

**CITY OF SALINAS**  
**ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT**

**SALINAS TRAVEL CENTER (LOVE'S TRAVEL STOP)**

This Economic Development Incentive Agreement ("the Agreement") is entered into this \_\_\_\_ day of March 2018 (the "Effective Date"), by and between the City of Salinas, a California charter city and municipal corporation hereinafter referred to as "the City," and Love's County Stores of California, Inc. hereinafter referred to as "the Developer." The City and the Developer are, from time to time, referred to herein individually as a "Party" and collectively as the "Parties."

**RECITALS**

A. The Salinas City Council has identified economic development objectives of an enhanced sales tax revenue base, increased job creation, and diversification of the local economy. To meet those objectives the Salinas City Council has adopted Economic Development Incentive Policy Guidelines to assist the City Council and City staff in the retention of an existing business, to encourage the expansion of local businesses, and the attraction of targeted businesses.

B. The City is authorized to collect sales taxes from retail uses operating throughout the City pursuant to Article XI, Section 5 of the California Constitution and pursuant to Chapter 32 of the Salinas City Code. Such taxes are used for the general benefit and operations of the City of Salinas.

C. The City wishes to provide economic incentives for new business operations because providing such incentives encourages the development of new retail uses which might not otherwise be viable and the existence of quality retail uses within the city furthers the economic climate for businesses and residents in the city and also generates new sales tax revenue in excess of amounts made available in the form of incentives.

D. The Developer has represented that it will construct a travel center on land currently located in unincorporated Monterey County, south of the existing City limits. The property owner and the Developer have indicated their desire and their intent to have the property on which the project will be developed annexed into the City as a part of the project's entitlement process.

E. The project is anticipated to include approximately 70,000 square feet of nonresidential uses, including 20,000 square feet of travel center uses and approximately 50,000 square feet of hotel uses. The travel center component is anticipated to contain a 7,700 square-foot convenience store, a 2,900 square-foot restaurant, and a 9,800 square-foot mechanics building. In addition, the project will contain 23 fueling stations. All of these items described in this paragraph are collectively herein referred to as “the Project.”

F. The Salinas City Council finds and determines that development of the Project as proposed by the Developer and as evidenced by the independent economic analysis prepared for the Project by Economic & Planning Systems, Inc. (attached hereto as Attachment A and incorporated herein by reference), as well as the information and the analysis provided by City staff, will result in positive diversification of the local economy and will provide a substantial positive economic impact on the community through job creation and through the projected net increase in sales and use tax revenues.

G. The Project is expected to generate an estimated net fiscal surplus of \$898,000 per year to the City, which revenues will exceed the amounts made available in the form of incentives over the term of this Agreement. The economic analysis prepared by Applied Economics, attached hereto as Attachment A and incorporated herein by reference, indicates that the annual revenues projected to be generated by the Project will exceed the annual municipal service costs projected to result from the development and the operation of the Project. (Pages 8-9 of the Applied Economics analysis.)

The City would share 32% of the sales and transactions and use tax revenue, which is estimated at \$266,700 per year based on the City’s sales tax estimate. The City would retain 68%, or approximately \$566,700 of the sales and transactions and use tax, plus approximately \$203,600 in property tax, hotel and transient occupancy tax and other revenue per year, for a total of \$770,300 per year.

The Project is projected to create fifty (50) full-time equivalent (FTE) jobs and fourteen (14) full time equivalent part-time positions.

H. The Developer has indicated that without the incentives provided for this in this Agreement they would not proceed with development of the Project as it would not be financially feasible.

I. The development, improvement, use, and operation of the Project, and the fulfillment of this Agreement, are in the vital and the best interest of the City and the welfare of its residents, and in accordance with the public purposes and provisions of applicable laws.

NOW, THEREFORE, it is mutually agreed by and between the City and the Developer as follows:

## **TERMS**

**1. Incorporation of Recitals.** The Recitals set forth above are found and acknowledged by the City and by the Developer to be true and correct and each of them is herein incorporated by reference as a term and condition of this Agreement.

**2. Term.** This Agreement shall commence automatically on the date first written above upon which the City Council has approved a resolution authorizing the Mayor to enter into this Agreement on behalf of the City and shall continue for a period of no more than seven (7) years from the date of the Commencement of Operations as defined in Section 5 of this Agreement, or until such time as the Total Incentive Payment, as defined in Section 3 of this Agreement, has been made, whichever occurs first ("Termination Date"). This Agreement shall automatically terminate, without the requirement for any action on the part of either Party, prior to the Termination Date in the event the conditions imposed upon the use and the operation of the Love's County Store as set forth in Section 4 of this Agreement are not met.

**3. City Payments.** In exchange for the Developer's covenants and commitments set forth in this Agreement, over the Term of this Agreement and in accordance with this section and the requirements and the conditions of this Agreement, the City shall make incentive payments to Developer in the maximum cumulative amount of one million six hundred fifty thousand dollars \$1,650,000 ("Total Incentive Payment").

**a. Time of Payment.** The Total Incentive Payment shall be made by the City in arrears through a series of Quarterly Incentive Payments which shall begin with the first Calendar Quarter following the Commencement of Operations, as defined and as required in Section 5 of this Agreement, until such time as the Total Incentive Payment set forth in this Section 3 has been paid. However, in no event shall any Quarterly Incentive Payments be made after the seventh anniversary of the Commencement of Operations defined in Section 5 of this Agreement, whether or not the full amount of the Total Incentive Payment has been reached.

Each Quarterly Incentive Payment shall be based on the total sales tax revenue cash receipts reported on a quarterly report prepared for and on behalf of the City by The HdL Companies (HdL), adjusted by the **Net New Sales Tax Adjustment Factor**. The City shall make each Quarterly Incentive Payment within thirty (30) days after receiving the report from HdL. The quarterly reports are typically received by the City within three months after the end of the quarter. Therefore, as an example, the 2<sup>nd</sup> quarter sales for April through June will be reported by HdL in September which will result in a Quarterly Incentive Payment being paid in October.

**b. Amount of Quarterly Incentive Payment.** Each Quarterly Incentive Payment shall be made in an amount equal to fifty percent (50%) of the calendar quarter's gross sales tax revenue cash receipts reported on the quarterly report prepared for and on behalf of the City by HdL, adjusted by the **Net New Sales Tax adjustment factor**. The sales tax revenue cash receipts for purposes of this Quarterly Incentive Payment shall be associated with the Net New Sales Tax paid by or caused to be paid by Love's Country Store, and ultimately collected by the State Board of Equalization for the City based upon returns filed pursuant to Chapter 32, Article III, of the Salinas City Code, or any successor section or chapter of the Salinas City Code. The first Quarterly Incentive Payments shall be based upon sales tax associated with the first Calendar Quarter during which operations at the Love's Country Store commenced, as defined and as required in Section 5 of this Agreement.

**c. "Calendar Quarter".** For the purposes of this section, including the calculation of each Quarterly Incentive Payment and for calculating the timing of each Quarterly Incentive Payment, the term "Calendar Quarter" shall mean the three month period of each calendar year ending on March 31, June 30, September 30, and December 31.

**d. "Net New Sales Tax Adjustment Factor".** For the purposes of this section, including the calculation of each Quarterly Incentive Payment, **the term "Net New Sales Tax Adjustment Factor" shall mean the adjustment factor as listed on Attachment B** associated with each calendar year. The adjustment factor is estimated to represents the portion of the total sales tax paid or caused to be paid by the Love's Country Store, or any part thereof, and ultimately collected by the State Board of Equalization for the City arising from the retail sale, storage, use or other consumption of tangible personal property including, but not limited to, motor vehicle fuel from or on the Love's Country Store, or any part thereof, from time-to-time, pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (California Revenue and Taxation Code Section 7200 *et seq.*), that would not have otherwise been generated within the city of Salinas.

e. **Change in Tax Law.** If the Bradley-Burns Uniform Local Sales and Use Tax Law is modified or repealed with the result that sales tax revenues to the City are calculated in a different manner or are replaced by an alternate revenue stream (i) arising from the retail sale, storage, use or other consumption of tangible personal property from or at the Love's County Store, or any portion thereof, or (ii) designated as being a replacement for Net New Sales Tax previously generated by the retail sale, storage, use or other consumption of tangible personal property on or at the Love's County Store, then the Parties shall meet and confer in good faith to arrive at a modification of this Agreement that will realize the Total Incentive Payment to Developer within the term of this Agreement, utilizing if necessary other City revenue sources attributable to the Project, including, but not limited to, property tax, business license fees and utility and franchise fees. Any such modification shall require the consideration and the approval of the Salinas City Council.

4. **Use and Operation of the Site.** It is specifically understood and acknowledged by the City and by the Developer that the development and the operation of a Love's County Store was and is a material and substantial inducement to the City in the absence of which the City would not have entered into this Agreement. Consequently, notwithstanding what is otherwise set forth in this Agreement, the development and the operation of a Love's County Store is expressly made a condition of this Agreement and a condition precedent to the City's obligation to share sales tax revenue with the Developer.

5. **Commencement of Operations.** For purposes of this Agreement and for the commencement of Quarterly Incentive Payments, the Love's County Store shall be deemed to have commenced operations on the date a Certificate of Occupancy is issued for the Love's County Store.

6. **Compliance with Governmental Regulations.** The Developer shall carry out the design, construction, and operation of the Love's County Store in conformity with all applicable federal, state, and local laws, rules, and regulations.

7. **Payment of Sales Tax and Transaction and Uses Tax.** The specific and the timely performance of all obligations of the Developer to pay sales taxes under state law and the Salinas City Code is a material part of this Agreement, and this Agreement shall not alter any provision of the Salinas City Code or the California Revenue and Taxation Code pertaining to sales tax, and all such taxes shall be due and payable at all times according to the law. Nothing in this Agreement shall relieve the Developer of its obligation to file all returns and other reports in a timely manner, and to remit the full amount of sales taxes due and payable to the City pursuant

to state law or the Salinas City Code. The failure of the Developer or tenants or operators to make all sales tax payments lawfully due and payable under state law or the Salinas City Code shall render this Agreement immediately null and void, provided that the City shall have first given the Developer written notice of such failure and sixty (60) days opportunity to cure. Thereafter, in the event such failure has not been cured in full, the City shall be under no obligation to make any further Quarterly Incentive Payments.

**8. Developer's Indemnity.** The Developer shall indemnify, defend, and hold harmless the City and its officers, employees, agents, and representatives from any action brought by a third party (i) challenging the validity of this Agreement or (ii) seeking damages which may arise directly or indirectly from the negotiation, formation, execution, enforcement or termination of this Agreement. Nothing in this section shall be construed to mean that the Developer shall hold the City harmless or defend it to the extent that such claims, costs or liability arise from, or are alleged to have arisen from, the sole negligence or willful misconduct of the City.

**9. Taxes and Assessments.** At all times, the Developer shall pay prior to delinquency all ad valorem real estate taxes and assessments on the Love's County Store, subject to the Developer's right to contest in good faith any such taxes. The Developer shall remove or have removed any levy or attachment made on the site of the Love's County Store accruing after the commencement of the term of this Agreement. The Developer shall not apply for or receive any exemption from the payment of property taxes or assessments on any interest in or to the Love's County Store.

**10. Relationship Between the City and the Developer.** It is hereby acknowledged that the relationship between the City and the Developer is not that of a partnership or joint venture and that the City and the Developer shall not be deemed or construed for any purpose to be the agent of the other.

**11. City Approvals and Actions.** Any and all modifications or amendments to this Agreement shall require the consideration and action of the Salinas City Council and the approval of the Developer.

**12. Assignment.** It is recognized by the Parties hereto that a substantial inducement to the City for entering into this Agreement was, and is, the professional reputation and competence of the Developer. This Agreement is personal to the Developer and shall not be assigned by it without express written approval of the Salinas City Council, which approval shall not be unreasonably withheld, conditioned or delayed.

**13. Successors and Assigns.** All of the covenants, terms, and conditions of this Agreement shall be binding upon the Developer and its permitted successors, assigns, and operators.

**14. Compliance with Laws, Rules, and Regulations.** All of the obligations and requirements imposed upon the Developer pursuant to this Agreement shall be performed in accordance and full compliance with all applicable federal, state, and City laws and any rules or regulations promulgated thereunder.

**15. Exhibits Incorporated.** All exhibits referred to in this Agreement and attached to it are hereby incorporated in it by this reference. In the event there is a conflict between any of the terms of this Agreement and any of the terms of any exhibit to the Agreement, the terms of the Agreement shall control the respective duties and liabilities of the parties.

**16. Integration and Agreement.** This Agreement represents the entire understanding of the City and the Developer as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters contained herein. This Agreement may not be modified or altered except upon the approval of the Salinas City Council which shall be memorialized by amendment in writing signed by both parties.

**17. Jurisdiction.** This Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be in the State of California, in the County of Monterey or in the appropriate federal court with jurisdiction over the matter.

**18. Severability.** If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of the Agreement shall continue to be in full force and effect.

**19. Notices.**

- a. Written notices to the City hereunder shall, until further notice by City, be addressed to:

City Manager  
City of Salinas  
200 Lincoln Avenue  
Salinas, California 93901

With a Copy to:

City Attorney  
City of Salinas  
200 Lincoln Avenue  
Salinas, California 93901

b. Written notices to the Developer shall, until further notice by the Developer, be addressed to:

With a Copy to:

c. The execution of any such notices by the City Manager of the City shall be effective as to the Developer as if it were by resolution or order of the City Council, and the Developer shall not question the authority of the City Manager to execute any such notice.

d. All such notices shall either be delivered personally to the other party's designee named above, or shall be deposited in the United States Mail, properly addressed as aforesaid, postage fully prepaid, and shall be effective the day following such deposit in the mail.

**20. Headings.** The section headings appearing herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of this Agreement.

**21. Attorney's Fees.** In case suit shall be brought to interpret or to enforce this Agreement, or because of the breach of any other covenant or provision herein contained, the prevailing party in such action shall be entitled to recover their reasonable attorneys' fees in addition to such costs as may be allowed by the Court. City's attorneys' fees, if awarded, shall be calculated at the market rate.

**22. Rights and Obligations Under Agreement.** By entering into this Agreement, the Parties do not intend to create any obligations express or implied other than those set out herein; further, this Agreement shall not create any rights in any party not a signatory hereto.



**23. Further Acts.** Each of the Parties agrees to take whatever further action, including the execution of other and further documents, as may be required to effectuate the intent of the Parties and to carry out the terms of this Agreement.

**24. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute a single agreement.

**25. Legal Representation.** Each Party affirms that it has been represented by legal counsel of its own choosing regarding the preparation and the negotiation of this Agreement and the matters and claims set forth herein, and that each of them has read this Agreement and is fully aware of its contents and its legal effect. Neither party is relying on any statement of the other party outside the terms set forth in this Agreement as an inducement to enter into this Agreement.

**26. Joint Representation.** The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any party. No presumptions or rules of interpretation based upon the identity of the party preparing or drafting the Agreement, or any part thereof, shall be applicable or invoked.

**27. Warranty of Authority.** Each party represents and warrants that it has the right, power, and authority to enter into this Agreement. Each party further represents and warrants that it has given any and all notices, and obtained any and all consents, powers, and authorities, necessary to permit it, and the persons entering into this Agreement for it, to enter into this Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the date first written above.

**CITY OF SALINAS**

\_\_\_\_\_  
Joe Gunter, Mayor

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

\_\_\_\_\_  
Christopher A. Callihan, City Attorney

\_\_\_\_\_  
Date

**DEVELOPER**

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By:  
Its:

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Date

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By:  
Its:

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Date