

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 **DCG WEST I LLC**, a Delaware limited liability company having its principal place of business at c/o C.P. Bedrock LLC, 610 W. 26th Street, Suite 910, New York, NY, 10001 (the “Contractor” and together with the City, the “Parties” and each a “Party”).

RECITALS

WHEREAS, there is a public purpose for attracting companies and their associated economic activity within the City of Denver (“Denver”), including stimulating economic development, retail spending, strengthening Denver’s tax base, and creating jobs within Denver;

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

WHEREAS, the Contractor is developing land located generally at Green Valley Ranch Blvd. and Airport Way, with an address 16298 Green Valley Ranch Blvd (the “Property”), with such development to be known as “The Flyway,” and intends that certain improvements will be constructed, including retail, restaurant and other uses, including a Costco warehouse and other permitted ancillary uses in furtherance of creating a town center for the area (collectively, “the Project”);

WHEREAS, the Contractor is negotiating to transfer a portion of the Property to Costco Wholesale Corporation (the “Anchor User”), which is willing to locate a Costco retail facility within the Project to provide goods and services to the general public by means of the sale of memberships due to the availability of certain incentives provided to the Contractor by the City, as further described in this Agreement;

WHEREAS, this Agreement, and the establishment and operation of the Project and the Costco facility within Denver 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 Denver residents as a result of the incentives described herein, without which the Project is not likely to occur; 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.

A. The following shall be conditions precedent to the City’s obligation to remit the first Incentive Payment to the Contractor as provided in Section 2 (collectively, the “Incentive Conditions”). If the Contractor does not timely satisfy one or more of the Incentive Conditions, the City’s obligation to remit the first Incentive Payment shall not be triggered until the Contractor

(i) has satisfied the delinquent Incentive Condition(s) and (ii) delivers a written certification to the City with the next-occurring petition that such obligation has been met. If the Contractor does not satisfy any one of the following obligations within one hundred eighty (180) days of the applicable deadline, the City may terminate this Agreement upon thirty (30) days prior written notice to the Contractor. The Contractor shall supply a written certification as to the date which constitutes the Opening Day, such certification to be included in the applicable Petition. At such time as the Incentive Conditions are timely met, subject to extension due to Force Majeure (as defined below) under Section 9, the City's obligations under Section 5 shall commence and will continue through the Term (as defined below), subject to the terms of this Agreement.

i. On or before July 31, 2022, Contractor shall have conveyed a portion of the Property to the Anchor User, subject to the terms and conditions of a purchase and sale agreement by and between the Contractor and the Anchor User, acceptable to the Contractor in its discretion, for the purpose of the Anchor User's development and operation of a retail facility, specifically a Costco warehouse, focused on providing goods and services to the general public by means of the sale of memberships, which shall be no less than 120,000 square feet in size (the "Facility"); and

ii. On or before the date that Contractor conveys a portion of the property to the Anchor User pursuant to 1(A)(i) above, the Contractor shall obtain Anchor User's written consent for the City, through its Department of Finance, to provide the City's Department of Economic Development & Opportunity ("DEDO") with such information as is required for DEDO to verify (a) the Denver Sales Tax paid by Anchor User at the Facility pursuant to this Agreement, and (b) the number of employees employed by Anchor User at the Facility, and such other information about such employees as is required by this Agreement. Such consent shall be provided in the form of Exhibit A attached hereto and incorporated herein by this reference, shall be signed by the Anchor User, and shall be effective for the longer of the term of this Agreement or as indicated in Exhibit A (the "Consent").

iii. On or before July 31, 2023, Anchor User shall have completed construction of the Facility, and the Facility shall be open to the public as a Costco warehouse; and

iv. On or before the first day that the Facility is open to the public as a Costco Warehouse (the "Opening Day"), the Contractor shall have provided no fewer than one hundred (100) Costco one-year memberships to the District 11 Council office; and

v. On or before six months after the Opening Day, the Anchor User shall provide to those Employees at the Facility working no fewer than thirty (30) hours per week benefits consistent with Anchor User's standards of operation for similar Costco facilities in the region.

2. MILESTONES. From and after the Opening Day, the Contractor shall timely satisfy the obligations in this Section 2 related to the operation and development of the Property (each, a "Milestone"). If the Contractor does not timely satisfy any one of the following obligations, the City may suspend any payments due to the Contractor pursuant to this Agreement until the Contractor (i) has met the delinquent condition(s) and (ii) delivers a written certification to the

City with the next-occurring petition that such obligation has been met. If the Contractor does not satisfy any one of the foregoing obligations within 180 days of the applicable deadline, the City may terminate this Agreement upon thirty days prior written notice to the Contractor.

The Site Development Plan attached hereto as Exhibit B and incorporated herein by this reference identifies those locations on the Property where Buildings #1, #2, and #3, and the Community Serving Elements (each as defined below), must be located to satisfy the requirements of this Section 2. The Executive Director of DEDO is authorized to consent to an amendment to Exhibit B solely for purposes of this Agreement. For purposes of clarity, the Executive Director has no authority to approve or disapprove of any Site Development Plan filed with any City agency other than DEDO as part of the development of the Property.

A. On the last day of the first calendar quarter after the Opening Day, the Anchor User shall employ at the Facility not less than one hundred twenty-five (125) employees consisting of (a) salaried employees, (b) full-time hourly employees, and (c) part-time hourly employees working no less than thirty (30) hours per week (collectively, “Employees”), as evidenced by corresponding Occupational Privilege Tax (“OPT”) records reviewed by DEDO, .

B. On or before July 31, 2024, construction of a building other than the Facility, for any use allowed by the approved zoning (“Building #1”), shall have commenced in any portion of The Flyway.

C. As measured on that date which is six (6) months from the Opening Day (the “Employment Date”) and continuing for the Term, Anchor User shall employ at the Facility not fewer than two hundred (200) Employees (the “Employee Minimum”) as evidenced by corresponding OPT records reviewed by DEDO. The average wage of all Employees at the Facility as measured on the Employment Date shall be no less than one hundred fifteen percent (115%) of the then-current Denver Minimum Wage (the “Wage Condition”), as evidenced by a certification in the form attached as Exhibit C (the “Anchor User Certification”) to be provided by the Anchor User to the Contractor, and submitted by the Contractor to DEDO with the next-occurring petition.

D. On or before July 31, 2025, construction of the following shall have been completed:

- i. Building #1;
- ii. a building other than the Facility and Building #1, for any use allowed by the approved zoning (“Building #2”), in any portion of The Flyway; and
- iii. certain community serving elements and features of the Project (“Community Serving Elements”), such as a plaza, seating areas, open space and outdoor gathering places, as evidenced on the Exhibit B Site Development Plan.

E. On or before July 31, 2026, construction of a building, other than the Facility, Building #1, and Building #2, for any use allowed by the approved zoning (“Building #3”), shall have completed in any portion of the Flyway.

3. ONGOING CONTRACTOR OBLIGATIONS. The following shall constitute ongoing obligations of the Contractor hereunder. If the Contractor does not satisfy any one of the following obligations, the City may suspend any payments due to the Contractor pursuant to this Agreement

until the Contractor (i) has met the delinquent condition(s) and (ii) delivers a written certification to the City with the next-occurring petition that such obligation has been met. If the Contractor does not satisfy any one of the foregoing obligations within 180 days of the applicable deadline, the City may terminate this Agreement upon thirty days prior written notice to the Contractor.

A. The Facility shall be continuously operated by the Anchor User during its normal business hours (“Fully Operational”). The Contractor shall include a certification with each quarterly petition attesting to the foregoing.

B. The Anchor User shall not have withdrawn the Consent. The City shall be under no obligation to obtain the Consent from the Anchor User.

C. Throughout the Term, the Anchor User shall continue to meet the Employee Minimum, which shall be determined with each Incentive Payment (as defined below) subsequent to the Employment Date. To determine compliance with the Employee Minimum, the number of Employees considered to be employed at the Facility shall be determined by the number of Employees employed by the Anchor User at the Facility on March 31, June 30, September 30, and December 31 of each calendar year during the Term as evidenced by corresponding Occupational Privilege Tax records reviewed by DEDO.

D. The Anchor User shall use reasonable efforts to make entry-level and other positions at the Facility available to residents of the City and County of Denver by posting positions on publicly accessible recruiting sites during the term of this Agreement. Anchor User shall consult with Denver Workforce Services to assist in the hiring for the Facility and shall link available job openings to Connecting Colorado, the state system of record.

4. THE ANCHOR USER.

A. The initial Anchor User (as defined above) shall be Costco Wholesale Corporation.

B. If the Anchor User determines, in its own business judgement, to cease operation of a retail facility at the Facility, the requirements of Sections 2 and 3 of this Agreement shall continue to apply and shall not toll. Incentive Payments will not be made until a retail facility operated by an entity approved by DEDO, and generating Denver Sales Tax, reopens at the Facility. In the event the Facility does not generate Denver Sales Tax due to closure of the retail facility, no additional Incentive Payments will be made until a retail facility approved by DEDO reopens at the Facility.

C. If the Anchor User decides to sublease the Facility or the Contractor obtains leasing control of the Facility, a new tenant for the Facility may be obtained (an “Alternative Anchor User”). If DEDO approves the Alternative Anchor User in writing, the terms of this Agreement shall continue until the termination date of this Agreement and any reference to “Anchor User” herein shall include and apply to the Alternative Anchor User. If the Alternative Anchor User is not approved in writing by DEDO, no additional Incentive Payments may be earned or paid. The Executive Director or the Executive Director’s designee is authorized to approve an Alternative Anchor User List, at the his or her reasonable discretion. For purposes of this paragraph, the Executive Director’s designee shall be the Chief Business Development Officer within DEDO.

5. INCENTIVE PAYMENTS/MECHANISM. Subject to the terms hereof, the City agrees to make incentive payments to the Contractor payable as follows (each, an “Incentive Payment” and, collectively, “Incentive Payments”):

A. Anchor User Sales Activity and Payment of Collected Denver Sales Tax (\$9,500,000.00). The City shall pay to the Contractor an amount equal to fifty percent (50%) of the general fund portion of the Denver Sales Tax (as specified in the Denver Revised Municipal Code (“D.R.M.C.”) (“Denver Sales Tax”) collected and timely paid by Anchor User for sales activity at the Facility for the Term, not to exceed a maximum of Nine Million Five Hundred Thousand Dollars and No Cents (\$9,500,000.00) (the “Maximum Contract Amount”).

B. Incentive Payments will be paid quarterly in arrears. The quarterly payment will be calculated based upon the general fund portion of the total quarterly Denver Sales Tax payment remitted by Anchor User for the Facility and reconciled by the City for the quarter for which the Contractor petitions for a payment. The Incentive Payment amount shall equal fifty percent (50%) of the general fund portion of the adjusted total annual Denver Sales Tax payment to the City for the quarter for which the Contractor petitions for a payment.

C. The total amount of Incentive Payments shall not exceed the Maximum Contract Amount or fifty percent (50%) of Anchor User-paid Denver Sales Tax during the Term, whichever is lower. To illustrate by way of example only: during the first quarter of 2024, if the Anchor User completes sales totaling \$10,000,000.00, which require collection of Denver Sales Tax (based on the current Sales Tax rate of 4.31%, the general fund portion of which is 3.5%), the Anchor User would generate Denver Sales Tax totaling \$431,000 (the general fund portion of which is \$350,000) if Anchor User makes appropriate and timely payments of such amount to the City’s Department of Finance, Treasury Division. Upon receipt of a petition from the Contractor and the City’s confirmation of payment by Anchor User of the Denver Sales Tax, DEDO will remit to the Contractor in accordance with this Agreement an incentive payment of \$175,000 for the same quarter, based upon providing an incentive of fifty percent (50%) of the general fund portion of total Denver Sales tax paid to the Treasury Division.

D. To receive an Incentive Payment hereunder, the Contractor shall petition jointly the Executive Director of DEDO (the “Executive Director”) and the City Treasurer. Each petition shall be in the form of the Petition attached hereto as Exhibit D and shall include a certification by the Contractor that the Contractor remains in compliance with any applicable conditions and performance requirements during the preceding quarter. The Incentive Conditions, Milestones, and Ongoing Obligations, including the information required to be submitted by the Contractor to evidence compliance with the applicable obligations, are set forth in the Schedule of Milestones attached hereto as Exhibit E. So long as the Incentive Conditions, applicable Milestones, and applicable Ongoing Obligations are timely met, the Contractor shall be eligible to receive Incentive Payments hereunder commencing on the 91st day following Opening Day, for sales taxes paid 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 the Maximum Contract Amount, or (b) the expiration of the Term. The 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 immediately preceding quarter.

E. Upon receipt of documentation satisfying the requirements in Section 5(D), the City shall verify the Contractor's petition and issue proper Incentive Payment within the City's Prompt Payment Rules and Regulations as outlined in Denver Revised Municipal Code ("D.R.M.C.") Sections 20-107, *et seq.* The Contractor agrees that DEDO shall have access to Incentive Payment amounts and supporting documentation in possession of the Department of Finance.

F. The City may withhold Incentive Payments for which it has been petitioned by the Contractor if it reasonably determines that the petition is not substantiated by the supporting documentation submitted by the Contractor. If the City makes such a determination, it will timely provide to the Contractor written notice, which notice shall include (i) notice that the City believes the information to be insufficient; and (ii) a description, with as much specificity as possible, of what additional documents or information the Contractor must provide in order to render the petition and supporting documentation sufficient.

G. In the event any audit by the City reveals that the Anchor User has overpaid Sales Tax and is paid a refund, the City shall be due a credit from the Contractor in the amount that the City overpaid the Contractor in the applicable Incentive Payment resulting from the Anchor User overpayment, and the City shall deduct such credit from the next occurring Incentive Payment after discovery of such Anchor User overpayment. Payment by the City of an Incentive Payment constitutes a waiver of any subsequently discovered or determined defects in the petition or supporting documentation on which such payment was based.

H. No more frequently than once per calendar year, the Contractor may, if it reasonably disputes the amount of an Incentive Payment, engage an auditor of Contractor's choosing (the "DCG Auditor") to review such information as the City is permitted to deliver to the DCG Auditor pursuant to the Consent (the "Auditor Information"). Upon written request from the DCG Auditor delivered to Executive Director of DEDO (the "Executive Director"), and the City Treasurer at Department of Finance, City and County of Denver, 201 W Colfax Ave., Denver, CO 80202, Attn. Treasurer, referencing the City contract number of this Agreement and this Section (Section 5(H)), the City shall deliver the Auditor Information to the DCG Auditor. If the parties agree that the audit conducted by the DCG Auditor (the "DCG Audit") reveals a discrepancy in the Incentive Payment amount(s), the discrepancy shall be resolved as a deduction to or increase of the next Incentive Payment, or if no subsequent Incentive Payment will be due, as a freestanding payment to the Contractor (as to an underpayment by the City) or as a refund to the City (as to an overpayment by the City), payable promptly upon the conclusion of the audit.

6. DEFAULT AND REMEDIES.

A. Upon receipt by the City of a timely petition, if the City fails to either timely remit an Incentive Payment or notify the Contractor that a petition is not substantiated by the supporting documentation submitted by the Contractor pursuant to Section 5(F), the Contractor shall deliver to the City, in writing, a notice of such failure. Upon receipt of such notice from the Contractor, the City shall, as applicable, either remit the applicable Incentive Payment or deliver the written determination of an unsubstantiated petition to the Contractor within 35 days. If the City fails to either remit the applicable Incentive Payment or deliver the written determination required by section 5(F) within such additional notice and cure period, then the Contractor shall be entitled to bring an action in a court of competent jurisdiction for breach of this Agreement or equitable relief.

B. Any failure or delay in giving a notice described in this Section 5 shall not constitute a waiver of any default. Any failure or delay by any Party in asserting any of its rights or remedies in respect of any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any of its rights or remedies.

C. In the event the Contractor defaults, the City may suspend any payments due to the Contractor as described in this Agreement until the Contractor has met the delinquent condition(s). If the Contractor default arises from the Anchor User failing to be Fully Operational for its own business reasons and not as a result of Force Majeure, the City may suspend Incentive Payments, which will not resume until an alternative Anchor User approved in writing by DEDO has commenced operations as described in Section 3.

D. The rights and remedies of the Parties are cumulative and in addition to any other right or remedy given hereunder, applicable law or in equity, and the exercise by a Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Event of Default. The provisions of this Section 6(F) shall survive any expiration or termination of this Agreement.

7. **PRIOR APPROPRIATION.** The obligation of the City to make Incentive Payments 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, taxing 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 shall not exceed the Maximum Contract Amount.

8. **EXAMINATION OF RECORDS AND AUDITS.** Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at the City's election in paper or electronic form, any pertinent books, documents, papers and records related to the Contractor's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement not otherwise subject to a confidentiality restriction, no more frequently than annually. The Contractor shall cooperate with City representatives, and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until three (3) years after the later of the final Incentive Payment under this Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including without limitation with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this Section 6 shall require the Contractor to make disclosures in violation of state or federal privacy laws or to violate any contract to which it is a party. The Contractor shall at all times comply with D.R.M.C. 20-276.

9. **TERM.** The term of this Agreement shall commence on the date of mutual execution and shall terminate, subject to any extension of time due to Force Majeure as provided by Section 9, on the earlier of: (a) September 1, 2035 or (b) when the City's Incentive Payment(s) hereunder

equal the amount set forth in Paragraph 5(A) above (the “Term”).

10. ASSIGNMENT AND SUBCONTRACTING. The City is not obligated or liable under this Agreement to any party other than the Contractor. The 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, except that the following assignments shall be permitted upon written notice to the City, including the name and address of the assignee, provided that any such assignee entity delivers to the City a signed writing evidencing its agreement to be bound by the terms and conditions of this Agreement:

A. Assignment to a successor of Contractor who is a fee simple owner of substantially all of the Property, other than that which has been conveyed to the Anchor User;

B. An assignment, pledge, collateral assignment, or other encumbrance of all or any part of this Agreement, including the right to receive any payment or reimbursement, to any lender or other party that provides acquisition, construction, working capital, tenant improvement, or other financing to Contractor relative to the Property, provided that with any such assignment, the Contractor shall remain liable under this Agreement to perform all the conditions and obligations provided herein to be observed and performed by it;

C. The Anchor User; or

D. To one or more special purpose entities affiliated with Contractor and created to develop, own, and/or operate all or a portion of the Property or to a joint venture entity with another developer or investor created for the same purpose.

11. FORCE MAJEURE. Where either Party hereto is required to do any act contemplated by this Agreement but is unable to timely complete such act due directly to events beyond the affected Party’s reasonable control, including but not limited to acts of God, hurricane, tornado, adverse weather condition, energy shortage, war, civil commotion, acts of terrorism, fire, government orders, government shutdowns, strikes, disturbances, unavailability of labor or materials or reasonable substitutes therefor, (each, a “Force Majeure Event”), the duration of the affected Party’s suspension of performance attributable to such Force Majeure Event shall not be counted in determining the time during which such act is to be completed (i.e., deadlines shall be tolled during the duration of a Force Majeure event), provided that (i) the affected Party makes commercially reasonable efforts to prevent and/or avoid the impacts of any such Force Majeure Event, (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure, (iii) the affected Party gives notice of the particulars of the Force Majeure Event, including the nature and date of the occurrence and the expected duration of any suspension of performance it claims are caused by the Force Majeure Event within ten (10) days following the Force Majeure Event causing the suspension, and (iv) the affected Party gives notice of resumption of performance within ten (10) days following such resumption. The Contractor may only claim a Force Majeure Event where such event affects the Property or the Project. With respect only to strikes, or unavailability of labor, it shall not constitute a Force Majeure event if such strike or unavailability of labor is a strike or unavailability of labor of Contractor’s own personnel, contractors or subcontractors. A Force Majeure Event shall not excuse any payment obligation hereunder, including the City’s payment of Incentive Payments; provided, however,

that a Force Majeure Event may excuse the City's ability to timely review a petition. If the Contractor claims a Force Majeure Event and such event continues for a period of 30 days or more, the City will have the right to suspend payment of any pending and future Incentive Payments until the Contractor has completed the applicable obligation and submitted a petition certifying to such completion. The Contractor may not claim a Force Majeure Event where it has contracted, subcontracted or otherwise transferred responsibility for completing any work required to meet any Incentive Condition, Milestone, or Ongoing Obligations to any third party and such third party is delayed for any reason other than a Force Majeure Event.

12. WHEN RIGHTS AND REMEDIES NOT WAIVED. In no event shall any action by the City or the Contractor hereunder constitute or be construed to be a waiver by the City or the 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 this Agreement shall be deemed or taken to be a waiver of any other breach.

13. NO DISCRIMINATION IN EMPLOYMENT. In connection with the performance of work under this Agreement, the Contractor may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability. The Contractor shall insert the foregoing provision in all subcontracts.

14. AGREEMENT AS COMPLETE INTEGRATION. 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.

15. 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 the Contractor further agrees not to hire or contract for services any employee or officer of the City which would be in violation of the D.R.M.C. Chapter 2, Article IV, Code of Ethics, or Denver City Charter provisions 1.2.9 or 1.2.12.

16. CONSTRUCTION. This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado, the Charter of the City, the D.R.M.C., applicable code of the 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 exclusively in the District Court in and for the City and County of Denver, Colorado.

17. LEGAL AUTHORITY.

A. The 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 the Contractor do hereby represent and warrant that he/she or they have been fully authorized by the Contractor to execute this Agreement on behalf of the Contractor and to validly and legally bind the Contractor to all the terms, performances and provisions herein set forth.

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 the Contractor or the person signing this Agreement on the 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.

18. NO THIRD-PARTY BENEFICIARY. Enforcement of the terms of this Agreement and all rights of action relating to enforcement are strictly reserved to the Parties. Nothing contained in this Agreement gives or allows any claim or right of action to any third person or entity except the Contractor's successors or assigns properly assigned pursuant to Section 10. Any person or entity other than the City or the Contractor or a proper assignee receiving services or benefits pursuant to this Agreement is an incidental beneficiary only.

19. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS. The Parties consent to the use of electronic signatures by each Party. This 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 this 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 this 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.

20. COMPLIANCE WITH APPLICABLE LAWS. The Contractor shall perform or cause to be performed all obligations under the Agreement over which it has control 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.

21. MUTUAL DRAFTING. Each Party has participated in the drafting of this Agreement, which each Party acknowledges is the result of extensive negotiations between the Parties. In the event of any ambiguity or question of intent arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

22. SEVERABILITY. Except for the provisions of the Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the parties can be fulfilled.

23. INTERPRETATION. The captions appearing at the commencement of the sections hereof are descriptive only and for convenience of reference and in no way whatsoever define, limit or describe the scope or intent of this Agreement, nor in any way affect this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s). Any term used in an exhibit hereto shall have the same meaning as in this Agreement unless otherwise defined in such exhibit. All references in this Agreement to sections and exhibits shall be to sections and exhibits to this Agreement, unless otherwise specified.

24. NOTICES. All notices required by the terms of this Agreement must be hand delivered, sent by nationally recognized overnight courier service or mailed by certified mail, return receipt requested with postage prepaid, or mailed via United States mail postage prepaid:

To the City at:

Executive Director of Denver Economic Development & Opportunity or Designee
101 W Colfax Avenue Suite 850
Denver, CO 80202

With a copy of any such notice to:

Denver City Attorney's Office
1437 Bannock St., Room 353
Denver, Colorado 80202

To the Contractor at:

DCG West, LLC
Attn: Mark Goldberg
5415 Sunset Drive
Bow Mar, Colorado 80123

With a copy of any such notice to:

Attn: Adam Myers at the same address

With a copy of any such notice to:

Brownstein Hyatt Farber Schreck
Attn:Carolynne C. White, Esq.
410 17th St., Suite 2200
Denver, CO 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The Parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGES FOLLOW.]**

Contract Control Number: OEDEV-202055552-00
Contractor Name: DCG WEST 1 LLC

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

Mayor

Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

Assistant City Attorney

Manager of Finance

By:

Auditor

Contract Control Number:
Contractor Name:

OEDEV-202055552-00
DCG WEST 1 LLC

DocuSigned by:
Chris Flagg
By: D132AEFCC72449C...

Name: Chris Flagg
(please print)

Title: President
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

Exhibit A
Costco Consent Letter

September _____, 2020

Mr. Steve Ellington, Treasurer
Department of Finance
City and County of Denver
201 W Colfax Ave
Denver, CO 80202

Re: Costco Consent to Provide Sales Tax and Occupational Privilege Tax (“OPT”) records

To Whom It May Concern:

Costco Wholesale Corporation, a Washington corporation (“Costco”), acknowledges that prior to its acquisition and development of certain real property in Denver, Colorado, the City and County of Denver (the “City”) and DCG West I, LLC (“DCG”) are negotiating and intend to enter into an agreement (the “Agreement”) to facilitate the construction of Costco’s new store (the “Facility”) at _____ . Provided the City and DCG execute the Agreement, the City’s Denver Economic Development & Opportunity (“DEDO”) will be responsible for administering the Agreement on behalf of the City.

Pursuant to the terms of the Agreement, upon satisfaction by DCG of certain requirements set forth in the Agreement, the City will pay DCG on a quarterly basis an amount equal to fifty percent (50%) of the general fund portion of the collected and timely paid Denver Sales Tax (as specified in the Denver Revised Municipal Code) associated with Costco’s sales activity at the Facility during the term of the Agreement, up to an agreed upon maximum amount. In order for DEDO and DCG to confirm that DCG is receiving its appropriate quarterly payments pursuant to the Agreement, DEDO and DCG request that the City, through its Department of Finance, provide the monthly Denver Sales Tax returns filed by Costco for sales activities at the Facility (i) to DEDO, and (ii) to _____ on behalf of DCG (the “DCG Auditor”). It is expressly understood that the DCG Auditor shall not provide such returns to DCG.

The Agreement further conditions the City’s obligations to make the aforementioned quarterly payments on Costco employing a certain minimum number of employees at the Facility during the term of the Agreement, as set forth in the Agreement. In order for DEDO and DCG to confirm that Costco is employing the minimum required number of employees at the Facility, DEDO and DCG request that the City, through its Department of Finance, also provide the monthly Occupational Privilege Tax (“OPT”) returns filed by Costco for the Facility, to DEDO and to the DCG Auditor.

Under Section 53-8 of the Denver Revised Municipal Code (“D.R.M.C.”), the City is prohibited from disclosing the aforementioned reports to DEDO and the DCG Auditor, except upon the consent of the taxpayer. Accordingly, Costco hereby waives confidentiality afforded by Section 53-8(a) of the Denver Revised Municipal Code, as such provision existed on August 1, 2020, or as thereafter amended, to allow the disclosure of Costco Denver Sales Tax and OPT information to DEDO and the DCG Auditor as is required under the terms of the Agreement.

Costco's consent to the disclosure of such Denver Sales Tax and OPT information to DEDO and the DCG Auditor shall be effective upon Costco signing below and shall expire on the earlier of the expiration or earlier termination of the Agreement or September 1, 2035.

Costco further agrees that DEDO and the Department of Finance (or successor agencies) shall have access to and the right to examine Costco's City and County of Denver tax records filed with and in possession of the City (the "Tax Records") for the period commencing upon opening of the Facility and ending five (5) years after the termination of this Agreement. Tax Records shall include Denver Sales Tax and OPT 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). No identifying data and analysis shall be publicly available.

Costco expressly acknowledges that, notwithstanding the fact that the DCG Auditor cannot disclose the aforementioned reports to DCG, that DCG will nonetheless be able to deduce Costco sales at the Facility based on the terms of the Agreement and the quarterly payments paid by the City to DCG. Costco further acknowledges that, as part of the City's budgeting process, certain information relating to incentive payments paid by the City to DCG, as well as the Agreement, will be public records subject to disclosure.

Sincerely,

COSTCO WHOLESALE CORPORATION
a Washington corporation

By: _____
Name: _____
Title: _____
Date: _____

AGREED TO AND ACKNOWLEDGED BY:

DCG Auditor: _____

By: _____

Name: _____

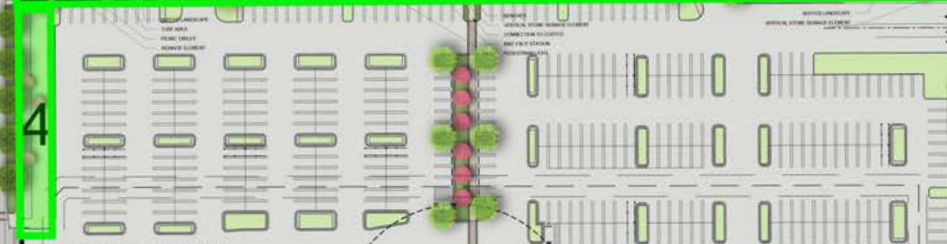
Title: _____

Date: _____

GREEN VALLEY RANCH BLVD.

BUS STOP

PROPOSED SIGNALIZED FULL ACCESS INTERSECTION



E. BOLLING DR.

AIRPORT WAY TRACT +/- 2.87 AC

AIRPORT WAY

MEMPHIS ST.

Town Center (3 buildings to be constructed in this area, one in plaza building area required)

Plaza Building Area

Community Serving Elements (1 - Plaza North, 2 - Plaza South, 3 - Open Space Channel, 4 - Costco Buffer - , 5 Avion Entry (at least 2 to be built including a plaza))



EXHIBIT C
QUALIFYING JOBS CERTIFICATION
CITY OF DENVER

Costco Wholesale Corporation

Warehouse # _____
16298 Green Valley Ranch Blvd.
Denver, CO

Average hourly wage of Employees* at the above Costco Warehouse: \$	As measured on [insert date], which is the date that is six months from the first day that Warehouse # _____, at the above address (the “Facility”), is open to the public as a Costco Warehouse, Costco certifies that the average wage of all Employees at the Facility equals or exceeds 115% of the then-current Denver Minimum Wage.
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* “Employees” consist of (a) salaried employees, (b) full-time hourly employees, and (c) part-time hourly employees working no less than thirty (30) hours per week

The foregoing information is true and correct to the best of my knowledge.

Costco Wholesale Corporation

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT D

[Business Letterhead]

[Date]

Mr. Eric Hiraga, Executive Director
Economic Development & Opportunity
City and County of Denver
101 W. Colfax Ave., Ste. 850
Denver CO 80204

Mr. Steve Ellington, Treasurer
Department of Finance
City and County of Denver
201 W. Colfax Ave.
Denver, CO 80202

Dear Mr. Hiraga and Mr. Ellington:

DCG West I, LLC ("Contractor") and the City and County of Denver ("City") are parties to an Agreement [202055552], dated XXXX, (the "Agreement").

Pursuant to Section 5 of the Agreement we respectfully submit this petition for quarterly incentive payment for the time period from (XX/XX/XXX) to (XX/XX/XXX) for an amount equal to fifty percent (50%) of the general fund portion of the reconciled Denver Sales Tax remitted by Costco Wholesale Corporation for the sales activities in the above referenced time period at its retail facility located at [Address of Facility].

DCG hereby certifies that the following items from Exhibit D Schedule of Milestones have been satisfied:

[List of Satisfied Milestones]

Please remit payment to:

DCG West I, LLC

[Contact]

[Address]

If you have any questions concerning this petition, or require additional information, please contact me at (XXX) XXX-XXXX or by email at XXXXXX

Respectfully,

XXXXXX

Exhibit E
List of Selected Performance Milestones and Associated Documentation Requirements

1 Conditions			
1.A.i	Contractor shall have conveyed a portion of the Property to the Anchor User, subject to the terms and conditions of a purchase and sale agreement by and between the Contractor and the Anchor User	On or before July 31, 2022	DCG West I will provide copy of deed
1.A.i	Development and operation of a retail facility, specifically a Costco warehouse, focused on providing goods and services to the general public by means of the sale of memberships, which shall be no less than 120,000 square feet in size (the "Facility")	On or before July 31, 2023	1. Opening Day: DCG West I to provide written certification pursuant to Agreement Section 1(A) as to the date which constitutes the Opening Day. 2. Facility size: DCG to provide a copy of building permit showing square footage of the Facility.
1.A.ii	Contractor shall obtain Anchor User's written consent for the City, through its Department of Finance, to provide the City's Department of Economic Development & Opportunity ("DEDO") with such information as is required for DEDO to verify (a) the Denver Sales Tax paid by Anchor User at the Facility pursuant to this Agreement, and (b) the number of employees employed by Anchor User at the Facility, and such other information about such employees as is required by this Agreement (Exhibit A)	On or before the date Contractor conveys a portion of the Property to the Anchor User pursuant to 1.A.i above	DCG West I will provide copy of signed consent document
1.A.iii	Anchor User shall have completed construction of the Facility, and the Facility shall be open to the public as a Costco warehouse	On or before July 31, 2023	DCG West I will provide Certificate of Occupancy or Temporary Certificate of Occupancy; DCG West I will self-certify store opening DEDO to verify by site visit
1.A.iv	The Contractor shall have provided no fewer than one hundred (100) Costco one-year memberships to the District 11 Council office	On or before the first day that the Facility is open to the public as a Costco	

		Warehouse (the “Opening Day”)	
1.A.v	Anchor User shall provide to those Employees at the Facility working no fewer than thirty (30) hours per week benefits consistent with Anchor User’s standards of operation for similar Costco facilities in the region.	On or before six months after the Opening Day	DCG West I will provide Anchor User’s self-certification
2 Milestones			
2.A	Anchor User shall employ at the Facility not less than one hundred twenty-five (125) employees consisting of (a) salaried employees, (b) full-time hourly employees, and (c) part-time hourly employees working no less than thirty (30) hours per week (collectively, “Employees”), as evidenced by corresponding Occupational Privilege Tax (“OPT”) records reviewed by DEDO	On the last day of the first calendar quarter after the Opening Day	City to verify through Occupational Privilege Tax (OPT) records
2.B	Construction of a building other than the Facility, for any use allowed by the approved zoning (“Building #1”), shall have commenced in any portion of The Flyway.	On or before July 31, 2024	DCG West I will provide self-certification and images of construction for Building 1 City verification: Building permit issued; site visit, visual evidence of vertical construction activities
2.C	Anchor User shall employ at the Facility not fewer than two hundred (200) Employees (the “Employee Minimum”) The average wage of all Employees at the Facility as measured on the Employment Date shall be no less than one hundred fifteen percent (115%) of the then-current Denver Minimum Wage (the “Wage Condition”)	As measured on that date which is six (6) months from the Opening Day (the “Employment Date”) and continuing for the Term	City to verify through Occupational Privilege Tax (OPT) records DCG West I will provide Anchor User Certification

<p>2.D i. - iii</p>	<p>Construction of the following shall have been completed: Building #1; Building #2 “Community Serving Elements”), such as a plaza, seating areas, open space and outdoor gathering places, as evidenced on the Exhibit B Site Development Plan.</p>	<p>On or before July 31, 2025</p>	<p>DCG West I will provide Temporary Certificate of Occupancy or Certificate of Occupancy for Buildings #1 and #2 DCG West I will self-certify and provide images of Community Serving Elements City will verify by site visit</p>
<p>2.E</p>	<p>Construction of a building, other than the Facility, Building #1, and Building #2, for any use allowed by the approved zoning (“Building #3”), shall have completed in any portion of the Flyway.</p>	<p>On or before July 31, 2026</p>	<p>DCG West I will provide Temporary Certificate of Occupancy or Certificate of Occupancy for Building #3 City will verify by site visit</p>
<p>Ongoing</p>			
	<p>Anchor User shall not have withdrawn the Consent (1.A.ii)</p>	<p>Throughout Term</p>	<p>Consent remains in place</p>
	<p>Anchor User shall continue to meet the Employee Minimum</p>	<p>Throughout Term</p>	<p>City to verify quarterly through Occupational Privilege Tax (OPT) records</p>
	<p>Facility shall continue to be occupied by the Anchor User and remain open to the public</p>	<p>Throughout Term</p>	<p>City will verify through Site visits/ OPT and Sales tax filings</p>
	<p>Anchor User shall use reasonable efforts to make entry level and other positions available to residents of Denver. Anchor User will consult with Denver Workforce Services</p>	<p>Throughout Term</p>	<p>DEDO Denver Workforce Services to verify</p>