



**CITY OF ELK GROVE  
CITY COUNCIL STAFF REPORT**

**AGENDA TITLE:** A Public Hearing to consider a resolution authorizing the City Manager to execute an Economic Development Incentive Agreement with The Ridge EG East, LP in a not-to-exceed amount of \$8,000,000 (present value) (CEQA Exempt)

**MEETING DATE:** April 12, 2017

**PREPARED BY** Darrell A. Doan, Economic Development  
**DEPARTMENT HEAD:** Director

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**RECOMMENDED ACTION:**

Staff recommends the City Council conduct a public hearing to consider adopting a resolution authorizing the City Manager to execute an Economic Development Incentive Agreement with The Ridge EG East, LP, in substantially the form provided, in a not-to-exceed amount of \$8,000,000 (present value) related to the construction and operation of a Costco Wholesale Corporation wholesale and retail general merchandise warehouse store in Elk Grove.

**BACKGROUND INFORMATION:**

The Ridge EG East, LP (“Landowner”) is a Sacramento-based real estate developer affiliated with Pappas Investments. The Landowner is the owner of an approximately 17.43-acre parcel of land located northwest of the intersection of Civic Center Drive and Babylon Drive in the City of Elk Grove (the “Property”), which is within the boundaries of the Laguna Ridge Specific Plan (adopted in 2004) and the Laguna Ridge Town Center Specific Plan (adopted in 2008).

In 2015, Costco Wholesale Corporation (“Costco”) made an application to the City for conditional use and major design approvals necessary to construct a proposed Costco warehouse store on the Property (the

“Project”). If constructed, the Project will consist of an approximately 150,000 square foot store; a 24-pump fueling facility with capacity for future expansion to 30 pumps; a parking lot with 751 parking stalls; building signage; landscaping; vehicular access points off of Civic Center Drive and Elk Grove Boulevard; and all underground infrastructure to support the Project.

On May 5, 2016, the Elk Grove Planning Commission voted to recommend to the City Council that the City Council adopt a resolution finding no further CEQA review necessary for the Project; approving a Conditional Use Permit due to the Project’s size being in excess of 100,000 square feet (as required by the Laguna Ridge Specific Plan); and approving a Major Design Review. The City Council considered the Project at its May 25, 2016 and July 13, 2016 City Council meetings. At the July 13, 2016 City Council meeting, the City Council approved the Project.

At the May 25, 2016 City Council meeting, staff advised the City Council that a ground lease between the Landowner and Costco had been conceptually agreed to; that the Landowner had advised the City that the Project might not proceed unless it received an economic development incentive from the City in an amount to be determined; that staff was at that time analyzing the possibility and viability of providing such an incentive; and that any such incentive would be brought to the City Council at a later date for consideration.

The Landowner and Costco have reached further agreement on the terms of a long-term ground lease for the Property (“the Costco Ground Lease”), which is near ready for execution, by which Costco will ground lease the Property from the Landowner, and Costco will construct the store improvements to be located on the Property. The Costco Ground Lease is contingent upon, among other things, approval of the requested Economic Development Incentive Agreement. If the proposed Agreement is approved by the City Council, Landowner and Costco have indicated they intend to proceed under the Costco Ground Lease, and Costco will construct the Project beginning this summer, with completion scheduled for approximately the first quarter of 2018. Costco has made application to the City for a building permit for the Project, and the permit is ready to be issued by the City.

## **ANALYSIS:**

The Landowner has requested an economic incentive be provided in the form of a sales tax sharing arrangement in support of the Project in an amount not-to-exceed \$8,000,000 (present value with a 6% discount rate) (the “Maximum Payment Amount”).

The Landowner asserts that the economic incentive is necessary in order for it to achieve its targeted 14.4% Internal Rate of Return (“IRR”) on the Costco Ground Lease. The Landowner indicates that a 14.4% IRR for the Ground Lease is required to justify proceeding with the Ground Lease given the Project’s site acquisition and development costs, risks, and complexity incurred by the Landowner. Without the incentive, the Landowner has indicated that its IRR for the Ground Lease is negative 15.92%. A negative or lower return on investment for this type of project would not, based on the Landowner’s representations, induce it to move forward. It is staff’s understanding that the Property is Costco’s first choice for developing an additional store in southern Sacramento County, and that its second choice is property just outside and to the northwest of the City’s jurisdiction. Further, staff understands that no other Elk Grove properties are under consideration for the Project by Costco. Costco also advises the City that it has no plans to close its Sacramento County store at 7981 East Stockton Boulevard.

Key terms of the proposed Economic Development Incentive Agreement include the following:

- For up to 25 years, the City would rebate to the Landowner on an annual basis an amount equal to 50% of all sales tax revenues received by the City generated directly and only by the Project, exclusive of gasoline generated sales tax revenue. (All references to sales tax in this staff report refer to the share of sales tax the City actually receives from the Project; i.e. 1% of total sales tax generated.) Quarterly payments would be made by the City under the Agreement, and the City would have the right to prepay all or any portion of the total amount owed. The obligations created by the Agreement do not create an immediate indebtedness to the City of the Maximum Payment Amount, but rather create a liability only when a payment becomes due under the Agreement.

- The Agreement would expire upon the earlier of 25 years, or when sales tax payments total \$8,000,000 on a present value basis. If the store outperforms sales tax expectations, and annual payments to the Landowner end up being larger than anticipated, the Agreement would expire sooner than 25 years. Conversely, if the full amount of the incentive has not been paid to the Landowner within 25 years, the Agreement would terminate with no further payment obligations by the City.
- Only newly generated sales tax revenue derived during the Term of the Agreement directly and only from the Project would be used to calculate the payments to the Landowner; no other City revenues, current or future, would be considered under the Agreement to calculate payments to the Landowner.
- Should there never be a Costco store at this location, no payments from the City would ever be required.
- Should Costco voluntarily and permanently discontinue operations at the Project location, the Agreement would automatically terminate.
- No sales tax revenues from gasoline sales at the Project would be included in the calculation of the amount to be rebated; the City would keep all gasoline generated sales tax.

Staff recommends approving the Economic Development Incentive Agreement for the following key reasons:

- Over the 25-year term of the Agreement, based on certain assumptions about sales tax generation from the Project, the Project would generate an estimated \$27,893,195 of sales tax revenue to the City *after* the Landowner were to receive the amount calculated as its portion of the sales tax. The Project would also generate additional revenue for the City in the form of increased property and utility taxes. Upon expiration of the Agreement, the City would keep all sales and other taxes derived from the Project and any future replacement projects.
- The revenues required to make payment under the Incentive Agreement would all be derived directly from the sales tax revenues to be generated by the Project. No existing or future General Fund or

other revenues would be used to satisfy payment under the Agreement. No capital outlay is required by the City, and no financial risk is required.

- If the Project is completed, the City will retain 50% of all sales tax revenue received from the store over the life of the Agreement and 100% of all sales tax thereafter, and the City will always receive all other ancillary forms of tax revenue (i.e. property and utility taxes); if the Project is not completed, the City will continue to receive very little revenue from the Property.
- The Project would put to productive commercial use a parcel of land at the center of the City that has remained vacant for over 12 years since the time the Laguna Ridge Specific Plan was adopted and commercial development of the site was planned.
- The Project would act as a catalyst for development of the entire commercial corridor along Elk Grove Boulevard between Bruceville Road and Laguna Springs Drive, which would generate additional significant sales tax and other revenue to the City once built out. Based on certain assumptions about planned retail projects in vicinity of the Property, sales tax revenues from nearby projects would total approximately \$42,521,970 over a 25-year period. These revenues would be in addition to the net revenues derived from the Costco store.
- The Project, and other retail development anticipated and realized in the vicinity, would provide needed enhanced retail options for the City's residents.
- As a result of the Project, a significant amount of retail sales leakage would be recaptured by the City, as current Elk Grove residents who are shopping at Costco outside of Elk Grove would likely choose to shop at the new Elk Grove Costco; and new sales tax revenue would be generated by the Project as Costco shoppers from outside of Elk Grove come in to Elk Grove to shop.
- Without the economic incentive, the project would likely not be built in the City, resulting in 100% of the Costco sales tax never being realized.

- The Landowner has represented, through Costco, that the Project would create an estimated 100 full-time and 100 part-time retail jobs with average hourly wages of approximately \$22 plus benefits.

Pursuant to California Government Code section 53083, an Economic Incentive Agreement Report is attached to this staff report.

### **ENVIRONMENTAL ANALYSIS:**

The Agreement is not subject to the California Environmental Quality Act (“CEQA”) because the Agreement is a financial arrangement and does not constitute the approval of a project under CEQA. (Pub. Res. Code § 21065, CEQA Guidelines §§ 15060(c),(2)(3); 15061(b)(3); 15378(a)).

### **FISCAL IMPACT:**

Approval of the Economic Incentive Agreement would have no effect on current City revenues, or future City revenues not derived directly from the Project. Staff estimates total net sales tax revenue to be derived from the Project (after the City’s payment obligations under the Agreement are satisfied) to be approximately \$27,893,195 over the 25 year term of the Agreement. Staff estimates total sales tax revenue to be generated by retail projects in vicinity of the Costco Project over a 25-year period to be \$42,521,970, for a total positive fiscal impact of the Project to the City of \$70,415,165 in future dollars.

### **ATTACHMENTS:**

1. Resolution
2. Agreement
3. Economic Incentive Agreement Report

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE  
AUTHORIZING THE CITY MANAGER TO EXECUTE AN ECONOMIC  
DEVELOPMENT INCENTIVE AGREEMENT WITH THE RIDGE EG EAST, LP  
IN AN AMOUNT NOT-TO-EXCEED \$8,000,000 ON A PRESENT VALUE BASIS  
(CEQA EXEMPT)**

**WHEREAS**, economic development efforts are critical for the City of Elk Grove to ensure a vibrant, healthy, and diverse local economy; and

**WHEREAS**, the successful development of retail projects in the City of Elk Grove is a critical component of the City's economic development efforts; and

**WHEREAS**, The Ridge EG East, LP, intends to execute a ground lease with Costco Wholesale Corporation, whereby Costco will construct an approximately 150,000 square foot wholesale and retail general merchandise warehouse store in Elk Grove within the boundaries of the Laguna Ridge Town Center Specific Plan; and

**WHEREAS**, the development of the warehouse store in Elk Grove serves the public interest and purposes because the construction and operation of the project will create jobs within the City, expand the range and diversity of the City's retail sector, broaden the City's property tax and sales tax base, as well as generate other City revenues, and will generally contribute to the maintenance, growth, and expansion of the City's economic base; and

**WHEREAS**, the proposed Economic Development Incentive Agreement constitutes a contract, obligation and indebtedness within the meaning and scope of Gov. Code § 53511 and the Validation Act (Code of Civil Procedure §§ 860 et seq.) and is the best and most appropriate means available to the City of financing the Economic Development provided therein that will allow the project to proceed so that the City of Elk Grove may realize the public benefits of the project, and it is necessary for the City to promptly settle any questions relating to the validity or enforceability of the Agreement; and

**WHEREAS**, approval of the proposed Economic Development Incentive Agreement is not subject to the California Environmental Quality Act ("CEQA") because the Agreement is a financial arrangement and does not constitute the approval of a project under CEQA. (Pub. Res. Code § 21065, CEQA Guidelines §§ 15060(c),(2)(3); 15061(b)(3); 15378(a)); and

**WHEREAS**, the obligations created under the Economic Incentive Agreement do not create an immediate indebtedness to the City of the Maximum Payment Amount of the Economic Development Incentive, but rather create a liability only when a payment becomes due.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Elk Grove hereby approves the accompanying Economic Incentive Agreement Report and authorizes the City Manager to execute an Economic Development Incentive Agreement with The Ridge EG East, LP, in substantially the form presented, in an amount not-to-exceed \$8,000,000 on a present value basis.

**PASSED AND ADOPTED** by the City Council of the City of Elk Grove this 12<sup>th</sup> day of April 2017.

\_\_\_\_\_  
STEVE LY, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
JASON LINDGREN, CITY CLERK

\_\_\_\_\_  
JONATHAN P. HOBBS,  
CITY ATTORNEY



**CITY OF ELK GROVE**

**ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT**

**(Costco)**

This Economic Incentive Agreement (“Agreement”) is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between the City of Elk Grove, a municipal corporation (“City”) on the one hand, and The RIDGE EG EAST, LP, a California Limited Partnership (“Property Owner”). The City and Property Owner are sometimes collectively referred to herein as “the Parties,” and singularly as a “Party.”

**RECITALS**

A. WHEREAS, Property Owner is the owner of that certain property in the City of Elk Grove comprised of approximately 17.43 acres located northwest of the intersection of Civic Center Drive and Babylon Drive in the City of Elk Grove and identified as Resultant Parcel G, Boundary Line Adjustment – Certificate of Compliance recorded September 13, 2016, in Book 20160913 page 268, Official Records of Sacramento County (the “Property”); and

B. WHEREAS, Property Owner proposes to enter into a long-term lease (the “Costco Lease”) with Costco Wholesale Corporation, a Washington Corporation (“Costco”) at the Property for the development of a wholesale and retail general merchandise facility owned and operated by Costco (the “Costco Project”); and

C. WHEREAS, Property Owner has requested, and the City has agreed, to provide Property Owner with a contingent economic development incentive in conjunction with Property Owner’s lease to Costco and Costco’s development of the Costco Project, all as set forth herein.

D. WHEREAS, the City finds that the public purpose of this economic development incentive is to promote the general welfare of the City and its residents by creating new jobs, expanding the range and diversity of its retail sector in which it is currently underserved, and to broaden the City’s property tax and sales tax base, as well as generating other City revenues. Specifically the Costco Project is a unique opportunity for the City that would not only significantly promote the public purposes listed above, but is anticipated to be a catalyst for further economic development in a substantially larger area of currently undeveloped properties in the City, which will further promote and enhance the public purposes listed above. But for the economic development incentive, the Costco Project might not be located in the City and its benefits to the City would be lost. This economic development incentive is consistent with and in furtherance of the City’s economic development incentive programs.

E. WHEREAS, inasmuch as this economic development incentive provided for in this Agreement is a material inducement for the Property Owner to enter into the Costco Lease in furtherance of the important public purpose herein stated, this Agreement constitutes a contract, obligation and evidence of indebtedness within the meaning and scope of Government Code section 53511 and the Validation Act (Code of Civil Procedure sections 860 et seq.) in that it provides to the Property Owner assurance that the City can satisfy its financial obligations under this Agreement which benefit the City and the public generally. In approving this Agreement the City Council has found and determined that this Agreement is the best and most appropriate means available to the City of financing the economic development incentives provided herein that will allow the Costco Project to proceed, and it is necessary for the City to promptly settle any questions relating to the validity or enforceability of this Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and the following mutual covenants, agreements, conditions, and representations, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Recitals. The above-referenced Recitals are true and correct and incorporated herein by reference.

2. Definitions. In addition to other defined terms in the body of this Agreement, the following terms shall have the following meaning, as used in this Agreement:

a. "Fiscal Year" shall mean the City's fiscal year running from July 1 through June 30 of the following year.

b. "Base Sales Tax" shall mean, for each Fiscal Year during the term of the City's payment obligations hereunder, that portion of sales taxes actually received by the City from the imposition of the Bradley-Burns Uniform Local Sales and Use Tax Law (commencing with Section 7200 of the California Revenue & Taxation Code or any successor sales tax statute thereto) and Chapter 3.04 of the Elk Grove Municipal Code (or any successor sales tax ordinance thereto), as reported to the California State Board of Equalization ("SBOE") by Costco from the operation of the Costco Project on the Property.

c. "Sales Tax" shall mean the Base Sales tax excluding all of the following: (i) any portion of the Base Sales Tax that the City may be required to pay, transfer, assign, or allocate to any other entity or entities by virtue of any law now or hereafter existing, or by virtue of any agreement entered into between City and any other governmental entity under California Government Code Section 53084, if any; (ii) the State Board of Equalization's administrative and processing fee attributable to the City's portion of such taxes (calculated at the same percentage of such taxes as applies city-wide); (iii) any sales tax over-rides for transportation and/or public safety; (iv) any revenues from any supplemental local sales, transactions, and/or use tax approved by the City and/or the electorate beyond the Base Sales Tax; and (v) so long as the Costco Project includes retail sales of gasoline, Base Sales Tax from the retail sale of gas or diesel fuel at the vehicle filling station of the Costco Project based on deemed annual Retail Gas

Sales of \$25,000,000 adjusted for each calendar year following the "Store Opening" (as defined below), all as set forth below ("Annual Retail Gas Sales"). "Sales Tax" shall not be considered to have been received by the City until the City is able to confirm receipt of such taxes from the SBOE. For purposes of this Agreement, Annual Retail Gas Sales shall be determined as follows: (i) for any partial calendar year and the next succeeding full calendar year following the Store Opening, Annual Retail Gas Sales shall be deemed to be \$25,000,000 per year; and (ii) on January 1 of each calendar year thereafter, Annual Retail Gas Sales shall be adjusted (up or down) by the percentage change between the "CPI Index" for September of the immediately preceding year and September of the immediately preceding year before that. For purposes of this Agreement, the "CPI Index" shall mean the Consumers Price Index for All Urban Consumers published from time to time by the United States Bureau of Labor Statistics.

3. Incentive Payment. Subject to the provisions and limitations set forth herein, the City agrees to provide an economic development incentive payment ("Incentive Payment") to Property Owner in an amount not to exceed the present value of eight million dollars (\$8,000,000), all as discounted, adjusted, and calculated pursuant to the formula set forth at Exhibit A (the "Maximum Payment Amount"). The Maximum Payment Amount shall remain unadjusted and undiscounted until the Costco Store is completed and open to the public for business (the "Store Opening"). Should there never be a Store Opening, no payments from the City shall be required under this Agreement. During the term of this Agreement, should the City Sales Tax Revenues as defined in Section 4 of this Agreement be materially and adversely effected as a result of revisions to the structure of sales and/or use taxes imposed by the State of California or the imposition of a statewide tax that effectively replaces the current form and/or structure of statewide sales and/or use taxes (a "Replacement State Tax"), the parties shall meet and confer in good faith to consider whether and how the terms and conditions of this Agreement should be revised and/or amended to best achieve the purposes of this Agreement in light of such Replacement State Tax, provided, however, that nothing in the foregoing sentence shall be deemed, interpreted or construed to obligate either Party to agree to any change, modification or amendment to this Agreement for such purposes.

4. Manner and Timing of Payments; City's Right to Prepay. In consideration of Property Owner's compliance with all other terms of this Agreement, and subject to the Store Opening, in each full or partial Fiscal Year during the term of this Agreement, the City shall make payments to Property Owner in installments as described herein in an amount equal to fifty percent (50%) of the Sales Tax generated by the Costco Project and received by the City ("City Sales Tax Revenues"), until the City has paid the Maximum Payment Amount, or this Agreement otherwise terminates. Payment of the annual payments for each Fiscal Year shall be made by the City to Property Owner in quarterly installments, each installment payable no later than one-hundred and fifty (150) days following the end of each quarter<sup>1</sup> and subject to receipt of all data by the City from the SBOE confirming the City's share of City Sales Tax Revenues attributable to the Costco Project. On or before the Store Opening, Property Owner shall notify City in writing of the Costco Store's SBOE retail identification number. To the extent required by law or City procedures, the City Manager shall include in the annual general fund budget

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<sup>1</sup> A "quarter" shall be defined as follows: January to March (first quarter); April to June (second quarter); July to September (third quarter); October to December (fourth quarter).

adopted by the City Council, the receipt of funds from Sales Tax proceeds generated by the Costco Project, and the appropriation of and authorization to the City Manager, to make the payments from the general fund required by this section. At any time and from time to time, the City may prepay all or any portion of the total amounts owing to Property Owners under this Agreement; provided that the sum total of all payments (including any such prepayments) shall not be less than the Maximum Payment Amount.

5. Consent/Waiver by Costco to Disclose Tax Information. Prior to any payment being made to Property Owner hereunder, or the disclosure of any Base Sales Tax and/or Sales Tax information to Property Owner hereunder, Property Owner shall provide to the City, and maintain in effect during the term of this Agreement, all in a form acceptable to the City, a written consent from Costco consenting to the disclosure and use of the Base Sales Tax and/or Sales Tax information consistent with this Agreement, and a written waiver from Costco waiving the protections, privilege, and confidentiality provided by California Revenue and Taxation Code section 7056 and any other similar law that would otherwise prevent the disclosure of such Base Sales Tax and/or Sales Tax information. The waiver and consent from Costco shall include, among other things, an express acknowledgment by Costco that the amount of the payments made by the City to Property Owner hereunder may be released to the public upon inquiry.

6. Limited City Obligation. The obligations arising from this Agreement are not a debt of the City, nor a legal or equitable pledge, charge, lien, or encumbrance upon any of its property or upon any of its monies, income, receipts, or revenues, except the revenues from the Sales Tax proceeds as provided herein. Except as expressly provided in Sections 4 and 17 of this Agreement, neither the general fund nor any other fund of the City shall be liable for the payment of any obligations arising from this Agreement. The credit or taxing power of the City is not pledged for the payment of any obligation arising from this Agreement. Nothing herein shall provide the Property Owner any right to compel the forfeiture of any of the City's property to satisfy any obligations arising from this Agreement. The obligations created by this Agreement do not create an immediate indebtedness of the City of the Maximum Payment Amount, but rather create a liability only when a payment becomes due hereunder.

7. Term and Expiration of Agreement. This Agreement shall commence and be effective upon full execution by all parties (the "Effective Date") and shall expire upon the earlier of: (i) the date the City has made payment to Property Owner of the Maximum Payment Amount as provided for herein; or (ii) twenty five (25) years from the Store Opening. Notwithstanding the expiration of this Agreement, the indemnity obligations at paragraphs 11 and 12 below shall survive and remain in full force and effect following the expiration of this Agreement.

8. Maintenance. Property Owner shall cause Costco to maintain and repair the Costco Project, including all improvements and landscaping on the Property in good order, and in the condition (and, as to landscaping, in a healthy condition) and in accordance with all applicable laws, including, without limitation, the City's Nuisance Code. In this regard, Property Owner shall further cause Costco to prevent excessive accumulation of any waste materials, rubbish, graffiti, weeds, or debris on the Property and at the Costco Store and to not permit any unlawful use or unlawful nuisance to occur on the Property, all in accordance with the Costco Lease.

9. Discontinuance of Costco Operations. Should the Costco Project voluntarily discontinue operations at the Property as a wholesale and retail general merchandise store for a continuous period exceeding 270 days (subject to extension for the period of any "Force Majeure Event" (as defined below)), this Agreement shall automatically terminate, and the City shall be under no obligation to provide further incentives under this Agreement. Any expansion, renovation, or repair or restoration of damage by Costco shall not be deemed a discontinuance of operations under this section or any other provision of this Agreement. The 270 day period set forth herein shall not run, and shall be tolled if already commenced, during any Force Majeure Event until such Force Majeure Event ends. For purposes of this Agreement, "Force Majeure Event" means flood, drought, earthquake, storm, fire, pestilence, lightning, or other natural catastrophe, tsunami, epidemics, acts of God or the public enemy, war, riot, civil disturbance or disobedience, strike, labor dispute, or sabotage of facilities, or other circumstances beyond the reasonable control of Costco, and preventing continued operations at the Property as a wholesale and retail general merchandise store. Notwithstanding the foregoing, should the term of this Agreement expire, as set forth in section 7, during the pendency of a Force Majeure Event, this Agreement shall terminate, and the City shall be under no obligation to provide further incentives under this Agreement.

10. No Waiver of Reimbursement Rights by Property Owner. Nothing in this Agreement shall be deemed, interpreted or construed to constitute a waiver or release by the Property Owners of any right or claim of right to any further reimbursement for any improvements, whether on-site or off-site, related to the Costco Project from the City or any Community Facilities District ("CFD") created by the City, including, without limitation, any claim to the City roadway fee fund, Laguna Ridge CFD 2005-1, or any other general or restricted fund owned, held, or controlled by the City.

11. Prevailing Wage. Property Owner is fully aware of the provisions of Labor Code sections 1720, et seq. regarding payment of prevailing wages in connection with public works and has consulted with its own legal counsel regarding such wage issue. Property Owner's execution of this Agreement is an acknowledgment that such independent advice and counsel has been obtained and relied on in executing this Agreement and accepting the benefits under it. Property Owner shall cause Costco to comply with all applicable laws concerning the development of the Project including, as applicable, Labor Code sections 1720 et seq. Neither the City nor any of its employees, agents, or representatives have rendered opinions to Property Owner respecting the applicability of Labor Code sections 1720, et seq. to Property Owner's construction project, and Property Owner has not relied on any such representation in entering into this Agreement. In the event any claim of any kind or nature based on Labor Code sections 1720, et seq. (including Section 1781) is brought or made against the City in connection with this Agreement or any related construction project, Property Owner shall be obligated to defend, indemnify, and hold harmless the City with respect to such claim in accordance with paragraph 12 below.

12. Indemnity. Property Owner agrees to protect, defend (with legal counsel acceptable to the City), indemnify, and hold harmless the City, its Council members, officers, agents, independent contractors, and employees from any and all claims, damages, penalties, losses, costs, expenses (including reasonable attorneys' fees and court costs), injuries, and liabilities of every kind (collectively, "Covered Claims") arising out of the execution and

performance of this Agreement including, but not limited to, whether the benefits conferred by the City under this Agreement create a public work for prevailing wage purposes thereby requiring the payment of prevailing wages, and all claims challenging the legality, constitutionality, or enforceability of this Agreement, including, but not limited to, the City's authority to pay the Incentive Payment; provided, however, that Property Owner shall have no obligation to the City under this paragraph to the extent that any such Covered Claim results from the sole negligence or willful misconduct by the City or any of its representatives, as determined by a Court of competent jurisdiction. Unless and until such judicial determination is made, or as otherwise agreed by the Parties, Property Owner shall remain obligated to defend, indemnify, and hold harmless the City, its council members, officers, agents, independent contractors, and employees pursuant to this Agreement. The City's rights under this paragraph shall not depend upon the actual payment of any claim, damage, penalty, loss, cost, expense (including reasonable attorneys' fees and court costs), injury, or liability sustained by Property Owner and/or its contractors, subcontractors, agents, and/or employees. In the event that the City tenders the defense and indemnification of a Covered Claim to Property Owner, Property Owner shall provide the City with regular reports on the status of the proceeding with respect to any such Covered Claim, and the City must consent to the disposition of any such Covered Claim, including, but not limited to, the settlement of any such Covered Claim, provided that such consent shall not be unreasonably withheld, delayed or conditioned.

13. Validation Action. At any time during the term of this Agreement, upon written request of the Property Owner, the City shall consider, in its reasonable discretion, whether to file and prosecute to completion a validation action under Government Code Section 53511 and Code of Civil Procedure Sections 860 et seq. (the "Validation Act"), or such other action at law as the Property Owner may deem appropriate, to obtain a final judgement to validate or enforce the financial obligations and indebtedness of the City under this Agreement as binding and irrevocable obligations of the City beyond further challenge by any person or entity. The Property Owner shall cooperate with the City in any such action and bear the attorneys' fees, and litigation costs of any such action. The City shall bring and maintain any such action with qualified legal counsel selected by the City and reasonably approved by the Property Owner. The City's legal counsel shall consult with the Property Owner's counsel in the preparation and filing of any such action and the prosecution thereof. The Property Owner may join with the City in any such action or appear as an interested person in support of the City; provided that no settlement of such litigation may be negotiated or entered into by the City without the express written consent of the Property Owner. Nothing in this section shall change in any way or provide a waiver of or excuse for failure of any party challenging the validity of this Agreement to comply with the procedure and time requirements set forth in the Validation Act, and the failure of any party to timely file or successfully maintain a challenge to this Agreement shall have the effect on the validity of this Agreement and the obligations of the City therein as set forth in the Validation Act.

14. Authority to Execute Agreement. Each individual signing this Agreement represents and warrants that he or she has full authority to execute the same on behalf of the Party on whose behalf he or she so signs, and that he or she is acting within the scope of his or her authority.

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

16. Entire Agreement. It is expressly understood and agreed that this Agreement contains the entire agreement and understanding concerning the subject matter thereof, and supersedes and replaces all prior negotiations and agreements between the Parties, whether written or oral. It is expressly understood and agreed that there have been no promises, agreements, warranties, or inducements, not herein expressed. The Parties acknowledge that they have read this Agreement and have executed it without relying upon any statements, representations, or warranties, whether written or oral, not expressly set forth herein.

17. Governing Law. All questions with respect to the enforcement, interpretation, or construction of this Agreement and the rights and liabilities of the Parties hereto shall be governed by the laws of the State of California. Should any judicial proceeding be brought relating to this Agreement, venue shall lie exclusively in a court of competent jurisdiction located in Sacramento County. Subject to the foregoing, City agrees that among remedies available to the Property Owner for City's failure to perform the provisions of this Agreement, shall be an action in mandamus, injunctive relief, or other suitable remedy to compel the payments, required to be paid by the City to the Property Owner under this Agreement; provided that nothing herein shall be deemed, interpreted or construed to constitute a waiver of any of Property Owner's rights or remedies under law or in equity.

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

19. Further Assurances. The Parties shall at their own cost and expense execute and deliver such further documents and instruments, and shall take such other actions, as may be reasonably required or appropriate to carry out the intent and purposes of this Agreement.

20. Amendment/Modification. This Agreement shall not be amended except by a written instrument signed by all Parties or their respective successors and assigns.

21. Waiver/Estoppel. No waiver by any party of any breach of any term or provision of this Agreement shall be construed to be, nor be, a waiver of any proceeding, concurrent or succeeding breach of the same, or any other term or provision thereof. No waiver shall be binding unless in writing and signed by all Parties to this Agreement. Delay or failure of any party to enforce any right provided by this Agreement shall not constitute a waiver or estoppel of said right. Any waiver by any party of any term or provision of this Agreement shall not be deemed a waiver of any other term or provision of this Agreement.

22. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns, provided, however, that Property Owner shall not assign this Agreement to any other person, entity, or successor without the express written approval of the City, which approval shall not be unreasonably withheld; provided further that no such consent shall be required if Property Owner conveys all of its interest in the Property and, concurrently with such conveyance, assigns this Agreement to the transferee(s).

23. Severability. If any provision of this Agreement or the application thereof to any person or entity is held to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall continue to be in full force and effect and be binding on the Parties hereto.

24. Time. Time is of the essence of this Agreement.

25. Captions. Sections, titles, and captions contained in this Agreement are inserted only as a matter of convenience and for reference and shall in no way be construed to define, limit, or extend the scope of this Agreement or the intent of any of its provisions.

26. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which shall constitute one and the same instrument. Such executed counterparts may be delivered by facsimile or email which, upon transmission to the other parties, shall have the same force and effect as delivery of the original signed counterpart.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date the last Party signs this Agreement, as indicated below.

CITY:

City of Elk Grove, a municipal corporation

By: \_\_\_\_\_  
Laura S. Gill  
City Manager

Dated: \_\_\_\_\_, 2017

Approved as to Form:

Elk Grove City Attorney's Office

By: \_\_\_\_\_  
Jonathan P. Hobbs  
City Attorney

PROPERTY OWNER:

THE RIDGE EG EAST, LP, a California  
Limited Partnership

By: \_\_\_\_\_  
John Papagiannopoulos  
Its: \_\_\_\_\_  
Manager

Dated: April 5, 2017

Approved as to Form:

Murphy Austin Adams Schoenfeld, LLP

By: \_\_\_\_\_  
Russell J. Austin  
Attorney for Property Owner

**Attest:**

By: \_\_\_\_\_  
Jason Lindgren, City Clerk

**EXHIBIT A  
CITY OF ELK GROVE**

**ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT  
CALCULATIONS AND PROCEDURES AND DEFINITIONS FOR PAYMENTS**

The Payment due Property Owner shall be paid quarterly and within one-hundred and fifty (150) days following the end of each quarter and subject to receipt of all data by the City from the State Board of Equalization confirming the City's share of City Sales Tax Revenues attributable to the Costco Project, all as set forth in the Agreement. The Payment Amount due Property Owner from the City shall be calculated as set forth herein. Any subsequent sales tax distribution corrections made by the State Board of Equalization shall be reflected in the calculations of the next Payment

**1. General Statement**

The Payment Amount due Property Owner shall be an amount equal to 50% of the Sales Tax (as defined in Section 2(b) of the Agreement) revenue generated by the Project Parcel.

**2. Maximum Discounted Present Value**

After the Payment Amount has been calculated, its discounted present value shall be calculated as follows:

- 2.1 The number of years shall be determined by subtracting 2018 from the calculation year.
- 2.2 The Calculated Discount Factor shall be the number 1.06 raised to a power equal to the number of years calculated above.
- 2.3 The Current Discount Present Value of the Payment shall be equal to the Payment Amount divided by the Calculated Discount Factor from above.
- 2.4 The Cumulative Discounted Present Value of the Payment Amount shall be the sum of the prior Cumulative Discounted Present Value of the Payment Amount plus the Current Discounted Present Value of the Payment Amount.

In no event may a payment be made which would cause the Cumulative Discounted Present Value to exceed \$8 million. Eight million dollars (\$8,000,000) is the Maximum Payment Amount of the cumulative Payment Amounts.

**3. Example Calculation**

**3.1 Calculation Format**

Presented below is an example calculation format for the second full calendar year - 2019, assuming a Store Opening sometime in 2018.

Calculations and adjustments will actually be made at the time each quarterly payment is made by the City during the Calendar Year.

A.	Actual 2019 Sales Tax Revenue Generated by Project		\$1,000,000
B.	2019 Percentage Allocation to Property Owner		50%
C.	2019 Payment Amount	A * B	\$500,000
D.	2019 Base Discount Factor		1.06
E.	Power to Raise Discount Factor (Current Year – 2018)	2019-2018=1	
F.	2019 Calculated Discount Factor		$1.06^1 = 1.06$
G.	2019 Current Discounted Present Value	C / F	\$471,698
H.	Prior Year Cumulative Discounted Value (2018) (Assumes 2018 Payment Amount is \$500,000, no discount applies in first year)		\$500,000
I.	Cumulative Discounted Present Value	G + H	\$971,698
J.	Maximum Cumulative Discounted Present Value		\$8,000,000

Under the above example, the City will have paid Property Owner \$1,000,000 in Sales Tax proceeds for 2018 and 2019, and the City will have received a credit towards the \$8,000,000 Maximum Payment Amount of \$971,698, due to the discount factor. These payments shall continue until the earlier of: (1) the Cumulative Discounted Present Value paid equals \$8,000,000, which could result in a payment of less than 50% of the Sales Tax revenues in the last year of payment (see Limitation, below); or (2) twenty-five (25) years from Store Opening.

Limitation – Cumulative Discounted Present Value (I) cannot exceed Maximum Cumulative Discounted Present Value. In the year in which, Cumulative Discounted Present Value exceeds Maximum Cumulative Discounted Present Value, reduce Payment Amount until Cumulative Discounted Present Value Equals Maximum Cumulative Present Value.

**CITY OF ELK GROVE  
ECONOMIC INCENTIVE AGREEMENT REPORT  
BETWEEN THE CITY OF ELK GROVE AND THE RIDGE EG EAST, LP**

The City of Elk Grove (“City”) proposes to enter into an Economic Incentive Agreement (the “Agreement”) with The Ridge EG East, LP (“Property Owner”) relating to a Costco wholesale and retail general merchandise store to be located at northwest intersection of Civic Center Drive and Babylon Drive in the City of Elk Grove. Property Owner is the proposed landlord and owner of the property at which the Costco project is proposed to be developed. This report includes the information required by Government Code section 53083. This report shall remain available to the public and available on the City’s internet web-site during the duration of the Agreement.

**1. The name and address of all corporations or any other business entities, except for sole proprietorships, that are the beneficiary of the economic development subsidy, if applicable.**

The Ridge EG East, LP; the Ridge EG East, LLC

**2. The start and end dates and schedule, if applicable, for the economic development subsidy.**

The Agreement is anticipated to commence in or about April of 2017 and shall be for a term of no more than 25 years from the opening of the Costco store, or until all payments have been made to Property Owner, whichever occurs first, all as discussed below and as set forth in the Agreement.

**3. A description of the economic development subsidy, including the estimated total amount of the expenditure of public funds by, or of revenue lost to, the local agency as a result of the economic development subsidy.**

Pursuant to the Agreement, the City shall make annual sales tax sharing payment to Property Owner in the amount of 50% of the sales tax generated from the Costco store (as defined in the Agreement) until payments have reached a net present value of up to \$8,000,000, all as calculated and adjusted under the Agreement. Payment shall continue until the earlier of full payment of the \$8,000,000, as provided in the Agreement, or 25 years from the opening of the Costco store, whichever occurs first.

**4. A statement of the public purpose for the economic development subsidy.**

The proposed Agreement serves the public interest and public purpose because the construction and operation of the Costco store will create jobs within the City, promote long-term employment and economic growth in the City and, specifically, the area surrounding the Costco store, expand the range and diversity of its retail sector in the City, result in the generation of sales tax, and contribute to the maintenance, growth, and expansion of the City’s economic base. The development of the Costco store is anticipated to be a catalyst for further economic development in the City and the area surrounding the Costco store. If the economic incentive is

not provided, the Costco store might not be developed within the City, which would result in a loss of the benefits identified above.

### **5. Projected tax revenue to the local agency as a result of the economic development subsidy.**

After payment of the 50% sales tax split between the City and Property Owner, the City projects sales tax revenues to the City of not less than \$300,000 in the first year of operation of the Costco store, escalating at approximately 6% over the course of 25 years, with an estimated sales tax revenue of over \$1,000,000 in year 20 and continuing during the operation of the Costco store. These figures are projections only. Actual sales tax revenue will be dependent on actual sales performance by the Costco store and will vary.

### **6. Estimated number of jobs created by the economic development subsidy, broken down by full-time, part-time, and temporary positions.**

Based on historical operations from similar stores, Costco estimates that the proposed Costco store will create approximately 100 full-time jobs and 100 part-time jobs.



*Incorporated July 1, 2000*

8401 Laguna Palms Way  
Elk Grove, California 95758

**CITY OF ELK GROVE**

Telephone: (916) 683-7111  
Fax: (916) 627-4400  
www.elkgrovecity.org

## **City of Elk Grove – City Council NOTICE OF PUBLIC HEARING**

**NOTICE IS HEREBY GIVEN** that on **Wednesday, April 12, 2017**, at the hour of **6:00 p.m.**, or as soon thereafter as the matter may be heard, the Elk Grove City Council will conduct a public hearing at City Hall in the Council Chambers, 8400 Laguna Palms Way, Elk Grove, California, to consider the following matter:

### **APPROVAL OF AN ECONOMIC DEVELOPMENT INCENTIVE PAYMENT AGREEMENT RELATING TO A COSTCO STORE TO BE LOCATED IN ELK GROVE**

The proposed agreement would consist of economic development incentive payments to be provided from the City to The Ridge EG East, LP, the owner/landlord of property at which a proposed Costco wholesale and retail general merchandise store will be located. The Costco store is to be located at the northwest intersection of Civic Center Drive and Babylon Drive in the City of Elk Grove. The agreement would provide for sales tax sharing between the City and the landlord/property owner in a present value amount of not more than \$8,000,000, as escalated and adjusted over time, all as provided in the agreement. Payment would be made for up to 25 years, or until the entire economic development incentive amount of \$8,000,000, as provided in the agreement, is paid, whichever occurs first. A report containing the information required by Government Code section 53083(a) shall be made publicly available before approval of the agreement. The agreement is not subject to the California Environmental Quality Act (“CEQA”) because the agreement is a financial arrangement and it does not constitute the approval of a project under CEQA. (Pub. Res. Code § 21065, CEQA Guidelines §§ 15060(c), (2)(3); 15061(b)(3); 15378(a)).

Information or questions regarding this item should be referred to the City’s Economic Development Department, 8401 Laguna Palms Way, Elk Grove, CA, 95758, (916)478-3690. All interested persons are invited to present their views and comments on this matter. Written statements may be filed with the City Clerk at any time prior to the close of the hearing scheduled herein, and oral statements may be made at said hearing.

If you challenge the subject matter in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the City Clerk, 8401 Laguna Palms Way, Elk Grove, CA, 95758, at or prior to the close of the public hearing.

**This meeting notice is provided pursuant to Government Code Section 53083.**

Dated/Published: March 31, 2017

JASON LINDGREN  
CITY CLERK, CITY OF ELK GROVE

**ADA COMPLIANCE STATEMENT**

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Office of the City Clerk at (916) 478-3635. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting