

**RESOLUTION NO. 2021-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FONTANA, CALIFORNIA, APPROVING THE OPERATING COVENANT AGREEMENT BETWEEN THE CITY OF FONTANA AND FONTANA AUTOMOTIVE SERVICES EAST, INC. AND MAKING RELATED FINDINGS**

**WHEREAS**, Fontana Automotive Services East, Inc. (“Fontana Automotive”), a California Corporation, constructed on an undeveloped lot an automobile sales business, specifically a Hyundai dealership, in the City of Fontana; and

**WHEREAS**, the City and Fontana Automotive have negotiated a new Operating Covenant Agreement (“Agreement”) designed to ensure the ongoing operation and retention of the Hyundai dealership located within the Fontana Auto Center at 16850 South Highland Avenue; and

**WHEREAS**, the incentives provided in this Agreement are intended to ensure Fontana Automotive remains operating within the City for not less than 12 years; and

**WHEREAS**, the City has determined that the ongoing operation of the automobile sales business within the City will generate substantial revenue for the City, allow for the retention and creation of new jobs, and result in community and public improvements that might not otherwise be available to the community for many years; and

**WHEREAS**, entering into this Agreement and ensuring the retention of the automobile sales business may attract additional businesses and investment in the community due to increased services and economic activity in the area; and

**WHEREAS**, the City has determined that approval of the Agreement is not a “project” as defined by the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) (“CEQA”), or is exempt pursuant to the State CEQA Guidelines (Cal. Code Regs., § 15000 et seq.) section 15061(b)(3), because the Agreement does not have the potential for resulting in either a significant direct physical change in the environment or a reasonably foreseeable significant indirect physical change in the environment; and

**WHEREAS**, on September 14, 2021, the City Council of the City of Fontana conducted a public hearing to consider the Agreement and concluded said hearing on that date; and

**WHEREAS**, all legal prerequisites to the adoption of this Resolution have occurred.

**NOW, THEREFORE, BE IT RESOLVED**, determined, and ordered by the City Council of the City of Fontana, California, as follows:

**SECTION 1.** Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

**SECTION 2.** Findings. The City Council hereby finds that:

(a) Entering into this Agreement will serve the following public purposes:

(1) Fontana Automotive Services East, Inc. will be committed to maintaining and operating the Hyundai dealership in the City of Fontana; and

(2) Retaining this business within the City will create jobs, maintain economic diversity in the community and stimulate the economic recovery of the Inland Empire by generating new opportunities for economic growth within the region; and

(3) Retaining Fontana Automotive's operations within the City will generate substantial revenue for the City, allow for the retention of jobs, and result in community and public improvements that might not otherwise be available to the community for many years; and

(4) Entering into this Agreement and ensuring the retention of Fontana Automotive's Hyundai dealership may attract additional businesses and investment in the community due to increased services and economic activity in the area; and

(b) Based upon these and other public benefits, the public purposes of the Agreement outweigh any private benefit to private persons or entities.

(c) Contingent Obligations. The City finds that each City obligation in the Agreement is contingent upon separate consideration by Fontana Automotive including but not limited to quarterly sales tax generation.

**SECTION 3.** Approve Agreement. The City Council hereby approves the Operating Covenant Agreement in the form attached to this Resolution as Exhibit A. The City Council hereby authorizes the City Manager, with the concurrence of the City Attorney, to execute said Agreement. City Manager is hereby authorized to take any additional steps necessary to facilitate the intent of this action.

**SECTION 4.** CEQA Compliance. Pursuant to the California Environmental Quality Act ("CEQA") (Pub. Res. Code, § 21000 et seq.) and the State CEQA Guidelines (Cal. Code Regs, tit. 14 § 15000 et seq.), the City is the lead agency for this action. The City Council finds that approving the Operating Covenant Agreement is not a "project" subject to CEQA pursuant to State CEQA Guidelines sections 15060(c)(2), 15060(c)(3), and 15378. Under section 15060(c)(2) an activity that will not result in a direct or reasonably foreseeable indirect physical change in the environment is not subject to environmental review under CEQA. Further, under section 15060(c)(2) an activity that

is not a project as defined in CEQA Guidelines section 15378 is also not subject to environmental review under CEQA. Here, approval of the Agreement, in of itself, does not have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and therefore is not considered a “project” under CEQA. (Pub. Resources Code, § 21065; State CEQA Guidelines, § 15378(a).)

The City Council further finds that approval of the Agreement is exempt from CEQA under State CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. Here, Fontana Automative’s Hyundai dealership is already in place and under operation. No staff or operational changes will occur as a result of approval of the Agreement.

**SECTION 5.** Implementation. The City Manager or his or her designee is hereby authorized and directed to, on behalf of the City, execute any and all documents in accordance with this Resolution and applicable law.

**SECTION 6.** Severability. If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The City declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

**SECTION 7.** Certification. The City Clerk shall certify to the adoption of this Resolution.

**SECTION 8.** Effective Date. This Resolution shall become effective immediately upon its adoption.

**APPROVED AND ADOPTED** this 14th day of September, 2021.

**READ AND APPROVED AS TO LEGAL FORM:**

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City Attorney

Resolution No. 2021-

I, Tonia Lewis, City Clerk of the City of Fontana, and Ex-Officio Clerk of the City Council, do hereby certify that the foregoing Resolution is the actual Resolution duly and regularly adopted by the City Council at a regular meeting on the 14th day of September, 2021, by the following vote to wit:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

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City Clerk of the City of Fontana

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Mayor of the City of Fontana

**ATTEST:**

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City Clerk

EXHIBIT A  
OPERATING COVENANT AGREEMENT

[Attached behind this cover page]