

CITY OF ROSEVILLE ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

(Costco Project: Baseline Road)

THIS ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT (“Agreement”) is made and entered into this ___ day of _____, 20 __, by and between the City of Roseville, a municipal corporation (“City”), and Costco Wholesale Corporation, a Washington Corporation, including its agents, officers, employees, volunteers, independent contractors, and subcontractors (“Costco”); and

RECITALS:

A. WHEREAS, Costco is the owner of that certain property in the City of Roseville comprised of approximately 29 acres located north of Baseline Road, known as a portion of Phase II of the Baseline Marketplace project, and more particularly described in Exhibit “A” hereto (the “Property”); and

B. WHEREAS, Costco agrees to develop, open, and operate a wholesale and retail general merchandise facility, with a potential gas station, owned and operated by Costco at the Property, commonly referred to as a “Costco Wholesale” (“Costco Store”). Additionally, Costco intends to develop additional required infrastructure improvements and additional retail properties on the Property that will be offered for rent or sale to other tenants or retailers (“Other Retail”). The Costco Store and Other Retail are collectively referred to herein as the “Costco Project;” and

C. The City of Roseville facilitates a landowner funded and sponsored Sierra Vista Specific Plan Fee Program (“SVSP Fee Program”) to account for construction and reimbursement of certain required public infrastructure costs and fees amongst the landowners in the Sierra Vista Specific Plan (“SVSP”). This SVSP Fee Program, amongst other things, entitles certain landowners who develop property in the SVSP, as a condition of regulatory approval, to reimbursement of certain costs by way of cash or fee credits, which are paid out of the SVSP Fee Program. The SVSP

Fee Program is funded by the landowners in the SVSP, based on their share of development, as a way to proportionally share in the costs of constructing required public infrastructure that benefit the landowners. Costco will participate in the SVSP Fee Program if it develops the Property; and

D. WHEREAS, the City has entered into an agreement with the County of Placer to address the anticipated impacts of development in the City of Roseville and Placer County and have designed a joint traffic fee program to implement mitigation measures for impacts identified within the City of Roseville and Placer County (the “City/County Fee”). The City/County Fee provides for certain reimbursements to landowners who complete certain required public improvements, including for portions of Baseline Road; and

E. WHEREAS, the City has created a Traffic Mitigation Fund (the “TMF”) to address burdens on the existing traffic and circulation infrastructure caused by new development, and the expansion of existing development. The TMF is funded by a fee charged to landowners based on their share of development, to spread costs of traffic and circulation infrastructure to those who create the need for such infrastructure and to implement the general plan by assuring that adequate public facilities are provided. The TMF provides certain reimbursements to landowners who complete certain required public improvements to be funded by the TMF fees, which TMF includes a SVSP Set-Aside Fund (the “TMF Set-Aside Fund”) for collection of fees to fund certain required public infrastructure and reimburse landowners who complete certain required public improvements in the SVSP; and

F. WHEREAS, Costco has requested, and the City has agreed, to provide Costco with a contingent economic development incentive in conjunction with the Costco Project, subject to the terms and conditions set forth herein; and

G. WHEREAS, the City finds that the public purpose of this economic development incentive is to promote the general welfare of the City and its residents by creating new jobs;

expanding the range and diversity of its commercial retail sector, especially in west Roseville; to reduce traffic and vehicle miles traveled from residents in west Roseville to the existing Costco facility in northeast Roseville; to broaden the City's property tax and sales tax base; and to generate ongoing City revenues. The Costco Project is a uniquely significant sales tax generating retail opportunity for the City that would be a catalyst for future economic development in west Roseville, where there is currently undeveloped commercial properties and lack of requisite infrastructure, with no anticipated immediate development. But for the economic development incentive, the Costco Project might not be developed at all in west Roseville. This economic development incentive is consistent with and in furtherance of the City's Economic Development Strategy.

NOW, THEREFORE, in consideration of the foregoing Recitals and the following mutual covenants, agreements, conditions, and representations, and for valuable consideration, the receipt of which is acknowledged, the parties agree as follows:

1. Recitals. The foregoing Recitals are true and correct and incorporated herein by reference.
2. Incentive Payment. Subject to the provisions and limitations set forth herein, the City agrees to make an economic development incentive payment to Costco ("Incentive Payment") in cash in an amount not to exceed six million dollars (\$6,000,000.00) (the "Incentive Cap"), subject to issuance of a certificate of occupancy by City for the Costco Store (hereinafter "Store Opening") and true-up of the actual amount up to the Incentive Cap as herein provided. City shall have no obligation to make the Incentive Payment prior to the Store Opening. City shall make payment of the Incentive Payment within thirty (30) days of the Store Opening. Should there never be a Store Opening, no payment from the City shall be required under this Agreement. The parties acknowledge that the Incentive Cap amount is based on a rounded-up estimate of the anticipated amount of the required construction, alteration, demolition, installation, or repair work for the public

work of improvement required by City for development of the Costco Project and not reimbursed from other public sources depicted on Exhibit "B" hereto ("Net Cost of the Public Work"). The estimated total cost of the Public Work, defined infra, and the sources for reimbursement are summarized on Exhibit "B" hereto.

3. Prevailing Wage. The parties agree that as a condition of regulatory approval by City of the otherwise private Costco Project, the City requires Costco to perform construction, alteration, demolition, installation, or repair work on a public work of improvement at the Costco Project (as defined by California Labor Code Section 1720), including but not limited to design, permitting, and development of public roadways, public roadway frontage improvements, curbs, and gutters, and utility infrastructure (the "Public Work"). The Incentive Payment amount shall be no more money or the equivalent of money than is required to perform this public work of improvement for the Costco Project and not reimbursed to Costco from other public sources. The Net Cost of the Public Work shall be determined by the parties pursuant to the true-up provided in Section 4 of this Agreement. The Incentive Payment is specifically meant to comply with California Labor Code Section 1720(c)(2).

Costco is fully aware of the provisions of California Labor Code Sections 1720, et seq., regarding payment of prevailing wages in connection with public works and has consulted with its own legal counsel regarding such wage issue. Costco's execution of this Agreement is an acknowledgment that such independent advice and counsel has been obtained and relied on in executing this Agreement and accepting the benefits under it.

Costco shall comply with all applicable laws concerning the development of the Costco Project, including, as applicable, California Labor Code Sections 1720 et seq. In the event any claim of any kind or nature based on California Labor Code Sections 1720, et seq. (including California Labor Code Section 1781) is brought or made against the City in connection with this

Agreement or the Costco Project, Costco shall be obligated to defend, indemnify, and hold harmless the City, with respect to such claim, in accordance with Section 6 below.

4. True-Up. Upon completion of the Public Work, the final determination of the Net Cost of the Public Work shall be determined by the City Engineer, based on documentation thereof provided by Costco to the SVSP Fee Program Administrator's and City Engineer's reasonable satisfaction.

a. For construction change orders to be given consideration, Costco must present the change order request and estimated cost along with supporting information to City upon completion of the Public Work and fully document any work performed under a change order to verify all associated costs. Failure to comply with any of these procedures may result in the ineligibility of the requested change order inclusion in the cost of the constructing the Public Work.

b. In order to receive the final Incentive Payment, Costco shall provide the following items to the City Engineer upon completion of the Public Work in order for the City to determine the actual Net Costs of the Public Work incurred by Costco:

(i) Copies of the original Construction Contract(s) and any change orders that have been agreed to by Costco, contractor, and the City;

(ii) Copies of all invoices and certified payroll records, or proof of submission of certified payroll records to the Department of Industrial Relations, with unconditional lien releases, submitted by the contractor;

(iii) Copies of all checks issued by Costco with related invoices indicated;

(iv) Copies of all invoices, payments by Costco, and reimbursements to Costco for the soft costs of the Public Work;

(v) Copies or other evidence of all and cash and fee credit reimbursements received or due to be received by Costco with respect to the Public Work; and

(vi) A summary tabulation of all contractor invoices, Costco payments, and Costco reimbursements from sources other than the Incentive Payment, such as the SVSP Fee Program, the City/County Fee, and the TMF Set-Aside Fund (collectively the "Reimbursement Sources").

c. Upon final reconciliation the City Engineer shall notify the City of the amount of the Incentive Payment to be issued to Costco.

5. Timing of Reimbursement. Costco, as a landowner in the SVSP, must participate in the SVSP Fee Program and may be eligible for any cash fee reimbursement and/or fee credits, pursuant to the SVSP Fee Program, that would otherwise be available to it as an entity electing to develop a portion of property within the SVSP. Additionally, should Costco develop the Costco Project, it may be entitled to fee credits and cash reimbursements pursuant to the City/County Fee and/or the TMF Set-Aside Fund. Those reimbursements are separate and distinct from the Incentive Payment contemplated under this Agreement and are governed by the terms of the Reimbursement Sources. Such reimbursements under the Reimbursement Sources will be utilized to determine the Net Cost of the Public Work as part of the true-up process outlined in Section 4. Because reimbursements under the Reimbursement Sources are based on the funds available in the Reimbursement Sources and directly tied to the rate of improvement construction in the SVSP, there is recognition that the timing of any cash fee reimbursements or fee credits under the Reimbursement Sources may vary based on the rate of SVSP development. Because Costco may have to wait years for any cash reimbursement of fees, and that delay may impact the ultimate development of the Costco Project, City agrees that if Costco has not received eligible cash fee

reimbursement under the City/County Fee and/or the TMF Set-Aside Fund for the Costco Project seven (7) years after the date of Store Opening, that City will pay Costco for any such cash fee reimbursement that it is deemed eligible for under the City/County Fee and/or the TMF Set-Aside Fund for the Costco Project, at that time. Such payment by City is not made as part of the respective Reimbursement Sources or in any way on behalf of those Reimbursement Sources and is not a guarantee for payment thereunder. If such payment is made, Costco will remain in the respective program for the Reimbursement Sources and will assign its right to all of its then eligible cash fee reimbursements under the respective City/County Fee and/or the TMF Set-Aside Fund to City as a condition for any payment by City, such that City is entitled to all cash fee reimbursements that would have been available to Costco under the City/County Fee and/or the TMF Set-Aside Fund and Costco would not be "double-recovering". The parties estimate that the total for any such cash reimbursements is approximately \$900,000.00 in City/County Fee cash reimbursement and \$800,000.00 in the TMF Set-Aside Fund cash reimbursement, but in no event shall City have any obligation under this Section to reimburse Costco for more than \$1.8 million. Should Costco receive reimbursement of any or all fees from the City/County Fee and/or TMF Set-Aside Fund before seven (7) years after Store Opening, City will have no obligation to make payment to Costco for that fee reimbursement amount. Costco agrees, in good faith, to use all reasonably available options to obtain fee reimbursement from the Reimbursement Sources within seven (7) years after Store Opening. City will be entitled to an accounting of any payments to Costco from the Reimbursement Sources upon request.

6. Indemnification. To the fullest extent allowed by law, Costco shall defend, indemnify, and save and hold harmless City, its officers, agents, employees and volunteers from any claims, suits or actions of every name, kind and description brought forth, or on account of, or

resulting from or arising out of Costco's willful misconduct or negligent act or omission while engaged in the development of the Costco Project, or performance of obligations or exercise of rights created by this Agreement, except those matters arising from City's sole negligence or willful misconduct. The parties intend that this provision shall be broadly construed.

Costco agrees to defend and indemnify City if, despite the parties intent and practice, any venue, agency, or court with competent jurisdiction determines that Costco and/or any of its agents, officers, employees, volunteers, independent contractors, or subcontractors, are characterized as employee(s) of City.

Costco's responsibility for such defense and indemnity obligations under this Section 6 shall survive the termination or completion of this Agreement for the full period of time allowed by law. The defense and indemnity obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, any insurance limits.

7. Limited City Obligation. The obligations arising from this Agreement are not a debt of the City under section 18 of article XVI of the California Constitution, nor a legal or equitable pledge, charge, lien, or encumbrance upon any of its property or upon any of its income, receipts, or revenues. The credit or taxing power of the City is not pledged for the payment of any obligation arising from this Agreement. Nothing herein shall provide Costco any right to compel the forfeiture of any of the City's property to satisfy any obligations arising from this Agreement. The obligations created by this Agreement do not create an immediate indebtedness of the City, but rather create a contingent liability only when a payment becomes due hereunder.

8. Compliance with Laws. Costco shall comply with all federal, state and local laws, ordinances and policies as may be applicable to the performance of services under this Agreement,

including without limitation any applicable development agreement for the Sierra Vista Specific Plan.

9. Ability to Perform. Costco agrees and represents that it has the time, ability and professional expertise to perform the development of the Costco Project, including specifically the Costco Store, required under this Agreement.

10. Governing Agreement. In the event of any conflict between this Agreement and any Exhibits, the provisions of this Agreement shall govern. In the event of any conflict between any of the Exhibits, the provisions of the first in order of attachment shall govern.

11. Assignment. Costco is performing unique services in developing the Costco Project and specifically the Costco Store. As such, Costco shall not assign this Agreement without the prior written consent of City.

12. Independent Contractor. Costco, inclusive of its agents, officers, employees, volunteers, independent contractors, and subcontractors, shall act as an independent contractor, and covenants and agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be, an officer or employee of City by reason of this Agreement.

13. Successors in Interest. This Agreement shall be binding upon the heirs, successors, executors, administrators and assigns of the respective parties hereto.

14. Termination of Agreement. The parties anticipate the Store Opening within three (3) years of the date of this Agreement. The City may terminate this Agreement should the Store Opening not occur by December 31, 2026. Sections 3, 6, and 15 of this Agreement shall survive any termination of this Agreement.

15. Attorney's Fees; Venue; Governing Law. If either party commences any legal action against the other party arising out of this Agreement or the performance hereof, the

prevailing party in such action shall be entitled to recover its reasonable litigation expenses, including but not limited to, court costs, expert witness fees, discovery expenses, and attorney's fees. Any action arising out of this Agreement shall be brought in Placer County, California, regardless of where else venue may lie. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

16. Modification. This Agreement and each provision contained herein may be waived, amended, supplemented or eliminated only by mutual written agreement of the parties. The City Manager for the City, or his or her designee, shall have authority to execute any documents necessary to effectuate the purpose of this Agreement.

17. Severability. If any of the provisions contained in this Agreement are for any reason held invalid or unenforceable, such holding shall not affect the remaining provisions or the validity and enforceability of the Agreement as a whole.

18. Notices. Any notices to parties required by this Agreement shall be delivered personally or mailed, U.S. first class postage prepaid, addressed as follows:

CITY OF ROSEVILLE

City of Roseville
City Clerk's Office
311 Vernon Street
Roseville, CA 95678
Attn: Ryan DeVore, Asst. City Manager

COSTCO

Costco Wholesale Corporation
Property Management/Legal Department
999 Lake Drive
Issaquah, WA 98027
Attn: Rick Jerabek, Corporate Counsel

Either party may amend its address for notice by giving notice to the other party in writing.

19. Time is of the Essence. The parties acknowledge that time is of the essence.

20. Integrated Agreement. This is an integrated agreement and contains all of the terms, considerations, understanding and promises of the parties. It shall be read as a whole.

21. Advice of Legal Counsel. Each of the parties hereto has received the advice of independent legal counsel prior to signing this Agreement. Each of the parties hereto acknowledges that neither party, or agent or attorney of a party, has made a promise, representation, or warranty whatsoever, express or implied, not contained herein concerning the subject matter herein to induce the other party to execute this Agreement.

22. Joint Drafting. Each party fully understands each term contained herein. Each party knowingly and voluntarily enters into this Agreement and knowingly and voluntarily agrees to each term contained herein. All of the undersigned parties agree that they and their legal counsel have reviewed and have had an opportunity to revise this Agreement, that no single party shall be deemed to have drafted this Agreement or any portion thereof, and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement.

IN WITNESS WHEREOF, the City of Roseville, a municipal corporation, has authorized the execution of this Agreement in duplicate by its City Manager and attested to by its City Clerk under the authority of Resolution No. _____, adopted by the Council of the City of Roseville on the ___ day of _____, 20___, and Costco has caused this Agreement to be duly executed.

CITY OF ROSEVILLE, a
municipal corporation

COSTCO WHOLESALE CORPORATION, a
Washington Corporation

BY: _____
DOMINICK CASEY
City Manager

BY: Del Miller
its: SVP Real Estate

ATTEST:

BY: _____
CARMEN AVALOS
City Clerk

APPROVED AS TO FORM:

BY: MICHELLE SHEIDENBERGER
City Attorney

APPROVED AS TO SUBSTANCE:


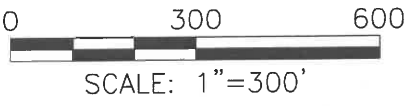
BY: 
RYAN DEVORE
Assistant City Manager

EXHIBIT "A"
Legal Description of the Property

4-28-2023 09:07:34 rdickey P:\18476\DES\Exh-D\Econ Dev Incentive Agmt_Exh A.dwg [1] P:\18476\SRV\CS\ID-CS-LLM COMM.dwg [2] P:\18476\SRV\CS\ID-CS-BM-ADJ.dwg [3] P:\18476\SRV\CS\ID-CS-BM-BL1.dwg

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Portion of Baseline Marketplace Phase II

Exhibit A

City of Roseville
Scale 1"=300'

MACKAY & SOMPS
ENGINEERS PLANNERS SURVEYORS
1025 Creekside Ridge Drive, Suite 150, Roseville, CA 95678 (916) 773-1188

California
April 28, 2023
18476

EXHIBIT "B"
Summary of Estimated Costs and Sources

COST SUMMARY

<i>Road Segment</i>	<i>Cost</i>	<i>SVSP Fee Reimbursement</i>	<i>City/County Fee Reimbursement</i>	<i>City TMF Fund Reimbursement</i>	<i>Net Cost</i>
<i>Baseline Road Segment 1</i>	\$ 4,020,310	\$ 2,004,104	\$ 1,316,518	\$ 490,000	\$ 209,688
<i>Baseline Road Segment 2</i>	\$ 1,913,744	\$ 965,321	\$ 256,312	\$ 560,000	\$ 132,111
<i>Baseline Road Segment 3</i>	\$ 662,018	\$ 490,896		\$ 70,000	\$ 101,122
<i>Upland Drive</i>	\$ 2,984,244	\$ 2,980,044			\$ 4,200
<i>Fiddymont Road Widening</i>	\$ 1,577,366	\$ 1,087,366		\$ 340,000	\$ 150,000
<i>San Fernando Drive</i>	\$ 1,176,610				\$ 1,176,610
<i>Pavilion Drive</i>	\$ 4,141,421	\$ 454,157			\$ 3,687,264
GRAND TOTAL	\$ 16,475,712	\$ 7,981,887	\$ 1,572,830	\$ 1,460,000	\$ 5,460,995