

**VOLUNTARY AGREEMENT  
BETWEEN THE CITY OF COVINGTON AND COSTCO  
FOR PAYMENT OF TRAFFIC IMPACT FEES AND MITIGATION FEES**

The City of Covington (“City”), a Washington municipal corporation, and Costco Wholesale Corporation, a Washington corporation (“Costco”), collectively referred to herein as “the Parties”, enter into the following voluntary agreement (“Agreement”), effective as of \_\_\_\_\_, 2007, to address the mitigation of impacts that will result from the development of a new Costco retail building in Covington, Washington through the payment of traffic impact fees and mitigation fees.

**RECITALS**

A. Costco applied for a commercial site development (“CSD”) permit on April 6, 2006 for a proposed new Costco retail building to be located in Covington, Washington (the “Project”).

B. Environmental review of the Project was conducted pursuant to SEPA, and the City issued a Mitigated Determination of Non-significance (the “MDNS”) on March 28, 2007. As a result of the MDNS, it was determined that Costco must pay its proportionate share of certain capital improvement projects (“CIPs”) to mitigate traffic that will be generated by the Project. Costco’s proportionate share of the CIP projects identified in the MDNS is \$2,297,966.00. The vast majority of this mitigation is to be used to improve the 168<sup>th</sup>/165<sup>th</sup> Ave SE corridor, which will run in front of the Project. The improvements to the 168<sup>th</sup>/165<sup>th</sup> Ave SE corridor are contained within CIP No. 1082. The work contemplated under CIP No. 1082 is referred to herein as the “CIP No. 1082 Work.” The MDNS also indicated that Costco would be required to pay transportation impact fees totaling \$140,189.00 pursuant to CMC 12.105.040.

C. Subsequent to the issuance of the MDNS, but prior to CSD permit approval, an existing CIP project was amended to include the addition of a right-turn lane that will be impacted by the Project. Costco’s proportionate share of the additional improvements to CIP No. 1063 is \$257,064.00. The work contemplated under the impacted CIPs contained in the MDNS, including CIP No. 1082, as well as the additional work contemplated under the amended CIP No. 1063 is referred to herein as the “CIP Work” and Costco’s proportionate share of the CIP Work in the total amount of \$2,695,219.00 is referred to herein as the “Mitigation/Impact Fees.”

D. Costco desires to have the new extension of 168<sup>th</sup> Ave SE (CIP No. 1082) built prior to the opening of the Project, which is anticipated to occur in the fall of 2008. The City estimates that it will take 11 months from the effective date of this Agreement to complete the CIP No. 1082 Work.

E. Costco is not obligated to fund the Mitigation/Impact Fees until it receives from the City the applicable Notice to Proceed for the Project (the “Notice to Proceed”). However, because Costco would like to expedite the commencement and completion of the CIP No. 1082 Work to insure timely completion of the work prior to its Fall 2008 store opening, and because Costco

recognizes that the City does not have the funds necessary to complete the CIP No. 1082 Work until it receives the Mitigation/Impact Fees, Costco agrees to fund the Mitigation/Impact Fees prior to its receipt of the Notice to Proceed for the Project, so long as the City promptly commences and diligently pursues completion of the CIP No. 1082 Work.

## **AGREEMENT**

In consideration of the mutual promises and agreements contained herein, the City and Costco agree as follows:

- 1. Traffic Mitigation.** The Project has been subject to detailed environmental review. Mitigation of significant adverse environmental impacts imposed under SEPA, through the City's SEPA regulations, is incorporated into the Agreement. To mitigate the traffic impacts associated with the Project, Costco agrees to pay the associated mitigation and traffic impact fees outlined in the MDNS issued on March 28, 2007 in the amount of \$2,438,155.00.
- 2. Proportionate Share OF CIP No. 1063.** In addition, Costco agrees to pay its proportionate share contribution to impacted CIP No. 1063 in the amount of \$257,064.00.
- 3. Payment of Mitigation/Impact Fees.** Costco agrees to pay the Mitigation/Impact Fees as of the date of this Agreement, which date is prior to the issuance of the Notice to Proceed for the Project. Costco and the City understand that the commencement of the CIP No. 1082 Work is subject to the payment of the Mitigation/Impact Fees by Costco.
- 4. Mitigation/Impact Fees Nonrefundable.** Subject to Section 5 below, Costco understands and agrees that the payment of the Mitigation/Impact Fees is nonrefundable except and/or until Costco meets the requirements of the City's Traffic Impact Fee Funding Source Adjustment (TIFFSA) program outlined in Covington Municipal Code Chapter 12.120.
- 5. Construction of CIP No. 1082.** Upon receipt of the Mitigation/Impact Fees, the City shall promptly commence the process to issue a Notice to Proceed for the CIP No. 1082 Work and shall diligently pursue completion of the CIP No. 1082 Work. The City estimates that it will take 11 months from the effective date of this Agreement to complete the CIP No. 1082 Work. Notwithstanding anything to the contrary contained in this Agreement, in the event a Request for Bids for CIP No. 1082 Work is not issued on or before the date that is sixty (60) days after the date of this Agreement, then upon written request from Costco, the City shall return the Mitigation/Impact Fees to Costco; provided, however, that Costco's right to receive the return of the Mitigation/Impact Fees shall terminate and be of no further force or effect in the event the Notice to Proceed for the Project is issued within such 60-day period. The return of the Mitigation/Impact Fees is the only remedy available to Costco if the City fails to meet its due diligence obligations under this Agreement. In the event the Mitigation/Impact Fees are refunded pursuant to this section of the Agreement, the parties understand and agree that Costco's Mitigation/Impact Fees will be collected as required by law at the time of Notice to Proceed issuance. In addition, if the fees are refunded pursuant to this section of the Agreement,

the City may, at its sole discretion, recalculate that portion of the Mitigation/Impact Fees that constitute non-MPS proportional share fees in the event that the proposed project is modified, or in the event that the City adopts by ordinance an alternative proportional share calculation methodology prior to collection of the fees at the time of Notice to Proceed issuance.

**6. Representations and Warranties of the City.** The City represents and warrants to Costco that:

(a) All funds other than the Mitigation/Impact Fees required to fund the CIP No. 1082 Work are available to the City.

(b) The City will exercise its due diligence to commence and complete the CIP No. 1082 Work within the 11 month estimate.

**7. Waiver and Mutual Release of Claims of Invalidity.** The City and Costco acknowledge and represent that the terms of this Agreement have been jointly negotiated and that each party enters into this Agreement voluntarily. Further, Costco and the City agree that this Agreement is authorized under law and each party waives any claim that the Agreement is invalid or illegal. The agreements and representations in this Section are material to this Agreement and are being relied upon by both parties.

**8. Binding on Successors.** The Agreement shall bind and inure to the benefit of the Parties and their successors in interest, and may be assigned to any successor in interest to the Project property.

**9. Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Washington. Venue for any action to enforce the terms of this Agreement shall be in King County Superior Court.

**10. Severability.** The provisions of this Agreement are separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of this Agreement, or the validity of its application to other persons or circumstances.

**11. Authority.** The City and Costco each represents and warrants to the other that it has the respective power and authority, and is duly authorized, to execute and deliver this Agreement and that the persons signing on its behalf are duly authorized to do so.

**12. Amendments.** This Agreement may not be amended or modified except by a writing, signed by the parties to be bound thereby, or signed by their respective attorneys as authorized.

**13. Headings.** The headings in this Agreement are inserted for reference only and shall not be construed to expand, limit or otherwise modify the terms and conditions of this Agreement.

**14. Integration; Scope of Agreement.** This Agreement represents the entire agreement of the Parties with respect to the subject matter hereof. There are no other agreements, oral or written, except as expressly set forth herein. This Agreement does not set forth all conditions applicable to the Project to the extent that additional conditions may be imposed as part of any permit issued by the City, as required by the Covington Municipal Code as determined by the discretion of the Directors of the Departments of Community Development Services and/or Public Works.

**15. No Third Parties.** The Agreement is made and entered into for the benefit of the parties hereto and their successors and assigns. No other person or entity is an intended third party beneficiary. No other person or entity shall have any right of action under this Agreement.

**16. Attorney and Expert Witness Fees.** In the event that either party resorts to litigation to enforce any term of this Agreement, the substantially prevailing party in any such litigation shall be entitled to an award of reasonable attorney fees and expert witness fees, together with actual court costs, expended in such litigation.

**17. Equal Opportunity to Participate in Drafting.** The parties have had an equal opportunity to participate in the preparation this Agreement.

**18. Full Understanding; Independent Counsel.** The parties each acknowledge, represent and agree that they have read this Agreement; that they fully understand the terms thereof; and that they have been fully advised by their independent legal counsel or have had the opportunity to be so advised in connection with the terms of this Agreement.

IN WITNESS WHEREOF the parties have hereunto placed their hand and seals on the day and year indicated.

CITY OF COVINGTON,  
a Washington municipal corporation

COSTCO WHOLESALE CORPORATION,  
a Washington corporation

BY: \_\_\_\_\_  
Derek M. Matheson, City Manager

BY: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Form  
for City of Covington:

Approved as to Form  
for Costco:

\_\_\_\_\_  
City Attorney, Amy Jo Pearsall

\_\_\_\_\_

STATE OF WASHINGTON            )  
  )ss.  
COUNTY OF KING                )

On this day, personally appeared before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, \_\_\_\_\_ to me known to be the \_\_\_\_\_ of Costco Wholesale Corporation, a Washington corporation, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute said instrument on behalf of said corporation.

Given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
(notary signature)  
\_\_\_\_\_  
(typed/printed name of notary)  
Notary Public in and for the State  
of Washington.  
My commission expires:\_\_\_\_\_

STATE OF WASHINGTON            )  
  )ss.  
COUNTY OF KING                )

On this day, personally appeared before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, Derek Matheson to me known to be the City Manager of the City of Covington, a Washington municipal corporation, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute said instrument on behalf of said municipal corporation.

Given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
(notary signature)  
\_\_\_\_\_  
(typed/printed name of notary)  
Notary Public in and for the State  
of Washington.  
My commission expires:\_\_\_\_\_