

**MEMORANDUM  
DEPARTMENT OF FACILITY SERVICES  
COUNTY OF PLACER**

To: Honorable Board of Supervisors

Date: December 9, 2014

From: *MD* Mary Dietrich, Facility Services Director  
By: Laurie Morse, Property Manager

Subject: Placer County Government Center – Costco Wholesale Corporation Option to Ground Lease and Ground Lease

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**ACTION REQUESTED:**

1. Authorize the Chairman to execute the Option to Ground Lease between Costco Wholesale Corporation and the County of Placer for approximately 16 acres at the Placer County Government Center in Auburn, at no new net County cost and, after Costco Wholesale Corporation has obtained necessary land use approvals in compliance with the California Environmental Quality Act and has exercised its rights to the Ground Lease pursuant to the terms of the Option to Ground Lease, to execute the Ground Lease and associated documents.
2. Adopt the Resolution authorizing the Director of Facility Services, or designee, to administer on behalf of the County all provisions and responsibilities of the Option to Ground Lease including the Escrow Agreement between Costco Wholesale Corporation, the Volunteers for the Multipurpose Senior Center, Inc., and the County of Placer, and, after execution of the Ground Lease, administer on behalf of the County all provisions and responsibilities of the Ground Lease, at no new net County cost.

**BACKGROUND:**

Over its 70-year history, the Dewitt Center (now referred to as the Placer County Government Center) (PCGC) has served Federal, State and County needs and has functioned as an economic driver for government, employment and local businesses. In 1943, over 750,000 square feet of buildings on 220 acres were constructed during World War II to receive medical casualties from overseas and to provide treatment to patients from military bases in the region. Following the war, the facility was declared surplus and purchased by the State of California in 1946 for use as a mental institution. Then, in 1972, the County took ownership of PCGC from the State. Shortly thereafter, in 1978 with the passage of Assembly Bill 1943, a limitation restricting leasing to private users was eliminated allowing the County to begin realizing revenues through its private tenant leasing program. Following the certification of the DeWitt Government Center Facility Plan Environmental Impact Report (EIR) in 2003, the County commenced demolition of the aged, outdated and potentially hazardous building inventory and constructed modern facilities such as the Community Development Resource Center and the Auburn Justice Center. About this time, the County entered into an Option to Ground Lease with Home Depot that resulted in your Board's execution of a Ground Lease in 2006 and the store opening in 2009. This lease has generated significant revenue for the County and provides good jobs to the community, all at minimal cost for property management, maintenance and utility expenses as compared to managing and maintaining the existing private tenant facilities.

In July 2011, staff presented to your Board a report on the County's Comprehensive Facilities Master Plan which was originally prepared in 1993. This presentation outlined efforts to project County space needs at the PCGC into the future and the further capacity at the PCGC to provide for important economic development opportunities for the Auburn Area while providing additional revenue to the County. The July 2011 presentation to your Board identified additional capacity for

private commercial development in the vicinity of Willow Creek Drive and First Street near Home Depot. In November 2011, your Board agreed to grant an Exclusive Right to Negotiate Agreement (ERNA) to Conkey Real Estate Development LLC (Conkey) to pursue the feasibility of a Costco warehouse store (Costco) development on approximately 16 acres of PCGC property. This was viewed as an opportunity to bring Costco to the North Auburn area and benefit from revenues from rents, sales tax and in-lieu property taxes as well as additional economic benefits from the 165-170 estimated new local jobs.

On March 11, 2014, your Board approved the execution of a Site Access and Negotiating Agreement (SANA) with Costco. The SANA granted Costco the exclusive right to negotiate an Option to Ground Lease and Ground Lease with respect to a 16-acre site at PCGC bordered by First and Second Streets and C Avenue and the Placer County Garage area off of F Avenue as shown on Exhibit A (the Site). On November 18, 2014 your Board approved the extension of the SANA term until January 31, 2015.

At the March 11, 2014 meeting, your Board also approved the Real Estate Services and Property Development Agreement (Property Development Agreement) with Conkey for its past services related to securing Costco. This action concluded Conkey's role associated with the ERNA and allowed Costco to play an active role in the environmental and entitlement process. This also allowed staff to commence direct negotiations with Costco thereby eliminating any potential delay due to third party negotiations. At this March 11, 2014 meeting, your Board approved the following key business and financial terms for the proposed Option to Ground Lease and Ground Lease.

1. **Option to Ground Lease Term:** 30 months with two 6-month options to extend.
2. **Costco Support for Senior Center:** Costco to deposit \$530,000 in an escrow account to fund tenant improvements and rent payments for the Volunteers for the Multipurpose Senior Center, Inc. If Costco fails to or is unable to exercise the Ground Lease, the County is obligated to reimburse Costco for this amount.
3. **Ground Lease Term:** 20 years with three 10-year options to extend.
4. **Ground Lease Base Rent:** Costco to pay \$325,000 annually with 10% rent escalations every 10 years.
5. **Ground Lease Rent Commencement:** Rent shall commence the earlier of one year after the Effective Date of the Ground Lease or when Costco opens for business.
6. **Extraordinary Costs Rental Credit:** Costco to receive a \$1,000,000 credit against rent applied in \$100,000 annual increments over the first 10 years of the Ground Lease. These funds will compensate Costco for anticipated extraordinary site costs, which include relocation of existing utility infrastructure, offsite utility improvements, retaining walls, canal encasements and other such costs.
7. **Demolition and Hazardous Materials Remediation Costs Rent Credit:** Costco to receive a rent credit equal to Costco's actual costs to demolish buildings, fixtures, improvements such as paved parking areas, and roadways on the premises and to remediate any hazardous materials that were not otherwise performed by the County during the Option term.
8. **Additional Rent Due to County Operations Impacts:** On Ground Lease commencement, Costco to pay \$650,000 as additional rent as compensation for the loss of existing improvements being impacted by the Costco project.

These terms established the framework for the negotiations between County staff and Costco representatives, and form the core of the proposed agreement between the County and Costco. Over the past nine months, County staff has engaged and completed extensive negotiations with Costco Wholesale Corporation for the proposed Option to Ground Lease (Option) and the Ground Lease, which are further described below. Staff believes that the proposed Option and Ground Lease is a commercially reasonable transaction that provides a fair return to the County for the use of its property and provides the basis for enhanced economic development in the Auburn area, and is in the best interests of the County.

**Option to Ground Lease:**

The purpose of the Option is to provide Costco with a sufficient period of time to evaluate the Site. During the Option period, Costco will review the property title, its physical and environmental condition and determine to its satisfaction the acceptability of the Site for Costco's intended use.

The Option further requires Costco to apply for and diligently obtain all discretionary land use approvals necessary to use the Site for Costco's intended use from the County before it can exercise its rights to the Ground Lease. Only after Costco has received its conditional use approvals, design review and other discretionary land use approvals as required by Placer County ordinances, which are subject to review under and can only be issued in compliance with the California Environmental Quality Act, may Costco exercise its rights to the Ground Lease and present an executed Ground Lease to the County for its signature.

The Option provides for a Possession Date where the County delivers the Site to Costco with all County buildings, fixtures, improvements such as paved parking areas, and roadways removed such that Costco can possess the Site for the term of the Ground Lease. The Possession Date is determined by the County under the terms of the Option, but can be no sooner than March 1, 2016, unless agreed to by both Parties. Costco will perform a survey of the Site that describes the final premises boundaries and area.

Costco has agreed to assist the Volunteers for the Multipurpose Senior Center, Inc. (Senior Center) with the costs of obtaining, leasing and improving a new location, so the Option includes a provision to provide a funding mechanism for that purpose. Costco, the County, and the Senior Center will enter into an Escrow Agreement and establish an escrow account. Within 10 business days of the execution of the Option, Costco will deposit \$530,000 into an escrow account from which the Senior Center may seek disbursements. The County does not exercise any control over or in any way direct the use of the monies by the Senior Center, but if Costco fails to proceed with the Ground Lease, then the County must reimburse Costco for the Deposit amount of \$530,000. The escrow account then will remain and monies be available for further disbursements pursuant to the Escrow Agreement. The Escrow Agreement is attached to the Option as Exhibit F. Execution of the Escrow Agreement is an implementation action dependent upon approval of the Option.

The Option allows the parties to make nonmaterial changes to the Ground Lease and modify the Base Rent to reflect any change in the premises square footage.

**Ground Lease:**

The Ground Lease incorporates the key business terms as approved by your Board but also contains numerous other business and legal terms that required extensive discussion and negotiation. The Ground Lease can only be entered into by the County if Costco has applied for and obtained all necessary land use approvals for it to utilize the Site for its intended purpose, and that discretionary review will be subject to full compliance with the California Environmental Quality Act. The following is a discussion of the most significant of the additional terms in the Ground Lease:

A PCGC Road Maintenance Assessment Costs provision requires Costco to contribute to costs to maintain common roadways and associated improvements at such time this fund is developed.

The County has the right to terminate the Ground Lease and recapture the premises if Costco does not commence construction within two years of the Ground Lease commencement or stock and open a Costco store for at least one day within three years of the Ground Lease commencement. Under this circumstance, the County would compensate Costco for roadway and infrastructure improvements that benefit the County, the \$530,000 deposited into the Senior Center escrow account, and any demolition and hazardous remediation costs incurred by Costco, less any rent credits previously collected by Costco.

If Costco (or a sublessee or assignee) opens the store and then closes and fails to reopen for a two year period, the County also has the right to terminate the Ground Lease and recapture the property. In this event, the County would pay Costco the unamortized cost of the Costco project improvements based on a 27-year amortization schedule. In the event of closure, Costco could prevent the County's recapture by assigning or subleasing pursuant to the assignment and subletting provision of the Ground Lease. This provision allows Costco to assign or sublet the premises to a broad range of tenants (e.g., retail, restaurant, entertainment and recreational) or a tenant with a net worth in excess of \$100,000,000. Additional rent would be due to the County if the tenant occupies more than 10% of the land area of the premises or more than 50% of the building square footage based on 1/2 of additional land rent paid. An exclusivity provision in the Ground Lease restricts the County from selling or leasing land within a 1-mile radius to another wholesaler or retailer with a similar merchandising concept as Costco.

As with the Home Depot agreement, Costco has the sole responsibility and obligation to maintain the premises and all improvements, maintain and evidence specified insurance coverage, pay all utility costs, real and personal property taxes and assessments.

**ENVIRONMENTAL CLEARANCE:**

The action to approve the Option to Ground Lease is exempt from review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) because it can be determined with certainty there is no possibility that the approval of the Option will result in a direct or a reasonably foreseeable indirect significant impact on the environment. Approval of the Option does not grant any land use entitlements, does not allow Costco to take possession of the property, and does not authorize any development use of the property by Costco. In order to utilize the property in any way, Costco must exercise its rights to the Ground Lease, and Costco may not exercise its rights until it has applied for and been granted all necessary discretionary land use approvals from the County, which are subject to full environmental review in accordance with CEQA. The County cannot enter into the Ground Lease until the decision is made by Costco to exercise its rights to the Ground Lease, prior to which time full environmental review will have been done of all activities proposed to take place on the Site. The Option establishes the terms under which the Ground Lease may be exercised, so the action by the County to execute the Ground Lease is non-discretionary and not subject to any additional environmental review under the California Environmental Quality Act pursuant to Public Resources Code Section 21080(b)(1).

**FISCAL IMPACT:**

Revenues from the Costco project are projected to exceed \$18 million over the initial 20-year lease term. These revenues include rents, sales tax, and in-lieu property taxes, and are net of the costs associated with replacement of impacted County facilities, rent from existing PCGC private tenants, fees paid pursuant to the Property Development Agreement, and the Costco rent credits. Revenues are expected to exceed \$85 million over the 50-year term should all options be exercised by Costco.

ATTACHMENTS: EXHIBIT A – SITE  
RESOLUTION

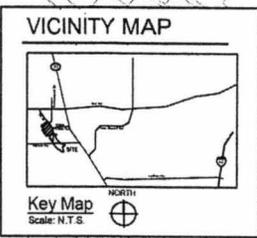
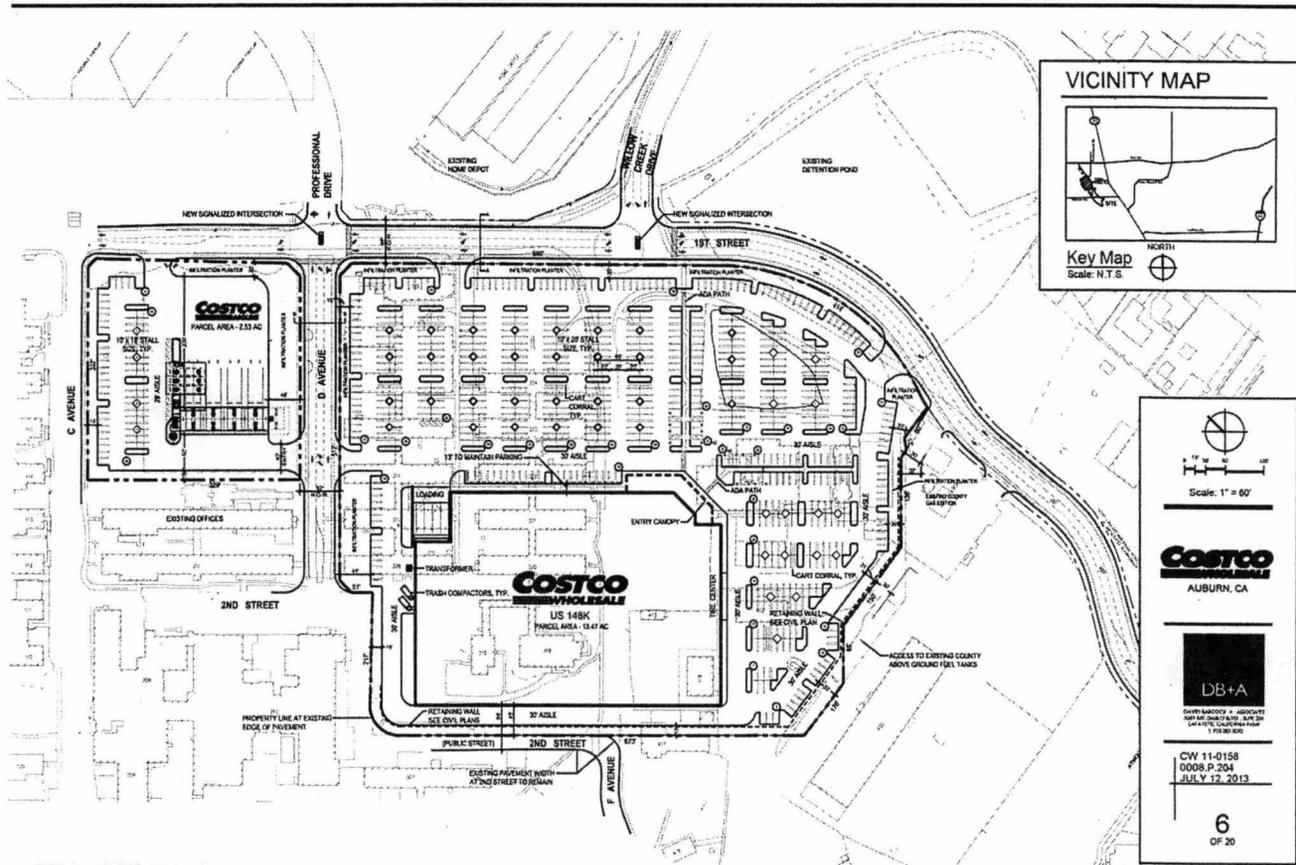
AVAILABLE FOR REVIEW AT THE CLERK OF THE BOARD'S OFFICE: OPTION TO GROUND LEASE AND GROUND LEASE

CC: COUNTY EXECUTIVE OFFICE  
COUNTY COUNSEL

MD/LM/EF

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**EXHIBIT A**  
**SITE**



Scale: 1" = 60'

**Costco WHOLESALE**  
AUBURN, CA

**DB+A**

CW 11-0158  
0008.P.204  
JULY 12, 2013

6  
OF 20

**Costco**  
**WHOLESALE**  
AUBURN, CALIFORNIA

**Auburn Concept Site Plan 5.4d**

# Before the Board of Supervisors County of Placer, State of California

In the matter of: A RESOLUTION AUTHORIZING THE                      RESOLUTION No: \_\_\_\_\_  
DIRECTOR OF FACILITY SERVICES, OR DESIGNEE,  
TO ADMINISTER THE OPTION TO GROUND LEASE AND  
GROUND LEASE BETWEEN THE COUNTY AND COSTCO  
WHOLESALE CORPORATION FOR APPROXIMATELY 16  
ACRES AT THE PLACER COUNTY GOVERNMENT CENTER.

The following RESOLUTION was duly passed by the Board of Supervisors of the County of Placer at a regular meeting held \_\_\_\_\_, 2014 by the following vote on roll call:

Ayes:

Noes:

Absent:

Signed and approved by me after its passage.

Attest:

\_\_\_\_\_  
Chair, Board of Supervisors

\_\_\_\_\_  
Clerk of said Board

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**WHEREAS**, the County of Placer (County) is the owner of approximately 16 acres of property at the Placer County Government Center (PCGC) in Auburn, California; and the County and Costco Wholesale Corporation (Costco) entered into a Site Access and Negotiating Agreement on March 21, 2014 to negotiate an Option to Ground Lease the approximately 16 acres of property at the PCGC; and

**WHEREAS**, the County staff has negotiated an Option to Ground Lease (Option) and Ground Lease, and the County and Costco desire to enter into the Option to Ground Lease with the ability to execute the Ground Lease at a later date; and

**WHEREAS**, after entering into the Option, Costco intends to deposit funds into an Escrow Account to assist with a future Senior Center location, and the County, Costco and the Volunteers for the Multipurpose Senior Center, Inc. (Senior Center) have negotiated an Escrow Agreement to address distribution of funds towards tenant improvements and rent.

**NOW THEREFORE, BE IT RESOLVED**, the Placer County Board of Supervisors does hereby authorize the Chairman of the Board to execute the Option to Ground Lease, and after Costco Wholesale Corporation has obtained necessary land use approvals in compliance with the California Environmental Quality Act and has exercised its rights to the Ground Lease pursuant to the terms of the Option to Ground Lease, to execute the Ground Lease and associated documents; and

**BE IT FURTHER RESOLVED** that the Director of Facility Services, or designee, is hereby delegated authority to administer on behalf of the County all provisions and responsibilities of the Option and the Ground Lease once fully executed, including the recordation of Memoranda and other financing agreements or instruments as contemplated in said Option or Ground Lease; and to execute and administer on behalf of the County all provisions and responsibilities of the Escrow Agreement between Costco, the Senior Center, and the County to provide funding for tenant improvements and rent associated with a future Senior Center location.

