

MASTER INTERLOCAL COOPERATION AGREEMENT CONCERNING THE  
WAIVER OF ALLOCATION OF SALES AND USE TAX COLLECTION REVENUE AND  
USE OF CAPITAL IMPROVEMENTS FOR FIRE AND EMERGENCY SERVICES

This Master Interlocal Cooperation Agreement Concerning the Waiver of Allocation of Sales and Use Tax Collection Revenue and Use of Capital Improvements for Fire And Emergency Services Agreement (the "Master Agreement " or "Agreement") is made and entered into on the \_\_ day of \_\_\_\_\_, 2024 (the "Effective Date"), by and between the City of New Braunfels, Texas (the "City") and Comal County Water Improvement District No. 3A (the "District"). The City and the District may be referred to singularly as a "Party" or collectively as the "Parties". Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Allocation Agreement (defined below and attached as Exhibit A hereto.)

Waiver Agreements (as hereinafter defined) approved by the City and the District pursuant to this Master Agreement will be made Attachments and incorporated herein in their entirety and made part of this Agreement upon their execution (See Attachment 1 for Form Waiver).

**RECITALS**

WHEREAS, the City has been created, established, organized, and exists as a home-rule municipality under the laws of the State of Texas;

WHEREAS, the District (i) is a water control and improvement district and municipal utility district under Section 59, Article XVI, Texas Constitution, Section 52, Article III, Texas Constitution, and Chapters 49 and 51, Texas Water Code (ii) is authorized by House Bill 3941, 83<sup>rd</sup> Texas Legislature Regular Session, codified in Chapter 8489, Texas Special District Local Laws Code, as amended, effective June 14, 2013 (the "Creation Statute"), (iii) and was initially created as Comal County Water Improvement District No. 3 by a confirmation election on May 7, 2022, and (iv) on February 9, 2024, Comal County Water Improvement District No. 3 adopted an order dividing the district and creating the District, and on May 4, 2024 the District held a confirmation election;

WHEREAS, the District and the City desire that the effective, efficient, and responsible local government be provided to the citizens of the District and the City before, during, and after the City annexes the District for full purposes; and the District and the City also desire to avoid unnecessary duplication of services and taxes, and to provide for the orderly and seamless succession of the District;

WHEREAS, on June 6, 2024, the City and Comal County Water Improvement District No. 3 entered into an Interlocal Cooperation Agreement Concerning the Allocation of Sales and Use Tax Collection Revenue and Use of Capital Improvements for

Fire and Emergency Services, an agreement providing benefits to the City and the District, including revenue, services, and regulatory benefits which are reasonable and equitable to both the District and the City (the "Allocation Agreement", attached hereto as Exhibit A); and whereas this Allocation Agreement was assigned by Comal County Water Improvement District No. 3 to the District pursuant to Section 7.02 of the Allocation Agreement;

WHEREAS, the Allocation Agreement provides that upon receipt by the City of sales and use tax from Comal County Emergency Services District Number 7 (the "ESD"), pursuant to that certain interlocal cooperation agreement by and between the City and the ESD dated August 28, 2023 (the "ESD Agreement"), the City shall remit a "Sales Tax Payment" to the District;

WHEREAS, where the City and District agree that in the event the City can benefit the District by entering into an incentive agreement with a third party, the District may agree to waive some portion of its Sales Tax Payment (the "Waived Amount") so that the City can remit economic incentives to said third party in an amount equal to the Waived Amount, on terms agreed to by the City and the District;

NOW, THEREFORE, for and in consideration as hereinafter expressed and the mutual condition set out herein, it is agreed by and between the City and the District as follows:

## **ARTICLE I** **PURPOSE**

**Section 1.01. Sales Tax Payment.** Section 3.02 of the Allocation Agreement outlines the remittance of City funds to the District as follows:

- A. **Initial Period Payment.** During the first five (5) years following the issuance of the certificate of occupancy for the initial sales tax producing commercial property within any portion of the "Limited Purpose Tract" on the applicable "Sector Plan" (the "Initial Period"), the City shall remit to the District an amount equal to forty percent (40%) of eligible Sales and Use Tax Revenue that would have otherwise been collected by the City in the "Commercial Areas" (1.5 cents), less twenty-five percent (25%) in "District Type B Revenues". This amount is referred to as the "Initial Period Payment".
  
- B. **Limited Annexation Period Payment.** After the Initial period, the City shall remit to the District an amount equal to fifty percent (50%) of the eligible sales and use tax revenue that would have otherwise been levied and collected by the City in Commercial Areas (1.5 cents), less twenty-five percent (25%) in District Type B

Revenues, until the City annexes the District for full purposes. This Amount is referred to as the "Limited Annexation Period Payment".

**Section 1.02. Waiver of Sales Tax Payment.** Where the City has entered into an incentive agreement with a third party for a commercial project in the District, and the District finds a benefit in this incentive agreement, the District may waive some portion of its Sales Tax Payment. The District's delivery of a waiver agreement in substantially the form of Attachment 1 hereto (each, a "Waiver Agreement" and, collectively, the "Waiver Agreements") shall be (i) conclusive evidence that the District finds a benefit in the applicable incentive agreement (in furtherance of this Section 1.02) and, (ii) except as specifically set forth in Section 3.03 below, deemed to be an irrevocable waiver by the District of the portion of the maximum amount of the Sales Tax Payment described in said Waiver Agreement. For the avoidance of doubt, all references herein to a Waiver Agreement shall be deemed to include the Waiver Agreement in the form of Attachment 1-A hereto (the "Costco Waiver Agreement") and other waiver agreements approved by the City and the District and attached hereto.

- A. District Waiver. The District agrees to waive the Sales Tax Payment, including the Initial Period Payment and Limited Annexation Period Payment, as applicable, under the terms and conditions of the Waiver Agreement(s) attached hereto.
- B. District Type B Revenues. The District Type B Revenues (the twenty-five percent (25%) deducted from the payment calculations to calculate the Initial Period Payment and the Limited Annexation Period Payment, as applicable) are not included in the District Waiver.

## **ARTICLE II**

### **TERM**

**Section 2.01. Term.** This Agreement shall be effective as of the Effective Date and shall continue until termination by mutual consent of the parties. Notwithstanding the foregoing and anything herein to the contrary, the parties hereto agree that this Agreement shall not be terminated before the stated expiration date of the Costco Waiver Agreement or other waiver agreement approved by the City and District and attached hereto.

**Section 2.02. Waiver Agreements.** Each Waiver Agreement attached hereto shall have a specific term for the District's waiver of applicable Sales Tax Payments. No waiver agreement shall exceed the term of the underlying incentive agreement between the City and the third party.

## **ARTICLE III**

### **CITY OBLIGATIONS**

**Section 3.01. Limited Purpose Annexation.** The City agrees that any commercial property that is subject to a Waiver Agreement attached hereto shall have been annexed for the limited purpose of collecting sales tax revenues generated by the District's Commercial Areas.

**Section 3.02. Incentive Agreement.** The City agrees that any commercial property that is subject to a Waiver Agreement attached hereto shall be the subject of an incentive agreement with the City.

**Section 3.03. Sales Tax Payments.** The City shall continue to remit Sales Tax Payments pursuant to the Allocation Agreement to the District that are not subject to any Waiver Agreement.

**Section 3.03. Right of Recapture.** In the event the City terminates an incentive agreement and the third party is required to pay back funds received under such incentive agreement, the City shall rebate to the District its portion of the funds returned by the third party.

#### **ARTICLE IV** **ADMINISTRATIVE PROVISIONS**

**Section 4.01. Inspection.** All records concerning the assessment and collection of the ESD Payment, the City's remittance of the Sales Tax Payment, and the City's calculation of Sales Tax Payments to waived shall be kept and maintained by the City and a designated representative of the District, including the District's auditor, is authorized to examine the records maintained by the City at such reasonable time and interval as the District deems necessary.

**Section 4.02. Recordkeeping.** All such books and records as necessary to determine the assessment and collection of the ESD Payment, the Sales Tax Payment, and any District waivers will be kept in the offices of the City.

#### **ARTICLE V** **LIABILITY**

**Section 5.01. No Personal Liability.** Nothing in the Agreement is construed as creating any personal liability on the part of any officer, director, employee, or agent of any public body that may be a party to the Agreement, and the Parties expressly agree that the execution of the Agreement does not create any personal liability on the part of any officer, director, employee, or agent of the City or the District. The Parties agree that no provision of this Agreement extends the City's or the District's liability beyond the liability provided in the Texas Constitution and the laws of the State of Texas.

**Section 5.02. Waiver of Sovereign Immunity; Chapter 271, Texas Local Government Code.** The Parties hereby agree that this Agreement constitutes an agreement for providing goods and/or services to the District, which is subject to the provisions of Subchapter I, Chapter 271, Texas Local Government Code, and any successor statutes. In accordance with Sections 271.152-.153, Texas Local Government Code, the District and the City hereby waive, to the maximum extent allowed by law, any constitutional, statutory, or common law right to sovereign immunity from liability or suit and expressly consent to be sued and held liable with respect to their performance and/or failure to fully and timely perform each and every obligation under this Agreement but only to the extent such liability or suit arises from or relates to this Agreement or a claim brought under this Agreement.

## **ARTICLE VI** **MISCELLANEOUS**

**Section 6.01. Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue shall be in Comal County, Texas.

**Section 6.02. Assignability.** No assignment of this Agreement or of any right accrued hereunder shall be made in whole or in part by either Party without the prior written consent of the other Party.

**Section 6.03. Corporate Authorization.** The undersigned officer or agent of the Parties hereto are the properly authorized officials of the Party presented and have the necessary authority to execute this Agreement on behalf of the Parties hereto and each Party hereby certifies to the other that any necessary approvals have been duly passed and approved and are not in full force and effect.

**Section 6.04. No Third-Party Beneficiaries.** Except as provided in Section 1.02.A above with respect to parties and projects described in waiver agreements attached hereto, the Parties to this Agreement do not intend by this Agreement that any specific third party may obtain a right by virtue of the execution of performance of this Agreement.

**Section 6.05. Severability.** In the event that any one or more terms, provisions, or conditions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other terms, provisions, or conditions; and the Agreement shall be construed as if such invalid, illegal, or unenforceable term, provision, or condition had never been contained in it.

**Section 6.06. Modification.** The Parties may not modify, amend or waive this Agreement, except by written agreement executed by both Parties.



[SIGNATURE PAGES FOLLOW]

CITY:

**CITY OF NEW BRAUNFELS, TEXAS**

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

Name: ROBERT CAMARENO

Title: City Manager

THE STATE OF TEXAS §

§

COUNTY OF COMAL §

This instrument was acknowledged before me on \_\_\_\_\_, 2024,  
by ROBERT CAMARENO, City Manager, on behalf of the City of New Braunfels, Texas,  
a municipal corporation.

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



**DISTRICT:**

**COMAL COUNTY WATER IMPROVEMENT  
DISTRICT NO. 3A**

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

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

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

THE STATE OF TEXAS §

§

COUNTY OF COMAL §

This instrument was acknowledged before me on \_\_\_\_\_, 2024,  
by \_\_\_\_\_, \_\_\_\_\_, on behalf of the Comal County Water  
Improvement District No. 3A, a Texas political subdivision.

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

Exhibit A  
The Allocation Agreement

Attachment 1  
Form of Waiver Agreement - CONFIDENTIAL

This Waiver Agreement by and between the City of New Braunfels, Texas (the "City") and Comal County Water Improvement District No. 3A (the "District") is subject to and a part of the Master Interlocal Cooperation Agreement Concerning the Waiver of Allocation of Sales and Use Tax Collection Revenue and Use of Capital Improvements for Fire And Emergency Services Agreement between the City and the District.

Incentive Project Name: \_\_\_\_\_

Commercial Site Description / Limited Purpose Tract: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Sector Plan for Commercial Area: \_\_\_\_\_  
\_\_\_\_\_

Date of City of New Braunfels limited annexation of Site: \_\_\_\_\_

Date of City of New Braunfels incentive agreement for Project: \_\_\_\_\_

Date of EDC incentive agreement for Project: \_\_\_\_\_

Date of Project Certificate of Occupancy: \_\_\_\_\_

Maximum Term of the Waiver: \_\_\_\_\_

Maximum Amount of the Waiver: \_\_\_\_\_  
\_\_\_\_\_

Other Terms of the Waiver: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CITY OF NEW BRAUNFELS, TEXAS

COMAL COUNTY WATER  
IMPROVEMENT DISTRICT No. 3A

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Attachment 1-A  
Waiver Agreement 1-A

This Waiver Agreement by and between the City of New Braunfels, Texas (the "City") and Comal County Water Improvement District No. 3A (the "District") is subject to and a part of the Master Interlocal Cooperation Agreement Concerning the Waiver of Allocation of Sales and Use Tax Collection Revenue and Use of Capital Improvements for Fire And Emergency Services Agreement (the "Underlying Master Waiver Agreement") between the City and the District.

Incentive Project Party: Costco Wholesale Corporation, a Washington Corporation ("Costco")

Commercial Site Description / Limited Purpose Tract: An approximately 19.9983 acre parcel of land in Comal County, Texas located at the intersection of I-35 and Kohlenberg Road

Sector Plan for Commercial Area: \_\_\_\_\_

Date of City of New Braunfels limited annexation of Site: (to come)

Date of City of New Braunfels incentive agreement for Project: (to come)

Date of EDC incentive agreement for Project: N/A

Date of Project Certificate of Occupancy: (to come)

Maximum Term of the Waiver: No longer than 20 years from Certificate of Occupancy; provided, however, if, as of the date that is 20 years from Certificate of Occupancy, the term of that certain Chapter 380 Economic Development Agreement between the City and Costco providing for economic incentive payments to Costco in an amount of up to \$6.3 million (the "\$6.3 million 380 Agreement") has not yet terminated or expired, then the term of this Waiver Agreement shall be automatically extended to be coterminous with the term of the \$6.3 million 380 Agreement.

Maximum Amount of the Waiver: Up to \$6.3 million from 75% of Sales Tax Payment from the Commercial Site described above.

Other Terms of the Waiver: See below.

1. District agrees to collaterally assign the remaining 25% of Sales Tax Payment to Costco to secure the completion of certain public infrastructure improvements benefitting the wholesale and retail general merchandise facility that Costco intends to develop, construct, open, operate and maintain on the Commercial Site described above (hereinafter the "Costco Facility"), all as further described in that certain Developer Agreement among the District, Costco, and SouthStar at Mayfair Developer, LLC, to which the City is not a party.

2. The City and the District shall, promptly following or concurrent with the City and Costco entering into one or more incentive agreements with respect to the Commercial Site described above, execute and deliver this Waiver Agreement with respect to the Costco Facility, and such Waiver Agreement shall be the "Costco Waiver Agreement" defined in the Underlying Master Waiver Agreement.
  
3. District shall not agree to waive (and agrees not to execute any Waiver Agreement memorializing its waiver of) or otherwise assign any Sales Tax Payment generated from the Costco Facility and continuing until the stated expiration date of this Waiver Agreement.
  
4. Subject to the terms of this Waiver Agreement, the City shall continue to remit Sales Tax Payments pursuant to the Allocation Agreement to the District that are not subject to any Waiver Agreement.

CITY OF NEW BRAUNFELS, TEXAS

COMAL COUNTY WATER  
IMPROVEMENT DISTRICT No. 3A

\_\_\_\_\_  
 By: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

\_\_\_\_\_  
 By: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_