CHAPTER 381
ECONOMIC DEVELOPMENT AGREEMENT BETWEEN HAYS COUNTY, TEXAS AND COSTCO WHOLESALE CORPORATION

This Chapter 381 Economic Development Agreement (this "**Agreement**") is entered into between Hays County, a political subdivision of the State of Texas (the "**County**") and Costco Wholesale Corporation, a Washington corporation ("**Costco**"). The County and Costco may be referred to herein individually as a "**Party**" and jointly as the "**Parties**."

RECITALS

WHEREAS, as of the date of this Agreement, Costco has entered into an agreement to purchase approximately 21 acres of land situated in the shopping center commonly known as Kyle Town Center Shopping Center located between Kyle Crossing Road and Interstate Highway 35 in the City of Kyle, Hays County, Texas, as more particularly described on the attached **Exhibit "A"** (the "**Costco Property**"); and

WHEREAS, under authority of Section 52-a of Article III of the Texas Constitution, the Texas Legislature enacted Chapter 381, Texas Local Government Code (Chapter 381), which provides that the governing body of a county may establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the county; and

WHEREAS, the County has taken all necessary legal action to adopt an economic development program in satisfaction of Chapter 381; and

WHEREAS, the County has determined and hereby finds that the development of the Costco Property as contemplated in this Agreement qualifies under the County's economic development program and the incentives granted to Costco in this Agreement comply in all respects with Section 381.004(b), Texas Local Government Code, as amended; and

WHEREAS, in order to induce Costco to acquire and develop the Costco Property, the County desires to offer incentives to Costco over a period of time which, after Costco acquires the Costco Property, will enable Costco to develop, construct, open, operate, and maintain the Costco Property as a wholesale and retail general merchandise facility (the "**Costco Facility**; and

WHEREAS, the development of the Costco Property will add significant new revenue to the County's tax base and will create jobs, which will help stimulate the overall local economy.

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 County and Costco agree as follows:

1.
County's Authority

The County's execution of this Agreement is authorized by Chapter 381 of the Texas Local Government Code. All appropriate and necessary action has been taken to authorize the County Judge to sign on behalf of the County and this Agreement constitutes a valid and binding obligation of the County subject to the terms and conditions set forth in this Agreement. The County acknowledges that Costco is acting in reliance upon the County's performance of its obligations under this Agreement in making its decision to commit substantial resources and money to acquire and develop the Costco Property and that the County is acting in reliance upon the Costco's performance of its obligations under this Agreement in making its decision to commit substantial resources and money to develop the Costco Property. The County's agreement to commit substantial resources to Costco is subject to the satisfaction of the conditions and obligations set forth in this Agreement with respect to Costco and the Costco Property.

2.
Definitions

The foregoing Recitals are incorporated into this Agreement for all purposes. In addition to the terms defined above in the Recitals or elsewhere in this Agreement, as used in this Agreement, the following words or phrases shall have the following meanings:

2.1 "**Acquisition Deadline**" shall mean June 30, 2022.

2.2 **"Certificate of Occupancy"** shall mean a certificate of occupancy issued by the City of Kyle, Texas ("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.

2.3 **"Chapter 381 Payment(s)"** means the amount(s) to be paid by the County to Costco under Article 5 of this Agreement.

2.4 **"County Default"** shall have the meaning set forth in Section 7.2 of this Agreement.

2.5 **"Conditions Satisfaction Deadline"** shall mean the date that is 24 months after the date of the Costco Property Closing, as such Conditions Satisfaction Deadline may be extended by delays caused by Force Majeure.

2.6 **"Costco Default"** shall have the meaning set forth in Section 7.1 of this Agreement.

2.7 "**Costco Facility**" shall have the meaning set forth in the above Recitals.

2.8 "**Costco Property**" shall have the meaning set forth in the above Recitals.

2.9 "**Costco Property Closing**" shall mean the closing of the sale of the Costco Property to Costco as evidenced by the recordation of the deed conveying the Costco Property to Costco.

2.10 **"Effective Date"** means the last date this Agreement is signed by the County and Costco.

2.11 **"Force Majeure"** means any contingency or cause beyond the reasonable control of a Party including, without limitation, (a) war, riots, acts of terrorism, acts of the public enemy, insurrections, civil commotion; (b) labor disputes, a general inability to obtain labor or materials or reasonable substitutes for either, unusual delay in transportation, strikes, slowdowns or work stoppages; (c) acts of God, casualties, explosions, floods, fire, earthquake, tornado, hurricane or other severe and adverse weather conditions; (d) pandemics, epidemics, infectious disease outbreaks, public health emergencies, health and safety circumstances that require individual isolation, quarantine or quarantine-like restrictions, (e) 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 (f) 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).

2.12 **"Gross Leasable Space"** means either air-conditioned and heated space under roof, or space under roof ready for finish-out work (which may include installation of heating, ventilation, and air-conditioning systems) by a tenant under an executed lease.

2.13 **"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"

2.14 **"Permitted Closure"** shall have the meaning set forth in Section 4.2.1 of this Agreement.

2.15 **"Program"** means the economic development program established by the County, as authorized by Chapter 381 of the Texas Local Government Code, to promote local economic development and stimulate business and commercial activity within the County.

2.16 **"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.

2.17 "Sales Tax Revenues" means the amount of sales/use tax that the County receives for transactions arising from and within the Costco Property resulting from the imposition of a local sales tax, less any portion thereof the State is permitted under law to retain.

2.18 "Term of Fifteen Years" means a fifteen (15) year period commencing on the Sales Tax Effective Date and continuing for each consecutive year through the end of the fifteenth year.

2.19 "Term of this Agreement" shall have the meaning set forth in Article 3 of this Agreement.

3.
Term

This Agreement shall become enforceable upon the Effective Date and will terminate on the first to occur of (a) the Term of Fifteen Years; or (b) receipt by Costco of Chapter 381 Payments of Two Million, Five Hundred and Six Thousand, One Hundred and No/100 Dollars ($2,506,100); or (c) upon termination of this Agreement as provided for herein (the "**Term of this Agreement**"). In recognition of the fact that the Chapter 381 Payments are based solely upon receipt by the County of Sales Tax Revenues, and thus, by necessity, are calculated and paid after sales taxes have been levied by and paid to the County and, therefore, will always be paid in arrears, the Term of this Agreement shall be deemed extended until any Chapter 381 Payments relating to Sales Tax Revenues levied during the Term of the Agreement specified above have been paid by the County to Costco. Notwithstanding anything to the contrary set forth in this Agreement, if Costco has not closed on the acquisition of the Costco 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.

4.
Costco's Performance Criteria

4.1 Costco must satisfy all of the following conditions precedent by no later than the Conditions Satisfaction Deadline in order to receive any Chapter 381 Payments hereunder:

4.1.1 Completion of construction of the Costco Facility on the Costco Property containing at least One Hundred Fifty Thousand (150,000) square feet of Gross Leasable Space. This condition shall be satisfied by delivery of a certificate from an architect licensed in the State of Texas certifying the same.

4.1.2 Costco shall have made a capital investment of not less than Fifteen Million Dollars ($15,000,000) in the Costco Facility, including, without limitation, the costs of acquiring the Costco 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 County of a certificate in the form attached hereto as **Exhibit "B"** certifying that Costco has made a total of at least $15,000,000 in capital investment.

4.1.3 A Certificate of Occupancy shall have been issued for the Costco Facility.

4.1.4 The Costco Facility shall have been built in substantial accordance with the City's Code of Ordinances and other applicable laws. This condition shall be satisfied by the issuance of a Certificate of Occupancy.

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

4.1.6 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 County shall have no obligation to pay any Chapter 381 Payments to Costco under this Agreement and this Agreement shall be terminated and the Parties shall have no further obligations under this Agreement.

4.2 Notwithstanding anything 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 180 days, except in connection with, and to the extent of, a Permitted Closure as defined in Section 4.2.1 below, then at any time after such 180 day period, the County shall have the right, via written notice to Costco: (i) to cease payment of all or any of the Chapter 381 Payments to Costco under this Agreement from the 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 County to pay any Chapter 381 Payments which would or may have accrued during such period of ceased occupation or operation; and/or (ii) to terminate this Agreement with respect to Costco if Costco fails to re-open for business to the public (subject to Costco's membership policies) in the Costco Facility within 90 days from the date Costco receives the County's written notice of termination, with such termination being effective as of the 91st day without further notice. 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 in Section 4.2.1 below, for a period of more than 365 days, then at any time after such 365 day period, the County shall have the right, via written notice to Costco: (i) to cease payment of all or any of the Chapter 381 Payments to Costco under this Agreement from the 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 County to pay any Chapter 381 Payments which would or may have accrued during such period of ceased occupation or operation; and/or (ii) to terminate this Agreement with respect to Costco if Costco fails to re-open for business to the public (subject to Costco's membership policies) in the Costco Facility within 90 days from the date Costco receives the County's written notice of termination, with such termination being effective as of the 91st day without further notice.

4.2.1 "**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 (i) as 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, or (ii) as a result of an event of Force Majeure, or (iii) as 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, or (iv) as 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 (v) as 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.

5.
County's Payment of Chapter 381 Payments and Obligations

5.1 Subject to Costco's satisfaction of the performance criteria set forth in Article 4 above, the County shall be obligated to pay to Costco payments based on Sales Tax Revenues as provided in this Article 5, in an amount up to but not to exceed a cumulative total amount of Two Million, Five Hundred and Six Thousand, One Hundred and No/100 Dollars ($2,506,100) over a period not to exceed the Term of Fifteen Years. In no event shall the County be required to make any Chapter 381 Payments to Costco except as provided herein, and subject to satisfaction of the conditions set forth in Article 4 above. The County's obligation to pay Costco shall cease upon payment in full to Costco of Two Million, Five Hundred and Six Thousand, One Hundred and No/100 Dollars ($2,506,100), or the expiration of the Term of this Agreement, even if the full Two Million, Five Hundred and Six Thousand, One Hundred and No/100 Dollars ($2,506,100) has not been paid, whichever occurs first.

5.2 Payments to Costco.

5.2.1 Commencing after the satisfaction of all of the conditions set forth in Section 4.1 above, the County shall pay to Costco annual payments in the amount of fifty percent (50%) of the Sales Tax Revenues arising from and within the Costco Property as received by the County from the Texas Comptroller for the previous calendar year, as reconciled with the sales and use tax information provided by the Texas Comptroller's office. The County 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 4.1 above. The payments shall be for sales tax-generating transactions in that occurred from January 1 to December 31 of the prior calendar year. The County's obligation to pay Costco under this Article 5 shall cease upon Costco's receipt of Chapter 381 Payments totaling of Two Million, Five Hundred and Six Thousand, One Hundred and No/100 Dollars ($2,506,100) in the aggregate, or the expiration of the Term of this Agreement, whichever occurs first. The County shall be required to issue only one (1) check or wire transfer (per wiring instructions provided by Costco) for each annual payment under this Article 5 to Costco or Costco's designee.

5.2.2 A delay in the County's payment obligation in Section 5.2.1 due to a delay in receiving the Sales Tax Revenues and/or sales and use tax information from the Texas Comptroller shall not be considered a default on the part of the County so long as the County uses reasonable efforts to obtain the Sales Tax Revenues and/or sales and use tax information and makes the annual payment to Costco within thirty (30) days after receipt of such Sales Tax Revenues and/or sales and use tax information.

5.2.3 As a condition to obtaining any Chapter 381 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 Chapter 381 Payment to sign) and submit to the County and maintain during the Term of this Agreement), 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 of this Agreement to permit the release of sales tax information relating to the Costco Facility to the County.

6.
Costco's Covenants, Warranties, Obligations and Duties

6.1 Costco hereby makes the following covenants and warranties to the County, and agrees, to timely and fully perform the following obligations and duties.

6.1.1 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.

6.1.2 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, by-

laws, or of any agreement or instrument to which Costco is a party or by which it may be bound.

6.1.3 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.

6.1.4 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.

6.1.5 There are no bankruptcy proceedings or other proceedings currently pending or contemplated, and Costco has not been informed of any potential involuntary bankruptcy proceedings.

6.1.6 Costco shall pay all state and local taxes due and owing by Costco to all taxing authorities having jurisdiction over the Costco 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 6.1.6 shall not constitute a Costco Default under this Agreement, but as a result of such failure, the County shall have no obligation to pay any Chapter 381 Payments to Costco due during the year in which Costco is delinquent in any state and local taxes due and owing by Costco.

6.1.7 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.

6.1.8 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 County's reputation by virtue of the County's relationship with Costco.

6.1.9 Costco acknowledges that for contracts needing Hays County Commissioners Court approval, the County may not accept or enter into a contract until it has received from Costco a completed, signed, and notarized Texas Ethics Commission ("**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.

6.1.10 Pursuant to Chapter 2264 of the Texas Government Code, Costco certifies that as of the Effective Date of this Agreement and throughout the Term of this Agreement, Costco's business, or a branch, division, or department thereof, does not and will not knowingly employ an undocumented worker (as defined in Section 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 County the total amount of Chapter 381 Payments paid to Costco under this Agreement, plus interest at Agreed Rate (as hereinafter defined), not later than the 120th day after the date County 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, (i) 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; (ii) 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 (iii) the date that "County 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. For purposes of this Section "Agreed Rate" shall mean the lesser of: (i) 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 and (ii) the highest lawful rate.

7.
Default

7.1 The following shall constitute a "Costco Default" under this Agreement:

7.1.1 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.

7.1.2 The adjudication of Costco as bankrupt.

7.1.3 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.

7.1.4 Upon the expiration of the notice and cure period set forth in Section 7.3 below, a breach of a material representation under this Agreement by Costco.

7.1.5 Upon the expiration of the notice and cure period set forth in Section 7.3 below, a breach of any material covenant set forth in Section 6.1 of this Agreement.

7.2 The following shall constitute a "County Default" under this Agreement:

7.2.1 The appointment of a receiver of the County, or of all or any substantial part of its property, and the failure of such receiver to be discharged within ninety (90) days thereafter.

7.2.2 The adjudication of the County as bankrupt.

7.2.3 The filing by the County 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.

7.2.4 Upon the expiration of the notice and cure period set forth in Section 7.3 below, a breach of a material representation under this Agreement by the County.

7.2.5 Upon the expiration of the notice and cure period set forth in Section 7.3 below, the County's failure to pay any Chapter 381 Payment owing to Costco in accordance with this Agreement.

7.2.6 Upon the expiration of the notice and cure period set forth in Section 7.3 below, a breach of the County's obligations set forth in Article 9 of this Agreement.

7.3 In the event of the occurrence of a breach or default by Costco or the County under this Agreement, as applicable, the non-defaulting Party shall give written notice to the other Party of such default, and the defaulting Party shall have 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 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 60 additional days. Should a default or breach as described in Sections 7.1.4, 7.1.5, 7.2.4, 7.2.5 or 7.2.6, as applicable, remain uncured after such cure period it shall constitute a Costco Default or County Default, as applicable, and the non-defaulting Party shall have the right to exercise the remedies set forth in Section 7.4 below.

7.4 Remedies.

7.4.1 Upon the occurrence of a Costco Default, the County shall have the right to terminate this Agreement by written notice to Costco, in which event the County shall have no obligation to make any future Chapter 381 Payments to Costco under this Agreement.

7.4.2 Upon the occurrence of a County Default, Costco shall have the right to terminate this Agreement by written notice to the County, in which event Costco shall have no further obligations under this Agreement.

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

7.4.4 Under no circumstances shall the County be entitled to a refund of any Chapter 381 Payments that have been paid to Costco, except as provided in Section 6.1.10, and further provided that the County shall be entitled to recapture any Chapter 381 Payments which were made based upon 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 County shall be entitled to any action to recover any amounts owed by Costco as provided in the foregoing sentence.

7.4.5 Upon the occurrence of a County 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 Chapter 381 Payments owing to Costco by the County under this Agreement.

7.4.6 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, THE COUNTY 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. THE COUNTY DOES NOT OTHERWISE WAIVE IMMUNITIES EXISTING UNDER APPLICABLE LAWS, AND IT IS EXPRESSLY UNDERSTOOD THAT THE WAIVER HERE GRANTED IS A LIMITED AND NOT A GENERAL WAIVER, AND THAT ITS EFFECT IS LIMITED TO SPECIFIC CLAIMS UNDER THIS AGREEMENT.

7.4.7 If any legal action or proceeding is commenced by the County or Costco 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.

7.4.8 The sole and exclusive remedies of Costco for a breach by the County under this Agreement, and the County's sole and exclusive remedies for a breach by Costco under this Agreement, shall be those expressly provided for in this Section 7.4 and elsewhere in this Agreement. Costco and the County each hereby waives any other remedies under law or in equity.

7.4.9 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.

7.4.10 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.

7.4.11 Any waiver granted by one Party to the other 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.

8.
County's Liability Limitations

The County is making payments under this Agreement solely and exclusively from the Sales Tax Revenues it receives from the Texas Comptroller related to the Costco Property and such funds are not financed and will not be financed or otherwise paid from any other source. Under no circumstances shall the County's obligations 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.

9.
Additional County Representations, Warranties, and Agreements

9.1 County's Authority. The County represents and warrants to Costco the Program and this Agreement are within its authority, and that it is duly authorized and empowered to establish the Program and enter into this Agreement.

10.
Miscellaneous Provisions

10.1 Changes in Law. If, during the Term of this Agreement, State law applicable to local sales taxes changes and, as a result, the Chapter 381 Payments differ from the amount which would have been paid to Costco under the laws in effect as of the Effective Date, then the County,

in its sole discretion, may adjust the Chapter 381 Payments utilizing whatever discretionary taxes and revenues are legally available to the County to be allocated to the Chapter 381 Payments. The foregoing does not require the County to use funds from sources which are not within the County's discretion to allocate to the Costco 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 of this Agreement, including without limitation a change in law, that prevents or prohibits the County 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.

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

10.3 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 County, 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 County hereby consents 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 County with written notice of any such assignment.

10.4 Notice. Any notice or other communication ("**Notice**") given under this Agreement shall be in writing, and may be given: (i) by depositing the Notice in the United States Mail, postage paid, certified, and addressed to the Party to be notified with return receipt requested; (ii) by personal delivery of the Notice to the Party; (iii) by depositing the notice with Federal Express or another nationally recognized courier service for next day delivery; or (iii) by confirmed facsimile, provided that a copy of the Notice is also given in one of the manners specified in (i), (ii), or (iii). Notice shall be effective upon receipt or refusal of delivery by the Party to be notified. For the purposes of Notice, the addresses of the Parties are, until changed as provided below, be as follows:

County:	Hays County, Texas 111 E. San Antonio Street, Suite 300 Attn: County Judge San Marcos, TX 78666
with a copy to:	Office of General Counsel 111 E. San Antonio Street, Suite 202 San Marcos, Texas 78666 Fax: (512) _____
Costco:	Costco Wholesale Corporation 999 Lake Drive

Issaquah, Washington 98027
Attn: Property Management Department
Fax: (425) 318-8114

with a copy to: Thompson & Knight LLP
One Arts Plaza
1722 Routh Street, Suite 1500
Dallas, TX 75201
Attn: Ray T. Khirallah
Fax: (214) 969-1751

A Party may designate a different address at any time by giving Notice to the other Party.

10.5 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.

10.6 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 County nor its 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 Costco Property or the design, construction or operation of any portion of the Costco Property.

10.7 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 Hays County, Texas. The Parties consent to, and waives any objections to, in person jurisdiction in Hays County, Texas.

10.8 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.

10.9 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.

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

10.11 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which will constitute one and 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.

10.12 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	–	Legal Description of Costco Property
Exhibit B	–	Form of Certificate Regarding Capital Investment
Exhibit C	–	Agreement for Disclosure of Confidential Information
Exhibit D	–	TEC Form 1295

10.13 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.

10.14 Confidentiality. The Couny acknowledges that the information regarding sales taxes generated by the Costco Property is commercial or financial information which is proprietary and confidential, the disclosure of which could cause competitive harm to Costco and/or its respective tenants, subtenants and/or licensees, as applicable. To the maximum extent permitted by law, the County and elected officials, officers, directors, and employees, and its agents or contractors retained to perform economic development services for County (hereinafter the "**County Parties**") (i) shall 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 Costco 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 County shall immediately notify Costco of requests, Attorney General Opinions, and court orders to release such information. The County shall be permitted to disclose the foregoing information to such of the County Parties as the County, in its reasonable discretion, deems appropriate in furtherance of the purposes of this Agreement, so long as the County makes such disclosure subject to compliance by such County Parties with the terms of this Section 10.14.

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

IN WITNESS WHEREOF, the Parties have executed this Agreement and caused this Agreement to be effective on the latest date as reflected by the signatures below.

HAYS COUNTY
a political subdivision of the State of Texas

By: _____
Ruben Becerra
Hays County Judge

Date: 7-27-2021

ATTEST:

_____
Elaine Cardenas, MBA, PhD
Hays County Clerk

IN WITNESS WHEREOF, the Parties have executed this Agreement and caused this Agreement to be effective on the latest date as reflected by the signatures below.

COSTCO WHOLESALE CORPORATION,
a Washington corporation

By: _____
Name: PAT CALLANS
Title: EVP

Date: 7/28/21

STATE OF Washington §
§
COUNTY OF King §

This instrument was acknowledged before me on the 28 day of July, 2021, by Pat Callans, the EVP of Costco Wholesale Corporation, a Washington corporation, on behalf of said corporation.

_____
Notary Public, State of Washington

S GARDNER
17915
NOTARY
PUBLIC
COMMISSION EXPIRES 05-06-25
STATE OF WASHINGTON

EXHIBIT A

LEGAL DESCRIPTION OF COSTCO PROPERTY

Lot 6, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas.

Lot 14, KYLE TOWNE CENTER, REPLAT OF LOT 1-A, BLOCK A, a subdivision in Hays County, Texas, according to the map or plat of record in Document No. 20015578, of the Plat Records of Hays County, Texas.

EXHIBIT B

FORM OF CAPITAL INVESTMENT CERTIFICATION

Re: CHAPTER 381 ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE HAYS COUNTY, TEXAS AND COSTCO WHOLESALE CORPORATION; CAPITAL INVESTMENT CERTIFICATION

This Capital Investment Certification is being delivered by Costco Wholesale Corporation ("Costco") in connection with that certain Economic Development Agreement between Hays County, Texas (the "County") and Costco effective as of _____, 2021 (the "Agreement"). All terms used herein have the meanings ascribed to them in the Agreement unless otherwise defined herein.

1. The undersigned authorized officer of Costco hereby certifies to the County that Costco has made a capital investment of not less than Fifteen Million Dollars as follows:

Land Acquisition Costs:	approximately $_____
Hard and Soft Construction Costs:	approximately $_____
Equipment and Fixtures:	approximately $_____
Other (does not include inventory):	approximately $_____

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

AGREEMENT FOR DISCLOSURE OF CONFIDENTIAL TAX INFORMATION

This Agreement for Disclosure of Confidential Tax Information (this "Agreement") is entered into between the Hays County, Texas (the "County") 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 County any and all sales and use tax information pertaining to Taxpayer's business in the Costco wholesale/retail facility located in the shopping center commonly known as Kyle Town Center Shopping Center situated between Kyle Crossing Road and Interstate Highway 35 in Kyle, Texas. This waiver applies only to the Costco wholesale/retail facility located in the shopping center commonly known as Kyle Town Center Shopping Center situated between Kyle Crossing Road and Interstate Highway 35 in Kyle, Texas.

The undersigned Taxpayer understands and agrees that this release will be made by the Texas Comptroller's Office to the County 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 County agrees that the County will use the sales and use tax information disclosed by the Texas Comptroller pursuant to this Agreement solely and exclusively for the purposes under the Chapter 381 Economic Development Agreement Between the Hays County, Texas and Costco Wholesale Corporation, and subject to the terms thereof.

This Agreement is entered into in Hays County, Texas, and Texas law will apply to its interpretation and enforcement.

SIGNED AND AGREED TO on this ____ day of _____, 2021

_____

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

Texas Taxpayer ID Number

Tax Outlet Number
(As Shown on Texas Sales Tax Permit)

Taxpayer's Authorized Signature*

Print Name of Authorized Signature

Position of Authorized Signature

*The authorized signature must be that of an owner, officer, director, partner, or agent authorized to sign a Texas Sales Tax Return. If you have any questions concerning this waiver of confidentiality, please contact the Texas Comptroller of Public Accounts at 1 (800) 531-5441.

Hays County, Texas

County's Authorized Signature*

Print Name of Authorized Signature

Position of Authorized Signature

EXHIBIT D

TEC Form 1295

To be attached upon receipt from Costco