



Staff Report

March 12, 2019

TO: Honorable Mayor and Members of the Town Council
 FROM: Sean Rabé, Town Manager
 DATE: March 4, 2019
 RE: Reimbursement Agreement Amendment with Costco

Recommendation

Staff recommends the Town Council approve the attached resolution and authorize the Town Manager to enter into a second agreement amendment with Costco Wholesale Corporation for project processing associated with the Costco Retail Warehouse project. This agreement amendment will bring the deposit amount under the agreement to \$955,000.

Issue Statement and Discussion

The Town of Loomis entered into a reimbursement agreement with Costco Wholesale Corporation in March 2017, which initially required a deposit amount of \$2,305,000 for project processing for the Costco Retail Warehouse project. A first agreement amendment was approved by Council in May 2017, that adjusted the deposit amount to \$813,280 (the original erroneously included permit costs, which would normally be paid when permits for the project are issued).

Because of the recirculation of the Draft Environmental Impact Report and other project processing costs, Staff has identified the need for additional deposit of funds. The attached second agreement amendment will bring the total amount of the deposit to \$955,000.

The Draft Environmental Impact Report for the project is currently being revised and will be recirculated in the upcoming months. During the review period the Town and Costco also identified changes to the proposed project. These changes require an increased deposit of funds for the Town to continue processing the project.

Staff is prepared to answer any questions you may have.

CEQA Requirements

There are no CEQA implications associated with the recommended action.

Financial and/or Policy Implications

The agreement amendment provides an additional deposit amount of \$141,720.

Attachments

- A. Resolution
- B. Costco Wholesale Corporation Agreement Amendment 2
- C. Revised Project Processing and Permit Estimate
- D. Reimbursement Agreement Amendment 1
- E. Original Reimbursement Agreement

TOWN OF LOOMIS

RESOLUTION NO. 19 - __

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOOMIS
AMENDING THE AGREEMENT FOR ADVANCEMENT OF FUNDS, REIMBURSEMENT AND
INDEMNIFICATION FOR PREPARATION OF PLANNING PERMITS, REPORTS, STUDIES, AND
ENVIRONMENTAL REVIEW DOCUMENTS AS REQUIRED BY THE LOOMIS MUNICIPAL CODE
AND THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

WHEREAS, the Town and Costco entered into the March 14, 2017 Agreement For Advancement Of Funds, Reimbursement And Indemnification For Preparation Of Planning Permits, Reports, Studies, And Environmental Review Documents As Required By The Loomis Municipal Code And The California Environmental Quality Act ("AGREEMENT"), to provide for a deposit of funds to reimburse the Town for the costs of the Costco project processing; and

WHEREAS, on May 9, 2017, the Town Council approved a first amendment to the AGREEMENT to adjust the deposit to \$813,280, which represented the Town's estimate for project processing costs; and

WHEREAS, the Town has identified additional funds required to complete the project processing due to a recirculation of the Draft Environmental Impact Report; and

WHEREAS, the Town and Costco Wholesale Corporation now desire to approve a Second Amendment to the AGREEMENT to increase the total deposit amount under the AGREEMENT to \$114,000.

NOW, THEREFORE, IT IS MUTUALLY AGREED by parties hereto to amend said Contract as follows:

- I. Amendment. Section 4 of the Contract is hereby amended by replacing the figure \$813,280 with \$955,000.
- II. Remaining Terms Unaffected:

Except as expressly provided herein, nothing in this Amendment shall be deemed to waive or modify any of the other provisions of the AGREEMENT. In the event of any conflict between this Amendment and the AGREEMENT, the terms of this Amendment shall control.

PASSED AND ADOPTED by the Town Council of the Town of Loomis this 12th day of March, 2019 by the following vote:

AYES:
NOES:
ABSTAINED:
ABSENT:

Mayor

ATTEST:

Town Clerk

**AMENDMENT NO. 2
TO THE AGREEMENT FOR ADVANCEMENT OF FUNDS, REIMBURSEMENT AND
INDEMNIFICATION FOR PREPARATION OF PLANNING PERMITS, REPORTS, STUDIES,
AND ENVIRONMENTAL REVIEW DOCUMENTS AS REQUIRED BY THE LOOMIS
MUNICIPAL CODE AND THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

This Amendment No. 2 to the Agreement between the **Town of Loomis** ("Town") and Costco Wholesale Corporation, which was entered into on March 14, 2017, is made and entered into this 12th day of March, 2019 (the "Effective Date").

RECITALS

WHEREAS, the Town and Costco entered into the March 14, 2017 Agreement For Advancement Of Funds, Reimbursement And Indemnification For Preparation Of Planning Permits, Reports, Studies, And Environmental Review Documents As Required By The Loomis Municipal Code And The California Environmental Quality Act ("AGREEMENT"), to provide for a deposit of funds to reimburse the Town for the costs of the Costco project processing; and

WHEREAS, on May 9, 2017, the Town Council approved a first amendment to the AGREEMENT to adjust the deposit to \$813,280, which represented the Town's estimate for project processing costs; and

WHEREAS, the Town has identified additional funds required to complete the project processing due to a recirculation of the Draft Environmental Impact Report; and

WHEREAS, the Town and Costco Wholesale Corporation now desire to approve a Second Amendment to the AGREEMENT to increase the total deposit amount under the AGREEMENT to \$114,000.

NOW, THEREFORE, IT IS MUTUALLY AGREED by parties hereto to amend said Contract as follows:

I. Amendment. Section 4 of the Contract is hereby amended by replacing the figure \$813,280 with \$955,000.

II. Remaining Terms Unaffected:

Except as expressly provided herein, nothing in this Amendment shall be deemed to waive or modify any of the other provisions of the Contract. In the event of any conflict between this Amendment and the Contract, the terms of this Amendment shall control.

IN WITNESS WHEREOF the parties hereto have executed this Amendment as of the Effective Date.

Town of Loomis

Costco Wholesale Corporation

By: _____
Sean Rabe, Town Manager

By: _____

Attest:

Approved as to form:

By: _____
Charleen Strock, Town Clerk

By: _____
Jeffrey Mitchell, Town Attorney

LOOMIS COSTCO ESTIMATED BUDGET - 1/23/2019				
Estimate through February 2020				
	Item	Notes	Town of Loomis Fee\Cost	Estimate of Fees by Others
Permits, Fees & Assessments				
<i>Agency Permits and Fees</i>				
	Fire Fees	South Placer Fire Department (\$1.32 per sq. foot)		\$211,200
	Health Department Fee	Placer County Environmental Health Division		Unknown
	School Impact Fees	Loomis Union Elementary (\$0.37 per sq foot)		\$59,200
	School Impact Fees	Placer Union High School Districts (\$0.244 per sq foot)		\$39,040
	Air Quality Impact Fees	Placer County Air Pollution Control District		Unknown
	Sewer Impact Fees	South Placer Municipal Utility District		Unknown
	Water Impact Fees	Placer County Water Agency		Unknown
	Storm Drainage Impact Fees	Placer County Flood Control		Unknown
	Water Connection and Meter Fees (Domestic)	Placer County Water Agency		Unknown
	Fire Service Connection Fee (10" -12" service)	Placer County Water Agency		Unknown
	Sewer Connection & Lateral Fees\ Inspections	South Placer Municipal Utility District		Unknown
	Fire Permits and Inspections	South Placer Fire Department (\$1.32 per sq. foot)		Unknown
	Gas Station Permits and Fees (Health Dept)	Placer County Environmental Health Division		Unknown
	Erosion and Sediment Control Plan	State of California		Unknown
	NPDES C3 Review	State of California		Unknown
	Habitat Conservation Impact Fees	Various State and Federal Agencies		Unknown
		Sub-Total Agency Permits & Fees	\$0	\$309,440
<i>Loomis Permits and Fees</i>				
	Building and Associated Fees	See Attached Table for Details	\$1,342,320	
	Engineering Plan Check Fees	(3% of Improvement costs) (Improvement Costs based on submittal of improvement plans)	TBD	
	Design Review		\$1,507	
	Conditional Use Permit Application		\$3,800	
	Sign application and review		\$93	
	Lot Line Adjustment\Reversion to Acreage	Costco determined to file after title of land is obtained.	\$2,002	
	Town Alcohol Permit		\$170	
	Tree Removal Permit (Fees to be determined)	To be determined based on mitigation plan.	TBD	
	GPA/Rezone Combination		\$3,702	
	Grading Permits	(3% of grading improvement cost) (based on soil to be moved)	TBD	
	Encroachment Permit	Note: Rocklin may have an encroachment fee.	\$198	TBD (Rocklin)
	Technology Fee	(1% of fees)	\$0	
	Notice of Determination (Placer County Filing Fee)		\$3,128	
	Permit and Geometric Plan Review (Public Works)	(3% of Improvement Costs)	TBD	
		Sub-Total Loomis Permits & Fees	\$1,356,920.25	\$309,440
Loomis Staff and Town Costs				
	Planning Review and Management		\$ 65,000	
	Engineering Review and Management		\$ 65,000	
	Finance		\$ 20,000	
		Sub-Total Loomis In-House Costs	\$ 150,000	
Consultant and Studies				
	CEQA EIR Consultant and Studies		\$ 350,000	
	Program management		\$ 150,000	
	Town Traffic Consultant		\$ 30,000	
	Town Attorney		\$ 275,000	
		Sub-Total Consultants and Studies	\$ 805,000	
		Total:	\$2,311,920	\$309,440
		Grand Total Town and Partial others		\$2,621,360
	Initial Deposit per March 7, 2017 resolution			\$ 813,280
	Town Staff and Consultant Estimate			\$ 955,000
	Additional Funds Required			\$ 141,720

**AGREEMENT FOR ADVANCEMENT OF FUNDS, REIMBURSEMENT AND
INDEMNIFICATION FOR PREPARATION OF PLANNING PERMITS,
REPORTS, STUDIES AND ENVIRONMENTAL REVIEW DOCUMENTS AS
REQUIRED BY THE LOOMIS MUNICIPAL CODE AND THE CALIFORNIA
ENVIRONMENTAL QUALITY ACT (CEQA)**

AMENDMENT #1

1. The Town and Costco entered into the above-referenced agreement approved by the Town Council on March 13, 2017;
2. The agreement, under Section 4, required a deposit of funds in the amount of \$2,305,000 (Two Million, Three Hundred and Five Thousand Dollars) to be used to reimburse the Town for costs incurred in analyzing the environmental impacts of and processing the application for the project. The amount also included fronting of development and other fees as initially requested by Costco.
3. The amount of deposit set forth in Section 4 is hereby amended to read \$813,280 (Eight Hundred Thirteen Thousand, Two Hundred and Eighty Dollars).
4. All other terms and provisions of the amendment remain in full force and effect.

Approved by the Loomis Town Council on May 9, 2017.

Town of Loomis
A municipal corporation

By:


Joan L. Phillippe
Town Manager

Dated:

May 11, 2017

Costco Wholesale Corporation
a Washington corporation

By:


Michael Okuma, on behalf of Costco
Director of Real Estate Development

Dated:

05/15/17

AGREEMENT FOR ADVANCEMENT OF FUNDS, REIMBURSEMENT AND INDEMNIFICATION FOR PREPARATION OF PLANNING PERMITS, REPORTS, STUDIES AND ENVIRONMENTAL REVIEW DOCUMENTS AS REQUIRED BY THE LOOMIS MUNICIPAL CODE AND THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

This Agreement ("Agreement") is made this 14th day of March 2017, by and between the Town of Loomis, a municipal corporation (the "Town"), and Costco, a Washington corporation (the "Applicant"). The Town and Applicant are collectively referred to as the "Parties."

RECITALS

This Agreement is made with respect to the following facts:

A. The Applicant is in contract to purchase that certain real property located southeast of Sierra College Blvd. and Brace Road, within the Town of Loomis, County of Placer, California and further identified as APNs: 044-042-011, -012, -034, -035, 036 and 037 (the "Property").

B. The Applicant is contemplating the development of the Property for the purpose of a Wholesale Retail Business "Costco" at Loomis, requiring a zone text amendment, a zone map amendment, a conditional use permit, design review, tree removal permits, subdivision map and other approvals as may be determined by the Town and as required by other governmental agencies, subject to the preparation of an environmental impact report (EIR) as required by the California Environmental Quality Act (CEQA). All of the above shall be referred to collectively as the "Project."

C. As a condition to the Town's completion of the Project EIR, the Applicant has agreed to advance an initial deposit and to subsequently reimburse the Town for all costs, fees, and expenses related to the Project EIR in the manner and amounts set forth in this Agreement whether such fees, costs, or expenses are incurred before or after Applicant submits a formal application to the Town and whether Applicant pursues any such application to completion. The Applicant's reimbursement of Town costs, fees, and expenses under this Agreement is for the purpose of ensuring that Town has the necessary resources to diligently and efficiently process the Project EIR.

D. It is the intent of this Agreement that Applicant shall pay for all fees, costs, and expenses associated with the processing of a project application. This includes but is not limited to the Project EIR, preparation of all documentation, agreements, studies, analyses, legal services, and any other activity reasonably associated with the Project, which will include, but not be limited to, the cost of in-house Town staff time and any Consultants (as herein below defined) retained by the Town, and that this Agreement shall be construed broadly to further this intent.

AGREEMENT

NOW, THEREFORE, the Parties agree to as follows:

1. Incorporation of Recitals. The parties agree that the Recitals constitute the factual basis upon which Town and Applicant have entered into this Agreement. The Town and Applicant each acknowledge the accuracy of the Recitals and agree that the Recitals are incorporated into this Agreement as though fully set forth at length.

2. Town May Retain Consultants. As a necessary and indispensable part of its fact finding process relating to the review of the Applicant's proposed Project, the Town may, in its discretion, retain the services of qualified professionals and experts in the fields and subject matters of the Project ("Consultants") to provide such environmental, fiscal, planning, public information, and legal advice as the Town may deem necessary in its discretion, by means of contracts ("Consultants' Contract"). The identity of the Consultants employed shall be as determined by the Town in its discretion. The Town reserves the right, in its discretion, to amend the Consultants' scope of work as it deems necessary and appropriate where such amendments are reasonably necessary and related to the Town's proper review and consideration of the Applicant's Project EIR. The Town may also replace Consultants at any time, without consulting with the Applicant or obtaining the Applicant's approval. Notwithstanding the Applicant's reimbursement obligations under this Agreement, the Applicant agrees that the Consultants selected by the Town shall be the exclusive contractors of the Town and not of the Applicant.

3. Applicant to Cooperate with Consultants. The Applicant agrees to cooperate in good faith with the Consultants. The Applicant further agrees that it will instruct its agents, employees, consultants, contractors and attorneys to reasonably cooperate with the Town's Consultants and to provide all necessary documents or information reasonably requested of them by the Consultants; provided, however, that the foregoing shall not require the disclosure of any documents or information of the Applicant which is privileged, proprietary, confidential, or exempt from disclosure under the Public Records Act, to the extent permissible by law.

4. Applicant's Advancement of Costs and Reimbursement of Expenditures. Applicant hereby agrees to advance to the Town the sum of \$2,305,000.00 (Two Million, Three Hundred and Five Thousand Dollars) (the "Funds") which Funds shall be used to reimburse the Town for costs incurred in analyzing the environmental impacts of and processing the application for the Project. Applicant understands and agrees that the term "Project", as used in this Agreement, includes any changes or modifications to the Project and any and all application(s) for permits or other approvals required by Applicant or otherwise required in connection with the Town's review of the Project. Applicant acknowledges that:

(a) The advance of Funds shall be made to the Town upon execution of this Agreement.

(b) If, after completion of all Town work related to the Project, any portion of the Funds has not been expended or committed for expenditure, the Town shall return to Applicant such unexpended or uncommitted amount.

(c) Applicant fully understands and agrees to each of the following:

i. Applicant acknowledges that the Funds paid herewith may not be adequate to fully reimburse the Town for costs incurred in connection with the Project, and that periodically, as the need arises, Applicant may be called upon to make further deposits. In the event, for any reason, the Town's request for further deposit from Applicant is not fully satisfied, the Town reserves the right to cease processing the Project and to cancel any pending application(s).

ii. Applicant agrees to bring the account current through the date of any public meeting of the Town related to consideration of the Project, prior to the date of the meeting. Applicant shall pay the charges estimated by the Town for work to be performed through the date of the meeting.

iii. The Funds shall be deposited to the Town's Revolving Trust Fund and shall be accounted for by the Town in the manner in which Revolving Trust Fund monies are normally accounted for. The Funds shall be used, in the discretion of the Town, to fund or aid in the funding of certain services, studies, activities, supplies and other costs incurred by the Town in connection with the Project. These include but are not limited to review of application(s), responses to public inquiries regarding applications(s), preparation and administrative review costs of any required environmental documents(s), implementation and inspection of mitigation measures identified in the environmental documents(s), checking for conformance with and implementation of the conditions of approval of applications(s), Town Attorney and Consultant costs attributable to the Project, Town staff costs attributable to the Project and other items not specifically identified here. The termination of this Agreement will not take place until all conditions of approval and implementation measures of the environmental document are met by the Applicant or pursuant to early termination under Section 8 hereof. While Applicant acknowledges Town's discretion in entering into Consultant Contracts and processing the Project Application, Applicant reserves, and the Town acknowledges, the right of Applicant to request and receive on a timely basis as processing of the Project application progress, copies of supporting documentation for the Funds applied by the Town against the costs incurred, including, without limitation (except as noted below), copies of Consultants' Contracts and invoices, calculations of staff time expended and compensation therefor, and publication and mailing costs, and a budget of the amount of Project costs and expense expected to be incurred, stated on a monthly basis, which budget shall be updated at least each sixty (60) days. Notwithstanding the foregoing, Town may redact descriptions of services performed by Town's attorneys.

iv. The advance of Funds shall not be contingent on the hiring of any specific employee or Consultant. The Town reserves discretion as to the selection, hiring, assignment, supervision and evaluation of any and all employees, contractors, or Consultants

that may be necessary to assist the Town in connection with the Project. The Town shall have the discretion to establish the amount of compensation paid to the employees and the amount of fees paid to the Consultants or the Consultants' firms that are hired by the Town in connection with the Project. Applicant acknowledges that the Town will be using staff and Consultants of the Town in preparing the environmental analysis of the Project.

v. The advance of Funds shall not be dependent upon the Town's approval or disapproval of any Project or any application(s) by Applicant, or upon the result of any action, and shall in no way influence the Project. Neither Applicant nor any other person providing funding for the Project shall, as a result of such funding, have any expectation as to the outcome of any application or the selection of any alternative favorable to or benefiting Applicant.

vi. Applicant is expressly prohibited from directly or indirectly exercising any supervision or control over any employee, agent or Consultant of the Town involved in the Project. This prohibition shall not be construed to preclude Applicant, its agents or representatives, from providing information to the Town or any employee, agent or Consultant of the Town for incorporation into the Project, or from seeking information from the Town, or any employee, agent or Consultant of the Town with respect to the Project.

vii. Applicant understands that, despite the Town's efforts to hire qualified Consultants, it is possible that the work of any Consultant may, in the Town's discretion, prove to be defective, which may in turn lead to the Town to refusing to pay some portion of Consultants' bills and/or the Town terminating the services of the Consultants. In such situations, the Town may assign, and the Applicant shall accept, the obligation of resolving and/or paying any outstanding bills of such Consultants. If litigation ensues concerning Consultants' bills, Applicant must indemnify, defend, and hold harmless the Town in that regard, except that if the litigation concerns Town's nonpayment to Consultants and Applicant has paid Town for Consultants' fees at issue or if the Consultant asserts wrongful termination by the Town, Applicant shall not be required to indemnify, defend, and hold harmless the Town in that regard. In any situation in which a Consultant is discharged, the Town will, pursuant to Sections 2 through 4, retain other Consultants at Applicant's expense.

5. Indemnification, Defense and Hold Harmless.

(a) Applicant hereby acknowledges and agrees that, except to the extent of negligence, unlawful conduct or willful misconduct on the part of Town or Town's Agents (as defined below), Applicant shall defend, indemnify, release and hold harmless the Town and its agents, officers, attorneys, elected officials, Consultants (whether professional, legal, technical, or other), independent contractors and employees ("the Town's Agents") from any and all damage, liability or loss, or any claim of damage, liability or loss, including without limitation attorneys' fees or costs (including claims for "private attorney general" fees), connected with or arising out of any action, proceeding or alternative dispute resolution process, including, without limitation, any litigation under Section 4(c)vii hereof (collectively, "Action") against the

Town or the Town's Agents to: (1) attack, set aside, void, or annul the actions of the Town or the Town's Agents related to development of the Project, including without limitation any decision, determination, or action made or taken approving, supplementing or sustaining the Project or any part thereof, or any related approvals or Project conditions imposed by the Town or the Town's Agents concerning the Project; or (2) to impose personal liability against the Town's Agents resulting from or arising out of their involvement in the Project.

(b) In the event of any such Action, the Town and Applicant shall confer and cooperate with each other in response to such Action, including the use of outside Consultants and/or legal counsel; however, this Agreement to 'confer and cooperate' shall in no way be construed to limit the Town's independence in its response to such Action, including without limitation, its authority in connection with the retention and/or use of outside Consultants and/or legal counsel, nor shall it obligate the Town to in any way compromise or alter its attorney-client relationships or confidences with legal counsel or outside Consultants. To the extent that the Town, in its discretion, uses any of its resources, including, without limitation, the fees and expenses of outside Consultants, attorneys and experts, in responding to any Action, Applicant shall reimburse the Town in accordance with this Agreement for the use of such resources within thirty (30) days of the Town's written demand for payment. Such resources include, but are not limited to, staff time, court costs, and Town Attorney's or other Town legal counsel's, agent's or Consultant's time at a rate equal to its total costs, or any other direct or indirect costs associated with responding to the Action. If Applicant does not reimburse all costs associated with responding to the Action within thirty (30) business days of the Town's written demand for payment, interest shall accrue on the unpaid amount at a rate of 10 percent (10%) per annum, calculated monthly.

(c) The Town shall promptly notify Applicant of any Action.

(d) The Town, in its discretion, may actively participate, at Applicant's expense, in the defense of any Action in which it is named as a party. If the Town retains outside counsel, agents, or Consultants at Applicant's expense as part of Town's active participation, then the Town shall exercise sole, reasonable control and supervision over such Agents, including in a manner so as to avoid unnecessary duplication of effort between Town's legal representatives and the legal representatives of Applicant.

(e) No settlement of any such Action shall be binding on the Town unless the Town approves of the settlement in writing.

6. Town to Retain Discretion. The Applicant acknowledges and agrees that notwithstanding the Applicant's reimbursement obligations under this Agreement, the Town is not obligated to approve any or all of the proposed uses or permits for the Property, to approve any environmental documents or general plan or municipal code amendments which may be required for any of the uses contemplated for the Property and/or the Project. The Applicant warrants and represents that no Town official, officer, employee, agent or attorney has represented, expressly or impliedly, that the Town will approve any proposed use of the

Property and/or the Project. The Applicant understands: that there may be numerous legislative and quasi-judicial decisions to be made by the Town with regard to the development of the Property and/or the Project; that all such decisions of the Town with regard to the Property and/or the Project and the contemplated uses of the property and/or the Project will be made only after compliance with all the Town's statutory and other legal obligations and after considering all appropriate information and evidence; and that such evidence may cause the Town to disapprove any or all of the contemplated uses of the property and/or the Project. Notwithstanding anything in this Agreement to the contrary, the Town retains all authority and discretion granted to it by law to approve, disapprove or modify any of the proposed uses of the Property and/or Project.

The Applicant further understands that the Town shall not be bound by any recommendations or conclusions reached by the Consultants and that the Town may accept or reject, in whole or in part, any such recommendations or conclusions that the Town, in its discretion, deems to be unreasonable or contrary to the Town's land use ordinances and regulations or State statutes or regulations.

7. Term. The term of this Agreement shall commence on the date that this Agreement is approved by the Town and fully executed by the Parties and shall terminate when all work required by each Consultants' Contract has been completed to the Town's reasonable satisfaction and the Applicant has satisfied all of its obligations under this Agreement including, without limitation, the obligation to pay the Town for all Costs, whether or not paid by the Town to a Consultant prior to the date of termination. The Applicant's obligation to reimburse the Town as provided in this Agreement, as well as Applicant's obligation to indemnify the Town pursuant to Section 7, shall survive the termination of this Agreement.

8. Early Termination. The Town, in its discretion, may terminate this Agreement prior to the term set forth in Section 7 above, without cost or liability to the Town, upon thirty (30) days prior written notice to the Applicant. The Applicant, upon thirty (30) days' prior written notice, may, in its discretion, terminate this Agreement prior to the end of the term set forth in Section 7 above, provided, however, that the Applicant has satisfied all of its obligations under this Agreement to the date of termination regarding reimbursement to the Town of all Costs, and furthermore, that the Applicant has given Town written notice withdrawing its application(s) for the Project.

Within two (2) Town working days following either the Town's decision to terminate this Agreement or the Town's receipt of written notice indicating the Applicant's decision to terminate this Agreement, the Town shall notify the Consultants and instruct them to cease work under any Contracts. The Consultants shall be instructed to bill the Town for any work completed prior to the date of termination of the Consultant Contract.

9. Remedies Upon Default. An event of default shall be deemed to exist upon the occurrence of all of the following:

(a) The Applicant or the Town has, without legal justification or excuse, breached any one or more of its obligations under this Agreement; and

(b) Either party has sent written notice to the party claimed to be in default, specifying the default and what actions the non-defaulting party asserts should be taken to remedy the default; and

(c) The party claimed to be in default has not, within ten (10) days following receipt of the written notice described above, either corrected the default or taken actions, reasonably satisfactory to the other party, to remedy the default within a reasonable period of time, but in no event longer than thirty (30) days after receipt of the written notice described in (b) above.

Following an event of default, either party may exercise any and all remedies available to it pursuant to this Agreement, or at law or in equity, including, without limitation, instituting an action for damages, injunctive relief, or specific performance.

10. Nonwaiver of Rights or Remedies. The failure of a party to exercise any one or more of its rights or remedies under this Agreement shall not constitute a waiver of that party's right to enforce that right or seek that remedy in the future. No course of conduct or act of forbearance on any one or more occasions by a party shall preclude that party from asserting any right to remedy available to it in the future. No course of conduct or act of forbearance on any one or more occasions by a party shall be deemed to be an implied modification of the terms of this Agreement.

11. Assignability. This Agreement may not be assigned by the Applicant without the prior and express written consent of the Town. In determining whether to approve a request by the Applicant to assign this Agreement, the Town may consider, among other things, the proposed assignee's financial status and commitment to the Project. Any attempted assignment of this Agreement not in compliance with the terms of this Agreement shall be null and void and shall confer no rights or benefits upon the assignee. The restrictions of this Section 11 notwithstanding, Applicant may at any time, and without the necessity of approval from the Town, assign this Agreement, to: (i) a subsidiary, affiliate, parent or other entity which controls, is controlled by, or is under common control with Applicant; (ii) a successor corporation related to Applicant by merger, consolidation, non-bankruptcy reorganization, or government action; (iii) a purchaser of substantially all of Applicant's assets located in the northern Central Valley of California; or (iv) a joint venture in which Applicant or any successor to Applicant under the preceding clauses (i) to (iii) is a venturer or partner. For purposes of this Agreement, sale or transfer of Applicant's capital stock through any public exchange, or redemption or issuance of additional stock of any class shall not be deemed an assignment or change of control.

12. No Oral Modifications. This Agreement represents the entire understanding of the Town and Applicant and supersedes all other prior or contemporaneous written or oral

agreements pertaining to the subject matter of this Agreement. This Agreement may be modified only by a writing signed by the authorized representatives of both the Town and the Applicant. All modifications to this Agreement must be approved by the Town.

13. Binding Upon Successors. This Agreement and each of its terms shall be binding upon the parties and their respective officers, elected officials, employees, agents, contractors, and permitted successors and assigns.

14. Legal Challenges. Nothing herein shall be construed to require Town to defend any third party claims and suits challenging any action taken by the Town with regard to any procedure or substantive aspect of the Town's approval of development of the property and/or the Project, the environmental process, or the proposed uses of the property and/or the Project. The Applicant may, however, in its discretion appear as real party in interest in any such third party action or proceeding. If the Town, in its discretion, defends such action or proceeding, the Applicant shall be responsible and shall reimburse the Town for any and all legal fees and costs that may be incurred by the Town in defense of such action or proceeding. Subject to Section 5 hereof, the Town shall have the right to retain such legal counsel as the Town deems necessary and appropriate, and Applicant shall reimburse Town in the event of any award of Court costs or attorneys' fees is made against Town in favor of any third party including, but not limited to, a third party challenging either the sufficiency of any environmental documents/certifications or the validity of the Town's approval of the Application in connection with the Property and/or the Project.

15. Attorneys' Fees. In the event that any action or proceeding, including arbitration, is commenced by either the Town or the Applicant against the other to challenge the validity of this Agreement or to enforce any one or more of its terms, the prevailing party in any such action or proceeding shall be entitled to recover from the other, in addition to all other legal aid equitable remedies available to it, its actual attorneys' fees and costs of such litigation and/or arbitration, including, without limitation, filing fees, service fees, deposition costs, arbitration of costs and expert witness fees, including actual costs and attorneys' fees on appeal.

16. Jurisdiction and Venue. This Agreement is executed and is to be performed in the Town of Loomis and any action or proceeding brought relative to this Agreement shall be heard in the appropriate court in the County of Placer, California, or in the Federal District Courts of the Eastern District of California. The Town and the Applicant each consent to the personal jurisdiction of these courts in any such action or proceeding.

17. Time is of the Essence. Except as otherwise expressly stated, time is of the essence in the performance of each and every action required of Applicant pursuant to this Agreement.

18. Covenant of Further Assurances. The Applicant shall take all other actions and execute all other documents, which are reasonably necessary to effectuate this Agreement.

19. Interpretation. The Town and the Applicant agree that this Agreement is the product of mutual negotiations and is an arms-length transaction. Each party has negotiated this Agreement with the advice and assistance of legal counsel of its own choosing.

It is further agreed that the terms of this Agreement shall be construed in accordance with the meaning of the language and shall not be construed for or against either party by reason of authorship and the rule that ambiguities in a document shall be construed against the drafter of the document shall have no application to this Agreement. In construing and interpreting this Agreement, the finder of fact shall give effect to the mutual intention of the Town and the Applicant, notwithstanding such ambiguity, and may refer to the facts and circumstances under which this Agreement is made and such other extraneous evidence as may assist the finder of fact in ascertaining the intent of the Town and the Applicant. Wherever in this Agreement the right is reserved to a party to make a decision or take any action in its "discretion," that term shall be construed as being the sole but reasonable discretion of the party, acting in good faith and in accordance with all applicable laws.

20. Severability. If any term or provision of this Agreement is found to be invalid or not enforceable to its full extent, such term or provision shall be enforced to the fullest extent permitted by law, and the validity of the remaining provisions hereof shall not be affected thereby.

21. Headings. The headings of each section of this Agreement are for the purposes of convenience only and shall not be construed to either expand or limit the express terms and language of each section.

22. Representations of Authority. Each party signing this Agreement on behalf of a party which is not a natural person hereby represents and warrants to the other party that all necessary legal prerequisites to that party's execution of this Agreement have been satisfied and that he or she has been authorized to sign this Agreement and bind the party on whose behalf he or she signs.

23. Notices. Notices required under this Agreement shall be sent to the following:

If to the Town: Town of Loomis
 Attn: Town Manager
 3665 Taylor Road
 Loomis, CA 95650

If to the Applicant: Costco Wholesale Corporation
 Attn: Michael Okuma
 9 Corporate Park Drive, Suite 230
 Irvine, CA 92606

With copy to:

Costco Wholesale Corporation
Attention: Legal/Property Management Dept.
999 Lake Drive
Issaquah, Washington 98027

Notices given pursuant to this Agreement shall be deemed received as follows:

(a) If sent by United States Mail – five (5) calendar days after deposit into the United States Mail, first class postage paid.

(b) If by express courier service or hand delivery – on the date of receipt by the receiving party.

The addresses for notices set forth in this Section 23 may be changed upon written notice of such change to either the Town or the Applicant, as appropriate.

24. Days. Unless otherwise specified to the contrary, “days” in this Agreement shall mean calendar, not business, days.

25. Public Record. This Agreement shall be a public record of the Town.

**TOWN OF LOOMIS,
a municipal corporation**

Dated: 3/23/2017

By: Joan L. Phillips
Town Manager

ATTEST:

Charles Strach
Town Clerk

APPROVED AS TO FORM:

Q Mitchell
Town Attorney

Developer:

**Costco Wholesale Corporation
a Washington corporation**

Dated: 03/21/17

By: Michael Okuma
MICHAEL OKUMA (on behalf of Costco)
Director of Real Estate Development