
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 "Indemnatee"), 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 Indemnatee) against any Indemnatee 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 Indemnatee'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 Indemnatee 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 Indemnatee 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

Exhibit 1
ULTA – NEW FULL-TIME EQUIVALENT JOB CREATION
EMPLOYMENT SURVEY

Business Activity Information

(to be completed within sixty days of the Effective Date and Each Subsequent Year of the Agreement Term)

Business Name:	
Employment Address(es) in City of Fresno:	

Full-Time Equivalent Positions <i>(List Title of Positions currently filled by Company at address(es) above.)</i>	Count of Positions by Status		
	DIRECT	CONTRACT	ANNUAL HOURS PAID

I hereby certify that Ulta employs the job positions listed above at the locations listed above as of _____ (date).

Director of Human Resources
Ulta

Signature

Printed Name

Date