

## **CONSTRUCTION ACCESS AND WORK AGREEMENT**

**COSTCO WHOLESALE CORPORATION**, a Washington corporation ("Costco"), hereby grants this Construction Access and Work Agreement (this "Agreement") to the **CITY OF LAS VEGAS**, a Municipal Corporation of the County of Clark, State of Nevada, its successors and assigns (together, "City"), to allow access onto, upon, over and across the parcel of land hereinafter described (the "Property") subject to the limited purposes and terms and conditions set forth herein.

**The Property is described as a portion of:**

**APN: 139-33-102-013**

***(See attached map for specific, limited location of Property.)***

1. **Purpose.** Costco hereby grants to City the non-exclusive right to enter upon the Property for the sole purpose of constructing and installing, at City's sole cost and expense, the curb-cut, apron, drive aisle and related parking lot improvements in the locations depicted on Exhibit "A" attached hereto, and in accordance with the plans attached hereto as Exhibit "B", both of which exhibits are incorporated herein by this reference (collectively, the "Work").
2. **Term.** The term of this Agreement shall begin on the date of this document (the "Commencement Date") and shall expire on the date of substantial completion of the Work to Costco's satisfaction.
3. **Payment of Fees.** In connection with the Work and with the deeding by Costco of certain property to the City, the City shall pay Costco the sum of Two Hundred Twenty-Five Thousand Dollars (\$225,000). In addition, as reimbursement for professional fees incurred to review the Work plans, City shall pay Costco the sum of One Thousand Dollars (\$1,000). Both such payments shall be paid into an escrow account in immediately available funds.
4. **Approval of City's Plans.** Before proceeding with and Work, City shall deliver to Costco one (1) full-sized and two (2) half-sized sets of final construction plan drawings for Costco's review and approval. Costco shall approve or object to same, in Costco's sole discretion, in writing within ten (10) business days of receipt of same. If Costco fails to respond to City within such ten (10) day period, then Costco will be deemed to have approved same.
5. **Coordination of Activities.** City shall coordinate the dates of the Work with Costco, and City shall provide Costco with at least five (5) days prior written

notice of its intent to enter upon the Property to commence any Work. City will limit the closure of any vehicular access point between Martin Luther King Boulevard and the Property to the hours of 10 p.m. and 7:30 a.m. In no event shall vehicular passage between the Property and Martin Luther King Boulevard be restricted to less than two (2) points of full ingress/egress in connection with the Work.

6. Maintain and Restore. City shall not allow any waste, damage, or destruction to occur on the Property and upon termination or expiration of this Agreement, City, at its sole cost and expense, shall restore the Property to its original condition, excepting the results of the Work permitted under the terms of this Agreement. Without limiting the foregoing, City specifically agrees not to allow any toxic, hazardous or petroleum products to be discharged or deposited onto the Property in connection with City's activities hereunder. In connection with City's restoration obligations as set forth in this Section 4 and at City's sole cost and expense, City shall (i) replace any lighting fixtures removed or damaged in connection with the Work with lighting fixtures providing at least the same level of lumens as such removed or damaged lighting fixtures provide on the date of execution hereof, and (ii) reinstall the existing shopping cart corral which will be affected by the Work in a location of Costco's choosing and pursuant to Costco's specifications.

7. Due Care and Diligence. City will use due care and diligence in the exercise of its rights hereunder, and it will at all times exercise its rights hereunder at such times and in such manner as approved by Costco and as will not occasion (a) any unreasonable interference with the business operations on the Property, (b) any unreasonable interference with the customary access to or from the Property, or (c) any damage or injury to the Property, or to any sublessees, agents, servants or employees of Costco. Without limiting the generality of the foregoing, City shall not perform any portion of the Work during the months of November and December of any calendar year or during the operating hours of the business(es) located on the Property.

8. Assumption of Risk. City assumes all risks and liabilities arising out of City's use of the Property or use of the Property by City's employees, agents, representatives, guests or invitees.

9. City's Covenants. City covenants and agrees that Costco shall not at any time or to any extent whatsoever be liable, responsible or held accountable for: (a) any personal injury (including death) to any person, including City's employees, agents, representatives, guests or invitees which in any way arises out of the Work or activities of City, City's employees, agents, representatives, guests or invitees hereunder or use or occupation of the Property by City, or City's employees, agents, representatives, guests or invitees; (b) property damage including property of City or City's employees, agents, representatives, guests or invitees which in any way arises out of City's activities hereunder or

activities of City's employees, agents, representatives, guests or invitees hereunder or use or occupation of the Property by City, or City's employees, agents, representatives, guests or invitees; and (c) any costs associated with City's activities under this Agreement.

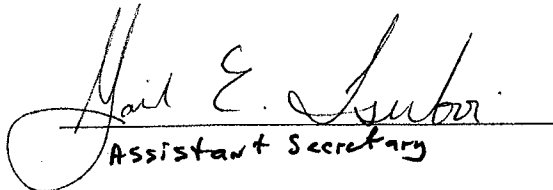
10. Indemnity. Subject to the limitations of liability set forth in NRS 41.035, City agrees to indemnify and hold harmless and, at Costco's option, defend Costco, its officers, agents, employees, successors and assigns from and against any and all suits, actions, legal proceedings, claims, demands, and expenses (including attorneys' fees and expenses) of whatever kind or character relating to City's use of the Property and/or the Work, including, but not limited to: (a) personal injury (including death) to any person, including City's employees, agents, representatives, guests or invitees; (b) property damage, or activities of City's employees, agents, representatives, guests or invitees or the use of the Property by City or by City's employees, agents, representatives, guests or invitees; (c) claims of lien from City's employees, agents, representatives, or (sub)contractors; or (d) the presence of hazardous, toxic or petroleum products on the Property.

11. Insurance. City shall ensure that any contractors or subcontractors used by the City in connection with the Work shall procure and maintain in effect during the term hereof commercial general liability insurance and property damage insurance, including a contractual liability endorsement covering without limitation, all potential claims and liability as described in Section 10, in the minimum amount of \$5,000,000. Within three (3) days from the date hereof, but in any event prior to the Commencement Date, City shall furnish Costco with a certificate of such policies of insurance on which Costco is named as an additional insured. The obligation to carry insurance shall not limit or modify any other obligations assumed by City hereunder, nor shall Costco be under any duty to examine such certificate or to advise City in the event its insurance is not in compliance with this Agreement. The insurance policy evidenced by the certificate of insurance shall be with a company reasonably approved by Costco, and such policy shall provide that it is not subject to cancellation or reduction in coverage except after ten (10) days' prior written notice to Costco.

Dated as of this 2nd day of April, 2007.

Costco:

Costco Wholesale Corporation, a Washington corporation

  
Assistant Secretary

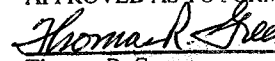
City:

City of Las Vegas, a Municipal Corporation of the County of Clark, State of Nevada



Attest: By   
BEVERLY K. BRIDGES, CMC, City Clerk

APPROVED AS TO FORM

 4/9/07  
Thomas R. Green Date  
Deputy City Attorney