

RESOLUTION NO. 45-17
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER John Salcedo ON THE 7th DAY OF August, 2017.

A RESOLUTION RATIFYING AND AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT AND CONSENT AS TO REPRESENTATION WITH COSTCO WHOLESALE CORPORATION AND AUTHORIZING APPEAL OF OHIO DEPARTMENT OF TAXATION DETERMINATIONS.

WHEREAS, the Ohio Department of Taxation (ODT) issued final determinations as to two applications for exemption filed on November 12, 2015 by Costco Wholesale Corporation (Costco); and

WHEREAS, the City desires to seek appeal the ODT determinations; and

WHEREAS, Costco agrees that they have a common interest in appealing the determinations; and

WHEREAS, the City intends to take the lead in facilitating and pursuing the appeal; and

WHEREAS, the appeal was to be filed by August 4, 2017.

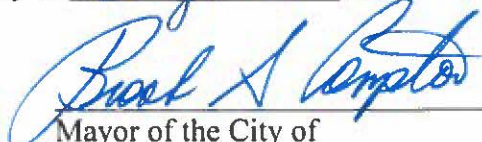
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CENTERVILLE, MONTGOMERY COUNTY, OHIO, AS FOLLOWS:

Section 1. The City hereby agrees to enter into an Agreement with Costco and the actions of the Interim City Manager to execute the Agreement with Costco is hereby ratified and authorized. The Agreement is attached hereto as Exhibit "A" and incorporated herein on behalf of the City of Centerville.

Section 2. The City further ratifies the actions of the City Manager and authorizes the appeal of the ODT determinations.

Section 3. This Resolution shall be in full force and effect at the earliest date allowed by law.

PASSED THIS 7th day of August, 2017.



Mayor of the City of
Centerville, Ohio

ATTEST:

Caun R. Andrews

Clerk of Council
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Resolution No. 44-17, passed by the Council of the City of Centerville, Ohio on the 7th day of August.

Caun R. Andrews

Clerk of the Council

Approved as to form, consistency
with existing ordinances, the
charter & constitutional provisions
Department of Law
Scott A. Liberman
Municipal Attorney

EXHIBIT A

AGREEMENT AND CONSENT AS TO REPRESENTATION

This “AGREEMENT AND CONSENT AS TO REPRESENTATION” (hereinafter “Agreement”) is entered into, as of the date of execution set forth below, by and between the City of Centerville, an Ohio municipal corporation (hereinafter “City”), and Costco Wholesale Corporation, a Washington corporation and a real property owner in the City of Centerville, Greene County, Ohio (hereinafter “Costco”).

WHEREAS, Costco is the owner of real property at 5300 Cornerstone North Blvd, Centerville, OH 45440, in the Cornerstone of Centerville North Development at the corner of Feedwire Road and Wilmington in the City of Centerville, Greene County, Ohio; and

WHEREAS, on June 5, 2017, the Ohio Department of Taxation (“ODT”) issued Final Determinations as to the two applications for exemption filed on November 12, 2015 by Costco on parcel number L490001000100002000 in DTE No. XE 2213 and parcel number L490001000100002100 in DTE No. XE 2214 (hereinafter “Determinations”); and

WHEREAS, the City and Costco agree they have a common interest in appealing the Determinations, and that their interests in the matter are not adverse: and

WHEREAS, the City and Costco wish to cooperate in facilitating an appeal of the Determinations:

NOW, THEREFORE, in consideration of the following, the City and Costco each hereby agree and consent as follows:

1. The City has agreed to provide legal representation to Costco in bringing an appeal of the Determinations and in any subsequent appeal arising from the Determinations, including any appeal to the Ohio Supreme Court (hereinafter “Appeal”), through the City’s Municipal Attorney and the City’s Bond Counsel (hereinafter “City’s attorneys”).
2. Costco’s attorney’s fees, litigation costs and expenses incurred on its behalf by the City’s Attorneys in the Appeal of the Determinations shall be paid by the City.
3. It is acknowledged by Costco that the City’s Attorneys regularly represent the City in matters both related to and unrelated to the subject matter of the Determinations.
4. It is understood by the parties that representation of Costco by the City’s Attorneys shall be limited to the Appeal.
5. It is further understood by the parties that in representing the interests of Costco in the Appeal, the City’s Attorneys will, at all times, be exercising their professional

independent judgment and will maintain their attorney client relationship with each party to this Agreement, including maintaining attorney client privilege with regard to each as to any communications, except upon order of court. It is further agreed that all substantive pleadings submitted on Costco's behalf will be shared with Costco before filing.

6. Costco agrees that once this Agreement is signed and accepted by all parties, Costco will cause the execution of any documents that assist in and authorize the filing of and pursuit of the Appeal on its behalf and will not withdraw such authorization throughout the entire appeals process, including any subsequent appeals, and will continue to support the Appeal throughout the entire appeal process so long as such is at no further expense to Costco and so long as the Appeal is supported by the City.
7. Costco agrees to cooperate and participate in the Appeal, including by appearing as necessary for and in providing any information or testimony necessary to presenting the Appeal before any administrative body or court of competent jurisdiction.
8. The City agrees to cooperate and participate in the Appeal, including by appearing as necessary for and in providing any information or testimony necessary to presenting the Appeal before any administrative body or court of competent jurisdiction as the City deems necessary.
9. This Agreement and the rights and obligations of the parties hereunder shall be subject to the terms and conditions hereof and shall inure to the benefit of and be binding on their respective successors and assigns.
10. No amendment, modification or alteration of this Agreement shall be valid unless in writing and signed by the parties hereto.
11. If for any reason any one or more articles, sections, sentences, clauses or parts of this Agreement are held invalid by any court of law or duly authorized public body, such determinations shall not affect, impair, or invalidate the remaining provisions of this Agreement and shall not prejudice in any way the validity of the Agreement in any other instance nor shall such finding alter the understanding of both parties as to the intent of this Agreement and both parties agree to use their best efforts to bring to fruition the results contemplated in this Agreement regardless of the findings of any court of law or other duly authorized public body.
12. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

COSTCO:

COSTCO WHOLESALE CORPORATION

Proffey
By: ~~Bruce Koppel~~
Its: ~~Municipal Counsel~~
Date: ~~8/2/17~~

CITY:

CITY OF CENTERVILLE, OHIO

Jennifer S Wilder
By: ~~Nathan Cahall~~ Jennifer S. Wilder
Its: ~~Acting City Manager~~ Interim
Date: ~~8/3/17~~

Approved as to Form:
Scott A. [Signature]
Municipal Attorney