

**Excise Tax Exempt**

Pierce County, WA

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## RETURN TO:

Puyallup School District

302 2nd Street SE

Puyallup, WA 98372

Attention: Brian J. Devereux,

Director of Facilities Planning

Document Title: Overflow Stormwater Easement Agreement  
 Grantor: Puyallup School District No. 3, a Washington municipal corporation  
 Costco Wholesale Corporation, a Washington corporation  
 Grantee: Costco Wholesale Corporation, a Washington corporation  
 Puyallup School District No. 3, a Washington municipal corporation  
 Abbreviated Legal: PTN Revised Parcel A City of Puyallup BLA 202 305/85001  
 PTN Lot 1 Costco Lot Combination Rec. No. 200006075006  
 Complete Legal Descriptions: See Pages 2, 3, and 4  
 Assessor Tax Parcel Nos.: PTN 0419043117 and PTN 0419043115 (School District) and PTN  
 0419043114 and PTN 0419043115 (Costco)

**OVERFLOW STORMWATER EASEMENT AGREEMENT**

THIS OVERFLOW STORMWATER EASEMENT AGREEMENT (“Easement Agreement”) is made this 17<sup>th</sup> day of May, 2023 (the “Reference Date”), by and between **PUYALLUP SCHOOL DISTRICT NO. 3**, a Washington municipal corporation (“**District**”), and **COSTCO WHOLESALE CORPORATION**, a Washington corporation (“**Costco**”). The District and Costco are sometimes individually referred to herein as a "party" and collectively as the "parties."

**I. RECITALS**

A. The District is the owner of certain real property located in the City of Puyallup, Washington (hereinafter City of Puyallup) and is legally described on *Exhibit A* attached hereto (the “**District Property**”).

B. Costco is the owner of certain real properties abutting the southerly boundary and the northerly boundary of the District Property in the City of Puyallup as legally described on *Exhibit B* attached hereto (collectively, the “**Costco Properties**” and individually, the “**Costco Expansion Property**” and the “**Costco Stormwater Pond Property**”).

C. The purpose of this Easement Agreement is to memorialize in writing:

C.1. the grant of an easement from the District to Costco to provide for the right of collection and transmission of such overflow stormwater from the Costco Expansion Property, as may be required under development permitting to be issued to Costco by the City of Puyallup, across and through a stormwater line and associated appurtenances to be located on the District Property subject to the terms and conditions of this Easement Agreement; and

C.2 the grant of an easement from Costco to the District to discharge combined overflow stormwater from the District Property and, to the extent required, from the Costco Expansion Property together with stormwater from that portion of the public right-of-way known as the 14th Street Place Southwest cul-de-sac across and through a stormwater line and associated appurtenances to be located on the Costco Stormwater Pond Property subject to the terms and conditions of this Easement Agreement.

D. This Easement Agreement sets forth the rights and obligations of the District and Costco relating to use of the District Property and use of the Costco Stormwater Pond Property.

## **II. EASEMENT AGREEMENT**

NOW, THEREFORE, in consideration of good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, the parties hereby covenant and agree to the following terms, provisions, and conditions:

1. Incorporation of Recitals. The parties hereby incorporate the Recitals and Exhibits attached hereto as material and substantive terms of this Easement Agreement as if fully set forth in this paragraph.

2. Grant of Easements.

2.1 Costco Stormwater Overflow Easement. Subject to the obligation of Costco to release the following-described easement as set forth under Section 4.7 below, the District hereby grants and conveys to Costco, its successors and assigns, a perpetual, non-exclusive easement across, under and through the following described District Property, situated in City of Puyallup and for the purposes described and subject to the terms and conditions set forth under Section 4 below.

A 15.00 FOOT WIDE STRIP OF LAND LYING WITHIN PARCEL 2 AS DESCRIBED AND DELINEATED ON COSTCO WHOLESALE LOT COMBINATION RECORDED JUNE 7, 2000 UNDER AUDITOR FILE NUMBER 200006075005, RECORDS OF PIERCE COUNTY, WASHINGTON, LOCATED WITHIN THE S.W. ¼ OF THE S.W. ¼ OF SECTION 4, TOWNSHIP 19 NORTH, RANGE 4 EAST OF THE WILLAMETTE MERIDIAN, CITY OF PUYALLUP, PIERCE

COUNTY, WASHINGTON, THE CENTERLINE OF WHICH IS SPECIFICALLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID PARCEL 2;

THENCE NORTH 80°46'03" WEST, ALONG THE NORTH LINE THEREOF, 482.49 FEET TO THE **POINT OF BEGINNING** OF THIS CENTERLINE DESCRIPTION;

THENCE SOUTH 01°23'26" WEST 496.18 FEET TO INTERSECT THE WESTERLY EXTENSION OF THE SOUTH LINE OF LOT 7 OF CRESTLINE ESTATES, PER PLAT THEREOF AS RECORDED IN VOLUME 45 OF PLATS AT PAGES 9 AND 10, RECORDS OF PIERCE COUNTY, WASHINGTON, AND THE **TERMINUS** OF THIS LINE DESCRIPTION;

THE SIDELINES OF THE ABOVE DESCRIBED STRIP SHALL BE LENGTHENED OR SHORTENED TO INTERSECT THE NORTH LINE OF SAID PARCEL 2 AND THE WESTERLY EXTENSION OF THE SOUTH LINE OF SAID LOT 7.

(hereinafter the "**Costco Overflow Stormwater Easement Area**")

The purpose of the Costco Overflow Stormwater Easement Area, as described more fully below under Section 4, is to collect and transmit overflow stormwater across and through a stormwater line and associated appurtenances to be installed as described under Sections 3 and 4 below within the Costco Overflow Stormwater Easement Area.

2.2 Attached hereto as *Exhibit C* is an Illustrative Map depicting the location of the Costco Overflow Stormwater Easement Area.

2.3 District Overflow Stormwater Discharge Easement to Costco Pond Property. Costco hereby grants and conveys to the District, its successors and assigns, a perpetual, non-exclusive easement under, over, across, and through the following described Costco Stormwater Pond Property, situated in City of Puyallup, the location of which is illustratively depicted on *Exhibit C* and for the purposes described and subject to the terms and conditions set forth under Section 3 below:

A 15.00 FOOT WIDE STRIP OF LAND LYING WITHIN PARCEL 1 AS DESCRIBED AND DELINEATED ON COSTCO WHOLESALE LOT COMBINATION RECORDED JUNE 7, 2000 UNDER AUDITOR FILE NUMBER 200006075005, RECORDS OF PIERCE COUNTY, WASHINGTON, LOCATED WITHIN THE S.W. ¼ OF THE S.W. ¼ OF

SECTION 4, TOWNSHIP 19 NORTH, RANGE 4 EAST OF THE WILLAMETTE MERIDIAN, CITY OF PUYALLUP, PIERCE COUNTY, WASHINGTON, THE CENTERLINE OF WHICH IS SPECIFICALLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF PARCEL 2 WITHIN SAID LOT COMBINATION;

THENCE NORTH 80°46'03" WEST, ALONG THE NORTH LINE OF SAID PARCEL 2, 482.49 FEET TO THE **POINT OF BEGINNING OF THIS CENTERLINE DESCRIPTION**;

THENCE NORTH 01°23'26" EAST 20.16 FEET TO THE **TERMINUS OF THIS LINE DESCRIPTION**; THE SIDELINES OF THE ABOVE DESCRIBED STRIP SHALL BE LENGTHENED OR SHORTENED TO INTERSECT THE NORTH LINE OF SAID PARCEL 2 AND A LINE PERPENDICULAR TO THE DESCRIBED CENTERLINE AT ITS **TERMINUS**.

(the "**District Overflow Discharge Easement Area**")

2.4 The Costco Overflow Stormwater Easement Area and the District Overflow Discharge Easement Area, may, at times, be referred to herein individually as the "**Shared Overflow Easement Area**" or collectively as the "**Shared Overflow Easement Areas**". The 15" stormwater line with associated appurtenances installed, as the case may be, by the District or by Costco within the Costco Overflow Stormwater Easement Area and the Costco Stormwater Pond Easement Area may, at times, be referred to herein as the "**Shared Overflow Stormwater**" or the "**Shared Overflow Stormwater Line**" as overflow stormwater from the District Property and overflow stormwater from the Costco Expansion Property will comeingle within the stormwater line and associated appurtenances installed in the Shared Overflow Easement Areas subject to and in accordance with the terms and conditions of this Easement Agreement.

### 3. District Use of Shared Overflow Stormwater Easement Areas.

3.1 The District intends to construct on the District Property a biofiltration facility to treat pollution generating stormwater runoff and an infiltration facility to infiltrate stormwater onsite up to the 100 year stormwater event as established by continuous stormwater modeling using the Western Washington Hydrology Model (WWHM) consistent with such approvals and permitting issued under the City of Puyallup Site Development Regulations. The District also intends to install approximately three hundred thirty-seven lineal feet (337 LF) of a fifteen inch (15") overflow stormwater line to serve the District Property commencing from the north boundary line of the District Property, as illustratively depicted on *Exhibit C*, together with associated appropriate and necessary appurtenances, to:

3.1.1 collect and transmit overflow stormwater within the Costco Overflow Stormwater Easement Area from stormwater events in excess of the 100 year storm event from the District Property and the Costco Expansion Property;

3.1.2 discharge the Shared Overflow Stormwater over, under, across, and through a 15” stormwater line with associated appurtenances within that certain Costco Stormwater Pond, all located within the District Overflow Discharge Easement Area.

3.2 Costco acknowledges and recognizes that the Shared Overflow Stormwater Line will also collect and transmit public stormwater, discharged from that certain public right-of-way commonly known as the 14th Street Place Southwest cul-de-sac, through the Shared Overflow Stormwater Line to the Costco Stormwater Pond.

3.3 The District shall be obligated to also construct such commercially appropriate and necessary temporary erosion and control measures consistent with such site development approvals and permitting issued by the City of Puyallup.

3.4 Upon completion of installation of the District segment of the Shared Overflow Stormwater Line (“**District Segment of Shared Overflow Stormwater Line**”) and inclusive of that portion located within the District Overflow Stormwater Discharge Easement Area, the District shall promptly provide Costco written notice that the District has achieved such installation and that Costco may inspect the Shared Overflow Line within not more than five (5) business days from said notice (“**District Notice of Right of Inspection**”). In the event that Costco provides the District with written notice of any issues discovered by such inspection, Costco and the District agree to act in good faith and use their best efforts to cooperate and to reach resolution of any such issues. In the event Costco fails to notify the District in writing of any issues upon such inspection, the District Segment of Shared Overflow Stormwater Line shall be deemed to be approved by Costco provided such District Segment of Shared Overflow Stormwater Line is accepted by City of Puyallup as compliant with City of Puyallup development requirements and is generally consistent with industry construction standards.

3.5 To the extent any restoration work on the Costco Stormwater Pond Property is required in conjunction with the District’s installation of the Shared Overflow Stormwater Line, the District shall perform, at the District’s cost, any such restoration work required consistent with the permitting issued by the City of Puyallup. The District shall promptly notify Costco, in writing, when the Shared Overflow Stormwater Line has been accepted by the City of Puyallup for operation and use by Costco under the terms and conditions of this Easement Agreement.

3.6 As of the Reference Date of this Easement Agreement, it is the District’s intention to install the District Segment of Shared Overflow Stormwater Line, as depicted on *Exhibit C*, for operation commencing on or before September 30, 2024 (the “**Target Date**”).

In the event that the District notifies Costco that the District will not be able to complete installation of the District Segment of Shared Overflow Stormwater Line by the Target Date and Costco requires installation of the Costco Stormwater Line Connection, in the exercise of its commercially reasonable discretion, based upon evidence of Costco's submittal of stormwater management plans to and status of review by the City of Puyallup and the generally accepted commercial standard for timing and sequencing of construction of a stormwater management system, the District and Costco shall meet promptly, at a mutually agreeable date and time to determine a mutually acceptable stormwater engineering solution, consistent with the City of Puyallup Development requirements. Costco and the District agree to act in good faith and use their best efforts to cooperate and to reach resolution of the timing of construction of the District Segment of Shared Overflow Stormwater Line.

4. Costco Use of Shared Overflow Stormwater Easement Areas.

4.1 In conjunction with development of the Costco Expansion Property, Costco shall be obligated to: (i) infiltrate its stormwater up to the full 100 year storm event as established by continuous modeling under the WWHM, and (ii) install such water quality facilities to treat all pollution generating sources consistent with such approvals and permitting issued by the City of Puyallup under the City of Puyallup Site Development Regulations.

4.2 As of the Reference Date of this Easement Agreement, Costco has not submitted its stormwater system plans associated with development of the Costco Expansion Property to the City of Puyallup. The parties acknowledge and recognize that Costco may not be required by the City of Puyallup to connect to the proposed Shared Overflow Stormwater Line. In the event that Costco either elects or is required by the City of Puyallup to discharge its stormwater in excess of the 100 year storm event by connection to the District Segment of Shared Overflow Stormwater Line to be installed by the District, in accordance with the terms and conditions of this Easement Agreement, Costco, in its sole cost and expense, shall have the right by vehicular, equipment or pedestrian access, under the terms and conditions set forth below, to construct approximately 159 lineal feet commencing from the north property line of the Costco Expansion Property, as illustratively depicted on *Exhibit C*, of not more than a fifteen inch (15") sub-surface stormwater line within the Shared Overflow Easement Area ("**Costco Segment of Shared Overflow Stormwater Line**") to provide appropriate connection to the District Segment of Shared Overflow Stormwater Line located within the Shared Overflow Easement Area.

4.3 Not less than forty-five (45) calendar days prior to submittal of its stormwater system plans to the City of Puyallup, Costco shall provide the District with a full set of plans and its drainage report associated with its stormwater management system for review. The District shall, within fifteen (15) calendar days (or within five (5) business days of delivery of any revisions thereafter), provide Costco with any comments or issues relating to the proposed Costco Segment of Shared Overflow Stormwater Line. Costco and the District shall communicate in good faith and use commercially reasonable efforts, in the exercise of their reasonable discretion, to reach agreement on any comments or issues relating to the Costco

Segment of Shared Overflow Stormwater Line. In the event the parties cannot reach agreement, the District shall have the right to provide comments to the City of Puyallup for consideration relating to any such comment or issue associated with the Costco Segment of Shared Overflow Stormwater Line.

4.4 Costco shall provide the District with not less than twenty (20) business days advance notice, in writing, prior to commencement of installation of the Costco Segment of Shared Overflow Stormwater Line within the Shared Overflow Easement Area. At the written request of the District for a pre-construction meeting, Costco shall meet with the District on a date, time, and location as mutually agreeable by the parties to discuss scheduling and sequencing of the work to complete the Costco Segment of Shared Overflow Stormwater Line. The District acknowledges and recognizes the City of Puyallup has the right of inspection of the Costco Stormwater Line Connection. To the extent that the City of Puyallup provides advance notice to Costco of an inspection, Costco shall promptly provide notice to the District of such proposed inspection by the City of Puyallup.

4.5 Costco shall be obligated to also construct such commercially appropriate and necessary temporary erosion and control measures to protect the District Segment of Shared Overflow Stormwater Line consistent with such site development approvals and permitting issued by the City of Puyallup and to allow collection of stormwater discharge from the District Property as appropriate and necessary.

4.6 Prior to backfilling the trench containing the Costco Segment of Shared Overflow Stormwater Line within the Costco Stormwater Easement Area, Costco shall promptly provide the District written notice that Costco has completed such installation and that the District may inspect the Costco Stormwater Connection Line not more than five (5) business days (“**District Notice of Right of Inspection**”) from delivery of said notice. In the event that the District provides Costco with written notice of any issues discovered by such inspection, Costco and the District agree to act in good faith and use their best efforts to cooperate and to reach resolution of any such issues. In the event District fails to notify the Costco in writing of any issues upon such inspection, the Costco Segment of Shared Overflow Stormwater Line shall be deemed to be approved by the District provided such District Segment of Shared Overflow Stormwater Line is accepted by City of Puyallup as compliant with City of Puyallup development requirements and is generally consistent with industry construction standards.

5. Unimpaired Use of Easement Areas.

5.1 Neither the District nor Costco, as the case may be, shall in any way, block, restrict or impede access to or use of the Shared Overflow Stormwater Easement Areas for the purposes described under this Easement Agreement. In the event that usage of the Shared Overflow Stormwater Easement Areas is blocked, restricted or impeded, then either party to this Easement Agreement, following written notice to the other party, may take such action as may be reasonably necessary to prevent such blockage, restriction or impairment and restore

operations to the Shared Overflow Stormwater Line within the Shared Overflow Stormwater Easement Areas on an emergency basis only. Following such action in the event of an emergency circumstance as contemplated in the previous sentence, Costco and the District shall communicate in good faith and use commercially reasonable efforts to reach agreement on any issues related thereto.

5.2 Neither the District nor Costco shall construct, install or place any structures or improvements which cause material damage, impairment or interference with the Shared Overflow Stormwater Line or the normal use and operation of the Shared Overflow Stormwater Line within the Overflow Stormwater Easement Areas.

5.3 Neither the District nor Costco, as the case may be, shall cause any hazardous substances to be generated, treated, released, stored or disposed of, or otherwise deposited on either the District Property, the Costco Expansion Property, or the Costco Stormwater Pond Property, except in compliance with any and all permitting issued by the City of Puyallup provide such permitting is in compliance with all regulatory requirements under the environmental laws of the State of Washington. As used herein the term "Hazardous Substances" shall mean: (a) any radioactive materials and (b) any substance or material the transportation, storage, treatment, handling, use, removal or release of which is subject to any law under the Washington State Model Toxics Control Act regarding health, safety, radioactive materials or the environment (an "Environmental Law"). Without limiting the generality of the foregoing, "Hazardous Substances" shall include: asbestos and asbestos-containing materials (whether or not friable); urea-formaldehyde in any of its forms; polychlorinated biphenyls; oil, used oil; petroleum products and their by-products; lead-based paint; and any substances defined as "hazardous waste," "hazardous substances," "pollutants or contaminants," "toxic substances," "hazardous chemicals," "hazardous pollutants," or "toxic chemicals" under an Environmental Law.

6. Maintenance and Repair of Shared Overflow Stormwater Easement Areas.

6.1 The District shall be responsible for costs and expenses of ordinary maintenance, repair, and operation of the Shared Overflow Stormwater Line, described under this Easement Agreement, consistent with the City of Puyallup site development and stormwater requirements and any Stormwater Management/BMP Facilities Agreement entered into between the District and the City of Puyallup, together with all costs and expenses with any associated restoration of the Shared Overflow Stormwater Easement Areas and any appurtenant access areas to the extent disturbed by the District in accordance with the obligations of the District under this Easement Agreement. Provided, however, in the event that any maintenance or repair of the Shared Overflow Stormwater Line is caused by any "extraordinary" activities, actions, or use by Costco that is not in compliance with this Easement Agreement, with any and all permitting issued by the City of Puyallup, or otherwise not in compliance with all regulatory requirements under the environmental laws of the State of Washington, then Costco shall be responsible for any and all such costs and expenses reasonably incurred by the District, following receipt of a written invoice by the District setting



forth in reasonable detail the costs and expenses for such extraordinary maintenance and repair of the Shared Overflow Stormwater Line. For the avoidance of doubt, Costco and the District agree and acknowledge that Costco may use the Costco Properties for any and all use(s) permitted by the City of Puyallup Municipal Code, including, but not limited to, a tire sales and installation center, a propane sales and fueling center, a vehicle fueling facility, a car wash, and related parking improvements, in each case in compliance with the permitting issued by the City of Puyallup, and no such activity shall be deemed “extraordinary” as used in this Section 6.1 provided such use is in compliance with the obligations under this Easement Agreement, otherwise in compliance with the regulatory requirements under the environmental laws and such other applicable statutes and regulations of the State of Washington, and such common law duties in the operation of such uses.

6.2 For avoidance of doubt, the ordinary maintenance and repair obligations of the District, described under Section 6.1 above, shall be limited to the extent of the Shared Overflow Stormwater Line installed within the Shared Overflow Stormwater Easement Areas described above under Section 2 and subparagraphs thereunder. Costco shall otherwise be responsible for all costs and expenses of ordinary maintenance, repair, and operation of all stormwater facilities located on the Costco Expansion Property and that certain infiltration area and associated appurtenances known as the Costco Stormwater Pond lying within that land described under Section 2.3 and illustratively depicted on *Exhibit C* consistent with such applicable City of Puyallup site development and stormwater requirements and such existing stormwater management facilities agreement, as of the Reference Date of this Easement Agreement, and any subsequent, stormwater management facilities agreement entered into between Costco and the City of Puyallup relating to or associated with development of the Costco Expansion Property.

6.3 The District and Costco shall communicate in good faith and use commercially reasonable efforts to reach agreement on any issues related to a parties ordinary maintenance and repair responsibilities as contemplated under Sections 6.1 and 6.2 above.

## 7. Indemnification.

7.1 Costco shall defend, indemnify and save harmless the District, its appointed and elected officers, directors, and employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the District, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons, and for damages to property arising from any generation, treatment, release, storage, discharge or disposal of Hazardous Substances, as defined above under Section 5.3, by Costco within or to the Shared Overflow Stormwater Easement Areas, including loss of use thereof, when such injury to persons or damage to property arises from or relates to the negligence or wrongful conduct of Costco, its officers and employees, contractors, consultants, licensees, invitees, or agents.

7.2 The District shall defend, indemnify and save harmless Costco, its officers, directors, and employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon Costco, its elected officers, directors or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons, and for damages to property arising from or relating to any generation, treatment, release, storage, discharge, or disposal of Hazardous Substances, as defined above under Section 4.3, by the District within or to the Shared Overflow Stormwater Easement Areas, including loss of use thereof, when such injury to persons or damage to property arises from or relates to the negligence or wrongful conduct of the District, its officers, directors, and employees, contractors, consultants, licensees, invitees, or agents.

7.3 Each party accordingly hereby waives any and all immunities it now has or hereafter may have under Title 51 RCW (Industrial Insurance), or other worker's compensation, disability benefit or other similar act that would otherwise be applicable in the case of such a claim and further acknowledges that such waiver was mutually negotiated by the parties as required by RCW 4.24.115.

8. Miscellaneous.

8.1 Notices. Except for notices under Sections 3, 4, 5, and 6 and associated subparagraphs, which may be delivered electronically, all other notices required under this Easement Agreement shall be in writing and shall be delivered by a recognized overnight, national courier service, or delivered by United States Postal Service registered or certified mail, return receipt requested. If a notice is mailed, it shall be considered delivered three (3) calendar days after deposit in such mail. If a notice is delivered via overnight courier, it shall be deemed received upon the next business day. The addresses to be used in connection with such correspondence and notices are the following, or such other address as a party shall from time to time direct:

Costco: Costco Wholesale Corporation  
999 Lake Drive  
Issaquah, WA 98027  
Attn: John Ellingsen  
Email: [jellingsen@costco.com](mailto:jellingsen@costco.com)

and to: Foster Garvey PC  
1111 Third Avenue, Suite 3000  
Seattle, WA 98101  
Attention: Bryan Helfer  
Email: [bryan.helfer@foster.com](mailto:bryan.helfer@foster.com)

District: Puyallup School District No. 3  
302 2nd Street Southeast  
Puyallup, WA 98372

Dr. John A. Polm, Jr. Superintendent  
Email: [PolmjJA@puyallup.k12.wa.us](mailto:PolmjJA@puyallup.k12.wa.us)  
Telephone: 253-840-8950

and to: Brian J. Devereux, Director of Facilities  
Email: [deverebj@puyallup.k12.wa.us](mailto:deverebj@puyallup.k12.wa.us)  
Telephone: 253-435-6672

8.2 Venue/Jurisdiction. Grantor hereby consents to the jurisdiction of the State of Washington in any action or proceeding relating to this Easement Agreement. It is further agreed that the venue of any action or proceeding brought under the terms of this Agreement shall be Pierce County, Washington. This Agreement shall be governed by the applicable laws of the State of Washington without regard to those governing conflicts of law.

8.3 Construction. This Easement Agreement shall not be construed more favorably to one party over another, notwithstanding the fact one party, or its attorney, may have been more responsible for the preparation of the document.

8.4 Attorney's Fees. If any legal proceeding arises in connection with, relating to, or performance under this Easement Agreement, the substantially prevailing party in any lawsuit or arbitration shall be entitled to recover from the losing party the substantially prevailing party's costs and expenses, including reasonable attorneys' fees, incurred in connection therewith, in preparation therefor and on appeal therefrom, including those in any bankruptcy proceeding, which amounts shall be included in any judgment entered therein.

8.5 Modification. This Easement Agreement constitutes the entire agreement between the parties and no modification, amendment, addition to or changes to this Agreement shall be valid or enforceable unless in writing and signed by all parties.

8.6 Waiver. No delay in exercising any right or remedy provided under this Easement Agreement shall constitute a waiver thereof, and no waiver of the breach of any provision of this Easement Agreement shall be construed as a waiver of preceding or succeeding breach of the same.

8.7 Severability. If any term or condition of this Easement Agreement is held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision including in this Easement Agreement, and this Easement Agreement shall be construed as if such invalid or unenforceable provision had never been contained in this Easement Agreement.

8.8 Force Majeure Event. In the event that either party hereto shall be delayed, hindered in, or prevented from the performance of any act required herein by reason of by acts of God, fire or other casualty, earthquake, tornado, explosion, actions of the elements, floods or similar natural or man-made disaster; war, invasion, insurrection, riot, mob violence, sabotage, pandemic, moratorium, acts of the public enemy, or acts of terrorists; inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the ordinary course on the open market; failure of normal transportation and any reasonable alternatives; strikes, lockouts, action of labor unions; condemnation, requisition; laws; inability to obtain governmental approvals or permits despite the exercise of due diligence and commercially reasonable efforts (individually, a “**Permitted Excuse**” and collectively, the “**Permitted Excuses**”), the party claiming a delay due to the occurrence of a Permitted Excuse shall give notice to the other party of the circumstances supporting such claim within five (5) business days after the occurrence of the Permitted Excuse. Failure by such party to timely provide notice of a Permitted Excuse shall be deemed a waiver by such party of any such claim of the existence of such Permitted Excuse. Delay arising from a Permitted Excuse shall be exercised in good faith to only seek a delay in performance of an act required herein to the extent of a commercially reasonable period of delay commensurate with the Permitted Excuse.

8.9 Authority. The individuals executing this Easement Agreement represent and warrant that they have the authority to bind the parties to the terms, provisions, and conditions of this Easement Agreement.

8.10 Effective Date. This Easement Agreement shall be effective upon the date of recordation in the official records of the Pierce County Auditor.

8.11 Covenant Running with the Land. The Easement Agreement shall be a covenant running with and this Easement Agreement and shall: (i) burden and benefit District Property described under *Exhibit A*, (ii) shall burden and benefit the Costco Properties described under *Exhibit B*, and (iii) shall be binding upon the successors and assigns of Costco and the District.

*[the remainder of this page is intentionally left blank]*

IN WITNESS WHEREOF, this Easement Agreement is executed on the dates set forth below.

**COSTCO**

COSTCO WHOLESALE CORPORATION,  
a Washington corporation

PC  
By: David Messner  
DAVID MESSNER

[print name]

Its: SVP

Date: 5/17/23

**DISTRICT**

PUYALLUP SCHOOL DISTRICT NO. 3, a  
Washington municipal corporation

By: \_\_\_\_\_  
Dr. John A. Polm, Jr.

Its: Superintendent

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

[acknowledgements on next page]

IN WITNESS WHEREOF, this Easement Agreement is executed on the dates set forth below.

**COSTCO**

COSTCO WHOLESALE CORPORATION,  
a Washington corporation

**DISTRICT**


PUYALLUP SCHOOL DISTRICT NO. 3, a  
Washington municipal corporation

By: \_\_\_\_\_

\_\_\_\_\_  
[print name]

Its: \_\_\_\_\_

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

By:  \_\_\_\_\_

Dr. John A. Polm, Jr.

Its: Superintendent

Date: 5.17.2023

[acknowledgements on next page]

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this day personally appeared before me DAVID MESSNER to me known to be the SVP of Costco Wholesale Corporation, a Washington corporation described in and 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 was authorized to execute said instrument on behalf of said municipal corporation.

GIVEN under my hand and official seal this 17th day of May, 2023.



Haejin Lee Mattsen  
[printed name of notary]

NOTARY PUBLIC in and for the State of Washington, residing at RENTON, WA  
My Commission Expires: 8/30/2026

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF PIERCE )

On this day personally appeared before me Dr. John A. Polm, Jr. to me known to be the Superintendent of Puyallup School District No. 3, a Washington municipal corporation described in and 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 was authorized to execute said instrument on behalf of said municipal corporation.

GIVEN under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
\_\_\_\_\_  
[printed name of notary]  
NOTARY PUBLIC in and for the State of Washington, residing at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this day personally appeared before me \_\_\_\_\_ to me known to be the \_\_\_\_\_ of Costco Wholesale Corporation, a Washington corporation described in and 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 was authorized to execute said instrument on behalf of said municipal corporation.

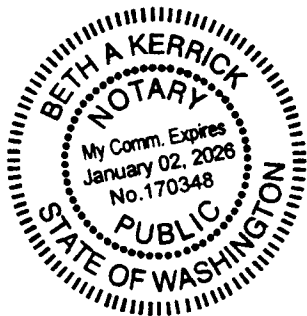
GIVEN under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
\_\_\_\_\_  
[printed name of notary]  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF PIERCE )

On this day personally appeared before me Dr. John A. Polm, Jr. to me known to be the Superintendent of Puyallup School District No. 3, a Washington municipal corporation described in and 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 was authorized to execute said instrument on behalf of said municipal corporation.

GIVEN under my hand and official seal this 17<sup>th</sup> day of May, 2023.



Beth A. Kerrick  
\_\_\_\_\_  
Beth A. Kerrick  
[printed name of notary]  
NOTARY PUBLIC in and for the State of  
Washington, residing at Puyallup, WA  
My Commission Expires: 1/2/2026



**EXHIBIT A**

**LEGAL DESCRIPTION OF SCHOOL DISTRICT PROPERTY**

THE WEST HALF OF THE WEST HALF OF THE EAST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN PIERCE COUNTY, WASHINGTON.

TOGETHER WITH THE WEST HALF OF SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 19 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN PIERCE COUNTY, WASHINGTON;

EXCEPT THE WEST 30 FEET THEREOF RESERVED FOR ROAD; AND

EXCEPT RIGHT OF WAY FOR 112TH STREET EAST (LAKEVIEW PUYALLUP ROAD); AND

EXCEPT THOSE PORTIONS CONVEYED TO THE STATE OF WASHINGTON BY DEEDS RECORDED UNDER RECORDING NUMBERS 2227326, 2227327, 2239840, 2227151, AND 9407070774; AND

EXCEPT THAT PORTION THEREOF CONVEYED TO THE CITY OF PUYALLUP BY DEED RECORDED UNDER RECORDING NUMBERS 200907210799 AND 200907210800; AND

EXCEPT THAT PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 19 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN PIERCE COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING 30 FEET NORTH AND 15 FEET EAST OF THE SOUTHWEST CORNER OF SAID SECTION 4;  
THENCE NORTH 553.14 FEET;  
THENCE EAST 315 FEET;  
THENCE SOUTH 553.14 FEET;  
THENCE WEST 315 FEET TO THE POINT OF BEGINNING; AND

EXCEPT THAT PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 19 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN PIERCE COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 4;  
THENCE NORTH 00°04'25" EAST ALONG THE WEST LINE OF SAID SECTION, A DISTANCE OF 1,148.90 FEET TO THE TRUE POINT OF BEGINNING;  
THENCE NORTH 89°07'39" EAST, A DISTANCE OF 162.0 FEET;  
THENCE NORTH 00°04'25" EAST, A DISTANCE OF 148.0 FEET;  
THENCE SOUTH 89°07'39" WEST, A DISTANCE OF 162.0 FEET TO THE WEST LINE OF SAID SECTION;

**EXHIBIT A**

**EXHIBIT A**

**LEGAL DESCRIPTION OF SCHOOL DISTRICT PROPERTY  
(continued)**

THENCE SOUTH 00°04'25" WEST, 148.0 FEET ALONG THE WEST LINE OF SAID SECTION TO THE TRUE POINT OF BEGINNING;

TOGETHER WITH THAT PORTION OF PARCEL 2 AS DESCRIBED AND DELINEATED ON COSTCO WHOLESALIE LOT COMBINATION RECORDED JUNE 7, 2000 UNDER AUDITOR FILE NUMBER 200006075005, IN PIERCE COUNTY, WASHINGTON LYING NORTH OF THE FOLLOWING DESCRIBED LINE AND ITS EASTERLY AND WESTERLY EXTENSIONS:

COMMENCING AT THE NORTHWEST CORNER OF SAID PARCEL 2;  
THENCE SOUTH 01°23'27" WEST, ALONG THE WEST LINE OF SAID PARCEL 2, 499.48 FEET TO INTERSECT THE WESTERLY EXTENSION OF THE SOUTH LINE OF LOT 7 OF CRESTLINE ESTATES, PER PLAT THEREOF AS RECORDED IN VOLUME 45 OF PLATS AT PAGES 9 AND 10, RECORDS OF PIERCE COUNTY, WASHINGTON, BEING THE POINT OF BEGINNING OF THIS LINE DESCRIPTION;  
THENCE SOUTH 88°16'11" EAST, ALONG SAID WESTERLY EXTENSION, 172.00 FEET TO THE SOUTHWEST CORNER OF SAID LOT 7 AND THE TERMINUS OF THIS LINE DESCRIPTION; AND

EXCEPT THAT PORTION OF PARCEL 2 OF COSTCO WHOLESALE LOT COMBINATION RECORDED JUNE 7, 2000 UNDER RECORDING NO. 200006075005, IN PIERCE COUNTY, WASHINGTON DESCRIBED AS THE CLAIM BOUNDARY WITHIN AGREED ORDER TO QUIET TITLE, PIERCE COUNTY SUPERIOR COURT CAUSE NUMBER 22-2-09290-0.

(ALSO KNOWN AS REVISED PARCEL A OF CITY OF PUYALLUP BOUNDARY LINE ADJUSTMENT NUMBER PLBDJ20220100, RECORDED ON May 18, 2023, UNDER RECORDING NO. 202305785001 ).

**EXHIBIT A**

**EXHIBIT B**

**LEGAL DESCRIPTION OF COSTCO PROPERTIES**

**COSTCO EXPANSION PROPERTY**

ALL THAT PORTION OF PARCEL 2 AS DESCRIBED AND DELINEATED ON COSTCO WHOLESALE LOT COMBINATION RECORDED JUNE 7, 2000 UNDER AUDITOR FILE NUMBER 200006075005, IN PIERCE COUNTY, WASHINGTON LYING SOUTH OF THE FOLLOWING DESCRIBED LINE AND ITS EASTERLY AND WESTERLY EXTENSIONS:

COMMENCING AT THE NORTHWEST CORNER OF SAID PARCEL 2;

THENCE SOUTH 01°23'27" WEST, ALONG THE WEST LINE OF SAID PARCEL 2, 499.48 FEET TO INTERSECT THE WESTERLY EXTENSION OF THE SOUTH LINE OF LOT 7 OF CRESTLINE ESTATES, PER PLAT THEREOF AS RECORDED IN VOLUME 45 OF PLATS AT PAGES 9 AND 10, RECORDS OF PIERCE COUNTY, WASHINGTON, BEING THE POINT OF BEGINNING OF THIS LINE DESCRIPTION;

THENCE SOUTH 88°16'11" EAST, ALONG SAID WESTERLY EXTENSION, 172.00 FEET TO THE SOUTHWEST CORNER OF SAID LOT 7 AND THE TERMINUS OF THIS LINE DESCRIPTION;

EXCEPT THAT PORTION FOR RIGHT OF WAY CONVEYED TO THE CITY OF PUYALLUP IN DEED RECORDED UNDER RECORDING NO. 201403190208; AND

EXCEPT THAT PORTION OF PARCEL 2 OF COSTCO WHOLESALE LOT COMBINATION RECORDED JUNE 7, 2000 UNDER RECORDING NO. 200006075005, IN PIERCE COUNTY, WASHINGTON DESCRIBED AS THE CLAIM BOUNDARY WITHIN AGREED ORDER TO QUIET TITLE, PIERCE COUNTY SUPERIOR COURT CAUSE NUMBER 22-2-09290-0.

(ALSO KNOWN AS REVISED PARCEL B OF CITY OF PUYALLUP BOUNDARY LINE ADJUSTMENT NUMBER PLBDJ20220100, RECORDED ON May 18, 2023, UNDER RECORDING NO. 202305785001 ).

**COSTCO STORMWATER POND PROPERTY**

LOT 1 OF COSTCO WHOLESALE LOT COMBINATION RECORDED UNDER RECORDING NO. 200006075006, IN PIERCE COUNTY, WASHINGTON;

EXCEPT THAT PORTION CONVEYED TO THE CITY OF PUYALLUP FOR RIGHT OF WAY IN DEED RECORDED UNDER RECORDING NO. 201611300332.

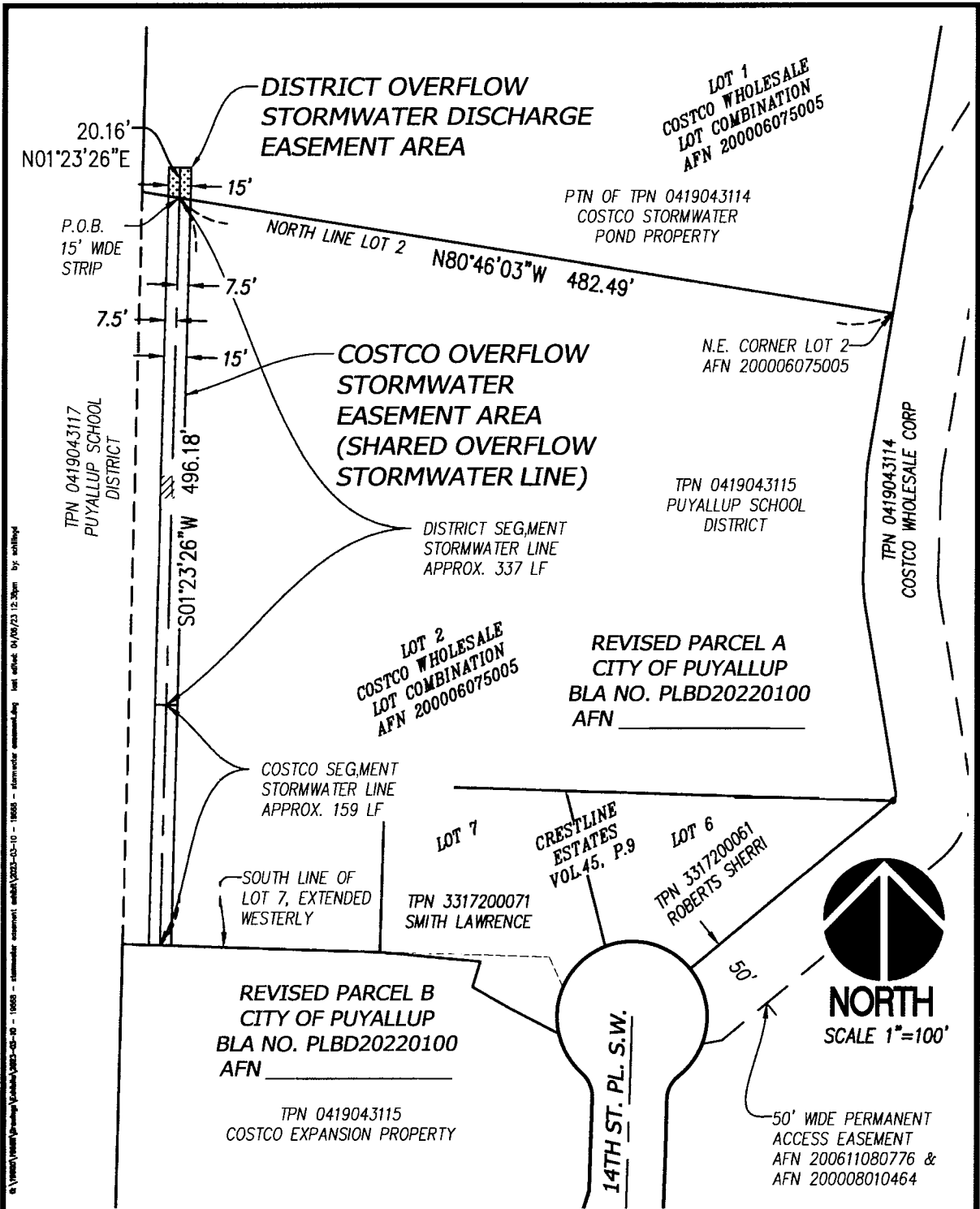
**EXHIBIT B**

**EXHIBIT C**

**ILLUSTRATIVE MAP OF SHARED OVERFLOW STORMWATER EASEMENT AREAS**

**EXHIBIT C**

PSD-Costco.Overflow Stormwater  
Easement Agmt.04-07-23  
FG: 100937737.2  
FG: 101381099.2



SHEET TITLE	PREPARED BY	SHEET
<b>STORMWATER EASEMENT AREA EXHIBIT</b>		<b>1 OF 1</b>
PUYALLUP WA	<small>CIVIL STRUCTURAL SURVEY 4815 CENTER STREET   TACOMA, WA 98409 PHONE: (253) 474-8449   FAX: (253) 474-0153 http://www.shitsandhill.com</small>	PROJECT NO. <b>19668</b>