



## Staff Report

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**TO:** Honorable Mayor and Members of the Town Council  
**FROM:** Sean Rabé, Town Manager  
**DATE:** December 13, 2022  
**RE:** Reimbursement Agreement Amendment with Costco

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### **Recommendation**

Staff recommends the Town Council adopt the attached resolution and authorize the Town Manager to enter into a sixth (and final) agreement amendment with Costco Wholesale Corporation. This sixth contract amendment covers additional costs related to litigation defense for the Costco Retail Warehouse project, which was settled in October. This agreement amendment will bring the deposit amount under the agreement to \$1,948,243.

### **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).

The Town and Costco have amended the agreement a total of five times because of the lengthy approval process and subsequent litigation. The fifth amendment, approved by Council in January 2021, brought the total reimbursement agreement to \$1,648,243. This sixth and final amendment will close out the project processing costs and will bring the total reimbursement agreement to \$1,948,243. This amount includes a small cushion (about \$15,000) for any unanticipated costs.

Development costs and fees will be paid through the project's building permits.

### **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 \$300,000 to bring the total reimbursement agreement to \$1,948,243.

### **Attachments**

- A. Resolution
- B. Costco Wholesale Corporation Agreement Amendment 6

# TOWN OF LOOMIS

## RESOLUTION NO. 22 - XX

### 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 Council approved a second amendment to the AGREEMENT to adjust the deposit to \$955,000 because of increased project processing costs associated with the recirculation of the Draft Environmental Impact Report; and

**WHEREAS**, on November 12, 2019, the Town Council approved a third amendment to the AGREEMENT to adjust the deposit to \$1,182,078 because of increased project processing costs associated with the recirculation of the Draft Environmental Impact Report; and

**WHEREAS**, on May 12, 2020, the Town Council approved a fourth amendment to the AGREEMENT to adjust the deposit to \$1,448,243 because of increased project processing costs associated with the Final Environmental Impact Report; and

**WHEREAS**, on January 12, 2021, the Town Council approved a fifth amendment to the AGREEMENT to adjust the deposit to \$1,648,243 because of increased costs associated with litigation costs for the project; and

**WHEREAS**, the Town has identified additional funds required to close out the project's processing now that the litigation has been settled; and

**WHEREAS**, the Town and Costco Wholesale Corporation now desire to approve a SIXTH Amendment to the AGREEMENT to increase the total deposit amount under the AGREEMENT to \$1,948,243.

**NOW, THEREFORE, IT IS HEREBY RESOLVED** by the Town Council of the Town of Loomis to amend said Contract as follows:

- I. Amendment. Section 4 of the Contract is hereby amended by replacing the figure \$1,648,243 with \$1,948,243.
- 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 13th day of December, 2022, by the following vote:

**AYES:**

**NOES:**

**ABSTAINED:**

**ABSENT:**

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Deputy Town Clerk

**AMENDMENT NO. 6  
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. 6 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 13 day of December, 2022 (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 Council approved a second amendment to the AGREEMENT to adjust the deposit to \$955,000 because of increased project processing costs associated with the recirculation of the Draft Environmental Impact Report; and

**WHEREAS**, on November 12, 2019, the Town Council approved a third amendment to the AGREEMENT to adjust the deposit to \$1,182,078 because of increased project processing costs associated with the recirculation of the Draft Environmental Impact Report; and

**WHEREAS**, on May 12, 2020, the Town Council approved a fourth amendment to the AGREEMENT to adjust the deposit to \$1,448,243 because of increased project processing costs associated with the Final Environmental Impact Report; and

**WHEREAS**, on January 12, 2021, the Town Council approved a fifth amendment to the AGREEMENT to adjust the deposit to \$1,648,243 because of increased costs associated with litigation costs for the project; and

**WHEREAS**, the Town has identified additional funds required to close out the project's processing now that the litigation has been settled; and

**WHEREAS**, the Town and Costco Wholesale Corporation now desire to approve a SIXTH Amendment to the AGREEMENT to increase the total deposit amount under the AGREEMENT to \$1,948,243.

**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 \$1,648,243 with \$1,948,243.
- 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.

**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: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_  
Jeffrey Mitchell, Town Attorney

Attest:

By: \_\_\_\_\_  
Town Clerk