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Agenda Item: ID#16-1363 (3:00 P.M.)

Date: 11/17/16

CITY CLERK, FRESNO

FRESNO CITY COUNCIL

City of



Supplemental Information Packet

Agenda Related Item(s) – ID#16-1363 (3:00 P.M.)

Contents of Supplement: Staff Report and Attachments

Item(s)

Actions pertaining to Economic Incentive Agreement with ULTA, Inc., a Delaware Corporation

1. Adopt an Environmental Finding of No Possibility of Significant Effect Environmental Assessment No. EA-16-036
2. Approve the attached Economic Incentive Agreement with ULTA, Inc., a Delaware Corporation for the creation of up to 1,200 jobs at a Business Activity Center(s), including but not limited to an e-commerce distribution/fulfillment center to be located in Fresno

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

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REPORT TO THE CITY COUNCIL

November 17, 2016

FROM: BRUCE RUDD
City Manager

BY: LARRY WESTERLUND
Director of Economic Development

SUBJECT

..Title

Actions pertaining to Economic Incentive Agreement with ULTA, Inc., a Delaware Corporation

1. Adopt an Environmental Finding of No Possibility of Significant Effect Environmental Assessment No. EA-16-036.
2. Approve the attached Economic Incentive Agreement with ULTA, Inc. a Delaware Corporation for the creation of up to 1,200 jobs at a Business Activity Center(s), including but not limited to an e-commerce distribution/fulfillment center to be located in Fresno.

..Body

RECOMMENDATION

The Administration recommends that the Council approve the attached Environmental Finding of No Possibility of Significant Effect Environmental Assessment No. EA-16-036 related to the Economic Incentive Agreement between the City and ULTA, Inc. (ULTA) and approve the attached Economic Incentive Agreement. Per the City's Economic Expansion Act adopted in March 2016, this project is eligible for a revenue sharing incentive agreement. The agreement will provide performance-based financial incentives, via the creation of up to 1,200 jobs at a Distribution/Internet Fulfillment Center (i.e. Business Activity Center/s) to be located in Fresno.

EXECUTIVE SUMMARY

Ulta Salon, Cosmetics and Fragrance, Inc., founded 25 years ago, is the largest beauty retailer in the United States and the premier destination for beauty products. ULTA is a publicly traded company listed on the NASDAQ stock-exchange with a market capitalization of over \$14 billion. They are a member of the Fortune 1000 with revenues of nearly \$4 billion a year and employ over 18,000 team members. The company needs to expand its e-commerce capacity to the Western United States and California, in particular. Ulta Salon, Cosmetics and Fragrance, Inc, is the parent company for ULTA, Inc. that handles their distribution and e-commerce fulfillment needs.

In September 2016, the City of Fresno was contacted by consultants working on behalf of the company indicating their West Coast facilities search had been narrowed to three cities. Currently, a site in the Fresno Industrial Triangle at East Avenue and Central Avenue has been selected by the company as the preferred site for the new facility and now will be the subject of their full due diligence. The Economic Development Team has led a coordinated effort involving all of the

relevant departments in the City of Fresno, the property owners and the development team to get Fresno to the point of being designated the preferred site for this major investment.

ULTA has requested that an incentive agreement be approved so that they can move forward on their analysis of this location and ultimately make a final decision on the location.

The proposed ULTA facility would be over a \$110 million investment in an approximately 670,000 square foot e-commerce fulfillment center on 38 acres. The company estimates that their initial workforce would consist of 642 full time employees with up to 700 part time employees at peak times of the year. The company contemplates a second phase of the project that could include an additional 196,000 square feet to the facility and the hiring of additional employees.

The company conservatively projects retail sales of \$66,000,000 in the first year at the Fresno site and expects e-commerce sales to continue to grow each year starting with 20% growth in year 2019, 15% in year 2020, and 10% in year 2021 and then 5% thereafter. In the last two years, ULTA reported Internet sales growth at 40-70%.

Ulta Inc., the legal entity which handles Distribution Centers and e-commerce, does not currently do business in California. They just recently registered with the California Secretary of State in October and this facility would be their first and only presence in the State. As a result, Senate Bill 533 does not apply, as it does not affect entities that are new to the State. The project will not pull sales out of any other California city.

The Administration and ULTA now ask the Council to approve a sales and property tax sharing agreement based on job-creation performance at the Center to incentivize the company in locating up to 642 full-time jobs and up to 700 part-time jobs in Fresno. The incentive agreement would not exceed \$18 million over a thirty year term and would be based entirely on the number of jobs created at the Fresno site.

BACKGROUND

ULTA, Inc. is the largest beauty retailer in the United States, operating 926 stores across 48 states and the District of Columbia. The company offers more than 20,000 products from over 500 beauty brands across all categories and price points. ULTA offers full-service salons in every store. ULTA intends, over the long-term, to grow their store base to approximately 1200 Ulta stores. They also intend to establish themselves as the leading online beauty resource by providing their customers with a rich online customer experience that works in conjunct with their stores.

As of a recent 10-K report, they operate three distribution facilities located in Romeoville, Illinois, Phoenix, Arizona and Chambersburg, Pennsylvania.

As mentioned above, the City has worked with the Company, their consultant and the development team from ProLogis (the international leader in industrial facilities development) to conduct the Company's preliminary due diligence on the site. As mentioned above, the Fresno site has been selected as the preferred site for consideration of the facility, subject to approval of state tax credits (scheduled for approval on November 17 at the CalCompetes board meeting), the City's approval of this incentive agreement, possible participation by the County of Fresno, and the approval of the Enhanced Economic Development rate for this project by PG&E.

The facility would include \$110 million in investment in an approximately 670,000 square foot building. The workforce would include up to 642 new full-time employees over several years, with the addition of up to 700 part-time, seasonal jobs.

Additionally, it is contemplated that ULTA could expand its facility in the coming years. The agreement anticipates the expansion and would offer a similar property tax sharing incentive to ULTA should they move forward with the facility expansion.

The Administration has negotiated a Job Creation/Performance-Based Economic Incentive Agreement. To incentivize more full-time, company hired direct jobs, the agreement provides a graduated level of incentive amount per employee based upon their employment status. As follows:

\$15,000 per direct, full-time employee

\$10,000 per full-time, contract employee

\$5,000 per contract, full-time equivalent position comprised of multiple, part-time contract positions

The structure of the deal points are as follows:

E-Commerce Fulfillment/Distribution Center based on Ulta's anticipated employment of up to 642 full time employees at \$15,000 per job:

1. Per the Economic Expansion Act, the City would rebate sales tax, use tax and property tax over a period of time not to exceed thirty (30) years or up to \$18,000,000 whichever comes first. The amount of \$18,000,000 is calculated at 1200 full time company positions at \$15,000 per job. As the attached analysis of sales, use, and property taxes indicates, the average amount of annual rebate is projected to be approximately \$514,000 per year.
2. The City Sales Tax and Use Tax Rebate on purchases would be 75% of the sales tax and use tax revenue received from the construction, equipping and operations of the facility for the first ten (10) years of the incentive program.
3. The City Sales Tax on sales would be 75% of the sales tax revenue received from the operations of the facility for the first five (5) years; 50% for the following ten (10) years; and 25% for the remaining 15 years of the incentive program.
4. The City would rebate Incremental City Property Taxes on the property and investment made by the Company from on or after the execution date of this agreement through January 1, following the 5th full year following the receipt of the Certificate of Occupancy, at 75% of the incremental property tax and if the Company expanded as contemplated 50% incremental city property tax rebate for the following five (5) years following the investment for the expansion.

The Economic Development Department engaged an outside firm, Impact DataSource, to analyze the public investment in this project and the potential return on that public investment. A copy of their report and full analysis is attached.

Impact DataSource reviewed the amount of the tax sharing to be returned to the project and estimated the minimum impact the project would have in the local economy. The firm also estimated the costs and benefits for local taxing agencies over a 25-year period. They concluded that, overall, the City will receive approximately \$42,000,000 in net benefits over the 25-year period from additional local tax revenue alone. Additionally, they concluded that the initial 642 jobs will

result in an additional 136 indirect and induced jobs over the next twenty-five years. This analysis does not take into consideration the economic impact of the annual payroll associated with the 642 direct and 187 indirect jobs associated with the first phase of activity. The payroll associated with 642 direct, full-time jobs is estimated to be \$28,286,825 annually.

In addition to the forgoing Economic Impact Report, and as part of the City's due diligence, the City Controller and the Director of Economic Development have reviewed ULTA's Third Quarter 2016 Earnings Report with consolidated financial statements to complete the due diligence required by the Better Business Act and the Economic Expansion Act. Under the Economic Expansion Act, this project is considered exempt from the requirement of the Better Business Act because the company is valued at more than \$1 billion dollars.

ENVIRONMENTAL FINDINGS

Pursuant to Section 15061 (b)(3) of the California Environmental Quality Act (CEQA) Guidelines, CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The entrance into the Economic Incentive Agreement with the City of Fresno for this Project does not involve new significant environmental effects and thus, staff has determined that a no possibility of significant effect is appropriate.

LOCAL PREFERENCE

Local preference was not considered because this is not a competitive bid.

FISCAL IMPACT

The Agreement is based upon a "Job Creation/Performance Based" strategy through rebating sales and property tax increment the City would not otherwise be realizing without this development. The Agreement does not attach any sort of liability to the General Fund or any other City account. It is estimated that this project will provide an overall net benefit to the City of approximately \$33.5 million over a thirty year period, not including an estimated \$28,286,825 annual payroll, which will be a welcome infusion of jobs and annual wages for our regional economy.

Attachment: Attachment A – Adopt an Environmental Finding of No Possibility of Significant Effect
Environmental Assessment No. EA-16-036.
Attachment B – Economic Incentive Agreement
Attachment C – City Controller 30-year Fiscal Analysis Spreadsheet

**CITY OF FRESNO
ENVIRONMENTAL FINDING OF NO POSSIBILITY OF SIGNIFICANT EFFECT
ENVIRONMENTAL ASSESSMENT NO. EA-16-036**

THE PROJECT DESCRIBED HEREIN IS DETERMINED TO HAVE NO
SIGNIFICANT EFFECT ON THE ENVIRONMENT PURSUANT TO ARTICLE 5 OF THE
STATE OF CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) GUIDELINES

APPLICANT: Larry Westerlund
Economic Development Department
2600 Fresno Street, 2nd Floor
Fresno, CA 93721-2760

PROJECT LOCATION: Economic Incentive Agreement for Project Cheetah located on the northwest corner of South East Avenue and East Central Avenue within the City and County of Fresno.

PROJECT DESCRIPTION: Environmental Assessment No. EA-16-036 pertains to an Economic Incentive Agreement for Project Cheetah located on the northwest corner of South East Avenue and East Central Avenue. The agreement will specify incentives and site improvements associated with a proposed industrial park.

This project is exempt under Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines.

EXPLANATION: CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

The entrance into the Economic Incentive Agreement with the City of Fresno for Project Cheetah does not involve new significant environmental effects or a substantial increase in the severity of previously identified significant effects as identified by EA No. R-15-10. Therefore, staff has determined that a no possibility of significant effect is appropriate for the proposed project.

Date: November 14, 2016

Prepared By: Mike Sanchez
Assistant Director

Submitted By:



Mike Sanchez
Planning Manager
City of Fresno
Development and Resource Management Department
(559) 621-8277

**CITY OF FRESNO
ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT**

BY AND BETWEEN

**THE CITY OF FRESNO,
A CALIFORNIA MUNICIPAL CORPORATION**

AND

**ULTA, INC.
A DELAWARE CORPORATION**

CITY OF FRESNO

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

THIS CITY OF FRESNO ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT ("Agreement") is entered into this _____ day of November, 2016 ("Execution Date") by and between THE CITY OF FRESNO, a California municipal corporation ("City") and ULTA, INC., a Delaware corporation ("Company"). City and Company may be referred to collectively as the "Parties" and individually as a "Party."

RECITALS

The Parties enter into this Agreement with reference to the following circumstances:

- A. The Company is currently seeking approximately 670,000 square feet of industrial property in the City for a West Region Distribution and E-Commerce Fulfillment Center ("Site").
- B. Company does not currently operate E-Commerce fulfillment centers in California and does not currently allocate sales tax subject to this Agreement in California. Company's E-Commerce transactions currently result in use tax transactions allocated based on the home of the customer.
- C. Ulta Salon, Cosmetics and Fragrance, Inc., d/b/a Ulta Beauty, the parent corporation of Company, founded in 1990, is the largest beauty retailer in the United States and has over a \$14 billion market capitalization.
- D. The Company intends to invest over \$110 million to build and equip its West Region Distribution and E-Commerce Fulfillment Center.
- E. The Company expects, at full build out, to employ over 652 employees and would hire hundreds more of additional employees at peak sales time of year.
- F. The City anticipates over the term of the agreement to reap tens of millions of dollars in new property tax, sales tax, and employment driven benefits over and above the incentive investment set forth in this agreement.
- G. The purpose of this Agreement is to provide certain incentives and guarantees to Company to create certain jobs in the City (collectively, "Business Activities").
- H. City wishes to provide Company with incentives to locate and increase over time its Business Activities that are likely to result in substantial public benefits to the City, including job creation and the increase of property taxes and Local Sales and Use Tax Revenues (defined below).
- I. The Company wishes to locate its Business Activities in a City offering operational advantages including, but not limited to, a qualified workforce, cost advantages, access to customers, and capacity to staff a certain number of jobs in said City.
- J. City wishes to encourage Company's location and growth of Business Activities because City expects Business Activities will create jobs, promote the stability and growth of City taxes and other revenues, further the City's economic

development, particularly in the E-Commerce fulfillment sector, and promote a sound and healthy local economy.

TERMS AND CONDITIONS

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS

For purposes of this Agreement, and in addition to certain terms defined elsewhere in this Agreement, the following capitalized terms shall have the following meanings:

“Commencement of Operations” means the date on which the first commercial transaction is consummated at the Site, to be documented based on taxable sales reported on California Board of Equalization (“BOE”) Sales Tax returns pursuant to the Sales Tax Law.

“Company’s Taxable Products” means all taxable personal property subject to the Bradley-Burns Uniform Local Sales and Use Tax Law (Cal. Rev. & Tax. Code §§ 7200-7212, 7221 -7226).

“Full-Time Equivalent Position” means a position of employment, or combination of multiple positions of employment, in the City at which an employee is, or combination of employees are, compensated for no fewer than 1,750 hours during any consecutive 365-day period-of-time, inclusive of paid sick days and/or vacation days.

“Local Sales and Use Tax Revenues” means that portion of the sales and use taxes, if any, levied under the authority of the Sales Tax Law, paid by Company, which are finally and irrevocably allocated and paid to City by the BOE pursuant to the Sales Tax Law.

“New Job” means a filled Full-time Equivalent Position of employment funded by Company in the City.

“Direct Job” means a position of employment in which the Company directly employs the employee on either a full- or part-time basis.

“Contract Job” means a position of employment caused by the Company in which a third party contractor to Company employs an employee on either a full- or part-time basis for purposes of satisfying a labor contract between Company and a third party.

“Sales Tax Law” means California Revenue and Taxation Code Section 6001 et seq., and any successor law thereto, including the Bradley-Burns Uniform Local Sales and Use Tax Law (Rev. & Tax Code § 7200 et seq.), and any successor law thereto, and all regulations of the BOE and other binding rulings and interpretations relating thereto.

“Taxable Sales” means Company’s sales of Company’s Taxable Products within the City’s jurisdiction, which the BOE finally and irrevocably determines the reported “point of sale” is the City. “Taxable Sales” does not include sales made and reported to jurisdictions in California other than the City.

“Term” shall mean the term of this Agreement as described in Section 3.

2. ECONOMIC INCENTIVES

2.1 Eligibility Requirements. The Parties agree that creation of jobs and growth of tax revenue generated by Company and received by City as a result of Company's Business Activities are both central to this Agreement. Accordingly, to be eligible to receive the economic incentives (“Incentives”) described in this Agreement, Company shall fulfill all of the following eligibility requirements:

Business Activities.

(a.) Establish operations. Establish or cause to be established and increase Business Activities are likely to result in the increase of tax revenues for the City. Such activities include, but are not limited to, purchase or lease of land, construct or cause construction of improvements, and operation of a distribution and E-commerce fulfillment center, among other functions; and

(b.) New Job Creation. Create or cause creation of a minimum of 500 and a maximum of 1,200 Net New Full-time Equivalent Positions in the City.

Company will provide information, as commercially reasonable, to City, from time to time, in order to implement the terms of the Agreement, including, without limitation, completed employment surveys, in the format of Exhibit 1, certifying the New Job creation in the City within sixty days of the Effective Date and sixty days after each anniversary of the Effective Date during the Term of this Agreement.

2.2 Calculation and Payment of Incentives. City shall provide Incentives to Company, so long as Company continues to comply with the eligibility requirements set forth above. Company shall be eligible to receive Incentives commencing on the Execution Date. After the third year, no Incentives shall be paid in any year in which the annual average Full-Time Equivalent Positions is less than 500. If Company does not achieve 500 Full-Time Equivalent Positions by December 31, 2022, any and all Incentives paid to Company on or before that date must be refunded to City and said refund shall be paid in full within thirty days. Company may receive Incentives following said refund in any year in which it achieves an annual average of 500 Full-Time Equivalent Positions.

West Region Distribution and E-Commerce Fulfillment Center. The Incentives shall be as follows:

\$15,000 per Direct Full-time Equivalent Position

\$10,000 per Contract Full-time Position

\$5,000 per Contract Full-time Equivalent Position comprised of multiple part-time Contract positions

Company expects to employ over 652 Full-time Equivalent Positions at a West Region Distribution and E-Commerce Fulfillment Center (“Fulfillment Center”). Company may, in its sole discretion, expand its Fulfillment Center or build a new facility within the City (“Expansion”).

The total Incentives payable under this Agreement shall be up to \$15,000 per Direct Full-time Equivalent Position, \$10,000 per Contract Full-time Position, and \$5,000 per Contract Full-time Equivalent Position comprised of multiple part-time Contract Positions (calculated based on annual average) up to the maximum of 1,200 total Positions at the Fulfillment Center and Expansion, if applicable, for a maximum total payment of \$18,000,000 ("Incentives Cap").

Incentives based on job creation will be deemed earned when a Full-Time Equivalent Position has been maintained for a minimum of three 365-day periods following creation of the Full-Time Equivalent Position. Incentives paid for job creation that does not meet the three-year maintenance requirement are subject to recapture. Incentives paid for job creation that satisfied the three-year maintenance requirement is deemed fully earned and not subject to recapture.

In the event a new position under this Agreement is initially created as a Contract position on either a Full-time or Full-time Equivalent basis, and an incentive is paid on that basis, and should the Company later convert that position to a Direct position, the Company would be eligible for a true-up incentive based on the difference between the Direct Position incentive and the Contract Position incentive actually paid.

To ensure that Incentives shall not exceed incremental revenues to the City generated as a result of Company activities, Incentives shall be calculated to include:

Local Sales and Use Tax on Purchases. 75% of the Local Sales and Use Tax Revenues (annually, on a cumulative basis) paid by Company from the Execution Date through the end of the tenth 365-day period in which applicable taxes are paid for four full consecutive quarters ("Full Year") following execution of a lease or purchase of Site in connection with the purchase of taxable tangible personal property placed into service within the City, as long as such tax is reported and allocated to the City, and 50% of the Local Sales and Use Tax Revenues (annually, on a cumulative basis) paid by Company thereafter.

Local Sales Tax on Sales. 75% of the Local Sales and Use Tax Revenues (annually, on a cumulative basis) attributable to Company's Taxable Sales paid by Company and reported to the City, in accordance with the Sales Tax Law, for the initial five Full Years following Commencement of Operations; 50% of the Local Sales and Use Tax Revenues, attributable to Company's Taxable Sales paid by Company and reported to the City, in accordance with the Sales Tax Law, for the following 10 years; and 25% of the Local Sales and Use Tax Revenues, attributable to Company's Taxable Sales paid by Company and reported to the City, in accordance with the Sales Tax Law, for the remaining 15 years of the Agreement.

Incremental City Property Taxes Attributable to Investment Made or Caused by Company to Site and Expansion. 75% of the City's share of secured real property and personal property taxes in connection with improvements to, and capital equipment purchases for, the Site. The taxes on improvements to and capital equipment purchases for the Site shall be determined by subtracting the amount of the secured real property and personal property tax obligations for the Site in the last full year prior to the commencement of Company's improvements to the Site ("Base Year Property Taxes") from the amount of such secured real property and personal property tax obligations for

the Site in any subsequent year ("Incremental Property Taxes") through the fifth Full Year following Company's receipt of the Certificate of Occupancy for the Site. Within thirty calendar days of commencement of Company's improvements to the Site, City and Company shall confirm in writing the amount of the Base Year Property Taxes. Incentives under this section will be payable only after property tax obligations for the Site have been paid by the Company to the County, and County has distributed property taxes to the City. Company is eligible to receive 75% of Incremental Property Taxes incurred on or after January 1st following the Execution Date through January 1st following the fifth Full Year following receipt of the Certificate of Occupancy. The City will confirm receipt of Incremental Property Taxes within thirty days of receipt of the distribution of funds from the County. Within thirty days of confirming the amount of the Incremental Property Taxes, City will issue payment to Company equal to 75% of Incremental Property Taxes. Incremental Property Taxes include secured real property and personal property taxes paid pursuant to a lease for the Site whether by Company or Company's lessor.

In the event of an Expansion during the term of this Agreement, 50% of the City's share of secured real property and personal property taxes in connection with improvements to and capital equipment purchases for, the Expansion. The taxes on improvements to and capital equipment purchases for the Expansion shall be determined by subtracting the amount of the secured real property and personal property tax obligations for the Expansion in the last full year prior to the commencement of Company's improvements to the Expansion ("Expansion Base Year Property Taxes") from the amount of such secured real property and personal property tax obligations for the Expansion in any subsequent year ("Expansion Incremental Property Taxes") through the fifth Full Year following Company's receipt of the Certificate of Occupancy for the Expansion. Within thirty calendar days of commencement of the Expansion, City and Company shall confirm in writing the amount of the Expansion Base Year Property Taxes. Incentives under this section will be payable only after property tax obligations for the Expansion have been paid by the Company to the County, and County has distributed property taxes to the City. Company is eligible to receive 50% of Expansion Incremental Property Taxes incurred on or after January 1st following the Company's receipt of the Certificate of Occupancy for the Expansion through January 1st following the fifth Full Year following receipt of the Certificate of Occupancy. The City will confirm receipt of Expansion Incremental Property Taxes within thirty days of receipt of the distribution of funds from the County. Within thirty days of confirming the amount of the Expansion Incremental Property Taxes, City will issue payment to Company equal to 50% of Expansion Incremental Property Taxes. Expansion Incremental Property Taxes include secured real property and personal property taxes paid pursuant to a lease for the Expansion whether by Company or Company's lessor.

Notwithstanding the foregoing, in no event shall City be obligated to make payment of 75% of Incremental Property Taxes or 50% of Expansion Incremental Property Taxes to Company upon the expiration of this Agreement.

If a property tax assessment appeal is filed by or on behalf of Company or Company's lessor at any time during the term of this Agreement and if, as a result of

such appeal, Company or Company's lessor receives a refund of any property taxes previously paid by Company or Company's lessor for any property tax fiscal year which were used as a basis for calculating the Base Year Property Taxes, Expansion Base Year Property Taxes, Incremental Property Taxes or Expansion Incremental Property Taxes, then the next installment of payment of Incremental Property Taxes or Expansion Incremental Property Taxes shall be reduced by an amount equal to 75% of the City's share of secured real and personal property taxes of said refund, if said refund relates to the Site, or 50% of the City's share of secured real and personal property taxes of said refund, if said refund relates to the Expansion

2.3 Timing of Incentives Payment. Subject to the provisions of this Agreement, City shall pay the Incentives to Company, in an amount not to exceed the Incentives Cap, in Annual Payments. Before making each Annual Payment, City shall confirm that Company has created or caused to be created, and/or maintained new positions in accordance with Section 2.2 and City has received Local Sales and Use Tax Revenues from the BOE and Incremental Property Taxes and/or Expansion Incremental Property Taxes from the County Assessor. Company will submit a written request for the Annual Payment, together with a copy of any supporting documentation, including the documentation described below and other documentation reasonably requested by City. Company's written request for the Annual Payment may be submitted following submission of the prior twelve months' sales and use tax returns and prior year's property tax invoices and proof-of-payment.

2.4 Plan Check and Related Fees. As part of this Agreement, the City will set a flat rate, to be mutually agreed upon by the parties, for plan check, entitlements, building permit, building safety, fire safety review, sprinkler plan check and inspections.

2.5 Verification of Revenue. No Incentives payment will be made by City to Company until City has verified receipt of Local Sales and Use Tax Revenues paid to the City by the BOE and local property tax payments to City. City shall have three months following the receipt of the Local Sales and Use Tax Revenues to verify the allocation and receipt of local taxes. City will make commercially reasonable efforts to verify its receipt of local taxes.

2.6 Data and Documentation. For the purposes of this Agreement, the term "Data and Documentation" means any and all bills, invoices, schedules, vouchers, statements, receipts, cancelled checks, statements and any other documents evidencing the amount Local Sales and Use Tax Revenues paid by Company to the BOE, including: copies of all schedules and reports filed by Company with BOE during that Fiscal Quarter, including, without implied limitation, those relating to Taxable Sales and Local Sales and Use Tax Revenues paid by Company. Company, on behalf of itself and any affiliate, and to the extent such consent is required by any applicable legal provision, consents to the City's review and use of the information contained in the data and documentation Company submits to the BOE to the extent necessary for the City to verify the allocation and receipt of Local Sales and Use Tax Revenues.

2.7 Reduction of Amount. The amount of any Incentives payable to Company shall be reduced by the amount by which any Local Sales Taxes or Local Use

Taxes are reallocated from the City by the BOE if such reallocation reduces the basis upon which the Incentives would otherwise be paid.

2.8 Recapture of Incentive Payments. If, at any time during or after the Term of this Agreement, the BOE determines that all or any portion of the Local Sales and Use Tax Revenues received by the City were improperly allocated and/or paid to the City, and if BOE requires redistribution, repayment or offsets against future Local Sales and Use Tax Revenues payments, or otherwise recaptures from the City any such Local Sales and Use Tax Revenues determined by the BOE to have been improperly allocated or paid, then Company shall, within thirty days after written demand from the City, repay all City Payments (or applicable portions thereof) theretofore paid to Company which are attributable to such repaid, offset or recaptured Local Sales and Use Tax Revenues. If Company fails to make such repayment within thirty days after the City's written demand, then such obligation shall accrue interest from the date of the City's original written demand at the then-maximum legal rate imposed by the California Code of Civil Procedure on prejudgment monetary obligations, compounded monthly, until paid. It is the express intent of City and Company any risk of loss or diminution of Local Sales Tax Revenues be borne by Company and not by the City; provided however, the City and Company shall cooperate in any proceeding to prevent or mitigate any loss or diminution of Local Sales Tax Revenues or to recover any Local Sales Tax Revenues so lost or diminished.

2.9 Annual Appropriation. City covenants to take such action as may be necessary to include all such Incentive Payments due pursuant to this Agreement in its annual budgets during the term of this Agreement and to make the necessary annual appropriations for all such Incentive Payments. The covenants of City set forth in this Section 2.9 shall be considered ministerial duties imposed by law and it shall be the duty of each and every public official of City to take such action and do such things as are required by law in the performance of the official duty of such official to enable City to carry out and perform the covenants of City set forth in this Section 2.9.

3. AGREEMENT TERM

This Agreement shall terminate on the date upon which City provides payment to Company in the amount of the Incentives Cap, or thirty years following the Commencement of Operations, whichever occurs first. It is the intent of this Agreement to provide incentives to the Company to continue to invest and create new jobs in the City.

4. INDEMNIFICATION

Company agrees to indemnify, defend (if so requested by the City, and with counsel of the City's choice), and hold the City, its officers, employees, agents, and assigns (severally and collectively, any "Indemnitee"), harmless from any loss, expense or other cost (including, without limitation, attorneys' fees) related to any claim, action, lawsuit or other proceeding, whether administrative, at law or in equity, brought or maintained by or on behalf of any person or entity (other than Company or any Indemnitee) against any Indemnitee as a result of any conduct of Company or the City in performing, observing, or administering any obligation or provision arising under or pursuant to this Agreement or Company's allocation of sales and use tax revenues to

the City under Sales Tax Law, except to the extent that any such claim, action, lawsuit, or other proceeding was caused by an Indemnitee's sole negligence or willful misconduct. Company shall also defend (if so requested by the City, and with counsel of the City's choice) any Indemnitee from any legal action challenging the validity of this Agreement or any provision of this Agreement. Without limitation on the foregoing provisions, and notwithstanding any other provision of this Agreement, if any court or administrative body of competent jurisdiction orders the return to the City of any Incentives payment, Company shall hold any Indemnitee harmless from any such claims Company may have for reimbursement or contribution with respect to any such funds.

To the full extent required by applicable federal and state law, Company and its contractors and agents shall comply with California Labor Code Section 1720 et seq. and the regulations adopted pursuant thereto ("Prevailing Wage Laws"), if so required, and shall be solely responsible for carrying out the requirements of such provisions. Company shall indemnify, defend (with counsel approved by City) and hold the City and its elected and appointed officers, officials, employees, agents, consultants, and contractors (collectively, the "Indemnitees") harmless from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages (including without limitation, all claims that may be made by contractors, subcontractors, or third party claimants pursuant to Labor Code sections 1726 and 1781), the failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including, but not limited to the Prevailing Wage Laws, or any act or omission of Company related to this Agreement with respect to the payment or requirement of payment of prevailing wages,

5. GENERAL PROVISIONS

5.1 Notice. Notice as referenced herein shall be deemed sufficiently given if made in writing and dispatched by any of the following methods to the addresses of the Parties set forth in this Section: (i) registered or certified mail, postage prepaid, return receipt requested (in which event, the notice shall be deemed delivered on the date of receipt thereof); (ii) electronic facsimile transmission, followed on the same day by delivery of a "hard" copy via: first class mail, postage prepaid; or (iii) personal delivery, including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service (in which event, the notice shall be deemed delivered on the documented date of receipt).

If to City: CITY OF FRESNO
 Attn: City Manager
 2600 Fresno Street
 Fresno, CA 93721

If to Company: ULTA, INC.

5.2 Non-Discrimination Requirements. Company shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers. Company shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Company understands and agrees that violation of this clause shall be considered a material breach of the Agreement and may result in Agreement termination, or other sanctions.

5.3 Waivers. The failure by either Party to enforce at any time any provision or condition of this Agreement shall not be construed to be a waiver of such provision or condition contained herein or a waiver of any subsequent breach or violation of the same or any other provision or condition, nor in any way to "affect the validity of this Agreement or any part hereof or the right of a Party to thereafter enforce each and every such provision or condition. A waiver under this Agreement must be in writing and state that it is a waiver. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

5.4 Confidentiality. City shall keep any and all proprietary and confidential information and data provided by Company under this Agreement strictly confidential to the extent permitted by law. City will use information provided by Company pursuant to this Agreement only for purposes within the scope of this Agreement. Company shall clearly mark or otherwise identify in writing all information it considers to be proprietary and confidential at the time it is delivered to City. The confidentiality obligation under this section shall not apply to: (a) information which is already public information or which is otherwise available to the general public; (b) information received from a third party without a similar confidentiality restriction who is lawfully in possession of the information and who has the lawful right to disclose it; (c) information that is already in City's possession prior to receiving it from Company; or (d) information delivered by Company to City and not marked or otherwise identified as proprietary and confidential at the time it was delivered. Company shall defend, at Company's expense, any legal actions or challenges seeking to obtain from City any information requested under the California Public Records Act withheld by City at Company's request. Furthermore, Company shall indemnify City and hold it harmless for any claim or liability, and defend any action brought against City, resulting from City's refusal to release information requested under the Public Records Act withheld at Company's request.

5.5 Local, State and Federal Laws. Company hereby agrees to carry out Business Activities in conformity with all applicable federal, state, and City laws.

5.6 Termination. Other provisions of this Agreement and its Effective Date notwithstanding, Company may, at its sole discretion, terminate this Agreement by providing notice in writing to City.

5.7 Successors and Assigns. This Agreement shall be binding upon the Parties' successors and assigns. Company shall not assign this Agreement or any right or obligation hereunder except that it may so assign to its immediate or ultimate parent, or to a directly related corporate or business entity, by providing notice to City.

5.8 Entire Agreement. This Agreement (including the exhibits hereto, which are integral parts of this Agreement) supersedes all previous representations, understandings, negotiations and agreements either written or oral between the Parties or their representatives. This Agreement may not be modified except by the written agreement executed and delivered by both Parties.

5.9 Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby and shall remain valid and enforceable to the greatest extent permitted by law.

5.10 Counterparts. This Agreement may be executed in any number of and by different parties hereto on separate counterparts, all of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same agreement. Any signature delivered by a party by facsimile transmission or electronic transmission (including e-mail transmission of a PDF image) shall be deemed to be an original signature hereto.

[signatures on following page]

IN WITNESS WHEREOF, this Agreement is executed.

ULTA, INC.
A Delaware Corporation

By: _____
Its:

Date: _____

THE CITY OF FRESNO
a California municipal corporation

By: _____
Bruce Rudd
City Manager

Date: _____

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: _____
Deputy

APPROVED AS TO FORM
DOUGLAS T. SLOAN
City Attorney

By: _____
Laurie Avedisian-Favini
Assistant City Attorney

LAF:ns [73000ns/laf] 11/14/16

