

AMENDATORY AGREEMENT

This **AMENDATORY 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, and **DCG WEST I LLC**, a Delaware limited liability company.

RECITALS:

WHEREAS, the Parties entered into an Agreement dated September 16, 2020 (the “Agreement”) in part to address the Parties’ incentive behavior.

WHEREAS, the Parties wish to amend the Agreement to extend a Milestone and as further set forth herein.

NOW THEREFORE, in consideration of the premises and the Parties’ mutual covenants and obligations, the Parties agree as follows:

1. Capitalized terms used but not defined herein shall have the meanings given them in the Agreement.

2. All references to “...Exhibit E...” in the Agreement shall be amended to read: “...Exhibits E and E-1...” as applicable. Exhibit E-1 is attached and will control from and after the date of execution of this First Amendatory Agreement.

3. In Section 2 of the Agreement, entitled “MILESTONES.”, Subsection E. is amended to read as follows:

“E. On or before July 31, 2027, 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 been completed in any portion of the Flyway.”

4. Section 13 of the Agreement, entitled “**NO DISCRIMINATION IN EMPLOYMENT**.”, is amended to read as follows:

“13. NO DISCRIMINATION IN EMPLOYMENT. In connection with the performance of work under this Agreement, the Contractor may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability.

The Contractor shall insert the foregoing provision in all subcontracts.”

5. In Section 24 of the Agreement, entitled “**NOTICES**,” the address for notices to DEDO is hereby changed to 201 W. Colfax Ave. Dept 600, Denver, CO 80202. The address for the Denver City Attorney’s Office is unchanged.

6. A new Section 25 is hereby added as follows:

“**25. COMPLIANCE WITH DENVER WAGE LAWS.** To the extent applicable to the Contractor’s provision of Services hereunder, the Contractor shall comply with, and agrees to be bound by, all rules, regulations, requirements, conditions, and City determinations regarding the City’s Minimum Wage and Civil Wage Theft Ordinances, Sections 58-1 through 58-26 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid all earned wages under applicable state, federal, and city law in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, the Contractor expressly acknowledges that the Contractor is aware of the requirements of the City’s Minimum Wage and Civil Wage Theft Ordinances and that any failure by the Contractor, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.”

7. As herein amended, the Agreement is affirmed and ratified in each and every particular.

8. This Amendatory Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

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

Contract Control Number: OEDEV-202683230-01 [OEDEV-202055552-01]
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:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

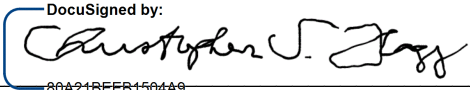
By:

By:

By:

Contract Control Number:
Contractor Name:

OEDEV-202683230-01 [OEDEV-202055552-01]
DCG WEST 1 LLC

By: 
80A21BEEB1504A9...

Name: Chris Flagg
(please print)

Title: President
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

Exhibit E-1

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

2.D i. - iii	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.	On or before July 31, 2025	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
2.E	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.	On or before July 31, 2026 2027	DCG West I will provide Temporary Certificate of Occupancy or Certificate of Occupancy for Building #3 City will verify by site visit
Ongoing			
	Anchor User shall not have withdrawn the Consent (1.A.ii)	Throughout Term	Consent remains in place
	Anchor User shall continue to meet the Employee Minimum	Throughout Term	City to verify quarterly through Occupational Privilege Tax (OPT) records
	Facility shall continue to be occupied by the Anchor User and remain open to the public	Throughout Term	City will verify through Site visits/ OPT and Sales tax filings
	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	Throughout Term	DEDO Denver Workforce Services to verify