

## SALES TAX REVENUE SHARING AGREEMENT

This **SALES TAX REVENUE SHARING AGREEMENT** (this “**Agreement**”) is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2020 (“**Effective Date**”), by and between **COSTCO WHOLESALE CORPORATION**, a Washington corporation (“**Costco**”), and the **CITY OF NAPERVILLE**, an Illinois home rule municipal corporation (the “**CITY**”). Costco and the City are hereinafter individually sometimes referred to as a “**Party**” and collectively as the “**Parties.**”

### RECITALS

- A. **WHEREAS**, the City is a home rule municipality in accordance with Article VI of the Constitution of the State of Illinois of 1970 and is entering into this Agreement pursuant to its authority as a home rule unit; and
- B. **WHEREAS**, Costco is the contract purchaser of approximately 20 acres of real property located west of the intersection of Naperville-Wheaton Road and Ogden Avenue in the City of Naperville Illinois (the “**Property**”); and
- C. **WHEREAS**, Costco intends to acquire the Property and undertake the development and construction of a wholesale and general merchandise facility and vehicle fueling facility (the “**Project**”); and
- D. **WHEREAS**, the City seeks to encourage commencement and completion of the Project and, in order to make the Project economically feasible, the City has agreed to rebate to Costco a portion of the Sales Taxes (as defined below) that are generated by the Project and received by the City in accordance with the terms of this Agreement (the “**Rebate**”); and
- E. **WHEREAS**, Costco would not proceed with the acquisition of the Property and the construction of the Project without the Rebate.

**NOW, THEREFORE**, in consideration of the foregoing recitals, the covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals.** The recitals set forth above are expressly incorporated into this Agreement by this reference thereto as if fully set forth in this Section 1.
2. **Definitions.** For purposes of this Agreement, the following terms shall have the meanings set forth below.

- a. **Commencement Date.** The date on which Costco opens the Project to the public for retail, wholesale and gasoline sales, or January 1, 2022, whichever shall first occur.
- b. **Municipal Code.** The Municipal Code of the City of Naperville.
- c. **Payment Date.** That date which is within 30 days of the last to occur of i) the receipt of the necessary documentation from the Illinois Department of Revenue (“IDOR”) to establish the amount of retailers’ occupation tax collected from, and paid to the State by, Costco and ii) the actual receipt by the City from the IDOR of the total amount of the City’s periodic distributive share of such retailers’ occupation tax collected from, and paid to the State by, Costco. Based on information provided to the City by the IDOR, the City anticipates that the IDOR will provide the relevant documentation to establish the amount of retailers’ occupation tax collected and paid to the State of Illinois by the Project three times per year: in June (for tax collections made during the preceding January through April), October (for tax collections made during the preceding May through August) and February (for tax collections made during the preceding September through December).
- d. **Project.** Shall have the meaning set forth in Recital C.
- e. **Property.** Shall have the meaning set forth in Recital B.
- f. **Rebate.** Shall have the meaning set forth in Recital D.
- g. **Rebate Amount.** Shall have the meaning set forth in Section 4.
- h. **Remittance Statement.** A written statement prepared by the City setting forth the amount of Sales Taxes remitted to Costco concurrently therewith and the balance of funds remaining to be paid.
- i. **Sales Taxes.** Shall mean the sum of: (1) the taxes imposed from time to time by the State as a retailers’ occupation tax, service occupation tax, use tax, service use tax or any other so-called “sales tax” or similar tax that are paid to the State and remitted to the City; and (2) the home rule sales taxes imposed from time to time by and paid to the City.
- j. **State.** The State of Illinois.

3. **Rebate.** Subject to the terms and conditions of this Agreement, the City agrees to remit to Costco 75% of the Sales Taxes generated by the Project during the term of this Agreement and actually received by the City up to the Rebate Amount due hereunder.
4. **Rebate Amount and Termination.**
  - a. Costco shall be entitled to a Rebate in the amount of Five Million Five Hundred Thousand and No/100s Dollars (\$5,500,000.00) (the “**Rebate Amount**”).
  - b. The obligation of the City to pay the Rebate Amount shall terminate upon the expiration of the term of this Agreement as set forth in Section 6 below. Notwithstanding the foregoing, upon expiration of such term the City shall pay to Costco the unpaid portion of the Rebate Amount owed to Costco. Nothing in this Agreement shall obligate the City to make any payment toward the Rebate Amount from any source of funds other than the Sales Taxes generated by the Project during the term of this Agreement and actually received by the City.
  - c. The obligation of the City to pay the Rebate Amount shall likewise terminate in the event the Project shall, at any time after opening to the public, cease to operate for a period of more than six (6) consecutive months, plus any “Excepted Closure Period” (as hereinafter defined). For purposes of this Section 4.c, “**Excepted Closure Period**” shall mean any period of closure due to: (i) casualty, repair, reconstruction, remodeling, or re-fixturing if Costco is proceeding with reasonable diligence to complete the work and reopen for business; or (ii) unavoidable events outside the reasonable control of Costco, including but not limited to acts of God, condemnation, other governmental rules, orders, acts or requirements, war, insurrection, riot and labor disputes (but excluding financial inability or economic conditions).
  - d. Costco and the City acknowledge that the City’s obligation hereunder to pay the Rebate Amount assumes that the current provisions of Illinois law concerning the payment of a distributive share to the City of the Sales Taxes by the State of Illinois or the IDOR (“**Sales Tax Distribution Law**”) will continue to exist in the same or substantially the same form during the term of this Agreement, but further acknowledge that the Illinois General Assembly has from time to time considered modifying or repealing the Sales Tax Distribution Law. In the event that the State of Illinois amends or repeals the Sales Tax Distribution Law in any way that eliminates the distribution of any of the Sales Taxes to the Village, or that modifies the distribution of any of the Sales Taxes to the City in any way that prevents the City and Costco from determining with a reasonable degree of certainty the amount of Sales Taxes generated by the Project and paid to the City, the obligation of the

City hereunder to pay the Rebate Amount shall terminate as of the effective date of such amendment or repeal of the Sales Tax Distribution law with respect to the underlying Sales Taxes affected by such amendment or repeal.

5. **Payments.** The City shall make payments to Costco on each Payment Date from and after the Commencement Date for the term of this Agreement and shall concurrently deliver to Costco a Remittance Statement reflecting such payments. Such payments shall be made solely from 75% of the Sales Taxes generated from the Project that is collected directly by, or remitted to, the City during the term of this Agreement and agreed to be rebated by the City to Costco pursuant to Section 3. The payments shall be sent to Costco at the address set forth in Section 9 or to such other address as Costco may hereafter provide by notice. Only monies paid to Costco by the City shall be applied to the Rebate.
6. **Term.** The term of this Agreement shall end on the first to occur of: (a) the fifteenth (15<sup>th</sup>) anniversary of the Commencement Date; and (b) the date Costco has been paid the entire Rebate Amount. This Agreement shall remain in effect, notwithstanding the foregoing, for purposes of audit, final accounting, and payment and for purposes of enforcement actions hereon.
7. **Mutual Assistance.** The City and Costco agree to do all things necessary or appropriate to carry out, and to aid and assist each other in carrying out, the terms of this Agreement and in implementing the Parties' intent, as reflected by the terms of this Agreement, including, without limitation, the giving of such notices, the holding of such public hearings, the enactment by the City of such resolutions and ordinances and the taking of such actions as may be necessary to enable the Parties' compliance with the terms and provisions of this Agreement and as may be necessary to give effect to the terms and provisions of this Agreement and the Parties' intentions as reflected by the terms of this Agreement. No waiver of City regulations shall be inferred from this Agreement, except as specifically set forth.
8. **Reporting.** Costco shall provide the City with certified copies (i.e., certified by a representative of Costco) of all ST-1 and/or ST-2 sales tax reporting forms, or any successor reporting forms, filed with the State relating to the operation of the Project promptly after filing same with the State. To the maximum extent permitted by law, the City shall maintain the confidentiality of the information contained in the ST-1 and/or ST-2 reports provided by Costco to the City, but shall be permitted to disclose such information to such City employees and consultants as the City, in its sole discretion, deems appropriate in order to monitor compliance and audit this Agreement. To the extent permitted by law, the City shall refuse to disclose information received from the State or otherwise contained in such ST-1 and/or ST-2 or similar reporting form pursuant to the applicable exemptions from the Illinois Freedom of Information Act or similar statute, and in the event the City

receives a request pursuant to the Illinois Freedom of Information Act or similar statute which the City determines to be exempt, then the City shall notify Costco prior to the City refusing to provide such information, and provide Costco with a copy of the request. Costco shall then have the opportunity, within three (3) business days (or such lesser period of time as may be necessary for the City to respond to the request within the statutory time period), to notify the City as to whether it consents or objects to the request. If no notice is given within said time period, the City may disclose the information.

9. **Notices.** All notices, demands, consents, approvals and other communications which are required or desired to be given by either Party to the other hereunder shall be in writing and shall be hand delivered or sent by United States registered or certified mail, postage prepaid, return receipt requested, addressed to the appropriate Party at its address set forth below, or at such other address as such Party shall have last designated by notice to the other. Notices, demands, consents, approvals, and other communications shall be deemed given when delivered or three days after mailing; provided, however, that if any such notice or other communication shall also be sent by telecopy or fax machine, such notice shall be deemed given at the time and on the date of machine transmittal if the sending Party receives a written send verification on its machines and forwards a copy thereof with its mailed or courier delivered notice or communication.

All notices to the City shall be sent to:

City of Naperville  
400 South Eagle Street  
Naperville, IL 60540  
Attn: City Manager Douglas Krieger  
Email: kriegerd@naperville.il.us

With copy to:

City of Naperville  
400 South Eagle Street  
Naperville, IL. 60540  
Attn: City Attorney Michael DiSanto  
Email: disantom@naperville.il.us

All notices to Costco shall be sent to:

Costco Wholesale Corporation  
999 Lake Drive  
Issaquah, WA 98027  
Attn: Bruce Coffey  
Email: bcoffey@costco.com

With copy to:

Meltzer, Purtill & Stelle LLC  
1515 East Woodfield Road, Suite 250  
Schaumburg, Illinois 60173  
Attn: Peter Levy  
Email: plevy@mpslaw.com

10. **Default/Remedies.** The failure of a Party to materially comply with its obligations under this Agreement shall constitute a default by such Party. The Party claiming the occurrence of such default shall notify the other Party of same specifying the nature of the default and shall demand performance by the defaulting Party within thirty (30) day of the date of the notice specifying such default. Unless, within such thirty (30) day period either (a) the defaulting Party, (i) cures such default, or (ii) if it is not reasonable to sure the default within said thirty (30) day period, the Party in default commences action to cure such default and completes the curing of such default within a reasonable time or (b) the Party claiming default, by written notice given to the defaulting Party, either waives the default or grants the defaulting Party a longer period to cure, then, after the expiration of such thirty (30) period or such longer period as the Party claiming the default my grant or the Party in default may be entitled under the foregoing clause (a)(ii), without, in any such case, such default not being cured or waived, the Party claiming the default may pursue all remedies available at law and equity, including specific performance.

In the event legal action or other proceeding is brought for enforcement of this Agreement or with respect to an alleged breach, default or misrepresentation, the successful or prevailing Party shall be entitled to recover from the non-prevailing Party its reasonable attorneys' fees and related costs (including any fees and costs incident to appeals) in addition to any other relief hereunder to which such Party may be entitled.

11. **Governing Law.** This Agreement shall be governed by the laws of the State of Illinois, and the venue shall be DuPage County.
12. **Appropriation.** To the extent the City is required to do so by law, the City has taken (or shall take) such actions as may be required from time to time to appropriate funds pursuant to Illinois law to satisfy its obligations to Costco under this Agreement.
13. **Integration.** This Agreement contains the entire agreement of the Parties with respect to the transactions contemplated by this Agreement. All prior agreements, negotiations, and understandings are expressly merged herein and superseded hereby.
14. **Severability.** Each section of this Agreement, and each sentence, clause or phrase contained in such section, shall be considered severable and if, for any reason, any section,

or any sentence, clause or phrase contained in such section, is determined to be invalid or unenforceable, such invalidity or unenforceability shall not impair the operation or affect enforceability or validity of the remaining portions of this Agreement.

15. **Amendment.** This Agreement may be amended by, and only by, a written instrument authorized in accordance with law and signed by both Parties.
16. **Successors and Assigns.** This Agreement shall inure to the benefit of, and be binding upon: (i) the City and any successor corporate authorities of the City; and (ii) Costco. This Agreement may not be assigned by Costco to any grantee, lessee, assign or other third party without the City's consent, which consent shall not be unreasonably delayed, withheld or conditioned.
17. **Effectiveness of this Agreement.** Nothing contained in this Agreement shall be deemed or construed to impose any duty or obligation upon Costco to acquire the Property, to undertake the development and construction of the Project or any other on-site or off-site improvements or to operate the Project, it being expressly acknowledged and agreed, however, that the City's obligations to Costco hereunder are premised and conditioned on the generation of Sales Taxes from the Project as the sole source of reimbursement hereunder.
18. **Counterparts; Facsimile Signatures.** This Agreement may be executed in more than one counterpart, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Facsimile or other electronically transmitted signatures on this Agreement shall constitute originals signatures of the Parties.
19. **Construction.** Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
20. **Time is of the Essence.** Time is of the essence of this Agreement and of each and every provision hereof.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the dates set forth below their respective signatures, to be effective as of the Effective Date.

**COSTCO WHOLESALE CORPORATION,**  
a Washington corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**CITY OF NAPERVILLE,**  
an Illinois municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_