiscal Year and Recapture of Overpayment from Company

Base Year Sales Tax Revenues (BYSTR): \$600,000

Quarterly Baseline (QB): $\$600,000 \div 4 = \$150,000$

Quarter 1 Sales Tax Revenues (QSTR1): \$160,000

Quarter 2 Sales Tax Revenues (QSTR2): \$120,000

Quarter 3 Sales Tax Revenues (QSTR3): \$100,000

Quarter 4 Sales Tax Revenues (QSTR4): \$220,000

Sales Tax Revenues for Applicable Fiscal Year (FYSTR): \$600,000

Annual Increment (AI): $\$600,000 - \$600,000 = \$0$

Annual Covenants Consideration Amount (ACCA) = $\$0 \times 50\% = \0

	Quarter 1	Quarter 2	Quarter 3	Quarter 4	Notes
Sales Tax Revenues for Quarter (QSTR)	\$160,000	\$120,000	\$100,000	\$220,000	
Quarterly Increment (QI) $QI = QSTR - QB$	\$10,000	(\$30,000)	(\$50,000)		Quarterly Increment for Q2 and Q3 are negative
Quarterly Covenants Consideration Amount (QCCA) $QCCA1,2,3 = QI \times 50\%$ $QCCA4 = ACCA - QP1 - QP2 - QP3$	\$5,000	(\$15,000)	(\$25,000)	(\$5,000)	QCCA for 4 th Quarter: $\$0 - \$5,000 - \$0 - \$0 = (\$5,000)$
Quarterly Payment (QP)	\$5,000	\$0	\$0	\$0	Sum of all four Quarterly Payments <i>more than</i> ACCA. Since ACCA \$0 for FY, QP for Q4 is \$0, and City to recapture \$5,000 Overpayment from Company

EXAMPLE 4

Negative 4th Quarter Increment; Resulting in Overpayment for Fiscal Year and Recapture of Overpayment from Company

Base Year Sales Tax Revenues (BYSTR): \$600,000

Quarterly Baseline (QB): $\$600,000 \div 4 = \$150,000$

Quarter 1 Sales Tax Revenues (QSTR1): \$160,000

Quarter 2 Sales Tax Revenues (QSTR2): \$180,000

Quarter 3 Sales Tax Revenues (QSTR3): \$150,000

Quarter 4 Sales Tax Revenues (QSTR4): \$100,000

Sales Tax Revenues for Applicable Fiscal Year (FYSTR): \$590,000

Annual Increment (AI): $\$590,000 - \$600,000 = (\$10,000)$

Annual Covenants Consideration Amount (ACCA) = $(\$10,000) \times 50\% = (\$5,000)$

	Quarter 1	Quarter 2	Quarter 3	Quarter 4	Notes
Sales Tax Revenues for Quarter (QSTR)	\$160,000	\$180,000	\$150,00	\$100,000	
Quarterly Increment (QI) $QI = QSTR - QB$	\$10,000	\$30,000	\$0		Quarterly Increment for Q4 is negative number
Quarterly Covenants Consideration Amount (QCCA) $QCCA1,2,3 = QI \times 50\%$ $QCCA4 = ACCA - QP1 - QP2 - QP3$	\$5,000	\$15,000	\$0	(\$25,000)	QCCA for 4 th Quarter: $(\$5,000) - \$5,000 - \$15,000 - \$0 = (\$25,000)$
Quarterly Payment (QP)	\$5,000	\$15,000	\$0	0	ACCA is <i>negative</i> for FY, so Q4 QP is \$0, and City to recapture \$25,000 Overpayment from Company.

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

RECITALS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[SIGNATURES FOLLOW ON NEXT PAGE]