

AGENDA – Saratoga Springs Community Development and Renewal Agency Meeting

Board Members:

Jim Miller, Chair
Stephen Willden, Vice-Chair
Shellie Baertsch
Michael McOmber
Ryan Poduska
Chris Porter

SARATOGA SPRINGS COMMUNITY DEVELOPMENT AND RENEWAL AGENCY

Tuesday, September 17, 2019, 6:00 PM

City of Saratoga Springs Council Chambers

1307 North Commerce Drive, Suite 200, Saratoga Springs, UT 84045

1. Call to Order.
2. Roll Call.

PUBLIC HEARING:

1. Draft Community Reinvestment Project Area 1 Official Plan and Draft Project Area Budget for the Proposed Community Reinvestment Project Area 1 within the CRA Project Area 1 Survey Area.

BUSINESS ITEM:

1. Resolution Approving the Official Project Area Plan for the Community Reinvestment Project Area 1 within the CRA Project Area 1 Survey Area; CDA R19-3 (9-17-19).
2. Resolution Approving an Official Project Area Budget for the Community Reinvestment Project Area 1 within the CRA Project Area 1 Survey Area; CDA R19-4 (9-17-19).
3. Resolution Approving an Interlocal Cooperation Agreement between Agency and the City of Saratoga Springs Relating to Certain Future Sales Tax Revenues within the Community Reinvestment Project Area 1; CDA R19-5 (9-17-19).
4. Resolution Approving a Participation Agreement between Agency and Costco Wholesale Corporation Relating to Promoting Private Development within the Community Reinvestment Project Area 1; CDA R19-6 (9-17-19).

MINUTES:

1. August 6, 2019.

ADJOURNMENT

In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this meeting should notify the City Recorder at 801.766.9793 at least one day prior to the meeting.

COMMUNITY REINVESTMENT PROJECT AREA 1

PROJECT AREA PLAN

SEPTEMBER 17, 2019
[Draft dated August 16, 2019]

COMMUNITY REINVESTMENT PROJECT AREA 1

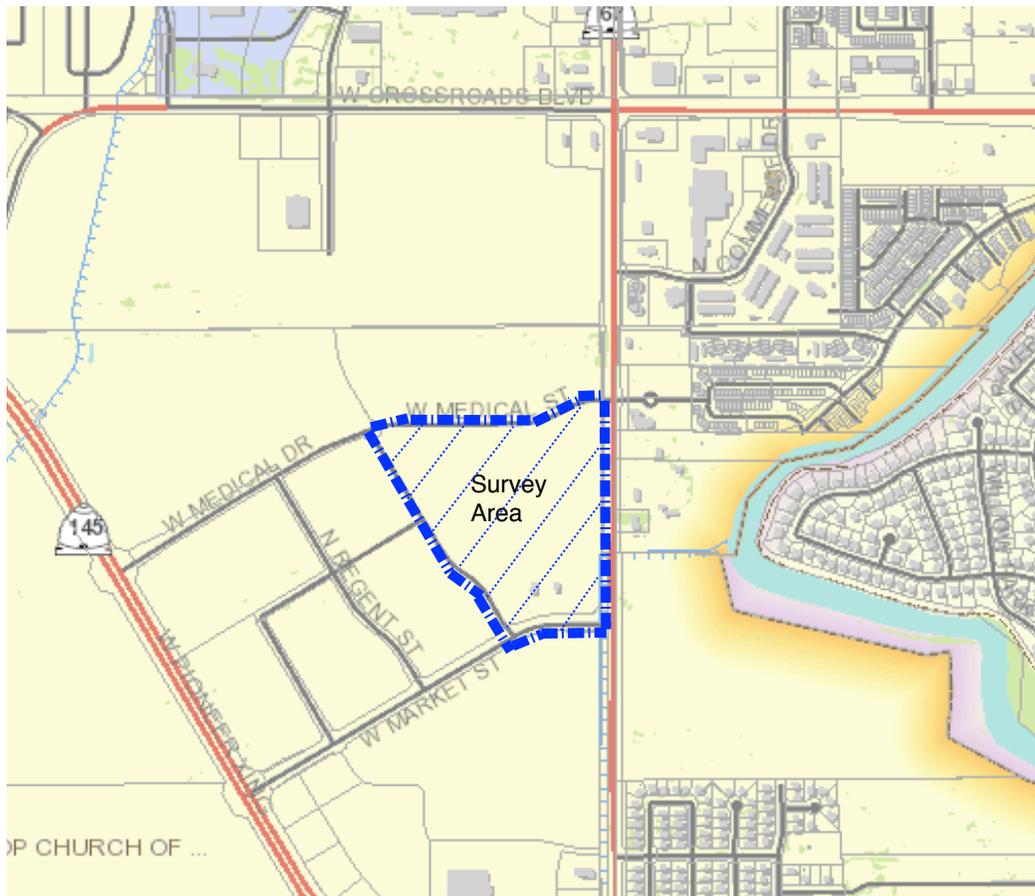
PROJECT AREA PLAN

This Project Area Plan (this “Plan”), for the Community Reinvestment Project Area 1 (the “Project Area”) has been prepared for the Saratoga Springs Community Development and Renewal Agency (the “Agency”), by direction of the Governing Board of the Agency, under the authority provided in Title 17C, Chapter 5 of the Utah Code Ann. 2019. The primary objective of this Plan is to provide a means for the Agency to induce the development and operation of a regionally significant retail wholesaler (the “Company”) within the boundaries of the City of Saratoga Springs, Utah (the “City”). Adoption of this Plan by the Governing Board of the Agency and the City Council of the City is the first step in that inducement process.

This Plan complies with all requirements of Utah Code Ann. 17C-5-105, as follows:

17C-5-105(1) - Boundary description/map

The boundaries of the Project Area are described in **Exhibit A** attached hereto and incorporated herein by this reference. Here is a map of the Project Area (all of the identified “Survey Area”):



17C-5-105(2) - Existing land uses, layout of principal streets, population densities, and building intensities

The entire Project Area is vacant. There are no current land uses within the Project Area. The Project Area is zoned to permit commercial/retail. The Project Area is bordered by Market Street, Medical Street, and Redwood Road, which are the only existing public streets within the actual Project Area. Two additional rights of way/streets are contemplated within the Project Area, subject to City requirement and approval. There is no existing population within the Project Area. There are no existing buildings within the Project Area.

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The development of any improvement within the Project Area will be governed by standard City code, rules and regulations. No other development standards will be imposed by the Agency.

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The Company's operation of a regional retail warehouse will provide significant benefits to the property and sales tax base of the City. Additionally, quality employment opportunities arising during development and construction, as well as from the operation of the retail warehouse, will benefit local City residents and the local City economy.

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Not applicable. Blight is not currently a concern or consideration in this Project Area. The Agency does not contemplate the use of eminent domain in the Project Area at any time.

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The Company's regional retail warehouse is the only specific project being contemplated by the Agency within the Project Area.

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The Company has been selected because the Company will control the retail site within the Project Area.

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[End of Plan - Exhibit A attached]

Exhibit A

Description of the Project Area

A portion of the Southwest quarter of Section 14, Township 5 South, Range 1 West, Salt Lake Meridian, located in Saratoga Springs, Utah, more particularly described as follows: Commencing at the Southwest corner of said Section 14; thence North 00°20'44" East 893.56 feet; thence East 2016.41 feet to the POINT OF BEGINNING; thence North 30°48'54" West 174.02 feet to a point on a non-tangent curve to the left having a radius of 396.46 feet, a central angle of 26°07'24" and a chord that bears North 43°59'38" West 179.20 feet; thence along said curve northwesterly an arc distance of 180.76 feet to a reverse curve to the right having a radius of 538.50 feet, a central angle of 26°21'18" and a chord that bears North 43°52'41" West 245.52 feet; thence along said curve northwesterly an arc distance of 247.70 feet; thence North 30°41'53" West 773.19 feet; thence North 78°14'14" East 81.37 feet to a point on a non-tangent curve to the right having a radius of 15.14 feet, a central angle of 108°56'31" and a chord that bears North 24°34'06" East 24.64 feet; thence along said curve northeasterly an arc distance of 28.79 feet; thence North 37°07'02" West 84.74 feet to a point on a non-tangent curve to the right having a radius of 533.07 feet, a central angle of 14°23'57" and a chord that bears North 82°49'56" East 133.62 feet; thence along said curve easterly an arc distance of 133.97 feet; thence East 690.12 feet to a curve to the left having a radius of 461.49 feet, a central angle of 27°16'24" and a chord that bears North 76°21'48" East 217.61 feet; thence along said curve easterly an arc distance of 219.67 feet; thence North 62°43'36" East 63.64 feet to a curve to the right having a radius of 538.49 feet, a central angle of 21°32'18" and a chord that bears North 73°29'45" East 201.24 feet; thence along said curve easterly an arc distance of 202.43 feet to a reverse curve to the left having a radius of 51.00 feet, a central angle of 83°53'11" and a chord that bears North 42°19'19" East 68.18 feet; thence along said curve northeasterly an arc distance of 74.67 feet; thence South 89°37'17" East 10.00 feet to the Westerly right of way line of Redwood Road (State Road 68); thence South 00°22'43" West 1295.18 feet along said Westerly right of way to the Northerly right of way line of Market Street, as shown on Market Street Right of Way Dedication Plat recorded April 23, 2015 as Map 14581 of official records; thence along said right of way through the following eight (8) calls, to-wit: 1-North 89°36'11" West 10.00 feet to a point on a non-tangent curve to the right having a radius of 51.51 feet, a central angle of 65°34'03" and a chord that bears South 33°34'46" West 55.78 feet; 2-thence along said curve southwesterly an arc distance of 58.95 feet to a point on a non-tangent curve to the right having a radius of 20.00 feet, a central angle of 23°38'04" and a chord that bears South 78°10'58" West 8.19 feet; 3-thence along said curve southwesterly an arc distance of 8.25 feet; 4-thence West 175.84 feet to a curve to the left having a radius of 644.50 feet, a central angle of 25°16'59" and a chord that bears South 77°21'32" West 282.10 feet; 5-thence along said curve westerly an arc distance of 284.40 feet to a reverse curve to the right having a radius of 20.50 feet, a central angle of 86°52'26" and a chord that bears North 71°50'46" West 28.19 feet; 6-thence along said curve westerly an arc distance of 31.08 feet; 7-thence South 61°25'21" West 71.56 feet to a point on a non-tangent curve to the right having a radius of 20.50 feet, a central angle of 91°28'23" and a chord that bears South 13°32'47" West 29.36 feet; 8-thence along said curve southerly an arc distance of 32.73 feet; 9-thence South 59°16'58" West 2.50 feet to a point on a non-tangent curve to the left having a radius of 21.02 feet, a central angle of 90°03'38" and a chord that bears North

14°13'55" East 29.74 feet; thence along said curve northerly an arc distance of 33.04 feet to the POINT OF BEGINNING.

Contains 1,290,487 square feet or 29.625 acres, more or less, and constituting a portion of Utah County Parcel No. 58:032:0187.

COMMUNITY REINVESTMENT PROJECT AREA 1

PROJECT AREA BUDGET

SEPTEMBER 17, 2019
[Draft dated August 16, 2019]

COMMUNITY REINVESTMENT PROJECT AREA 1

PROJECT AREA BUDGET

This Project Area Budget (this “Budget”), for the Community Reinvestment Project Area 1 (the “Project Area”) has been prepared for the Saratoga Springs Community Development and Renewal Agency (the “Agency”), in connection with an official Project Area Plan (the “Plan”) for the Project Area by direction of the Governing Board of the Agency, under the authority provided in Title 17C, Chapter 5 of the Utah Code Ann. 2019. This Budget complies with all applicable requirements of Utah Code Ann. 17C-5-303, as follows:

17C-5-303(1) - Tax Increment

At this time the Agency is not requesting any taxing entity participation, other than sales tax revenue from the City. Therefore, there will not at this time be any interlocal cooperation agreements, nor will there be a taxing entity, regarding tax increment or property tax revenue. This Plan will be funded entirely by sales tax revenues provided from the City. If tax increment participation is ever to become a part of consideration for this Project Area, the Agency and City will first need to amend this Budget and the Plan as required by the Utah Code Ann., and only then may the Agency consider funding the Plan with tax increment (subject to approval of the taxing entities by interlocal cooperation agreement or taxing entity committee decision at that time).

17C-5-303(2) - Sales Tax Revenue

The Agency’s receipt of sales tax revenues from the City will be governed by an interlocal cooperation agreement between the Agency and the City. Generally, the City will provide sufficient sales tax revenues in order to permit the Agency to meet any monetary obligations of the Agency under any participation agreement entered into by the Agency within the Project Area. The Agency anticipates receiving up to a maximum of \$4,500,000.00 in cumulative sales tax revenues from the City, paid annually in an amount up to 90% of the point-of-sale portion of sales tax revenues received by the City. The amount of each annual payment of sales tax revenue to the Agency will depend on the timing of completion of construction within the Project Area, as follows:

Project Completion Date	Payment Amount	Payment Cap
On or before 08/31/2020	90% of the City’s one-half point of sale portion of sales tax revenues generated from the Project	\$4,500,000

On or before 2/29/2020	85% of the City's one-half point of sale portion of sales tax revenues generated from the Project	\$4,250,000
On or before 08/31/2021	80% of the City's one-half point of sale portion of sales tax revenues generated from the Project	\$4,000,000
On or before 2/28/2021	75% of the City's one-half point of sale portion of sales tax revenues generated from the Project	\$3,750,000
On or before 08/31/2022	70% of the City's one-half point of sale portion of sales tax revenues generated from the Project	\$3,500,000
On or before 2/28/2022	65% of the City's one-half point of sale portion of sales tax revenues generated from the Project	\$3,250,000
Before, on, or after 08/31/2023	60% of the City's one-half point of sale portion of sales tax revenues generated from the Project	\$3,000,000

17C-5-303(3) - Use of Funds

The Agency anticipates using all City sales tax revenues to reimburse the participant for certain extraordinary site development costs, as specified in a participation agreement between the Agency and the participant.

17C-5-303(4) - Combined Incremental Value

The Agency is not requesting any tax increment within the Project Area at this time. This Budget will need to be amended by the Agency before any tax increment may be used within the Project Area, and if that occurs, then the Agency will provide the combined incremental value at that time when it becomes relevant.

17C-5-303(5) - Administration

The Agency anticipates using all City sales tax revenues to reimburse the participant; none of the funds will be used for administration. The Agency will fund administration from other sources.

17C-5-303(6) - Agency Property

The Agency does not own any property within the Project Area. The Agency does not anticipate acquiring any property within the Project Area.

[End of Budget]

RESOLUTION NO. CDA R19-3 (9-17-19)

RESOLUTION OF THE SARATOGA SPRINGS COMMUNITY DEVELOPMENT AND RENEWAL AGENCY ADOPTING AN OFFICIAL PLAN FOR THE COMMUNITY REINVESTMENT PROJECT AREA 1.

WHEREAS, the Saratoga Springs Community Development and Renewal Agency (the "Agency") was created to transact the business and exercise the powers provided for in the current Limited Purpose Local Government Entities - Community Reinvestment Agency Act, Title 17C of the Utah Code Ann. 1953, as amended (the "Act"); and

WHEREAS, the City of Saratoga Springs (the "City") has a planning commission and has adopted a general plan pursuant to applicable law; and

WHEREAS, the Agency, by Resolution, has authorized the preparation of a draft project area plan as provided in Section 17C-5-103 of the Act, within the CRA Project Area 1 Survey Area (the "Survey Area") referred to as the Community Reinvestment Project Area 1 (the "Project Area"); and

WHEREAS, pursuant to Section 17C-5-104 of the Act, the Agency has (a) prepared a draft Project Area Plan for the Project Area (the "Project Area Plan" or "Plan") and (b) made the draft Project Area Plan available to the public at the Agency's offices during normal business hours; and

WHEREAS, the Agency provided notice of the public hearing in compliance with Sections 17C-1-805, 806, and 808; and

WHEREAS, the Agency has held a public hearing on the draft Project Area Plan and at that Plan hearing (a) allowed public comment on the draft Project Area Plan and whether the draft Project Area Plan should be revised, approved or rejected, and (b) received all written and heard all oral objections to the draft Project Area Plan; and

WHEREAS, after holding the public hearing, and at the same meeting, the Agency considered the oral and written objections to the draft Project Area Plan, and whether to revise, approve or reject the draft Project Area Plan;

WHEREAS, less than one year has passed since the date of the public hearing.

NOW, THEREFORE BE IT RESOLVED BY THE GOVERNING BODY OF THE AGENCY:

Section I. Adoption of Project Area Plan. It has become necessary and desirable to adopt the draft Project Area Plan as the official Project Area Plan for the Project Area. The draft Project Area Plan, in the form attached hereto as **Exhibit C**, and together with any changes to the draft Project Area Plan as may be indicated in the minutes of this meeting (if any), is hereby designated and adopted as the official plan for the Project Area. The Agency shall submit the Project Area Plan, together with a copy of this Resolution, to the City Council requesting that the Project Area Plan be adopted by ordinance of the legislative body of the City in accordance with the provisions of the Act.

All comments and objections to the draft Project Area Plan (if any) have been considered and are, unless otherwise provided in the minutes of this meeting (if at all), passed upon.

Section 2. Legal Description of the Project Area Boundaries. The legal description of the boundaries of the Project Area covered by the Project Area Plan is attached hereto and incorporated herein as **Exhibit A**. A map of the Project Area is attached and incorporated herein as **Exhibit B**.

Section 3. Agency's Purposes and Intent. The Agency's purposes and intent with respect to the Project Area are set forth in the Project Area Plan, and include the following:

- A. Encourage and accomplish appropriate private development and community reinvestment activities within the Project Area.
- B. Provide for infrastructure improvements within or to serve the Project Area.
- C. Provide for the strengthening of the tax base and economic health of the community.

Section 4. Project Area Plan Incorporated by Reference. The Project Area Plan, together with supporting documents, in the form attached as **Exhibit C**, and together with any changes to the draft Project Area Plan as may be indicated in the minutes of this meeting (if any), is hereby incorporated herein by reference, and made a part of this Resolution. Copies of the Project Area Plan shall be filed and maintained in the office of the Agency and the City Recorder for public inspection.

Section 5. Agency Board Findings. The Agency Board hereby determines and finds that the Project Area Plan:

- A. Serves a public purpose by, among other things, encouraging and accomplishing appropriate community reinvestment and development activities within the Project Area;
- B. Produces a public benefit in the form of, among other things, increased development activity within the boundaries of the Agency, including in particular within the Project Area, that is desirable and will enhance the tax base of all taxing entities within the Project Area, as demonstrated by the analysis provided in the Project Area Plan;
- C. Is economically sound and feasible, in that the revenue needed for the implementation of the Project Area Plan will come from incremental tax revenues generated by new private development and/or business activities within the Project Area;
- D. Conforms to the City's general plan in that, among other things, the Project Area Plan provides that all development in the Project Area is to be in accordance with the City's zoning ordinances and requirements, and the development activities contemplated by the Project Area Plan are in harmony with the City's general plan; and
- E. Promotes the public peace, health, safety and welfare of the City.

Section 6. Effective Date. This Resolution shall take effect immediately upon adoption, and pursuant to the provisions of the Act, the Project Area Plan shall become effective upon adoption by Ordinance of the legislative body of the City.

THIS RESOLUTION IS APPROVED AND ADOPTED on this September 17, 2019.

Jim Miller, Chair

Attest:

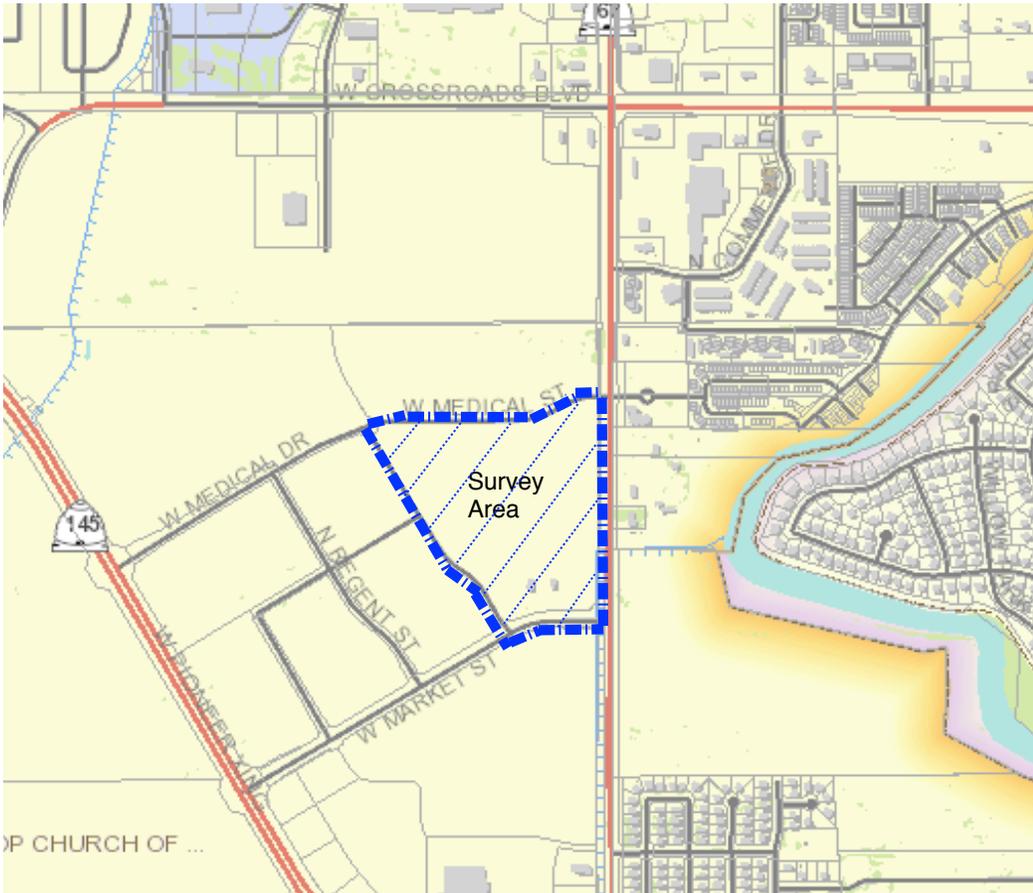
Cindy LoPiccolo, Secretary

EXHIBIT A – LEGAL DESCRIPTION OF THE PROJECT AREA

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EXHIBIT B – MAP OF THE PROJECT AREA*



*Project Area = All area identified as "Survey Area"

EXHIBIT C: PROJECT AREA PLAN

COMMUNITY REINVESTMENT PROJECT AREA 1

PROJECT AREA PLAN

SEPTEMBER 17, 2019
[Draft dated August 16, 2019]

COMMUNITY REINVESTMENT PROJECT AREA 1

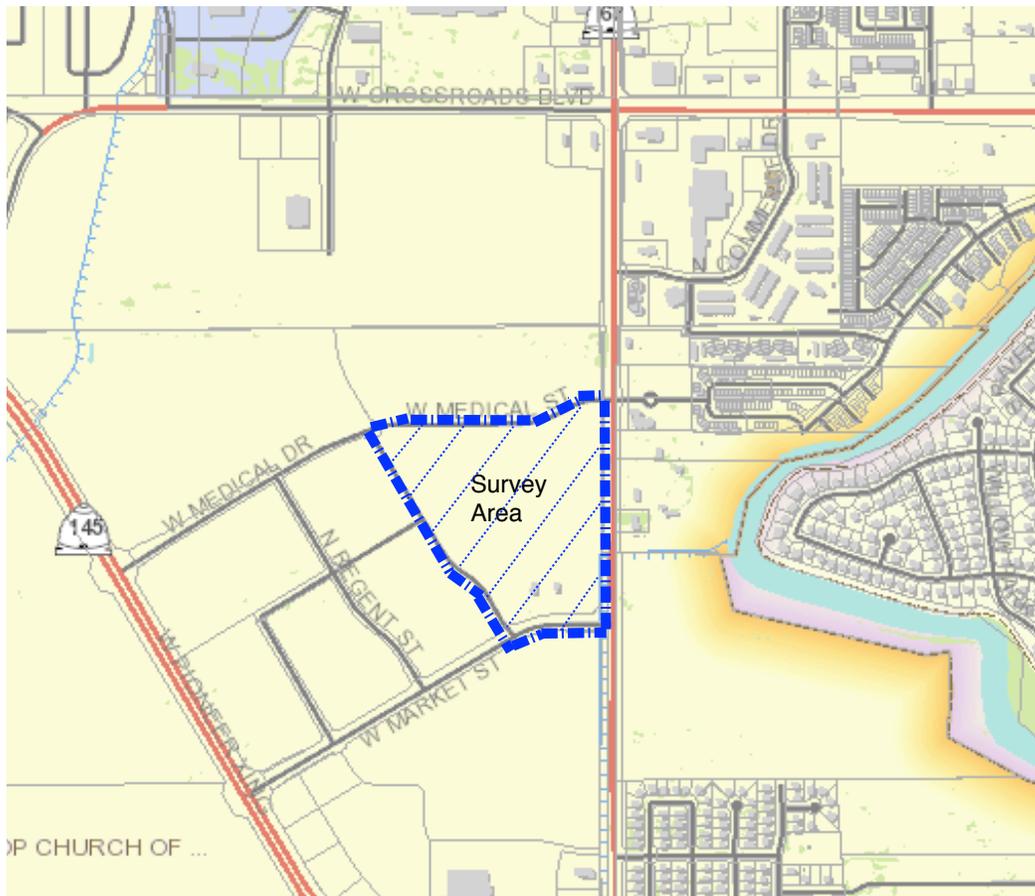
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This requirement is not applicable. The land in the Project Area is vacant. There are no historical buildings or uses within the Project Area.

17C-5-105(14) - Funding the Plan

At this time the Agency is not requesting any taxing entity participation, other than sales tax revenue from the City. Therefore, there will not at this time be any interlocal cooperation agreements, nor will there be a taxing entity, regarding tax increment or property tax revenue. This Plan will be funded entirely by sales tax revenues provided from the City. If tax increment participation is ever to become a part of consideration for this Project Area, the Agency and City will first need to amend this Plan as required by the Utah Code Ann., and only then may the Agency consider funding this Plan with tax increment (subject to approval of the taxing entities by interlocal cooperation agreement or taxing entity committee decision at that time).

[End of Plan - Exhibit A attached]

Exhibit A

Description of the Project Area

A portion of the Southwest quarter of Section 14, Township 5 South, Range 1 West, Salt Lake Meridian, located in Saratoga Springs, Utah, more particularly described as follows: Commencing at the Southwest corner of said Section 14; thence North 00°20'44" East 893.56 feet; thence East 2016.41 feet to the POINT OF BEGINNING; thence North 30°48'54" West 174.02 feet to a point on a non-tangent curve to the left having a radius of 396.46 feet, a central angle of 26°07'24" and a chord that bears North 43°59'38" West 179.20 feet; thence along said curve northwesterly an arc distance of 180.76 feet to a reverse curve to the right having a radius of 538.50 feet, a central angle of 26°21'18" and a chord that bears North 43°52'41" West 245.52 feet; thence along said curve northwesterly an arc distance of 247.70 feet; thence North 30°41'53" West 773.19 feet; thence North 78°14'14" East 81.37 feet to a point on a non-tangent curve to the right having a radius of 15.14 feet, a central angle of 108°56'31" and a chord that bears North 24°34'06" East 24.64 feet; thence along said curve northeasterly an arc distance of 28.79 feet; thence North 37°07'02" West 84.74 feet to a point on a non-tangent curve to the right having a radius of 533.07 feet, a central angle of 14°23'57" and a chord that bears North 82°49'56" East 133.62 feet; thence along said curve easterly an arc distance of 133.97 feet; thence East 690.12 feet to a curve to the left having a radius of 461.49 feet, a central angle of 27°16'24" and a chord that bears North 76°21'48" East 217.61 feet; thence along said curve easterly an arc distance of 219.67 feet; thence North 62°43'36" East 63.64 feet to a curve to the right having a radius of 538.49 feet, a central angle of 21°32'18" and a chord that bears North 73°29'45" East 201.24 feet; thence along said curve easterly an arc distance of 202.43 feet to a reverse curve to the left having a radius of 51.00 feet, a central angle of 83°53'11" and a chord that bears North 42°19'19" East 68.18 feet; thence along said curve northeasterly an arc distance of 74.67 feet; thence South 89°37'17" East 10.00 feet to the Westerly right of way line of Redwood Road (State Road 68); thence South 00°22'43" West 1295.18 feet along said Westerly right of way to the Northerly right of way line of Market Street, as shown on Market Street Right of Way Dedication Plat recorded April 23, 2015 as Map 14581 of official records; thence along said right of way through the following eight (8) calls, to-wit: 1-North 89°36'11" West 10.00 feet to a point on a non-tangent curve to the right having a radius of 51.51 feet, a central angle of 65°34'03" and a chord that bears South 33°34'46" West 55.78 feet; 2-thence along said curve southwesterly an arc distance of 58.95 feet to a point on a non-tangent curve to the right having a radius of 20.00 feet, a central angle of 23°38'04" and a chord that bears South 78°10'58" West 8.19 feet; 3-thence along said curve southwesterly an arc distance of 8.25 feet; 4-thence West 175.84 feet to a curve to the left having a radius of 644.50 feet, a central angle of 25°16'59" and a chord that bears South 77°21'32" West 282.10 feet; 5-thence along said curve westerly an arc distance of 284.40 feet to a reverse curve to the right having a radius of 20.50 feet, a central angle of 86°52'26" and a chord that bears North 71°50'46" West 28.19 feet; 6-thence along said curve westerly an arc distance of 31.08 feet; 7-thence South 61°25'21" West 71.56 feet to a point on a non-tangent curve to the right having a radius of 20.50 feet, a central angle of 91°28'23" and a chord that bears South 13°32'47" West 29.36 feet; 8-thence along said curve southerly an arc distance of 32.73 feet; 9-thence South 59°16'58" West 2.50 feet to a point on a non-tangent curve to the left having a radius of 21.02 feet, a central angle of 90°03'38" and a chord that bears North

14°13'55" East 29.74 feet; thence along said curve northerly an arc distance of 33.04 feet to the POINT OF BEGINNING.

Contains 1,290,487 square feet or 29.625 acres, more or less, and constituting a portion of Utah County Parcel No. 58:032:0187.

RESOLUTION NO. CDA R19-4 (9-17-19)

RESOLUTION OF THE SARATOGA SPRINGS COMMUNITY DEVELOPMENT AND RENEWAL AGENCY ADOPTING THE PROJECT AREA BUDGET FOR THE COMMUNITY REINVESTMENT PROJECT AREA 1.

WHEREAS, the Community Reinvestment Agency of Blanding (the "Agency") was created to transact the business and exercise the powers provided for in the current Limited Purpose Local Government Entities - Community Reinvestment Agency Act, Title 17C of the Utah Code Ann. 1953, as amended (the "Act"); and

WHEREAS, the Agency has adopted by Resolution an official Project Area Plan (the "Plan") for the Community Reinvestment Project Area 1 (the "Project Area"); and

WHEREAS, the Plan allows for the Agency to collect and disburse certain tax revenues created within the Project Area to assist in the creation of jobs, to meet other goals and objectives as outlined in the Plan, to promote economic development, and provide a public benefit within the City (the "City"); and

WHEREAS, the Agency has prepared a draft Project Area Budget in accordance with section 17C-5-303 of the Act.

WHEREAS, the Agency has held a public hearing on the draft Project Area Budget and at that hearing allowed public comment on the draft Project Area Budget and whether the draft Project Area Plan should be revised, approved or rejected; and

WHEREAS, after holding the public hearing, and at the same meeting, the Agency considered the oral and written objections to the draft Project Area Budget, and whether to revise, approve or reject the draft Project Area Budget;

NOW, THEREFORE BE IT RESOLVED BY THE GOVERNING BODY OF THE AGENCY:

1. All comments and objections to the draft Project Area Budget (if any) have been considered and are, unless otherwise provided in the minutes of this meeting (if at all), passed upon.
2. The Project Area Budget attached hereto as **Exhibit A** and incorporated herein, is hereby approved and adopted effective immediately.
3. This Resolution takes effect immediately.

THIS RESOLUTION IS APPROVED AND ADOPTED on this September 17, 2019.

ATTEST:

Jim Miller, Chair

Cindy LoPiccolo, Secretary

EXHIBIT A: PROJECT AREA BUDGET

COMMUNITY REINVESTMENT PROJECT AREA 1

PROJECT AREA BUDGET

SEPTEMBER 17, 2019
[Draft dated August 16, 2019]

COMMUNITY REINVESTMENT PROJECT AREA 1

PROJECT AREA BUDGET

This Project Area Budget (this “Budget”), for the Community Reinvestment Project Area 1 (the “Project Area”) has been prepared for the Saratoga Springs Community Development and Renewal Agency (the “Agency”), in connection with an official Project Area Plan (the “Plan”) for the Project Area by direction of the Governing Board of the Agency, under the authority provided in Title 17C, Chapter 5 of the Utah Code Ann. 2019. This Budget complies with all applicable requirements of Utah Code Ann. 17C-5-303, as follows:

17C-5-303(1) - Tax Increment

At this time the Agency is not requesting any taxing entity participation, other than sales tax revenue from the City. Therefore, there will not at this time be any interlocal cooperation agreements, nor will there be a taxing entity, regarding tax increment or property tax revenue. This Plan will be funded entirely by sales tax revenues provided from the City. If tax increment participation is ever to become a part of consideration for this Project Area, the Agency and City will first need to amend this Budget and the Plan as required by the Utah Code Ann., and only then may the Agency consider funding the Plan with tax increment (subject to approval of the taxing entities by interlocal cooperation agreement or taxing entity committee decision at that time).

17C-5-303(2) - Sales Tax Revenue

The Agency’s receipt of sales tax revenues from the City will be governed by an interlocal cooperation agreement between the Agency and the City. Generally, the City will provide sufficient sales tax revenues in order to permit the Agency to meet any monetary obligations of the Agency under any participation agreement entered into by the Agency within the Project Area. The Agency anticipates receiving up to a maximum of \$4,500,000.00 in cumulative sales tax revenues from the City, paid annually in an amount up to 90% of the point-of-sale portion of sales tax revenues received by the City. The amount of each annual payment of sales tax revenue to the Agency will depend on the timing of completion of construction within the Project Area, as follows:

Project Completion Date	Payment Amount	Payment Cap
On or before 08/31/2020	90% of the City’s one-half point of sale portion of sales tax revenues generated from the Project	\$4,500,000

On or before 2/29/2020	85% of the City's one-half point of sale portion of sales tax revenues generated from the Project	\$4,250,000
On or before 08/31/2021	80% of the City's one-half point of sale portion of sales tax revenues generated from the Project	\$4,000,000
On or before 2/28/2021	75% of the City's one-half point of sale portion of sales tax revenues generated from the Project	\$3,750,000
On or before 08/31/2022	70% of the City's one-half point of sale portion of sales tax revenues generated from the Project	\$3,500,000
On or before 2/28/2022	65% of the City's one-half point of sale portion of sales tax revenues generated from the Project	\$3,250,000
Before, on, or after 08/31/2023	60% of the City's one-half point of sale portion of sales tax revenues generated from the Project	\$3,000,000

17C-5-303(3) - Use of Funds

The Agency anticipates using all City sales tax revenues to reimburse the participant for certain extraordinary site development costs, as specified in a participation agreement between the Agency and the participant.

17C-5-303(4) - Combined Incremental Value

The Agency is not requesting any tax increment within the Project Area at this time. This Budget will need to be amended by the Agency before any tax increment may be used within the Project Area, and if that occurs, then the Agency will provide the combined incremental value at that time when it becomes relevant.

17C-5-303(5) - Administration

The Agency anticipates using all City sales tax revenues to reimburse the participant; none of the funds will be used for administration. The Agency will fund administration from other sources.

17C-5-303(6) - Agency Property

The Agency does not own any property within the Project Area. The Agency does not anticipate acquiring any property within the Project Area.

[End of Budget]

Interlocal Cooperation Agreement

THIS INTERLOCAL COOPERATION AGREEMENT is entered into as of September 17, 2019 (the “**Effective Date**”), by and between the **SARATOGA SPRINGS COMMUNITY DEVELOPMENT AND RENEWAL AGENCY**, a Utah political subdivisions (the “**Agency**”) and **CITY OF SARATOGA SPRINGS**, a Utah municipal corporation (the “**City**”) (collectively, the “**Parties**”).

A. WHEREAS, the Agency was created by the City and continues to operate under the provisions of what is now known as the Limited Purpose Local Government Entities - Community Reinvestment Agency Act found Title 17C of the Utah Code (the “**Act**”);

B. WHEREAS, pursuant to the Act, the City and Agency have created the Community Reinvestment Project Area 1 (the “**Project Area**”) for the purpose of providing for and encouraging the economic development of the Project Area;

C. WHEREAS, the Agency intends to enter into a Participation Agreement (a fully executed copy of which shall, upon execution, be attached hereto as Exhibit A) dated effective the same date as this Agreement (the “**Participation Agreement**”), under which the “**Participant**” described in the Participation Agreement agrees to open and operate a new Costco retail warehouse (the “**Project**”) on certain property located within the boundaries of the Project Area and more specifically described in the Participation Agreement (the “**Property**”);

D. WHEREAS, this Agreement is entered into by the Parties pursuant to the provisions of applicable State law, including both the Act and the Interlocal Cooperation Act, Title 11, Chapter 13 of the Utah Code (the “**Cooperation Act**”); and

NOW, THEREFORE, in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each Party, the Parties hereby agree as follows:

1. City's Pledge and Consent. Conditional upon the Agency and the Participant actually entering into the Participation Agreement with one another, the City hereby pledges to the Agency certain sales tax revenues generated from point of sale taxable sales on the Property, and actually received by the City each year, in the amount necessary for the Agency to satisfy the Agency’s corresponding obligations to the Participant the Participation Agreement. In no event will the total cumulative amount paid to the Agency exceed the applicable “Payment Cap” shown in the table below. The amount of each annual payment of sales tax revenue to the Agency will depend on the timing of completion of construction of the Project—as evidenced by the issuance of a temporary or permanent certificate of occupancy to the Company for the Project—as defined and described in the Participation Agreement, and summarized as follows:

Project Completion Date	Pledged Amount	Payment Cap
On or before 08/31/2020	90% of the City’s one-half point of sale portion of	\$4,500,000

	sales tax revenues generated from the Project	
On or before 2/29/2020	85% of the City's one-half point of sale portion of sales tax revenues generated from the Project	\$4,250,000
On or before 08/31/2021	80% of the City's one-half point of sale portion of sales tax revenues generated from the Project	\$4,000,000
On or before 2/28/2021	75% of the City's one-half point of sale portion of sales tax revenues generated from the Project	\$3,750,000
On or before 08/31/2022	70% of the City's one-half point of sale portion of sales tax revenues generated from the Project	\$3,500,000
On or before 2/28/2022	65% of the City's one-half point of sale portion of sales tax revenues generated from the Project	\$3,250,000
Before, on, or after 08/31/2023	60% of the City's one-half point of sale portion of sales tax revenues generated from the Project	\$3,000,000

The City will pay the sales tax revenues to the Agency by or before the May 31 immediately following each applicable calendar year (e.g., May 31, 2022 for the 2021 calendar year). The Agency is authorized to use the sales tax revenue paid by the City each year for the sole purpose of satisfying the Agency's obligation to the Participant under the Participation Agreement. If in any year the City pays more sales tax revenues to the Agency than the amount needed by the Agency to satisfy the Agency's obligation to the Participant in that year, the Agency must refund the excess amount back to the City. The Agency shall have no obligation to repay any sales tax revenues duly paid by the Agency to the Participant pursuant to the Participation Agreement.

2. Clarification Regarding Sales Tax Revenues. For the purpose of clarification, under Utah law governing sales tax revenue, one-half of every sales tax dollar remains in the city where the sale takes place and the other one-half is distributed to all cities according to their percentage of the state population. This Agreement relates solely to the City's one-half "point of sale" portion of the sales tax revenue. This Agreement relates in no way to the other one-half distributed according to population.

3. No Third-Party Beneficiary. Nothing in this Agreement shall create or be read or interpreted to create any rights in or obligations in favor of any person or entity not a party to this Agreement. Except as otherwise specifically provided herein, no person or entity is

an intended third-party beneficiary under this Agreement.

4. **Interlocal Cooperation Act.** In satisfaction of the requirements of the Cooperation Act in connection with this Agreement, the Parties agree as follows:

a. This Agreement shall be authorized and adopted by resolution of the legislative body of each Party pursuant to and in accordance with the provisions of Section 11-13-202.5 of the Cooperation Act;

b. This Agreement shall be reviewed as to proper form and compliance with applicable law by a duly authorized attorney in behalf of each Party pursuant to and in accordance with the Section 11-13-202.5(3) of the Cooperation Act;

c. A duly executed original counterpart of this Agreement shall be filed immediately with the keeper of records of each Party pursuant to Section 11-13-209 of the Cooperation Act;

d. This Agreement does not create an interlocal entity. The City Manager is hereby designated the administrator for all purposes of the Cooperation Act, pursuant to Section 11-13-207 of the Cooperation Act;

e. This Agreement shall commence on the Effective Date and shall remain in full force and effect until the earlier to occur of either of the following: (i) the City makes the final payment of sales tax revenues to the Agency, or (ii) the Participation Agreement is terminated for any reason.

f. Immediately after execution of this Agreement by both Parties, each of the Parties shall cause to be published notice, or one of the Parties may publish a joint notice, regarding this Agreement pursuant to Section 11-13-219 of the Cooperation Act.

g. It is not anticipated that either party will own any property that is connected in any way to this Agreement.

5. **Modification and Amendment.** Any modification of or amendment to any provision contained herein shall be effective only if the modification or amendment is in writing and signed by the Parties. Any oral representation or modification concerning this Agreement shall be of no force or effect.

6. **Further Assurance.** Each of the Parties hereto agrees to cooperate in good faith with the other, to execute and deliver such further documents, to adopt any resolutions, to take any other official action, and to perform such other acts as may be reasonably necessary or appropriate to consummate and carry into effect the transactions contemplated under this Agreement.

7. **Governing Law.** This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Utah.

8. **Interpretation.** The terms "include," "includes," "including" when used herein shall be deemed in each case to be followed by the words "without limitation."

9. **Severability.** If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction or as a result of future legislative action, and if the rights or obligations of any Party hereto under this Agreement will not be materially and adversely affected thereby,

a. such holding or action shall be strictly construed;

b. such provision shall be fully severable;

c. this Agreement shall be construed and enforced as if such provision had never comprised a part hereof;

d. the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the invalid or unenforceable provision or by its severance from this Agreement; and

e. in lieu of such illegal, invalid, or unenforceable provision, the Parties hereto shall use commercially reasonable efforts to negotiate in good faith a substitute, legal, valid, and enforceable provision that most nearly effects the Parties' intent in entering into this Agreement.

10. **Incorporation of Recitals.** The recitals set forth above are incorporated as part of this Agreement.

[End of Terms – Signature Page Follows]

SIGNATURES TO INTERLOCAL COOPERATION AGREEMENT

SARATOGA SPRINGS COMMUNITY
DEVELOPMENT AND RENEWAL AGENCY

By: _____
Executive Director

ATTEST:

By: _____
Secretary

Attorney Review for Agency:

The undersigned, as special counsel for the Saratoga Springs Community Development and Renewal Agency has reviewed the foregoing Interlocal Cooperation Agreement and finds it to be in proper form and in compliance with applicable state law.

Agency Attorney

[Signatures continue on next page]

SIGNATURES TO INTERLOCAL COOPERATION AGREEMENT, CONT'D

CITY OF SARATOGA SPRINGS

By: _____
City Manager

ATTEST:

City Recorder

Attorney Review for City:

The undersigned, as attorney for City of Saratoga Springs, has reviewed the foregoing Interlocal Cooperation Agreement and finds it to be in proper form and in compliance with applicable state law.

City Attorney

Exhibit A

Participation Agreement

Resolution No. CDA R19-5 (9-17-19)

A RESOLUTION OF THE SARATOGA SPRINGS COMMUNITY DEVELOPMENT AND RENEWAL AGENCY APPROVING AN INTERLOCAL COOPERATION AGREEMENT WITH THE CITY OF SARATOGA SPRINGS, WHICH AGREEMENT PROVIDES FOR THE PAYMENT OF CERTAIN FUTURE SALES TAX REVENUES FROM THE CITY TO THE AGENCY WITHIN THE COMMUNITY REINVESTMENT PROJECT AREA 1.

WHEREAS the Saratoga Springs Community Development and Renewal Agency (the “Agency”) has been created by the Saratoga Springs City Council to transact the business and exercise all of the powers provided for by Title 17C of the Utah Code Annotated, known as the “Limited Purpose Local Government Entities — Community Reinvestment Agency Act” (the “RDA Act”);

WHEREAS under the Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated 1953, as amended (the “Interlocal Act”), public agencies, such as the City and the Agency, are authorized to enter agreements for joint and cooperative actions, including the sharing of tax and other revenues;

WHEREAS, the Agency desires to enter into an Interlocal Cooperation Agreement (the “Agreement”), substantially in the form attached hereto as **Exhibit A**, with the City.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE AGENCY:

1. The Agreement in substantially the form attached hereto and incorporated herein as **Exhibit A** is approved, and the Executive Director of the Agency is authorized and directed to execute the Agreement for and on behalf of the Agency. The Executive Director may approve any minor modifications, amendments, or revisions to the Agreement as may be in the Agency’s best interest and in harmony with the intent and purpose of the Agreement as substantially set forth in the attached **Exhibit A**.

2. This resolution takes effect upon adoption.

THIS RESOLUTION IS APPROVED AND ADOPTED on September 17, 2019.

Jim Miller, Chair

Attest:

Cindy LoPiccolo, Secretary

Exhibit A
Form of Interlocal Cooperation Agreement

Interlocal Cooperation Agreement

THIS INTERLOCAL COOPERATION AGREEMENT is entered into as of September 17, 2019 (the “**Effective Date**”), by and between the **SARATOGA SPRINGS COMMUNITY DEVELOPMENT AND RENEWAL AGENCY**, a Utah political subdivisions (the “**Agency**”) and **CITY OF SARATOGA SPRINGS**, a Utah municipal corporation (the “**City**”) (collectively, the “**Parties**”).

A. WHEREAS, the Agency was created by the City and continues to operate under the provisions of what is now known as the Limited Purpose Local Government Entities - Community Reinvestment Agency Act found Title 17C of the Utah Code (the “**Act**”);

B. WHEREAS, pursuant to the Act, the City and Agency have created the Community Reinvestment Project Area 1 (the “**Project Area**”) for the purpose of providing for and encouraging the economic development of the Project Area;

C. WHEREAS, the Agency intends to enter into a Participation Agreement (a fully executed copy of which shall, upon execution, be attached hereto as Exhibit A) dated effective the same date as this Agreement (the “**Participation Agreement**”), under which the “**Participant**” described in the Participation Agreement agrees to open and operate a new Costco retail warehouse (the “**Project**”) on certain property located within the boundaries of the Project Area and more specifically described in the Participation Agreement (the “**Property**”);

D. WHEREAS, this Agreement is entered into by the Parties pursuant to the provisions of applicable State law, including both the Act and the Interlocal Cooperation Act, Title 11, Chapter 13 of the Utah Code (the “**Cooperation Act**”); and

NOW, THEREFORE, in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each Party, the Parties hereby agree as follows:

1. City's Pledge and Consent. Conditional upon the Agency and the Participant actually entering into the Participation Agreement with one another, the City hereby pledges to the Agency certain sales tax revenues generated from point of sale taxable sales on the Property, and actually received by the City each year, in the amount necessary for the Agency to satisfy the Agency’s corresponding obligations to the Participant the Participation Agreement. In no event will the total cumulative amount paid to the Agency exceed the applicable “Payment Cap” shown in the table below. The amount of each annual payment of sales tax revenue to the Agency will depend on the timing of completion of construction of the Project—as evidenced by the issuance of a temporary or permanent certificate of occupancy to the Company for the Project—as defined and described in the Participation Agreement, and summarized as follows:

Project Completion Date	Pledged Amount	Payment Cap
On or before 08/31/2020	90% of the City’s one-half point of sale portion of	\$4,500,000

	sales tax revenues generated from the Project	
On or before 2/29/2020	85% of the City's one-half point of sale portion of sales tax revenues generated from the Project	\$4,250,000
On or before 08/31/2021	80% of the City's one-half point of sale portion of sales tax revenues generated from the Project	\$4,000,000
On or before 2/28/2021	75% of the City's one-half point of sale portion of sales tax revenues generated from the Project	\$3,750,000
On or before 08/31/2022	70% of the City's one-half point of sale portion of sales tax revenues generated from the Project	\$3,500,000
On or before 2/28/2022	65% of the City's one-half point of sale portion of sales tax revenues generated from the Project	\$3,250,000
Before, on, or after 08/31/2023	60% of the City's one-half point of sale portion of sales tax revenues generated from the Project	\$3,000,000

The City will pay the sales tax revenues to the Agency by or before the May 31 immediately following each applicable calendar year (e.g., May 31, 2022 for the 2021 calendar year). The Agency is authorized to use the sales tax revenue paid by the City each year for the sole purpose of satisfying the Agency's obligation to the Participant under the Participation Agreement. If in any year the City pays more sales tax revenues to the Agency than the amount needed by the Agency to satisfy the Agency's obligation to the Participant in that year, the Agency must refund the excess amount back to the City. The Agency shall have no obligation to repay any sales tax revenues duly paid by the Agency to the Participant pursuant to the Participation Agreement.

2. Clarification Regarding Sales Tax Revenues. For the purpose of clarification, under Utah law governing sales tax revenue, one-half of every sales tax dollar remains in the city where the sale takes place and the other one-half is distributed to all cities according to their percentage of the state population. This Agreement relates solely to the City's one-half "point of sale" portion of the sales tax revenue. This Agreement relates in no way to the other one-half distributed according to population.

3. No Third-Party Beneficiary. Nothing in this Agreement shall create or be read or interpreted to create any rights in or obligations in favor of any person or entity not a party to this Agreement. Except as otherwise specifically provided herein, no person or entity is

an intended third-party beneficiary under this Agreement.

4. **Interlocal Cooperation Act.** In satisfaction of the requirements of the Cooperation Act in connection with this Agreement, the Parties agree as follows:

a. This Agreement shall be authorized and adopted by resolution of the legislative body of each Party pursuant to and in accordance with the provisions of Section 11-13-202.5 of the Cooperation Act;

b. This Agreement shall be reviewed as to proper form and compliance with applicable law by a duly authorized attorney in behalf of each Party pursuant to and in accordance with the Section 11-13-202.5(3) of the Cooperation Act;

c. A duly executed original counterpart of this Agreement shall be filed immediately with the keeper of records of each Party pursuant to Section 11-13-209 of the Cooperation Act;

d. This Agreement does not create an interlocal entity. The City Manager is hereby designated the administrator for all purposes of the Cooperation Act, pursuant to Section 11-13-207 of the Cooperation Act;

e. This Agreement shall commence on the Effective Date and shall remain in full force and effect until the earlier to occur of either of the following: (i) the City makes the final payment of sales tax revenues to the Agency, or (ii) the Participation Agreement is terminated for any reason.

f. Immediately after execution of this Agreement by both Parties, each of the Parties shall cause to be published notice, or one of the Parties may publish a joint notice, regarding this Agreement pursuant to Section 11-13-219 of the Cooperation Act.

g. It is not anticipated that either party will own any property that is connected in any way to this Agreement.

5. **Modification and Amendment.** Any modification of or amendment to any provision contained herein shall be effective only if the modification or amendment is in writing and signed by the Parties. Any oral representation or modification concerning this Agreement shall be of no force or effect.

6. **Further Assurance.** Each of the Parties hereto agrees to cooperate in good faith with the other, to execute and deliver such further documents, to adopt any resolutions, to take any other official action, and to perform such other acts as may be reasonably necessary or appropriate to consummate and carry into effect the transactions contemplated under this Agreement.

7. **Governing Law.** This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Utah.

8. **Interpretation.** The terms "include," "includes," "including" when used herein shall be deemed in each case to be followed by the words "without limitation."

9. **Severability.** If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction or as a result of future legislative action, and if the rights or obligations of any Party hereto under this Agreement will not be materially and adversely affected thereby,

a. such holding or action shall be strictly construed;

b. such provision shall be fully severable;

c. this Agreement shall be construed and enforced as if such provision had never comprised a part hereof;

d. the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the invalid or unenforceable provision or by its severance from this Agreement; and

e. in lieu of such illegal, invalid, or unenforceable provision, the Parties hereto shall use commercially reasonable efforts to negotiate in good faith a substitute, legal, valid, and enforceable provision that most nearly effects the Parties' intent in entering into this Agreement.

10. **Incorporation of Recitals.** The recitals set forth above are incorporated as part of this Agreement.

[End of Terms – Signature Page Follows]

SIGNATURES TO INTERLOCAL COOPERATION AGREEMENT

SARATOGA SPRINGS COMMUNITY
DEVELOPMENT AND RENEWAL AGENCY

By: _____
Executive Director

ATTEST:

By: _____
Secretary

Attorney Review for Agency:

The undersigned, as special counsel for the Saratoga Springs Community Development and Renewal Agency has reviewed the foregoing Interlocal Cooperation Agreement and finds it to be in proper form and in compliance with applicable state law.

Agency Attorney

[Signatures continue on next page]

SIGNATURES TO INTERLOCAL COOPERATION AGREEMENT, CONT'D

CITY OF SARATOGA SPRINGS

By: _____
City Manager

ATTEST:

City Recorder

Attorney Review for City:

The undersigned, as attorney for City of Saratoga Springs, has reviewed the foregoing Interlocal Cooperation Agreement and finds it to be in proper form and in compliance with applicable state law.

City Attorney

Exhibit A

Participation Agreement

PARTICIPATION AGREEMENT

This Participation Agreement (this “Agreement”) is entered into as of September 17, 2019, between **Costco Wholesale Corporation**, a Washington corporation (the “Company”) and the **Saratoga Springs Community Development and Renewal Agency**, a Utah political subdivision (the “Agency”), on the following terms:

Recitals

A. The Company has or expects to obtain the right to acquire ownership of some or all of the real property described/depicted in the attached **Exhibit A** (the “Property”), which Property is located within the boundaries of a community reinvestment project area created by the Agency and known as the Saratoga Springs Community Reinvestment Project Area 1 (the “Project Area”).

B. This Agreement becomes effective and enforceable only upon acquisition of the Property, or a portion of the Property, by the Company or any wholly owned subsidiary or affiliate of the Company, and this Agreement will be effective only with respect to the portion of Property actually acquired by the Company or any wholly owned subsidiary or affiliate of the Company. If the Company or any wholly owned subsidiary or affiliate of the Company acquires less than all of the Property then the parties agree to, upon the request of either party, execute an amended **Exhibit A** identifying the portion of Property actually acquired and subject to this Agreement.

C. The Company intends to construct, open and operate a Costco retail warehouse on the Property (the “Project”), which Project would be of great benefit to the Project Area and to the City of Saratoga Springs and its residents.

D. The Project will include a facility that is at least 140,000 square feet in size (“Facility”) and involve a capital investment of at least \$20,000,000.00.

E. The Company intends to provide not fewer than one hundred (100) full-time equivalent positions at the Facility, with average wages of not less than Fifteen Dollars (\$15.00) per hour, plus medical, dental and vacation benefits.

F. The Company has presented to the Agency sufficient information, including development plans and alternatives, and a projected financing pro forma, showing justification for the Agency’s participation in certain extraordinary development costs associated with the Property and the Project.

G. The Agency has adopted the Community Reinvestment Project Area 1 Plan (the “Plan”), relating to overall development and participation by the Agency within the Project Area.

H. The City of Saratoga Springs has on the same date as the effective date of this Agreement entered into an Interlocal Cooperation Agreement (the “City Interlocal Agreement”) with the Agency under which, in summary, the City has agreed that the Agency is entitled to receive a

portion of the sales tax revenues generated from taxable sales on the Property and paid to the City, in an amount sufficient to enable the Agency to meet its potential payment obligations to the Company under this Agreement relating to sales tax revenues.

I. The Agency is, subject at all times to the prior performance of the Company as described below, willing to provide the portion of the sales tax revenue generated from the Project, and actually received by the Agency each year under the City Interlocal Agreement, to the Company in accordance with Section 2.a hereof in order to induce the Company to construct and open the Project on the Property.

AGREEMENT:

NOW THEREFORE, in consideration of the mutual covenants, conditions, and considerations as more fully set forth below, the parties hereby agree as follows:

1. **Company Commitments.** Despite anything else in this Agreement to the contrary, the Company will not be entitled to receive any payment(s) from the Agency under this Agreement unless the Company satisfies, each of the following conditions precedent:

- a. The Company shall complete the construction of the Facility (containing at least 140,000 square feet).
- b. The Company shall have made a capital investment of not less than \$20,000,000.00 in the Project, including, without limitation, the costs of acquiring the Property, hard and soft construction costs relating to the Facility, including any necessary off-site improvements, and the costs of equipping the Facility.
- c. The Company shall create not fewer than one hundred (100) full-time equivalent positions at the Facility, with average wages of not less than Fifteen Dollars (\$15.00) per hour, plus medical, dental and vacation benefits. Within ninety (90) days after the Costco store opens for business, the Company will certify to Agency in writing, using the form attached hereto as **Exhibit B**, the number of full-time equivalent positions at the Facility, which must be not fewer than one hundred (100) positions with average wages of not less than Fifteen Dollars (\$15.00) per hour, plus medical, dental and vacation benefits, to support the fee waiver contemplated in this Agreement. For the purposes of this paragraph, “full-time equivalent” is any combination of seasonal or part-time employees whose compensated hours during a consecutive twelve (12) month period equals two thousand eighty (2,080) hours.
- d. The Company shall timely and properly pay all taxes assessed on or generated from the Property and the Project, including but not necessarily limited to real property, personal property, *ad valorem*, and sales taxes, to the appropriate taxing authorities.

2. **Post-Performance Reimbursement.** The Agency agrees to contribute to the Company the following annual incentive, on a post-performance reimbursement basis, for a portion of the extraordinary costs of developing the Project on the Property:

a. The Agency will pay to the Company annually, solely from sales tax revenues generated by Company and actually received by the Agency under the City Interlocal Agreement, a portion of the sales tax revenue generated by the Project’s taxable sales on the Property (each an “Annual Payment”). The total amount of all Annual Payments will be subject to a maximum aggregate payment cap (the “Payment Cap”), meaning that once the Agency has paid Annual Payments equal to the Payment Cap, the Agency will have no further payment obligations to the Company. The amount of each Annual Payment, and the Payment Cap, will depend on the timing of completion of construction of the Project—as evidenced by the issuance of a temporary or permanent certificate of occupancy to the Company for the Project—according to the following schedule (the term “City” means the City of Saratoga Springs, Utah):

Project Completion Date	Annual Payment Amount	Payment Cap
On or before 08/31/2020	90% of the City’s one-half point of sale portion of sales tax revenues generated from the Project	\$4,500,000
On or before 2/29/2020	85% of the City’s one-half point of sale portion of sales tax revenues generated from the Project	\$4,250,000
On or before 08/31/2021	80% of the City’s one-half point of sale portion of sales tax revenues generated from the Project	\$4,000,000
On or before 2/28/2021	75% of the City’s one-half point of sale portion of sales tax revenues generated from the Project	\$3,750,000
On or before 08/31/2022	70% of the City’s one-half point of sale portion of sales tax revenues generated from the Project	\$3,500,000
On or before 2/28/2022	65% of the City’s one-half point of sale portion of sales tax revenues generated from the Project	\$3,250,000
Before, on, or after 08/31/2023	60% of the City’s one-half point of sale portion of sales tax revenues generated from the Project	\$3,000,000

b. Despite the foregoing, the Agency has the option, but not the obligation, to pay early any amount up to the Payment Cap, in the Agency's sole discretion. Despite anything in this Agreement to the contrary, this Agreement and all obligations of the Agency to the Company will terminate upon payment of the applicable Payment Cap amount to the Company.

c. For the purpose of clarification, all Annual Payments amounts are subject to the following: the City charges a 1% municipal sales tax; under Utah law governing sales tax revenue, one-half of every sales tax dollar, not including any portions due to the State of Utah or other taxing entity, remains in the city where the sale takes place (point of sale) and the other one-half is distributed to all cities according to their percentage of the state population. This Agreement relates solely to the City of Saratoga Springs' one-half "point of sale" portion of the sales tax revenue with respect only to the 1% municipal sales tax.

d. The Agency represents and warrants that it has not encumbered or pledged to any other party any of the sales tax under the City Interlocal Agreement. The Agency agrees that the Agency will not, without the prior written consent of the Company, which may be withheld in the Company's sole discretion, issue any bonds or other indebtedness that are secured by sales tax under the City Interlocal Agreement until such time as Company has been reimbursed all amounts required under this Agreement, unless such obligations are subordinate to the rights of the Company under this Agreement.

e. The Agency agrees that the Agency will not, without the prior written consent of the Company, which may be withheld in the Company's sole discretion, until such time as Company has been reimbursed all amounts required under this Agreement, cause, permit, or consent to any modifications or amendments to the City Interlocal Agreement in a manner that reduces the amount of sales tax revenues to be paid to the Agency, on either an annual or cumulative basis, from the Project.

3. **Timing of Annual Incentive Payments.** The Agency will make the first Annual Payment by the June 15 immediately following the calendar year during which the Project is completed (as evidenced by issuance of the certificate of occupancy as provided under Section 2), and the Agency will continue making the Annual Payments by each following June 15 (*e.g.*, by June 15, 2022 for sales tax revenues generated in the 2021 calendar year). The Agency will stop making Annual Payments once cumulative payments to the Company have reached the applicable Payment Cap. If the Agency for any reason, including unintentionally or otherwise, pays the Company more than the applicable Payment Cap, the Company agrees to immediately refund the excess to the Agency.

4. **Failure to Construct.** In the event the Company fails to construct and open the Project for business to its members on or before **August 31, 2023**, then this Agreement shall automatically terminate and be of no further force or effect thereafter.

5. **Agency Authority.** The Company acknowledges that:

a. the Agency is a political subdivision of the State of Utah operating and existing under Title 17C of the Utah Code Ann., separate and distinct from the City, for the purpose of, among other things, promoting the urban renewal, economic development and community development in the City;

b. the City is not a party to this Agreement, and the City will not have any commitments, obligations, duties, liabilities or obligations under this Agreement;

c. the Agency has no independent taxing power, and therefore the Agency's sole source of revenue, at least for purposes of this Agreement, is the sales tax revenues pledged by the City under the City Interlocal Agreement;

d. if Utah law is amended or superseded by new law that has the effect of reducing or eliminating the amount of sales tax revenue to be paid to the Agency, the Agency's obligation to pay the Payment Cap to the Company will be accordingly reduced or eliminated;

e. if a court of competent jurisdiction declares that the Agency cannot legally receive sales tax revenues, or make payments to the Company from sales tax revenues as provided in this Agreement, or takes any other action which eliminates or reduces the amount of sales tax revenues paid to the Agency, the Agency's obligation to pay the Payment Cap to the Company shall be accordingly reduced or eliminated; and

f. the Agency has no power or authority to grant any land use approvals;

g. nothing in this Agreement creates, implies, or guarantees any land use approvals; and

h. all land use approvals are subject to the standard requirements of applicable state and City laws and regulations.

6. **No Public Dedication.** Nothing contained in this Agreement shall be deemed to be a gift or dedication of all or any portion of the Property or Project for the general public or for any public purpose whatsoever.

7. **Agreement Term/Breach/Termination.** This Agreement will immediately and automatically terminate upon the satisfaction of all payment and performance obligations of the Agency to the Company and the Company to the Agency.

8. **Successors and Assigns.** This Agreement is binding upon the parties and their respective successors and assigns. Neither party may assign or delegate any of its rights or duties under this Agreement without the prior written consent of the other party.

9. **Amendments.** Except as otherwise provided herein, this Agreement may be modified or amended by, and only by, a written instrument duly authorized and executed by the Company and the Agency.

10. **Waiver.** The waiver by any party of any right granted to it hereunder shall not be deemed a waiver of any other right or of a subsequent right obtained by reason of the matter previously waived.

11. **Governing Law and Interpretation.** This Agreement shall be governed by the laws of the State of Utah, and any action pertaining hereto shall be brought in the applicable state or federal court having jurisdiction in Utah County, Utah.

12. **Incorporation of Recitals and Exhibits/Integration.** The above recitals and the City Interlocal Agreement are hereby incorporated and made an integral and binding part of this Agreement. There are no other contracts, understandings, representations, or agreements, written or verbal, between the parties relating in any way to the subject matter of this Agreement. No party is relying on any verbal or written statements of the other than those expressly in this Agreement.

13. **Further Assurances.** The parties shall cooperate, take such additional actions, sign such additional documentation, and provide such additional information as reasonably necessary to accomplish the objectives set forth in this Agreement.

14. **Indemnification.** The Company agrees to indemnify, defend (with counsel of the Indemnitees' choosing), and hold the Agency and the City, including their respective officers, directors, agents, employees, contractors, and consultants (the "Indemnitees"), harmless from and against all liability, loss, damage, costs or expenses, including attorneys' fees and court costs, arising from or as a result of death, injury, accident, loss or damage of any kind caused to any person or property because of the act(s), error(s), or omission(s) of the Company, including its officers, directors, agents, employees, contractors, and consultants, upon or in connection with the Property or in connection in any way with this Agreement, except in each case to the extent arising out of the gross negligence, willful misconduct, illegal acts, bad faith, or breach of this Agreement by the Indemnitees.

15. **Third-Party Beneficiaries.** Except for the City of Saratoga Springs which is an intended third-party beneficiary as described in the immediately preceding paragraph regarding indemnification, this Agreement is intended solely for the benefit of the Agency and the Company and there are no intended third-party beneficiaries.

16. **No Liability of Officials or Employees.** No director, officer, agent, employee, or consultant of the Agency or the Company shall be personally liable to the other party hereto, or any successor in interest, in the event of any default or breach by the Agency or Company or for any amount which may become due to the Company or its successors or on any obligations under the terms of this Agreement.

17. **No Legal Relationships.** The parties disclaim any partnership, joint venture, fiduciary, agency or employment status or relationship between them. No party has the authority to make any representation or warranty or incur any obligation or liability on behalf of the other party, nor shall they make any representation to any third party inconsistent with this paragraph.

18. **Attorneys' Fees.** In the event of litigation between the parties related to this Agreement, the Court must award the prevailing party its costs, expenses, and reasonable attorneys' fees, such fees to be determined by the court sitting without a jury.

19. **Severability.** If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction or as a result of future legislative action, and if the rights or obligations of any Party hereto under this Agreement will not be materially and adversely affected thereby,

a. such holding or action shall be strictly construed;

b. such provision shall be fully severable;

c. this Agreement shall be construed and enforced as if such provision had never comprised a part hereof;

d. the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the invalid or unenforceable provision or by its severance from this Agreement; and

e. in lieu of such illegal, invalid, or unenforceable provision, the Parties hereto shall use commercially reasonable efforts to negotiate in good faith a substitute, legal, valid, and enforceable provision that most nearly effects the Parties' intent in entering into this Agreement.

20. **Time is of the Essence.** Time is of the essence with respect to each and every term, condition, obligation and provision hereof.

21. **Waiver of Jury Trial.** The Parties irrevocably waive any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement.

22. **Force Majeure.** The Agency or the Company shall be excused, without penalty, for the period of any delay in the performance of any obligations hereunder when prevented from doing so by causes beyond its control, which shall include without limitation acts of God, governmental restrictions, strikes, labor disturbances, shortages of materials or supplies and the inability to obtain reasonable substitutes, and actions or inactions of governmental authorities (a "Force Majeure Event"). In connection with any Force Majeure Event, the party claiming such Force Majeure Event must use commercially reasonable efforts to mitigate the effect of such Force Majeure Event. Nothing contained in this paragraph shall excuse either party from paying in a timely fashion any payments due under the terms of this Agreement.

23. **Remedies.** In the event of a breach or a default by the Company or the Agency under this Agreement, the non-defaulting party may 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 (a "Default").

23.1 Company Default. Upon the occurrence of a Company Default, the Agency shall have the right to terminate this Agreement by written notice to the Company, in which event the Agency shall have no obligation to make any future Annual Payments to the Company under this Agreement.

23.2 Agency Default. Upon the occurrence of an Agency Default, the Company shall have the right to terminate this Agreement by written notice to the Agency, in which event the Company shall have no further obligations under this Agreement.

23.3 Agency Remedy Limitation. Under no circumstances shall the Agency be entitled to a refund of any Annual Payments that have been paid to the Company, nor shall the Company be liable to the Agency or the City for any monetary damages, including, but not limited to, costs, fees, special, general, direct, indirect, delay, compensatory, expectancy, consequential, reliance, out-of-pocket, restitution, or other damages, except as otherwise expressly stated herein.

23.4 Company Remedy Limitation. The Company's sole and exclusive remedy for any non-performance or breach of the Agency's express or implied covenants of this Agreement is declaratory relief construing this Agreement's rights and obligations and specific performance of this Agreement, or termination of this Agreement as provided above. Under no circumstances shall the Agency be liable to the Company or its successors-in-interest for any monetary damages, including, but not limited to, costs, fees, special, general, direct, indirect, delay, compensatory, expectancy, consequential, reliance, out-of-pocket, restitution, or other damages, except as otherwise expressly stated herein. Nothing in this Agreement shall relieve the Company or its successors-in-interest of the requirement to exhaust available administrative remedies.

24. Authority. The individuals executing this Agreement represent and warrant to the Parties that they possess the legal authority to execute this Agreement pursuant to the terms herein.

25. Notices. All notices, demands, requests, or other communications required or permitted by this Lease shall be in writing and effective when received, and delivery shall be made personally, or by registered or certified mail, return receipt requested, postage prepaid, or overnight courier, addressed as follows:

The Company:
Costco Wholesale
999 Lake Drive
Issaquah, WA 98027
Attn: Property Management

With copy to:

Costco Wholesale
999 Lake Drive
Issaquah, WA 98027
Attn: Bruce Coffey

The Agency:
Saratoga Springs CDRA
Attn: Director
1307 N Commerce Drive
Suite 200
Saratoga Springs, UT 84045

With copy to:
Saratoga Springs City Attorney
1307 N Commerce Drive
Suite 200
Saratoga Springs, UT 84045

26. **Mutual Preparation in Document Preparation.** Each party has participated materially in the negotiation and preparation of this Agreement and any related items; in the event of a dispute concerning the interpretation of any provision of this Agreement or any related item, both parties will be deemed to have jointly drafted this Agreement and the rule of construction to the effect that certain ambiguities are to be construed against the party drafting a document will not apply.

THIS PARTICIPATION AGREEMENT IS EXECUTED effective as of the date written above:

COMPANY: COSTCO WHOLESALE CORPORATION

By: _____
Name: _____
Title: _____

AGENCY: SARATOGA SPRINGS COMMUNITY
DEVELOPMENT AND RENEWAL AGENCY,
a Utah political subdivision

By: _____
Name: _____
Title: _____

Attest:

Secretary

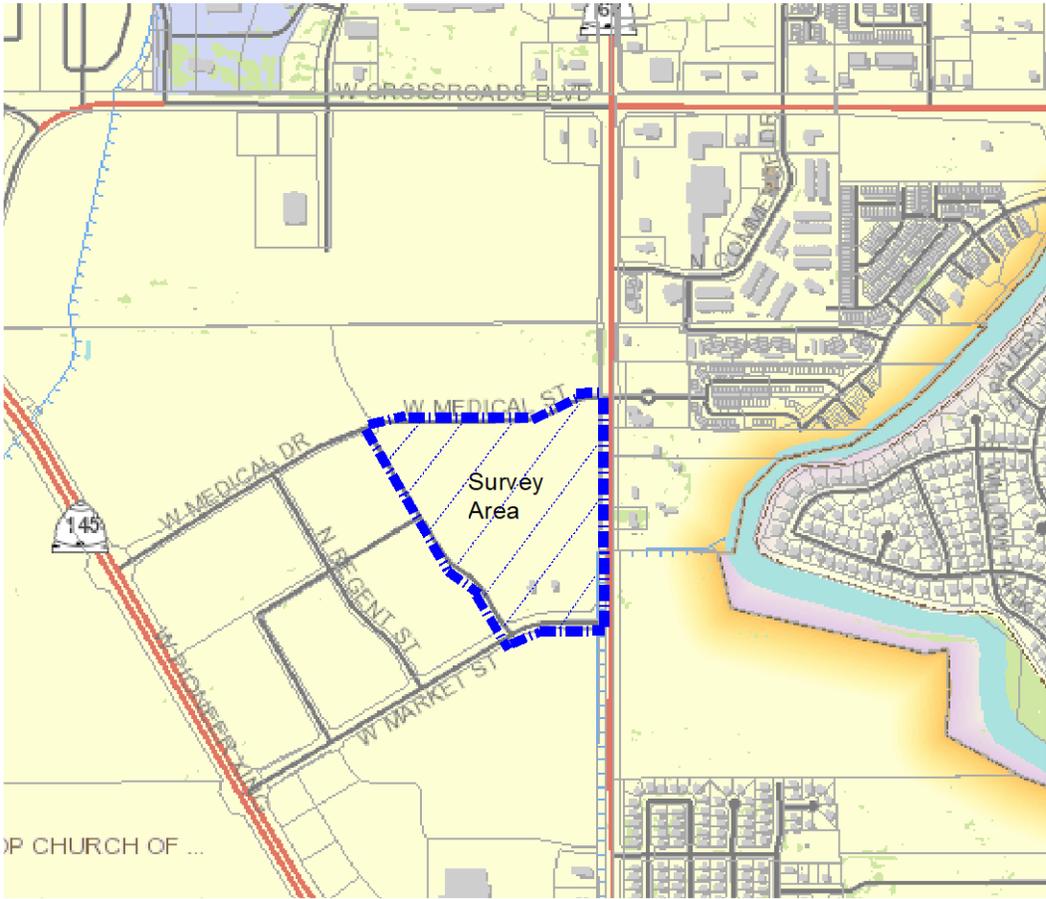
[Exhibits A and B attached]

Exhibit A

Legal Description/Map of the Property

A portion of the Southwest quarter of Section 14, Township 5 South, Range 1 West, Salt Lake Meridian, located in Saratoga Springs, Utah, more particularly described as follows: Commencing at the Southwest corner of said Section 14; thence North 00°20'44" East 893.56 feet; thence East 2016.41 feet to the POINT OF BEGINNING; thence North 30°48'54" West 174.02 feet to a point on a non-tangent curve to the left having a radius of 396.46 feet, a central angle of 26°07'24" and a chord that bears North 43°59'38" West 179.20 feet; thence along said curve northwesterly an arc distance of 180.76 feet to a reverse curve to the right having a radius of 538.50 feet, a central angle of 26°21'18" and a chord that bears North 43°52'41" West 245.52 feet; thence along said curve northwesterly an arc distance of 247.70 feet; thence North 30°41'53" West 773.19 feet; thence North 78°14'14" East 81.37 feet to a point on a non-tangent curve to the right having a radius of 15.14 feet, a central angle of 108°56'31" and a chord that bears North 24°34'06" East 24.64 feet; thence along said curve northeasterly an arc distance of 28.79 feet; thence North 37°07'02" West 84.74 feet to a point on a non-tangent curve to the right having a radius of 533.07 feet, a central angle of 14°23'57" and a chord that bears North 82°49'56" East 133.62 feet; thence along said curve easterly an arc distance of 133.97 feet; thence East 690.12 feet to a curve to the left having a radius of 461.49 feet, a central angle of 27°16'24" and a chord that bears North 76°21'48" East 217.61 feet; thence along said curve easterly an arc distance of 219.67 feet; thence North 62°43'36" East 63.64 feet to a curve to the right having a radius of 538.49 feet, a central angle of 21°32'18" and a chord that bears North 73°29'45" East 201.24 feet; thence along said curve easterly an arc distance of 202.43 feet to a reverse curve to the left having a radius of 51.00 feet, a central angle of 83°53'11" and a chord that bears North 42°19'19" East 68.18 feet; thence along said curve northeasterly an arc distance of 74.67 feet; thence South 89°37'17" East 10.00 feet to the Westerly right of way line of Redwood Road (State Road 68); thence South 00°22'43" West 1295.18 feet along said Westerly right of way to the Northerly right of way line of Market Street, as shown on Market Street Right of Way Dedication Plat recorded April 23, 2015 as Map 14581 of official records; thence along said right of way through the following eight (8) calls, to-wit: 1-North 89°36'11" West 10.00 feet to a point on a non-tangent curve to the right having a radius of 51.51 feet, a central angle of 65°34'03" and a chord that bears South 33°34'46" West 55.78 feet; 2-thence along said curve southwesterly an arc distance of 58.95 feet to a point on a non-tangent curve to the right having a radius of 20.00 feet, a central angle of 23°38'04" and a chord that bears South 78°10'58" West 8.19 feet; 3-thence along said curve southwesterly an arc distance of 8.25 feet; 4- thence West 175.84 feet to a curve to the left having a radius of 644.50 feet, a central angle of 25°16'59" and a chord that bears South 77°21'32" West 282.10 feet; 5-thence along said curve westerly an arc distance of 284.40 feet to a reverse curve to the right having a radius of 20.50 feet, a central angle of 86°52'26" and a chord that bears North 71°50'46" West 28.19 feet; 6-thence along said curve westerly an arc distance of 31.08 feet; 7- thence South 61°25'21" West 71.56 feet to a point on a non-tangent curve to the right having a radius of 20.50 feet, a central angle of 91°28'23" and a chord that bears South 13°32'47" West 29.36 feet; 8-thence along said curve southerly an arc distance of 32.73 feet; 9-thence South 59°16'58" West 2.50 feet to a point on a non- tangent curve to the left having a radius of 21.02 feet, a central angle of 90°03'38" and a chord that bears North 14°13'55" East 29.74 feet; thence along said curve northerly an arc distance of 33.04 feet to the POINT OF BEGINNING.

Contains 1,290,487 square feet or 29.625 acres, more or less, and constituting a portion of Utah County Parcel No. 58:032:0187.



(all area identified as the "Survey Area")

Exhibit B

EMPLOYMENT CERTIFICATION

This Employment Certification is being delivered by Costco Wholesale Corporation (the "Company") in connection with that certain Participation Agreement between the Company and the Saratoga Springs Community Development and Renewal Agency (the "Agency") dated as of September 17, 2019 ("Agreement"). All terms used herein have the meanings ascribed to them in the Agreement unless otherwise defined herein.

THE UNDERSIGNED HEREBY CERTIFIES TO THE AGENCY THAT AS OF THE DATE OF THIS CERTIFICATION THE COMPANY HAS CREATED AND FILLED THE FOLLOWING NUMBER OF FULL-TIME EQUIVALENT POSITIONS AT THE FACILITY, WITH AVERAGE WAGES OF NOT LESS THAN FIFTEEN DOLLARS (\$15.00) PER HOUR, PLUS MEDICAL, DENTAL AND VACATION BENEFITS:

Number of full-time equivalent positions: _____

The undersigned hereby certifies that I am a duly authorized representative of Costco and am duly authorized to execute this Employment Certification.

COSTCO WHOLESALE CORPORATION

BY: _____
NAME _____
TITLE _____
DATE _____, 20__

STATE OF WASHINGTON

COUNTY OF KING

Sworn to and subscribed to before me on the ____ day of _____, 20____, by
_____.

NOTARY NAME _____

Resolution No. CDA R19-6 (9-17-19)

RESOLUTION OF THE SARATOGA SPRINGS COMMUNITY DEVELOPMENT AND RENEWAL AGENCY AUTHORIZING THE EXECUTION OF A PARTICIPATION AGREEMENT WITH COSTCO WHOLESALE CORPORATION RELATING TO NEW COMMERCIAL DEVELOPMENT WITHIN THE COMMUNITY REINVESTMENT PROJECT AREA 1.

WHEREAS the Saratoga Springs Community Development and Renewal Agency (the “Agency”) has been created by the Saratoga Springs City Council to transact the business and exercise all of the powers provided for by Title 17C of the Utah Code Annotated, “Limited Purpose Local Government Entities—Community Reinvestment Agency Act” (the “Act”);

WHEREAS, the Agency, in furtherance of the purposes of the Act and the Project Area Plan for the Community Reinvestment Project Area 1 (the “Project Area”), desires to enter into a Participation Agreement (the “Agreement”), substantially in the form attached hereto as **Exhibit A**, encouraging and promoting the private development of a major wholesale retailer within the Project Area.

NOW, THEREFORE, BE IT RESOLVED BY GOVERNING BODY OF THE AGENCY:

1. The Agreement in substantially the form attached hereto as **Exhibit A** is hereby approved, and the Executive Director of the Agency is authorized and directed to execute the same for and on behalf of the Agency. The Executive Director is authorized to approve any minor modifications, amendments, or revisions to the Agreement as may be in the Agency’s best interest and in harmony with the intent and purpose of the Agreement, and the Executive Director’s signature upon the final Agreement shall constitute the Agency Board’s acceptance of all such minor modifications, amendments, or revisions.

2. This resolution takes effect upon adoption.

THIS RESOLUTION IS APPROVED AND ADOPTED this September 17, 2019.

Jim Miller, Chair

Attest:

Cindy LoPiccolo, Secretary

Exhibit A
Form of Agreement

PARTICIPATION AGREEMENT

This Participation Agreement (this “Agreement”) is entered into as of September 17, 2019, between **Costco Wholesale Corporation**, a Washington corporation (the “Company”) and the **Saratoga Springs Community Development and Renewal Agency**, a Utah political subdivision (the “Agency”), on the following terms:

Recitals

A. The Company has or expects to obtain the right to acquire ownership of some or all of the real property described/depicted in the attached **Exhibit A** (the “Property”), which Property is located within the boundaries of a community reinvestment project area created by the Agency and known as the Saratoga Springs Community Reinvestment Project Area 1 (the “Project Area”).

B. This Agreement becomes effective and enforceable only upon acquisition of the Property, or a portion of the Property, by the Company or any wholly owned subsidiary or affiliate of the Company, and this Agreement will be effective only with respect to the portion of Property actually acquired by the Company or any wholly owned subsidiary or affiliate of the Company. If the Company or any wholly owned subsidiary or affiliate of the Company acquires less than all of the Property then the parties agree to, upon the request of either party, execute an amended **Exhibit A** identifying the portion of Property actually acquired and subject to this Agreement.

C. The Company intends to construct, open and operate a Costco retail warehouse on the Property (the “Project”), which Project would be of great benefit to the Project Area and to the City of Saratoga Springs and its residents.

D. The Project will include a facility that is at least 140,000 square feet in size (“Facility”) and involve a capital investment of at least \$20,000,000.00.

E. The Company intends to provide not fewer than one hundred (100) full-time equivalent positions at the Facility, with average wages of not less than Fifteen Dollars (\$15.00) per hour, plus medical, dental and vacation benefits.

F. The Company has presented to the Agency sufficient information, including development plans and alternatives, and a projected financing pro forma, showing justification for the Agency’s participation in certain extraordinary development costs associated with the Property and the Project.

G. The Agency has adopted the Community Reinvestment Project Area 1 Plan (the “Plan”), relating to overall development and participation by the Agency within the Project Area.

H. The City of Saratoga Springs has on the same date as the effective date of this Agreement entered into an Interlocal Cooperation Agreement (the “City Interlocal Agreement”) with the Agency under which, in summary, the City has agreed that the Agency is entitled to receive a

portion of the sales tax revenues generated from taxable sales on the Property and paid to the City, in an amount sufficient to enable the Agency to meet its potential payment obligations to the Company under this Agreement relating to sales tax revenues.

I. The Agency is, subject at all times to the prior performance of the Company as described below, willing to provide the portion of the sales tax revenue generated from the Project, and actually received by the Agency each year under the City Interlocal Agreement, to the Company in accordance with Section 2.a hereof in order to induce the Company to construct and open the Project on the Property.

AGREEMENT:

NOW THEREFORE, in consideration of the mutual covenants, conditions, and considerations as more fully set forth below, the parties hereby agree as follows:

1. **Company Commitments.** Despite anything else in this Agreement to the contrary, the Company will not be entitled to receive any payment(s) from the Agency under this Agreement unless the Company satisfies, each of the following conditions precedent:

- a. The Company shall complete the construction of the Facility (containing at least 140,000 square feet).
- b. The Company shall have made a capital investment of not less than \$20,000,000.00 in the Project, including, without limitation, the costs of acquiring the Property, hard and soft construction costs relating to the Facility, including any necessary off-site improvements, and the costs of equipping the Facility.
- c. The Company shall create not fewer than one hundred (100) full-time equivalent positions at the Facility, with average wages of not less than Fifteen Dollars (\$15.00) per hour, plus medical, dental and vacation benefits. Within ninety (90) days after the Costco store opens for business, the Company will certify to Agency in writing, using the form attached hereto as **Exhibit B**, the number of full-time equivalent positions at the Facility, which must be not fewer than one hundred (100) positions with average wages of not less than Fifteen Dollars (\$15.00) per hour, plus medical, dental and vacation benefits, to support the fee waiver contemplated in this Agreement. For the purposes of this paragraph, “full-time equivalent” is any combination of seasonal or part-time employees whose compensated hours during a consecutive twelve (12) month period equals two thousand eighty (2,080) hours.
- d. The Company shall timely and properly pay all taxes assessed on or generated from the Property and the Project, including but not necessarily limited to real property, personal property, *ad valorem*, and sales taxes, to the appropriate taxing authorities.

2. **Post-Performance Reimbursement.** The Agency agrees to contribute to the Company the following annual incentive, on a post-performance reimbursement basis, for a portion of the extraordinary costs of developing the Project on the Property:

a. The Agency will pay to the Company annually, solely from sales tax revenues generated by Company and actually received by the Agency under the City Interlocal Agreement, a portion of the sales tax revenue generated by the Project’s taxable sales on the Property (each an “Annual Payment”). The total amount of all Annual Payments will be subject to a maximum aggregate payment cap (the “Payment Cap”), meaning that once the Agency has paid Annual Payments equal to the Payment Cap, the Agency will have no further payment obligations to the Company. The amount of each Annual Payment, and the Payment Cap, will depend on the timing of completion of construction of the Project—as evidenced by the issuance of a temporary or permanent certificate of occupancy to the Company for the Project—according to the following schedule (the term “City” means the City of Saratoga Springs, Utah):

Project Completion Date	Annual Payment Amount	Payment Cap
On or before 08/31/2020	90% of the City’s one-half point of sale portion of sales tax revenues generated from the Project	\$4,500,000
On or before 2/29/2020	85% of the City’s one-half point of sale portion of sales tax revenues generated from the Project	\$4,250,000
On or before 08/31/2021	80% of the City’s one-half point of sale portion of sales tax revenues generated from the Project	\$4,000,000
On or before 2/28/2021	75% of the City’s one-half point of sale portion of sales tax revenues generated from the Project	\$3,750,000
On or before 08/31/2022	70% of the City’s one-half point of sale portion of sales tax revenues generated from the Project	\$3,500,000
On or before 2/28/2022	65% of the City’s one-half point of sale portion of sales tax revenues generated from the Project	\$3,250,000
Before, on, or after 08/31/2023	60% of the City’s one-half point of sale portion of sales tax revenues generated from the Project	\$3,000,000

b. Despite the foregoing, the Agency has the option, but not the obligation, to pay early any amount up to the Payment Cap, in the Agency's sole discretion. Despite anything in this Agreement to the contrary, this Agreement and all obligations of the Agency to the Company will terminate upon payment of the applicable Payment Cap amount to the Company.

c. For the purpose of clarification, all Annual Payments amounts are subject to the following: the City charges a 1% municipal sales tax; under Utah law governing sales tax revenue, one-half of every sales tax dollar, not including any portions due to the State of Utah or other taxing entity, remains in the city where the sale takes place (point of sale) and the other one-half is distributed to all cities according to their percentage of the state population. This Agreement relates solely to the City of Saratoga Springs' one-half "point of sale" portion of the sales tax revenue with respect only to the 1% municipal sales tax.

d. The Agency represents and warrants that it has not encumbered or pledged to any other party any of the sales tax under the City Interlocal Agreement. The Agency agrees that the Agency will not, without the prior written consent of the Company, which may be withheld in the Company's sole discretion, issue any bonds or other indebtedness that are secured by sales tax under the City Interlocal Agreement until such time as Company has been reimbursed all amounts required under this Agreement, unless such obligations are subordinate to the rights of the Company under this Agreement.

e. The Agency agrees that the Agency will not, without the prior written consent of the Company, which may be withheld in the Company's sole discretion, until such time as Company has been reimbursed all amounts required under this Agreement, cause, permit, or consent to any modifications or amendments to the City Interlocal Agreement in a manner that reduces the amount of sales tax revenues to be paid to the Agency, on either an annual or cumulative basis, from the Project.

3. **Timing of Annual Incentive Payments.** The Agency will make the first Annual Payment by the June 15 immediately following the calendar year during which the Project is completed (as evidenced by issuance of the certificate of occupancy as provided under Section 2), and the Agency will continue making the Annual Payments by each following June 15 (*e.g.*, by June 15, 2022 for sales tax revenues generated in the 2021 calendar year). The Agency will stop making Annual Payments once cumulative payments to the Company have reached the applicable Payment Cap. If the Agency for any reason, including unintentionally or otherwise, pays the Company more than the applicable Payment Cap, the Company agrees to immediately refund the excess to the Agency.

4. **Failure to Construct.** In the event the Company fails to construct and open the Project for business to its members on or before **August 31, 2023**, then this Agreement shall automatically terminate and be of no further force or effect thereafter.

5. **Agency Authority.** The Company acknowledges that:

a. the Agency is a political subdivision of the State of Utah operating and existing under Title 17C of the Utah Code Ann., separate and distinct from the City, for the purpose of, among other things, promoting the urban renewal, economic development and community development in the City;

b. the City is not a party to this Agreement, and the City will not have any commitments, obligations, duties, liabilities or obligations under this Agreement;

c. the Agency has no independent taxing power, and therefore the Agency's sole source of revenue, at least for purposes of this Agreement, is the sales tax revenues pledged by the City under the City Interlocal Agreement;

d. if Utah law is amended or superseded by new law that has the effect of reducing or eliminating the amount of sales tax revenue to be paid to the Agency, the Agency's obligation to pay the Payment Cap to the Company will be accordingly reduced or eliminated;

e. if a court of competent jurisdiction declares that the Agency cannot legally receive sales tax revenues, or make payments to the Company from sales tax revenues as provided in this Agreement, or takes any other action which eliminates or reduces the amount of sales tax revenues paid to the Agency, the Agency's obligation to pay the Payment Cap to the Company shall be accordingly reduced or eliminated; and

f. the Agency has no power or authority to grant any land use approvals;

g. nothing in this Agreement creates, implies, or guarantees any land use approvals; and

h. all land use approvals are subject to the standard requirements of applicable state and City laws and regulations.

6. **No Public Dedication.** Nothing contained in this Agreement shall be deemed to be a gift or dedication of all or any portion of the Property or Project for the general public or for any public purpose whatsoever.

7. **Agreement Term/Breach/Termination.** This Agreement will immediately and automatically terminate upon the satisfaction of all payment and performance obligations of the Agency to the Company and the Company to the Agency.

8. **Successors and Assigns.** This Agreement is binding upon the parties and their respective successors and assigns. Neither party may assign or delegate any of its rights or duties under this Agreement without the prior written consent of the other party.

9. **Amendments.** Except as otherwise provided herein, this Agreement may be modified or amended by, and only by, a written instrument duly authorized and executed by the Company and the Agency.

10. **Waiver.** The waiver by any party of any right granted to it hereunder shall not be deemed a waiver of any other right or of a subsequent right obtained by reason of the matter previously waived.
11. **Governing Law and Interpretation.** This Agreement shall be governed by the laws of the State of Utah, and any action pertaining hereto shall be brought in the applicable state or federal court having jurisdiction in Utah County, Utah.
12. **Incorporation of Recitals and Exhibits/Integration.** The above recitals and the City Interlocal Agreement are hereby incorporated and made an integral and binding part of this Agreement. There are no other contracts, understandings, representations, or agreements, written or verbal, between the parties relating in any way to the subject matter of this Agreement. No party is relying on any verbal or written statements of the other than those expressly in this Agreement.
13. **Further Assurances.** The parties shall cooperate, take such additional actions, sign such additional documentation, and provide such additional information as reasonably necessary to accomplish the objectives set forth in this Agreement.
14. **Indemnification.** The Company agrees to indemnify, defend (with counsel of the Indemnitees' choosing), and hold the Agency and the City, including their respective officers, directors, agents, employees, contractors, and consultants (the "Indemnitees"), harmless from and against all liability, loss, damage, costs or expenses, including attorneys' fees and court costs, arising from or as a result of death, injury, accident, loss or damage of any kind caused to any person or property because of the act(s), error(s), or omission(s) of the Company, including its officers, directors, agents, employees, contractors, and consultants, upon or in connection with the Property or in connection in any way with this Agreement, except in each case to the extent arising out of the gross negligence, willful misconduct, illegal acts, bad faith, or breach of this Agreement by the Indemnitees.
15. **Third-Party Beneficiaries.** Except for the City of Saratoga Springs which is an intended third-party beneficiary as described in the immediately preceding paragraph regarding indemnification, this Agreement is intended solely for the benefit of the Agency and the Company and there are no intended third-party beneficiaries.
16. **No Liability of Officials or Employees.** No director, officer, agent, employee, or consultant of the Agency or the Company shall be personally liable to the other party hereto, or any successor in interest, in the event of any default or breach by the Agency or Company or for any amount which may become due to the Company or its successors or on any obligations under the terms of this Agreement.
17. **No Legal Relationships.** The parties disclaim any partnership, joint venture, fiduciary, agency or employment status or relationship between them. No party has the authority to make any representation or warranty or incur any obligation or liability on behalf of the other party, nor shall they make any representation to any third party inconsistent with this paragraph.

18. **Attorneys' Fees.** In the event of litigation between the parties related to this Agreement, the Court must award the prevailing party its costs, expenses, and reasonable attorneys' fees, such fees to be determined by the court sitting without a jury.

19. **Severability.** If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction or as a result of future legislative action, and if the rights or obligations of any Party hereto under this Agreement will not be materially and adversely affected thereby,

a. such holding or action shall be strictly construed;

b. such provision shall be fully severable;

c. this Agreement shall be construed and enforced as if such provision had never comprised a part hereof;

d. the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the invalid or unenforceable provision or by its severance from this Agreement; and

e. in lieu of such illegal, invalid, or unenforceable provision, the Parties hereto shall use commercially reasonable efforts to negotiate in good faith a substitute, legal, valid, and enforceable provision that most nearly effects the Parties' intent in entering into this Agreement.

20. **Time is of the Essence.** Time is of the essence with respect to each and every term, condition, obligation and provision hereof.

21. **Waiver of Jury Trial.** The Parties irrevocably waive any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement.

22. **Force Majeure.** The Agency or the Company shall be excused, without penalty, for the period of any delay in the performance of any obligations hereunder when prevented from doing so by causes beyond its control, which shall include without limitation acts of God, governmental restrictions, strikes, labor disturbances, shortages of materials or supplies and the inability to obtain reasonable substitutes, and actions or inactions of governmental authorities (a "Force Majeure Event"). In connection with any Force Majeure Event, the party claiming such Force Majeure Event must use commercially reasonable efforts to mitigate the effect of such Force Majeure Event. Nothing contained in this paragraph shall excuse either party from paying in a timely fashion any payments due under the terms of this Agreement.

23. **Remedies.** In the event of a breach or a default by the Company or the Agency under this Agreement, the non-defaulting party may 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 (a "Default").

23.1 Company Default. Upon the occurrence of a Company Default, the Agency shall have the right to terminate this Agreement by written notice to the Company, in which event the Agency shall have no obligation to make any future Annual Payments to the Company under this Agreement.

23.2 Agency Default. Upon the occurrence of an Agency Default, the Company shall have the right to terminate this Agreement by written notice to the Agency, in which event the Company shall have no further obligations under this Agreement.

23.3 Agency Remedy Limitation. Under no circumstances shall the Agency be entitled to a refund of any Annual Payments that have been paid to the Company, nor shall the Company be liable to the Agency or the City for any monetary damages, including, but not limited to, costs, fees, special, general, direct, indirect, delay, compensatory, expectancy, consequential, reliance, out-of-pocket, restitution, or other damages, except as otherwise expressly stated herein.

23.4 Company Remedy Limitation. The Company's sole and exclusive remedy for any non-performance or breach of the Agency's express or implied covenants of this Agreement is declaratory relief construing this Agreement's rights and obligations and specific performance of this Agreement, or termination of this Agreement as provided above. Under no circumstances shall the Agency be liable to the Company or its successors-in-interest for any monetary damages, including, but not limited to, costs, fees, special, general, direct, indirect, delay, compensatory, expectancy, consequential, reliance, out-of-pocket, restitution, or other damages, except as otherwise expressly stated herein. Nothing in this Agreement shall relieve the Company or its successors-in-interest of the requirement to exhaust available administrative remedies.

24. Authority. The individuals executing this Agreement represent and warrant to the Parties that they possess the legal authority to execute this Agreement pursuant to the terms herein.

25. Notices. All notices, demands, requests, or other communications required or permitted by this Lease shall be in writing and effective when received, and delivery shall be made personally, or by registered or certified mail, return receipt requested, postage prepaid, or overnight courier, addressed as follows:

The Company:
Costco Wholesale
999 Lake Drive
Issaquah, WA 98027
Attn: Property Management

With copy to:

Costco Wholesale
999 Lake Drive
Issaquah, WA 98027
Attn: Bruce Coffey

The Agency:
Saratoga Springs CDRA
Attn: Director
1307 N Commerce Drive
Suite 200
Saratoga Springs, UT 84045

With copy to:
Saratoga Springs City Attorney
1307 N Commerce Drive
Suite 200
Saratoga Springs, UT 84045

26. **Mutual Preparation in Document Preparation.** Each party has participated materially in the negotiation and preparation of this Agreement and any related items; in the event of a dispute concerning the interpretation of any provision of this Agreement or any related item, both parties will be deemed to have jointly drafted this Agreement and the rule of construction to the effect that certain ambiguities are to be construed against the party drafting a document will not apply.

THIS PARTICIPATION AGREEMENT IS EXECUTED effective as of the date written above:

COMPANY: COSTCO WHOLESALE CORPORATION

By: _____
Name: _____
Title: _____

AGENCY: SARATOGA SPRINGS COMMUNITY
DEVELOPMENT AND RENEWAL AGENCY,
a Utah political subdivision

By: _____
Name: _____
Title: _____

Attest:

Secretary

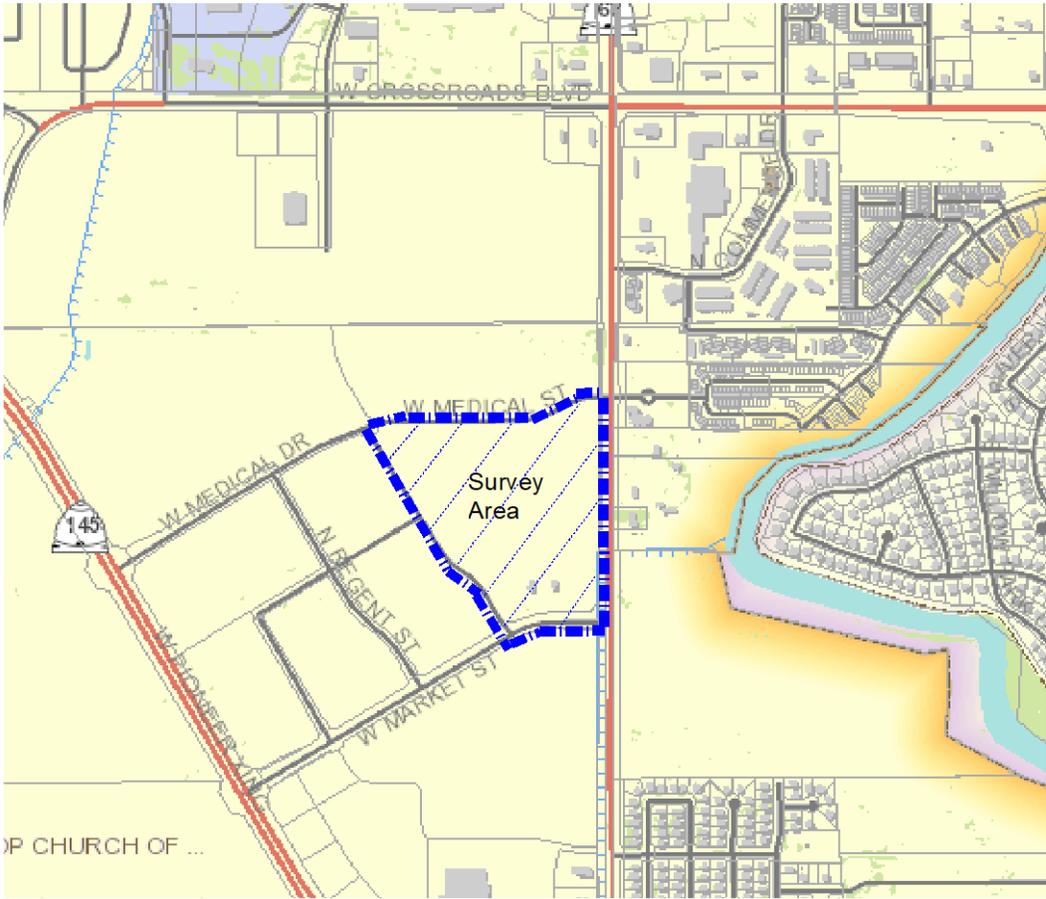
[Exhibits A and B attached]

Exhibit A

Legal Description/Map of the Property

A portion of the Southwest quarter of Section 14, Township 5 South, Range 1 West, Salt Lake Meridian, located in Saratoga Springs, Utah, more particularly described as follows: Commencing at the Southwest corner of said Section 14; thence North 00°20'44" East 893.56 feet; thence East 2016.41 feet to the POINT OF BEGINNING; thence North 30°48'54" West 174.02 feet to a point on a non-tangent curve to the left having a radius of 396.46 feet, a central angle of 26°07'24" and a chord that bears North 43°59'38" West 179.20 feet; thence along said curve northwesterly an arc distance of 180.76 feet to a reverse curve to the right having a radius of 538.50 feet, a central angle of 26°21'18" and a chord that bears North 43°52'41" West 245.52 feet; thence along said curve northwesterly an arc distance of 247.70 feet; thence North 30°41'53" West 773.19 feet; thence North 78°14'14" East 81.37 feet to a point on a non-tangent curve to the right having a radius of 15.14 feet, a central angle of 108°56'31" and a chord that bears North 24°34'06" East 24.64 feet; thence along said curve northeasterly an arc distance of 28.79 feet; thence North 37°07'02" West 84.74 feet to a point on a non-tangent curve to the right having a radius of 533.07 feet, a central angle of 14°23'57" and a chord that bears North 82°49'56" East 133.62 feet; thence along said curve easterly an arc distance of 133.97 feet; thence East 690.12 feet to a curve to the left having a radius of 461.49 feet, a central angle of 27°16'24" and a chord that bears North 76°21'48" East 217.61 feet; thence along said curve easterly an arc distance of 219.67 feet; thence North 62°43'36" East 63.64 feet to a curve to the right having a radius of 538.49 feet, a central angle of 21°32'18" and a chord that bears North 73°29'45" East 201.24 feet; thence along said curve easterly an arc distance of 202.43 feet to a reverse curve to the left having a radius of 51.00 feet, a central angle of 83°53'11" and a chord that bears North 42°19'19" East 68.18 feet; thence along said curve northeasterly an arc distance of 74.67 feet; thence South 89°37'17" East 10.00 feet to the Westerly right of way line of Redwood Road (State Road 68); thence South 00°22'43" West 1295.18 feet along said Westerly right of way to the Northerly right of way line of Market Street, as shown on Market Street Right of Way Dedication Plat recorded April 23, 2015 as Map 14581 of official records; thence along said right of way through the following eight (8) calls, to-wit: 1-North 89°36'11" West 10.00 feet to a point on a non-tangent curve to the right having a radius of 51.51 feet, a central angle of 65°34'03" and a chord that bears South 33°34'46" West 55.78 feet; 2-thence along said curve southwesterly an arc distance of 58.95 feet to a point on a non-tangent curve to the right having a radius of 20.00 feet, a central angle of 23°38'04" and a chord that bears South 78°10'58" West 8.19 feet; 3-thence along said curve southwesterly an arc distance of 8.25 feet; 4- thence West 175.84 feet to a curve to the left having a radius of 644.50 feet, a central angle of 25°16'59" and a chord that bears South 77°21'32" West 282.10 feet; 5-thence along said curve westerly an arc distance of 284.40 feet to a reverse curve to the right having a radius of 20.50 feet, a central angle of 86°52'26" and a chord that bears North 71°50'46" West 28.19 feet; 6-thence along said curve westerly an arc distance of 31.08 feet; 7- thence South 61°25'21" West 71.56 feet to a point on a non-tangent curve to the right having a radius of 20.50 feet, a central angle of 91°28'23" and a chord that bears South 13°32'47" West 29.36 feet; 8-thence along said curve southerly an arc distance of 32.73 feet; 9-thence South 59°16'58" West 2.50 feet to a point on a non-tangent curve to the left having a radius of 21.02 feet, a central angle of 90°03'38" and a chord that bears North 14°13'55" East 29.74 feet; thence along said curve northerly an arc distance of 33.04 feet to the POINT OF BEGINNING.

Contains 1,290,487 square feet or 29.625 acres, more or less, and constituting a portion of Utah County Parcel No. 58:032:0187.



(all area identified as the “Survey Area”)

Exhibit B

EMPLOYMENT CERTIFICATION

This Employment Certification is being delivered by Costco Wholesale Corporation (the "Company") in connection with that certain Participation Agreement between the Company and the Saratoga Springs Community Development and Renewal Agency (the "Agency") dated as of September 17, 2019 ("Agreement"). All terms used herein have the meanings ascribed to them in the Agreement unless otherwise defined herein.

THE UNDERSIGNED HEREBY CERTIFIES TO THE AGENCY THAT AS OF THE DATE OF THIS CERTIFICATION THE COMPANY HAS CREATED AND FILLED THE FOLLOWING NUMBER OF FULL-TIME EQUIVALENT POSITIONS AT THE FACILITY, WITH AVERAGE WAGES OF NOT LESS THAN FIFTEEN DOLLARS (\$15.00) PER HOUR, PLUS MEDICAL, DENTAL AND VACATION BENEFITS:

Number of full-time equivalent positions: _____

The undersigned hereby certifies that I am a duly authorized representative of Costco and am duly authorized to execute this Employment Certification.

COSTCO WHOLESALE CORPORATION

BY: _____
NAME _____
TITLE _____
DATE _____, 20__

STATE OF WASHINGTON

COUNTY OF KING

Sworn to and subscribed to before me on the ____ day of _____, 20____, by
_____.

NOTARY NAME _____

1 **MINUTES – SARATOGA SPRINGS COMMUNITY DEVELOPMENT**
2 **AND RENEWAL AGENCY BOARD**

3 **Tuesday, August 6, 2019**

4 Saratoga Springs City Offices

5 1307 North Commerce Drive, Suite 200, Saratoga Springs, Utah 84045

6
7 **Saratoga Springs Community Development and Renewal Agency Board Meeting**

8
9 **Call to Order:** Chair Jim Miller called the Meeting to order at 6:18 p.m.

10
11 **Roll Call:**

12 Present Chair Jim Miller, Board Members Shellie Baertsch, Chris Porter, and Stephen Willden.
13 Board Member Michael McOmber excused.

14
15 Staff Present Executive Director Mark Christensen, Legal Counsel Kevin Thurman, Redevelopment
16 Director City Manager Owen Jackson, and Secretary Cindy LoPiccolo.

17
18 **BUSINESS ITEMS:**

19
20 **1) Adoption of Bylaws, Appointment of Officers; CDA Resolution R19-1 (8-6-19).**

21 Executive Director Christensen presented the report and introduced the Resolution for adoption of Agency
22 Bylaws and appointment of officers. Council Member Porter noted in regard to appoint of officers the
23 Bylaws should be corrected to state “Mayor” and “Mayor Pro Tem” of the City Council appointed as Chair
24 and Vice-Chair of the Agency.

25
26 Motion by Board Member Porter to adopt the Bylaws and approve the appointment of Officers with noted
27 correction, CDA Resolution R19-1 (8-6-19), was seconded by Board Member Willden.

28 Vote: Board Members Porter, Baertsch, Willden, and Poduska – Aye

29 Motion carried 4-0; Council Member McOmber excused.

30
31 **2) Resolution Initiating the Process of Adopting a Community Reinvestment Project Area Plan by**
32 **Designating a Survey Area Known as the “CRA Project Area 1 Survey Area”; CDA Resolution R19-2 (8-6-**
33 **19).**

34 Executive Director Christensen introduced the Resolution adopting the survey area pertaining to the Costco
35 village plan. Board Member Baertsch questioned if the survey area should only include Costco as
36 concerning outside pads qualifying for the benefits granted to Costco, Executive Director Christensen
37 advised options can be discussed. Board Member Willden noted it was his understanding the Board has
38 the option whether or not to add and can determine considerations. City Manager Christensen further
39 advised the Council would have choice and enter into specific agreements, this would establish a larger
40 footprint allowing incentives and increment options within the area.

41
42 Outside Legal Council Kyle Fielding, McDonald Fielding PLLC, was present for questions.

44 Motion by Board Member Baertsch to approve CDA Resolution R19-2 (8-6-19) initiating the process of
45 adopting a Community Reinvestment Project Area Plan by designating a survey area known as the CRA
46 Project Area 1 Survey Area, was seconded by Board Member Poduska.
47 Vote: Board Members Porter, Baertsch, Willden, and Poduska – Aye
48 Motion carried 4-0; Council Member McOmber excused.

49

50 **ADJOURNMENT:**

51

52 There being no further business, Chair Miller adjourned the meeting at 6:24 p.m.

53

54

55

56 _____
Jim Miller, Chair

57

58 Attest:

59

60

61

62 _____
Cindy LoPiccolo, Secretary

63

64 Approved: