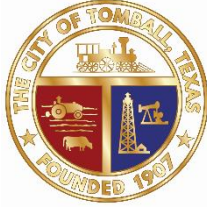


**NOTICE OF SPECIAL JOINT TOMBALL CITY COUNCIL AND
TOMBALL ECONOMIC DEVELOPMENT CORPORATION MEETING
CITY OF TOMBALL, TEXAS**



**Monday, November 7, 2022
6:00 PM**

Notice is hereby given of a Special meeting of the Tomball City Council and the Tomball Economic Development Corporation, to be held on Monday, November 7, 2022 at 6:00 PM, City Hall, 401 Market Street, Tomball, Texas 77375, for the purpose of considering the following agenda items. All agenda items are subject to action. The Tomball City Council and the Tomball Economic Development Corporation reserve the right to meet in a closed session for consultation with attorney on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

**THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, AND THE TOMBALL
ECONOMIC DEVELOPMENT CORPORATION WILL CONDUCT THE MEETING
SCHEDULED FOR NOVEMBER 7, 2022, 6:00 PM, AT 401 MARKET STREET,
TOMBALL, TEXAS, 77375. THIS MEETING AGENDA AND THE AGENDA PACKET
ARE POSTED ONLINE AT:**

[HTTPS://TOMBALLTX.GOV/ARCHIVE.ASPX?AMID=38](https://tomballtx.gov/archive.aspx?amid=38)

**A RECORDING OF THE MEETING WILL BE MADE AND WILL BE AVAILABLE
TO THE PUBLIC IN ACCORDANCE WITH THE OPEN MEETINGS ACT UPON
WRITTEN REQUEST.**

The public toll-free dial-in numbers to participate in the telephonic meeting are any one of the following (dial by your location): +1 312 626 6799 US (Chicago); +1 646 876 9923 US (New York); +1 301 715 8592 US; +1 346 248 7799 US (Houston); +1 408 638 0968 US (San Jose); +1 669 900 6833 US (San Jose); or +1 253 215 8782 US (Tahoma) - Meeting ID: 851 5138 2588, Passcode: 859642. The public will be permitted to offer public comments telephonically, as provided by the agenda and as permitted by the presiding officer during the meeting.

- A. Call to Order
- B. Public Comments and Receipt of Petitions: *[At this time, anyone will be allowed to speak on any matter other than personnel matters or matters under litigation, for length of time*

not to exceed three minutes. No Council/Board discussion or action may take place on a matter until such matter has been placed on an agenda and posted in accordance with law - GC, 551.042.]

C. New Business

1. Presentation regarding Economic Development Incentive Agreement with Costco Wholesale Corporation associated with the construction of a Costco retail facility and fueling station on approximately 25.88 acres of land situated at the northeast corner of the intersection of Holderrieth Road and State Highway 249 Frontage Road in the City of Tomball, Texas.
2. Consideration and possible action by Tomball Economic Development Corporation to approve, as a Project of the Corporation, an Economic Development Incentive Agreement with Costco Wholesale Corporation, to promote new and expanded business development associated with the construction of a Costco retail facility and fueling station on approximately 25.88 acres of land situation at the northeast corner of the intersection of Holderrieth Road and State Highway 249 Frontage Road in the City of Tomball, Texas.

* Conduct Public Hearing

3. Approve, on First Reading, Resolution No. 2022-50-TEDC, a Resolution of the City Council of the City of Tomball, Texas Authorizing and Approving, as a Project of the Tomball Economic Development Corporation, an Economic Development Incentive between the City of Tomball (the “City”), Tomball Economic Development Corporation (the “TEDC”), and Costco Wholesale Corporation (“Costco”), to Expend Funds in Accordance with an Economic Development Incentive Agreement to promote new and expanded business development associated with the construction of a Costco retail facility and fueling station on approximately 25.88 acres of land situation at the northeast corner of the intersection of Holderrieth Road and State Highway 249 Frontage Road in the City of Tomball, Texas; Containing other Provisions relating to the Subject; and Providing for Severability.

D. Adjournment

C E R T I F I C A T I O N

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall, City of Tomball, Texas, a place readily accessible to the general public at all times, on the 3rd day of November 2022 by 5:00 PM, and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Doris Speer, City Secretary, TRMC, MMC

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the City Secretary's office at (281) 290-1002 or FAX (281) 351-6256 for further information.

AGENDAS MAY BE VIEWED ONLINE AT www.ci.tomball.tx.us.

Special Joint Agenda Item Data Sheet

Meeting Date: November 7, 2022

Topic:

Presentation regarding Economic Development Incentive Agreement with Costco Wholesale Corporation associated with the construction of a Costco retail facility and fueling station on approximately 25.88 acres of land situated at the northeast corner of the intersection of Holderrieth Road and State Highway 249 Frontage Road in the City of Tomball, Texas.

Background:

Costco Wholesale Corporation is under contract to purchase approximately 25.88 acres of land in the city to construct an approximately 150,000 square foot Costco retail facility and fueling station near the intersection of Business 249 and Holderrieth Road.

The Tomball City Council and Tomball EDC Board of Directors are being asked to consider an economic development incentive agreement with Costco to help offset infrastructure costs associated with the construction of the site.

The terms of the agreement are as follows:

- I. Total Incentive: \$6 million
- II. Term: 20 years (or upon receipt of grant payments totaling \$6 million dollars)
- III. Minimum Capital Investment: \$10 million
- IV. Number of Jobs: 125
- V. City of Tomball Sales Tax Reimbursement: 50% of the City's 1% Sales Tax (does not include ½% which is for property tax reduction)
- VI. TEDC Sales Tax Reimbursement: 100% of the TEDC's ½% Sales Tax

Based upon Costco's sales projections for the location, we anticipate the incentive to be fully paid in approximately 6 years.

Origination: Costco Wholesale Corporation

Recommendation: Approval of the proposed Economic Development Incentive Agreement with Costco Wholesale Corporation.

Party(ies) responsible for placing this item on agenda: Kelly Violette

FUNDING (IF APPLICABLE)

Are funds specifically designated in the current budget for the full amount required for this purpose?

Yes: X No:

If yes, specify Account Number: # Project Grants

If no, funds will be transferred from account # _____ To account # _____

Signed	_____	Approved by	_____
	Staff Member-TEDC		Executive Director-TEDC
	Date		Date

October 15, 2022

Via Email Only

Ms. Kelly Violette
Tomball Economic Development Corporation
P.O. Box 820
Tomball, TX 77377-0820

RE: Costco Wholesale Corporation request for Development Assistance, Tomball, TX

Dear Ms. Violette:

As you are aware, Costco Wholesale Corporation, a Washington Corporation, is considering the construction of a new retail facility generally at the NEC of Holderreith and Hwy. 249. Given very detailed demographic research, corresponding sales projections and the cost of the undertaking, the company's hurdle rate will not be achieved in the absence of municipal participation/assistance in the amount of \$6M. Accordingly, we have completed the Grant Assistance Application with your department (to the best of our abilities) that hopefully, combined with the below, allows you to complete your impact analysis. We are hereby supplying the following additional information:

1. **Intent.** We have placed land under contract and intend to build a prototypical Costco w/ a fueling facility.
2. **Transaction Details.** A Letter of Intent was executed 12/01/2021. The Purchase Agreement effective date is 2/21/2022 with approvals waiver 12/14/2022.
3. **Due Diligence & Feasibility Results.** Due diligence physical studies have been completed on site. Historical data indicate that the Site consisted of agricultural land dating back to the mid-1940s with oil and gas activity on surrounding properties. Oil and gas production was developed on the site during the 1960s when an oil well was drilled on the western portion of the site. A total of four (4) natural gas pipelines span the property and appear to have been installed between 1970 & 1990. Three (3) natural gas pipelines traversing east to west along the south-central portion of the property are owned by Tandem Energy Corporation and one (1) natural gas pipeline spanning north and south along the west edge of the Site is owned by Pelican Reserve Pipeline Company. A 30-foot easement associated with two (2) Tandem Energy Corporation pipelines is depicted on the Terra Surveying Co. survey. The Developer is currently working with the pipeline company to

Page 1 of 4

relocate the existing pipelines crossing west to east. They are also working on vacation of the north to south pipeline which is not in use or connected to other pipelines. Based on a review of the Texas Railroad Commission (RRC) Public GIS Map Viewer, the Site once contained an oil well on the west-central portion of the property owned by Exxon Corp. and a dry gas well in the south-central portion of the property. The Site had been primarily wooded from the late 1980s until 2006 when it was cleared for potential future development. Based upon historical aerial photography (1944 – 2020), the proposed site is undeveloped and was once densely covered with trees. The site was cleared in 2006 and it appears grading activity was performed that year; however, no further development took place, and the property has since reverted to grass and tree cover. The site is currently within the regulatory FEMA floodplain. In conjunction with excavation for a regional stormwater facility nearby the Developer used the excavated material to raise portions of the site above the 100-year flood elevation. Portions of the site are still up to twelve inches below the 100-year flood elevation. The excavated soil material from the required onsite stormwater management basin is anticipated to generate enough soil to raise the site above the flood elevations, including the required safety factor. Loosely placed soils up to ten feet in depth were identified within the building pad area. To provide the required bearing capacity the geotechnical engineer is recommending removal of the material and replacing it using proper compaction methods.

4. **Entitlements & Land Use.** Costco is purchasing a +/-26 acre parcel located at the NE corner of Holderrieth Road and 249 Frontage Road/Tomball Parkway. The parcel is currently zoned PD-8 for a mixed-use residential/retail development. The 2021 Future Land Use Map shows the parcel as “Commercial Corridor”. The parcel would need to be re-zoned to C-Commercial District zoning which allows all Costco’s uses. The PSA prohibits any zoning changes taking effect prior to Costco closing on the property. We anticipate zoning approval being ready in time for an anticipated closing date in December. Discussions have been had with the City staff, and they stated they would support re-zoning back to C-Commercial District. A Concept Site Plan was submitted to the planning staff and preliminary comments received that were minor. Currently it is anticipated that, except for minor deviations that can be approved by staff, Costco will not require any major approvals for variances or deviations from code. An Outlot of approximately 1.9 acres is being planned with the project. The property is planned to be re-platted later.
5. **Access.** Access to the property is proposed via one full access driveway and one right-in-right-out driveway onto Holderrieth Road, and a single right-in-right-out driveway onto Tomball Parkway. Holderrieth Road is currently a two-lane road across the Costco property. The County is currently in the final stages of planning to widen Holderrieth Road to a four-lane road with a wide median. Construction is anticipated to start late 2022 and be complete in Spring 2024. We are working with the County to have them construct the median break and turn lane for the full access to the Costco site. The County has also indicated they are open to a signal if the traffic warrants it. A Traffic Impact Study is currently under way.
6. **Plans, Permits & Bids.** Proposed schedule for consideration is as follows: Trigger CD’s 6/6/2022; Submit for Permits 8/1/2022; Anticipate permits 10/15/2022. Pricing Exercise

Out 8/16/2022, Pricing Exercise Due 9/8/2022. Opening date subject to County completion of Holderrieth Road widening and Costco Operator input.

7. Site & Building Construction.

- a. Off-site:
 - i. Holderrieth Road improvements by County.
 - ii. Costco responsible for additional costs associated with turn lane and median opening. Costco responsible for traffic signal costs if signal is approved.
- b. Onsite:
 - i. Developer is responsible for relocation of two pipelines currently running across the middle of the property and relocating them to the perimeter property lines.
 - ii. Costco is responsible to Clear/grub, grading, 2 detention ponds, retaining walls, wet/dry utilities from proposed adjacent ROW, concrete pavement, curb/gutter, site lighting, landscape/irrigation communication conduit, cart corrals and 2 Generators with 10K gal underground diesel tank.

8. **Building/Fuel.** 161,119 SF master warehouse (151K prototype); rib metal with concrete columns at open canopy, 25.88 acres overall (Warehouse 20.98 acres, Detention 3.00 acres and Outlot 1.90 acres), 861 stalls (10' wide), 4x3-fuel facility with 12 active fueling pumps (24 fueling positions) with future expansion to 4x4 with 16 active fueling pumps (32 fueling positions), includes rib metal fascia and metal columns, steel faced smooth insulated panel controller enclosure without restroom, (2) 40K gal regular and (1) 40K premium tanks. No diesel.

9. **Sales Projections.** Costco projects the following conservative "top line" sales projections:

a. Year 1	\$196M
b. Year 2	\$225M
c. Year 3	\$256M
d. Year 4	\$276M
e. Year 5	\$297M
f. Year 6	\$300M+

10. Taxable Sales.

- a. Texas Costco statewide taxable sales percentage average for the last three fiscal years:
 - i. FY2022: 42.32%
 - ii. FY2021: 44.16%
 - iii. FY2020: 42.7%
- b. Significant contributors to the exempt sales component are several, including:
 - i. Food
 - ii. Gas
 - iii. Pharmacy
 - iv. Membership
 - v. Resale sales

- c. Costco has **not** done a review of the applicability of current regulations to the above and therefore can make no minimum representations on sales or tax receipts.

11. Employment.

- a. Attached please find the Costco Wholesale Warehouse Statistics and Compensation Study which outlines current benefits and average pay. You will find Costco among the highest retail wage payers in the world. The employees are generally split 50/50 between full time and part time and the number of employees varies dependent on store volume and other factors.
- b. Costco will strive to employ a minimum of 125 employees upon opening.

12. Construction & Project Costs

- a. We anticipate the total project costs will be more than \$20M.

In close, Costco is very excited about the possibility of expanding into the City of Tomball. Kindly let me know if there is any other information or materials that you require. Thank you.

Very truly yours,

INTREPID PROPERTIES, INC.



Michael S. Stratis
Vice President & Counsel
Agent for Costco Wholesale Corporation

cc: Bruce Coffey
Steve Cross

Costco Wholesale

Warehouse Statistics and Compensation Summary

Item 1.

Total U.S. Headcount= 185,800, Worldwide headcount = 292,300
 Total Union: WC Ee's = 11,920 (38 loc's.), EC Ee's = 4,263 (16 loc's.)

Warehouse Statistics (U.S. Stats)

Average Employee Count = 275	Hourly FT / PT Ratio = 57.4% / 42.6%
Turnover after 1 year of service = 9.2%	Average Years of Service = 10
Applications per year/per whse. = 4,420	Average Employee Age = 40

Wages

Cashier Starting Rate = \$18.50, Top Rate = \$27.95 Avg., Average Hourly Rate = \$22.84 (on-scale)
 10 Year Service Clerk makes \$64,000 with bonus
 Bonus amounts \$5000 – 8000 depending on years of service
 Sunday Differential = 1.5x

Benefits

Enrollment:	<u>Eligible</u>	<u>Enrolled</u>	Salaried Eligibility: 1 st day of mo. after date of hire
Fytd '22	87%	97%	FT/Hrly Eligibility*: 1 st day of 2 nd mo after 250 pd. hrs.
			PT/Hrly Eligibility*: 1 st day of 2 nd mo after 450 pd. hrs.

Benefits Offered:	<u>Employee</u>	<u>Dependents</u>	Employee Medical/Dental Contributions**:
Medical	X	X	92%/8% Costco / Employee Cost Share
Dental	X	X	Avg. Monthly Medical / Dental Deduction:
Pharmacy	X	X	Single: \$50, Family***: \$167
Vision	X	X	Company Sponsored Sup Life & AD&D Ins.
Life Insurance	X	X	Flex Spending Accounts for Health & Dependent Care
AD&D Insurance	X	X	401(k) Company Match and Annual Contribution
Short Term Disability	X		11 Holidays per year (4 floating)
Long Term Disability	X		Up to 5 weeks vacation
Employee Assistance Program	X	X	College Student Retention Program
			Employee Stock Purchase Program
			Free Costco Membership with 2% Reward
			Paid Bonding M/F, Hourly/Salary

*Except Hawaii employees

**Except Hawaii and Puerto Rico Employees

***Employee, Spouse, 1 child

Updated April 2021

ECONOMIC DEVELOPMENT AGREEMENT

This Economic Development Agreement (this “Agreement”) is made by and between the City of Tomball, a State of Texas home rule city (the “City”), the Tomball Economic Development Corporation, a State of Texas Type B economic development corporation (the “TEDC”), and Costco Wholesale Corporation, a Washington corporation (“Costco”) (with the City, the TEDC, and Costco each being a “Party”, and collectively the “Parties”), and is entered into by the Parties as of the Effective Date as defined in Section 3 below.

RECITALS

WHEREAS, Chapter 380 of the Texas Local Government Code (“Chapter 380”) allows the City to make grants of public funds for the public purposes of promoting local economic development and stimulating business and commercial activity within the City, which the City memorializes in an economic development agreement to a grantee (a “380 Agreement”); and

WHEREAS, the City has taken all necessary legal action to adopt an economic development program or programs in satisfaction with Chapter 380; and

WHEREAS, the TEDC has established programs in accordance with Chapters 501, 502 and 505 of the Texas Local Government Code to promote local economic development and stimulate business and commercial activity within the City, and when such programs involve a direct incentive to a company, Chapter 501 of the Texas Local Government Code requires the TEDC to memorialize such incentive in a performance agreement with the company (a “Performance Agreement”); and

WHEREAS, the City and the TEDC have concluded and hereby find that this Agreement promotes economic development in the City and, as such this Agreement is intended to be both a 380 Agreement, providing for the City’s grant of public funds to Costco, and a Performance Agreement, providing for the TEDC’s provision of a direct incentive to Costco; and

WHEREAS, to ensure that the grant of the City and the direct incentive of the TEDC provided under this Agreement are utilized in a manner consistent with Chapters 380, 501, 502, and 505 of the Texas Local Government Code, Costco has agreed to comply with certain conditions for receiving the City’s grant and the TEDC’s direct incentive, as provided herein; and

WHEREAS, Costco has entered into an agreement to purchase approximately 25.88 acres of land situated at the northeast corner of Tomball Parkway and Holderrieth Road in the boundaries of the City (the “Property”), with the Property being more particularly depicted and described in the attached Exhibit “A”; and

WHEREAS, the City’s grant and the TEDC’s direct incentive are intended to enable Costco to develop, construct, open, operate, and maintain a wholesale and retail general merchandise facility on the Property (the “Costco Facility”), with the development of the Property and the Costco Facility adding significant new revenue to the City’s tax base and will create jobs, which will help stimulate the overall local economy; and **NOW, THEREFORE:**

IN CONSIDERATION OF THE MUTUAL BENEFITS DESCRIBED IN THIS AGREEMENT, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:

AGREEMENT

SECTION 1. RECITALS

The facts and statements included in the Recitals to this Agreement are hereby incorporated into this Agreement for all intents and purposes.

SECTION 2. AUTHORITY

A. The City's participation in this Agreement is authorized by Chapter 380 of the Texas Local Government Code. The City finds that the grants of public funds for the public purposes of promoting local economic development and stimulating business and commercial activity within the City contemplated in this Agreement satisfy Chapter 380 of the Texas Local Government Code.

B. The TEDC's participation in this Agreement is authorized by Chapters 501, 502, and 505 of the Texas Local Government Code. At a meeting of the Board of Directors of the TEDC (the "Board") on November 1, 2022, the Board determined that the development of the Costco Facility constitutes a "project", as the term is defined in Section 501 of the Texas Local Government Code, and authorized the TEDC to offer a direct incentive to Costco. This Agreement satisfies Chapters 501, 502, and 505 of the Texas Local Government Code and serves as a Performance Agreement reflecting the obligations of the TEDC and Costco regarding the direct incentive.

C. The City and the TEDC have each taken all necessary actions and obtained all necessary approvals to enter into this Agreement. The City Council of the City approved this Agreement by resolution on _____ 2022, a copy of which is attached to this Agreement as "Exhibit E".

D. The City and the TEDC acknowledge that Costco's participation in this Agreement and Costco's decision to commit substantial resources and money to acquire and develop the Property are made in reliance upon the City's and TEDC's performance of their obligations under this Agreement and is subject to Costco's performance of its obligations under this Agreement.

SECTION 3. DEFINITIONS

In addition to the terms defined in the Recitals or elsewhere in this Agreement, as used in this Agreement, the following words or phrases shall have the following meanings:

(1) "Acquisition Deadline" shall mean December 31, 2023

(2) "Certificate of Occupancy" shall mean a certificate of occupancy issued by the City, indicating that the Costco Facility complies with the applicable provisions of the building codes and laws of the City, including, if applicable, a temporary certificate of occupancy under which Costco is permitted to Open for Business within the Costco Facility. A Certificate of

Occupancy shall not include a certificate issued in error, by mistake, or based upon a misrepresentation of facts by Costco or its agent.

(3) “Conditions Satisfaction Deadline” shall mean the date that is thirty-six (36) months after the date of the Property Closing, unless extended by delays caused by Force Majeure.

(4) “Economic Development Grant Payment(s)” means the amount(s) to be paid to Costco by the City and the TEDC to Costco herein.

(5) “Effective Date” means the last date this Agreement is signed by all Parties.

(6) “Force Majeure” means any contingency or cause beyond the reasonable control of a Party including, without limitation: war, riots, acts of terrorism, acts of the public enemy, insurrections, civil commotion; labor disputes, a general inability to obtain labor or materials or reasonable substitutes for either, unusual delay in transportation, strikes, slowdowns or work stoppages; acts of God, casualties, explosions, floods, fire, earthquake, tornado, hurricane or other severe and adverse weather conditions; pandemics, epidemics, infectious disease outbreaks, public health emergencies, health and safety circumstances that require individual isolation, quarantine or quarantine-like restrictions; delays caused by actions or inactions, or other acts or omissions on the part of any public utility or local, state, or federal government (or de facto governmental entity), government official or their respective agents or employees (including, but not limited to, any government-mandated or suggested work stoppages or slowdowns (such as, by way of example and not limitation, any reduction in the number of workers allowed to work at one time, or any limitation on the allowable working hours) and/or the closing or slowing of governmental offices or procedures (such as, by way of example and not limitation, any significant change in the time required to file or obtain permits or record documents); and, delays caused by governmental restrictions, regulations or controls, including without limitation, any moratoriums (i.e. zoning, platting, building or similar moratoriums). An inability to obtain funds shall not be considered Force Majeure (unless directly caused by one of the events specifically described above).

(7) “Open for Business” means that the space under roof and air-conditioned and heated is open for full-time business operations as a wholesale and retail general merchandise facility with a full line of products and services under the business name “Costco” or “Costco Wholesale”.

(8) “Property Closing” shall mean the closing of the sale of the Property to Costco as evidenced by the recordation of the deed conveying the Property to Costco.

(9) “Sales Tax Effective Date” means the first day of the month next following the date that is one hundred eighty (180) days after the Certificate of Occupancy is issued to Costco for the Costco Facility and Costco is Open for Business (subject to its membership policies) for at least one (1) day.

(10) “Sales Tax Revenues” means the amount of sales/use tax that the City receives for transactions arising from and within the Property resulting from the imposition of a municipal sales tax, being the two percent (2%) sales/use tax currently in effect pursuant to the Texas Tax Code. The City’s two percent (2%) sales/use tax is composed of the following portions: one

percent (1%) is dedicated to the City's General Fund and is available for all lawful purposes; one-half percent (½%) is dedicated for economic development purposes to be used by the TEDC; and, one-half percent (½%) is dedicated to property tax reduction, and may be used by the City for the limited purpose of property tax reduction. In calculating the Economic Development Grant Payment, the Sales Tax Revenues contemplated by this Agreement will not include the one-half percent (½%) of the City's sales/use tax dedicated to property tax relief. *[For example: If the Property produces one million dollars (\$1,000,000) of Sales Tax Revenue in any applicable period, then the portion of the Sales Tax Revenue applicable to this Agreement is seven hundred fifty thousand dollars (\$750,000). (One million dollars (\$1,000,000) minus the two hundred fifty thousand dollars (\$250,000) portion of the revenue dedicated to property tax relief.)]*

(11) "Term of Twenty Years" means a twenty (20) year period commencing on the Sales Tax Effective Date and continuing for each consecutive year for twenty (20) years.

SECTION 4. TERM

A. This Agreement shall become enforceable upon the Effective Date and will terminate on the first to occur upon the:

- (1) Term of Twenty Years;
- (2) receipt by Costco of Economic Development Grant Payments of six million dollars (\$6,000,000); or,
- (3) termination of this Agreement as provided for herein (the "Term").

B. In recognition of the fact that the Economic Development Grant Payments are based solely upon receipt by the City of Sales Tax Revenues, and thus, by necessity, are calculated and paid after sales taxes have been levied by and paid to the City and, therefore, will always be paid in arrears, the Term shall be deemed extended until any Economic Development Grant Payments relating to Sales Tax Revenues levied during the Term have been paid by the City to Costco. Notwithstanding anything to the contrary set forth in this Agreement, if Costco has not closed on the acquisition of the Property by the Acquisition Deadline, this Agreement shall automatically terminate and be of no further force or effect as of such date and the Parties shall have no further rights or obligations hereunder.

SECTION 5. COSTCO'S PERFORMANCE CRITERIA

A. Costco must satisfy all of the following conditions precedent by no later than the Conditions Satisfaction Deadline in order to receive any Economic Development Grant Payments hereunder:

- (1) Completion of construction of the Costco Facility on the Property containing at least one hundred fifty thousand (150,000) square feet of space. This condition shall be satisfied by delivery to the City of a certificate from a licensed architect certifying the same.
- (2) Costco shall have made a capital investment of not less than ten million dollars (\$10,000,000) in the Costco Facility, including, without limitation, the costs of acquiring the Property, hard and soft construction costs relating to the Costco Facility, including any

necessary off-site improvements, and the costs of equipping the Costco Facility. This condition shall be satisfied by delivery from Costco to the City of a certificate in the form attached hereto as Exhibit “B” certifying that Costco has made a total of at least ten million dollars (\$10,000,000) in capital investment.

(3) Costco shall have created at least one hundred twenty-five (125) jobs associated with the Costco Facility. For the purposes of this Agreement, a “job” shall be any employment associated with Costco that requires at least twenty (20) hours of work per week for an employee. This condition shall be satisfied by delivery from Costco to the City of a certificate in the form attached hereto as Exhibit “B” certifying that Costco has created at least one hundred twenty-five (125) jobs associated with the Costco Facility.

(4) A Certificate of Occupancy shall have been issued for the Costco Facility.

(5) The Costco Facility shall have been built in substantial accordance with all applicable City codes and other applicable laws. This condition shall be satisfied by the issuance of a Certificate of Occupancy by the City to Costco.

(6) The Costco Facility shall be Open for Business (subject to Costco’s membership policies) for at least one (1) day.

(7) All development associated with the Costco Facility must meet the drainage requirements of Atlas 14. This condition shall be satisfied by the City’s approval of the site plan and stormwater plan for the Costco Facility.

(8) A failure by Costco to satisfy all of the foregoing performance criteria by the Conditions Satisfaction Date shall not constitute a Costco Default under this Agreement, but as a result of such failure, the City shall have no obligation to pay any Economic Development Grant Payments to Costco under this Agreement and this Agreement shall be terminated and the Parties shall have no further obligations under this Agreement.

B. Notwithstanding anything to the contrary contained in this Agreement, Costco shall have no obligation to occupy or operate the Costco Facility, and if Costco fails or ceases to operate for business in the Costco Facility it shall not constitute a Costco Default under this Agreement. However, if at any time from and after the date that Costco opens for business to the public (subject to Costco’s membership policies) in the Costco Facility, Costco ceases to occupy and operate the Costco Facility open to the public (subject to Costco’s membership policies) for hours of operation consistent with Costco’s other facilities in the State of Texas for a continuous period of one hundred eighty (180) days, except in connection with, and to the extent of, a Permitted Closure as defined below, then the City shall have the right to give written notice to Costco of the City’s intent to exercise the City’s rights under this Section (the “First Notice”) and if Costco fails to re-open to the public, subject to Costco’s membership policies, in the Costco Facility within ninety (90) days after the First Notice, then at any time after such ninety (90) day period, the City shall have the right, via written notice (the “Election Notice”) to Costco to either:

(1) cease payment of all or any of the Economic Development Grant Payments to Costco under this Agreement from the one hundred eighty first (181st) day of such cessation of occupation or operation until Costco re-opens for business to the public (subject to Costco’s membership

policies) in the Costco Facility, without any obligation for the City to pay any Economic Development Grant Payments which would or may have accrued during such period of ceased occupation or operation; or,

(2) terminate this Agreement with respect to Costco, with such termination being effective as of the ninety first (91st) day after delivery of the First Notice.

C. Further, if at any time from and after the date that Costco opens for business to the public (subject to Costco's membership policies) in the Costco Facility, Costco ceases to occupy and operate the Costco Facility open to the public (subject to Costco's membership policies) for hours of operation consistent with Costco's other facilities in the State of Texas pursuant to a Permitted Closure, as defined below, for a period of more than three hundred sixty-five (365) days, then at any time after such three hundred sixty-five (365) day period, the City shall have the right, via written notice to Costco to cease payment of all or any of the Economic Development Grant Payments to Costco under this Agreement from the three hundred sixty-sixth (366th) day of such cessation of occupation or operation until Costco re-opens for business to the public (subject to Costco's membership policies) in the Costco Facility, without any obligation for the City to pay any Economic Development Grant Payments which would or may have accrued during such period of ceased occupation or operation.

D. "Permitted Closure" shall mean any period in which the Costco Facility is not open for business to the public (subject to Costco's membership policies) for hours of operation consistent with Costco's other facilities in the State of Texas as:

(1) a result of a fire, earthquake, flood or similar casualty that renders the Costco Facility unfit for the intended purpose, as determined by Costco in its reasonably exercised judgment;

(2) a result of an event of Force Majeure;

(3) a result of a condemnation or other exercise by a governmental authority of the power of eminent domain, to the extent necessary to as determined by Costco in its reasonably exercised judgment for repair and restoration of the Costco Facility;

(4) a result of any repairs, renovations, alterations or modifications to the Costco Facility made by Costco with the intention of recommencing operations in the Costco Facility; or,

(5) required by law, to the extent, and only to the extent, that the necessity of compliance is not the result of Costco's action, inaction, or failure to timely fulfill its obligations under this Agreement.

SECTION 6. ECONOMIC DEVELOPMENT GRANT PAYMENTS

A. Subject to Costco's satisfaction of the performance criteria set forth in Section 5.A above, the City and the TEDC shall be obligated to reimburse to Costco a portion of the Sales Tax Revenues as provided herein, in an amount up to but not to exceed a cumulative total amount of six million dollars (\$6,000,000) over a period not to exceed the Term of Twenty Years. In no event shall the City or the TEDC be required to make any Economic Development Grant Payments to Costco except as provided herein, and subject to satisfaction of the conditions set forth above. The

Economic Development Grant Payment obligations contained in this Agreement shall cease upon payment in full to Costco of six million dollars (\$6,000,000), or the expiration of the Term, whichever occurs first.

B. Commencing after the satisfaction of all of the conditions set forth in Section 5.A above, the City and the TEDC shall reimburse Costco annual payments in the amount of fifty percent (50%) of the Sales Tax Revenues arising from and within the Property as received by the City from the Texas Comptroller for the previous calendar year, and as reconciled with the sales and use tax information provided by the Texas Comptroller's office to the City. The City and the TEDC shall make such payments annually by March 31st, commencing with the March 31st next following the satisfaction of all of the conditions set forth in Section 5.A above. The payments shall be for sales tax-generating transactions in and on the Property that occurred from January 1 to December 31 of the prior calendar year. The obligation to reimburse Costco contemplated herein shall cease upon Costco's receipt of Economic Development Grant Payments totaling of six million dollars (\$6,000,000) in the aggregate, or the expiration of the Term, whichever occurs first. The City and the TEDC shall be required to issue only one (1) check or wire transfer (per wiring instructions provided by Costco) for each annual payment to Costco or Costco's designee.

C. A delay in the payment of the Economic Development Grant Payment by either the City or the TEDC due to a delay in receiving the Sales Tax Revenues or sales and use tax information from the Texas Comptroller shall not be considered a default on the part of the City or the TEDC so long as the City and the TEDC use reasonable efforts to obtain the Sales Tax Revenues or sales and use tax information and make the annual payment to Costco within thirty (30) days after receipt of such Sales Tax Revenues or sales and use tax information.

D. As a condition to obtaining any Economic Development Grant Payment based upon Sales Tax Revenues, Costco shall sign (and shall cause any affiliate, tenant, licensee, or other party generating Sales Tax Revenues from the Costco Facility which Costco desires to be included for purposes of determining any such Economic Development Grant Payment to sign) and submit to the City and the TEDC and maintain during the Term, the Waiver of Sales Tax Confidentiality form attached as Exhibit "C", or other similar form required by the Texas Comptroller as may be required from time to time during the Term to permit the release of sales tax information relating to the Costco Facility to the City and the TEDC.

E. The Economic Development Grant Payment made by the City and the TEDC to Costco shall be composed of fifty percent (50%) of the City's portion of the Sales Tax Revenue and one hundred percent (100%) of the TEDC's portion of the Sales Tax Revenue. As an example of how the Sales Tax Revenues shall be calculated by the City and the TEDC under this Agreement to satisfy the Economic Development Grant Payment obligations to Costco contemplated herein, the Parties shall consider the following:

If the Property produces one million dollars (\$1,000,000) in Sales Tax Revenue in any given year of the Term, then Costco should receive five hundred thousand dollars (\$500,000) as an Economic Development Grant Payment, which is a reimbursement of fifty percent (50%) of the Sales Tax Revenues generated at the Property. Of the one million dollars (\$1,000,000) in Sales Tax Revenue generated at the Property, two hundred fifty thousand dollars (\$250,000) shall be allotted by the City for property tax relief and is not applicable to this Agreement, which would leave a remaining seven hundred fifty thousand dollars (\$750,000) that is applicable to this Agreement. Five hundred

thousand dollars (\$500,000) of the remaining seven hundred fifty thousand dollars (\$750,000) of the Sales Tax Revenue is directed to the City's General Fund for any lawful purpose. Two hundred fifty thousand dollars (\$250,000) of the remaining seven hundred fifty thousand dollars (\$750,000) of the Sales Tax Revenue is dedicated for the economic development purposes of the TEDC. In this example, and for the purposes of this Agreement, the TEDC would provide two hundred fifty thousand dollars (\$250,000), or one hundred percent (100%), of its portion of the Sales Tax Revenue to Costco as the TEDC's portion of the Economic Development Grant Payment. In this example, and for the purposes of this Agreement, the City would provide two hundred fifty thousand dollars (\$250,000), or fifty percent (50%), of its portion of the Sales Tax Revenue to Costco as the City's portion of the Economic Development Grant Payment. By the City providing fifty percent (50%) and the TEDC providing one hundred percent (100%) of their applicable portions of the Sales Tax Revenue, the five hundred thousand dollar (\$500,000) Economic Development Grant Payment to Costco is satisfied.

SECTION 7. COSTCO'S COVENANTS, WARRANTIES, AND OBLIGATIONS

Costco hereby makes the following covenants and warranties to the City and the TEDC, and agrees, to timely and fully perform the following obligations and duties:

- (1) Costco is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas during the Term of this Agreement.
- (2) The execution of this Agreement has been duly authorized by Costco, and the corporate officer signing this Agreement is an officer of Costco, empowered to execute this Agreement and bind Costco, said authorization, signing and binding effect is not in contravention of any law, rule or regulation, or of the provisions of Costco's articles of incorporation, bylaws, or of any agreement or instrument to which Costco is a party or by which it may be bound.
- (3) The execution and performance of this Agreement by Costco constitutes its valid and binding obligation, subject to the terms and conditions set forth in this Agreement.
- (4) As of the date of this Agreement, no litigation or governmental proceeding is pending or, to the knowledge of Costco, threatened against or affecting Costco that may result in any material adverse change in Costco's business, properties or operation. No consent, approval or authorization of or registration or declaration within any governmental authority is required in connection with the execution of this Agreement or the transactions contemplated hereby.
- (5) There are no bankruptcy proceedings or other proceedings currently pending or contemplated, and Costco has not been informed of any potential involuntary bankruptcy proceedings.
- (6) Costco shall pay all state and local taxes due and owing by Costco to all taxing authorities having jurisdiction over the Property prior to delinquency (provided, however, Costco retains the right to timely and properly protest and contest any such taxes and so long as Costco is timely and properly protesting or contesting the same it shall not constitute a Costco Default). A failure by Costco to satisfy the performance criteria by set forth in this subsection shall not constitute a Costco Default under this Agreement, but as a result of such failure, the City shall have no obligation to pay any Economic Development Grant Payments to Costco due during the year in which Costco is delinquent in any state and local taxes due and owing by Costco.

(7) In the event of bankruptcy, receivership, or closure or cessation of operations at the Costco Facility, Costco shall maintain the Costco Facility in good condition and in compliance with applicable building and property maintenance codes and ordinances.

(8) Costco shall not discriminate against any person on the basis of race, color, national origin, sex, or by reason of being disabled, and shall refrain from violating any applicable local, state, and federal law which may have a material adverse effect on the City's or the TEDC's reputation by virtue of the City's or the TEDC's relationship with Costco.

(9) Costco acknowledges that for contracts needing City Council or TEDC Board of Directors approval, that the City or the TEDC may not accept or enter into a contract until it has received from Costco a completed, signed, and notarized Texas Ethics Commission (the "TEC") Form 1295 from Costco complete with a certificate number assigned by the TEC, pursuant to Texas Government Code §2252.908 and the rules promulgated thereunder by the TEC. Attached hereto as Exhibit "D" is a copy of the TEC Form 1295 filed by Costco to be attached upon receipt by Costco.

(10) Pursuant to Chapter 2264 of the Texas Government Code, Costco certifies that as of the Effective Date of this Agreement and throughout the Term, Costco's business, or a branch, division, or department thereof, does not and will not knowingly employ an undocumented worker (as defined in §2264.001 of the Texas Government Code), and if Costco's business, or a branch, division, or department thereof, is convicted of a violation of 8 U.S.C. §1324a(f) occurring during the Term of this Agreement, Costco shall repay to City and the TEDC the total amount of Economic Development Grant Payments paid to Costco under this Agreement, plus interest at Agreed Rate (as hereinafter defined), not later than the one hundred twentieth (120th) day after the date City or the TEDC notifies Costco of the violation. It is agreed that for purposes of this subsection, but only if permissible under Chapter 2264 of the Texas Government Code, that:

(a) For the purposes of this Section, "Costco's business" shall be limited to Costco's business in Tomball, Texas;

(b) Costco shall not be liable for a violation of Chapter 2264 of the Texas Government Code by a person or entity with whom Costco contracts;

(c) neither Costco nor its business, or branch, division, or department thereof, shall be deemed to have been "convicted of a violation" until all appeals have been exhausted and/or the time for all appeals has expired; and,

(d) the date that "City notifies Costco of the violation" may not be earlier than the date that Costco has been "convicted of a violation" as provided in the immediately preceding subsection.

(11) For purposes of this Section "Agreed Rate" shall mean the lesser of:

(a) the Wall Street Journal prime rate announced by and as quoted in Wall Street Journal, from time to time, as its prime commercial rate or, if the Wall Street Journal prime rate

ceases to be made available by the publisher, or any successor to the publisher, a similar reference interest rate based on the interest large United States money center commercial banks charge on short term uninsured loans to their most creditworthy borrowers, or

(b) the highest lawful rate.

SECTION 8. DEFAULT

A. The following shall constitute a “Costco Default” under this Agreement:

- (1) The appointment of a receiver of Costco, or of all or any substantial part of its property, and the failure of such receiver to be discharged within ninety (90) days thereafter.
- (2) The adjudication of Costco as bankrupt.
- (3) The filing by Costco of a petition or an answer seeking bankruptcy, receivership, reorganization, or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding.
- (4) Upon the expiration of the notice and cure period set forth below, a breach of a material representation under this Agreement by Costco.
- (5) Upon the expiration of the notice and cure period set forth below, a breach of any material covenant set forth herein.

B. The following shall constitute a “Tomball Default” under this Agreement:

- (1) The appointment of a receiver of the City or the TEDC, or of all or any substantial part of its property, and the failure of such receiver to be discharged within ninety (90) days thereafter.
- (2) The adjudication of the City or the TEDC as bankrupt.
- (3) The filing by the City or the TEDC of a petition or an answer seeking bankruptcy, receivership, reorganization, or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding.
- (4) Upon the expiration of the notice and cure period set forth below, a breach of a material representation under this Agreement by the City or the TEDC.
- (5) Upon the expiration of the notice and cure period set forth below, the City’s failure to pay by the City or TEDC any Economic Development Grant Payment to Costco in accordance with this Agreement.
- (6) Upon the expiration of the notice and cure period set forth below, a breach of the City’s or the TEDC’s obligations set forth in this Agreement.

C. In the event of the occurrence of a breach or default by a Party under this Agreement, as applicable, the non-defaulting Party shall give written notice to the other Parties of such default, and the defaulting Party shall have sixty (60) days thereafter to cure said default or if the defaulting

Party is diligently pursuing the cure of such default but such default is not reasonably curable within sixty (60) days, then the defaulting Party shall have such additional amount of time as is reasonably necessary to cure such default but no more than one hundred twenty (120) additional days. Should a default or breach as described herein, remain uncured after such cure period it shall constitute a Costco Default or Tomball Default, as applicable, and the non-defaulting Party shall have the right to exercise the remedies set forth below.

SECTION 9. REMEDIES.

A. Upon the occurrence of a Costco Default, the City and the TEDC shall have the right to terminate this Agreement by written notice to Costco, in which event the City and the TEDC shall have no obligation to make any future Economic Development Grant Payments to Costco under this Agreement.

B. Upon the occurrence of a Tomball Default, Costco shall have the right to terminate this Agreement by written notice to the City and the TEDC, in which event Costco shall have no further obligations under this Agreement.

C. In addition, and without terminating this Agreement, any Party shall further have the power to enforce specific performance to collect amounts owing by the other Parties under this Agreement or to otherwise compel the other Parties to perform their obligations under this Agreement. Further, any Party shall have the right to bring an action for a declaratory judgment.

D. The City and the TEDC shall not be entitled to a refund of any portion of or all Economic Development Grant Payments made to Costco, except as otherwise provided in Section 7(10) hereof, and further provided that the City and the TEDC shall be entitled to recapture any portion of or all Economic Development Grant Payments which were made based upon materially false or fraudulent information certified to or provided by Costco and for which Costco would not otherwise have been entitled. No action shall lie for damages against Costco except that the City and the TEDC shall be entitled to any action to recover any amounts owed by Costco as provided in the foregoing sentence.

E. Upon the occurrence of a Tomball Default, Costco has the right to bring any action to recover any amounts owed to it under this Agreement. In addition, Costco shall have the right to seek a judicial declaration of the appropriate amount of Economic Development Grant Payments owing to Costco by the City or the TEDC under this Agreement.

F. IF AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, THE CITY VOLUNTARILY WAIVES ITS RIGHT TO ASSERT SOVEREIGN IMMUNITY FROM SUIT OR LIABILITY IN RESPONSE TO AN ACTION BY COSTCO SEEKING ONLY THE REMEDIES SPECIFIED IN THIS AGREEMENT; IT BEING UNDERSTOOD THAT THIS WAIVER IS A LIMITED AND NOT A GENERAL WAIVER, AND THAT ITS EFFECT IS LIMITED TO SPECIFIC CLAIMS UNDER THIS AGREEMENT. EXCEPT AS EXPRESSLY PROVIDED IN THE FOREGOING SENTENCE, NEITHER THE CITY NOR THE TEDC OTHERWISE WAIVE ANY GOVERNMENTAL IMMUNITIES THAT EITHER MAY HAVE AS NOW EXIST OR MAY BE CREATED UNDER ANY APPLICABLE LAW OR JUDGEMENT.

G. If any legal action or proceeding is commenced by any Party to enforce the provisions of this

Agreement or to recover any damages permitted under this Agreement from the breaching Party, each Party shall pay their own legal fees and costs of court.

H. The sole and exclusive remedies of Costco for a breach by the City or the TEDC under this Agreement, and the City's and the TEDC's sole and exclusive remedies for a breach by Costco under this Agreement, shall be those expressly provided for in this Section 9 and elsewhere in this Agreement and Costco, the City and the TEDC each hereby waives any other remedies under law or in equity.

I. A Party shall not be deemed to be in default of this Agreement if performance of this Agreement is delayed, disrupted, or becomes impossible because of an event of Force Majeure, but only for so long as the event of Force Majeure reasonably delays, disrupts or prevents performance.

J. Any delay for any amount of time by a Party in providing notice of default to the other Party shall in no event be deemed or constitute a waiver of such default by such non-defaulting Party of any of its rights and remedies available in law or in equity.

K. Any waiver granted by one Party to another Party shall not be deemed or constitute a waiver of any other existing or future default by such Party or of a subsequent default of the same act or event.

SECTION 10. LIABILITY LIMITATIONS OF THE CITY AND THE TEDC

The City and the TEDC are making payments under this Agreement solely and exclusively from the Sales Tax Revenues each receives from the Texas Comptroller related to the Property and such funds are not financed and will not be financed or otherwise paid from any other source. Under no circumstances shall the obligations of the City or the TEDC hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. No public official or employee shall be personally responsible for any liability arising under or growing out of this Agreement.

SECTION 11. ADDITIONAL REPRESENTATIONS AND WARRANTIES

The City agrees to cooperate with Costco to expeditiously and in good faith process permits, plat applications, and other approvals as required for the Property and Costco Facility. This Section does not waive any requirements of the City's Code of Ordinances as they apply to Costco. All normal fees from the City shall apply to Costco, including, but not limited to, traffic impact analysis fees, water fees, and wastewater impact fees.

SECTION 12. MISCELLANEOUS PROVISIONS

A. Changes in Law. If, during the Term, State law applicable to municipal sales taxes changes and, as a result, the Economic Development Grant Payments differ from the amount which would have been paid to Costco under the laws in effect as of the Effective Date, then the City and the TEDC, in their sole discretion, may adjust the Economic Development Grant Payments utilizing whatever discretionary taxes and revenues are legally available to be allocated to the Economic Development Grant Payments. The foregoing does not require the City or the TEDC to use funds from sources which are not allocable to the Property in order to achieve the same economic benefits to Costco, which would have resulted if the law had not changed. Should any other legal impediment arise during the Term, including without limitation a change in law, that prevents or

prohibits the City or the TEDC from complying with or making any payments under this Agreement, the Parties agree to terminate this Agreement; provided, however, that, to the extent feasible and permitted by applicable law, the Parties agree to work together in good faith to modify this Agreement or enter into a new agreement or otherwise provide Costco with a remedy or reasonably equivalent value to otherwise accomplish the purpose of this Agreement.

B. Binding Effect. This Agreement will be binding on and inure to the benefit of the Parties and their respective successors and assigns.

C. Assignment. Except as provided below, Costco may not assign all or part of its rights under this Agreement to a third party without the prior written approval of the City and the TEDC, which approval will not be unreasonably withheld or delayed. In the event either Costco is sold or merged into, or transfers substantially all of its then owned assets to another entity, the City and the TEDC hereby consent to such sale, merger, or transfer and consents to any assignment of the sold, merged, or transferred entity's rights and obligations under this Agreement to such receiving entity as a result of such sale, merger, or transfer. Costco shall provide the City and the TEDC with written notice of any such assignment.

D. Notice. Notice shall be effective upon receipt or refusal of delivery by the Party to be notified. Any notice or other communication ("Notice") given under this Agreement shall be in writing, and may be given:

- (1) by depositing the Notice in the United States Mail, postage paid, certified, and addressed to the Party to be notified with return receipt requested;
- (2) by personal delivery of the Notice to the Party;
- (3) by depositing the notice with Federal Express or another nationally recognized courier service for next day delivery; or,
- (4) by confirmed facsimile, provided that a copy of the Notice is also given in one of the manners specified in (i), (ii), or (iii).

E. Notice Contact Information. For the purposes of Notice, unless changed as provided in writing to all Parties, as provided in Section 12.D above, the contact information of the Parties is as follows:

For the City:
City of Tomball
Attn: City Manager
401 Market Street
Tomball, Texas 77375

For the TEDC:
Tomball Economic Development Corp.
Attn: Executive Director
29201 Quinn Road, Ste. B
Tomball, Texas 77375

For Costco:
Costco Wholesale Corp.
Attn: Property Management Dept.
999 Lake Drive
Issaquah, Washington 98027

With Copy To:
Holland & Knight, LLP
Attn: Ray T. Khirallah
One Arts Plaza
1722 Routh Street, Suite 1500
Dallas, Texas 75201

F. Interpretation. Each of the Parties has been represented by counsel of its choosing in the negotiation and preparation of this Agreement. In the event of any dispute regarding the interpretation of this Agreement, this Agreement will be interpreted fairly and reasonably and neither more strongly for or against, either Party based on draftsmanship.

G. Relationship of the Parties. This Agreement shall not be construed as establishing a partnership or joint venture, joint enterprise, express or implied agency, or employer-employee relationship between the Parties. Neither the City, the TEDC, nor either's past, present, or future elected officials, officers, directors, employees, or agents, assume any responsibility or liability to any third party in connection with the development of the Property or the design, construction, or operation of any portion of the Property.

H. Applicable Law and Venue. This Agreement is made, and will be construed and interpreted, under the laws of the State of Texas without regard to any conflicts of law provision, and venue will lie in a state district court in Harris County, Texas. The Parties consent to, and waive any objection to, in person jurisdiction in Harris County, Texas.

I. Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable in any respect under present or future laws, the remainder of this Agreement shall not be affected so long as the intent, purpose, and benefits of this Agreement are not affected in any manner materially adverse to either Party hereto. This Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein, and in lieu of each provision that is found to be illegal, invalid or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable, is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable, and effects the intent, purpose, and benefits of this Agreement.

J. Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the paragraphs.

K. No Third-Party Beneficiaries. This Agreement is not intended to confer any rights, privileges, or causes of action upon any third party.

L. Counterparts. This Agreement may be executed simultaneously in two (2) or more counterparts, each of which will be deemed an original, but all of which will constitute the same instrument. A signature transmitted by facsimile or email will be deemed to be an original signature for all purposes. As used in this Section, "signature" means a manually signed document by a natural person, as opposed to an electronic signature.

M. Exhibits. The following exhibits are attached to and incorporated into this Agreement and made a part of this Agreement for all purposes as if they were set forth herein in their entirety: Exhibit A – Description of Property; Exhibit B – Certificate Regarding Capital Investment and Jobs; Exhibit C – Disclosure of Confidential Information; Exhibit D – Form 1295; Exhibit E – Resolution.

N. Entire Agreement. This Agreement embodies the complete agreement of the Parties, superseding all oral or written, previous and contemporary, agreements between the Parties relating to matters in this Agreement; and, except as otherwise provided herein, this Agreement cannot be modified or amended without a written agreement of the Parties.

Confidentiality. This Agreement is subject to the Texas Public Information Act and will be considered “public information” after consideration by the City or the TEDC at a posted meeting by either body. However, the City and the TEDC will use all appropriate measures to keep the information contained in and related to this Agreement confidential until such time as the Texas Public Information Act requires the City or the TEDC to disclose the applicable contents of this Agreement. To the maximum extent permitted by law, the City and the TEDC and their respective elected officials, officers, directors, and employees, and agents or contractors retained to perform economic development services for either the City or the TEDC (the “City Related Parties”): (i) shall use all appropriate measures to maintain the confidentiality of all sales tax information filed by Costco and/or its respective tenants, subtenants and/or licensees, as applicable, with the State of Texas and all other information regarding the Sales Tax Revenue generated by the Property; (ii) shall treat as confidential any other proprietary or financial information of Costco and/or its respective tenants, subtenants, and/or licensees and shall not release any of the foregoing information to the public, unless required by law or court order. The City and the TEDC shall notify Costco as a third-party under the Texas Public Information Act of requests, Attorney General Opinions, and court orders to release such information pursuant to the Texas Public Information Act. The City and the TEDC shall be permitted to disclose the foregoing information to such of the City Related Parties as either of the City and the TEDC, in its reasonable discretion, deems appropriate in furtherance of the purposes of this Agreement, so long as such disclosure is made subject to compliance by such City Related Parties with the terms of this Section. This Section is not meant to prevent the City or the TEDC from complying with the Texas Public Information Act, as it may be amended.

SIGNATURES ON THE FOLLOWING PAGES:

**SIGNATURE PAGE TO
ECONOMIC DEVELOPMENT AGREEMENT MADE BY AND AMONG
THE CITY OF TOMBALL,
THE TOMBALL ECONOMIC DEVELOPMENT CORPORATION,
AND COSTCO WHOLESALE CORPORATION**

IN WITNESS WHEREOF, the undersigned signed and executed this Agreement effective as of the dates set forth below.

FOR: THE CITY

FOR: THE TEDC

Name [Signature]

Name [Signature]

Name [Printed]

Name [Printed]

Title

Title

Date

Date

FOR THE TEDC

**THE STATE OF TEXAS §
COUNTY OF HARRIS §**

This instrument was acknowledged before me on the ____ day of _____ 2022,
by _____, _____ of _____,
Name Position/Title Entity Name
for and on behalf of said Entity.

(SEAL)

Notary Public in and for the State of Texas

My Commission Expires: _____

**ACKNOWLEDGEMENTS CONTINUE ON FOLLOWING PAGE
FOR THE CITY**

THE STATE OF TEXAS §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the _____ day of _____ 2022,
by _____, _____ of _____,
Name Position/Title Entity Name
for and on behalf of said Entity.

(SEAL)

Notary Public in and for the State of Texas

My Commission Expires: _____

**SIGNATURE PAGE TO
ECONOMIC DEVELOPMENT AGREEMENT MADE BY AND AMONG
THE CITY OF TOMBALL,
THE TOMBALL ECONOMIC DEVELOPMENT CORPORATION,
AND COSTCO WHOLESALE CORPORATION**

IN WITNESS WHEREOF, the undersigned signed and executed this Agreement effective as of the dates set forth below.

FOR: COSTCO

Name [Signature]

Name [Printed]

Title

Date

THE STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____ 2022,
by _____, the _____ of COSTCO WHOLESALE CORPORATION, a Washington corporation, for and on behalf of said corporation.

(SEAL)

Notary Public in and for the State of _____

My Commission Expires: _____

EXHIBIT A – DESCRIPTION OF PROPERTY

All of Reserve “A” of Maple Group, an addition to the City of Tomball, Harris County, Texas, according to the plat thereof recorded in Film Code No. 683989, Map Records, Harris County, Texas

EXHIBIT B – CAPITAL INVESTMENT AND JOBS CERTIFICATION

Re: ECONOMIC DEVELOPMENT AGREEMENT MADE BY AND AMONG THE CITY OF TOMBALL, THE TOMBALL ECONOMIC DEVELOPMENT CORPORATION, AND COSTCO WHOLESALE CORPORATION

This Capital Investment Certification is being delivered by Costco Wholesale Corporation (“Costco”) in connection with that certain Economic Development Agreement made by and among the City of Tomball (the “City”), the Tomball Economic Development Corporation (the “TEDC”), and Costco effective as of _____, 2022 (the “Agreement”). All terms used herein have the meanings ascribed to them in the Agreement unless otherwise defined herein.

The undersigned authorized officer of Costco hereby certifies to the City and the TEDC that:

1. Costco has made a capital investment of not less than Ten Million Dollars (\$10,000,000) in the Costco Facility, including, without limitation, the costs of acquiring the Property, hard and soft construction costs relating to the Costco Facility, including any necessary off-site improvements, and the costs of equipping the Costco Facility (but excluding inventory).
2. Costco has created at least one hundred twenty-five (125) jobs associated with the Costco Facility. (A “job” meaning any employment associated with Costco that requires at least twenty (20) hours of work per week for an employee).

The undersigned hereby certifies that I am a duly authorized representative of Costco and am duly authorized to execute this Cost Certification.

COSTCO WHOLESALE CORPORATION

BY: _____
NAME – SIGNATURE

NAME – PRINTED

TITLE DATE _____ 20__

STATE OF _____

COUNTY OF _____

Sworn to and subscribed to before me on the ____ day of _____,
20_____, by _____.

NOTARY NAME

EXHIBIT C – DISCLOSURE OF CONFIDENTIAL TAX INFORMATION AGREEMENT FOR DISCLOSURE OF CONFIDENTIAL TAX INFORMATION

This Agreement for Disclosure of Confidential Tax Information (this “Agreement”) is entered into by and among the City of Tomball (the “City”), the Tomball Economic Development Corporation (the “TEDC”; the City and the TEDC are collectively referred to as the “City Parties”), and Costco Wholesale Corporation, a Washington corporation (hereafter the “Taxpayer”) for the purposes indicated herein.

The undersigned Taxpayer hereby authorizes the Texas Comptroller’s Office to release and disclose to the City any and all sales and use tax information pertaining to Taxpayer’s business in the Costco wholesale/retail facility located situated at the northeast corner of Tomball Parkway and Holderrieth Road in the boundaries of the City of Tomball. This waiver applies only to the Costco wholesale/retail facility located on the northeast corner of Tomball Parkway and Holderrieth Road in Tomball, Texas.

The undersigned Taxpayer understands and agrees that this release will be made by the Texas Comptroller’s Office to the City on an ongoing monthly basis beginning on the date this Agreement is executed. Taxpayer waives any and all rights of confidentiality of tax information under Sections 111.006, 151.027 of the Texas Tax Code to the extent, and only to the extent, necessary to permit the Texas Comptroller’s Office to release and disclose Taxpayer’s sales and use tax information as provided in this Agreement.

The City Parties each agree that the City Parties will use the sales and use tax information disclosed by the Texas Comptroller pursuant to this Agreement solely and exclusively for the purposes under that certain Economic Development Agreement by and among the City Parties and Costco dated _____, 2022, and subject to the terms thereof.

This Agreement is entered into in the State of Texas, and Texas law will apply to its interpretation and enforcement.

SIGNED AND AGREED TO on this ____ day of _____, 202__

Name of Taxpayer Listed on Texas Sales Tax Permit

Name Under Which Taxpayer is Doing Business (d/b/a or Outlet Name)

Taxpayer Mailing Address

Physical Location of Business Permitted for Sales Tax

SIGNATURE PAGE TO DISCLOSURE OF CONFIDENTIAL TAX INFORMATION
AGREEMENT FOR DISCLOSURE OF CONFIDENTIAL TAX INFORMATION

THE CITY

THE TEDC

Name [Signature]

Name [Signature]

Name [Printed]

Name [Printed]

Title

Title

Date

Date

EXHIBIT D – FORM 1295

TO BE ATTACHED

**EXHIBIT E – RESOLUTION
TO BE ATTACHED**

						50% Reimbursement	100% Reimbursement	Total Annual Payment	
	Total Estimated Sales	% taxable sales	Total Estimated Taxable Sales	Local Sales Tax (2%)	City Sales Tax (1%)	City Sales Tax (1%)	TEDC Sales Tax (.5%)	to Costco	Property Tax Reduction (.5%)
Year 1	\$196,000,000	42%	\$ 82,320,000	\$ 1,646,400	\$ 823,200	\$ 411,600	\$ 411,600	\$ 823,200	\$ 411,600
Year 2	\$225,000,000	42%	\$ 94,500,000	\$ 1,890,000	\$ 945,000	\$ 472,500	\$ 472,500	\$ 945,000	\$ 472,500
Year 3	\$256,000,000	42%	\$ 107,520,000	\$ 2,150,400	\$ 1,075,200	\$ 537,600	\$ 537,600	\$ 1,075,200	\$ 537,600
Year 4	\$276,000,000	42%	\$ 115,920,000	\$ 2,318,400	\$ 1,159,200	\$ 579,600	\$ 579,600	\$ 1,159,200	\$ 579,600
Year 5	\$297,000,000	42%	\$ 124,740,000	\$ 2,494,800	\$ 1,247,400	\$ 623,700	\$ 623,700	\$ 1,247,400	\$ 623,700
Year 6	\$300,000,000	42%	\$ 126,000,000	\$ 2,520,000	\$ 1,260,000	\$ 375,000	\$ 375,000	\$ 750,000	\$ 630,000
Total	\$1,550,000,000		\$ 651,000,000	\$ 13,020,000	\$ 6,510,000	\$ 3,000,000	\$ 3,000,000	\$ 6,000,000	\$ 3,255,000

RESOLUTION NO. 2022-50-TEDC

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, AUTHORIZING AND APPROVING THE TOMBALL ECONOMIC DEVELOPMENT CORPORATION'S PROJECT TO EXPEND FUNDS IN ACCORDANCE WITH AN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF TOMBALL (THE "CITY"), TOMBALL ECONOMIC DEVELOPMENT CORPORATION (THE "TEDC"), AND COSTCO WHOLESALE CORPORATION ("COSTCO") TO PROMOTE AND DEVELOP NEW OR EXPANDED BUSINESS ENTERPRISE; CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT; AND PROVIDING FOR SEVERABILITY.

* * * * *

WHEREAS, the Tomball Economic Development Corporation (the "TEDC"), created pursuant to the Development Corporation Act, now Chapter 501 of the Texas Local Government Code, as amended (the "Act"), desires to adopt projects and provide incentives for economic development within the City; and

WHEREAS, the Board of Directors of the TEDC had adopted as a specific project a grant in an amount equal to a portion of the new incremental sales tax revenues associated with the development of a new Costco retail facility and fueling station on approximately 25.88 acres of land situated at the northeast corner of the intersection of Holderrieth Road and State Highway 249 Frontage Road in the City of Tomball, Texas; and

WHEREAS, pursuant to the Act, the TEDC may not undertake such project without the approval of Tomball City Council; and

WHEREAS, City Council finds and determines that such project promotes new or expanded business development and is in the best interests of the citizenry; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS:

Section 1. The facts and matters set forth in the preamble of this Resolution are hereby found to be true and correct.

Section 2. The City Council hereby authorizes and approves the adoption, by the Board of Directors of the Tomball Economic Development Corporation, as a specific project for the economic development of the City, an expenditure in an amount equal to a portion of the new incremental sales tax to COSTCO WHOLESALE CORPORATION a Washington corporation, in accordance with an economic development agreement by and between the CITY, the TEDC and COSTCO WHOLESALE CORPORATION, to promote and develop new or expanded business enterprise, to be located at the northeast corner the intersection of Holderrieth Road and State Highway 249 Frontage Road in the City of Tomball, Texas.

Section 3. In the event any clause, phrase, provision, sentence, or part of this Resolution or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Resolution as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

PASSED AND APPROVED on first reading this ____ day of _____, 2022.

PASSED, APPROVED, AND RESOLVED on second and final reading this ____ day of _____, 2022.

Lori Klein Quinn, Mayor

ATTEST:

Doris Speer, City Secretary

Special Joint Agenda Item Data Sheet

Meeting Date: November 7, 2022

Topic:

Consideration and possible action by Tomball Economic Development Corporation to approve, as a Project of the Corporation, an Economic Development Incentive Agreement with Costco Wholesale Corporation, to promote new and expanded business development associated with the construction of a Costco retail facility and fueling station on approximately 25.88 acres of land situation at the northeast corner of the intersection of Holderrieth Road and State Highway 249 Frontage Road in the City of Tomball, Texas.

- Public Hearing

Background:

Costco Wholesale Corporation is under contract to purchase approximately 25.88 acres of land in the city to construct an approximately 150,000 square foot Costco retail facility and fueling station near the intersection of Business 249 and Holderrieth Road.

The Tomball City Council and Tomball EDC Board of Directors are being asked to consider an economic development incentive agreement with Costco to help offset infrastructure costs associated with the construction of the site.

The terms of the agreement are as follows:

- I. Total Incentive: \$6 million
- II. Term: 20 years (or upon receipt of grant payments totaling \$6 million dollars)
- III. Minimum Capital Investment: \$10 million
- IV. Number of Jobs: 125
- V. City of Tomball Sales Tax Reimbursement: 50% of the City's 1% Sales Tax (does not include ½% which is for property tax reduction)
- VI. TEDC Sales Tax Reimbursement: 100% of the TEDC's ½% Sales Tax

Based upon Costco's sales projections for the location, we anticipate the incentive to be fully paid in approximately 6 years.

Origination: Costco Wholesale Corporation

Recommendation: Approval of the proposed Economic Development Incentive Agreement with Costco Wholesale Corporation.

Party(ies) responsible for placing this item on agenda:

Kelly Violette

FUNDING (IF APPLICABLE)

Are funds specifically designated in the current budget for the full amount required for this purpose?

Yes: X No: _____ If yes, specify Account Number: # Project Grants _____

If no, funds will be transferred from account # _____ To account # _____

Signed _____ Approved by _____
 Staff Member-TEDC Date Executive Director-TEDC Date

October 15, 2022

Via Email Only

Ms. Kelly Violette
Tomball Economic Development Corporation
P.O. Box 820
Tomball, TX 77377-0820

RE: Costco Wholesale Corporation request for Development Assistance, Tomball, TX

Dear Ms. Violette:

As you are aware, Costco Wholesale Corporation, a Washington Corporation, is considering the construction of a new retail facility generally at the NEC of Holderreith and Hwy. 249. Given very detailed demographic research, corresponding sales projections and the cost of the undertaking, the company's hurdle rate will not be achieved in the absence of municipal participation/assistance in the amount of \$6M. Accordingly, we have completed the Grant Assistance Application with your department (to the best of our abilities) that hopefully, combined with the below, allows you to complete your impact analysis. We are hereby supplying the following additional information:

1. **Intent.** We have placed land under contract and intend to build a prototypical Costco w/ a fueling facility.
2. **Transaction Details.** A Letter of Intent was executed 12/01/2021. The Purchase Agreement effective date is 2/21/2022 with approvals waiver 12/14/2022.
3. **Due Diligence & Feasibility Results.** Due diligence physical studies have been completed on site. Historical data indicate that the Site consisted of agricultural land dating back to the mid-1940s with oil and gas activity on surrounding properties. Oil and gas production was developed on the site during the 1960s when an oil well was drilled on the western portion of the site. A total of four (4) natural gas pipelines span the property and appear to have been installed between 1970 & 1990. Three (3) natural gas pipelines traversing east to west along the south-central portion of the property are owned by Tandem Energy Corporation and one (1) natural gas pipeline spanning north and south along the west edge of the Site is owned by Pelican Reserve Pipeline Company. A 30-foot easement associated with two (2) Tandem Energy Corporation pipelines is depicted on the Terra Surveying Co. survey. The Developer is currently working with the pipeline company to

relocate the existing pipelines crossing west to east. They are also working on vacation of the north to south pipeline which is not in use or connected to other pipelines. Based on a review of the Texas Railroad Commission (RRC) Public GIS Map Viewer, the Site once contained an oil well on the west-central portion of the property owned by Exxon Corp. and a dry gas well in the south-central portion of the property. The Site had been primarily wooded from the late 1980s until 2006 when it was cleared for potential future development. Based upon historical aerial photography (1944 – 2020), the proposed site is undeveloped and was once densely covered with trees. The site was cleared in 2006 and it appears grading activity was performed that year; however, no further development took place, and the property has since reverted to grass and tree cover. The site is currently within the regulatory FEMA floodplain. In conjunction with excavation for a regional stormwater facility nearby the Developer used the excavated material to raise portions of the site above the 100-year flood elevation. Portions of the site are still up to twelve inches below the 100-year flood elevation. The excavated soil material from the required onsite stormwater management basin is anticipated to generate enough soil to raise the site above the flood elevations, including the required safety factor. Loosely placed soils up to ten feet in depth were identified within the building pad area. To provide the required bearing capacity the geotechnical engineer is recommending removal of the material and replacing it using proper compaction methods.

4. **Entitlements & Land Use.** Costco is purchasing a +/-26 acre parcel located at the NE corner of Holderrieth Road and 249 Frontage Road/Tomball Parkway. The parcel is currently zoned PD-8 for a mixed-use residential/retail development. The 2021 Future Land Use Map shows the parcel as “Commercial Corridor”. The parcel would need to be re-zoned to C-Commercial District zoning which allows all Costco’s uses. The PSA prohibits any zoning changes taking effect prior to Costco closing on the property. We anticipate zoning approval being ready in time for an anticipated closing date in December. Discussions have been had with the City staff, and they stated they would support re-zoning back to C-Commercial District. A Concept Site Plan was submitted to the planning staff and preliminary comments received that were minor. Currently it is anticipated that, except for minor deviations that can be approved by staff, Costco will not require any major approvals for variances or deviations from code. An Outlot of approximately 1.9 acres is being planned with the project. The property is planned to be re-platted later.
5. **Access.** Access to the property is proposed via one full access driveway and one right-in-right-out driveway onto Holderrieth Road, and a single right-in-right-out driveway onto Tomball Parkway. Holderrieth Road is currently a two-lane road across the Costco property. The County is currently in the final stages of planning to widen Holderrieth Road to a four-lane road with a wide median. Construction is anticipated to start late 2022 and be complete in Spring 2024. We are working with the County to have them construct the median break and turn lane for the full access to the Costco site. The County has also indicated they are open to a signal if the traffic warrants it. A Traffic Impact Study is currently under way.
6. **Plans, Permits & Bids.** Proposed schedule for consideration is as follows: Trigger CD’s 6/6/2022; Submit for Permits 8/1/2022; Anticipate permits 10/15/2022. Pricing Exercise

Out 8/16/2022, Pricing Exercise Due 9/8/2022. Opening date subject to County completion of Holderrieth Road widening and Costco Operator input.

7. Site & Building Construction.

- a. Off-site:
 - i. Holderrieth Road improvements by County.
 - ii. Costco responsible for additional costs associated with turn lane and median opening. Costco responsible for traffic signal costs if signal is approved.
- b. Onsite:
 - i. Developer is responsible for relocation of two pipelines currently running across the middle of the property and relocating them to the perimeter property lines.
 - ii. Costco is responsible to Clear/grub, grading, 2 detention ponds, retaining walls, wet/dry utilities from proposed adjacent ROW, concrete pavement, curb/gutter, site lighting, landscape/irrigation communication conduit, cart corrals and 2 Generators with 10K gal underground diesel tank.

8. **Building/Fuel.** 161,119 SF master warehouse (151K prototype); rib metal with concrete columns at open canopy, 25.88 acres overall (Warehouse 20.98 acres, Detention 3.00 acres and Outlot 1.90 acres), 861 stalls (10' wide), 4x3-fuel facility with 12 active fueling pumps (24 fueling positions) with future expansion to 4x4 with 16 active fueling pumps (32 fueling positions), includes rib metal fascia and metal columns, steel faced smooth insulated panel controller enclosure without restroom, (2) 40K gal regular and (1) 40K premium tanks. No diesel.

9. **Sales Projections.** Costco projects the following conservative "top line" sales projections:

a. Year 1	\$196M
b. Year 2	\$225M
c. Year 3	\$256M
d. Year 4	\$276M
e. Year 5	\$297M
f. Year 6	\$300M+

10. Taxable Sales.

- a. Texas Costco statewide taxable sales percentage average for the last three fiscal years:
 - i. FY2022: 42.32%
 - ii. FY2021: 44.16%
 - iii. FY2020: 42.7%
- b. Significant contributors to the exempt sales component are several, including:
 - i. Food
 - ii. Gas
 - iii. Pharmacy
 - iv. Membership
 - v. Resale sales

- c. Costco has **not** done a review of the applicability of current regulations to the above and therefore can make no minimum representations on sales or tax receipts.

11. Employment.

- a. Attached please find the Costco Wholesale Warehouse Statistics and Compensation Study which outlines current benefits and average pay. You will find Costco among the highest retail wage payers in the world. The employees are generally split 50/50 between full time and part time and the number of employees varies dependent on store volume and other factors.
- b. Costco will strive to employ a minimum of 125 employees upon opening.

12. Construction & Project Costs

- a. We anticipate the total project costs will be more than \$20M.

In close, Costco is very excited about the possibility of expanding into the City of Tomball. Kindly let me know if there is any other information or materials that you require. Thank you.

Very truly yours,

INTREPID PROPERTIES, INC.



Michael S. Stratis
Vice President & Counsel
Agent for Costco Wholesale Corporation

cc: Bruce Coffey
Steve Cross

Costco Wholesale

Warehouse Statistics and Compensation Summary

Item 2.

Total U.S. Headcount= 185,800, Worldwide headcount = 292,300
 Total Union: WC Ee's = 11,920 (38 loc's.), EC Ee's = 4,263 (16 loc's.)

Warehouse Statistics (U.S. Stats)

Average Employee Count = 275	Hourly FT / PT Ratio = 57.4% / 42.6%
Turnover after 1 year of service = 9.2%	Average Years of Service = 10
Applications per year/per whse. = 4,420	Average Employee Age = 40

Wages

Cashier Starting Rate = \$18.50, Top Rate = \$27.95 Avg., Average Hourly Rate = \$22.84 (on-scale)
 10 Year Service Clerk makes \$64,000 with bonus
 Bonus amounts \$5000 – 8000 depending on years of service
 Sunday Differential = 1.5x

Benefits

Enrollment:	<u>Eligible</u>	<u>Enrolled</u>	Salaried Eligibility: 1 st day of mo. after date of hire
Fytd '22	87%	97%	FT/Hrly Eligibility*: 1 st day of 2 nd mo after 250 pd. hrs.
			PT/Hrly Eligibility*: 1 st day of 2 nd mo after 450 pd. hrs.

Benefits Offered:	<u>Employee</u>	<u>Dependents</u>
Medical	X	X
Dental	X	X
Pharmacy	X	X
Vision	X	X
Life Insurance	X	X
AD&D Insurance	X	X
Short Term Disability	X	
Long Term Disability	X	
Employee Assistance Program	X	X

Employee Medical/Dental Contributions:**
 92%/8% Costco / Employee Cost Share
 Avg. Monthly Medical / Dental Deduction:
 Single: \$50, Family***: \$167
 Company Sponsored Sup Life & AD&D Ins.
 Flex Spending Accounts for Health & Dependent Care
 401(k) Company Match and Annual Contribution
 11 Holidays per year (4 floating)
 Up to 5 weeks vacation
 College Student Retention Program
 Employee Stock Purchase Program
 Free Costco Membership with 2% Reward
 Paid Bonding M/F, Hourly/Salary

*Except Hawaii employees

**Except Hawaii and Puerto Rico Employees

***Employee, Spouse, 1 child

Updated April 2021

ECONOMIC DEVELOPMENT AGREEMENT

This Economic Development Agreement (this “Agreement”) is made by and between the City of Tomball, a State of Texas home rule city (the “City”), the Tomball Economic Development Corporation, a State of Texas Type B economic development corporation (the “TEDC”), and Costco Wholesale Corporation, a Washington corporation (“Costco”) (with the City, the TEDC, and Costco each being a “Party”, and collectively the “Parties”), and is entered into by the Parties as of the Effective Date as defined in Section 3 below.

RECITALS

WHEREAS, Chapter 380 of the Texas Local Government Code (“Chapter 380”) allows the City to make grants of public funds for the public purposes of promoting local economic development and stimulating business and commercial activity within the City, which the City memorializes in an economic development agreement to a grantee (a “380 Agreement”); and

WHEREAS, the City has taken all necessary legal action to adopt an economic development program or programs in satisfaction with Chapter 380; and

WHEREAS, the TEDC has established programs in accordance with Chapters 501, 502 and 505 of the Texas Local Government Code to promote local economic development and stimulate business and commercial activity within the City, and when such programs involve a direct incentive to a company, Chapter 501 of the Texas Local Government Code requires the TEDC to memorialize such incentive in a performance agreement with the company (a “Performance Agreement”); and

WHEREAS, the City and the TEDC have concluded and hereby find that this Agreement promotes economic development in the City and, as such this Agreement is intended to be both a 380 Agreement, providing for the City’s grant of public funds to Costco, and a Performance Agreement, providing for the TEDC’s provision of a direct incentive to Costco; and

WHEREAS, to ensure that the grant of the City and the direct incentive of the TEDC provided under this Agreement are utilized in a manner consistent with Chapters 380, 501, 502, and 505 of the Texas Local Government Code, Costco has agreed to comply with certain conditions for receiving the City’s grant and the TEDC’s direct incentive, as provided herein; and

WHEREAS, Costco has entered into an agreement to purchase approximately 25.88 acres of land situated at the northeast corner of Tomball Parkway and Holderrieth Road in the boundaries of the City (the “Property”), with the Property being more particularly depicted and described in the attached Exhibit “A”; and

WHEREAS, the City’s grant and the TEDC’s direct incentive are intended to enable Costco to develop, construct, open, operate, and maintain a wholesale and retail general merchandise facility on the Property (the “Costco Facility”), with the development of the Property and the Costco Facility adding significant new revenue to the City’s tax base and will create jobs, which will help stimulate the overall local economy; and **NOW, THEREFORE:**

IN CONSIDERATION OF THE MUTUAL BENEFITS DESCRIBED IN THIS AGREEMENT, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:

AGREEMENT

SECTION 1. RECITALS

The facts and statements included in the Recitals to this Agreement are hereby incorporated into this Agreement for all intents and purposes.

SECTION 2. AUTHORITY

A. The City's participation in this Agreement is authorized by Chapter 380 of the Texas Local Government Code. The City finds that the grants of public funds for the public purposes of promoting local economic development and stimulating business and commercial activity within the City contemplated in this Agreement satisfy Chapter 380 of the Texas Local Government Code.

B. The TEDC's participation in this Agreement is authorized by Chapters 501, 502, and 505 of the Texas Local Government Code. At a meeting of the Board of Directors of the TEDC (the "Board") on November 1, 2022, the Board determined that the development of the Costco Facility constitutes a "project", as the term is defined in Section 501 of the Texas Local Government Code, and authorized the TEDC to offer a direct incentive to Costco. This Agreement satisfies Chapters 501, 502, and 505 of the Texas Local Government Code and serves as a Performance Agreement reflecting the obligations of the TEDC and Costco regarding the direct incentive.

C. The City and the TEDC have each taken all necessary actions and obtained all necessary approvals to enter into this Agreement. The City Council of the City approved this Agreement by resolution on _____ 2022, a copy of which is attached to this Agreement as "Exhibit E".

D. The City and the TEDC acknowledge that Costco's participation in this Agreement and Costco's decision to commit substantial resources and money to acquire and develop the Property are made in reliance upon the City's and TEDC's performance of their obligations under this Agreement and is subject to Costco's performance of its obligations under this Agreement.

SECTION 3. DEFINITIONS

In addition to the terms defined in the Recitals or elsewhere in this Agreement, as used in this Agreement, the following words or phrases shall have the following meanings:

(1) "Acquisition Deadline" shall mean December 31, 2023

(2) "Certificate of Occupancy" shall mean a certificate of occupancy issued by the City, indicating that the Costco Facility complies with the applicable provisions of the building codes and laws of the City, including, if applicable, a temporary certificate of occupancy under which Costco is permitted to Open for Business within the Costco Facility. A Certificate of

Occupancy shall not include a certificate issued in error, by mistake, or based upon a misrepresentation of facts by Costco or its agent.

(3) “Conditions Satisfaction Deadline” shall mean the date that is thirty-six (36) months after the date of the Property Closing, unless extended by delays caused by Force Majeure.

(4) “Economic Development Grant Payment(s)” means the amount(s) to be paid to Costco by the City and the TEDC to Costco herein.

(5) “Effective Date” means the last date this Agreement is signed by all Parties.

(6) “Force Majeure” means any contingency or cause beyond the reasonable control of a Party including, without limitation: war, riots, acts of terrorism, acts of the public enemy, insurrections, civil commotion; labor disputes, a general inability to obtain labor or materials or reasonable substitutes for either, unusual delay in transportation, strikes, slowdowns or work stoppages; acts of God, casualties, explosions, floods, fire, earthquake, tornado, hurricane or other severe and adverse weather conditions; pandemics, epidemics, infectious disease outbreaks, public health emergencies, health and safety circumstances that require individual isolation, quarantine or quarantine-like restrictions; delays caused by actions or inactions, or other acts or omissions on the part of any public utility or local, state, or federal government (or de facto governmental entity), government official or their respective agents or employees (including, but not limited to, any government-mandated or suggested work stoppages or slowdowns (such as, by way of example and not limitation, any reduction in the number of workers allowed to work at one time, or any limitation on the allowable working hours) and/or the closing or slowing of governmental offices or procedures (such as, by way of example and not limitation, any significant change in the time required to file or obtain permits or record documents); and, delays caused by governmental restrictions, regulations or controls, including without limitation, any moratoriums (i.e. zoning, platting, building or similar moratoriums). An inability to obtain funds shall not be considered Force Majeure (unless directly caused by one of the events specifically described above).

(7) “Open for Business” means that the space under roof and air-conditioned and heated is open for full-time business operations as a wholesale and retail general merchandise facility with a full line of products and services under the business name “Costco” or “Costco Wholesale”.

(8) “Property Closing” shall mean the closing of the sale of the Property to Costco as evidenced by the recordation of the deed conveying the Property to Costco.

(9) “Sales Tax Effective Date” means the first day of the month next following the date that is one hundred eighty (180) days after the Certificate of Occupancy is issued to Costco for the Costco Facility and Costco is Open for Business (subject to its membership policies) for at least one (1) day.

(10) “Sales Tax Revenues” means the amount of sales/use tax that the City receives for transactions arising from and within the Property resulting from the imposition of a municipal sales tax, being the two percent (2%) sales/use tax currently in effect pursuant to the Texas Tax Code. The City’s two percent (2%) sales/use tax is composed of the following portions: one

percent (1%) is dedicated to the City's General Fund and is available for all lawful purposes; one-half percent (½%) is dedicated for economic development purposes to be used by the TEDC; and, one-half percent (½%) is dedicated to property tax reduction, and may be used by the City for the limited purpose of property tax reduction. In calculating the Economic Development Grant Payment, the Sales Tax Revenues contemplated by this Agreement will not include the one-half percent (½%) of the City's sales/use tax dedicated to property tax relief. *[For example: If the Property produces one million dollars (\$1,000,000) of Sales Tax Revenue in any applicable period, then the portion of the Sales Tax Revenue applicable to this Agreement is seven hundred fifty thousand dollars (\$750,000). (One million dollars (\$1,000,000) minus the two hundred fifty thousand dollars (\$250,000) portion of the revenue dedicated to property tax relief.)]*

(11) "Term of Twenty Years" means a twenty (20) year period commencing on the Sales Tax Effective Date and continuing for each consecutive year for twenty (20) years.

SECTION 4. TERM

A. This Agreement shall become enforceable upon the Effective Date and will terminate on the first to occur upon the:

- (1) Term of Twenty Years;
- (2) receipt by Costco of Economic Development Grant Payments of six million dollars (\$6,000,000); or,
- (3) termination of this Agreement as provided for herein (the "Term").

B. In recognition of the fact that the Economic Development Grant Payments are based solely upon receipt by the City of Sales Tax Revenues, and thus, by necessity, are calculated and paid after sales taxes have been levied by and paid to the City and, therefore, will always be paid in arrears, the Term shall be deemed extended until any Economic Development Grant Payments relating to Sales Tax Revenues levied during the Term have been paid by the City to Costco. Notwithstanding anything to the contrary set forth in this Agreement, if Costco has not closed on the acquisition of the Property by the Acquisition Deadline, this Agreement shall automatically terminate and be of no further force or effect as of such date and the Parties shall have no further rights or obligations hereunder.

SECTION 5. COSTCO'S PERFORMANCE CRITERIA

A. Costco must satisfy all of the following conditions precedent by no later than the Conditions Satisfaction Deadline in order to receive any Economic Development Grant Payments hereunder:

- (1) Completion of construction of the Costco Facility on the Property containing at least one hundred fifty thousand (150,000) square feet of space. This condition shall be satisfied by delivery to the City of a certificate from a licensed architect certifying the same.
- (2) Costco shall have made a capital investment of not less than ten million dollars (\$10,000,000) in the Costco Facility, including, without limitation, the costs of acquiring the Property, hard and soft construction costs relating to the Costco Facility, including any

necessary off-site improvements, and the costs of equipping the Costco Facility. This condition shall be satisfied by delivery from Costco to the City of a certificate in the form attached hereto as Exhibit “B” certifying that Costco has made a total of at least ten million dollars (\$10,000,000) in capital investment.

(3) Costco shall have created at least one hundred twenty-five (125) jobs associated with the Costco Facility. For the purposes of this Agreement, a “job” shall be any employment associated with Costco that requires at least twenty (20) hours of work per week for an employee. This condition shall be satisfied by delivery from Costco to the City of a certificate in the form attached hereto as Exhibit “B” certifying that Costco has created at least one hundred twenty-five (125) jobs associated with the Costco Facility.

(4) A Certificate of Occupancy shall have been issued for the Costco Facility.

(5) The Costco Facility shall have been built in substantial accordance with all applicable City codes and other applicable laws. This condition shall be satisfied by the issuance of a Certificate of Occupancy by the City to Costco.

(6) The Costco Facility shall be Open for Business (subject to Costco’s membership policies) for at least one (1) day.

(7) All development associated with the Costco Facility must meet the drainage requirements of Atlas 14. This condition shall be satisfied by the City’s approval of the site plan and stormwater plan for the Costco Facility.

(8) A failure by Costco to satisfy all of the foregoing performance criteria by the Conditions Satisfaction Date shall not constitute a Costco Default under this Agreement, but as a result of such failure, the City shall have no obligation to pay any Economic Development Grant Payments to Costco under this Agreement and this Agreement shall be terminated and the Parties shall have no further obligations under this Agreement.

B. Notwithstanding anything to the contrary contained in this Agreement, Costco shall have no obligation to occupy or operate the Costco Facility, and if Costco fails or ceases to operate for business in the Costco Facility it shall not constitute a Costco Default under this Agreement. However, if at any time from and after the date that Costco opens for business to the public (subject to Costco’s membership policies) in the Costco Facility, Costco ceases to occupy and operate the Costco Facility open to the public (subject to Costco’s membership policies) for hours of operation consistent with Costco’s other facilities in the State of Texas for a continuous period of one hundred eighty (180) days, except in connection with, and to the extent of, a Permitted Closure as defined below, then the City shall have the right to give written notice to Costco of the City’s intent to exercise the City’s rights under this Section (the “First Notice”) and if Costco fails to re-open to the public, subject to Costco’s membership policies, in the Costco Facility within ninety (90) days after the First Notice, then at any time after such ninety (90) day period, the City shall have the right, via written notice (the “Election Notice”) to Costco to either:

(1) cease payment of all or any of the Economic Development Grant Payments to Costco under this Agreement from the one hundred eighty first (181st) day of such cessation of occupation or operation until Costco re-opens for business to the public (subject to Costco’s membership

policies) in the Costco Facility, without any obligation for the City to pay any Economic Development Grant Payments which would or may have accrued during such period of ceased occupation or operation; or,

(2) terminate this Agreement with respect to Costco, with such termination being effective as of the ninety first (91st) day after delivery of the First Notice.

C. Further, if at any time from and after the date that Costco opens for business to the public (subject to Costco's membership policies) in the Costco Facility, Costco ceases to occupy and operate the Costco Facility open to the public (subject to Costco's membership policies) for hours of operation consistent with Costco's other facilities in the State of Texas pursuant to a Permitted Closure, as defined below, for a period of more than three hundred sixty-five (365) days, then at any time after such three hundred sixty-five (365) day period, the City shall have the right, via written notice to Costco to cease payment of all or any of the Economic Development Grant Payments to Costco under this Agreement from the three hundred sixty-sixth (366th) day of such cessation of occupation or operation until Costco re-opens for business to the public (subject to Costco's membership policies) in the Costco Facility, without any obligation for the City to pay any Economic Development Grant Payments which would or may have accrued during such period of ceased occupation or operation.

D. "Permitted Closure" shall mean any period in which the Costco Facility is not open for business to the public (subject to Costco's membership policies) for hours of operation consistent with Costco's other facilities in the State of Texas as:

(1) a result of a fire, earthquake, flood or similar casualty that renders the Costco Facility unfit for the intended purpose, as determined by Costco in its reasonably exercised judgment;

(2) a result of an event of Force Majeure;

(3) a result of a condemnation or other exercise by a governmental authority of the power of eminent domain, to the extent necessary to as determined by Costco in its reasonably exercised judgment for repair and restoration of the Costco Facility;

(4) a result of any repairs, renovations, alterations or modifications to the Costco Facility made by Costco with the intention of recommencing operations in the Costco Facility; or,

(5) required by law, to the extent, and only to the extent, that the necessity of compliance is not the result of Costco's action, inaction, or failure to timely fulfill its obligations under this Agreement.

SECTION 6. ECONOMIC DEVELOPMENT GRANT PAYMENTS

A. Subject to Costco's satisfaction of the performance criteria set forth in Section 5.A above, the City and the TEDC shall be obligated to reimburse to Costco a portion of the Sales Tax Revenues as provided herein, in an amount up to but not to exceed a cumulative total amount of six million dollars (\$6,000,000) over a period not to exceed the Term of Twenty Years. In no event shall the City or the TEDC be required to make any Economic Development Grant Payments to Costco except as provided herein, and subject to satisfaction of the conditions set forth above. The

Economic Development Grant Payment obligations contained in this Agreement shall cease upon payment in full to Costco of six million dollars (\$6,000,000), or the expiration of the Term, whichever occurs first.

B. Commencing after the satisfaction of all of the conditions set forth in Section 5.A above, the City and the TEDC shall reimburse Costco annual payments in the amount of fifty percent (50%) of the Sales Tax Revenues arising from and within the Property as received by the City from the Texas Comptroller for the previous calendar year, and as reconciled with the sales and use tax information provided by the Texas Comptroller's office to the City. The City and the TEDC shall make such payments annually by March 31st, commencing with the March 31st next following the satisfaction of all of the conditions set forth in Section 5.A above. The payments shall be for sales tax-generating transactions in and on the Property that occurred from January 1 to December 31 of the prior calendar year. The obligation to reimburse Costco contemplated herein shall cease upon Costco's receipt of Economic Development Grant Payments totaling of six million dollars (\$6,000,000) in the aggregate, or the expiration of the Term, whichever occurs first. The City and the TEDC shall be required to issue only one (1) check or wire transfer (per wiring instructions provided by Costco) for each annual payment to Costco or Costco's designee.

C. A delay in the payment of the Economic Development Grant Payment by either the City or the TEDC due to a delay in receiving the Sales Tax Revenues or sales and use tax information from the Texas Comptroller shall not be considered a default on the part of the City or the TEDC so long as the City and the TEDC use reasonable efforts to obtain the Sales Tax Revenues or sales and use tax information and make the annual payment to Costco within thirty (30) days after receipt of such Sales Tax Revenues or sales and use tax information.

D. As a condition to obtaining any Economic Development Grant Payment based upon Sales Tax Revenues, Costco shall sign (and shall cause any affiliate, tenant, licensee, or other party generating Sales Tax Revenues from the Costco Facility which Costco desires to be included for purposes of determining any such Economic Development Grant Payment to sign) and submit to the City and the TEDC and maintain during the Term, the Waiver of Sales Tax Confidentiality form attached as Exhibit "C", or other similar form required by the Texas Comptroller as may be required from time to time during the Term to permit the release of sales tax information relating to the Costco Facility to the City and the TEDC.

E. The Economic Development Grant Payment made by the City and the TEDC to Costco shall be composed of fifty percent (50%) of the City's portion of the Sales Tax Revenue and one hundred percent (100%) of the TEDC's portion of the Sales Tax Revenue. As an example of how the Sales Tax Revenues shall be calculated by the City and the TEDC under this Agreement to satisfy the Economic Development Grant Payment obligations to Costco contemplated herein, the Parties shall consider the following:

If the Property produces one million dollars (\$1,000,000) in Sales Tax Revenue in any given year of the Term, then Costco should receive five hundred thousand dollars (\$500,000) as an Economic Development Grant Payment, which is a reimbursement of fifty percent (50%) of the Sales Tax Revenues generated at the Property. Of the one million dollars (\$1,000,000) in Sales Tax Revenue generated at the Property, two hundred fifty thousand dollars (\$250,000) shall be allotted by the City for property tax relief and is not applicable to this Agreement, which would leave a remaining seven hundred fifty thousand dollars (\$750,000) that is applicable to this Agreement. Five hundred

thousand dollars (\$500,000) of the remaining seven hundred fifty thousand dollars (\$750,000) of the Sales Tax Revenue is directed to the City's General Fund for any lawful purpose. Two hundred fifty thousand dollars (\$250,000) of the remaining seven hundred fifty thousand dollars (\$750,000) of the Sales Tax Revenue is dedicated for the economic development purposes of the TEDC. In this example, and for the purposes of this Agreement, the TEDC would provide two hundred fifty thousand dollars (\$250,000), or one hundred percent (100%), of its portion of the Sales Tax Revenue to Costco as the TEDC's portion of the Economic Development Grant Payment. In this example, and for the purposes of this Agreement, the City would provide two hundred fifty thousand dollars (\$250,000), or fifty percent (50%), of its portion of the Sales Tax Revenue to Costco as the City's portion of the Economic Development Grant Payment. By the City providing fifty percent (50%) and the TEDC providing one hundred percent (100%) of their applicable portions of the Sales Tax Revenue, the five hundred thousand dollar (\$500,000) Economic Development Grant Payment to Costco is satisfied.

SECTION 7. COSTCO'S COVENANTS, WARRANTIES, AND OBLIGATIONS

Costco hereby makes the following covenants and warranties to the City and the TEDC, and agrees, to timely and fully perform the following obligations and duties:

- (1) Costco is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas during the Term of this Agreement.
- (2) The execution of this Agreement has been duly authorized by Costco, and the corporate officer signing this Agreement is an officer of Costco, empowered to execute this Agreement and bind Costco, said authorization, signing and binding effect is not in contravention of any law, rule or regulation, or of the provisions of Costco's articles of incorporation, bylaws, or of any agreement or instrument to which Costco is a party or by which it may be bound.
- (3) The execution and performance of this Agreement by Costco constitutes its valid and binding obligation, subject to the terms and conditions set forth in this Agreement.
- (4) As of the date of this Agreement, no litigation or governmental proceeding is pending or, to the knowledge of Costco, threatened against or affecting Costco that may result in any material adverse change in Costco's business, properties or operation. No consent, approval or authorization of or registration or declaration within any governmental authority is required in connection with the execution of this Agreement or the transactions contemplated hereby.
- (5) There are no bankruptcy proceedings or other proceedings currently pending or contemplated, and Costco has not been informed of any potential involuntary bankruptcy proceedings.
- (6) Costco shall pay all state and local taxes due and owing by Costco to all taxing authorities having jurisdiction over the Property prior to delinquency (provided, however, Costco retains the right to timely and properly protest and contest any such taxes and so long as Costco is timely and properly protesting or contesting the same it shall not constitute a Costco Default). A failure by Costco to satisfy the performance criteria by set forth in this subsection shall not constitute a Costco Default under this Agreement, but as a result of such failure, the City shall have no obligation to pay any Economic Development Grant Payments to Costco due during the year in which Costco is delinquent in any state and local taxes due and owing by Costco.

(7) In the event of bankruptcy, receivership, or closure or cessation of operations at the Costco Facility, Costco shall maintain the Costco Facility in good condition and in compliance with applicable building and property maintenance codes and ordinances.

(8) Costco shall not discriminate against any person on the basis of race, color, national origin, sex, or by reason of being disabled, and shall refrain from violating any applicable local, state, and federal law which may have a material adverse effect on the City's or the TEDC's reputation by virtue of the City's or the TEDC's relationship with Costco.

(9) Costco acknowledges that for contracts needing City Council or TEDC Board of Directors approval, that the City or the TEDC may not accept or enter into a contract until it has received from Costco a completed, signed, and notarized Texas Ethics Commission (the "TEC") Form 1295 from Costco complete with a certificate number assigned by the TEC, pursuant to Texas Government Code §2252.908 and the rules promulgated thereunder by the TEC. Attached hereto as Exhibit "D" is a copy of the TEC Form 1295 filed by Costco to be attached upon receipt by Costco.

(10) Pursuant to Chapter 2264 of the Texas Government Code, Costco certifies that as of the Effective Date of this Agreement and throughout the Term, Costco's business, or a branch, division, or department thereof, does not and will not knowingly employ an undocumented worker (as defined in §2264.001 of the Texas Government Code), and if Costco's business, or a branch, division, or department thereof, is convicted of a violation of 8 U.S.C. §1324a(f) occurring during the Term of this Agreement, Costco shall repay to City and the TEDC the total amount of Economic Development Grant Payments paid to Costco under this Agreement, plus interest at Agreed Rate (as hereinafter defined), not later than the one hundred twentieth (120th) day after the date City or the TEDC notifies Costco of the violation. It is agreed that for purposes of this subsection, but only if permissible under Chapter 2264 of the Texas Government Code, that:

(a) For the purposes of this Section, "Costco's business" shall be limited to Costco's business in Tomball, Texas;

(b) Costco shall not be liable for a violation of Chapter 2264 of the Texas Government Code by a person or entity with whom Costco contracts;

(c) neither Costco nor its business, or branch, division, or department thereof, shall be deemed to have been "convicted of a violation" until all appeals have been exhausted and/or the time for all appeals has expired; and,

(d) the date that "City notifies Costco of the violation" may not be earlier than the date that Costco has been "convicted of a violation" as provided in the immediately preceding subsection.

(11) For purposes of this Section "Agreed Rate" shall mean the lesser of:

(a) the Wall Street Journal prime rate announced by and as quoted in Wall Street Journal, from time to time, as its prime commercial rate or, if the Wall Street Journal prime rate

ceases to be made available by the publisher, or any successor to the publisher, a similar reference interest rate based on the interest large United States money center commercial banks charge on short term uninsured loans to their most creditworthy borrowers, or

(b) the highest lawful rate.

SECTION 8. DEFAULT

A. The following shall constitute a “Costco Default” under this Agreement:

- (1) The appointment of a receiver of Costco, or of all or any substantial part of its property, and the failure of such receiver to be discharged within ninety (90) days thereafter.
- (2) The adjudication of Costco as bankrupt.
- (3) The filing by Costco of a petition or an answer seeking bankruptcy, receivership, reorganization, or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding.
- (4) Upon the expiration of the notice and cure period set forth below, a breach of a material representation under this Agreement by Costco.
- (5) Upon the expiration of the notice and cure period set forth below, a breach of any material covenant set forth herein.

B. The following shall constitute a “Tomball Default” under this Agreement:

- (1) The appointment of a receiver of the City or the TEDC, or of all or any substantial part of its property, and the failure of such receiver to be discharged within ninety (90) days thereafter.
- (2) The adjudication of the City or the TEDC as bankrupt.
- (3) The filing by the City or the TEDC of a petition or an answer seeking bankruptcy, receivership, reorganization, or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding.
- (4) Upon the expiration of the notice and cure period set forth below, a breach of a material representation under this Agreement by the City or the TEDC.
- (5) Upon the expiration of the notice and cure period set forth below, the City’s failure to pay by the City or TEDC any Economic Development Grant Payment to Costco in accordance with this Agreement.
- (6) Upon the expiration of the notice and cure period set forth below, a breach of the City’s or the TEDC’s obligations set forth in this Agreement.

C. In the event of the occurrence of a breach or default by a Party under this Agreement, as applicable, the non-defaulting Party shall give written notice to the other Parties of such default, and the defaulting Party shall have sixty (60) days thereafter to cure said default or if the defaulting

Party is diligently pursuing the cure of such default but such default is not reasonably curable within sixty (60) days, then the defaulting Party shall have such additional amount of time as is reasonably necessary to cure such default but no more than one hundred twenty (120) additional days. Should a default or breach as described herein, remain uncured after such cure period it shall constitute a Costco Default or Tomball Default, as applicable, and the non-defaulting Party shall have the right to exercise the remedies set forth below.

SECTION 9. REMEDIES.

A. Upon the occurrence of a Costco Default, the City and the TEDC shall have the right to terminate this Agreement by written notice to Costco, in which event the City and the TEDC shall have no obligation to make any future Economic Development Grant Payments to Costco under this Agreement.

B. Upon the occurrence of a Tomball Default, Costco shall have the right to terminate this Agreement by written notice to the City and the TEDC, in which event Costco shall have no further obligations under this Agreement.

C. In addition, and without terminating this Agreement, any Party shall further have the power to enforce specific performance to collect amounts owing by the other Parties under this Agreement or to otherwise compel the other Parties to perform their obligations under this Agreement. Further, any Party shall have the right to bring an action for a declaratory judgment.

D. The City and the TEDC shall not be entitled to a refund of any portion of or all Economic Development Grant Payments made to Costco, except as otherwise provided in Section 7(10) hereof, and further provided that the City and the TEDC shall be entitled to recapture any portion of or all Economic Development Grant Payments which were made based upon materially false or fraudulent information certified to or provided by Costco and for which Costco would not otherwise have been entitled. No action shall lie for damages against Costco except that the City and the TEDC shall be entitled to any action to recover any amounts owed by Costco as provided in the foregoing sentence.

E. Upon the occurrence of a Tomball Default, Costco has the right to bring any action to recover any amounts owed to it under this Agreement. In addition, Costco shall have the right to seek a judicial declaration of the appropriate amount of Economic Development Grant Payments owing to Costco by the City or the TEDC under this Agreement.

F. IF AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, THE CITY VOLUNTARILY WAIVES ITS RIGHT TO ASSERT SOVEREIGN IMMUNITY FROM SUIT OR LIABILITY IN RESPONSE TO AN ACTION BY COSTCO SEEKING ONLY THE REMEDIES SPECIFIED IN THIS AGREEMENT; IT BEING UNDERSTOOD THAT THIS WAIVER IS A LIMITED AND NOT A GENERAL WAIVER, AND THAT ITS EFFECT IS LIMITED TO SPECIFIC CLAIMS UNDER THIS AGREEMENT. EXCEPT AS EXPRESSLY PROVIDED IN THE FOREGOING SENTENCE, NEITHER THE CITY NOR THE TEDC OTHERWISE WAIVE ANY GOVERNMENTAL IMMUNITIES THAT EITHER MAY HAVE AS NOW EXIST OR MAY BE CREATED UNDER ANY APPLICABLE LAW OR JUDGEMENT.

G. If any legal action or proceeding is commenced by any Party to enforce the provisions of this

Agreement or to recover any damages permitted under this Agreement from the breaching Party, each Party shall pay their own legal fees and costs of court.

H. The sole and exclusive remedies of Costco for a breach by the City or the TEDC under this Agreement, and the City's and the TEDC's sole and exclusive remedies for a breach by Costco under this Agreement, shall be those expressly provided for in this Section 9 and elsewhere in this Agreement and Costco, the City and the TEDC each hereby waives any other remedies under law or in equity.

I. A Party shall not be deemed to be in default of this Agreement if performance of this Agreement is delayed, disrupted, or becomes impossible because of an event of Force Majeure, but only for so long as the event of Force Majeure reasonably delays, disrupts or prevents performance.

J. Any delay for any amount of time by a Party in providing notice of default to the other Party shall in no event be deemed or constitute a waiver of such default by such non-defaulting Party of any of its rights and remedies available in law or in equity.

K. Any waiver granted by one Party to another Party shall not be deemed or constitute a waiver of any other existing or future default by such Party or of a subsequent default of the same act or event.

SECTION 10. LIABILITY LIMITATIONS OF THE CITY AND THE TEDC

The City and the TEDC are making payments under this Agreement solely and exclusively from the Sales Tax Revenues each receives from the Texas Comptroller related to the Property and such funds are not financed and will not be financed or otherwise paid from any other source. Under no circumstances shall the obligations of the City or the TEDC hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. No public official or employee shall be personally responsible for any liability arising under or growing out of this Agreement.

SECTION 11. ADDITIONAL REPRESENTATIONS AND WARRANTIES

The City agrees to cooperate with Costco to expeditiously and in good faith process permits, plat applications, and other approvals as required for the Property and Costco Facility. This Section does not waive any requirements of the City's Code of Ordinances as they apply to Costco. All normal fees from the City shall apply to Costco, including, but not limited to, traffic impact analysis fees, water fees, and wastewater impact fees.

SECTION 12. MISCELLANEOUS PROVISIONS

A. Changes in Law. If, during the Term, State law applicable to municipal sales taxes changes and, as a result, the Economic Development Grant Payments differ from the amount which would have been paid to Costco under the laws in effect as of the Effective Date, then the City and the TEDC, in their sole discretion, may adjust the Economic Development Grant Payments utilizing whatever discretionary taxes and revenues are legally available to be allocated to the Economic Development Grant Payments. The foregoing does not require the City or the TEDC to use funds from sources which are not allocable to the Property in order to achieve the same economic benefits to Costco, which would have resulted if the law had not changed. Should any other legal impediment arise during the Term, including without limitation a change in law, that prevents or

prohibits the City or the TEDC from complying with or making any payments under this Agreement, the Parties agree to terminate this Agreement; provided, however, that, to the extent feasible and permitted by applicable law, the Parties agree to work together in good faith to modify this Agreement or enter into a new agreement or otherwise provide Costco with a remedy or reasonably equivalent value to otherwise accomplish the purpose of this Agreement.

B. Binding Effect. This Agreement will be binding on and inure to the benefit of the Parties and their respective successors and assigns.

C. Assignment. Except as provided below, Costco may not assign all or part of its rights under this Agreement to a third party without the prior written approval of the City and the TEDC, which approval will not be unreasonably withheld or delayed. In the event either Costco is sold or merged into, or transfers substantially all of its then owned assets to another entity, the City and the TEDC hereby consent to such sale, merger, or transfer and consents to any assignment of the sold, merged, or transferred entity's rights and obligations under this Agreement to such receiving entity as a result of such sale, merger, or transfer. Costco shall provide the City and the TEDC with written notice of any such assignment.

D. Notice. Notice shall be effective upon receipt or refusal of delivery by the Party to be notified. Any notice or other communication ("Notice") given under this Agreement shall be in writing, and may be given:

- (1) by depositing the Notice in the United States Mail, postage paid, certified, and addressed to the Party to be notified with return receipt requested;
- (2) by personal delivery of the Notice to the Party;
- (3) by depositing the notice with Federal Express or another nationally recognized courier service for next day delivery; or,
- (4) by confirmed facsimile, provided that a copy of the Notice is also given in one of the manners specified in (i), (ii), or (iii).

E. Notice Contact Information. For the purposes of Notice, unless changed as provided in writing to all Parties, as provided in Section 12.D above, the contact information of the Parties is as follows:

For the City:
City of Tomball
Attn: City Manager
401 Market Street
Tomball, Texas 77375

For the TEDC:
Tomball Economic Development Corp.
Attn: Executive Director
29201 Quinn Road, Ste. B
Tomball, Texas 77375

For Costco:
Costco Wholesale Corp.
Attn: Property Management Dept.
999 Lake Drive
Issaquah, Washington 98027

With Copy To:
Holland & Knight, LLP
Attn: Ray T. Khirallah
One Arts Plaza
1722 Routh Street, Suite 1500
Dallas, Texas 75201

F. Interpretation. Each of the Parties has been represented by counsel of its choosing in the negotiation and preparation of this Agreement. In the event of any dispute regarding the interpretation of this Agreement, this Agreement will be interpreted fairly and reasonably and neither more strongly for or against, either Party based on draftsmanship.

G. Relationship of the Parties. This Agreement shall not be construed as establishing a partnership or joint venture, joint enterprise, express or implied agency, or employer-employee relationship between the Parties. Neither the City, the TEDC, nor either's past, present, or future elected officials, officers, directors, employees, or agents, assume any responsibility or liability to any third party in connection with the development of the Property or the design, construction, or operation of any portion of the Property.

H. Applicable Law and Venue. This Agreement is made, and will be construed and interpreted, under the laws of the State of Texas without regard to any conflicts of law provision, and venue will lie in a state district court in Harris County, Texas. The Parties consent to, and waive any objection to, in person jurisdiction in Harris County, Texas.

I. Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable in any respect under present or future laws, the remainder of this Agreement shall not be affected so long as the intent, purpose, and benefits of this Agreement are not affected in any manner materially adverse to either Party hereto. This Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein, and in lieu of each provision that is found to be illegal, invalid or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable, is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable, and effects the intent, purpose, and benefits of this Agreement.

J. Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the paragraphs.

K. No Third-Party Beneficiaries. This Agreement is not intended to confer any rights, privileges, or causes of action upon any third party.

L. Counterparts. This Agreement may be executed simultaneously in two (2) or more counterparts, each of which will be deemed an original, but all of which will constitute the same instrument. A signature transmitted by facsimile or email will be deemed to be an original signature for all purposes. As used in this Section, "signature" means a manually signed document by a natural person, as opposed to an electronic signature.

M. Exhibits. The following exhibits are attached to and incorporated into this Agreement and made a part of this Agreement for all purposes as if they were set forth herein in their entirety: Exhibit A – Description of Property; Exhibit B – Certificate Regarding Capital Investment and Jobs; Exhibit C – Disclosure of Confidential Information; Exhibit D – Form 1295; Exhibit E – Resolution.

N. Entire Agreement. This Agreement embodies the complete agreement of the Parties, superseding all oral or written, previous and contemporary, agreements between the Parties relating to matters in this Agreement; and, except as otherwise provided herein, this Agreement cannot be modified or amended without a written agreement of the Parties.

Confidentiality. This Agreement is subject to the Texas Public Information Act and will be considered “public information” after consideration by the City or the TEDC at a posted meeting by either body. However, the City and the TEDC will use all appropriate measures to keep the information contained in and related to this Agreement confidential until such time as the Texas Public Information Act requires the City or the TEDC to disclose the applicable contents of this Agreement. To the maximum extent permitted by law, the City and the TEDC and their respective elected officials, officers, directors, and employees, and agents or contractors retained to perform economic development services for either the City or the TEDC (the “City Related Parties”): (i) shall use all appropriate measures to maintain the confidentiality of all sales tax information filed by Costco and/or its respective tenants, subtenants and/or licensees, as applicable, with the State of Texas and all other information regarding the Sales Tax Revenue generated by the Property; (ii) shall treat as confidential any other proprietary or financial information of Costco and/or its respective tenants, subtenants, and/or licensees and shall not release any of the foregoing information to the public, unless required by law or court order. The City and the TEDC shall notify Costco as a third-party under the Texas Public Information Act of requests, Attorney General Opinions, and court orders to release such information pursuant to the Texas Public Information Act. The City and the TEDC shall be permitted to disclose the foregoing information to such of the City Related Parties as either of the City and the TEDC, in its reasonable discretion, deems appropriate in furtherance of the purposes of this Agreement, so long as such disclosure is made subject to compliance by such City Related Parties with the terms of this Section. This Section is not meant to prevent the City or the TEDC from complying with the Texas Public Information Act, as it may be amended.

SIGNATURES ON THE FOLLOWING PAGES:

**SIGNATURE PAGE TO
ECONOMIC DEVELOPMENT AGREEMENT MADE BY AND AMONG
THE CITY OF TOMBALL,
THE TOMBALL ECONOMIC DEVELOPMENT CORPORATION,
AND COSTCO WHOLESALE CORPORATION**

IN WITNESS WHEREOF, the undersigned signed and executed this Agreement effective as of the dates set forth below.

FOR: THE CITY

FOR: THE TEDC

Name [Signature]

Name [Signature]

Name [Printed]

Name [Printed]

Title

Title

Date

Date

FOR THE TEDC

**THE STATE OF TEXAS §
COUNTY OF HARRIS §**

This instrument was acknowledged before me on the ____ day of _____ 2022,
by _____, _____ of _____,
Name Position/Title Entity Name
for and on behalf of said Entity.

(SEAL)

Notary Public in and for the State of Texas

My Commission Expires: _____

**ACKNOWLEDGEMENTS CONTINUE ON FOLLOWING PAGE
FOR THE CITY**

THE STATE OF TEXAS §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the _____ day of _____ 2022,
by _____, _____ of _____,
Name Position/Title Entity Name
for and on behalf of said Entity.

(SEAL)

Notary Public in and for the State of Texas

My Commission Expires: _____

**SIGNATURE PAGE TO
ECONOMIC DEVELOPMENT AGREEMENT MADE BY AND AMONG
THE CITY OF TOMBALL,
THE TOMBALL ECONOMIC DEVELOPMENT CORPORATION,
AND COSTCO WHOLESALE CORPORATION**

IN WITNESS WHEREOF, the undersigned signed and executed this Agreement effective as of the dates set forth below.

FOR: COSTCO

Name [Signature]

Name [Printed]

Title

Date

THE STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____ 2022,
Day Month
by _____, the _____ of COSTCO WHOLESALE
CORPORATION, a Washington corporation, for and on behalf of said corporation.

(SEAL)

Notary Public in and for the State of _____

My Commission Expires: _____

EXHIBIT A – DESCRIPTION OF PROPERTY

All of Reserve “A” of Maple Group, an addition to the City of Tomball, Harris County, Texas, according to the plat thereof recorded in Film Code No. 683989, Map Records, Harris County, Texas

EXHIBIT B – CAPITAL INVESTMENT AND JOBS CERTIFICATION

Re: ECONOMIC DEVELOPMENT AGREEMENT MADE BY AND AMONG THE CITY OF TOMBALL, THE TOMBALL ECONOMIC DEVELOPMENT CORPORATION, AND COSTCO WHOLESALE CORPORATION

This Capital Investment Certification is being delivered by Costco Wholesale Corporation (“Costco”) in connection with that certain Economic Development Agreement made by and among the City of Tomball (the “City”), the Tomball Economic Development Corporation (the “TEDC”), and Costco effective as of _____, 2022 (the “Agreement”). All terms used herein have the meanings ascribed to them in the Agreement unless otherwise defined herein.

The undersigned authorized officer of Costco hereby certifies to the City and the TEDC that:

1. Costco has made a capital investment of not less than Ten Million Dollars (\$10,000,000) in the Costco Facility, including, without limitation, the costs of acquiring the Property, hard and soft construction costs relating to the Costco Facility, including any necessary off-site improvements, and the costs of equipping the Costco Facility (but excluding inventory).
2. Costco has created at least one hundred twenty-five (125) jobs associated with the Costco Facility. (A “job” meaning any employment associated with Costco that requires at least twenty (20) hours of work per week for an employee).

The undersigned hereby certifies that I am a duly authorized representative of Costco and am duly authorized to execute this Cost Certification.

COSTCO WHOLESALE CORPORATION

BY: _____
NAME – SIGNATURE

NAME – PRINTED

TITLE DATE _____ 20__

STATE OF _____

COUNTY OF _____

Sworn to and subscribed to before me on the ____ day of _____,
20_____, by _____.

NOTARY NAME

EXHIBIT C – DISCLOSURE OF CONFIDENTIAL TAX INFORMATION AGREEMENT FOR DISCLOSURE OF CONFIDENTIAL TAX INFORMATION

This Agreement for Disclosure of Confidential Tax Information (this “Agreement”) is entered into by and among the City of Tomball (the “City”), the Tomball Economic Development Corporation (the “TEDC”; the City and the TEDC are collectively referred to as the “City Parties”), and Costco Wholesale Corporation, a Washington corporation (hereafter the “Taxpayer”) for the purposes indicated herein.

The undersigned Taxpayer hereby authorizes the Texas Comptroller’s Office to release and disclose to the City any and all sales and use tax information pertaining to Taxpayer’s business in the Costco wholesale/retail facility located situated at the northeast corner of Tomball Parkway and Holderrieth Road in the boundaries of the City of Tomball. This waiver applies only to the Costco wholesale/retail facility located on the northeast corner of Tomball Parkway and Holderrieth Road in Tomball, Texas.

The undersigned Taxpayer understands and agrees that this release will be made by the Texas Comptroller’s Office to the City on an ongoing monthly basis beginning on the date this Agreement is executed. Taxpayer waives any and all rights of confidentiality of tax information under Sections 111.006, 151.027 of the Texas Tax Code to the extent, and only to the extent, necessary to permit the Texas Comptroller’s Office to release and disclose Taxpayer’s sales and use tax information as provided in this Agreement.

The City Parties each agree that the City Parties will use the sales and use tax information disclosed by the Texas Comptroller pursuant to this Agreement solely and exclusively for the purposes under that certain Economic Development Agreement by and among the City Parties and Costco dated _____, 2022, and subject to the terms thereof.

This Agreement is entered into in the State of Texas, and Texas law will apply to its interpretation and enforcement.

SIGNED AND AGREED TO on this ____ day of _____, 202__

Name of Taxpayer Listed on Texas Sales Tax Permit

Name Under Which Taxpayer is Doing Business (d/b/a or Outlet Name)

Taxpayer Mailing Address

Physical Location of Business Permitted for Sales Tax

SIGNATURE PAGE TO DISCLOSURE OF CONFIDENTIAL TAX INFORMATION
AGREEMENT FOR DISCLOSURE OF CONFIDENTIAL TAX INFORMATION

THE CITY

THE TEDC

Name [Signature]

Name [Signature]

Name [Printed]

Name [Printed]

Title

Title

Date

Date

EXHIBIT D – FORM 1295

TO BE ATTACHED

**EXHIBIT E – RESOLUTION
TO BE ATTACHED**

	Total Estimated Sales	% taxable sales	Total Estimated Taxable Sales	Local Sales Tax (2%)	City Sales Tax (1%)
Year 1	\$196,000,000	42%	\$ 82,320,000	\$ 1,646,400	\$ 823,200
Year 2	\$225,000,000	42%	\$ 94,500,000	\$ 1,890,000	\$ 945,000
Year 3	\$256,000,000	42%	\$ 107,520,000	\$ 2,150,400	\$ 1,075,200
Year 4	\$276,000,000	42%	\$ 115,920,000	\$ 2,318,400	\$ 1,159,200
Year 5	\$297,000,000	42%	\$ 124,740,000	\$ 2,494,800	\$ 1,247,400
Year 6	\$300,000,000	42%	\$ 126,000,000	\$ 2,520,000	\$ 1,260,000
Total	\$1,550,000,000		\$ 651,000,000	\$ 13,020,000	\$ 6,510,000

50% Reimbursement	100% Reimbursement	Total Annual Payment	
City Sales Tax (1%)	TEDC Sales Tax (.5%)	to Costco	Property Tax Reduction (.5%)
\$ 411,600	\$ 411,600	\$ 823,200	\$ 411,600
\$ 472,500	\$ 472,500	\$ 945,000	\$ 472,500
\$ 537,600	\$ 537,600	\$ 1,075,200	\$ 537,600
\$ 579,600	\$ 579,600	\$ 1,159,200	\$ 579,600
\$ 623,700	\$ 623,700	\$ 1,247,400	\$ 623,700
\$ 375,000	\$ 375,000	\$ 750,000	\$ 630,000
\$ 3,000,000	\$ 3,000,000	\$ 6,000,000	\$ 3,255,000

Special Joint Agenda Item Data Sheet

Meeting Date: November 7, 2022

Topic:

Approve, on First Reading, Resolution No. 2022-50-TEDC, a Resolution of the City Council of the City of Tomball, Texas Authorizing and Approving, as a Project of the Tomball Economic Development Corporation, an Economic Development Incentive between the City of Tomball (the “City”), Tomball Economic Development Corporation (the “TEDC”), and Costco Wholesale Corporation (“Costco”), to Expend Funds in Accordance with an Economic Development Incentive Agreement to promote new and expanded business development associated with the construction of a Costco retail facility and fueling station on approximately 25.88 acres of land situation at the northeast corner of the intersection of Holderrieth Road and State Highway 249 Frontage Road in the City of Tomball, Texas; Containing other Provisions relating to the Subject; and Providing for Severability.

Background:

Origination: Tomball Economic Development Corporation Board of Directors

Recommendation: Approval of the First Reading, Resolution No. 2022-50-TEDC.

Party(ies) responsible for placing this item on agenda: Kelly Violette

FUNDING (IF APPLICABLE)

Are funds specifically designated in the current budget for the full amount required for this purpose?

Yes: X No: If yes, specify Account Number: # Project Grants

If no, funds will be transferred from account # _____ To account # _____

Signed _____		Approved by _____	
Staff Member-TEDC	Date	Executive Director-TEDC	Date

RESOLUTION NO. 2022-50-TEDC

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, AUTHORIZING AND APPROVING THE TOMBALL ECONOMIC DEVELOPMENT CORPORATION'S PROJECT TO EXPEND FUNDS IN ACCORDANCE WITH AN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF TOMBALL (THE "CITY"), TOMBALL ECONOMIC DEVELOPMENT CORPORATION (THE "TEDC"), AND COSTCO WHOLESALE CORPORATION ("COSTCO") TO PROMOTE AND DEVELOP NEW OR EXPANDED BUSINESS ENTERPRISE; CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT; AND PROVIDING FOR SEVERABILITY.

* * * * *

WHEREAS, the Tomball Economic Development Corporation (the "TEDC"), created pursuant to the Development Corporation Act, now Chapter 501 of the Texas Local Government Code, as amended (the "Act"), desires to adopt projects and provide incentives for economic development within the City; and

WHEREAS, the Board of Directors of the TEDC had adopted as a specific project a grant in an amount equal to a portion of the new incremental sales tax revenues associated with the development of a new Costco retail facility and fueling station on approximately 25.88 acres of land situated at the northeast corner of the intersection of Holderrieth Road and State Highway 249 Frontage Road in the City of Tomball, Texas; and

WHEREAS, pursuant to the Act, the TEDC may not undertake such project without the approval of Tomball City Council; and

WHEREAS, City Council finds and determines that such project promotes new or expanded business development and is in the best interests of the citizenry; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS:

Section 1. The facts and matters set forth in the preamble of this Resolution are hereby found to be true and correct.

Section 2. The City Council hereby authorizes and approves the adoption, by the Board of Directors of the Tomball Economic Development Corporation, as a specific project for the economic development of the City, an expenditure in an amount equal to a portion of the new incremental sales tax to COSTCO WHOLESALE CORPORATION a Washington corporation, in accordance with an economic development agreement by and between the CITY, the TEDC and COSTCO WHOLESALE CORPORATION, to promote and develop new or expanded business enterprise, to be located at the northeast corner the intersection of Holderrieth Road and State Highway 249 Frontage Road in the City of Tomball, Texas.

Section 3. In the event any clause, phrase, provision, sentence, or part of this Resolution or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Resolution as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

PASSED AND APPROVED on first reading this ____ day of _____, 2022.

PASSED, APPROVED, AND RESOLVED on second and final reading this ____ day of _____, 2022.

Lori Klein Quinn, Mayor

ATTEST:

Doris Speer, City Secretary

ECONOMIC DEVELOPMENT AGREEMENT

This Economic Development Agreement (this “Agreement”) is made by and between the City of Tomball, a State of Texas home rule city (the “City”), the Tomball Economic Development Corporation, a State of Texas Type B economic development corporation (the “TEDC”), and Costco Wholesale Corporation, a Washington corporation (“Costco”) (with the City, the TEDC, and Costco each being a “Party”, and collectively the “Parties”), and is entered into by the Parties as of the Effective Date as defined in Section 3 below.

RECITALS

WHEREAS, Chapter 380 of the Texas Local Government Code (“Chapter 380”) allows the City to make grants of public funds for the public purposes of promoting local economic development and stimulating business and commercial activity within the City, which the City memorializes in an economic development agreement to a grantee (a “380 Agreement”); and

WHEREAS, the City has taken all necessary legal action to adopt an economic development program or programs in satisfaction with Chapter 380; and

WHEREAS, the TEDC has established programs in accordance with Chapters 501, 502 and 505 of the Texas Local Government Code to promote local economic development and stimulate business and commercial activity within the City, and when such programs involve a direct incentive to a company, Chapter 501 of the Texas Local Government Code requires the TEDC to memorialize such incentive in a performance agreement with the company (a “Performance Agreement”); and

WHEREAS, the City and the TEDC have concluded and hereby find that this Agreement promotes economic development in the City and, as such this Agreement is intended to be both a 380 Agreement, providing for the City’s grant of public funds to Costco, and a Performance Agreement, providing for the TEDC’s provision of a direct incentive to Costco; and

WHEREAS, to ensure that the grant of the City and the direct incentive of the TEDC provided under this Agreement are utilized in a manner consistent with Chapters 380, 501, 502, and 505 of the Texas Local Government Code, Costco has agreed to comply with certain conditions for receiving the City’s grant and the TEDC’s direct incentive, as provided herein; and

WHEREAS, Costco has entered into an agreement to purchase approximately 25.88 acres of land situated at the northeast corner of Tomball Parkway and Holderrieth Road in the boundaries of the City (the “Property”), with the Property being more particularly depicted and described in the attached Exhibit “A”; and

WHEREAS, the City’s grant and the TEDC’s direct incentive are intended to enable Costco to develop, construct, open, operate, and maintain a wholesale and retail general merchandise facility on the Property (the “Costco Facility”), with the development of the Property and the Costco Facility adding significant new revenue to the City’s tax base and will create jobs, which will help stimulate the overall local economy; and **NOW, THEREFORE:**

IN CONSIDERATION OF THE MUTUAL BENEFITS DESCRIBED IN THIS AGREEMENT, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:

AGREEMENT

SECTION 1. RECITALS

The facts and statements included in the Recitals to this Agreement are hereby incorporated into this Agreement for all intents and purposes.

SECTION 2. AUTHORITY

A. The City's participation in this Agreement is authorized by Chapter 380 of the Texas Local Government Code. The City finds that the grants of public funds for the public purposes of promoting local economic development and stimulating business and commercial activity within the City contemplated in this Agreement satisfy Chapter 380 of the Texas Local Government.

B. The TEDC's participation in this Agreement is authorized by Chapters 501, 502, and 505 of the Texas Local Government Code. At a meeting of the Board of Directors of the TEDC (the "Board") on November 1, 2022, the Board determined that the development of the Costco Facility constitutes a "project", as the term is defined in Section 501 of the Texas Local Government Code, and authorized the TEDC to offer a direct incentive to Costco. This Agreement satisfies Chapters 501, 502, and 505 of the Texas Local Government Code and serves as a Performance Agreement reflecting the obligations of the TEDC and Costco regarding the direct incentive.

C. The City and the TEDC have each taken all necessary actions and obtained all necessary approvals to enter into this Agreement. The City Council of the City approved this Agreement by resolution on _____ 2022, a copy of which is attached to this Agreement as "Exhibit E".

D. The City and the TEDC acknowledge that Costco's participation in this Agreement and Costco's decision to commit substantial resources and money to acquire and develop the Property are made in reliance upon the City's and TEDC's performance of their obligations under this Agreement and is subject to Costco's performance of its obligations under this Agreement.

SECTION 3. DEFINITIONS

In addition to the terms defined in the Recitals or elsewhere in this Agreement, as used in this Agreement, the following words or phrases shall have the following meanings:

(1) "Acquisition Deadline" shall mean December 31, 2023

(2) "Certificate of Occupancy" shall mean a certificate of occupancy issued by the City, indicating that the Costco Facility complies with the applicable provisions of the building codes and laws of the City, including, if applicable, a temporary certificate of occupancy under which Costco is permitted to Open for Business within the Costco Facility. A Certificate of

Occupancy shall not include a certificate issued in error, by mistake, or based upon a misrepresentation of facts by Costco or its agent.

(3) “Conditions Satisfaction Deadline” shall mean the date that is thirty-six (36) months after the date of the Property Closing, unless extended by delays caused by Force Majeure.

(4) “Economic Development Grant Payment(s)” means the amount(s) to be paid to Costco by the City and the TEDC to Costco herein.

(5) “Effective Date” means the last date this Agreement is signed by all Parties.

(6) “Force Majeure” means any contingency or cause beyond the reasonable control of a Party including, without limitation: war, riots, acts of terrorism, acts of the public enemy, insurrections, civil commotion; labor disputes, a general inability to obtain labor or materials or reasonable substitutes for either, unusual delay in transportation, strikes, slowdowns or work stoppages; acts of God, casualties, explosions, floods, fire, earthquake, tornado, hurricane or other severe and adverse weather conditions; pandemics, epidemics, infectious disease outbreaks, public health emergencies, health and safety circumstances that require individual isolation, quarantine or quarantine-like restrictions; delays caused by actions or inactions, or other acts or omissions on the part of any public utility or local, state, or federal government (or de facto governmental entity), government official or their respective agents or employees (including, but not limited to, any government-mandated or suggested work stoppages or slowdowns (such as, by way of example and not limitation, any reduction in the number of workers allowed to work at one time, or any limitation on the allowable working hours) and/or the closing or slowing of governmental offices or procedures (such as, by way of example and not limitation, any significant change in the time required to file or obtain permits or record documents); and, delays caused by governmental restrictions, regulations or controls, including without limitation, any moratoriums (i.e. zoning, platting, building or similar moratoriums). An inability to obtain funds shall not be considered Force Majeure (unless directly caused by one of the events specifically described above).

(7) “Open for Business” means that the space under roof and air-conditioned and heated is open for full-time business operations as a wholesale and retail general merchandise facility with a full line of products and services under the business name “Costco” or “Costco Wholesale”.

(8) “Property Closing” shall mean the closing of the sale of the Property to Costco as evidenced by the recordation of the deed conveying the Property to Costco.

(9) “Sales Tax Effective Date” means the first day of the month next following the date that is one hundred eighty (180) days after the Certificate of Occupancy is issued to Costco for the Costco Facility and Costco is Open for Business (subject to its membership policies) for at least one (1) day.

(10) “Sales Tax Revenues” means the amount of sales/use tax that the City receives for transactions arising from and within the Property resulting from the imposition of a municipal sales tax, being the two percent (2%) sales/use tax currently in effect pursuant to the Texas Tax Code. The City’s two percent (2%) sales/use tax is composed of the following portions: one

percent (1%) is dedicated to the City's General Fund and is available for all lawful purposes; one-half percent (½%) is dedicated for economic development purposes to be used by the TEDC; and, one-half percent (½%) is dedicated to property tax reduction, and may be used by the City for the limited purpose of property tax reduction. In calculating the Economic Development Grant Payment, the Sales Tax Revenues contemplated by this Agreement will not include the one-half percent (½%) of the City's sales/use tax dedicated to property tax relief. *[For example: If the Property produces one million dollars (\$1,000,000) of Sales Tax Revenue in any applicable period, then the portion of the Sales Tax Revenue applicable to this Agreement is seven hundred fifty thousand dollars (\$750,000). (One million dollars (\$1,000,000) minus the two hundred fifty thousand dollars (\$250,000) portion of the revenue dedicated to property tax relief.)]*

(11) "Term of Twenty Years" means a twenty (20) year period commencing on the Sales Tax Effective Date and continuing for each consecutive year for twenty (20) years.

SECTION 4. TERM

A. This Agreement shall become enforceable upon the Effective Date and will terminate on the first to occur upon the:

- (1) Term of Twenty Years;
- (2) receipt by Costco of Economic Development Grant Payments of six million dollars (\$6,000,000); or,
- (3) termination of this Agreement as provided for herein (the "Term").

B. In recognition of the fact that the Economic Development Grant Payments are based solely upon receipt by the City of Sales Tax Revenues, and thus, by necessity, are calculated and paid after sales taxes have been levied by and paid to the City and, therefore, will always be paid in arrears, the Term shall be deemed extended until any Economic Development Grant Payments relating to Sales Tax Revenues levied during the Term have been paid by the City to Costco. Notwithstanding anything to the contrary set forth in this Agreement, if Costco has not closed on the acquisition of the Property by the Acquisition Deadline, this Agreement shall automatically terminate and be of no further force or effect as of such date and the Parties shall have no further rights or obligations hereunder.

SECTION 5. COSTCO'S PERFORMANCE CRITERIA

A. Costco must satisfy all of the following conditions precedent by no later than the Conditions Satisfaction Deadline in order to receive any Economic Development Grant Payments hereunder:

- (1) Completion of construction of the Costco Facility on the Property containing at least one hundred fifty thousand (150,000) square feet of space. This condition shall be satisfied by delivery to the City of a certificate from a licensed architect certifying the same.
- (2) Costco shall have made a capital investment of not less than ten million dollars (\$10,000,000) in the Costco Facility, including, without limitation, the costs of acquiring the Property, hard and soft construction costs relating to the Costco Facility, including any

necessary off-site improvements, and the costs of equipping the Costco Facility. This condition shall be satisfied by delivery from Costco to the City of a certificate in the form attached hereto as Exhibit “B” certifying that Costco has made a total of at least ten million dollars (\$10,000,000) in capital investment.

(3) Costco shall have created at least one hundred twenty-five (125) jobs associated with the Costco Facility. For the purposes of this Agreement, a “job” shall be any employment associated with Costco that requires at least twenty (20) hours of work per week for an employee. This condition shall be satisfied by delivery from Costco to the City of a certificate in the form attached hereto as Exhibit “B” certifying that Costco has created at least one hundred twenty-five (125) jobs associated with the Costco Facility.

(4) A Certificate of Occupancy shall have been issued for the Costco Facility.

(5) The Costco Facility shall have been built in substantial accordance with all applicable City codes and other applicable laws. This condition shall be satisfied by the issuance of a Certificate of Occupancy by the City to Costco.

(6) The Costco Facility shall be Open for Business (subject to Costco’s membership policies) for at least one (1) day.

(7) All development associated with the Costco Facility must meet the drainage requirements of Atlas 14. This condition shall be satisfied by the City’s approval of the site plan and stormwater plan for the Costco Facility.

(8) A failure by Costco to satisfy all of the foregoing performance criteria by the Conditions Satisfaction Date shall not constitute a Costco Default under this Agreement, but as a result of such failure, the City shall have no obligation to pay any Economic Development Grant Payments to Costco under this Agreement and this Agreement shall be terminated and the Parties shall have no further obligations under this Agreement.

B. Notwithstanding anything to the contrary contained in this Agreement, Costco shall have no obligation to occupy or operate the Costco Facility, and if Costco fails or ceases to operate for business in the Costco Facility it shall not constitute a Costco Default under this Agreement. However, if at any time from and after the date that Costco opens for business to the public (subject to Costco’s membership policies) in the Costco Facility, Costco ceases to occupy and operate the Costco Facility open to the public (subject to Costco’s membership policies) for hours of operation consistent with Costco’s other facilities in the State of Texas for a continuous period of one hundred eighty (180) days, except in connection with, and to the extent of, a Permitted Closure as defined below, then the City shall have the right to give written notice to Costco of the City’s intent to exercise the City’s rights under this Section (the “First Notice”) and if Costco fails to re-open to the public, subject to Costco’s membership policies, in the Costco Facility within ninety (90) days after the First Notice, then at any time after such ninety (90) day period, the City shall have the right, via written notice (the “Election Notice”) to Costco to either:

(1) cease payment of all or any of the Economic Development Grant Payments to Costco under this Agreement from the one hundred eighty first (181st) day of such cessation of occupation or operation until Costco re-opens for business to the public (subject to Costco’s membership

policies) in the Costco Facility, without any obligation for the City to pay any Economic Development Grant Payments which would or may have accrued during such period of ceased occupation or operation; or,

(2) terminate this Agreement with respect to Costco, with such termination being effective as of the ninety first (91st) day after delivery of the First Notice.

C. Further, if at any time from and after the date that Costco opens for business to the public (subject to Costco's membership policies) in the Costco Facility, Costco ceases to occupy and operate the Costco Facility open to the public (subject to Costco's membership policies) for hours of operation consistent with Costco's other facilities in the State of Texas pursuant to a Permitted Closure, as defined below, for a period of more than three hundred sixty-five (365) days, then at any time after such three hundred sixty-five (365) day period, the City shall have the right, via written notice to Costco to cease payment of all or any of the Economic Development Grant Payments to Costco under this Agreement from the three hundred sixty-sixth (366th) day of such cessation of occupation or operation until Costco re-opens for business to the public (subject to Costco's membership policies) in the Costco Facility, without any obligation for the City to pay any Economic Development Grant Payments which would or may have accrued during such period of ceased occupation or operation.

D. "Permitted Closure" shall mean any period in which the Costco Facility is not open for business to the public (subject to Costco's membership policies) for hours of operation consistent with Costco's other facilities in the State of Texas as:

(1) a result of a fire, earthquake, flood or similar casualty that renders the Costco Facility unfit for the intended purpose, as determined by Costco in its reasonably exercised judgment;

(2) a result of an event of Force Majeure;

(3) a result of a condemnation or other exercise by a governmental authority of the power of eminent domain, to the extent necessary to as determined by Costco in its reasonably exercised judgment for repair and restoration of the Costco Facility;

(4) a result of any repairs, renovations, alterations or modifications to the Costco Facility made by Costco with the intention of recommencing operations in the Costco Facility; or,

(5) required by law, to the extent, and only to the extent, that the necessity of compliance is not the result of Costco's action, inaction, or failure to timely fulfill its obligations under this Agreement.

SECTION 6. ECONOMIC DEVELOPMENT GRANT PAYMENTS

A. Subject to Costco's satisfaction of the performance criteria set forth in Section 5.A above, the City and the TEDC shall be obligated to reimburse to Costco a portion of the Sales Tax Revenues as provided herein, in an amount up to but not to exceed a cumulative total amount of six million dollars (\$6,000,000) over a period not to exceed the Term of Twenty Years. In no event shall the City or the TEDC be required to make any Economic Development Grant Payments to Costco except as provided herein, and subject to satisfaction of the conditions set forth above. The

Economic Development Grant Payment obligations contained in this Agreement shall cease upon payment in full to Costco of six million dollars (\$6,000,000), or the expiration of the Term, whichever occurs first.

B. Commencing after the satisfaction of all of the conditions set forth in Section 5.A above, the City and the TEDC shall reimburse Costco annual payments in the amount of fifty percent (50%) of the Sales Tax Revenues arising from and within the Property as received by the City from the Texas Comptroller for the previous calendar year, and as reconciled with the sales and use tax information provided by the Texas Comptroller's office to the City. The City and the TEDC shall make such payments annually by March 31st, commencing with the March 31st next following the satisfaction of all of the conditions set forth in Section 5.A above. The payments shall be for sales tax-generating transactions in and on the Property that occurred from January 1 to December 31 of the prior calendar year. The obligation to reimburse Costco contemplated herein shall cease upon Costco's receipt of Economic Development Grant Payments totaling of six million dollars (\$6,000,000) in the aggregate, or the expiration of the Term, whichever occurs first. The City and the TEDC shall be required to issue only one (1) check or wire transfer (per wiring instructions provided by Costco) for each annual payment to Costco or Costco's designee.

C. A delay in the payment of the Economic Development Grant Payment by either the City or the TEDC due to a delay in receiving the Sales Tax Revenues or sales and use tax information from the Texas Comptroller shall not be considered a default on the part of the City or the TEDC so long as the City and the TEDC use reasonable efforts to obtain the Sales Tax Revenues or sales and use tax information and make the annual payment to Costco within thirty (30) days after receipt of such Sales Tax Revenues or sales and use tax information.

D. As a condition to obtaining any Economic Development Grant Payment based upon Sales Tax Revenues, Costco shall sign (and shall cause any affiliate, tenant, licensee, or other party generating Sales Tax Revenues from the Costco Facility which Costco desires to be included for purposes of determining any such Economic Development Grant Payment to sign) and submit to the City and the TEDC and maintain during the Term, the Waiver of Sales Tax Confidentiality form attached as Exhibit "C", or other similar form required by the Texas Comptroller as may be required from time to time during the Term to permit the release of sales tax information relating to the Costco Facility to the City and the TEDC.

E. The Economic Development Grant Payment made by the City and the TEDC to Costco shall be composed of fifty percent (50%) of the City's portion of the Sales Tax Revenue and one hundred percent (100%) of the TEDC's portion of the Sales Tax Revenue. As an example of how the Sales Tax Revenues shall be calculated by the City and the TEDC under this Agreement to satisfy the Economic Development Grant Payment obligations to Costco contemplated herein, the Parties shall consider the following:

If the Property produces one million dollars (\$1,000,000) in Sales Tax Revenue in any given year of the Term, then Costco should receive five hundred thousand dollars (\$500,000) as an Economic Development Grant Payment, which is a reimbursement of fifty percent (50%) of the Sales Tax Revenues generated at the Property. Of the one million dollars (\$1,000,000) in Sales Tax Revenue generated at the Property, two hundred fifty thousand dollars (\$250,000) shall be allotted by the City for property tax relief and is not applicable to this Agreement, which would leave a remaining seven hundred fifty thousand dollars (\$750,000) that is applicable to this Agreement. Five hundred

thousand dollars (\$500,000) of the remaining seven hundred fifty thousand dollars (\$750,000) of the Sales Tax Revenue is directed to the City's General Fund for any lawful purpose. Two hundred fifty thousand dollars (\$250,000) of the remaining seven hundred fifty thousand dollars (\$750,000) of the Sales Tax Revenue is dedicated for the economic development purposes of the TEDC. In this example, and for the purposes of this Agreement, the TEDC would provide two hundred fifty thousand dollars (\$250,000), or one hundred percent (100%), of its portion of the Sales Tax Revenue to Costco as the TEDC's portion of the Economic Development Grant Payment. In this example, and for the purposes of this Agreement, the City would provide two hundred fifty thousand dollars (\$250,000), or fifty percent (50%), of its portion of the Sales Tax Revenue to Costco as the City's portion of the Economic Development Grant Payment. By the City providing fifty percent (50%) and the TEDC providing one hundred percent (100%) of their applicable portions of the Sales Tax Revenue, the five hundred thousand dollar (\$500,000) Economic Development Grant Payment to Costco is satisfied.

SECTION 7. COSTCO'S COVENANTS, WARRANTIES, AND OBLIGATIONS

Costco hereby makes the following covenants and warranties to the City and the TEDC, and agrees, to timely and fully perform the following obligations and duties:

- (1) Costco is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas during the Term of this Agreement.
- (2) The execution of this Agreement has been duly authorized by Costco, and the corporate officer signing this Agreement is an officer of Costco, empowered to execute this Agreement and bind Costco, said authorization, signing and binding effect is not in contravention of any law, rule or regulation, or of the provisions of Costco's articles of incorporation, bylaws, or of any agreement or instrument to which Costco is a party or by which it may be bound.
- (3) The execution and performance of this Agreement by Costco constitutes its valid and binding obligation, subject to the terms and conditions set forth in this Agreement.
- (4) As of the date of this Agreement, no litigation or governmental proceeding is pending or, to the knowledge of Costco, threatened against or affecting Costco that may result in any material adverse change in Costco's business, properties or operation. No consent, approval or authorization of or registration or declaration within any governmental authority is required in connection with the execution of this Agreement or the transactions contemplated hereby.
- (5) There are no bankruptcy proceedings or other proceedings currently pending or contemplated, and Costco has not been informed of any potential involuntary bankruptcy proceedings.
- (6) Costco shall pay all state and local taxes due and owing by Costco to all taxing authorities having jurisdiction over the Property prior to delinquency (provided, however, Costco retains the right to timely and properly protest and contest any such taxes and so long as Costco is timely and properly protesting or contesting the same it shall not constitute a Costco Default). A failure by Costco to satisfy the performance criteria by set forth in this subsection shall not constitute a Costco Default under this Agreement, but as a result of such failure, the City shall have no obligation to pay any Economic Development Grant Payments to Costco due during the year in which Costco is delinquent in any state and local taxes due and owing by Costco.

(7) In the event of bankruptcy, receivership, or closure or cessation of operations at the Costco Facility, Costco shall maintain the Costco Facility in good condition and in compliance with applicable building and property maintenance codes and ordinances.

(8) Costco shall not discriminate against any person on the basis of race, color, national origin, sex, or by reason of being disabled, and shall refrain from violating any applicable local, state, and federal law which may have a material adverse effect on the City's or the TEDC's reputation by virtue of the City's or the TEDC's relationship with Costco.

(9) Costco acknowledges that for contracts needing City Council or TEDC Board of Directors approval, that the City or the TEDC may not accept or enter into a contract until it has received from Costco a completed, signed, and notarized Texas Ethics Commission (the "TEC") Form 1295 from Costco complete with a certificate number assigned by the TEC, pursuant to Texas Government Code §2252.908 and the rules promulgated thereunder by the TEC. Attached hereto as Exhibit "D" is a copy of the TEC Form 1295 filed by Costco to be attached upon receipt by Costco.

(10) Pursuant to Chapter 2264 of the Texas Government Code, Costco certifies that as of the Effective Date of this Agreement and throughout the Term, Costco's business, or a branch, division, or department thereof, does not and will not knowingly employ an undocumented worker (as defined in §2264.001 of the Texas Government Code), and if Costco's business, or a branch, division, or department thereof, is convicted of a violation of 8 U.S.C. §1324a(f) occurring during the Term of this Agreement, Costco shall repay to City and the TEDC the total amount of Economic Development Grant Payments paid to Costco under this Agreement, plus interest at Agreed Rate (as hereinafter defined), not later than the one hundred twentieth (120th) day after the date City or the TEDC notifies Costco of the violation. It is agreed that for purposes of this subsection, but only if permissible under Chapter 2264 of the Texas Government Code, that:

(a) For the purposes of this Section, "Costco's business" shall be limited to Costco's business in Tomball, Texas;

(b) Costco shall not be liable for a violation of Chapter 2264 of the Texas Government Code by a person or entity with whom Costco contracts;

(c) neither Costco nor its business, or branch, division, or department thereof, shall be deemed to have been "convicted of a violation" until all appeals have been exhausted and/or the time for all appeals has expired; and,

(d) the date that "City notifies Costco of the violation" may not be earlier than the date that Costco has been "convicted of a violation" as provided in the immediately preceding subsection.

(11) For purposes of this Section "Agreed Rate" shall mean the lesser of:

(a) the Wall Street Journal prime rate announced by and as quoted in Wall Street Journal, from time to time, as its prime commercial rate or, if the Wall Street Journal prime rate

ceases to be made available by the publisher, or any successor to the publisher, a similar reference interest rate based on the interest large United States money center commercial banks charge on short term uninsured loans to their most creditworthy borrowers, or

(b) the highest lawful rate.

SECTION 8. DEFAULT

A. The following shall constitute a “Costco Default” under this Agreement:

- (1) The appointment of a receiver of Costco, or of all or any substantial part of its property, and the failure of such receiver to be discharged within ninety (90) days thereafter.
- (2) The adjudication of Costco as bankrupt.
- (3) The filing by Costco of a petition or an answer seeking bankruptcy, receivership, reorganization, or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding.
- (4) Upon the expiration of the notice and cure period set forth below, a breach of a material representation under this Agreement by Costco.
- (5) Upon the expiration of the notice and cure period set forth below, a breach of any material covenant set forth herein.

B. The following shall constitute a “Tomball Default” under this Agreement:

- (1) The appointment of a receiver of the City or the TEDC, or of all or any substantial part of its property, and the failure of such receiver to be discharged within ninety (90) days thereafter.
- (2) The adjudication of the City or the TEDC as bankrupt.
- (3) The filing by the City or the TEDC of a petition or an answer seeking bankruptcy, receivership, reorganization, or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding.
- (4) Upon the expiration of the notice and cure period set forth below, a breach of a material representation under this Agreement by the City or the TEDC.
- (5) Upon the expiration of the notice and cure period set forth below, the City’s failure to pay by the City or TEDC any Economic Development Grant Payment to Costco in accordance with this Agreement.
- (6) Upon the expiration of the notice and cure period set forth below, a breach of the City’s or the TEDC’s obligations set forth in this Agreement.

C. In the event of the occurrence of a breach or default by a Party under this Agreement, as applicable, the non-defaulting Party shall give written notice to the other Parties of such default, and the defaulting Party shall have sixty (60) days thereafter to cure said default or if the defaulting

Party is diligently pursuing the cure of such default but such default is not reasonably curable within sixty (60) days, then the defaulting Party shall have such additional amount of time as is reasonably necessary to cure such default but no more than one hundred twenty (120) additional days. Should a default or breach as described herein, remain uncured after such cure period it shall constitute a Costco Default or Tomball Default, as applicable, and the non-defaulting Party shall have the right to exercise the remedies set forth below.

SECTION 9. REMEDIES.

A. Upon the occurrence of a Costco Default, the City and the TEDC shall have the right to terminate this Agreement by written notice to Costco, in which event the City and the TEDC shall have no obligation to make any future Economic Development Grant Payments to Costco under this Agreement.

B. Upon the occurrence of a Tomball Default, Costco shall have the right to terminate this Agreement by written notice to the City and the TEDC, in which event Costco shall have no further obligations under this Agreement.

C. In addition, and without terminating this Agreement, any Party shall further have the power to enforce specific performance to collect amounts owing by the other Parties under this Agreement or to otherwise compel the other Parties to perform their obligations under this Agreement. Further, any Party shall have the right to bring an action for a declaratory judgment.

D. The City and the TEDC shall not be entitled to a refund of any portion of or all Economic Development Grant Payments made to Costco, except as otherwise provided in Section 7(10) hereof, and further provided that the City and the TEDC shall be entitled to recapture any portion of or all Economic Development Grant Payments which were made based upon materially false or fraudulent information certified to or provided by Costco and for which Costco would not otherwise have been entitled. No action shall lie for damages against Costco except that the City and the TEDC shall be entitled to any action to recover any amounts owed by Costco as provided in the foregoing sentence.

E. Upon the occurrence of a Tomball Default, Costco has the right to bring any action to recover any amounts owed to it under this Agreement. In addition, Costco shall have the right to seek a judicial declaration of the appropriate amount of Economic Development Grant Payments owing to Costco by the City or the TEDC under this Agreement.

F. IF AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, THE CITY VOLUNTARILY WAIVES ITS RIGHT TO ASSERT SOVEREIGN IMMUNITY FROM SUIT OR LIABILITY IN RESPONSE TO AN ACTION BY COSTCO SEEKING ONLY THE REMEDIES SPECIFIED IN THIS AGREEMENT; IT BEING UNDERSTOOD THAT THIS WAIVER IS A LIMITED AND NOT A GENERAL WAIVER, AND THAT ITS EFFECT IS LIMITED TO SPECIFIC CLAIMS UNDER THIS AGREEMENT. EXCEPT AS EXPRESSLY PROVIDED IN THE FOREGOING SENTENCE, NEITHER THE CITY NOR THE TEDC OTHERWISE WAIVE ANY GOVERNMENTAL IMMUNITIES THAT EITHER MAY HAVE AS NOW EXIST OR MAY BE CREATED UNDER ANY APPLICABLE LAW OR JUDGEMENT.

G. If any legal action or proceeding is commenced by any Party to enforce the provisions of this

Agreement or to recover any damages permitted under this Agreement from the breaching Party, each Party shall pay their own legal fees and costs of court.

H. The sole and exclusive remedies of Costco for a breach by the City or the TEDC under this Agreement, and the City's and the TEDC's sole and exclusive remedies for a breach by Costco under this Agreement, shall be those expressly provided for in this Section 9 and elsewhere in this Agreement and Costco, the City and the TEDC each hereby waives any other remedies under law or in equity.

I. A Party shall not be deemed to be in default of this Agreement if performance of this Agreement is delayed, disrupted, or becomes impossible because of an event of Force Majeure, but only for so long as the event of Force Majeure reasonably delays, disrupts or prevents performance.

J. Any delay for any amount of time by a Party in providing notice of default to the other Party shall in no event be deemed or constitute a waiver of such default by such non-defaulting Party of any of its rights and remedies available in law or in equity.

K. Any waiver granted by one Party to another Party shall not be deemed or constitute a waiver of any other existing or future default by such Party or of a subsequent default of the same act or event.

SECTION 10. LIABILITY LIMITATIONS OF THE CITY AND THE TEDC

The City and the TEDC are making payments under this Agreement solely and exclusively from the Sales Tax Revenues each receives from the Texas Comptroller related to the Property and such funds are not financed and will not be financed or otherwise paid from any other source. Under no circumstances shall the obligations of the City or the TEDC hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. No public official or employee shall be personally responsible for any liability arising under or growing out of this Agreement.

SECTION 11. ADDITIONAL REPRESENTATIONS AND WARRANTIES

The City agrees to cooperate with Costco to expeditiously and in good faith process permits, plat applications, and other approvals as required for the Property and Costco Facility. This Section does not waive any requirements of the City's Code of Ordinances as they apply to Costco. All normal fees from the City shall apply to Costco, including, but not limited to, traffic impact analysis fees, water fees, and wastewater impact fees.

SECTION 12. MISCELLANEOUS PROVISIONS

A. Changes in Law. If, during the Term, State law applicable to municipal sales taxes changes and, as a result, the Economic Development Grant Payments differ from the amount which would have been paid to Costco under the laws in effect as of the Effective Date, then the City and the TEDC, in their sole discretion, may adjust the Economic Development Grant Payments utilizing whatever discretionary taxes and revenues are legally available to be allocated to the Economic Development Grant Payments. The foregoing does not require the City or the TEDC to use funds from sources which are not allocable to the Property in order to achieve the same economic benefits to Costco, which would have resulted if the law had not changed. Should any other legal impediment arise during the Term, including without limitation a change in law, that prevents or

prohibits the City or the TEDC from complying with or making any payments under this Agreement, the Parties agree to terminate this Agreement; provided, however, that, to the extent feasible and permitted by applicable law, the Parties agree to work together in good faith to modify this Agreement or enter into a new agreement or otherwise provide Costco with a remedy or reasonably equivalent value to otherwise accomplish the purpose of this Agreement.

B. Binding Effect. This Agreement will be binding on and inure to the benefit of the Parties and their respective successors and assigns.

C. Assignment. Except as provided below, Costco may not assign all or part of its rights under this Agreement to a third party without the prior written approval of the City and the TEDC, which approval will not be unreasonably withheld or delayed. In the event either Costco is sold or merged into, or transfers substantially all of its then owned assets to another entity, the City and the TEDC hereby consent to such sale, merger, or transfer and consents to any assignment of the sold, merged, or transferred entity's rights and obligations under this Agreement to such receiving entity as a result of such sale, merger, or transfer. Costco shall provide the City and the TEDC with written notice of any such assignment.

D. Notice. Notice shall be effective upon receipt or refusal of delivery by the Party to be notified. Any notice or other communication ("Notice") given under this Agreement shall be in writing, and may be given:

- (1) by depositing the Notice in the United States Mail, postage paid, certified, and addressed to the Party to be notified with return receipt requested;
- (2) by personal delivery of the Notice to the Party;
- (3) by depositing the notice with Federal Express or another nationally recognized courier service for next day delivery; or,
- (4) by confirmed facsimile, provided that a copy of the Notice is also given in one of the manners specified in (i), (ii), or (iii).

E. Notice Contact Information. For the purposes of Notice, unless changed as provided in writing to all Parties, as provided in Section 12.D above, the contact information of the Parties is as follows:

For the City:
City of Tomball
Attn: City Manager
401 Market Street
Tomball, Texas 77375

For the TEDC:
Tomball Economic Development Corp.
Attn: Executive Director
29201 Quinn Road, Ste. B
Tomball, Texas 77375

For Costco:
Costco Wholesale Corp.
Attn: Property Management Dept.
999 Lake Drive
Issaquah, Washington 98027

With Copy To:
Holland & Knight, LLP
Attn: Ray T. Khirallah
One Arts Plaza
1722 Routh Street, Suite 1500
Dallas, Texas 75201

F. Interpretation. Each of the Parties has been represented by counsel of its choosing in the negotiation and preparation of this Agreement. In the event of any dispute regarding the interpretation of this Agreement, this Agreement will be interpreted fairly and reasonably and neither more strongly for or against, either Party based on draftsmanship.

G. Relationship of the Parties. This Agreement shall not be construed as establishing a partnership or joint venture, joint enterprise, express or implied agency, or employer-employee relationship between the Parties. Neither the City, the TEDC, nor either's past, present, or future elected officials, officers, directors, employees, or agents, assume any responsibility or liability to any third party in connection with the development of the Property or the design, construction, or operation of any portion of the Property.

H. Applicable Law and Venue. This Agreement is made, and will be construed and interpreted, under the laws of the State of Texas without regard to any conflicts of law provision, and venue will lie in a state district court in Harris County, Texas. The Parties consent to, and waive any objection to, in person jurisdiction in Harris County, Texas.

I. Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable in any respect under present or future laws, the remainder of this Agreement shall not be affected so long as the intent, purpose, and benefits of this Agreement are not affected in any manner materially adverse to either Party hereto. This Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein, and in lieu of each provision that is found to be illegal, invalid or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable, is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable, and effects the intent, purpose, and benefits of this Agreement.

J. Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the paragraphs.

K. No Third-Party Beneficiaries. This Agreement is not intended to confer any rights, privileges, or causes of action upon any third party.

L. Counterparts. This Agreement may be executed simultaneously in two (2) or more counterparts, each of which will be deemed an original, but all of which will constitute the same instrument. A signature transmitted by facsimile or email will be deemed to be an original signature for all purposes. As used in this Section, "signature" means a manually signed document by a natural person, as opposed to an electronic signature.

M. Exhibits. The following exhibits are attached to and incorporated into this Agreement and made a part of this Agreement for all purposes as if they were set forth herein in their entirety: Exhibit A – Description of Property; Exhibit B – Certificate Regarding Capital Investment and Jobs; Exhibit C – Disclosure of Confidential Information; Exhibit D – Form 1295; Exhibit E – Resolution.

N. Entire Agreement. This Agreement embodies the complete agreement of the Parties, superseding all oral or written, previous and contemporary, agreements between the Parties relating to matters in this Agreement; and, except as otherwise provided herein, this Agreement cannot be modified or amended without a written agreement of the Parties.

Confidentiality. This Agreement is subject to the Texas Public Information Act and will be considered “public information” after consideration by the City or the TEDC at a posted meeting by either body. However, the City and the TEDC will use all appropriate measures to keep the information contained in and related to this Agreement confidential until such time as the Texas Public Information Act requires the City or the TEDC to disclose the applicable contents of this Agreement. To the maximum extent permitted by law, the City and the TEDC and their respective elected officials, officers, directors, and employees, and agents or contractors retained to perform economic development services for either the City or the TEDC (the “City Related Parties”): (i) shall use all appropriate measures to maintain the confidentiality of all sales tax information filed by Costco and/or its respective tenants, subtenants and/or licensees, as applicable, with the State of Texas and all other information regarding the Sales Tax Revenue generated by the Property; (ii) shall treat as confidential any other proprietary or financial information of Costco and/or its respective tenants, subtenants, and/or licensees and shall not release any of the foregoing information to the public, unless required by law or court order. The City and the TEDC shall notify Costco as a third-party under the Texas Public Information Act of requests, Attorney General Opinions, and court orders to release such information pursuant to the Texas Public Information Act. The City and the TEDC shall be permitted to disclose the foregoing information to such of the City Related Parties as either of the City and the TEDC, in its reasonable discretion, deems appropriate in furtherance of the purposes of this Agreement, so long as such disclosure is made subject to compliance by such City Related Parties with the terms of this Section. This Section is not meant to prevent the City or the TEDC from complying with the Texas Public Information Act, as it may be amended.

SIGNATURES ON THE FOLLOWING PAGES:

**SIGNATURE PAGE TO
ECONOMIC DEVELOPMENT AGREEMENT MADE BY AND AMONG
THE CITY OF TOMBALL,
THE TOMBALL ECONOMIC DEVELOPMENT CORPORATION,
AND COSTCO WHOLESALE CORPORATION**

IN WITNESS WHEREOF, the undersigned signed and executed this Agreement effective as of the dates set forth below.

FOR: THE CITY

FOR: THE TEDC

Name [Signature]

Name [Signature]

Name [Printed]

Name [Printed]

Title

Title

Date

Date

FOR THE TEDC

**THE STATE OF TEXAS §
COUNTY OF HARRIS §**

This instrument was acknowledged before me on the ____ day of _____ 2022,
by _____, _____ of _____,
Name Position/Title Entity Name
for and on behalf of said Entity.

(SEAL)

Notary Public in and for the State of Texas

My Commission Expires: _____

**ACKNOWLEDGEMENTS CONTINUE ON FOLLOWING PAGE
FOR THE CITY**

THE STATE OF TEXAS §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the _____ day of _____ 2022,
by _____, _____ of _____,
Name Position/Title Entity Name
for and on behalf of said Entity.

(SEAL)

Notary Public in and for the State of Texas

My Commission Expires: _____

**SIGNATURE PAGE TO
ECONOMIC DEVELOPMENT AGREEMENT MADE BY AND AMONG
THE CITY OF TOMBALL,
THE TOMBALL ECONOMIC DEVELOPMENT CORPORATION,
AND COSTCO WHOLESALE CORPORATION**

IN WITNESS WHEREOF, the undersigned signed and executed this Agreement effective as of the dates set forth below.

FOR: COSTCO

Name [Signature]

Name [Printed]

Title

Date

THE STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____ 2022,
by _____, the _____ of COSTCO WHOLESALE CORPORATION, a Washington corporation, for and on behalf of said corporation.

(SEAL)

Notary Public in and for the State of _____

My Commission Expires: _____

EXHIBIT A – DESCRIPTION OF PROPERTY

All of Reserve “A” of Maple Group, an addition to the City of Tomball, Harris County, Texas, according to the plat thereof recorded in Film Code No. 683989, Map Records, Harris County, Texas

EXHIBIT B – CAPITAL INVESTMENT AND JOBS CERTIFICATION

Re: ECONOMIC DEVELOPMENT AGREEMENT MADE BY AND AMONG THE CITY OF TOMBALL, THE TOMBALL ECONOMIC DEVELOPMENT CORPORATION, AND COSTCO WHOLESALE CORPORATION

This Capital Investment Certification is being delivered by Costco Wholesale Corporation (“Costco”) in connection with that certain Economic Development Agreement made by and among the City of Tomball (the “City”), the Tomball Economic Development Corporation (the “TEDC”), and Costco effective as of _____, 2022 (the “Agreement”). All terms used herein have the meanings ascribed to them in the Agreement unless otherwise defined herein.

The undersigned authorized officer of Costco hereby certifies to the City and the TEDC that:

1. Costco has made a capital investment of not less than Ten Million Dollars (\$10,000,000) in the Costco Facility, including, without limitation, the costs of acquiring the Property, hard and soft construction costs relating to the Costco Facility, including any necessary off-site improvements, and the costs of equipping the Costco Facility (but excluding inventory).
2. Costco has created at least one hundred twenty-five (125) jobs associated with the Costco Facility. (A “job” meaning any employment associated with Costco that requires at least twenty (20) hours of work per week for an employee).

The undersigned hereby certifies that I am a duly authorized representative of Costco and am duly authorized to execute this Cost Certification.

COSTCO WHOLESALE CORPORATION

BY: _____
NAME – SIGNATURE

NAME – PRINTED

TITLE DATE _____ 20__

STATE OF _____

COUNTY OF _____

Sworn to and subscribed to before me on the ____ day of _____,
20_____, by _____.

NOTARY NAME

EXHIBIT C – DISCLOSURE OF CONFIDENTIAL TAX INFORMATION AGREEMENT FOR DISCLOSURE OF CONFIDENTIAL TAX INFORMATION

This Agreement for Disclosure of Confidential Tax Information (this “Agreement”) is entered into by and among the City of Tomball (the “City”), the Tomball Economic Development Corporation (the “TEDC”; the City and the TEDC are collectively referred to as the “City Parties”), and Costco Wholesale Corporation, a Washington corporation (hereafter the “Taxpayer”) for the purposes indicated herein.

The undersigned Taxpayer hereby authorizes the Texas Comptroller’s Office to release and disclose to the City any and all sales and use tax information pertaining to Taxpayer’s business in the Costco wholesale/retail facility located situated at the northeast corner of Tomball Parkway and Holderrieth Road in the boundaries of the City of Tomball. This waiver applies only to the Costco wholesale/retail facility located on the northeast corner of Tomball Parkway and Holderrieth Road in Tomball, Texas.

The undersigned Taxpayer understands and agrees that this release will be made by the Texas Comptroller’s Office to the City on an ongoing monthly basis beginning on the date this Agreement is executed. Taxpayer waives any and all rights of confidentiality of tax information under Sections 111.006, 151.027 of the Texas Tax Code to the extent, and only to the extent, necessary to permit the Texas Comptroller’s Office to release and disclose Taxpayer’s sales and use tax information as provided in this Agreement.

The City Parties each agree that the City Parties will use the sales and use tax information disclosed by the Texas Comptroller pursuant to this Agreement solely and exclusively for the purposes under that certain Economic Development Agreement by and among the City Parties and Costco dated _____, 2022, and subject to the terms thereof.

This Agreement is entered into in the State of Texas, and Texas law will apply to its interpretation and enforcement.

SIGNED AND AGREED TO on this ____ day of _____, 202__

Name of Taxpayer Listed on Texas Sales Tax Permit

Name Under Which Taxpayer is Doing Business (d/b/a or Outlet Name)

Taxpayer Mailing Address

Physical Location of Business Permitted for Sales Tax

SIGNATURE PAGE TO DISCLOSURE OF CONFIDENTIAL TAX INFORMATION
AGREEMENT FOR DISCLOSURE OF CONFIDENTIAL TAX INFORMATION

THE CITY

THE TEDC

Name [Signature]

Name [Signature]

Name [Printed]

Name [Printed]

Title

Title

Date

Date

EXHIBIT D – FORM 1295

TO BE ATTACHED

**EXHIBIT E – RESOLUTION
TO BE ATTACHED**