

RESOLUTION NO. 1167

RESOLUTION APPROVING AN AGREEMENT BETWEEN SACABA, LLC,
CLEAN ENERGY, INC. AND THE CITY OF WEST BRANCH, IOWA.

WHEREAS, the City of West Branch, hereafter referred to as "CITY" will enter into an agreement with Casey's Marketing Company for the reconstruction of Tidewater Drive (the "PROJECT"); and

WHEREAS, Clean Energy, Inc., hereafter referred to as "LESSEE" is leasing property from Sacaba, LLC, hereafter referred to as "OWNER" and erecting a natural gas filling station on Lot 1 of the Tidewater Heights Subdivision; and

WHEREAS, to that end, the OWNER and LESSEE have agreed to pay their share of the PROJECT; and

WHEREAS, the CITY, the LESSEE and OWNER have all agreed that it is now necessary to enter into an agreement to outline the obligations of each party as it pertains to the construction of the PROJECT; and

WHEREAS, it is now necessary to approve said agreement.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of West Branch, Iowa, that the aforementioned agreement is hereby approved. Further, the Mayor is directed to execute the agreement on behalf of the City.

Passed and approved this 16th day of December, 2013.



Mark Worrell, Mayor

ATTEST:



Matt Muckler, City Administrator/Clerk



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Document 2014 488 Pages 4
Date 2/26/2014 Time 11:35:46AM
Rec Amt \$22.00

Cng

MELISSA HELMOLD, RECORDER
CEDAR COUNTY IOWA

Prepared by: Kevin D. Olson, West Branch City Attorney, PO Box 5127, Coralville, Iowa 52241 (319) 351-2277
Return to: City of West Branch, Attn: City Administrator, PO Box 218, West Branch, Iowa 52358 (319) 643-5888

AGREEMENT

THIS AGREEMENT is entered into by and between Sacaba, LLC, hereafter referred to as "OWNER"; Clean Energy, a California corporation, hereafter referred to as "LESSEE"; and the City of West Branch, Iowa, hereafter referred to as "CITY."

WHEREAS, Sacaba, LLC, is the OWNER of the following described property in the City of West Branch, Iowa:

Lot 1, Tidewater Heights Subdivision, West Branch, Iowa (the "Property")

WHEREAS, the LESSEE is leasing the Property from the OWNER and erecting a natural gas filling station on the Property; and

WHEREAS, the OWNER and LESSEE have agreed to pay its share of the reconstruction of Tidewater Drive (the "Project") as part of the platting proceedings; and

WHEREAS, the CITY will enter into an Agreement with Casey's Marketing Company ("Casey's") to construct the Project; and

WHEREAS, it is now necessary to enter into an agreement to outline the obligations of each party as it pertains to the construction of the Project.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. CITY shall cause the construction of the Project by Casey's in strict compliance with plans and specifications approved by the West Branch City Engineer.
2. CITY shall, after construction of said Project by Casey's, submit an invoice to the OWNER and LESSEE for the costs associated with the construction of the Project adjacent to the Property, which invoice shall not exceed \$30,760.00.
3. The OWNER or LESSEE shall pay the invoice within 30 days of receipt of the invoice for the Project to the CITY. In the event that the OWNER fails to pay said invoice, the OWNER expressly consents to the CITY certifying said invoice amount to the Cedar County Treasurer for collection with real property taxes. By its consent, the OWNER expressly waives its rights to notice, benefit or value as it pertains to special assessments as outlined in Chapter 384 of the Code of Iowa.
4. All Notices required under this Agreement shall be deemed delivered three (3) days after being placed in the U.S. Mail, postage prepaid, to the following address:

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OWNER:
Sacaba, LLC
C/O Matt Hayek
Hayek Brown Moreland & Smith LLP
120 E. Washington Street
Iowa City, IA 52240

LESSEE:
Clean Energy
C/O James N. Harger
4675 MacArthur Court, Suite 800
Newport Beach, CA 92660

With a copy to:

Clean Energy
C/O J. Nathan Jensen
4675 MacArthur Court, Suite 800
Newport Beach, CA 92660

CITY:
City of West Branch, Iowa
ATTN: City Administrator
PO Box 218, 110 N. Poplar Street
West Branch, Iowa 52358

5. This obligations in this agreement shall run with the land and bind each party's successors and assigns.

Dated this 11th day of December, 2013.

OWNER:



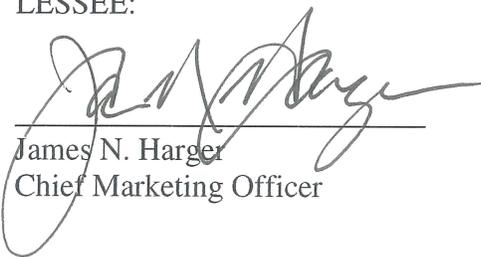
Matthew J. Hayek, Manager

CITY:



Mark Worrell, Mayor

LESSEE:



James N. Harger
Chief Marketing Officer

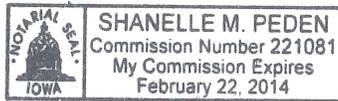
ATTEST:



Matt Muckler, City Administrator/Clerk

STATE OF IOWA, COUNTY OF CEDAR, ss:

On this 16th day of December, 2013, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Mark Worrell and Matt Muckler, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of West Branch, Iowa; a municipal corporation; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as passed by Resolution of the City Council; and Mark Worrell and Matt Muckler acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.

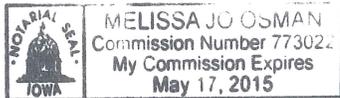


Shanelle M. Peden

A Notary Public in and for the
State of Iowa
My commission expires:

STATE OF IOWA, COUNTY OF JOHNSON, ss:

On this 16th day of December, 2013, personally appeared Matthew J. Hayek, who executed this Agreement as Manager of Sacaba, LLC.



MJ Osman

Notary Public

STATE OF _____, COUNTY OF _____, ss:

On this ____ day of _____, 2013, personally appeared _____, who executed this Agreement as _____ of Clean Energy.

see attached.

Notary Public

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California

County of Orange

On 12-12-2013

Date

before me,

Gina M. Leong, Notary Public

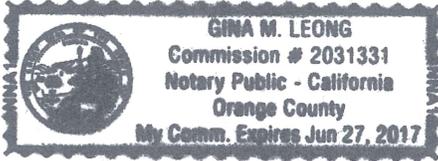
Here Insert Name and Title of the Officer

personally appeared

James N. Harger

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature:

[Handwritten Signature]

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document:

Agreement

Document Date:

Number of Pages:

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)

Signer's Name:

James N. Harger

Signer's Name:

Corporate Officer — Title(s)

Spit Marketing Agency

Corporate Officer — Title(s):

Individual

Individual

Partner — Limited General

Partner — Limited General

Attorney in Fact

Attorney in Fact

Trustee

Trustee

Guardian or Conservator

Guardian or Conservator

Other:

Other:

Signer Is Representing:

Clean Energy

Signer Is Representing: