

**COST SHARING AGREEMENT AND MEMORANDUM OF UNDERSTANDING
FOR THE WASHINGTON BOULEVARD STORMWATER AND
URBAN RUN-OFF DIVERSION SYSTEM PROJECT**

This Cost Sharing Agreement and Memorandum of Understanding (the "Agreement") is entered into by and between the City of Culver City, a California municipal corporation (the "City") and Costco Wholesale Corporation, a Washington Corporation ("Costco").

RECITALS

1. Costco is expanding the footprint of its Culver City warehouse, located at 13463 Washington Boulevard, Culver City, and demolishing the adjacent Albertsons grocery store building, to expand Costco's parking lot (the "Costco Expansion Project"). The Culver City Planning Commission approved the Costco Expansion Project pursuant to its Resolution No. 2015-P006.
2. The Costco Expansion Project Condition of Approval No. 77, as set forth in Resolution No. 2015-P006, requires Costco to comply with all applicable local, special district or authority, county, state and federal statutes, codes, standards and regulations.
3. As set forth in "The Waste Discharge Requirements for Municipal Separate Storm Sewer System (MS4) Discharges Within the Coastal Watersheds of Los Angeles County, Except Those Discharges Originating from the City of Long Beach MS4" (Order No. R4-2012-0175) (the "Municipal NPDES Permit"), the California Regional Water Quality Control Board for the Los Angeles Region adopted stormwater and urban runoff regulations which are applicable to the City and to certain new development and redevelopment projects.
4. Culver City Municipal Code (CCMC) Section 5.05.040 (Standard Urban Stormwater Mitigation Plan (SUSMP) Requirements for New Development and Redevelopment Projects) provides that redevelopment resulting in alteration of more than 50% of the impervious surface of a parcel not already subject to post-development stormwater quality control requirements triggers compliance with the most recent Municipal NPDES Permit. The Costco Expansion Project falls within this criteria and, therefore, is subject to the provisions of CCMC Section 5.05.040 and the Municipal NPDES Permit.
5. The Municipal NPDES Permit also imposes the Marina del Rey Harbor Enhanced Watershed Management Program plan on the City of Culver City.
6. In lieu of Costco constructing its own infiltration, bioretention and/or rainfall harvest and using structural controls, as required by CCMC Section 5.05.040 and the Municipal

NPDES Permit, the City and Costco have agreed to jointly fund the design and construction of a Stormwater and Urban Run-Off Diversion System (the "Diversion System"), which will allow Costco to comply with its obligations under CCMC Section 5.05.040 and both the City and Costco to comply with their respective obligations under the Municipal NPDES Permit.

7. With respect to Culver City, the Municipal NPDES Permit applies only to those properties located in that portion of Culver City that is part of the Marina del Rey Harbor Watershed, which measures a total of 39.88 acres (the "Drainage Area"). The Drainage Area is outlined in red in the attached Exhibit A, which is hereby incorporated and made a part of this Agreement.
8. Costco owns and controls 15.77 acres of the property located within the Drainage Area (the "Costco Parcel"), as depicted in gold in the attached Exhibit A. The Costco Parcel equates to approximately 40% ($15.77/39.88 \times 100$) of the Drainage Area.
9. Other third parties own and control three parcels (totaling 2.74 acres), located within the Drainage Area, as depicted in green in the attached Exhibit A (the "Outparcels").

NOW, THEREFORE, in reliance on the foregoing recitals and in consideration of the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Costco hereby agree as follows:

AGREEMENT

SECTION A – DIVERSION SYSTEM

1. The City agrees to design and construct the Diversion System on its public right-of-way, fronting the Costco Parcel, along Washington Boulevard between Walnut Avenue and Tivoli Avenue, as depicted in blue in the attached Exhibit A.
2. City shall require the contractor for the construction of the Diversion System to: (1) include Costco as an indemnitee in relation to injuries and damages arising out of or resulting from the construction of the Diversion System, excepting any injuries and damages caused by Costco's sole negligence or willful misconduct; and (2) maintain the following minimum insurance coverages in full force and effect: (i) commercial general liability insurance with coverage limits of not less than ___ million dollars (\$_,000,000 million) for bodily injury and property damage per occurrence, and not less than ___ million dollars (\$_,000,000 million) in the aggregate, annually; (ii) commercial automobile liability coverage in the amount of not less than one million dollars (\$1,000,000) combined single limit annually for bodily injury and property damage per occurrence; and (iii) workers compensation as statutorily required and employer's liability insurance. The minimum required proof of insurance shall

include insurance certificates reflecting the required coverages, which shall include Costco as an additional insured.

3. Costco agrees to connect its onsite storm drain system to the Diversion System at a point of connection on the Costco Parcel's property line along Washington Boulevard (the "System Connection"). The location of the System Connection will be as depicted in Costco's storm drain implementation plans.
4. The Diversion System shall be designed and constructed to accept drainage of the 85th percentile storm from the Drainage Area.
5. Once City has completed construction of the Diversion System, and Costco has connected its storm drain system to the System Connection, Costco shall convey all stormwater and urban runoff captured at the Costco Parcel utilizing its existing catch basins and conveyance system to the System Connection.
6. City shall be the sole owner of the Diversion System and any and all computations, plans, correspondence and/or other pertinent data, information, documents and computer media, including disks and other materials gathered or prepared in relation to the design and construction of the Diversion System.
7. The City's Public Works Director/City Engineer or designee agrees to attest that the Costco Expansion Project will be in compliance with the SUSMP requirements set forth in CCMC Section 5.05.040 upon the following: (1) completion of the Costco Expansion Project; (2) issuance of a Certificate of Occupancy for the Costco Expansion Project; and (3) Costco's full compliance with its cost-sharing obligations under Sections B.8 and B.9 of this Agreement. Notwithstanding the foregoing, Costco shall remain legally liable for any pollutant discharge in stormwater and urban runoff, if any, from the Costco Parcel which bypasses or does not enter the Diversion System, and shall remain subject to enforcement action and related penalties under the CCMC and the NPDES Municipal Permit for any such pollutant discharge which bypasses or does not enter the Diversion System.

SECTION B – COST SHARING

8. In consideration of the cooperative effort between the City and Costco in constructing the Diversion System for the purpose of draining that portion of Culver City, including the Costco Parcel, which is part of the Marina del Rey Harbor watershed, thereby assuring both parties' compliance with their respective obligations under the Municipal NPDES Permit and Costco's compliance with CCMC Section 5.05.040, Costco hereby agrees to reimburse City for Costco's share of the costs of the design, construction and construction

management of the Diversion System Project in the amounts and on the due dates contained in the following table:

PHASE	COSTCO'S SHARE	DUE DATE
Design of Diversion System	\$40,000	Upon City Council Approval of Professional Services Agreement for Design Services
Construction of Diversion System	\$1,345,000	Upon City Council Award of Construction Contract Agreement for Construction
Construction Management for the Diversion System & Off-Site Improvement	\$30,000*	Upon City Council Award of Construction Contract Agreement for Construction Management
*\$20,000 for Diversion System; \$10,000 for Off-Site Improvements		

9. The City agrees to construct the off-site improvements required by Condition Nos. 12 through 20 of the Conditions of Approval contained in the Culver City Planning Commission's Resolution No. 2015-P006 (the "Off-Site Improvements"). Prior to City's commencement of the bidding process for the construction or installation of the Off-Site Improvements, Costco shall: (1) design, at its own expense, the Off-Site Improvements; (2) deliver the construction plans and specifications for the Off-Site Improvements to City; (3) submit payment to City in the amount of \$340,000 as and for Costco's share of the construction of the Off-Site Improvements, which shall be deposited into a segregated account established by the City ("Construction Account").
10. Upon the Culver City City Council's award of the construction contract for the Off-Site Improvements, City shall be entitled to withdraw the \$340,000 from the Construction Account to be used toward the construction costs for the Off-Site Improvements.
11. City and Costco agree to share all maintenance, inspection and operational costs associated with the Diversion System and pre-treatment devices (collectively, "Maintenance Costs") in perpetuity based on actual Maintenance Costs, with Costco paying 40% of the Maintenance Costs and City paying 60% of the Maintenance Costs in accordance with the procedures set forth in Section B.13.
12. City and Costco will confer regarding the selection of a contractor to perform scheduled maintenance of the Diversion System as recommended by manufacturer(s) of the pre-treatment device(s) and storage tank, pursuant to a five-year maintenance agreement. The contractor shall be selected utilizing the City's procurement process. Prior to the expiration

of the term of each maintenance agreement, City shall confer with Costco regarding the selection of a maintenance contractor for any subsequent maintenance agreement.

13. Upon the Culver City City Council's award of a maintenance agreement, as referenced in Section B.12 of this Agreement, Costco shall deposit its share of the Maintenance Costs , as outlined in Section B.11 of this Agreement, into a segregated account established by the City ("Maintenance Account"). City shall be entitled to withdraw from the Maintenance Account, as needed, in order to pay for the costs of services rendered under the maintenance agreement.
14. City and Costco agree to share all costs which the City of Los Angeles invoices annually to City for the cost of treating the run-off from the Diversion System, with Costco paying 40% and City paying 60% of these costs in perpetuity. The City estimates that this cost will be \$25,000 during the first fiscal year of the Diversion System's operation. The cost will be adjusted in subsequent years by the percentage increase in the Consumer Price Index for All Urban Consumers, as calculated by the Bureau of Labor Statistics.

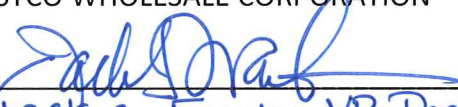
SECTION C – GENERAL

15. This Agreement shall remain in effect in perpetuity until: (1) terminated by mutual written agreement of the parties; or (2) Costco constructs a separate, independent stormwater treatment system and no longer diverts the stormwater and urban runoff from the Costco Parcel into the Diversion System.
16. Any attempt by Costco to assign the benefits or burdens of this Agreement without written approval of City shall be prohibited and shall be null and void.
17. This Agreement may not be modified, nor may any of the terms, provisions or conditions be modified or waived or otherwise affected, except by a written amendment signed by all parties hereto.
18. If at any time one party shall waive any term, provision or condition of this Agreement, either before or after any breach thereof, no party shall thereafter be deemed to have consented to any future failure of full performance hereunder.
19. The terms of this Agreement shall be interpreted according to the laws of the State of California. If litigation arises out of this Agreement, then venue shall be in the Superior Court of Los Angeles County.
20. If litigation arises out of this Agreement for the performance thereof, then the court shall award costs and expenses, including attorney's fees, to the prevailing party. In awarding

attorney's fees, the court shall not be bound by any court fee schedule but shall award the full amount of costs, expenses and attorney's fees paid or incurred in good faith.

21. This Agreement represents the entire Agreement between City and Costco regarding Costco's SUSMP requirements for the Costco Expansion Project, and constitutes a complete and exclusive statement of the terms of the agreement between the parties with respect to Costco's SUSMP requirements for the Costco Expansion Project. This Agreement shall not apply to any future projects that trigger SUSMP requirements. No verbal agreement or implied covenant shall be held to vary the provisions of this Agreement. This Agreement shall bind and inure to the benefit of the parties to this Agreement, and any subsequent successors and assigns.
22. The effective date of this Agreement is the date it is signed on behalf of City. This Agreement shall remain in full force and effect until amended or terminated; provided, that the indemnification and hold harmless provisions shall survive the termination.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

Dated: 8.4.16 By 
Jack S. Frank; VP Real Estate
Name and Title

Dated: _____ By _____

Name and Title

CITY OF CULVER CITY, CALIFORNIA

Dated: _____ By _____
John Nachbar
City Manager

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:

Charles Herbertson
Public Works Director/City Engineer

Carol A. Schwab
City Attorney

