

**SECOND AMENDMENT
TO
OPERATING COVENANT AGREEMENT
(Downs Companies)**

among

**THE CITY OF CORONA,
a California municipal corporation,**

and

**DOWNS ENERGY,
a California corporation**

[Dated as of December 16, 2015, for reference purposes only]

**SECOND AMENDMENT
TO
OPERATING COVENANT AGREEMENT
(Downs Companies)**

THIS SECOND AMENDMENT TO OPERATING COVENANT AGREEMENT (Downs Companies) (“**Second Amendment**”) is dated as of December 16, 2015, and is entered into by and between THE CITY OF CORONA, a California municipal corporation (“**City**”) and DOWNS ENERGY, a California corporation (“**Downs Energy**”). The City and Downs Energy are sometimes referred to in this Second Amendment individually as a “**Party**” or collectively as the “**Parties**.” The City and Downs Energy enter into this Second Amendment with reference to the following recited facts (each a “**Recital**”):

RECITALS

WHEREAS, Downs Energy owns and operates a commercial fueling and energy operation facility within the City and currently located as 1296 Magnolia Avenue in the City of Corona, County of Riverside (“**Property**”); and

WHEREAS, Downs Energy expects to generate significant sales and service-related revenues and to expand their commercial fueling and energy sales operations, all of which will result in the generation of significant new local sales tax revenues; and

WHEREAS, the City, Downs Energy and Downs Oil Co., Inc. (“**Downs Oil**”) previously entered into that certain Operating Covenant Agreement (Downs Companies), dated November 15, 2006, and as amended on June 6, 2012 (collectively, the “**Agreement**”), which, among other things, set forth the terms and conditions pursuant to which Downs Energy and Downs Oil agreed to maintain their sales office operations (the “**Facility**”) within the City for a period of twenty-five (25) years from the effective date of the Agreement and to expand their commercial fueling and energy sales activities throughout the State of California, in exchange for the City providing certain payments to the Downs Energy and Downs Oil as an incentive for operating the Facility within the City during this period and in consideration of the new and additional local sales tax revenues, property taxes, employment benefits, and other tangible and intangible benefits to be received by the City arising from the operation of the Facility within the City and the expansion of Downs Energy and Downs Oil commercial fueling and energy operations, as further described in the Agreement; and

WHEREAS, subsequent to the effective date of the Agreement, Downs Energy and Downs Oil merged into Downs Energy, which remains a Party to the Agreement and the sole operator of the Facility; and

WHEREAS, the purpose of this Second Amendment is to revise the Agreement to: (i) provide additional sixty (60) month extensions to the Term; and (ii) to set forth the amount of the Covenant Payments made by the City during any Extended Term; and

WHEREAS, the incentives provided in this Second Amendment are intended to ensure Owner maintains the existing Facility within the City and expands its operations within the City

as appropriate; and

WHEREAS, entering into this Second Amendment will generate substantial revenue for the City, create the potential for additional job growth, ensure the retention of 8 existing jobs, continue to stimulate the economy in an area of the City which has suffered a loss of jobs and businesses during the economic downturn of the mid-2000's, and result in community and public improvements that might not otherwise be available to the community for many years.

NOW THEREFORE, in consideration of the mutual covenants set forth herein and the mutual benefits to be derived therefrom, the Parties agree as follows:

TERMS

1. **Incorporation of Recitals.** The Recitals set forth above are true and correct and are incorporated into this Second Amendment in their entirety by this reference.

2. **Definitions.** All terms with initial capital letters used herein but not otherwise defined shall have the respective meanings set for the in the Agreement.

3. **Amendments.** The Agreement is hereby amended as follows:

3.1 Reference to Downs Companies. Each reference to "Downs Companies" in the Agreement is hereby amended to read "Downs Energy".

3.2 Term of this Agreement. Section 3 of the Agreement is hereby repealed and replaced in its entirety with the following:

"Term of this Agreement. This Agreement shall commence on the Effective Date and, unless terminated sooner pursuant to the provisions of this Agreement, shall continue in effect thereafter until the last day of Computation Quarter 120 (which time period is referred to in this Agreement as the "**Term**"), subject to any rights or remedies available to a Party to earlier terminate this Agreement as set forth hereinafter.

Upon expiration of the Term, the Term shall automatically renew for subsequent sixty (60) month periods (each an "**Extended Term**"), unless either Party provides written notice indicating its intent to terminate the Agreement to the other Party no less than one (1) year prior to expiration of the then existing Term or Extended Term, as applicable. (The Term together with any Extended Term shall be referred to herein collectively as the "Term".)"

3.3 Computation Quarter. Section 6.5 of the Agreement is hereby repealed and replaced in its entirety with the following:

“**Computation Quarter**” means and refers to each calendar quarter beginning on January 1, April 1, July 1, or October 1, as applicable, and ending on the succeeding March 31, June 30, September 30, or December 31, as applicable. The Parties agree that the first Computation Quarter within the Eligibility Period commenced July 1, 2006 and is referred to herein as “Computation Quarter 1”, with each succeeding Computation Quarter within the Eligibility Period being consecutively numbered, concluding with “Computation Quarter 120.” During any Extended Term, Computation Quarters shall commence with “Computation Quarter 121”, with each succeeding Computation Quarter within the Eligibility Period being consecutively numbered, concluding upon the Computation Quarter then existing as of expiration of the applicable Extended Term pursuant to Section 3.1.”

3.4 Eligibility Period. Section 6.8 of the Agreement is hereby repealed and replaced in its entirety with the following:

“**Eligibility Period**” means and refers to the period commencing as of the first (1st) day of Computation Quarter 1 and ending the last day of Computation Quarter 120, i.e. June 30, 2036, or the last day of the Computation Quarter of an Extended Term, as applicable.”

3.5 Covenant Payments During Extended Term. A new Section 8.4 is hereby added to the Agreement to read in its entirety as follows:

“**8.4** The City shall, with respect to any Computation Quarter during an Extended Term, pay Downs Energy an amount equal to fifty percent (50%) of the Local Sales Tax Revenues received by the City in the subject Computation Quarter.”

3.6 Jobs Creation Covenant. A new Section 10.5 is hereby added to the Agreement to read in its entirety as follows:

“**10.5** Downs Energy covenants and agrees that the continued operation of the Facility for the Extended Term shall result in retention of not less than 8 jobs in the City and Down’s Energy shall use its best commercially reasonable efforts to expand the workforce at the Property.”

4. Except as amended by this Second Amendment, all provisions of the Agreement, including without limitation the indemnity and insurance provisions, shall remain in full force and effect and shall govern the actions of the Parties under this Second Amendment. From and after the date of this Second Amendment, whenever the term “Agreement” appears in the Agreement, it shall mean the Agreement as amended by this Second Amendment.

5. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Second Amendment.

[Signatures on following pages]

**SIGNATURE PAGE
TO
SECOND AMENDMENT
TO
OPERATING COVENANT AGREEMENT
(Downs Companies)**

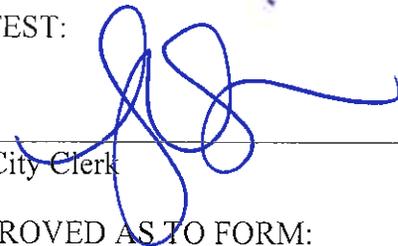
IN WITNESS WHEREOF, City and Downs Energy have executed this Second Amendment to Operating Covenant Agreement (Downs Companies) by and through the signatures of their duly authorized representative(s) set forth below:

CITY:

CITY OF CORONA, a California municipal corporation

Dated: 12/28/15

By: 
Darrell Talbert
City Manager

ATTEST:
By: 
City Clerk

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP

By: _____
Special Counsel

**SIGNATURE PAGE
TO
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TO
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CITY:

CITY OF CORONA, a California municipal corporation

Dated: _____

By: _____

Darrell Talbert
City Manager

ATTEST:

By: _____

City Clerk

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP

By: Elizabeth Hull

Special Counsel

**SIGNATURE PAGE
TO
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DOWNS ENERGY:

DOWNS ENERGY, a California corporation

Dated: 12-14-15

By: 
Name: Michael J. Downs _____
Its: President

Dated: 12-14-15

By: 
Name: Sharon L. Messner _____
Its: Secretary _____