

AGREEMENT

THIS AGREEMENT is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a home rule city organized and existing pursuant to Article XX of the Colorado Constitution (the “City”), and **Costco Wholesale Corporation**, a [Washington] corporation, whose address is [999 Lakes Drive, Issaquah, WA] (“Costco” or the “Contractor”) (together, the “Parties”).

RECITALS

WHEREAS, there is a public purpose for [attracting companies and their associated economic activity within Denver], including stimulating economic development, retail spending, and the creating of jobs within the City;

WHEREAS, incentives are often necessary in order to [attract and grow] private enterprises to further this public purpose;

WHEREAS, [Costco] is willing to [locate and maintain] a retail and wholesale facility, which is focused on providing goods and services to businesses, nonprofit, and other customers within the City partly due to the availability of certain incentives provided by the City, as further described in this Agreement;

WHEREAS, this Agreement, and the [maintenance of the location of the retail and wholesale facility] within the City will advance the valid and valuable public purpose set forth above by generating tax revenues and by the creation and maintenance of job opportunities for City residents, as a result of the incentives described herein; and

WHEREAS, for these reasons, in consideration of the mutual covenants herein contained, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

TERMS AND CONDITIONS

1. **CONDITIONS.** This Agreement and the City’s obligations hereunder are conditioned upon the following:

A. Contractor may [operate its facility, a Costco Business Center (or its successor) focused on providing goods and services to businesses, nonprofits, and other customers, located at 400 South Zuni Street within the City, for at least the term of this Agreement (the “Facility”)]. This Facility shall constitute a purchase and rehabilitation of space

for the described business operation.

B. Contractor shall use reasonable efforts to make entry-level and other non-managerial and non-supervisory positions at the Facility (and not including Contractor's employees transferred from other locations) known to residents of the City, by submitting to the City's Office of Economic Development pertinent job availability information on each job opening at the Facility during the term of this Agreement.

2. **INCENTIVE PAYMENTS/MECHANISM.** Subject to the terms hereof, the City agrees to make incentive payments to Contractor payable as follows:

A. Sales Activity and Payment of Collected Denver Sales/Use Tax (\$2,000,000.00). The City shall pay to the Contractor an amount equal to up to fifty percent (50%) of the collected and timely paid Denver Sales/Use Tax (as specified in the Denver Revised Municipal Code, "Denver Sales/Use Tax") for the term of this Agreement, up to a maximum of \$2,000,000.00, for sales activity related to the Facility. To illustrate: if, during the fourth quarter of 2016, the Contractor completes sales, which require collection of Denver Sales/Use Tax totaling \$12,328,767.12 (based on the current Sales/Use Tax rate of 3.65%, the Contractor would generate Denver Sales/Use Tax totaling \$450,000) and make appropriate and timely payments of such amount to the City's Department of Finance, Treasury Division. Upon receipt of an invoice and verified documentation of payment of the Denver Sales/Use Tax, the City's Office of Economic Development ("OED") will provide an incentive payment of \$225,000 for the same quarter, based upon providing an incentive of 50% of the total Denver Sales/Use tax paid to the Treasury Division. The City's incentive payments allocable to sales activity shall not exceed Two Million Dollars (\$2,000,000.00) over the term of this Agreement. Such payments shall be made pursuant to paragraph 2.B below. |

B. Petition. To receive an incentive payment hereunder, Contractor shall petition jointly the City's Director of OED and the City Treasurer.

1. [The petition for sales activity payment shall contain Contractor's certification, documentation of timely and complete payments of Denver Sales/Use Tax, and other documentation of sales activity originating at or from the Facility totaled on a quarterly basis of the quarter and year for which Contractor is petitioning for payment as described in paragraph 2.A above, based solely upon Contractor's sales activity in, on or from the Facility as demonstrated by the collection and payment of the appropriate Denver Sales/Use Tax for that

quarter, and Contractor's satisfaction of the requirements contained in Paragraph 1 above. Contractor shall be entitled to petition quarterly for its incentive payments hereunder beginning on January 1, 2017 for sales and use taxes paid or incurred in the prior quarter, and for each quarter of each year thereafter until the earlier of (a) the date on which Contractor has been paid or has deducted such \$2,000,000.00, or (b) February 15, 2021 (for the fourth quarter of 2020). Contractor shall submit its petition on or before 45 days after the last day of each quarter of each year in order to qualify for an incentive payment for the prior quarter. |

2. Contractor shall supply additional information the City requests that is reasonably related to the purposes of this Agreement in order to substantiate Contractor's petition for incentive payments. The City may withhold incentive payments for which it has been petitioned by Contractor if it reasonably determines that the petition for sales activity is not substantiated by the supporting documentation submitted by Contractor. Such determination shall be provided to Contractor in writing and shall be appealable to the Executive Director of OED or his or her successor.

3. Upon receipt of documentation satisfying the requirements in Paragraphs 2.B.1 of this Agreement, the City shall verify Contractor's petition and issue proper incentive payment within the City's Prompt Payment Rules and Regulations as outlined in Denver Revised Municipal Code Sections 20-107 et seq. but in any event within sixty (60) days after its receipt of all required information.

3. **PRIOR APPROPRIATION.** The obligation of the City for payment(s) hereunder is limited to funds annually appropriated for this and similar agreements by the City Council and paid into a special revenue fund restricted to making incentive payments to private, taxpaying entities selected for such payments by the City. This Agreement shall not be construed to constitute a multiple year fiscal obligation of the City under Section 20, Article X of the Colorado Constitution. Further, the City's maximum obligation hereunder for the entire term of the Agreement shall not exceed [Two Million Dollars (\$2,000,000.00)].

4. **EXAMINATION OF RECORDS.**

A. Contractor agrees that any duly authorized representative of the City shall, until the expiration of three (3) years after the termination of this Agreement, have access to and the right to examine, during normal business hours and following reasonable notice by the City, books, documents, papers and records of Contractor that are pertinent to Contractor's

qualification for incentive payments hereunder.

B. Contractor agrees that the City's Office of Economic Development and Department of Finance (or successor agencies) shall have access to and the right to examine Contractor's City and County of Denver tax records (the "Tax Records") with respect to the Facility filed for the period beginning five (5) years prior to the execution of this Agreement and ending five (5) years after the termination of this Agreement. Tax Records shall include sales/use tax, property (real and business personal property), occupational privilege tax, and other City tax information with respect to the Facility necessary to provide data to be used by the City to develop aggregated reports of performance outcomes and assess the effectiveness of the City's Business Incentive Program (or its successor program). In consideration of Contractor's status as a publicly traded corporation and its obligations under applicable federal securities laws, in lieu of providing written evidence of its entitlement to the receipt or deduction of incentives, (i) Contractor may meet with representatives of the City from time to time and display – but not furnish copies of – the reports and substantiation evidence required by this Agreement, and (ii) if Contractor's securities counsel advises Contractor that it cannot make the disclosures required by this Agreement, Contractor may furnish and the City will accept Contractor's auditor's statement of the amount due, and in either event Contractor will make such information available when it is lawful for it to do so. The City will hold the reports and evidence in strictest confidence and not disclose any of the information in them in a way that indicates Contractor's sales. No identifying data and analysis shall be publicly available.

5. **TERM.** The term of this Agreement shall be from [January 1, 2016, to March 1, 2021]; provided, however, that this Agreement shall automatically terminate when the City's payment(s) hereunder equal the amounts set forth in [Paragraphs 2.A and 2.B] above.

6. **ASSIGNMENT AND SUBCONTRACTING.** The City is not obligated or liable under this Agreement to any party other than Contractor. Contractor shall not assign or subcontract with respect to any of its rights, benefits, obligations or duties under this Agreement except upon prior written consent and approval of the City. However, Contractor may assign or subcontract this Agreement and its rights under it to any of its parent, sister, or subsidiary corporations, so long as (a) it gives the City at least thirty (30) days' prior written notice of the assignment or subcontract, and (b) the assignee or subcontractor operates either (i) under a name that includes the name "Costco," or (ii) under the name used by a majority of Contractor's

business centers.

7. **WHEN RIGHTS AND REMEDIES NOT WAIVED.** In no event shall any action by the City or Contractor hereunder constitute or be construed to be a waiver by the City or Contractor of any breach of covenant or default which may then exist, and the non-breaching party's action or inaction when any such breach or default shall exist shall not impair or prejudice any right or remedy available with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of the Agreement shall be deemed or taken to be a waiver of any other breach.

8. **NO DISCRIMINATION IN EMPLOYMENT.** In connection with the performance of work under this Agreement, Contractor agrees not to refuse to hire, to discharge, to promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability.

9. **AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS.** This Agreement is intended as the complete integration of all understandings between the parties. No prior, contemporaneous or subsequent addition, deletion, or other amendment hereto shall have any force or effect, unless embodied herein in writing, and executed in the same manner as this Agreement.

10. **CONFLICT OF INTEREST.** The parties agree that no employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and Contractor further agrees not to hire or contract for services any employee or officer of the City which would be in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics, or Denver City Charter provisions 1.2.9 or 1.2.12.

11. **CONSTRUCTION.** This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado, and the Charter and Revised Municipal Code of the City and County of Denver, and the ordinances, regulations and Executive Orders enacted and/or promulgated pursuant thereto. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver, Colorado.

12. **LEGAL AUTHORITY.**

A. Contractor represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.

B. The person or persons signing and executing this Agreement on behalf of Contractor do hereby represent and warrant that he/she or they have been fully authorized by Contractor to execute this Agreement on behalf of Contractor and to validly and legally bind Contractor to all the terms, performances and provisions herein set forth. The legal authority of Contractor and its signatory may be conclusively established by a certified copy of an appropriate resolution of its board of directors.

C. The City shall have the right, at its option, to temporarily suspend or permanently terminate this Agreement, if there is a dispute that the legal authority of either Contractor or the person signing the Agreement on Contractor's behalf is not sufficient to enter into this Agreement. The City shall not be obligated to Contractor for any performance of the provisions of this Agreement in the event that the City has suspended or terminated this Agreement as provided in this Section.

13. **NO THIRD PARTY BENEFICIARY.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and Contractor, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreements. It is the express intention of the City and Contractor that any person other than the City or Contractor receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

14. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS.** Contractor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or

electronic signature or that it is not in its original form or is not an original.

15. **COMPLIANCE WITH ALL LAWS**. Contractor shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

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