

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF PFLUGERVILLE, TEXAS CONVEYING 1.263 ACRES OF LAND IN THE CITY OF PFLUGERVILLE, TEXAS AT THE SOUTHEAST CORNER OF SH 130 AND KELLY LANE TO COSTCO WHOLESALE CORPORATION PURSUANT TO AN ECONOMIC DEVELOPMENT AGREEMENT AUTHORIZED UNDER CHAPTER 380 OF THE LOCAL GOVERNMENT CODE; AUTHORIZING THE CITY MANAGER TO EXECUTE A SPECIAL WARRANTY DEED; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE; REPEALING ALL ORDINANCES TO THE EXTENT THEY ARE IN CONFLICT; PROVIDING FOR SEVERABILITY**

**WHEREAS**, the City of Pflugerville desires to continue to protect and ensure the public health, safety, and welfare of its residents and businesses by effectively managing the City’s real property interests that are held in trust for the public; and

**WHEREAS**, under authority of Section 52-a of Article III of the Texas Constitution, the Texas Legislature enacted Chapter 380, Texas Local Government Code (Chapter 380), which provides that the governing body of a municipality 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 municipality; and

**WHEREAS**, the City has taken all necessary legal action to adopt an economic development program in satisfaction of Chapter 380; and

**WHEREAS**, pursuant to an Economic Development Agreement with the City (“**Exhibit A**”), Costco Wholesale Corporation, in addition to other promises, intends to construct a detention pond on this Property in exchange for the conveyance of this Property pursuant to the terms of the Agreement; and

**WHEREAS**, the City, after vetting the request and confirming with all appropriate City departments, has determined that the Property is no longer needed by the City and that it is in the public interest to convey it to Costco Wholesale Corporation in accordance with Section 3.14 of the City Charter.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PFLUGERVILLE, TEXAS:**

**SECTION 1. Findings of Fact.**

The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

- A. The Property has been found to no longer be necessary for public purposes and it being found to be in the public interest by the City of Pflugerville to the same to the extent of the public right, title and interest in and to the Property that the City may lawfully convey to Costco Wholesale Corporation.
- B. That the Property is possessed by the City and shall be conveyed to Costco Wholesale Corporation and that the City Manager of the City of Pflugerville, Texas is hereby authorized, empowered and directed to execute the deed and place such deed in escrow for conveyance to the Costco Wholesale Corporation, its successors, heirs and assigns, by virtue of a Special Warranty Deed in substantially the form provided as **Exhibit B**, which is attached hereto and incorporated herein for all purposes.

**SECTION 2. Conflicting Ordinances.**

All prior ordinances of the City dealing with or applicable to this Ordinance are hereby amended to the extent of any conflict herewith, and all ordinances or parts thereof conflicting or inconsistent with the provisions of this Ordinance as adopted and amended herein, are hereby amended to the extent of such conflict. In the event of a conflict or inconsistency between this Ordinance and any other ordinance of the City, the terms and provisions of this Ordinance shall govern.

**SECTION 3. Severability.**

Should any section or part of this Ordinance be held unconstitutional, illegal, or invalid, or the application to any person or circumstance thereof ineffective or inapplicable, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portion or portions thereof; but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this Ordinance are declared to be severable.

**SECTION 4. Effective Date.**

This Ordinance will take effect upon its passage and adoption by the City Council in accordance with the provisions of Section 3.15(d) of the City Charter.

**PASSED, APPROVED, AND ADOPTED** on the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Victor Gonzales, Mayor

**ATTEST:**

\_\_\_\_\_

Karen Thompson, City Secretary

**APPROVED AS TO FORM:**

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Charles E. Zech, City Attorney  
DENTON NAVARRO ROCHA BERNAL & ZECH, P.C.

**EXHIBIT A**  
ECONOMIC DEVELOPMENT AGREEMENT

**CHAPTER 380**  
**ECONOMIC DEVELOPMENT AGREEMENT BETWEEN**  
**THE CITY OF PFLUGERVILLE, TEXAS AND**  
**COSTCO WHOLESALE CORPORATION**

This Chapter 380 Economic Development Agreement (this “Agreement”) is entered into between **the City of Pflugerville, Texas**, a Texas home rule city (the “City”) and **Costco Wholesale Corporation**, a Washington corporation (“Costco”). The City 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 16.12 acres of land from Cornerstone at Kelly Lane, LLC (“Cornerstone”) located near the southeast corner of SH 130 and SH 45, in the City Limits of the City, and within the City of Pflugerville Reinvestment Zone Number One, 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 380, Texas Local Government Code (Chapter 380), which provides that the governing body of a municipality 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 municipality; and

**WHEREAS**, the City has taken all necessary legal action to adopt an economic development program in satisfaction of Chapter 380; and

**WHEREAS**, the Project qualifies under the City’s economic development program established under Chapter 380, and this Agreement is authorized pursuant to Section 380.001(a), Texas Local Government Code, as amended, and the Grant (as defined herein) granted to Costco in this Agreement complies in all respects with Section 380.001(b), Texas Local Government Code, as amended; and

**WHEREAS**, the City 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”), which Costco Facility is or will be more fully described in the permit(s) for the Costco Facility approved by the City (whether one or more, the “City-Approved Permit”); and

**WHEREAS**, for informational purposes only, proposed renderings generally depicting the Costco Facility are attached hereto as **Exhibit “B”** (which renderings are preliminary and subject to change in the submittals, and during the approval process, for the City-Approved Permit); and

**WHEREAS**, the development of the Costco Property will add significant new revenue to the City’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 City and Costco agree as follows:

**1.**  
**City's Authority**

The City's execution of this Agreement is authorized by Chapter 380 of the Texas Local Government Code. All appropriate and necessary action has been taken to authorize the City Manager to sign on behalf of the City and this Agreement constitutes a valid and binding obligation of the City subject to the terms and conditions set forth in this Agreement. The City acknowledges that Costco is acting in reliance upon the City'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 City 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 City'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 March 13, 2018.

**2.2** "Certificate of Occupancy" shall mean that final document issued by the City of Pflugerville, Texas, entitled "Certificate of Occupancy", indicating that the City is satisfied that all applicable codes, regulations, and ordinances enforced by the City have been complied with, 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 380 Payment(s)" means the amount(s) to be paid by the City to Costco under Article 5 of this Agreement.

**2.4** "City-Approved Permit" shall have the meaning set forth in the above Recitals.

**2.5** "City of Pflugerville" or "City" means the City of Pflugerville, Texas, the governing municipal corporation, and the geographic area that is within the city limits of the City of Pflugerville, Texas.

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

**2.7** “**Conditions Satisfaction Deadline**” shall mean the date that is 21 months after the date of the Costco Property Closing, as such Conditions Satisfaction Deadline may be extended by delays caused by Force Majeure.

**2.8** “**Cornerstone**” shall have the meaning set forth in the above Recitals.

**2.9** “**Costco Default**” shall have the meaning set forth in Section 7.1 of this Agreement.

**2.10** “**Costco Facility**” shall have the meaning set forth in the above Recitals.

**2.11** “**Costco Property**” shall have the meaning set forth in the above Recitals; provided, however, that after the Detention Pond Land has been conveyed to Costco as provided in Section 5.3 below, the term “Costco Property” shall include the Detention Pond Land.

**2.12** “**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.

**2.13** “**Detention Pond Land**” shall mean the land generally depicted on **Exhibit “C”**.

**2.14** “**Detention Facilities**” shall have the meaning set forth in Section 4.1.6 below.

**2.15** “**Effective Date**” means the last date this Agreement is signed by the City and Costco.

**2.16** “**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) delays caused by acts or failures to act by the City or any other governmental entity (or de facto governmental entity) or utility company or their respective agents or employees; and (e) 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).

**2.17** “**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.

**2.18** “**Insolvent**” means failure to timely pay debts in the ordinary course of business or cannot pay all debts when and as they become due, or is insolvent within the meaning of the federal bankruptcy law.

**2.19 “Open for Business”** means that the space under roof and air-conditioned and heated is open for full-time business operations with a full line of products and services.

**2.20 “Permitted Closure”** shall have the meaning set forth in Section 4.3.1 of this Agreement.

**2.21 “Program”** means the economic development program established by the City, as authorized by Chapter 380 of the Texas Local Government Code, to promote local economic development and stimulate business and commercial activity within the City.

**2.22 “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 has opened for full-time business operations (subject to its membership policies) with a full line of products and services for at least one (1) day.

**2.23 “Sales Tax Revenues”** means the amount of sales/use tax that the City receives for transactions arising from and within the Costco Property resulting from the imposition of a municipal sales tax, such as the one percent sales tax currently in effect pursuant to Section 321.101(a) and Section 321.103, Texas Tax Code, less any portion thereof the State is permitted under law to retain. If the City ever elects to charge less than a one percent sales tax, but is allowed by law to collect a sales tax of one percent or more, then, for purposes of calculating the amount of the Chapter 380 Payments as provided in Article 5, the Sales Tax Revenues attributable to sales tax collected will be grossed up and computed as if the City had elected to charge a one percent sales tax, less any portion the State is permitted under law to retain.

**2.24 “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.

**2.25 “Term of this Agreement”** shall have the meaning set forth in Article 3 of this Agreement.

**2.26 “Unified Development Code”** shall mean the Unified Development Code of the City of Pflugerville, Texas.

### **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 380 Payments of Six Million Two Hundred Fifty Thousand Dollars (\$6,250,000); or (c) upon termination of this Agreement as provided for herein (the “Term of this Agreement”). In recognition of the fact that the Chapter 380 Payments are based solely upon receipt by the City of Sales Tax Revenues, and thus, by necessity, are calculated and paid after taxes have been levied by and paid to the City and, therefore, will always be paid in arrears, the Term of this Agreement shall be deemed extended until any Chapter 380 Payments relating to Sales Tax Revenues levied during the Term of the Agreement specified above have been paid by the City 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 380 Payments hereunder:

- 4.1.1** Completion of construction of the Costco Facility 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 City of a certificate in the form attached hereto as **Exhibit "D"** 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 (i) the City-Approved Permit, subject to changes and modifications in the course of construction, which, to the extent required, shall be subject to the review and approval of City and/or other governmental entities with jurisdiction, as applicable, and (ii) the Unified Development Code 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** In connection with construction of the Costco Facility, Costco shall have constructed a detention pond and related detention facilities within the Costco Property and generally within the Detention Pond Land in substantial accordance with (i) the City-Approved Permit (subject to any modifications thereto mutually agreed to between Costco and the City during the permitting and construction process) and (ii) the Unified Development Code and other applicable laws (the "Detention Facilities"). This condition shall be satisfied by the issuance of a Certificate of Occupancy.

**4.1.7** 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 City shall have no obligation to pay any Chapter 380 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 4.3.1 below, then at any time after such 180 day period, the City shall have the right, via written notice to Costco: (i) to cease payment of all or any of the Chapter 380 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 City to pay any Chapter 380 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 City'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 4.3.1 below, for a period of more than 365 days, then at any time after such 365 day period, the City shall have the right, via written notice to Costco: (i) to cease payment of all or any of the Chapter 380 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 City to pay any Chapter 380 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 City'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.**

### **City's Payment of Chapter 380 Payments and Obligations**

**5.1** Subject to Costco's satisfaction of the performance criteria set forth in Article 4 above, the City 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 Six Million Two Hundred Fifty Thousand Dollars (\$6,250,000) over a period not to exceed the Term of Fifteen Years. In no event shall the City be required to make any Chapter 380 Payments to Costco except as provided herein, and subject to satisfaction of the conditions set forth in Article 4 above. The City's obligation to pay Costco shall cease upon payment in full to Costco of Six Million Two Hundred Fifty Thousand Dollars (\$6,250,000), or the expiration of the Term of this Agreement, even if the full Six Million Two Hundred Fifty Thousand Dollars (\$6,250,000) 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 City shall pay to Costco annual payments in the amount of one hundred percent (100%) of the Sales Tax Revenues arising from and within the Costco Property as received by the City 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 City shall make such payments annually by March 31<sup>st</sup>, commencing with the March 31<sup>st</sup> 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 City's obligation to pay Costco under this Article 5 shall cease upon Costco's receipt of Chapter 380 Payments totaling Six Million Two Hundred Fifty Thousand Dollars (\$6,250,000) in the aggregate, or the expiration of the Term of this Agreement, whichever occurs first. The City 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 City'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 City so long as the City 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 380 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 380 Payment to sign) and submit to the City and maintain during the Term of this Agreement), the Waiver of Sales Tax Confidentiality form attached as **Exhibit "E"**, 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 City.

### **5.3 Contribution of Detention Pond Land.**

- 5.3.1 The City has agreed to convey the Detention Pond Land to Costco in consideration of Costco's agreement to construct the Detention Facilities on the Costco Property generally within the Detention Pond Land servicing the Costco Property and property adjacent to the Costco Property.
- 5.3.2 The City acknowledges that Costco's obligation to acquire the Costco Property from Cornerstone is conditioned upon the acquisition of the Detention Pond Land. The City's agreement to convey the Detention Pond Land to Costco is conditioned upon Costco's acquisition of the Costco Property.
- 5.3.3 The City acknowledges that Costco desires to plat the Costco Property and the Detention Pond Land as one legal lot and that it is a condition to Costco's acquisition of the Costco Property from Cornerstone that Costco obtain the necessary approvals for such plat. The City agrees to cooperate with Costco to obtain the approvals for such plat prior to Costco's acquisition, subject to and as provided in Section 9.1 below.
- 5.3.4 A portion of the Detention Pond Land consists of right of way of old Kelly Lane (the "Old Kelly Lane ROW") and the remainder of the Detention Pond Land is currently owned by the City (the "City Land"). The City has enacted [Ordinance No 0372 ], a copy of which is attached hereto as **Exhibit "F"**, abandoning the Old Kelly Lane ROW, conditioned upon the closing of the acquisition of the Costco Property by Costco by no later than the Acquisition Deadline. Within five (5) days after the full execution of this Agreement by both Costco and the City, the City will deposit the following items to First American Title Company ("Escrow Agent") to hold in escrow, pursuant to terms of an Escrow Agreement in the form attached hereto as

**Exhibit “G”** (the “Escrow Agreement”) (i) a duly executed and acknowledged special warranty deed in the form attached hereto as **Exhibit “H”** conveying the City Land to Costco; and (ii) a duly executed and acknowledged deed in the form attached hereto as **Exhibit “I”** conveying the Old Kelly Lane ROW to Costco (collectively, the “Detention Land Conveyance Documents”). As provided in the Escrow Agreement, and pursuant and subject to the terms of the Escrow Agreement, the Detention Land Conveyance Documents shall be delivered and recorded by Escrow Agent at the Costco Property Closing. If the Costco Property Closing has not occurred by the Acquisition Deadline for any reason other than a default by the City, this Agreement shall terminate and the Detention Land Conveyance Documents shall be null and void and returned to the City.

**5.3.5** If prior to the earlier to occur of (a) the Term of Fifteen Years; or (b) receipt by Costco of Chapter 380 Payments totaling Six Million Two Hundred Fifty Thousand Dollars (\$6,250,000), either (i) Costco fails to satisfy all of the conditions set forth in Section 4.1 above by no later than the Conditions Satisfaction Deadline, or (ii) this Agreement is terminated by the City pursuant to Section 4.2 above, then within 30 days after written demand from the City, as the City’s sole remedy for such events, Costco will pay the City the sum of \$392,000 (which sum has been calculated based on the value as of the date of this Agreement as determined by the City of \$225,000 with respect to the City Land, and \$167,000 with respect to the Old Kelly Lane ROW).

## **6.**

### **Costco’s Covenants, Warranties, Obligations and Duties**

**6.1** Costco hereby makes the following covenants and warranties to the City, 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 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).
- 6.1.7** 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 City's reputation by virtue of the City's relationship with Costco.
- 6.1.8** Costco acknowledges that for contracts needing City Council approval, the City 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 "J"** is a copy of the TEC Form 1295 filed by Costco to be attached upon receipt from Costco.
- 6.1.9** 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 City the total amount of Chapter 380 Payments paid to Costco under this Agreement, plus interest at Agreed Rate (as hereinafter defined), not later than the 120th day after the date City 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 “City 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 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.
  - 7.1.6** If applicable, the failure to pay the \$392,000 payment to the City as required under Section 5.3.5 above.
- 7.2** The following shall constitute a “City Default” under this Agreement:
- 7.2.1** The appointment of a receiver of the City, 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 City as bankrupt.
- 7.2.3 The filing by the City 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 City.
- 7.2.5 Upon the expiration of the notice and cure period set forth in Section 7.3 below, the City's failure to pay any Chapter 380 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 City's obligations set forth in Section 5.3 and Section 9.1 of this Agreement.

**7.3** In the event of the occurrence of a breach or default by Costco or the City 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. 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 City 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 City shall have the right to terminate this Agreement by written notice to Costco, in which event the City shall have no obligation to make any future Chapter 380 Payments to Costco under this Agreement.
- 7.4.2 Upon the occurrence of a City Default, Costco shall have the right to terminate this Agreement by written notice to the City, 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 (including without limitation, Costco shall have the right to enforce specific performance of the City's obligation to convey the Detention Pond Land to Costco and, if applicable, the City shall have the right to bring an action to recover the \$392,000 payment due to the City under Section 5.3.5 above).



Further, either Party shall have the right to bring an action for a declaratory judgment.

- 7.4.4** Under no circumstances shall the City be entitled to a refund of any Chapter 380 Payments that have been paid to Costco, except as provided in Sections 6.1.9, and further provided that the City shall be entitled to recapture any Chapter 380 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 City 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 City 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 380 Payments owing to Costco by the City under this Agreement.
- 7.4.6** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, THE CITY 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 CITY 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 City 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 City under this Agreement, and the City'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 City 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.**

### **City's Liability Limitations**

The City 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 City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision.

## **9.**

### **Additional City Representations, Warranties, and Agreements**

**9.1 Permitting.** The City agrees to cooperate with Costco to expeditiously and in good faith process permits, plat applications, and other approvals as required for the Costco Property and Costco Facility. This section does not waive any requirements of the City's Unified Development Code as they apply to Costco. All normal fees from the City shall apply to Costco, including, but not limited to, traffic impact analysis fees, water fees, and wastewater impact fees.

**9.2 City's Authority.** The City 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 municipal sales taxes changes and, as a result, the Chapter 380 Payments differ from the amount which would have been paid to Costco under the laws in effect as of the Effective Date, then the City, in its sole discretion, may adjust the Chapter 380 Payments utilizing whatever discretionary taxes and revenues are legally available to the City to be allocated to the Chapter 380 Payments. The foregoing does not require the City to use funds from sources which are not within the City'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 City 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 City, 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 City 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 City 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:

**City:** City of Pflugerville, Texas Attn.: City Manager  
P.O. Box 589  
Pflugerville, Texas 78691-0589

with a copy to: Charles E. Zech  
Denton, Navarro, Rocha, Bernal & Zech, P.C.  
2500 W. William Cannon Dr., Suite 609  
Austin, Texas 78745  
Fax: (512) 279-6438

**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 City 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 Travis County, Texas. The Parties consent to, and waives any objections to, in personam jurisdiction in Travis 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 – Costco Property
- Exhibit B – Proposed Renderings for Costco Facility
- Exhibit C – Depiction of Detention Pond Land
- Exhibit D – Form of Certificate Regarding Capital Investment
- Exhibit E – Agreement for Disclosure of Confidential Information
- Exhibit F – City Ordinance
- Exhibit G - Form of Escrow Agreement
- Exhibit H – Form of Deed Conveying City Land
- Exhibit I – Form of Deed Conveying Old Kelly Lane ROW
- Exhibit J – 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 City 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 City and elected officials, officers, directors, and employees, and its agents or contractors retained to perform economic development services for City (hereinafter the “City 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 City shall immediately notify Costco of requests, Attorney General Opinion, and court orders to release such information. The City shall be permitted to disclose the foregoing information to such of the City Parties as the City, in its reasonable discretion, deems appropriate in furtherance of the purposes of this Agreement, so long as the City makes such disclosure subject to compliance by such City Parties with the terms of this Section 10.14. The City shall have the right to disclose information regarding sales taxes generated by the

Costco Property with the Pflugerville Community Development Corporation (the "PCDC") and the Travis County Emergency Services District No. 2 ("TCESD No. 2") so long as the PCDC and TCESD No. 2 agree to abide by the provisions 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.

THE CITY OF PFLUGERVILLE, TEXAS,  
a Texas municipal corporation

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

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

Title: \_\_\_\_\_

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

STATE OF TEXAS  
COUNTY OF TRAVIS

§  
§  
§

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_ 2017, by \_\_\_\_\_, the \_\_\_\_\_ of the City of Pflugerville, Texas, a Texas municipal corporation, on behalf of said municipal corporation.

\_\_\_\_\_  
Notary Public, State of Texas

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

Title: \_\_\_\_\_

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

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

§  
§  
§

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2017, by \_\_\_\_\_, the \_\_\_\_\_ of Costco Wholesale Corporation, a Washington corporation, on behalf of said corporation.

\_\_\_\_\_

Notary Public, State of \_\_\_\_\_



**EXHIBIT A**  
**COSTCO PROPERTY**

**EXHIBIT A**

**COSTCO PROPERTY**

**STATE OF TEXAS           §**  
**COUNTY OF TRAVIS       §**

BEING a tract of land situated in the JOHN DAVIS NO. 13 SURVEY, ABSTRACT NO. 231, City of Pflugerville, Travis County, Texas and being a portion of the remainder of a tract of land as described in deed recorded in Document No. 2005238782, Official Public Records of Travis County, Texas (O.P.R.T.C.T.) and being more particularly described as follows:

BEGINNING a point for corner at the northwest corner of said remainder tract and being the northeast corner of a tract of land as described in deed to the State of Texas, recorded in Document No. 2005099539, O.P.R.T.C.T., same being the easterly right-of-way line of F.M. Highway 685 (variable width right-of-way);

THENCE South 62 deg 16 min 12 sec East, a distance of 672.59 feet to a point for corner and the beginning of a curve to the left having a radius of 1,311.00 feet, a central angle of 03 deg 10 min 43 sec, a chord bearing of South 51 deg 34 min 06 sec East and a chord length of 72.72 feet;

THENCE along said curve to the left, an arc distance of 72.73 feet to a point for corner, said point being the northwest corner of Lot 4, Block A, Cornerstone at Kelly Lane, Phase I, an addition to the City of Pflugerville, Travis County, Texas according to the plat thereof recorded in Document No. 200900101, O.P.R.T.C.T.;

THENCE South 27 deg 44 min 04 sec West, along the westerly line of said Lot 4, Block A, a distance of 295.74 feet to a 1/2 inch iron rod found for corner, said 1/2 inch iron rod being the southwest corner of said Lot 4, Block A;

THENCE South 62 deg 15 min 56 sec East, departing said westerly line and along the southerly line of said Lot 4, Block A, a distance of 272.84 feet to a MAG nail found for corner, said MAG nail being situated in the northwesterly right-of-way line of Colorado Sand Drive (variable width right-of-way) and being the beginning of a non-tangent curve to the right having a radius of 455.00 feet, a central angle of 27 deg 29 min 54 sec, a chord bearing of South 45 deg 22 min 27 sec West and a chord length of 216.28 feet;

THENCE departing the southwesterly line of said Lot 4, Block A, and along the northwesterly right-of-way line of said Colorado Sands Drive, the following:

Along said non-tangent curve to the right, an arc distance of 218.37 feet to a point for corner;

South 59 deg 07 min 24 sec West, a distance of 49.73 feet to a point for corner;

North 77 deg 47 min 21 sec West, a distance of 36.60 feet to a point for corner;

South 59 deg 07 min 24 sec West, a distance of 50.11 feet to a point for corner;

South 12 deg 12 min 39 sec West, a distance of 34.23 feet to a point for corner;

South 59 deg 07 min 24 sec West, a distance of 53.71 feet to a point for corner and the beginning of a curve to the left having a radius of 545.00 feet, a central angle of 25 deg 20 min 53 sec, a chord bearing of South 46 deg 26 min 58 sec West and a chord length of 239.15 feet;

Along said curve to the left, an arc distance of 241.11 feet to a point for corner;

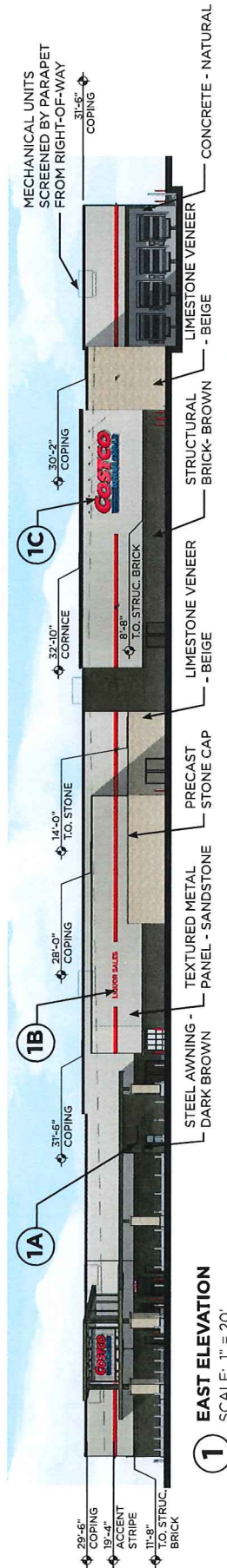
THENCE North 71 deg 57 min 59 sec West, departing the northwesterly right-of-way line of said Colorado Sands Drive, a distance of 192.74 feet to a point for corner;

THENCE North 53 deg 03 min 27 sec West, a distance of 413.13 feet to a point for corner, said point being situated in the east line of said State of Texas tract, same being the east right-of-way line of said F.M. Highway 685 and being the beginning of a non-tangent curve to the right having a radius of 5,329.58 feet, a central angle of 09 deg 40 min 11 sec, a chord bearing of North 16 deg 46 min 44 sec East and a chord length of 898.40 feet;

THENCE along said non-tangent curve to the right and along said easterly right-of-way line, an arc distance of 899.47 feet to the POINT OF BEGINNING.

CONTAINING within these metes and bounds 16.126 acres or 702,431 square feet of land, more or less.

**EXHIBIT B**  
**PROPOSED RENDERINGS FOR COSTCO FACILITY**



**1 EAST ELEVATION**  
SCALE: 1" = 20'

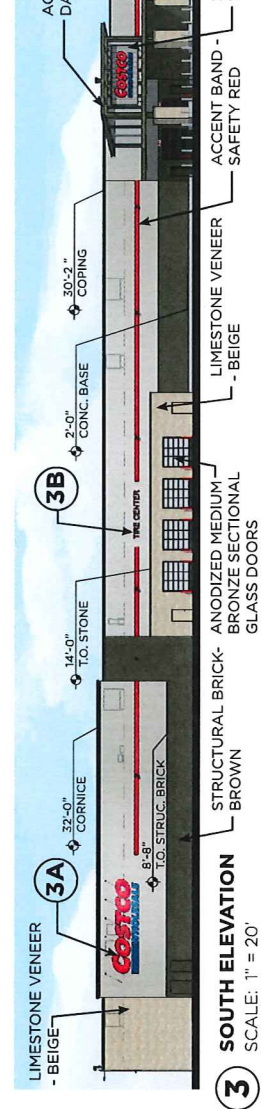
Material	Square Footage	Percentage
Structural Brick	3813	26.58%
Stone	2016	14.05%
Textured Metal Panel	7119	49.63%
Decorative Metal Panel	769	5.36%
Glazing	74	0.52%
Concrete	552	3.85%
Total	14343	100.00%
Accent Stripes (Red Primary Color)	446	3.11%

OPTOMETRIST  
LIQUOR SALES

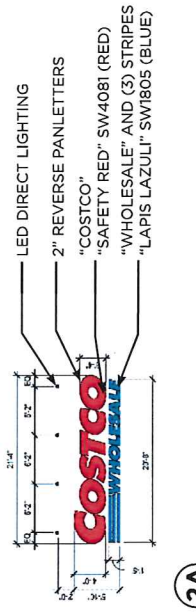
**1A**

**1B**

**1C**



**2 ENTRY ELEVATION**  
SCALE: 1" = 20'



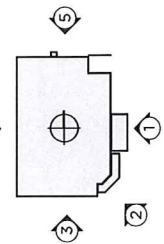
**2A**

Material	Square Footage	Percentage
Structural Brick	2588	27.24%
Stone	1428	15.03%
Textured Metal Panel	4882	46.12%
Decorative Metal Panel	611	4.00%
Glazing	400	4.21%
Concrete	93	0.98%
Total	9502	100.00%
Accent Stripes (Red Primary Color)	788	8.05%

**3A**

**3B**

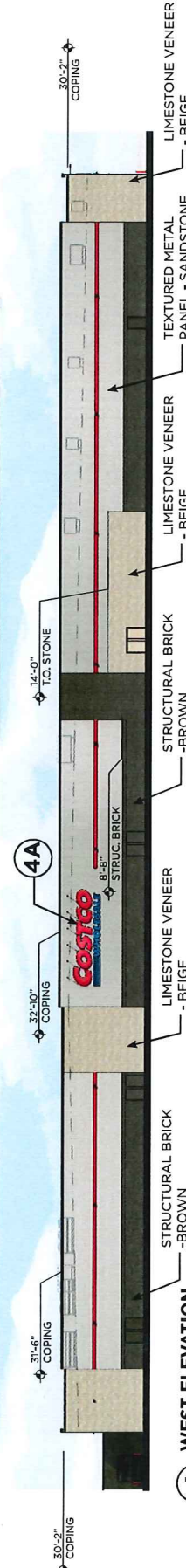
**3B**



OCTOBER 2ND, 2017  
PROJECT #15-5096-01  
PFLUGERVILLE, TX

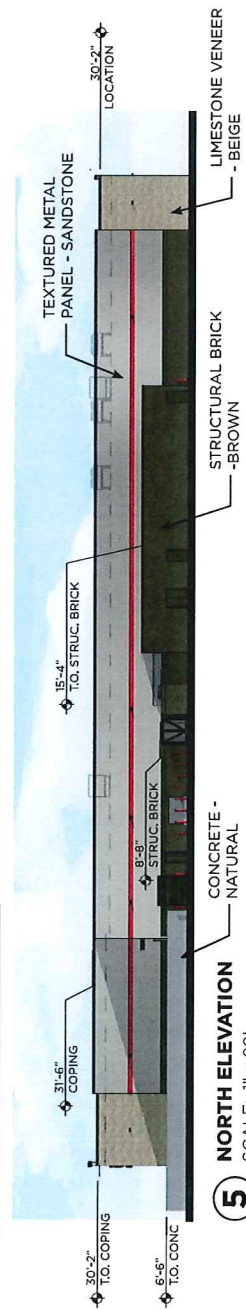
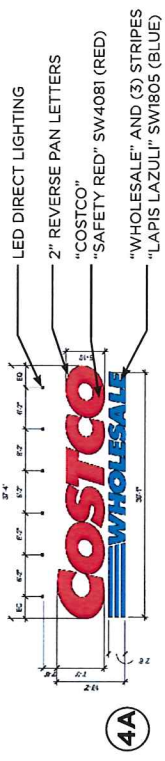


# CONCEPT WAREHOUSE ELEVATIONS



**4 WEST ELEVATION**  
SCALE: 1" = 20'

Material	Square Footage	Percentage
Structural Brick	3811	24.56%
Stone	2620	16.47%
Textured Metal Panel	8208	53.76%
Decorative Metal Panel	429	2.81%
Glazing	0	0.00%
Concrete	0	0.00%
Total	15268	100.00%
Accent Stripe (Red Primary Color)	429	2.81%

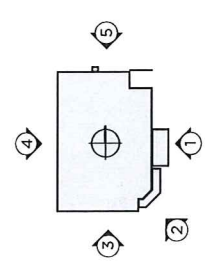


**5 NORTH ELEVATION**  
SCALE: 1" = 20'

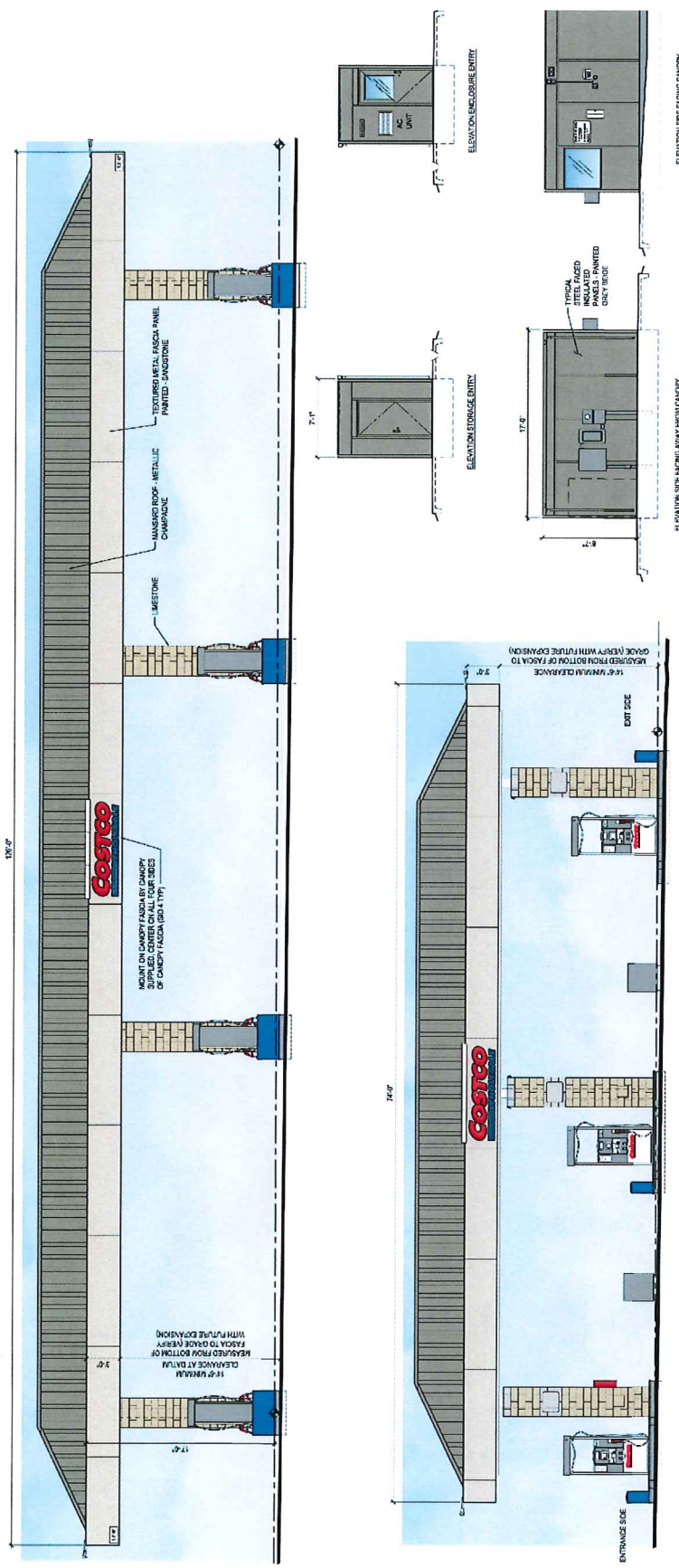
Material	Square Footage	Percentage
Structural Brick	5880	27.77%
Stone	3851	16.78%
Textured Metal Panel	5699	51.11%
Decorative Metal Panel	454	3.91%
Glazing	0	0.00%
Concrete	47	0.42%
Total	11091	100.00%
Accent Stripe (Red Primary Color)	454	3.91%

**6 SIGNAGE AREA**

SIGNAGE AREA TABULATION (WALL SIGNS)				
QTY	SIGN	SIZE	AREA (SF) EA	TOTAL SF
1	COSTCO WHOLESALE	7'-0" X 31'-0"	381 SF	381 SF
2	COSTCO WHOLESALE	6'-0" X 9'-0"	260 SF	560 SF
1	COSTCO WHOLESALE	4'-0" X 31'-0"	124 SF	124 SF
1	TIRE CENTER	17'-4" X 1'-9"	31 SF	31 SF
1	LIQUOR SALE	17'-4" X 1'-9"	31 SF	31 SF
1	OPTOMETRIST	9'-0" X 10'-0"	8 SF	8 SF
TOTAL SIGNAGE AREA				1135 SF

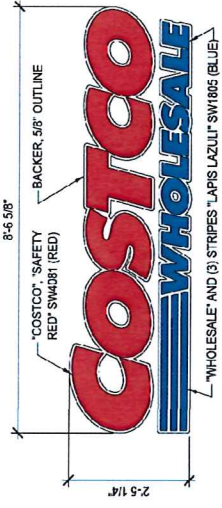






(2) WEST ELEVATION (EAST SIM.)  
SCALE: 1/4" = 1'-0"

(3) CONTROLLER ENCLOSURE ELEVATIONS  
SCALE: NTS



SIGNAGE AREA TABULATION (WALL SIGNS)				
QTY	SIGN	SIZE	AREA (SF) EA	TOTAL SF
4	COSTCO WHOLESALE	2'-5 1/4" X 8'-6 5/8"	22	88 SF
			TOTAL SIGNAGE AREA	88 SF



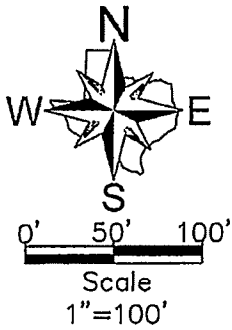
# CONCEPT FUEL ELEVATIONS

OCTOBER 2ND, 2017  
PROJECT #15-5096-01 V. #1.5  
PFLUGERVILLE, TX



**EXHIBIT C**  
**DEPICTION OF DETENTION POND LAND**





JOHN BECKMAN SURVEY  
ABSTRACT NO. 55

CITY OF  
PFLUGERVILLE, TEXAS  
CC #2016199150

STATE HIGHWAY 45  
(KELLY LANE)(VARIABLE WIDTH RIGHT-OF-WAY)

STATE HIGHWAY 130  
(F.M. HIGHWAY 685)  
(VARIABLE WIDTH RIGHT-OF-WAY)

JOHN DAVIS SURVEY  
ABSTRACT NO. 231

(60' RIGHT-OF-WAY; TO BE ABANDONED)  
KELLY LANE  
(BOOK 2, PAGE 308, COMMISSIONERS COURT MINUTES)

DAVID L. MELLEBRUCH APPROXIMATE  
CC #2005238782 LOCATION OF  
ABSTRACT LINE



**Winkelmann  
& Associates, Inc.**

CONSULTING CIVIL ENGINEERS ■ SURVEYORS  
8750 HILLCREST PLAZA DRIVE, SUITE 325 (972) 450-7090  
DALLAS, TEXAS 75230 (972) 450-7099 FAX  
Texas Engineers Registration No. 89  
Texas Surveyors No. 10086600 Expires 12-31-17  
COPYRIGHT © 2017, Winkelmann & Associates, Inc.

Scale : 1" = 100'

Date : 11.07.17

Dwg. File : 58813 - Pond tract

Project No. : 58813

*Preliminary, this  
document shall not be  
recorded for any  
purpose and shall not  
be used or viewed or  
relied upon as a final  
survey document.*

EXHIBIT 'C'  
DETENTION POND LAND

COSTCO WHOLESALE  
CORPORATION  
999 LAKE DRIVE  
ISSAQUAH, WA 98027

SHEET

1

**EXHIBIT D**

**FORM OF CAPITAL INVESTMENT CERTIFICATION**

Re: CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF PFLUGERVILLE, 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 the City of Pflugerville, Texas (the “City”) and Costco effective as of \_\_\_\_\_, 2017 (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 City 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 E**

**AGREEMENT FOR DISCLOSURE OF CONFIDENTIAL TAX INFORMATION**

This Agreement for Disclosure of Confidential Tax Information (this "Agreement") is entered into between the City of Pflugerville, Texas (the "City") and [Costco Wholesale Corporation, a Washington corporation][*(business name)*] (hereafter the "Taxpayer") for the purposes indicated herein.

The undersigned Taxpayer hereby authorizes the Texas Comptroller's Office to release and disclose to the City any and all sales and use tax information pertaining to Taxpayer's business in the Costco wholesale/retail facility located at the Southeast corner of State Highway 130 and Kelly Lane in Pflugerville, Texas. This waiver applies only to the Costco wholesale/retail facility located at the Southeast corner of State Highway 130 and Kelly Lane in Pflugerville, Texas.

The undersigned Taxpayer understands and agrees that this release will be made by the Texas Comptroller's Office to the City on an ongoing monthly basis beginning on the date this Agreement is executed and will extend for three years. 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 City agrees that the City 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 380 Economic Development Agreement Between the City of Pflugerville, Texas and Costco Wholesale Corporation, and subject to the terms thereof.

This Agreement is entered into in the City of Pflugerville, Travis County, Texas, and Texas law will apply to its interpretation and enforcement.

SIGNED AND AGREED TO on this \_\_\_\_ day of \_\_\_\_\_, 2017

---

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.

City of Pflugerville, Texas

---

Brandon Wade  
City Manager  
On Behalf of the City of Pflugerville

---

Amy M. Good  
Finance Director  
On Behalf of the City of Pflugerville

**EXHIBIT F**

**CITY ORDINANCE ABANDONING OLD KELLY LANE RIGHT OF WAY**

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF PFLUGERVILLE TEXAS CLOSING, VACATING, ABANDONING AND CONVEYING A PORTION OF KELLY LANE IN THE CITY OF PFLUGERVILLE, TEXAS; AUTHORIZING THE CITY MANAGER TO EXECUTE A DEED WITHOUT WARRANTY; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE; REPEALING ALL ORDINANCES TO THE EXTENT THEY ARE IN CONFLICT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EFFECTIVE DATE**

**WHEREAS**, the City of Pflugerville desires to continue to protect and ensure the public health, safety, and welfare of its residents and businesses by effectively managing the City's real property interests that are held in trust for the public; and

**WHEREAS**, Section 311.007 of the Texas Transportation Code authorizes home-rule cities to vacate, abandon and close any street or alley; and

**WHEREAS**, Section 272.001(b)(2) of the Texas Local Government Code authorizes the conveyance of City streets and alleys owned in fee or used by easement to abutting property owners; and

**WHEREAS**, the City of Pflugerville has received a request from the sole abutting property owner, Costco Wholesale Corporation (the "Requestor") has requested that the City close, vacate, abandon and convey a portion of Kelly Lane as more specifically described in **Exhibit A** (the "Property"), which is attached hereto and incorporated herein for all purposes; and

**WHEREAS**, the City, after vetting the request and confirming with all franchised public utility providers and appropriate City departments, has determined that the Property is no longer needed for a public right of way or any other public purpose and that it is in the public interest to close, vacate, abandon and convey the Property to the Requestor in accordance with Section 3.14 of the City Charter.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PFLUGERVILLE, TEXAS:**

**SECTION 1. Finding of Fact.**

The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

**SECTION 2.** All of the Property described in **Exhibit A** is hereby closed, abandoned and vacated as a right of way or passage by the City of Pflugerville, Texas, as the Property has been found to no longer be necessary for public purposes and it being found to be in the public interest by the City of Pflugerville to close, vacate and abandon the same to the extent of the public right, title and interest in and to the Property that the City may lawfully abandon.

**SECTION 3.** That the Property is possessed by the City and shall be conveyed to the abutting property owner, or its successor-in-interest, Costco Wholesale Corporation, in accordance with Section 272.001(b)(2) of the Texas Local Government Code, and that the City Manager of the City of Pflugerville, Texas is hereby authorized, empowered and directed to execute the deed and place such deed in escrow for conveyance to the Requestor, its successors, heirs and assigns, by virtue of a Deed without Warranty in substantially the form provided as **Exhibit B**, which is attached hereto and incorporated herein for all purposes.

**SECTION 4. Conflicting Ordinances.**

All prior ordinances of the City dealing with or applicable to this Ordinance are hereby amended to the extent of any conflict herewith, and all ordinances or parts thereof conflicting or inconsistent with the provisions of this Ordinance as adopted and amended herein, are hereby amended to the extent of such conflict. In the event of a conflict or inconsistency between this Ordinance and any other ordinance of the City, the terms and provisions of this Ordinance shall govern.

**SECTION 5. Severability.**

Should any section or part of this Ordinance be held unconstitutional, illegal, or invalid, or the application to any person or circumstance thereof ineffective or inapplicable, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portion or portions thereof; but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this Ordinance are declared to be severable. In the event that changes are made to Texas Water Code, Chapter 26, the provisions of state law will govern in the event of a conflict.

**SECTION 6. Effective Date.**

This Ordinance will take effect upon its passage and adoption by the City Council in accordance with the provisions of Section 3.15(d) of the City Charter.

**PASSED, APPROVED, AND ADOPTED** on the \_\_\_\_ day of \_\_\_\_\_,  
2017.

\_\_\_\_\_  
Victor Gonzales, Mayor

**ATTEST:**

---

Karen Thompson, City Secretary

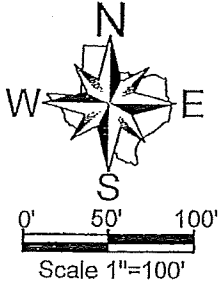
**APPROVED AS TO FORM:**

---

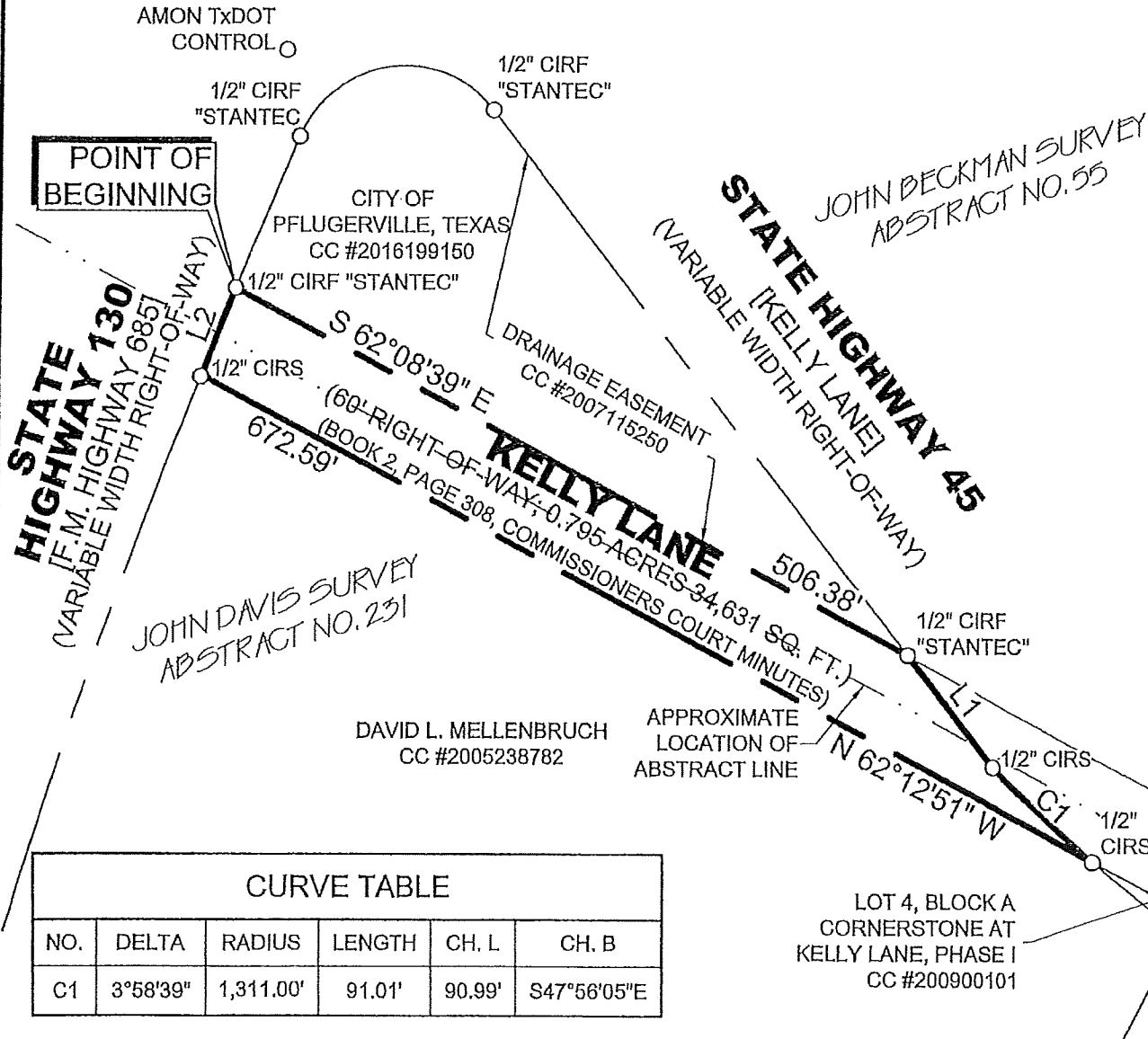
Charles E. Zech, City Attorney  
DENTON, NAVARRO, ROCHA, BERNAL & ZECH, P.C.



EXHIBIT "A"



LINE TABLE		
LINE #	BEARING	DISTANCE
L1	S38°22'57"E	92.33'
L2	N21°42'36"E	60.71'

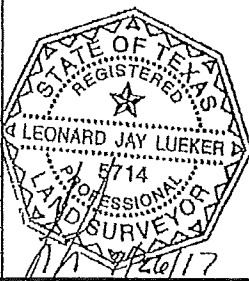


CURVE TABLE

NO.	DELTA	RADIUS	LENGTH	CH. L	CH. B
C1	3°58'39"	1,311.00'	91.01'	90.99'	S47°56'05"E

**Winkelmann & Associates, Inc.**  
 CONSULTING CIVIL ENGINEERS ■ SURVEYORS  
 8750 HALCREST PLAZA DRIVE, SUITE 325 DALLAS, TEXAS 75238  
 (872) 490-7090 (872) 410-7099 FAX  
 Texas Engineers Registration No. 89  
 Texas Surveyors No. 1006500 Expires 12-31-17  
 COPYRIGHT © 2017, Winkelmann & Associates, Inc.

Scale: 1" = 100'  
 Date: 06.26.17  
 Dwg. File: 58813 - EXH Kelly abd  
 Project No.: 58813



KELLY LANE RIGHT-OF-WAY ABANDONMENT  
 0.795 ACRES (34,631 SQ. FT.)  
 COSTCO WHOLESALE CORPORATION  
 9 CORPORATE DRIVE, SUITE 230  
 IRVINE, CALIFORNIA 92606

SHEET  
**1**  
 OF  
**2**

**PROPERTY DESCRIPTION**

STATE OF TEXAS §  
 COUNTY OF TRAVIS §

BEING a tract of land situated in the JOHN BECKMAN SURVEY, ABSTRACT NO. 55 and the JOHN DAVIS SURVEY, ABSTRACT NO. 231, in the City of Pflugerville, Travis County, Texas, and being part of Kelly Lane, a 60-foot right-of-way dedicated in Book 2, Page 308, Commissioners Court Minutes of Travis County, Texas, and being more particularly described as follows:

BEGINNING at a 1/2-inch iron rod with a pink plastic cap stamped "STANTEC" found for the Southwesterly corner of a tract of land described in deed to the City of Pflugerville, Texas as recorded in County Clerk's Instrument No. 2016199150, Official Public Records, Travis County, Texas, on the Easterly right-of-way of State Highway 130 [Farm to Market 685], a variable width right-of-way, at its intersection with the Northerly right-of-way of said Kelly Lane;

THENCE South 62 deg 08 min 39 sec East, departing the Easterly right-of-way of said State Highway 130, along the Northerly right-of-way of said Kelly Lane and the Southwesterly line of said City of Pflugerville, Texas tract, a distance of 506.38 feet to a 1/2-inch iron rod with a pink plastic cap stamped "STANTEC" found for corner on the Southwesterly right-of-way of State Highway 45 [Kelly Lane], a variable width right-of-way, at its intersection with the Northerly right-of-way of said Kelly Lane (Book 2, Page 308);


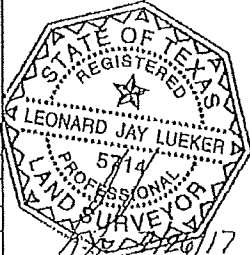
THENCE South 38 deg 22 min 57 sec East, along the Southwesterly right-of-way of said State Highway 45, a distance of 92.33 feet to a 1/2-inch iron rod with a red plastic cap stamped "WAI" set for corner, said point being the beginning of a non-tangent curve to the left having a radius of 1,311.00 feet, a central angle of 003 deg 58 min 39 sec, a chord bearing of South 47 deg 56 min 05 sec East, and a chord length of 90.99 feet;

THENCE continuing along the Southwesterly right-of-way of said State Highway 45 and along said non-tangent curve to the left, an arc distance of 91.01 feet to a 1/2-inch iron rod with a red plastic cap stamped "WAI" set for the most Northerly corner of Lot 4, Block A, Cornerstone at Kelly Lane, an addition to the City of Pflugerville, Travis County, Texas, according to the Plat thereof recorded in County Clerk's Instrument No. 200900101, Official Public Records, Travis County, Texas, said point being on the Southerly right-of-way of said Kelly Lane;

THENCE North 62 deg 12 min 51 sec West, along the Southerly right-of-way of said Kelly Lane, a distance of 672.59 feet to a 1/2-inch iron rod with a red plastic cap stamped "WAI" set for corner on the Westerly right-of-way of said State Highway 130;

THENCE North 21 deg 42 min 36 sec East, along the Easterly right-of-way of said State Highway 130, a distance of 60.71 feet to the POINT OF BEGINNING.

CONTAINING within these metes and bounds 34,631 square feet or 0.795 acres of land, more or less. Bearings shown hereon are based upon an on-the-ground Survey performed in the field on the 22nd day of June, 2017, utilizing a G.P.S. measurement (NAD 83, GRID) from the City of Pflugerville Monument Nos. 113 & 114.

 <p><b>Winkelmann &amp; Associates, Inc.</b>                  CONSULTING CIVIL ENGINEERS ■ SURVEYORS                  8750 HILLCREST PLAZA DRIVE, SUITE 315 DALLAS, TEXAS 75230                  Texas Engineers Registration No. 89                  Texas Surveyors No. 10085600 Expires 12-31-17                  COPYRIGHT © 2017, Winkelmann &amp; Associates, Inc.</p>		KELLY LANE RIGHT-OF-WAY ABANDONMENT 0.795 ACRES (34,631 SQ. FT.)	SHEET <b>2</b> OF <b>2</b>
		COSTCO WHOLESALE CORPORATION 9 CORPORATE DRIVE, SUITE 230 IRVINE, CALIFORNIA 92606	
Scale: N/A Date: 06.26.17 Dwg. File: 58813 - EXH Kelly abd Project No.: 58813			

**EXHIBIT B**

**DEED WITHOUT WARRANTY FORM**

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

THE STATE OF TEXAS

§

COUNTY OF TRAVIS

§

§

**DEED WITHOUT WARRANTY**

THE CITY OF PFLUGERVILLE, TEXAS ("**Grantor**"), for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to Grantor in hand paid by **Costco Wholesale Corporation** whose mailing address is 999 Lake Drive, Issaquah, Washington 98027 ("**Grantee**"), the receipt and sufficiency of which consideration are hereby acknowledged and confessed, Grantor has GRANTED, SOLD, AND CONVEYED, and by these presents does GRANT, SELL AND CONVEY, unto Grantee that certain parcel of land lying and being situated in the State of Texas and County of Travis, more particularly described on **Exhibit "A"** attached hereto and incorporated herein by reference ("**Property**").

This conveyance is made by Grantor and accepted by Grantee expressly subject to any and all restrictions, covenants, conditions, ordinances, easements, encroachments, maintenance charges and the liens securing the same, all outstanding royalty or mineral interests, and all other matters, of record or otherwise, to the extent the same are now in force and effect and relate to the Property (the "**Permitted Exceptions**").

Grantor, for the consideration and subject to the reservations from and exceptions to conveyance, conveys to Grantee the Property to have and to hold it to Grantee, Grantee's heirs, successors or assigns forever, **without express or implied warranty**, and all warranties that might arise by common law and the warranties in Section 5.023 of the Texas Property Code (or its successor) are excluded.

Grantee agrees to be responsible for any ad valorem taxes with respect to the Property accruing after the date of this conveyance and Grantee assumes and agrees to pay the same and to indemnify and hold Grantor harmless with respect thereto. Any and all ad valorem taxes with respect to the Property assessed for periods prior to the date hereof shall be the sole responsibility of Grantor, including any rollback taxes due to a change in use of the Property, and Grantor assumes and agrees to pay the same and to indemnify and hold harmless Grantee and Grantee's assigns with respect thereto.

**EXECUTED** on the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

THE CITY OF PFLUGERVILLE, TEXAS

By: \_\_\_\_\_  
Brandon Wade, City Manager

THE STATE OF TEXAS       §  
  §  
COUNTY OF TRAVIS       §

BEFORE ME, the undersigned authority, on this day personally appeared Brandon Wade, City Manager of the City of Pflugerville, Texas, known to me to be the person whose name is subscribed to the foregoing instrument, and who acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated, and as the act and deed of the City of Pflugerville, Texas.

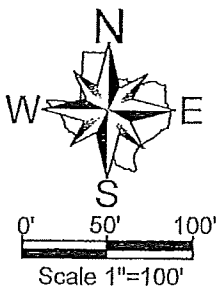
GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Notary Public in and for the State of Texas

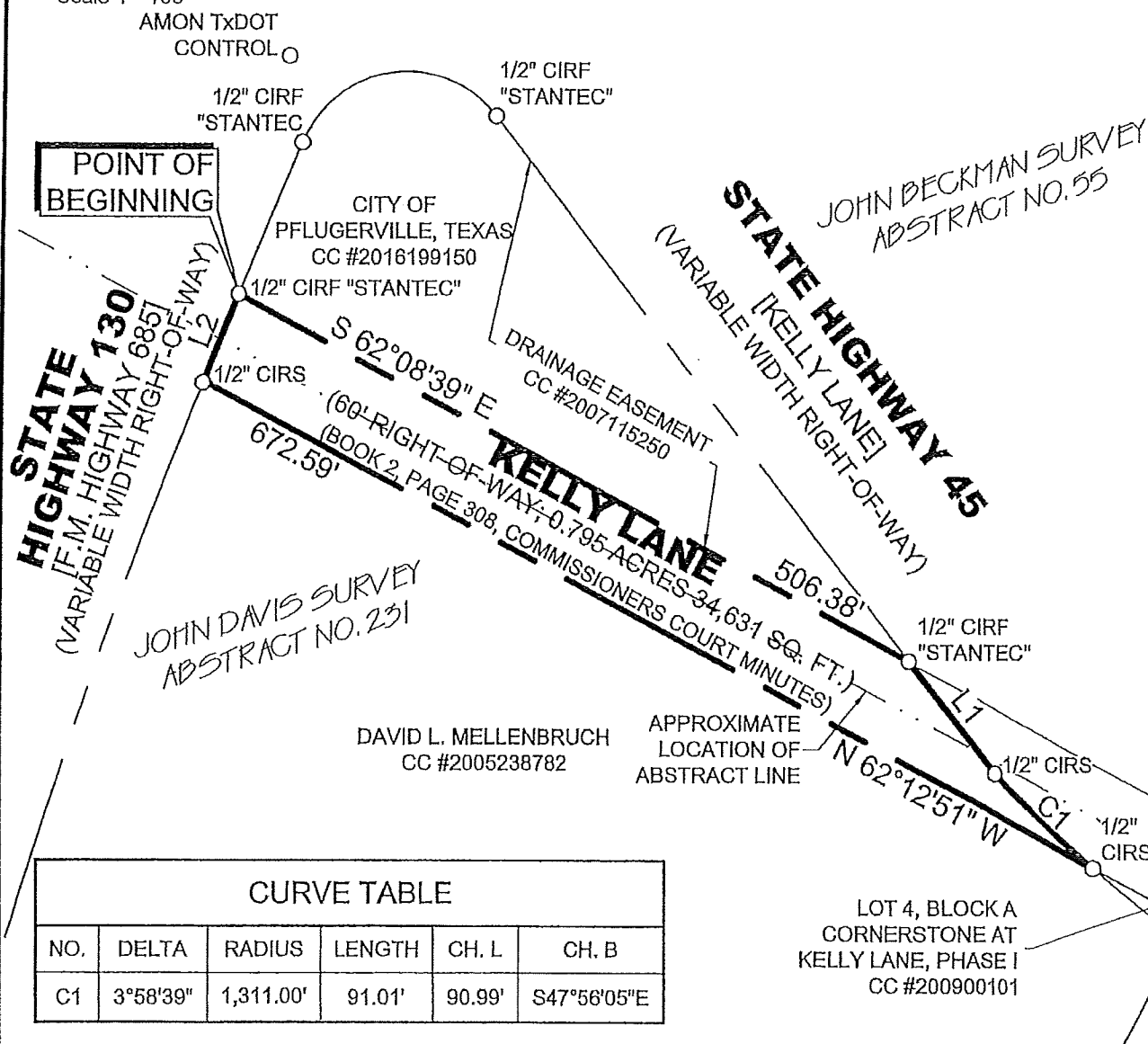
**EXHIBIT A**

**The Property**

EXHIBIT "A"



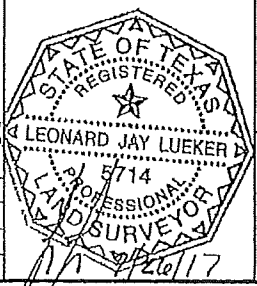
LINE TABLE		
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L2	N21°42'36"E	60.71'



CURVE TABLE					
NO.	DELTA	RADIUS	LENGTH	CH. L	CH. B
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**Winkelmann & Associates, Inc.**  
 CONSULTING CIVIL ENGINEERS & SURVEYORS  
 8150 HILLCREST PLAZA DRIVE, SUITE 525 DALLAS, TEXAS 75239  
 Texas Engineers Registration No. 83  
 Texas Surveyors No. 1005600 Expires 12-31-17  
 COPYRIGHT © 2017, Winkelmann & Associates, Inc.

Scale: 1" = 100'  
 Date: 06.26.17  
 Dwg. File: 58813 - EXH Kelly abd  
 Project No.: 58813



**KELLY LANE RIGHT-OF-WAY ABANDONMENT**  
 0.795 ACRES (34,631 SQ. FT.)

**COSTCO WHOLESALE CORPORATION**  
 9 CORPORATE DRIVE, SUITE 230  
 IRVINE, CALIFORNIA 92606

**SHEET 1 OF 2**

**PROPERTY DESCRIPTION**

STATE OF TEXAS §  
 COUNTY OF TRAVIS §

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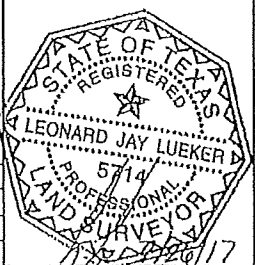
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THENCE North 21 deg 42 min 36 sec East, along the Easterly right-of-way of said State Highway 130, a distance of 60.71 feet to the POINT OF BEGINNING.

CONTAINING within these metes and bounds 34,631 square feet or 0.795 acres of land, more or less. Bearings shown hereon are based upon an on-the-ground Survey performed in the field on the 22nd day of June, 2017, utilizing a G.P.S. measurement (NAD 83, GRID) from the City of Pflugerville Monument Nos. 113 & 114.

**W Winkelmann & Associates, Inc.**  
 CONSULTING CIVIL ENGINEERS ■ SURVEYORS  
 4750 HILLCREST PLAZA DRIVE, SUITE 315 (972) 490-7090  
 DALLAS, TEXAS 75230 (972) 490-7099 FAX  
 Texas Engineers Registration No. 89  
 Texas Surveyors No. 10085600 Expires 12-31-17  
 COPYRIGHT © 2017, Winkelmann & Associates, Inc.

Scale: N/A  
 Date: 06.26.17  
 Dwg. File: 58813 - EXH Kelly abd  
 Project No.: 58813



KELLY LANE RIGHT-OF-WAY  
 ABANDONMENT  
 0.795 ACRES (34,631 SQ. FT.)

COSTCO WHOLESALE  
 CORPORATION  
 9 CORPORATE DRIVE, SUITE 230  
 IRVINE, CALIFORNIA 92606

**SHEET  
 2  
 OF  
 2**



**EXHIBIT G**  
**FORM OF ESCROW AGREEMENT**  
**PURSUANT TO JOINT ESCROW INSTRUCTIONS**

## JOINT ESCROW INSTRUCTIONS

November \_\_, 2017

via email [cstiller@firstam.com](mailto:cstiller@firstam.com) and facsimile at 866-678-0584

First American Title Insurance Company  
Seattle National Commercial Services Division  
818 Stewart Street, Suite 800  
Seattle, WA 98101  
Attention: Chantale Stiller-Anderson

Re: Chapter 380 Economic Development Agreement between The City of Pflugerville, Texas (the “**City**”) and Costco Wholesale Corporation, a Washington corporation (“**Costco**”) pursuant to which the City is to transfer to Costco an approximately 1.263 acre tract of land owned by the City (the “**City Property**”) and former right of way of old Kelly Lane adjacent to the City Property and the Costco Property consisting of approximately .795 acres (the “**Abandoned ROW Property**”) is to be abandoned and deeded to Costco as the adjacent owner; Commitment for Title Insurance issued by First American Title Insurance Company (the “**Title Company**”), Commitment No. NCS-808116-WA1, dated effective \_\_\_\_\_, 2017, with issue date \_\_\_\_\_, 2017 (the “**Title Commitment**”) issued in connection with the transaction described in that certain Property Purchase Agreement dated effective March 24, 2017 (as amended, the “**Land Acquisition Agreement**”) between Costco Wholesale Corporation, a Washington corporation (“**Costco**”), and Cornerstone at Kelly Lane, LLC, a Texas limited liability company (“**Seller**”) pursuant to which Seller is to transfer to Costco the approximately 16.125 acre tract of land located in Pflugerville, Texas more particularly described in the Land Acquisition Agreement (the “**Costco Property**”), which Title Commitment covers approximately 18.183 acres of land consisting of the Costco Property, the City Property and the Abandoned Property, all as more particularly described in the Title Commitment

Ladies and Gentlemen:

This letter constitutes joint escrow instructions on behalf of the City and Costco for the above-referenced escrow in connection with the transfer of the City Property and the abandonment of the Abandoned ROW as contemplated in the 380 Agreement.

The Land Acquisition Agreement provides that the closing of the transfer of the Costco Property from Seller to Costco is conditioned upon the contemporaneous transfer of the City Property and abandonment and transfer to Costco, as the adjacent owner, of the Abandoned ROW Property.

The 380 Agreement and the ordinances enacted by the City in connection therewith provide that the closing of the acquisition of the Costco Property is a condition

to the closing of the transfer of the City Property to Costco and that the abandonment of the Abandoned ROW Property shall not be effective unless and until the closing of the acquisition of the Costco Property and the transfer of the City Property to Costco have both occurred.

In order to accomplish the same, the following documents have been or will be delivered to you, to hold in trust pursuant to this closing instruction letter (the "**Closing Instructions**").

1. Original deed conveying the City Property to Costco, executed by the City and Costco (the "**City Property Deed**"); and
2. Original deed conveying the Abandoned ROW Property to Costco, executed by the City and Costco (the "**Abandoned ROW Deed**").

We herewith request that you hold the City Property Deed and Abandoned ROW Deed (collectively, the "**Deeds**") and any other documents delivered to you in connection with contemplated transfer of the City Property and Abandoned ROW Property to Costco (the Deeds and such other documents, if any, are herein collectively referred to as the "**Documents**") in trust subject to the directions hereinafter provided in these Closing Instructions. Do not proceed unless you accept full responsibility for following these Closing Instructions. These Closing Instructions must be strictly followed. Any modifications must be in writing and signed by the undersigned counsel for the City and Costco.

All original Documents deposited into this escrow are to be deemed executed but not delivered until the closing of the acquisition of the Costco Property has occurred. You are instructed to date the Deeds and any other undated Documents with the date of the closing of the acquisition of the Costco Property.

At such time as the closing of the acquisition of the Costco Property has occurred and the deed transferring the Costco Property has been recorded in the Official Records of Travis County, Texas (the "**Official Records**"), you shall IMMEDIATELY proceed as follows:

- (a) Record the City Property Deed in the Official Records;
- (b) After the City Property Deed has been recorded, record the Abandoned ROW Deed in the Official Records.

NOTE: THE COSTCO PROPERTY DEED, THE CITY PROPERTY DEED AND THE ABANDONED ROW DEED SHOULD BE RECORDED CONTEMPORANEOUSLY AND MUST BE RECORDED IN THE FOLLOWING ORDER: THE CITY PROPERTY DEED MAY NOT BE DELIVERED OR RECORDED UNLESS AND UNTIL THE COSTCO PROPERTY DEED HAS BEEN RECORDED AND THE

ABANDONED ROW DEED MAY NOT BE DELIVERED OR RECORDED UNLESS AND UNTIL THE CITY PROPERTY DEED HAS BEEN RECORDED.

As soon as possible, transmit, by courier delivery service or personal delivery to the undersigned counsels for Costco and the City or to such party as may be designated by such respective counsel, certified copies of the recorded City Property Deed and recorded Abandoned ROW Deed.

Upon return from the recording office, deliver the original recorded City Property Deed and recorded Abandoned ROW Deed to the undersigned counsel for Costco; and copies of the recorded City Property Deed and recorded Abandoned ROW Deed to the undersigned counsel for the City.

If for any reason Escrow Agent is unwilling or unable to comply with each and every condition set forth herein, then Escrow Agent is not authorized to file either Deed for record or to deliver any of the other Documents, if any, and you shall immediately contact the undersigned for further instructions.

In order to formalize this relationship and to evidence your acceptance and agreement to the foregoing, please execute two counterparts of these Closing Instructions as provided below and deliver a fully-executed original counterpart to each of the undersigned. It is understood that these Closing Instructions may be executed in any number of counterparts, each of which shall constitute an original.

This escrow shall close on or before \_\_\_\_\_, 2017, unless you are otherwise instructed in writing by the undersigned representatives of Costco and the City. If this transaction does not close on or before this date, you shall hold all instruments and documents deposited in this escrow pending receipt of further instructions from both of the undersigned.

These Closing Instructions may be executed in counterparts and delivered to you by facsimile transmission. These Closing Instructions may not be amended except in a writing executed by both the undersigned (or by both Costco and the City).

Please indicate on the enclosed copy of this letter your receipt and acceptance of these instructions and return the copy to each of the undersigned.

[SIGNATURE PAGES FOLLOW]

For the City:

By: \_\_\_\_\_  
Brandon Wade  
City Manager

For Costco: THOMPSON & KNIGHT, LLP

By: \_\_\_\_\_  
Ray T. Khirallah,  
Counsel for Costco

The foregoing is hereby accepted and agreed to by the undersigned this  
\_\_\_\_\_ day of November, 2017.

FIRST AMERICAN TITLE INSURANCE COMPANY  
SEATTLE NATIONAL COMMERCIAL SERVICES DIVISION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT H**

**FORM OF DEED CONVEYING CITY LAND**

**SPECIAL WARRANTY DEED**

THE STATE OF TEXAS     §  
  §  
COUNTY OF TRAVIS     §

KNOW ALL MEN BY THESE PRESENTS: That **CITY OF PFLUGERVILLE, TEXAS** (“Grantor”), a Texas home-rule municipality located in Travis County, Texas, whose mailing address is P.O. Box 589, Pflugerville, Travis County, Texas 78691, for the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration to Grantor in hand paid by the **COSTCO WHOLESALE CORPORATION** (“Grantee”), the receipt and sufficiency of which consideration are hereby acknowledged and confessed, has GRANTED, SOLD AND CONVEYED, and by these presents does GRANT, SELL AND CONVEY, unto Grantee, subject to all of the reservations, exceptions and other matters set forth or referred to herein, the property described and depicted on Exhibit “A”, attached hereto and incorporated herein by reference (“Property”),

This conveyance is expressly made subject to all presently recorded and validly existing restrictions, covenants, conditions, rights-of-way, easements, utility easements (held by Grantor or others), mineral reservations and royalty reservations, and other matters of record, if any, affecting the Property.

TOGETHER WITH, all and singular, the rights, benefits, privileges, easements, tenements, hereditaments, appurtenances and interests thereon or in anywise appertaining thereto and with all improvements located thereon (said land, rights, benefits, privileges, easements, tenements, hereditaments, appurtenances, improvements and interests being hereinafter referred to as the "Property").

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in anywise belonging, unto Grantee, and Grantee's successors or assigns, forever; and Grantor does hereby bind Grantor, and Grantor's successors and assigns, to WARRANT AND FOREVER DEFEND all and singular the Property unto Grantee, Grantee's successors and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof, by, through or under Grantor, but not otherwise, except, however, that this conveyance is made subject to the liens securing payment of ad valorem taxes for the current and all subsequent years.

EXECUTED effective as of this the \_\_\_\_ day of \_\_\_\_\_, 2017.

**GRANTOR:**

**CITY OF PFLUGERVILLE, TEXAS,**  
a Texas home-rule municipality

By: \_\_\_\_\_  
Brandon Wade, City Manager

ATTEST:

\_\_\_\_\_  
Karen Thompson, City Secretary

**AGREED AND ACCEPTED:**

**COSTCO WHOLESALE CORPORATION,**

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

---

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Acknowledgement

THE STATE OF TEXAS       §  
  §  
COUNTY OF TRAVIS       §

This instrument was acknowledged before me on \_\_\_\_\_, 2017 by \_\_\_\_\_  
for the purposes therein.

\_\_\_\_\_  
Notary Public's Signature

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Acknowledgement

THE STATE OF TEXAS       §  
  §  
COUNTY OF TRAVIS       §

This instrument was acknowledged before me on \_\_\_\_\_, 2017 by Brandon Wade, City Manager of City of Pflugerville, Texas, a Texas home-rule municipality, on behalf of said municipality.

\_\_\_\_\_  
Notary Public's Signature

After recordation please return to:   City of Pflugerville  
  Attn: Brandon Wade, City Manager  
  P.O. Box 589,  
  Pflugerville, Texas 78691



**EXHIBIT I**  
**FORM OF**  
**DEED CONVEYING OLD KELLY LANE RIGHT OF WAY**

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

THE STATE OF TEXAS

§

§

COUNTY OF TRAVIS

§

**DEED WITHOUT WARRANTY**

THE CITY OF PFLUGERVILLE, TEXAS ("**Grantor**"), for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to Grantor in hand paid by **Costco Wholesale Corporation** whose mailing address is 999 Lake Drive, Issaquah, Washington 98027 ("**Grantee**"), the receipt and sufficiency of which consideration are hereby acknowledged and confessed, Grantor has GRANTED, SOLD, AND CONVEYED, and by these presents does GRANT, SELL AND CONVEY, unto Grantee that certain parcel of land lying and being situated in the State of Texas and County of Travis, more particularly described on **Exhibit "A"** attached hereto and incorporated herein by reference ("**Property**").

This conveyance is made by Grantor and accepted by Grantee expressly subject to any and all restrictions, covenants, conditions, ordinances, easements, encroachments, maintenance charges and the liens securing the same, all outstanding royalty or mineral interests, and all other matters, of record or otherwise, to the extent the same are now in force and effect and relate to the Property (the "**Permitted Exceptions**").

Grantor, for the consideration and subject to the reservations from and exceptions to conveyance, conveys to Grantee the Property to have and to hold it to Grantee, Grantee's heirs, successors or assigns forever, **without express or implied warranty**, and all warranties that might arise by common law and the warranties in Section 5.023 of the Texas Property Code (or its successor) are excluded.

Grantee agrees to be responsible for any ad valorem taxes with respect to the Property accruing after the date of this conveyance and Grantee assumes and agrees to pay the same and to indemnify and hold Grantor harmless with respect thereto. Any and all ad valorem taxes with respect to the Property assessed for periods prior to the date hereof shall be the sole responsibility of Grantor, including any rollback taxes due to a change in use of the Property, and Grantor assumes and agrees to pay the same and to indemnify and hold harmless Grantee and Grantee's assigns with respect thereto.

**EXECUTED** on the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

THE CITY OF PFLUGERVILLE, TEXAS

By: \_\_\_\_\_  
Brandon Wade, City Manager

THE STATE OF TEXAS       §  
  §  
COUNTY OF TRAVIS       §

BEFORE ME, the undersigned authority, on this day personally appeared Brandon Wade, City Manager of the City of Pflugerville, Texas, known to me to be the person whose name is subscribed to the foregoing instrument, and who acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated, and as the act and deed of the City of Pflugerville, Texas.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Notary Public in and for the State of Texas

**EXHIBIT J**

**TEC Form 1295**

*To be attached upon receipt from Costco.*

**EXHIBIT B**

DEED

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**SPECIAL WARRANTY DEED**

**THE STATE OF TEXAS   §  
  §  
COUNTY OF TRAVIS   §**

KNOW ALL MEN BY THESE PRESENTS: That CITY OF PFLUGERVILLE, TEXAS (“Grantor”), a Texas home-rule municipality located in Travis County, Texas, whose mailing address is P.O. Box 589, Pflugerville, Travis County, Texas 78691, for the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration to Grantor in hand paid by the COSTCO WHOLESALE CORPORATION (“Grantee”), the receipt and sufficiency of which consideration are hereby acknowledged and confessed, has GRANTED, SOLD AND CONVEYED, and by these presents does GRANT, SELL AND CONVEY, unto Grantee, subject to all of the reservations, exceptions and other matters set forth or referred to herein, the property described and depicted on Exhibit “A”, attached hereto and incorporated herein by reference (“Property”),

This conveyance is expressly made subject to all presently recorded and validly existing restrictions, covenants, conditions, rights-of-way, easements, utility easements (held by Grantor or others), mineral reservations and royalty reservations, and other matters of record, if any, affecting the Property.

TOGETHER WITH, all and singular, the rights, benefits, privileges, easements, tenements, hereditaments, appurtenances and interests thereon or in anywise appertaining thereto and with all improvements located thereon (said land, rights, benefits, privileges, easements, tenements, hereditaments, appurtenances, improvements and interests being hereinafter referred to as the "Property").

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in anywise belonging, unto Grantee, and Grantee's successors or assigns, forever; and Grantor does hereby bind Grantor, and Grantor's successors and assigns, to WARRANT AND FOREVER DEFEND all and singular the Property unto Grantee, Grantee's successors and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof, by, through or under Grantor, but not otherwise, except, however, that this conveyance is made subject to the liens securing payment of ad valorem taxes for the current and all subsequent years.

EXECUTED effective as of this the \_\_\_\_ day of \_\_\_\_\_, 2017.

**GRANTOR:**

**CITY OF PFLUGERVILLE, TEXAS,**  
a Texas home-rule municipality

By: \_\_\_\_\_  
Brandon Wade, City Manager

ATTEST:

\_\_\_\_\_  
Karen Thompson, City Secretary

**AGREED AND ACCEPTED:**

**COSTCO WHOLESALE CORPORATION,**

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

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Acknowledgement

THE STATE OF TEXAS       §  
  §  
COUNTY OF TRAVIS       §

This instrument was acknowledged before me on \_\_\_\_\_, 2017 by \_\_\_\_\_  
for the purposes therein.

\_\_\_\_\_  
Notary Public's Signature

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Acknowledgement

THE STATE OF TEXAS       §  
  §  
COUNTY OF TRAVIS       §

This instrument was acknowledged before me on \_\_\_\_\_, 2017 by Brandon Wade, City Manager of City of Pflugerville, Texas, a Texas home-rule municipality, on behalf of said municipality.

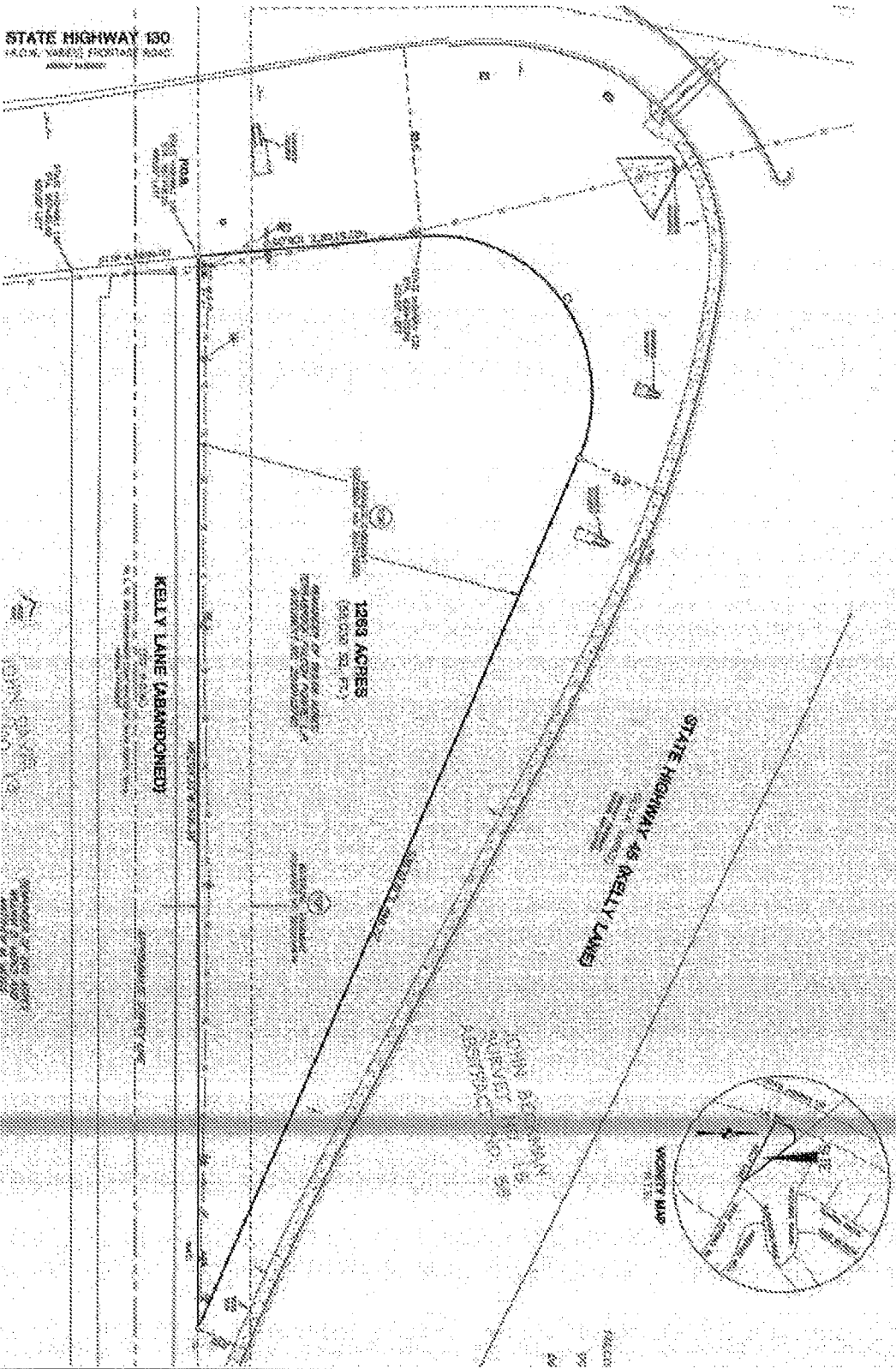
\_\_\_\_\_  
Notary Public's Signature

After recordation please return to:   City of Pflugerville  
  Attn: Brandon Wade, City Manager  
  P.O. Box 589,  
  Pflugerville, Texas 78691



**Exhibit A**  
The Property

STATE HIGHWAY 150  
FAZEL, YORRELL, PROCTOR, ROAD  
ABANDONED



1.263 ACRES  
NEWLAND COMMUNITIES  
SH130 AT SH45 SE CORNER

FN. NO. 16-405(MJJ)  
NOVEMBER 7, 2016  
JOB NO. 222010727

#### DESCRIPTION

OF 1.263 ACRES OF LAND OUT OF THE JOHN BECKMAN SURVEY NO. 16, ABSTRACT NO. 55, SITUATED IN TRAVIS COUNTY, TEXAS, BEING A PART OF THE REMAINING PORTION OF A 169.66 ACRE TRACT OF LAND CONVEYED TO TERRABROOK FALCON RIDGE L.P. BY DEED OF RECORD IN DOCUMENT NO. 2000102740 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS; SAID 1.263 ACRE TRACT ALSO BEING PARCEL 157A-E AS SHOWN ON THE RIGHT-OF-WAY MAP FOR STATE HIGHWAY 130 PREPARED BY MACIAS & ASSOCIATES, INC. DATED FEBRUARY 14, 2007; SAID 1.263 ACRES OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**BEGINNING**, at a 1/2 inch iron rod with "STANTEC" cap set in the easterly right-of-way line of State Highway 130 (R.O.W. varies)(State Highway 130 Sta. 957+18.25, 400.00 feet left), being in the northerly line of the abandoned portion of Kelly Lane, a 60 foot wide Roadway dedicated in Book 2, Page 308 of the Commissioner Court Minutes of Travis County, Texas, for the southwesterly corner hereof, from which a TxDOT concrete monument found in the southerly right-of-way line of State Highway 130 (Sta. 947+52.22, 400.00' Left) bears the following two (2) courses and distances, S21°58'02"W, a distance of 60.15 and S13°17'15"W, a chord distance of 1548.95 feet;

**THENCE**, leaving the northerly line of the abandoned portion of Kelly Lane, along the easterly right-of-way line of State Highway 130, for the westerly line hereof, the following two (2) courses and distances:

- 1) N22°51'09"E, a distance of 106.05 to a 1/2 inch iron rod with "STANTEC" cap set (State Highway 130 Sta. 956+03.89, 400.00 feet left) for the point of curvature of a curve to the right;
- 2) Along said curve to the right having a radius of 75.00 feet, a central angle of 118°43'54", an arc length of 155.42 feet and a chord which bears, N82°13'39"E, a distance of 129.07 feet to a 1/2 inch iron rod with "STANTEC" cap set in the southerly right-of-way line of State Highway 45 (R.O.W. varies) for the end of said curve;

**THENCE**, S38°23'51"E, along the southerly right-of-way line of State Highway 45, being the northeasterly line hereof, a distance of 449.72 feet to a 1/2 inch iron rod with "STANTEC" cap set at the intersection of State Highway 45 with the northerly line of the abandoned portion of Kelly Lane, for the most easterly corner hereof;

FN NO. 16-405(MJJ)  
NOVEMBER 7, 2016  
PAGE 2 OF 2

**THENCE**, N62°09'33"W, leaving the southerly right-of-way line of State Highway 130, along the northerly line of the abandoned portion of Kelly Lane, being the southerly line hereof, a distance of 506.38 feet to the **POINT OF BEGINNING**, containing an area of 1.263 acres (55,030 sq. ft.) of land, more or less, within these metes and bounds.

**BEARING BASIS:** THE BASIS OF BEARING OF THE SURVEY SHOWN HEREON IS TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE, NAD 83(96), UTILIZING WESTERN DATA SYSTEMS CONTINUALLY OPERATING REFERENCE STATION (CORS) NETWORK.



**FILED AND RECORDED**  
OFFICIAL PUBLIC RECORDS

*Dana Debeauvoir*

DANA DEBEAUVOIR, COUNTY CLERK  
TRAVIS COUNTY, TEXAS

December 01 2016 11:30 AM

FEE: \$ 54.00 2016199150