

MORENO VALLEY UTILITIES

ENERGY INCENTIVE AGREEMENT

THIS ENERGY INCENTIVE AGREEMENT ("Agreement") is effective on the date the City Manager signs this Agreement, which is by and between the CITY OF MORENO VALLEY, a municipal corporation, hereinafter called CITY and Ross Stores, Inc, hereinafter called APPLICANT. Each of the parties hereto may be referred to individually as a "Party" or collectively as the "Parties".

WITNESSETH:

WHEREAS, the City Council of the CITY adopted Resolution 2001-33 on June 26, 2001, and, as amended by Resolution 2002-46, authorized the creation and operation of a municipally owned utility to provide various utility services, and authorized the taking of certain other actions in connection therewith; and

WHEREAS, CITY has identified numerous potential benefits that would be derived from providing a municipally owned utility, including, but not limited to, the ability to offer competitive rates to citizens and businesses, and economic incentives to businesses to locate in the City; and

WHEREAS, Section 385 of the Public Utilities Code of the State of California requires every municipal electric utility to establish a nonbypassable, usage based Public Benefits Charge to fund a minimum level of investments by the utility and other parties, including, but not limited to, cost-effective demand-side management services to promote energy efficiency and energy conservation; and

WHEREAS, CITY wishes to promote investment in energy efficient design, new construction, building expansion and major retrofit projects, which have energy conservation features exceeding Title 24 California Energy Standards Code Compliance.

WHEREAS, APPLICANT has submitted nonresidential building plans, which have been reviewed by a qualified engineer, and have been deemed to exceed Title 24 California Energy Standards Code Compliance; and

WHEREAS, the determination has been made that the Calculated Energy Incentive Payment is \$204,711.19, as determined by Attachment "A" listing the qualifying items and the corresponding savings.

NOW, THEREFORE, IN CONSIDERATION of the mutual promises and covenants herein contained, CITY and APPLICANT agree as follows:

1.0 Inspections and Acceptance. APPLICANT agrees that upon completion of the project, CITY or its agent will have the right to enter the premises for the purposes of inspection and verification of the energy conservation features.

2.0 Energy Incentive Payment. Upon verification of the energy conservation features, CITY agrees to pay the APPLICANT the calculated Energy Savings Incentive within 90 days. APPLICANT also agrees to maintain the kWh savings for a minimum of five (5) years from the date of inspection. The property may be subject to annual inspections by CITY or its agent, to verify compliance with estimated kWh savings for the five (5) year period.

3.0 Hold Harmless. APPLICANT shall save, keep and hold harmless the CITY, its officers or agents, from all damages, costs or expenses in law or equity that may at any time arise or be set up because of damage to property, or of personal injury received by reason of or in the course of performing the work necessary for installation of aforesaid energy conservation features which may be occasioned by any act or omission on the part of APPLICANT, its agents or employees.

4.0 Mailing Address. Payments to be made under this Agreement shall be mailed to the address of APPLICANT hereinafter shown unless written notice of change of address is received by CITY.

5.0 Assignment. Rights to Payments due under this Agreement may be assigned after written notice to CITY by the holder of such rights, as shown by the records of CITY. Such assignment shall apply only to such payments becoming payable more than 30 days after receipt by CITY of written notice of assignment. CITY shall not be required to make any payment to more than a single APPLICANT or assignee.

NOW, THEREFORE, for the purposes set forth herein, and for good and valuable consideration, the adequacy of which is hereby acknowledged, APPLICANT and CITY hereby agree as follows:

TERMS

6.0 Incorporation of Recitals. The Parties hereby affirm the facts set forth in the Recitals above and agree to the incorporation of the Recitals as though fully set forth herein.

7.0 Design of Project. APPLICANT is responsible for preparing construction plans and specifications. APPLICANT is prohibited from commencing work on any portion of the project until all plans and specifications for the project have been submitted to and approved by CITY. Approval by CITY shall not relieve APPLICANT from ensuring that all improvements conform to all other requirements and standards set forth in this Agreement.

8.0 Quality of Work; Compliance With Laws and Codes. The construction plans and specifications for the project shall be prepared in accordance with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements. The project shall be completed in accordance with all approved maps, plans, specifications, standard drawings, and special amendments thereto on file with CITY, as well as all applicable federal, state, and local laws, ordinances, regulations, codes, standards, and other requirements applicable at the time work is actually commenced.

9.0 Permits and Notices. Prior to commencing any work, APPLICANT shall, at its sole cost, expense, and liability, obtain all necessary permits and licenses and give all necessary and incidental notices required for the lawful construction of the project and performance of APPLICANT's obligations under this Agreement. APPLICANT shall conduct the work in full compliance with the regulations, rules, and other requirements contained in any permit or license issued to APPLICANT.

10.0 California Labor Code Section 1720. APPLICANT shall be solely responsible and liable for compliance with all laws, rules and regulations applicable to the development of the project arising on account of the execution of this Agreement or the receipt of any fee credits under this Agreement. Without limiting the generality of the foregoing, APPLICANT acknowledges that CITY has advised APPLICANT of the contents of California Labor Code Section 1720, but has made no representation and given no advice concerning its applicability or non-applicability to APPLICANT's project. APPLICANT shall have sole responsibility to determine whether and to what extent this agreement or any credit received under this agreement subjects the project to prevailing wages.

11.0 Standard of Performance. APPLICANT and its contractors, if any, shall perform all work required, constructing the improvements in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. APPLICANT represents and maintains that it or its contractors shall be skilled in the professional calling necessary to perform the work. APPLICANT warrants that all of its employees and contractors shall have sufficient skill and experience to perform the work assigned to them, and that they shall have all licenses,

permits, qualifications and approvals of whatever nature that are legally required to perform the work, and that such licenses, permits, qualifications and approvals shall be maintained throughout the term of this Agreement.

12.0 Alterations to Improvements. All work shall be done and the improvements completed as shown on approved plans and specifications, and any subsequent alterations thereto. If during the course of construction and installation it is determined that the public interest requires alterations in the improvements, APPLICANT shall undertake such design and construction changes as may be reasonably required by CITY. Any and all alterations in the plans and specifications and the improvements to be completed may be accomplished without first giving prior notice thereof to APPLICANT's surety for this Agreement.

13.0 Fees and Charges. APPLICANT shall, at its sole cost, expense, and liability, pay all fees, charges, and taxes arising out of the construction of the improvements, including, but not limited to, all plan checks, design review, engineering, inspection, sewer treatment connection fees, and other service or impact fees established by CITY.

14.0 CITY Inspection of Improvements. APPLICANT shall, at its sole cost, expense, and liability, and always during construction of the improvements, maintain reasonable and safe facilities and provide safe access for inspection by CITY of the improvements and areas where construction of the improvements is occurring or will occur.

15.0 Indemnification. APPLICANT agrees to indemnify, defend, and save CITY, the Moreno Valley Housing Authority, and the Moreno Valley Community Service District (CSD), their officers, agents and employees harmless from any and all liability, claims, demands, damages, or injuries to any person, including injury to APPLICANT's employees and all claims which arise from or are connected with the negligent performance of or failure to perform the work or other obligations of APPLICANT under this Agreement, or are caused or claim to be caused by the negligent acts of APPLICANT, its officers, agents or employees, or its subconsultant(s) or any person acting for APPLICANT or under its control or direction; provided, however, that this indemnification and hold harmless shall not include claims arising from the sole negligence or willful misconduct of CITY, RDA, and CSD, their officers, agents or employees.

16.0 Notices. All notices, demands, invoices, and written communications shall be in writing and delivered to the following addresses or such other addresses as the Parties may designate by written notice:

To CITY: City of Moreno Valley
City Manager
14177 Frederick Street
Moreno Valley, CA 92552-0805
Phone Number: (951) 413-3500

To APPLICANT: Ross Stores, Inc
Attn: Richard Meyers
17800 N Perris Blvd
Moreno Valley, CA 92551
Phone Number: (951) 420-1332

Depending upon the method of transmittal, notice shall be deemed received as follows: by facsimile, as of the date and time sent; by messenger, as of the date delivered; and by U.S. Mail first class postage prepaid, as of 72 hours after deposit in the U.S. Mail.

17.0 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement.

18.0 Construction; References; Captions. It being agreed the Parties or their agents have participated in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days, or period for performance shall be deemed calendar days and not workdays. All references to APPLICANT include all personnel, employees, agents, and contractors of APPLICANT, except as otherwise specified in this Agreement. All references to CITY include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

19.0 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

20.0 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual right by custom, estoppel, or otherwise.

21.0 Binding Effect. Each and all the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns. This section shall not be construed as an authorization for any Party to assign any right or obligation.

22.0 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

23.0 Invalidity; Severability. If a court of competent jurisdiction declares any portion of this Agreement invalid, illegal, or otherwise unenforceable, the remaining provisions shall continue in full force and effect.

24.0 Consent to Jurisdiction and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which in any way arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate California State Court in the County of Riverside, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental entity is a party to the action or proceeding, or that a federal right or question is involved or alleged to be involved in the action or proceeding. Without limiting the generality of the foregoing waiver, APPLICANT expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure Section 394.

25.0 Time is of the Essence. Time is of the essence in this Agreement, and the Parties agree to execute all documents and proceed with due diligence to complete all covenants and conditions.

26.0 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

27.0 Entire Agreement. This Agreement contains the entire agreement between CITY and APPLICANT and supersedes any prior oral or written statements or agreements between CITY and APPLICANT.

Attest:

City Clerk

APPLICANT

Address: _____

Approved as to form:

City Attorney

By: _____

CITY OF MORENO VALLEY

City Manager

DRAFT

"Attachment A"

Previous Equipment (manufacturer, model, number, year, wattage, tons, HP, etc. Annual operating hours)	New Equipment (manufacturer, model, number, year, wattage, tons, HP, etc. Annual operating hours)	Demand (kW) Savings	Annual (kWh) Energy Savings
20 - 4' 16-Lamp T5HO Flood.	20 - LL-SL1-LG-300WD-50K-F60-HV	12.48	109,325
892 - 4' 3-Lamp T8 Troffer (2x4)	2676 - 9.5T8/4F/840/HE/DIR	44.60	390,132
12 - 4' 4-Lamp T5HO High Bay	12 - AH10S-A2-15K-SM-50-80-FR-HV-CRM-PIR Sensor	1.53	19,200
1056 - 4' 6-Lamp T5HO High Bay	1056 - AH10S-A2-15K-SM-50-80-FR-HV-CRM-PIR Sensor	259.04	2,528,081
1331 - 4' 6-Lamp T5HO High Bay	380 - AH10S-A2-40K-LG-50-80-FR-HV-CRM-PIR Sensor	362.76	3,421,047
154 - 400W Metal Halide High Bay	154 - Remove & Recycle.	69.76	611,115
280 - 225 Watt LED High Bays.	242 - Leaving 242 as is, removing & recycling 38 fixtures.	4.92	43,099