

**THIRD AMENDMENT TO
OPERATING COVENANT AGREEMENT II**

between

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

and

**ALL AMERICAN ASPHALT
a California corporation**

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

3. PARTIES AND EFFECTIVE DATE.

3.1 This Third Amendment to All American Asphalt Operating Covenant Agreement II (“First Amendment”) is entered into between (i) the City of Corona (“City”), a municipal corporation, and (ii) All American Asphalt (“Owner”), a California corporation. This Third Amendment will not become effective until the date (“Effective Date”) on which all of the following are true:

- (i) This Third Amendment has been approved and executed by the appropriate authorities of Owner, as defined herein, and delivered to the City;
- (ii) This Third Amendment has been approved by the City Council following a duly noticed public hearing and this Third Amendment has been executed by the appropriate authorities of the City and delivered to Owner.

4. RECITALS AND REPRESENTATIONS.

4.1 The City and Owner are parties to that certain “Operating Covenant Agreement II” (“Original Agreement”) dated August 6, 2008, that certain “First Amendment to Operating Covenant Agreement II” dated September 17, 2008 and that certain “Second Amendment to Operating Covenant Agreement II” dated March 20, 2013 (collectively, “Original Agreement”). All initially capitalized terms used, but not otherwise defined herein shall have the meaning for such terms as set forth in Original Agreement.

4.2 Owner operates, or has caused to be operated upon the Property located within the territory of the City, the Sales Office. The Owner also conducts Owner’s Sales Activities from several locations within the Designated Marketing Territory. A listing of the locations serving the Designated Marketing Territory is set forth in Original Agreement.

4.3 The Original Agreement provides for, among other things, Owner’s covenant to consummate all taxable sales transactions for its products and services in the Designated Marketing Territory at the Sales Office, consistent with all applicable statutory and California Board of Equalization (“BOE”) regulatory requirements applicable to Owner’s Sales Activities and the designation of the City as the “point of sale” for all Owner’s taxable sales occurring in the Designated Marketing Territory. The consideration to be paid to the Owner for Owner’s covenant stated in the previous sentence is certain financial incentive payments described in Original Agreement.

4.4 The Parties now desire to amend the Original Agreement to provide for consecutive additional five (5) year extensions to the Term.

4.5 The incentives provided in this Third Amendment are intended to ensure Owner maintains the Sales Office within the City and expands its operations within the City, as appropriate.

4.6 Entering into this Third Amendment will generate substantial revenue for the City, create the potential for additional job growth, ensure the retention of 596 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.

5. TERMS.

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

5.2. Definitions. All terms with initial capital letters used herein but not otherwise defined shall have the respective meanings set forth in the Original Agreement.

5.3 Jobs Creation Covenant. The following Section 3.1.6 of the Original Agreement is hereby repealed and replace in its entirety with the following:

“3.1.6 Jobs Creation Covenant and Operational Covenant. Owner covenants and agrees that the continued operation of the Sales Office shall result in retention of not less than 596 jobs in the City and Owner shall use its best commercially reasonable efforts to expand the workforce at the Property.”

5.4 First Extension. The following Section 3.1.7 of the Original Agreement is hereby repealed and replace in its entirety with the following:

“3.1.7 First Extension of Covenants. The Covenants as set forth in this Section 3.1 shall be extended to August 6, 2018 (“First Extended Term”).”

5.5 Additional Automatic Extensions. The following Section 3.1.8 shall be added to the Original Agreement to read as follows:

“3.1.8. Automatic Extension of Covenants. Upon expiration of the First Extended Term, the Covenants as set forth in this Section 3.1 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 Original Agreement to the other Party no less than one (1) year prior to expiration of the then existing Extended Term, as applicable.”

5.6 Computation Year. Section 1.3.3 of the Original Agreement is hereby repealed and replaced in its entirety with the following:

“1.3.3 “Computation Year” means one (1) Fiscal Year. As an example, the first Computation Year commenced on July 1, 2008 and ended June 30, 2009.

5.7 Eligibility Period. Section 1.3.7 of the Original Agreement is hereby repealed and replaced in its entirety with the following:

“1.3.7 **“Eligibility Period”** means the period commencing July 1, 2008 and ending the last day of last Computation Year of the Original Covenant Term, or the last day of the Computation Year of an Extended Term, as applicable.”

5.8 Ratification; Absence of Defaults. The City and Owner each hereby ratify and reaffirm each and every one of their obligations as set forth in the Original Agreement, as modified by this Third Amendment.

The City and Owner each represent to the other that there have been no events that, with the passage of time, the giving of notice, or both, would constitute City Default or Owner Default under the Original Agreement. Except as expressly modified herein, the terms, covenants, conditions and obligations of the Original Agreement remain in full force and effect. From and after the Effective Date of this Third Amendment, wherever the term “Covenant Agreement II” appears in the Original Agreement, it shall be read and understood to mean the Original Agreement as amended by this Third Amendment.

5.9 Counterparts. This Third Amendment maybe executed in duplicate originals, each of which is deemed to be an original, but when taken together shall constitute but one in the same instrument.

5.10 No Other Amendment. Except as hereinabove set forth, the Original Agreement is unmodified and remains in full force and effect.

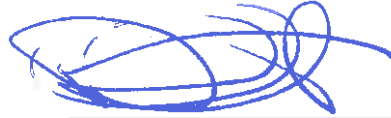
5.11 Ratification and Reaffirmation of Rights and Obligations under the Original Agreement. The City and Owner each hereby ratify, reaffirm and reauthorize each and every of their respective obligations arising under the Original Agreement. Each Party represents to the other Party that, as of its execution of this Third Amendment, there are no uncured material defaults of any of the other Parties under the Original Agreement, and that there have been no events which, with the giving of notice or the passage of time, or both, would constitute material events of default under the Original Agreement.

[Signatures on following page]

SIGNATURE PAGE TO THE
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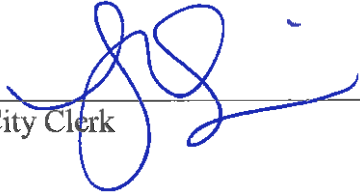
THE CITY OF CORONA
a California municipal corporation

By:



Darrell Talbert
City Manager

ATTEST:



City Clerk

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP

By:

Special Counsel

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a California municipal corporation

By: _____
Darrell Talbert
City Manager

ATTEST:

City Clerk

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP

By: Elizabeth Hull
Special Counsel

SIGNATURE PAGE TO THE
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ALL AMERICAN ASPHALT
a California corporation

By:



Mark Luer
President