

DAWSON TRAILS RETAIL INFRASTRUCTURE ASSISTANCE AGREEMENT

THIS RETAIL INFRASTRUCTURE ASSISTANCE AGREEMENT is made and entered into this _____ day of _____, 2022, by and between the **TOWN OF CASTLE ROCK**, a home rule municipal corporation of the State of Colorado (the “Town”), **DAWSON TRAILS I, LLC**, and **DAWSON TRAILS II, LLC**, both Colorado limited liability companies (collectively, the “Owner”), and **DAWSON RIDGE METROPOLITAN DISTRICT NO. 1**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”).

WITNESSETH:

WHEREAS, the Owner has sought and obtained approval from the Town Council for the rezoning of all of the Dawson Ridge planned development, a 1,883-acre site located in the Town west of Interstate 25 and south of Territorial Road, and a portion of the Westfield Trade Center planned development, a 339-acre site located in the Town west of Interstate 25 and north of Territorial Road, as the new “Dawson Trails” planned development; and

WHEREAS, the development plan for Dawson Trails proposes the development of 5,850 dwelling units and approximately 3.2 million square feet of commercial, office, restaurant and industrial uses; and

WHEREAS, the Owner has reached an agreement in principle with Costco to provide a site in Dawson Trails for the Costco Project; and

WHEREAS, the District is charged with the responsibility of providing public improvements for the use and benefit of the residents and taxpayers of the District, including Costco, as well as the general public; and

WHEREAS, for the purpose of paying a portion of the costs of acquiring, constructing, and installing certain public improvements, including certain public improvements for the Costco Project, it is anticipated that the District will issue its bonds (the “Bonds”) pursuant to an Indenture of Trust (the “Indenture”) between the District and a qualified trustee thereunder (the “Trustee”); and

WHEREAS, the Owner and the District are seeking economic development assistance from the Town to fund the Costco Improvements in the form of a \$3,500,000 payment from the Town Economic Development Fund upon opening of the Costco Project and up to and including \$6,500,000 in incremental Town sales tax revenues generated from the first ten (10) years of operation of the Costco Project; and

WHEREAS, the Town Economic Development Fund is supported entirely by revenues from the Town’s use tax on building materials that are generated from new commercial development and not from taxes paid by Town residents; and

WHEREAS, the Costco Project conforms with the Town’s Comprehensive Master Plan, Economic Development Strategic Action Plan, Economic Development Assistance policies and all applicable Town Regulations; and

WHEREAS, Town sales tax revenues are generated from both Town residents and visitors alike; and

WHEREAS, operation of the Costco Project will generate a significant increase in Town sales tax revenues and will provide a ready source of patronage to the other tax-generating businesses that are expected to locate within Dawson Trails, thereby providing the Town with a much-needed source of funding to provide municipal services, including police and fire protection, to its residents; and

WHEREAS, accordingly, the Town finds that the Owner and District’s request qualifies for economic assistance from the Town under Section 3.04.025 of the Town Code.

NOW, THEREFORE, in reliance on the matters set forth above, and in consideration of the mutual covenants and promises expressed herein, the Town, the Owner, and the District hereby agree as follows:

**ARTICLE I
DEFINITIONS**

1.01 Defined Terms. Unless the context expressly indicates to the contrary, the following words, when capitalized in the text, shall have the meanings indicated:

Agreement: this Dawson Trails Retail Infrastructure Assistance Agreement.

Costco: Costco Wholesale Corporation, a Washington corporation whose address is 999 Lake Drive, Issaquah, Washington 98027.

Costco Improvements: the public and private improvements necessary to support development of the Costco Property as identified in *Exhibit 1* of this Agreement.

Costco Project: the wholesale and retail general merchandise facility that will be owned, constructed, and operated by Costco and located within Dawson Trails, which facility, upon completion, may include, without limitation, a pharmacy, liquor sales, photo processing, butcher, deli, and bakery services, optometry services, a tire sales and installation center, a propane sales and fueling center, a vehicle fueling facility, a car wash, e-commerce sales and delivery, related office space, related parking and other improvements.

Costco Property: the property described and/or depicted in the attached *Exhibit 2*.

Crystal Valley Interchange: the future highway interchange that is planned to be constructed to provide direct connectivity between Interstate 25 and Crystal Valley Parkway.

Dawson Trails: the Dawson Trails Planned Development, as further described in the Planned Development Plan Amendment approved by Ordinance No. 2022-017 and recorded in the real estate records kept and maintained by the Douglas County Clerk and Recorder's Office at Reception No. _____.

Project Approvals: the construction permits required under the Town Regulations for the Project, inclusive of applicable public works and building permits.

Town Code: the Castle Rock Municipal Code, as amended from time to time.

Town Regulations: the Town Charter, ordinances, resolutions, rules, regulations and technical criteria of the Town, including the Town Code, and other provisions of all zoning, subdivision and building codes, as the same may be amended from time to time.

Certain other terms are defined in the text of the Agreement and shall have the meaning indicated.

1.02 Cross-Reference. Any reference to a section or article number, without further description, shall mean such section or article in this Agreement.

ARTICLE II APPLICATION AND EFFECT

2.01 Applicability. This Agreement, and the financial incentives extended to the Costco Project, are exclusive to the Owner and the District, and to the Costco Project and are not assignable or transferable to any other property, development interests, activities, or operations, except as expressly set forth herein.

2.02 Town Regulations. Town Regulations shall apply to the development of the Costco Project in the same manner and effect as within other areas of the Town. The development and use of the Costco Property shall be subject to the payment of all fees and taxes imposed by the Town through the Town Regulations.

2.03 Non-Exclusivity. This Agreement does not restrict the Town from extending financial assistance incentives to any other project or enterprise, including projects that may offer similar goods and services to those of the Costco Project, and any other project or enterprise within Dawson Trails.

ARTICLE III FINANCIAL ASSISTANCE

3.01 Qualifying Project. All financial assistance contained in this Article III is conditioned on (a) the receipt of an application for a building permit for the Costco Project not later than the date that is two (2) years after the completion and opening to the public of the Crystal Valley Interchange, and (b) the opening of the Costco Project to the public not later than the date that is two (2) years after the Town has issued a building permit for the Costco Project

(“Compliance Date(s)”). If, (i) any of the Costco Improvements are not constructed or installed and/or the Costco Project is not constructed in substantial conformance with the criteria set forth in *Exhibit 1*, or (ii) either of the Compliance Dates is not met by the Owner and/or the District, as applicable, then, at the option of the Town, this Agreement may be terminated. In such event, the Agreement shall have no force or effect, and all financial assistance established in this Article III shall lapse. The date the Costco Project is open to the public shall be referred to as the “Opening Date.”

Alternatively, the Town, at its sole option and discretion, may waive any deviation from *Exhibit 1* criteria and/or extend the Compliance Date(s). Any action taken by the Town under this Section shall be effected by written notice to the Owner and the District by the Town Manager and shall become effective and irrevocable as of the date of such notice. The cure rights afforded to the Owner and the District under Section 4.03 shall be applicable to notice given pursuant to this Section 3.01.

3.02 Lump Sum Payment. Within 30 days following the Opening Date, the Town shall pay to the Owner the sum of \$3,500,000 (the “Town Contribution”) out of the Town’s Economic Development Fund or other lawfully available source of Town revenues as partial consideration for the construction and installation of the Costco Improvements; provided, however, that, if and to the extent, the Town Contribution is pledged by the District to the repayment of the Bonds pursuant to the Indenture on the date of issuance of the Bonds, the Town shall pay the Town Contribution to the District for deposit thereunder as pledged revenue under the Indenture, and no portion of the Town Contribution may be transferred to the Owner or otherwise made available to the Owner.

3.03 Sales Tax Rebate. Provided that (i) the Costco Improvements have been constructed and installed and (ii) the Costco Project develops and opens for business in substantial conformance with this Agreement, pursuant to Section 3.04.025 of the Town Code, and subject to the conditions set forth below, the Town shall rebate to the District one-third (33.33%) of the Town’s 4% sales tax actually collected and received for taxable sales at the Costco Project for a period not to exceed ten (10) years (120 months) commencing on the Opening Date, provided that the total amount of such payments shall not exceed the aggregate sum of \$6,500,000 (the “Sales Tax Rebate”). The Sales Tax Rebate will be forwarded to the District to be remitted to the Trustee for deposit pursuant to the Indenture on a quarterly basis in accordance with the following schedule:

Date Received	Payment Due Date
First Quarter (January, February, March)	May 31
Second Quarter (April, May, June)	August 31
Third Quarter (July, August, September)	November 30
Fourth Quarter (October, November, December)	February 28

Notwithstanding any language in this Agreement to the contrary, the Town, at its sole discretion, may elect to prepay the Sales Tax Rebate, in whole or in part, at any time throughout

the term of this Agreement, from any lawfully available source of Town revenues that have been budgeted and appropriated for this purpose.

For avoidance of doubt, the parties agree that no portion of the Sales Tax Rebate may be transferred to the Owner or otherwise made available to the Owner.

3.04 No Creation of Debt or Multiple-Fiscal-Year Financial Obligation. The Town's commitment to pay the Sales Tax Rebate to the District is expressly made subject to the limitations of the Colorado Constitution. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or a multiple-fiscal-year financial obligation by the Town contrary to Article X, Section 20 of the Colorado Constitution, or any other constitutional, statutory, or charter debt limitation. The Town's performance hereunder shall be conditioned upon the annual budget and appropriation by the Town Council of the Sales Tax Rebate for the next ensuing fiscal year, which decision shall be at the sole discretion of the Town Council. In the event Town Council should fail to so authorize the Sales Tax Rebate for the next ensuing fiscal year, the Town's obligation to pay the Sales Tax Rebate to the District shall expire and lapse with the Sales Tax Rebate of those taxes collected on taxable sales through December 31 of the immediately preceding fiscal year, without any penalty or further recourse to the Town.

3.05 Business Termination. This Agreement is specific to the Costco Project and the Costco Property, including the continued operation of a Costco wholesale and retail general merchandise facility. If, at any time throughout the term of this Agreement, Costco terminates its business operations on the Costco Property (except for temporary closures necessitated by remodeling, etc., damage or destruction due to casualty or other force majeure events), this Agreement shall terminate. In the event of such early termination, the Town shall make a final payment of that portion of the Sales Tax Rebate accrued to the date of termination.

3.06 Subordination. The Town's obligation to pay the Sales Tax Rebate to the District is subordinate to the Town's obligation to pay any current or future bonds, or other indebtedness which are backed by a Town sales tax pledge. In addition, the Town's obligation to pay the Sales Tax Rebate under Section 3.03 is contingent upon the existence of surplus in sales tax revenues in excess of the sales tax revenues necessary to meet such existing or future bond or debt services.

ARTICLE IV OTHER PROVISIONS

4.01 Event of Default. Failure of the Town, the Owner, or the District to perform any covenant, agreement, obligation or provision of this Agreement, shall constitute an event of default under this Agreement.

4.02 Remedies. Upon default of this Agreement and failure to timely cure, the non-defaulting party shall have the right to take whatever action at law or in equity necessary or desirable to enforce performance and compliance with this Agreement, or to collect the monies then due and thereafter to become due; provided, however, in the event of a default by the Owner and/or the District, as applicable, the Town's sole remedy shall be to deny payments under Article III which become due to the Owner and the District, respectively, after the uncured event of

default. In any such legal action, the prevailing party shall be entitled to recover its reasonable attorney's fees and litigation costs from the other party.

4.03 Default Notice. In the event a party alleges that another party is in default, the non-defaulting party shall first notify the defaulting party in writing of such default and specify the exact nature of the default in such notice. The defaulting party shall have twenty (20) business days from receipt of such notice within which to cure such default before the non-defaulting party may exercise any of its remedies.

4.04 Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado.

4.05 Venue. Venue for any action to enforce or interpret the terms of this Agreement shall be in the District Court, Douglas County, Colorado.

4.06 Amendment. Any and all changes to this Agreement, in order to be mutually effective and binding upon the parties and their successors, must be in writing.

4.07 Non-Assignability. This Agreement and all interests and benefits of the Owner and the District thereunder, including the financial assistance extended to the Owner and the District, may be assigned by the Owner and the District, respectively, with the prior written consent of the Town, which consent shall not be unreasonably withheld, conditioned or delayed.

4.08 No Third-Party Beneficiaries. No third-party shall have any claim to the Sales Tax Rebate or the right to enforce or benefit from this Agreement. This Agreement creates no third-party beneficiaries. The Town will have fully discharged its obligation to pay the Sales Tax Rebate in any particular fiscal year by disbursement to the District. Accordingly, the Owner and, to the extent provided by law, the District shall indemnify and defend the Town against any claims to the Sales Tax Rebate made by any third-party. Such indemnification shall extend to any reasonable attorney's fees incurred by the Town.

4.09 Governmental Immunity. Nothing in this Agreement is to be construed as a waiver of any limitations upon, or immunity from, suits against the Town, its officers, agents, or employees, as may be provided by law.

4.10 Notice. Any and all notices allowed or required to be given in accordance with this Agreement are deemed to have been given when delivered to a party, or three (3) days following the date the same is deposited in the United States mail, registered or certified, postage prepaid, return receipt requested, addressed to the other party at the address noted; or such address as is subsequently endorsed in writing.

If to Town:

Town of Castle Rock
100 N. Wilcox Street
Castle Rock, Colorado 80104
Attn: Town Manager
With a copy to: Town Attorney

If to Owner Dawson Trails I. LLC
Dawson Trails II, LLC
4100 E. Mississippi Avenue, Suite 500
Glendale, Colorado 80246
Attn: Andrew Klein, Lawrence Jacobson and Jake Schroeder

If to District: Dawson Trails Metropolitan District No. 1
c/o White Bear Ankele Tanaka & Waldron, P.C.
2154 E. Commons Avenue, Suite 2000
Centennial, Colorado 80122
Attn: Jennifer Tanaka

4.11 Entire Agreement. This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations or agreements, either verbal or written.

(SIGNATURE PAGES TO FOLLOW)

EXECUTED as of the day and year first above written.

TOWN:

ATTEST:

TOWN OF CASTLE ROCK

Lisa Anderson, Town Clerk

Jason Gray, Mayor

Approved as to form:

Approved as to content:

Michael J. Hyman, Town Attorney

David L. Corliss, Town Manager

DEVELOPER:

DAWSON TRAILS I, LLC,
a Colorado limited liability company.

By: _____

Its: _____

DAWSON TRAILS II, LLC,
a Colorado limited liability company.

By: _____

Its: _____

DAWSON RIDGE METROPOLITAN DISTRICT NO. 1,
a quasi-municipal corporation and political subdivision of the State of Colorado

By: _____

Its: _____