

STATE OF TEXAS

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COUNTY OF TRAVIS

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**DEVELOPER PARTICIPATION CONTRACT**

This Developer Participation Contract (the "*Agreement*") is entered into this the \_\_\_\_\_ day of \_\_\_\_\_ 2018 (the "*Effective Date*") by and between the City of Pflugerville, Texas, a Texas home-rule municipality (the "*City*") and Costco Wholesale Corporation, a Washington corporation ("*Developer*"). The City and Developer are also referred to herein collectively as the "*Parties*" and individually as "*Party*."

**WHEREAS**, Developer is the current owner of that certain real property described in Exhibit 1 platted as Lot 1, Block A of the Costco Wholesale Pflugerville Addition ("*Lot 1*"), which property is part of a proposed shopping center development intended to be constructed within the Costco Wholesale Pflugerville Addition, Lots 1 and 2, Block A (the "*Development*");

**WHEREAS**, Developer is proposing to construct an 18" diameter water line over a portion of the City's right of way and a portion of Lot 1, Block A (the "*Project*"); and

**WHEREAS**, the City desires to oversize the overall scope of the Project and related infrastructure to include a 24" diameter water line and other ancillary improvements, if any, as described and/or depicted in Exhibit 2 (the "*City Improvements*") to increase capacity of the infrastructure for the benefit of other anticipated development in the area; and

**WHEREAS**, in connection with the Development and in accordance with this Agreement, the City desires to pay for the costs incurred by Developer in connection with this Agreement directly attributable to the costs of permitting, bidding, insuring, and constructing the City Improvements, as set forth herein; and

**WHEREAS**, contemporaneously with development and construction of the Project on the Lot 1, the City desires to have Developer construct the City Improvements as provided in this Agreement; and

**WHEREAS**, the Parties agree that the cost of the City Improvements do not exceed thirty (30%) percent of the Project and related improvement, or total contract costs and Section 212.072 (b)(1) of the Texas Local Government Code allows the City to participate up to thirty percent (30%) of the total contract price; and

**WHEREAS**, the Parties agree that the City Improvements are for the oversizing of the waterline to increase capacity to anticipate future development in the area, and Section 212.072(c) of the Texas Local Government Code allows participation by the City at a level not to exceed one hundred percent (100%) of the total costs of the City Improvements without complying with the competitive bidding procedure of Chapter 252 of the Local Government Code; and

**WHEREAS**, the City has determined Developer's construction of the City Improvements will be an economic benefit to the citizens of the City, therefore, this Agreement is in the best interest of the citizens of the City.

**NOW, THEREFORE**, for and in consideration of the above and foregoing recitals and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and Developer do hereby agree as follows:

**Section 1. Incorporation of Recitals.** The above and foregoing recitals are true and correct and are incorporated herein and made a part hereof for all purposes.

**Section 2. Term.** This Agreement shall be effective as of the date of execution of this Agreement by the last of the Parties to do so (the "*Effective Date*"). This Agreement shall remain in full force and effect from the Effective Date until the City and Developer have completed their respective obligations hereunder or until this Agreement has been earlier terminated by the mutual agreement of the City and Developer in writing or otherwise terminated as set forth in this Agreement.

**Section 3. Improvements.** The Project and City Improvements, as described and defined in the Recitals above, (collectively hereinafter referred to as the "*City-Developer Project improvements*") shall be constructed by Developer in accordance with and subject to the following:

Developer shall construct the City-Developer Project improvements as described in this Agreement in accordance with and subject to (i) the zoning for the Development, (ii) applicable all federal, state, and local ordinances, laws, statutes, standards, rules, regulations, codes, orders, directives, permits, plans or policies, including, without limitation, the City of Pflugerville, Texas, and any other governmental entity or agency having jurisdiction over the Development, and (iii) all of the terms and conditions of this Agreement.

A. *Design.* The plans for the design and construction of the City-Developer Project improvements dated January 30, 2018, entitled Costco Wholesale Public Improvements (the "*Plans*") have been completed by Winkelmann and Associates, Inc. (the "*Design Professional*"), and the same have been submitted to and approved by the City in accordance with the City's normal and usual practices and processes for reviewing and approving design plans for a development. A copy of the Plans will be kept on file in the office of the City Engineer (the "*City Engineer*"). Approval by the City of the Plans does not constitute a representation or warranty by the City regarding the accuracy and competency of the same, and such approval is not an assumption of or an indemnification for such responsibility or liability by the City for any defect, error or omission in the Plans.

B. *Construction.*

1. The Parties acknowledge that Developer shall construct the City-Developer Project improvements in accordance with the Plans with Developer's personnel and equipment and/or through contract with Robinson Construction Company (the "*Contractor*"). Upon the Effective Date of this Agreement, the construction of the City-Developer Project improvements shall be promptly commenced and thereafter diligently prosecuted to completion, but in any event not later than one (1) year following the Effective Date, unless due to Force Majeure occurrences defined below or upon an extension granted by the City Engineer for good cause shown. All work on the City-Developer Project improvements shall be performed in a good and workmanlike manner and in accordance with the Plans and all applicable laws, ordinances, rules, standards, regulations, and codes.
2. Prior to commencing any work on the City-Developer Project improvements, Developer shall provide (or require the Contractor to provide) to the City performance bonds as required under Section 212.073 of the Texas Local Government Code guaranteeing the faithful performance of the work and the payment of all obligations arising under the City-Developer Project including, without limitation, the payment of all persons performing labor or providing materials under or in connection with the City-Developer Project, each in the penal sum of one hundred percent (100%) of the total City-Developer Project improvements cost. Developer shall pay or cause the Contractor or the subcontractor to pay the premiums for such bonds. Bonds shall be issued by a surety company satisfactory to the City, licensed by the State of Texas to act as a Surety, and listed on the current U.S. Treasury Listing of Approved Sureties. All bonds shall be made on a form complying with the requirements of the laws of the State of Texas and satisfactory to the City. Upon the final completion of the City-Developer Project and the acceptance thereof by the City, Developer shall submit (or require the Contractor to submit) a warranty surety bond in required City format guaranteeing workmanship and materials for a period of two (2) years from the date of final acceptance of the City-Developer Project improvements by the City. Developer shall cause the Contractor, if any, to warrant and represent that it will repair any defects in the work herein contracted to be done and performed for a period of two (2) years from the date of the City's acceptance of all of the City-Developer Project improvements. Developer and the City of Pflugerville, Texas shall be named as joint obligees on all of such Contractor-provided bonds.
3. To the extent any of the City-Developer Project improvements are located within public right-of-way or property owned by the City, the City hereby grants to Developer and the Contractor a license to enter upon such public

right-of-way or property for the sole and limited purpose of constructing, inspecting, maintaining, and repairing the City-Developer Project improvements. Developer or Contractor shall coordinate with the City and utility providers to minimize the possibility of damage to utilities and any disruption to users within proximity of the construction area. Upon completion of the City-Developer Project, Developer shall ensure that the City-Developer Project improvements and the property on which such improvements were constructed are free and clear of all liens and encumbrances, including mechanics liens and purchase money security interests, to the extent arising by, through or under Developer, the Contractor, or any subcontractor or material suppliers pursuant to the construction contract for the City-Developer Project improvements.

4. Developer shall timely pay the Contractor in accordance with the terms and conditions of the applicable construction contract. Developer shall thoroughly inspect the work of any Contractor to guard the City against defects and deficiencies in the City-Developer Project improvements without assuming responsibility for the means and methods used by the Contractor.
5. The City has the right to inspect, test, measure or verify the construction work on the City-Developer Project improvements, as the City deems necessary and at any time.
6. Developer shall keep (or cause Contractor to keep) the City Engineer informed regarding the progress of the City-Developer Project improvements' construction as follows: Developer (or Contractor) shall notify and provide documentation to the City Engineer for the following events: (i) notice to proceed, (ii) default of the Contractor (if it occurs) after expiration of any applicable notice and cure periods, and (iii) completion of the City-Developer Project improvements such that they are ready for inspection by the City. The City-Developer Project improvements shall not be considered finally complete until the City Engineer (or designee) has inspected the improvements and has issued a certificate of completion and/or formally accepted the City-Developer Project improvements on behalf of the City.

**Section 4. Reimbursement.** Subject to all of the terms and conditions of this Agreement, the City shall reimburse Developer for the lesser of (i) one hundred percent (100%) of the total actual costs and expenses paid by Developer for designing, insuring, permitting, and constructing the City Improvements (the "*City Improvement Costs*") or (ii) an amount not to exceed Fifty Eight Thousand Four Hundred Eighteen Dollars (\$58,418), being the estimated City Improvement Costs as represented in Exhibit 3 attached hereto (the "*City Improvement Estimate*"). The lesser of the City Improvement Costs or the City Improvement Estimate shall be the "*Reimbursement Amount*".

1. Payment of the Reimbursement Amount shall be made within thirty (30) days following the last of:
  - (a) the City's receipt from the Design Professional of the Design Professional's certification (sealed by the Design Professional) that the City-Developer Project improvements have all been fully and finally completed in accordance with an applicable construction contract, all laws, ordinances, standards, codes, rules and regulations of the United States, the State of Texas, the City, and any other governmental entity having jurisdiction, and with this Agreement,
  - (b) the City's receipt of a written certification from Developer that the final payment for the construction of the City-Developer Project improvements has been made and accepted by the Contractor, and receipt of duly executed lien waivers from the Contractor (and subcontractors and material suppliers) establishing full and final payment or satisfaction of full and final payment to the same,
  - (c) the City's receipt from Developer of all guarantees and warranties from the Contractor, subcontractors, vendors, suppliers, or manufacturers, in connection with or relating to all or any portion of the work on the City-Developer Project improvements, and
  - (d) the City's receipt of a final invoice containing a notification of final completion of the City-Developer Project improvements and confirmation of the City's acceptance thereof as set forth herein.
2. The cost of the City Improvements shall not exceed thirty percent (30%) of the total contract price.
3. Payment of the Reimbursement Amount in full as provided in this Section 4 and City's issuance of a letter of acceptance memorandum shall constitute the last and final payment to be made by the City to Developer pursuant to this Agreement, and completion of all of the City's obligations hereunder.

**Section 5. Insurance.** At all times during the term of this Agreement, Developer shall maintain minimum insurance coverages, described below. Developer may satisfy this requirement through insurance provided by its Contractor.

- A. Commercial General Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence and \$2,000,000 general aggregate for bodily injury and property damage, which coverage shall include products/completed operations (\$2,000,000 products/ completed operations aggregate), and XCU (Explosion, Collapse, Underground) hazards. Coverage for products/completed operations must be maintained for at least two (2)

years after the construction work has been completed. Coverage must be amended to provide for an each-project aggregate limit of insurance. An alternative would be to have separate limits for all lines of General Liability coverage for each project.

- B. Workers Compensation insurance at statutory limits, including Employers Liability coverage with minimum limits of \$500,000 each-occurrence each accident/\$500,000 by disease each-occurrence/\$500,000 by disease aggregate.
- C. Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including owned, non-owned, and hired car coverage.
- D. Umbrella Liability at minimum limits of \$5,000,000.00 aggregate with respect to primary Commercial General Liability, Automobile Liability, and Employers Liability policies.

Any subcontractor(s) hired by the Contractor shall maintain insurance coverage equal to that required of the Contractor. Developer shall require Contractor to require all subcontractors to carry insurance naming the City of Pflugerville, Texas as an additional insured and meeting all of the above requirements.

- E. With reference to the foregoing insurance requirements, Developer or Contractor (as applicable) shall specifically endorse applicable insurance policies as follows:
  - 1. The City of Pflugerville, Texas shall be named as an additional insured with respect to General Liability, Automobile Liability, and Umbrella Liability.
  - 2. All liability policies shall not contain cross-liability exclusions or insured versus insured restrictions.
  - 3. A waiver of subrogation in favor of the City of Pflugerville, Texas, its officers, employees, and agents shall be contained in the Workers Compensation and all liability policies.
  - 4. If and to the extent commercially available, all insurance policies required under this Section shall be endorsed to require the insurer to immediately notify the City of any material change in the insurance coverage.
  - 5. If and to the extent commercially available, all insurance policies required under this Section shall be endorsed to the effect that the City

will receive at least thirty (30) days' notice prior to cancellation or non-renewal of the insurance.

6. All insurance policies, which name the City of Pflugerville, Texas as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
7. Required limits may be satisfied by any combination of primary and umbrella liability insurances.
8. Contractor may maintain reasonable and customary deductibles, subject to approval by the City.
9. Insurance must be purchased from insurers that are financially acceptable to the City.
10. All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of Insurance shall be prepared and executed by the insurance Developer or its authorized agent, delivered to Developer and the City prior to the commencement of any work on the City Improvements (or within 15 days after the date of this Agreement if construction has already commenced evidencing insurance coverages according to requirements and instructions contained herein.
11. Developer shall require Contractor to continuously and without interruption, maintain in force the required insurance coverages specified in this Section. If Developer does not comply with this requirement the City Engineer, at the City Engineer's sole discretion, may:
  - a. Subject to the notice and cure period set forth in Section 7, immediately suspend Developer from any further performance under this Agreement and begin procedures to terminate for default, or
  - b. Purchase the required insurance with City funds and deduct the cost of the premiums from the Reimbursement Amount due to Developer under this Agreement.
  - c. The City shall never waive or be estopped to assert its right to terminate this Agreement because of its acts or omissions regarding its review of insurance documents.

## **Section 6. Indemnity.**

To the extent permitted under applicable law, Developer covenants and agrees to FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS the City of Pflugerville, Texas and the elected officials, the officers, employees, representatives, and volunteers of the City of Pflugerville, Texas, individually or collectively, in both their official and private capacities (the City of Pflugerville, Texas, and such elected officials, and officers, employees, representatives, and volunteers of the City of Pflugerville, Texas each being a "Pflugerville Person" and collectively the "Pflugerville Persons"), from and against any and all costs, claims, liens, harm, damages, losses, expenses, fees, fines, penalties, proceedings, judgments, actions, demands, causes of action, liability, and suits, of any kind and nature whatsoever made upon any Pflugerville Person, whether directly or indirectly, that arise out of: (1) the performance of the work by Developer under this Agreement; and/or (2) a breach of any representations or warranties by Developer under this Agreement (the "Claims").

As soon as Developer becomes aware of any Claims against any Pflugerville Person or Developer related to or arising out of Developer's activities under this Agreement, Developer shall so advise the City in writing and shall see to the investigation and defense of such Claims at Developer's sole cost and expense. The Pflugerville Persons shall have the right, at the Pflugerville Persons' option and at its own expense, to participate in such defense without relieving Developer of any of its obligations hereunder.

The provisions of this defense, indemnity, and hold harmless obligation shall survive the termination or expiration of this Agreement for a period of one year.

## **Section 7. Termination.**

A. Either Party (the "*non-defaulting party*") may terminate this Agreement in the event of default of this Agreement by the other Party (the "*defaulting party*") and a failure by the defaulting party to cure such default after receiving notice thereof from the non-defaulting party in accordance with this Section 7A. Default shall occur if a Party fails to observe or perform any of its duties under this Agreement. Should such a default occur, the non-defaulting party shall deliver a written notice to the defaulting party describing such default and the proposed date of termination. Such date may not be sooner than the 20th day following receipt of the notice by the defaulting party; but if the default cannot with diligence be cured within the said 20 day period, if within such 20 day period the defaulting party provides the non-defaulting party written notice of the curative measures which it proposes to undertake, and proceeds promptly to initiate such measures to cure such default, and thereafter prosecutes the curing of such default with diligence and continuity, the time within which such default may be cured shall be extended for such period as may be necessary to complete the curing of such default with diligence and continuity, not to exceed 40 days following the occurrence of the default. The non-defaulting party, at its sole option, may extend the proposed date of termination to a later date. If prior to the proposed date of termination, the defaulting party cures such default to the non-defaulting party's satisfaction, the proposed termination shall be ineffective. If the defaulting party fails to cure such default prior to the proposed date of termination, the non-defaulting party may



terminate this Agreement, and the obligations of the Parties hereunder shall end, except to the extent of such obligations that expressly survive termination or such obligations which accrued prior to the date of such termination. The City Engineer may give such notice on behalf of the City for purposes of this Agreement.

B. In addition to the provisions of Section 7A above, the City may terminate this Agreement without notice or any opportunity to cure for any of the following reasons:

1. Insolvency of, the making of a transfer in fraud of creditors by, or the making of an assignment for the benefit of creditors by, Developer.

2. Filing of a petition under any section or chapter of the National Bankruptcy Act, as amended, or under any similar law or statute of the United States or any State thereof by Developer, or adjudication as a bankrupt or insolvent in proceedings filed against Developer.

3. Appointment of a receiver or trustee for all or substantially all of the assets of Developer.

4. Failure by Developer to complete the City-Developer Project improvements within one (1) year following the Effective Date (subject to Force Majeure or extension granted by the City for good cause shown).

C. In the event this Agreement is terminated due to default of Developer or for any of the reasons set forth in Section 7B above, or if Developer abandons the City-Developer Project for a period of ninety (90) days following commencement of construction thereof, either of which event is before Developer completes the construction of the City-Developer Project improvements, the City reserves the right to continue the City-Developer Project construction and utilize any unexpended funds for this Agreement or funds secured through any bond provided hereunder to complete the work. In such event, Developer shall have no claim for any other funds of the City.

D. In the event of a failure of the City to pay Developer the Reimbursement Amount as provided in this Agreement, Developer shall have all remedies under law or in equity. 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.

## **Section 8. Conflict of Interest.**

A. Developer acknowledges that it is informed that the Charter of the City of Pflugerville and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 11.06 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a “prohibited financial interest” in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a Party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

B. Pursuant to the subsection above, Developer warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City.

C. In addition, Developer warrants and certifies that it has filed a Texas Ethics Commission Certificate of Interested Parties (Form 1295) under Certificate Number 2017-279858.

## **Section 9. Miscellaneous.**

A. **Force Majeure.** “*Force Majeure*” includes acts of God, acts of the public enemy, war, blockades, insurrection, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, tornados, hurricanes, arrests and restraints of government and people, explosions, governmental delays, shortages of labor and/or materials, unforeseen environmental conditions and/or endangered species, and any other incapacities of either Party to carry out its obligations under this Agreement.

If, because of Force Majeure any Party is delayed in carrying out its obligations under this Agreement or is rendered unable, wholly or in part, to carry out its obligations under this Agreement, then such Party shall give to the other Party prompt written notice of the Force Majeure event with reasonable full details concerning it. Upon delivery of such notice, the obligation of the Party giving the notice, so far as it is affected by the Force Majeure, shall be suspended during, but not longer than, the continuance of the Force Majeure. Any Party who is affected by an event of Force Majeure shall use all possible diligence to remove the Force Majeure as quickly as possible, but its obligation shall not be deemed to require the settlement of any strike, lockout, or other labor difficulty contrary to the wishes of the Party involved or so affected.

B. **Inspection.** In connection with this Agreement and the matters set forth herein and in accordance with Texas Local Government Code § 212.074(b), copies of Developer’s books and other records related to the City-Developer Project improvements shall be made available by Developer for inspection by the City upon request. The City further has the right to

conduct inspections of all places where work is undertaken in connection with this Agreement.

C. **Independent Contractor.** Developer is an independent contractor, and Developer shall accomplish all of its obligations and services provided for herein in such capacity, and under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture, joint enterprise, or employment between the Parties; provided always, however, that the obligations and services of Developer hereunder shall be provided in a manner consistent with all applicable standards and regulations governing the same. The City shall have no control or supervisory powers as to the detailed manner or method of Developer's performance of the subject matter of this Agreement. All officers, employees, personnel, contractors, subcontractors, agents, and representatives supplied or used by Developer in connection with the obligations set forth in this Agreement shall be deemed officers, employees, personnel, contractors, subcontractors, agents, and representatives of Developer and shall not be considered officers, employees, personnel, contractors, subcontractors, agents, and representatives of the City for any purpose whatsoever. Developer shall be solely responsible for the compensation of all such persons, for the withholding of income, social security and other payroll taxes and for the coverage of all workers' compensation benefits, as and to the extent applicable.

D. **Non-Assignment.** Neither Party shall have the authority to or shall assign, convey, pledge, or otherwise transfer in any manner this Agreement, or any of the privileges, rights, or duties set forth herein, to any other person or entity, without the express prior written approval and consent of the other Party, except that Developer shall have the right to assign Developer's interest under this Agreement without the City's consent, to an Affiliate (as hereinafter defined). For the purpose of this provision, the sale or transfer of Developer's capital stock through a public exchange, or redemption or issuance of additional stock of any class shall not constitute an assignment nor a violation of this provision. For purposes of this Section, the term "Affiliate" shall mean (A) a subsidiary, affiliate, parent or other entity which controls, is controlled by or is under common control with Developer; (B) a successor corporation related to Developer by merger, consolidation, non-bankruptcy reorganization, or government action; (iii) a purchaser of substantially all of Developer's assets in the state where the Development is located. Notwithstanding the foregoing, the City acknowledges that Developer's obligations to construct the City-Developer Project improvements may be performed by the Contractor pursuant to a construction contract, but same shall not constitute an assignment nor a violation of this provision. Any assignment, conveyance, pledge, or other transfer in violation of this provision shall be null and void *ab initio* and cause for immediate termination (no period of cure) by the other Party.

E. **No Third-Party Beneficiary.** This Agreement and each of its provisions are solely for the benefit of the Parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

F. **Survival.** Except as otherwise provided for in this Agreement, all obligations and responsibilities arising prior to the expiration or termination of this Agreement allocating

responsibility or liability of or between the Parties shall survive the completion or termination of this Agreement, and any rights and remedies either Party may have with respect to the other arising out of the performance during the term of this Agreement shall survive the cancellation, expiration, or termination of this Agreement. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by a Party shall not preclude or waive its right to use any or all other rights and remedies, and said rights and remedies are given in addition to any other rights and remedies the Parties or either of them may have in law, in equity, or otherwise. Notwithstanding the foregoing, both the City and Developer expressly waive any and all rights to claim any speculative, consequential, punitive or special damages.

G. **Non-Waiver.** The failure of either Party to enforce any provision or condition contained in this Agreement at any time will not be construed as a waiver of that condition or provision nor will it operate as a forfeiture of any right of future enforcement of the condition or provision.

H. **Interpretation.** For purposes of this Agreement, “includes” and “including” are terms of enlargement and not of limitation or exclusive enumeration, and use of the term does not create a presumption that components not expressed are excluded.

I. **Exhibits.** All exhibits referenced in this Agreement are incorporated herein and made a part hereof for all purposes.

J. **Notices.** Any notice and/or statement required and permitted to be delivered shall be deemed delivered upon receipt after hand delivery or depositing same in the United States mail, certified mail with return receipt requested, postage prepaid, or upon receipt by nationally recognized overnight courier, addressed to the appropriate Party at the following addresses, or at such other addresses provided by the Parties by notice under this subsection:

If to the City, to:                      City of Pflugerville  
Attn: City Manager  
100 E. Main Street  
Pflugerville, Texas 78660  
Phone: 512.990.6101  
E-mail: [citymanager@pflugervilletx.gov](mailto:citymanager@pflugervilletx.gov)

*With copies to:*                      Charles E. Zech  
Denton, Navarro, Rocha, Bernal & Zech, PC  
2500 W. William Cannon, # 609  
Austin, Texas 78745  
Phone: 512.479.6431; Fax: 512-279-6438

If to the Company, to:                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

K. **Conflict of Laws and Venue.** The laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Agreement; and, with respect to any conflict of law provisions, the Parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Agreement. In the event of any action under this Agreement, exclusive venue for all causes of action shall be instituted and maintained in a state district court located in Travis County, Texas.

L. **Entire Agreement.** This Agreement supersedes all previous agreements regarding the matters set forth herein, and constitutes the entire understanding of the Parties. Developer shall be entitled to no other benefits than those specified herein. No changes, amendments, or alterations shall be effective unless in writing and signed by both Parties.

M. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision is not a part hereof, and the remaining provisions hereof shall remain in full force and effect. In lieu of any illegal, invalid, or unenforceable provision herein, the Parties shall seek to negotiate a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

N. **Applicable Laws.** This Agreement and all of its terms and conditions are subject to applicable laws, ordinances, rules, regulations, and codes, including, without limitation, the City Charter of the City of Pflugerville, Texas. Further, Developer acknowledges that the City of Pflugerville may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that; (i) it does not Boycott Israel; and (ii) will not Boycott Israel during the term of the contract. (Texas Government Code Chapter 2270). By entering into this Agreement, Developer verifies that it does not Boycott Israel, and agrees that during the term of this Agreement will not Boycott Israel as that term is defined in the Texas Government Code Section 808.001, as amended.

O. **Authority.** The undersigned officers and/or agents of the Parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the Parties hereto.

P. **Effective Date.** This Agreement shall be effective upon the date of the last of the Parties to sign below, as reflected by the date of signing.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the City and Developer have executed this Agreement.

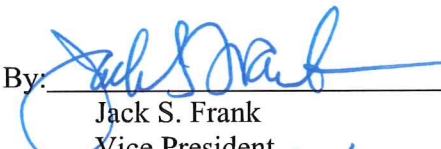
CITY:

DEVELOPER:

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

**COSTCO WHOLESALE CORPORATION,**  
a Washington corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: City Manager  
Date of signing: \_\_\_\_\_

By:  \_\_\_\_\_  
Jack S. Frank  
Vice President  
Date of signing: 5/17/10

ATTEST:

By: \_\_\_\_\_  
Karen Thompson  
City Secretary

**EXHIBIT 1**

**Legal Description and plat of Lot 1**

**PROPERTY DESCRIPTION**

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

BEING a tract of land situated in the JOHN DAVIS SURVEY, ABSTRACT NO. 231 and the JOHN BECKMAN SURVEY, ABSTRACT NO. 55, in the City of Pflugerville, Travis County, Texas, and being a portion of the remainder of a tract of land as described in deed to David L. Mellenbruch, recorded in County Clerk's Instrument No. 2005238782, Official Public Records, Travis County, Texas, and being all of a tract of land described in deed to the City of Pflugerville as recorded in County Clerk's Instrument No. 2016199150, Official Public Records, Travis County, Texas, and all of that portion of Kelly Lane abandoned by document recorded in County Clerk's Instrument No. 201800016, Official Public Records, Travis County, Texas, and being more particularly described as follows:

BEGINNING at a 1/2-inch iron rod with a red plastic cap stamped "WAI" set for corner on the Easterly right-of-way of F. M. Highway 685, a variable width right-of-way, at its intersection with the Southwest right-of-way of said Kelly Lane, a 60-foot right-of-way (Book 2, Page 308, Commissioners Court Minutes), said point being the Northwest corner of said Mellenbruch tract and the Northeast corner of a tract of land described in Condemnation Proceeding filed in the Probate Court No. One, Travis County, Texas, Judgement of Court in Absence of Objection to the State of Texas as recorded in County Clerk's Instrument No. 2005099539, Official Public Records, Travis County, Texas;

THENCE North 21 deg 42 min 36 sec East, along the Easterly right-of-way of said F. M. Highway 685 and the West line of said Kelly Lane abandonment, a distance of 60.71 feet to a 1/2-inch iron rod with a pink plastic cap stamped "STANTEC" found for the Northwest corner of said Kelly Lane abandonment and the Southwest corner of said City of Pflugerville drainage easement;

THENCE North 22 deg 52 min 00 sec East, continuing along the Easterly right-of-way of said F. M. Highway 685 and along the West line of said City of Pflugerville drainage easement, a distance of 106.05 feet to a 1/2-inch iron rod with a pink plastic cap stamped "STANTEC" found for corner at the beginning of a radial corner clip to the right at the intersection of the Easterly right-of-way of said F. M. Highway 685 with the Southwesterly right-of-way of Kelly Lane, a variable width right-of-way, said radial corner clip having a radius of 75.00 feet, a central angle of 118 deg 43 min 31 sec, a chord bearing of North 82 deg 14 min 29 sec East, and a chord length of 129.06 feet;

THENCE along said radial corner clip to the right, an arc distance of 155.41 feet to a  
**Pflugerville Developer Participation Agreement**



1/2-inch iron rod with a pink plastic cap stamped "STANTEC" found for corner on the Southwesterly right-of-way of said Kelly Lane;

THENCE South 38 deg 22 min 57 sec East, along the Southwesterly right-of-way of said Kelly Lane and the Northeasterly line of said City of Pflugerville drainage easement, passing a 1/2-inch iron rod with a pink plastic cap stamped "STANTEC" found for the Southeast corner of said City of Pflugerville drainage easement at a distance of 448.72 feet, continuing an additional 92.33 feet, in all, a total distance of 541.05 feet to a MAG nail found for corner, said MAG nail being the beginning of a non-tangent curve to the left having a radius of 1,311.00 feet, a central angle of 007 deg 09 min 22 sec, a chord bearing of South 49 deg 31 min 26 sec East, and a chord length of 163.63 feet;

THENCE along said curve to the left, an arc distance of 163.74 feet to a MAG nail found for the North 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 County Clerk's Instrument No. 200900101, Official Public Records, Travis County, Texas;

THENCE South 27 deg 47 min 25 sec West, along the Northwesterly line of said Lot 4, a distance of 295.74 feet to a 1/2-inch iron rod found for the Southwest corner of said Lot 4;

THENCE South 62 deg 12 min 35 sec East, along the Southwesterly line of said Lot 4, a distance of 272.84 feet to an "X" cut in concrete found for corner on the Northwesterly right-of-way of Colorado Sand Drive, a variable width right-of-way, said "X" cut 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 25 min 48 sec West, and a chord length of 216.28 feet;

THENCE departing the Southwesterly line of said Cornerstone at Kelly Lane, Phase I, and along the Northwesterly right-of-way of said Colorado Sands Drive, the following courses and distances:

Along said non-tangent curve to the right, an arc distance of 218.37 feet to a 1/2-inch iron rod with a plastic cap stamped "CARSON" found for corner;

South 59 deg 10 min 45 sec West, a distance of 49.73 feet to a 1/2-inch iron rod with a plastic cap stamped "CARSON" found for corner;

North 77 deg 44 min 00 sec West, a distance of 36.60 feet to a 1/2-inch iron rod with a plastic cap stamped "CARSON" found for corner;

South 59 deg 10 min 45 sec West, a distance of 50.11 feet to a 1/2-inch iron rod with a plastic cap stamped "CARSON" found for corner;

South 12 deg 16 min 00 sec West, a distance of 34.23 feet to a 1/2-inch iron rod with a plastic cap stamped "CARSON" found for corner;

South 59 deg 10 min 45 sec West, a distance of 53.71 feet to a 1/2-inch iron rod with a plastic cap stamped "CARSON" found for corner and the beginning of a curve to the left having a radius of 545.00 feet, a central angle of 025 deg 20 min 53 sec, a chord bearing of South 46 deg 30 min 18 sec West, and a chord length of 239.15 feet;

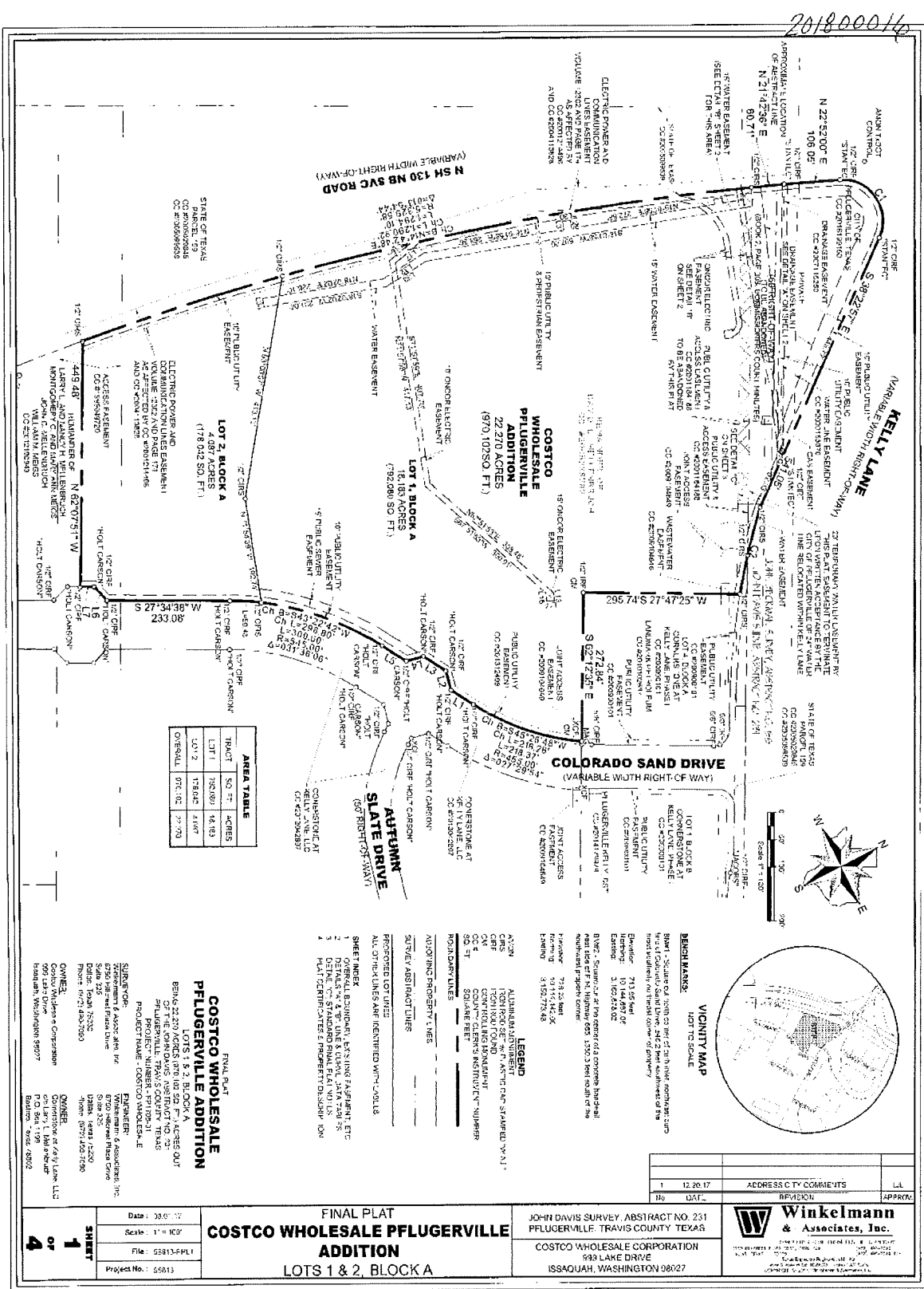
Along said curve to the left, an arc distance of 241.11 feet to a 1/2-inch iron rod with a red plastic cap stamped "WAI" set for corner;

THENCE North 71 deg 54 min 39 sec West, over and across said Mellenbruch tract, a distance of 192.74 feet to a 1/2-inch iron rod with a red plastic cap stamped "WAI" set for corner;

THENCE North 53 deg 00 min 07 sec West, continuing over and across said Mellenbruch tract, a distance of 413.13 feet to a 1/2-inch iron rod with a red plastic cap stamped "WAI" set for corner on the East right-of-way of said F. M. Highway 685 and the East line of said State of Texas tract, said point being the beginning of a non-tangent curve to the right having a radius of 5,329.58 feet, a central angle of 009 deg 40 min 11 sec, a chord bearing of North 16 deg 50 min 05 sec East, and a chord length of 898.40 feet;

THENCE along said non-tangent curve to the right and along the Easterly right-of-way of said F. M. Highway 685, an arc distance of 899.47 feet to the POINT OF BEGINNING.

CONTAINING within these metes and bounds 18.183 acres or 792,060 square feet of land, more or less. Bearings shown hereon are based upon an on-the-ground Survey performed in the field on the 10th day of September, 2016, utilizing a G.P.S. measurement (WGS 84) from the City of Pflugerville Monument Nos. 113 & 114.



**AREA TABLE**

TRACT	SQ. FT.	ACRES
LOT 1	78,000	1.79
LOT 2	78,000	1.79
OVERALL	156,000	3.58

**COSTCO WHOLESALE PFLUGERVILLE ADDITION**  
**LOTS 1 & 2, BLOCK A**

**OWNER:** COSTCO WHOLESALE CORPORATION  
 1000 Lakeside Drive  
 Issaquah, Washington 98027

**ENGINEER:** Winkelman & Associates, Inc.  
 7700 Westpark Drive  
 Suite 200  
 Dallas, Texas 75240  
 Phone: (972) 440-1000  
 Fax: (972) 440-1001

**DATE:** 08/13/18  
**SCALE:** 1" = 100'  
**FILE:** 03813-PFL1  
**PROJECT NO.:** 05813

**FINAL PLAT**  
**COSTCO WHOLESALE PFLUGERVILLE ADDITION**  
**LOTS 1 & 2, BLOCK A**

JOHN DAVIS SURVEY, ABSTRACT NO. 231  
 PFLUGERVILLE, TRAVIS COUNTY, TEXAS

COSTCO WHOLESALE CORPORATION  
 ISSAQUAH, WASHINGTON 98027

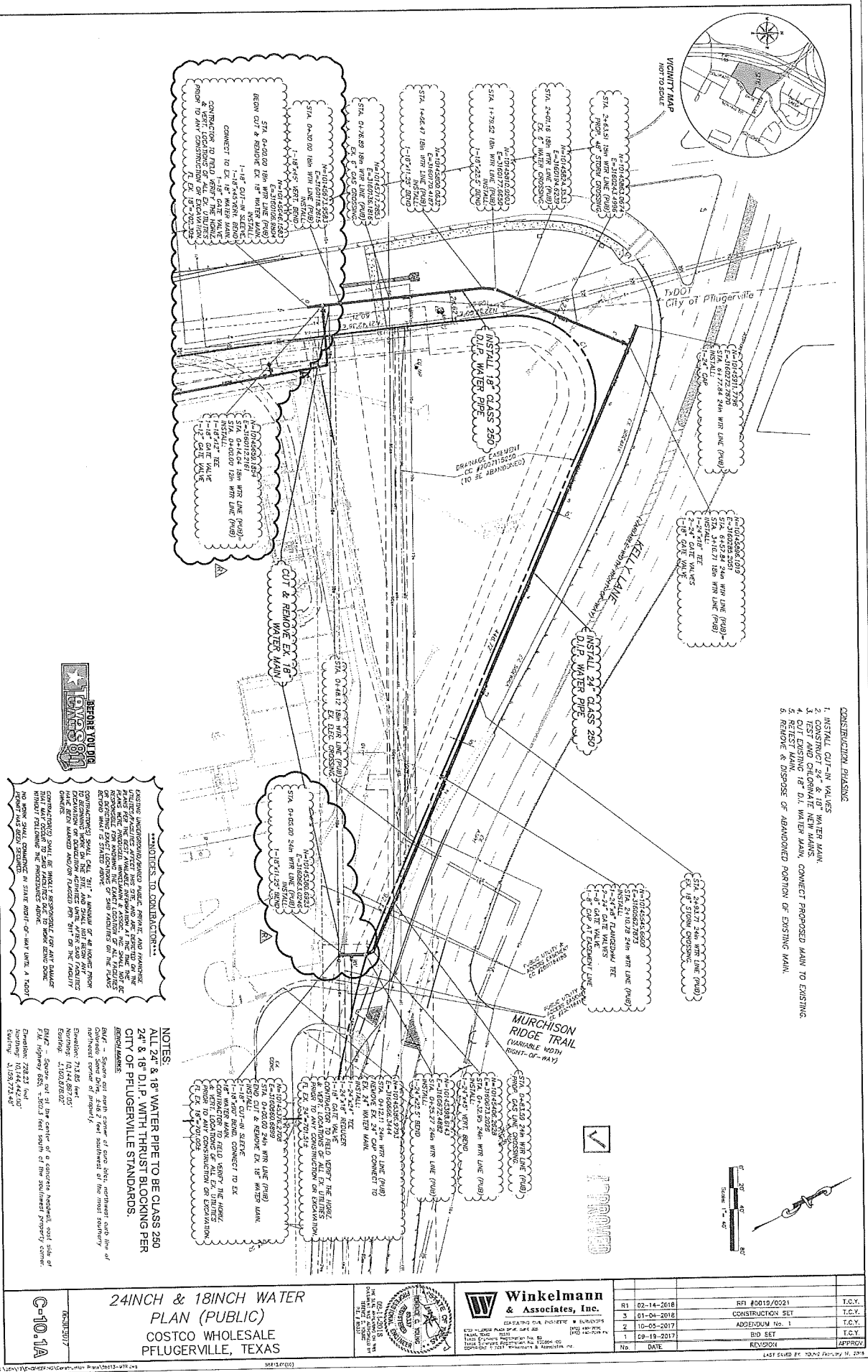
**Winkelman & Associates, Inc.**  
 7700 Westpark Drive, Suite 200  
 Dallas, Texas 75240  
 Phone: (972) 440-1000  
 Fax: (972) 440-1001  
 Website: www.winkelman.com

NO.	DATE	REVISION	APPROVED
1	12.20.17	ADDRESS CITY COMMENTS	

03813 SURVEY PFLUGERVILLE

**Pflugerville Developer Participation Agreement**

Exhibit 2



### **EXHIBIT 3**

#### **City Improvements Estimate**

Pflugerville, Texas  
"Costco Wholesale"  
Estimate of Upsize Water Line  
January 04, 2018

1. Upsize to 24" Water main	Quantities	Unit	Unit Price	Total Price	
A. 24" Ductile Iron Cladd 250 Pipe (6'-8')	496	LF	\$ 104.00	\$ 51,584.00	
B. 24" Ductile Iron Cladd 250 Pipe (8'-10')	100	LF	\$ 109.00	\$ 10,900.00	
C. 24" Ductile Iron Cladd 250 Pipe (10'-12')	88	LF	\$ 116.00	\$ 10,208.00	
D. 18" Ductile Iron Cladd 250 Pipe (6'-8')	306	LF	\$ 79.00	\$ 24,174.00	
E. Chlorination and Flushing	1	LS	\$ 1,000.00	\$ 1,000.00	
F. Cut & Remove existing 18" Pipe	620	LF	\$ 25.00	\$ 15,500.00	
G. Connect to existing 24" Line	1	EA	\$ 3,000.00	\$ 3,000.00	
H. Cut & Connect to existing 18" Line	2	EA	\$ 5,000.00	\$ 10,000.00	
I. 24" Gate Valve ( 3 require/ 1 City stub out	4	EA	\$ 15,000.00	\$ 60,000.00	
J. 18" Gate Valve	3	EA	\$ 9,915.00	\$ 29,745.00	
K. 8" Gate Valve	1	EA	\$ 970.00	\$ 970.00	
L. 24"x24" Tee	1	EA	\$ 2,000.00	\$ 2,000.00	
M. 24"x18" Tee	1	EA	\$ 2,020.00	\$ 2,020.00	
N. 24"x 18" Reducer	1	EA	\$ 860.00	\$ 860.00	
O. 24"x8" Tee	1	EA	\$ 1,200.00	\$ 1,200.00	
P. 24" Cap	1	EA	\$ 1,000.00	\$ 1,000.00	
Q. 18" 90 Bend	1	EA	\$ 870.00	\$ 870.00	
R. 18" 45 Bend	1	EA	\$ 700.00	\$ 700.00	
S. 18" 22.5 Bend	2	EA	\$ 605.00	\$ 1,210.00	
T. 18" 11.25 Bend	1	EA	\$ 765.00	\$ 765.00	
U. 18" Sleeve	2	EA	\$ 565.00	\$ 1,130.00	
V. 8" Cap/Plug	1	EA	\$ 800.00	\$ 800.00	
W. 24" Mega Lug	17	EA	\$ 600.00	\$ 10,200.00	
X. 18" Mega Lug	22	EA	\$ 360.00	\$ 7,920.00	
Y. 8" Mega Lug	2	EA	\$ 70.00	\$ 140.00	
			Subtotal	\$ 247,896.00	
2. 18" Water main	Quantities	Unit	Unit Price	Total Price	
A. 18" Ductile Iron Cladd 250 Pipe (6'-8')	496	LF	\$ 82.00	\$ 40,672.00	
B. 18" Ductile Iron Cladd 250 Pipe (8'-10')	100	LF	\$ 87.00	\$ 8,700.00	
C. 18" Ductile Iron Cladd 250 Pipe (10'-12')	88	LF	\$ 94.00	\$ 8,272.00	
D. 18" Ductile Iron Cladd 250 Pipe (6'-8')	306	LF	\$ 79.00	\$ 24,174.00	
E. Chlorination and Flushing	1	LS	\$ 1,000.00	\$ 1,000.00	
F. Cut & Remove existing 18" Pipe	620	LF	\$ 25.00	\$ 15,500.00	
G. Cut & Connect to existing 18" Line	2	EA	\$ 5,000.00	\$ 10,000.00	
H. 18" Gate Valve	3	EA	\$ 9,915.00	\$ 29,745.00	
I. 18" Gate Valve	3	EA	\$ 9,915.00	\$ 29,745.00	
J. 8" Gate Valve	1	EA	\$ 970.00	\$ 970.00	
L. 18"x8" Tee	1	EA	\$ 1,045.00	\$ 1,045.00	
M. 18" 90 Bend	1	EA	\$ 870.00	\$ 870.00	
N. 18" 45 Bend	1	EA	\$ 700.00	\$ 700.00	
O. 18" 22.5 Bend	2	EA	\$ 605.00	\$ 1,210.00	
P. 18" 11.25 Bend	1	EA	\$ 765.00	\$ 765.00	
Q. 18" Sleeve	2	EA	\$ 565.00	\$ 1,130.00	

Pflugerville, Texas  
 "Costco Wholesale"  
 Estimate of Upsize Water Line  
 January 04, 2018

R.	8" Cap/Plug	1	EA	\$ 800.00	\$ 800.00	
S.	18" Mega Lug	17	EA	\$ 360.00	\$ 6,120.00	
T.	18" Mega Lug	22	EA	\$ 360.00	\$ 7,920.00	
U.	8" Mega Lug	2	EA	\$ 70.00	\$ 140.00	
				Subtotal	\$ 189,478.00	
	The total cost difference by upsize water line from 18" to 24"			ToTal	\$ 58,418.00	
	Prepared by:					
	Terence C. Young, P.E.					
	Winkelmann & Associates, Inc.					
	6750 Hillcrest Plaza Dr., Ste. 325					
	Dallas, TX. 75230					
	972-490-7090					