

**SUBMITTAL TO THE BOARD OF DIRECTORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

127A



FROM: Regional Park and Open-Space District

SUBMITTAL DATE:
February 2, 2015

SUBJECT: Ticket Program Agreement between Riverside County Regional Park and Open-Space District and Costco Wholesale Corporation; Districts 2 and 5

RECOMMENDED MOTION: That the Board of Directors:

1. Approve the Ticket Program Agreement between Riverside County Regional Park and Open-Space District and Costco Wholesale Stores to sell Waterpark discounted package tickets at Costco Wholesale Stores;
2. Authorize the Chairman of the Board to execute three (3) copies of the Agreement on behalf of the District;
3. Authorize the General Manager, or his designee, for the District to execute Exhibit A and A-1 for the annual ticket sales program and any other documents necessary to complete this transaction and future renewals for the Ticket Program Agreement; and
4. Direct the Clerk of the Board to return three (3) copies of the Agreement to the District for further execution and transmittal.

Scott Bangle
General Manager

2015-027D KB/MWW

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 0	\$ 0	\$ 0	\$ 0	Consent <input type="checkbox"/> Policy <input type="checkbox"/>
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0	

SOURCE OF FUNDS:

Budget Adjustment: No
For Fiscal Year: 2014-15

C.E.O. RECOMMENDATION:

APPROVE

BY: _____
Alex Gann

County Executive Office Signature

MINUTES OF THE BOARD OF DIRECTORS

- A-30
- Positions Added
- 4/5 Vote
- Change Order

Prev. Agn. Ref.:

District: 2 and 5

Agenda Number:

DISTRICT

13-3

FORM APPROVED COUNTY COUNSEL
BY: GREGORY P. PRIAMOS
DATE: 2/4/15
Departmental Concurrence

SUBMITTAL TO THE BOARD OF DIRECTORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
FORM 11: Ticket Program Agreement between Riverside County Regional Park and Open-Space District and the Costco Wholesale Corporation; Districts 2 and 5

DATE: February 2, 2015

PAGE: 2 of 2

BACKGROUND:

Summary

Riverside County Regional Park and Open-Space District (District) is seeking approval to sell discounted packaged Waterpark tickets at Costco Wholesale Stores (Costco). The tickets will be valid at the Cove or the DropZone Waterparks, which include 4 daily admission tickets. These tickets will be based on the operating season, April through August 2015, and the Ticket Program Agreement with Costco will be in effect and ticket program sales will be renewed annually at the start of each season thereafter.

Impact on Citizens and Businesses

As part of the overall marketing plan and community outreach goals for the waterparks, this contract will offer discounted family options for two District waterpark locations. Staff will continue to offer in-park promotions and coupons to meet needs of those that do not hold a Costco Membership.

SUPPLEMENTAL:

ADDITIONAL FISCAL INFORMATION:

The promotion will last from April through August. Costco will buy packaged tickets through the District for \$35.00 per package and will resale packaged tickets for \$39.99 for the 2015 season. Each new season the price of the tickets may increase annually depending upon market factors or costs.

Contract History and Price Reasonableness:

The agreement is renewed annually. The District may choose to terminate and discontinue the ticket sales program after each season.

ATTACHMENTS:

Vendor agreement
Exhibit A and A1

TICKET/GIFT CARD PROGRAM AGREEMENT

This Ticket/Gift Card Program Agreement ("**Agreement**"), effective as of _____, 2015, is entered into by and between Costco Wholesale Corporation, a Washington corporation ("**Costco**"), and Riverside County Regional Park and Open-Space District, a Special District ("**District**") corporation ("**Supplier**").

RECITALS

WHEREAS, Supplier sells, among other things, Products that can be redeemed for certain goods and/or services; and

WHEREAS, Supplier wishes to sell the Products to Costco and Costco wishes to purchase the Products for resale to Costco Customers, all subject to and in accordance with the terms of this Agreement.

Therefore, in consideration of the mutual agreements of the parties contained in this Agreement and other good and valuable consideration, the parties agree as follows:

AGREEMENT

1. DEFINITIONS.

1.1 "**Agreement Documents**" means this Agreement and each Supplier Purchase Program Agreement, Item Agreement, or any other agreements (such as warehouse displays, promotions or rebates) that have been or will be signed between Supplier and Costco that are related to this Agreement.

1.2 "**Costco Warehouses**" means the membership warehouses of Costco in the United States and Puerto Rico participating in the Program, as determined by Costco in its sole discretion.

1.3 "**Customers**" means the Costco member or customer who purchases the Product at the Costco Warehouse and/or other holders of such Product.

1.4 "**Laws**" means all federal, state and local laws and regulations of the United States and the Commonwealth of Puerto Rico, and judicial, administrative or other government orders, including, but not limited to, gift certificate laws, gift card laws and consumer protection laws.

1.5 "**Marketing Materials**" means all consumer terms and conditions for the Product, display pallets, all artwork and text for the point-of-purchase, inserts and packaging of the Product and any other materials for the promotion, marketing or sale of the Product.

1.6 "**Product(s)**" means the ticket, voucher, gift card or gift certificate provided by Supplier that Costco offers for sale to its Customers as part of the Program, as further described in **Exhibit A**. The Product also includes all Product point-of-purchase, packaging, labels, instructions, terms and conditions, warranties and the products and services that can be obtained by redeeming the Product.

1.7 "**Program**" means the program for the promotion and sale of Products, as described in **Exhibit A**. The parties must execute additional Exhibits A for each new Program, if any. Once signed and dated by both parties, any additional **Exhibit A** will automatically become a part of this Agreement.

1.8 "**Purchase Order**" means a written or electronic order issued by Costco to Supplier for Product(s).

1.9 "**Supplier Trademarks**" means the trademarks, service marks, trade names, trade dress, logos and other identifiers of Supplier used on or in connection with the Product, including, without limitation, those listed on **Exhibit A**.

TICKET/GIFT CARD PROGRAM AGREEMENT

2. **AGREEMENT DOCUMENTS.** All sales and deliveries of Products by Supplier to Costco and all Purchase Orders by Costco to Supplier, will be covered by and subject to the terms of each of the Agreement Documents. Costco will not be bound by, and specifically objects to, any term, condition or other provision which is different from or in addition to the provisions of the Agreement Documents and submitted by Supplier in any order, receipt, invoice, confirmation, correspondence or otherwise. Some Agreement Documents may use the term "Vendor" rather than "Supplier". The terms are synonymous in the Agreement Documents.

3. **PURCHASE ORDERS.**

(a) **Item Agreement.** For each Product that Supplier offers to sell to Costco, Supplier must sign an "Item Agreement" which primarily identifies the Product and unit price of the Product "offered" for sale to Costco. An Item Agreement signed by Supplier does not constitute an order or a purchase by Costco.

(b) **Purchase Order.** Once an Item Agreement for the Product has been signed and received by Costco, Supplier may ship only upon receipt of a Purchase Order submitted to Supplier in writing or electronically through Costco's processing agent ("EDI"). A Purchase Order shall be considered an acceptance of any written offer to sell by Supplier. Shipment in response to a Purchase Order will be deemed Supplier's acceptance of the Purchase Order and this Agreement.

(c) **Projections.** Unless otherwise mutually agreed in writing, projections, any past purchasing history and representations about quantities to be purchased are not binding on Costco and Costco will not be liable for any act or expenditure (including expenditures for equipment, labor, materials or packaging) by Supplier in reliance on any such projections, history or representations.

4. **DOCUMENTS.** Supplier shall comply with all billing, payment, claim and document instructions in the Costco Wholesale Supplier Credit Information Packet, as it may be revised by Costco from time to time. On the date any Product is shipped, Supplier shall send to the "Bill To" address an original invoice. Supplier shall mark all invoices, bills of lading, and packing lists to show legibly the complete Costco Purchase Order number, Item number(s) and accounts payable number to which they relate. Any claims submitted by Supplier to Costco regarding unpaid invoices, partial payments, RTVs, audit deductions, etc. must be submitted on a Costco Wholesale Standard Supplier Claim Form.

5. **PRICING; PRICE CHANGES.** Supplier's pricing to Costco for a Product will be the amount set forth in the applicable Item Agreement and such pricing is not subject to any increase or additional charges because of increased cost, any change in any Laws or any other reason. If Supplier wishes to change the Product price, Supplier shall give Costco at least thirty (30) days' advance written notice of the proposed price change. If the proposed change is accepted by Costco, the parties will enter into a new Item Agreement for the Product.

6. **REDEMPTION OF PRODUCT ON SUPPLIER SITE.**

(a) **Supplier Site.** Supplier may permit Costco Customers to redeem the Product on Supplier's website located at www.riversidecountyparks.org.com ("Supplier Site"); provided, however, that Supplier will not, without the prior written consent of a Costco VP:

(i) in any way use Costco IP, in connection with the Supplier Site, including, without limitation, in any redemption process or as part of any domain name or URL (including second and third level domain names associated with the file directories);

(ii) in any way imply or suggest that the Supplier Site or redemption process is co-sponsored, co-branded, co hosted or otherwise approved by or affiliated with Costco or any of its affiliates or divisions; and

(iii) link from the Supplier Site to the website or web pages located at www.costco.com.

TICKET/GIFT CARD PROGRAM AGREEMENT

(b) **Customer Information.** If the redemption process for Products requires Customers to provide Supplier with certain information, such as name, address, e-mail address, telephone number, bank account number, debit or credit card number and/or other information that individually identifies or is tied to information that individually identifies the Customer ("Customer Information"), Supplier represents and warrants that:

- (i) its collection, storage and use of Customer Information complies with all Laws;
- (ii) it will not collect any Costco membership numbers from Customers under any circumstances; and
- (iii) it will not (1) use Customer Information to deliver to Customers any advertising, marketing or other promotional materials based exclusively or in part on the fact that such Customers are customers of Costco or (2) sell, give, rent, lease or barter Customer Information to any third party.

(c) **Privacy Policy.** Supplier will clearly and conspicuously post on the Supplier Site its own privacy policy that accurately describes Supplier's privacy and data security practices and that complies with Laws and best industry practices and standards.

(d) **Security of Customer Information.** Supplier will implement and maintain, at its sole cost and expense, administrative, physical and technical safeguards that prevent any collection, use or disclosure of, or access to, Customer Information, including, without limitation, a written and comprehensive information security program that meets the highest standards of best industry practice, sufficient to meet its obligations to Costco and its obligations under all Laws, including without limitation all consumer privacy, data security and security breach laws and regulations.

(e) **Backup Systems.** Supplier shall provide at least industry standard backup and disaster recovery systems and procedures to protect Customer Information, as well as Supplier's own systems being used in performing its obligations under this Agreement.

(f) **PCI Rules.** Supplier shall comply with the Payment Card Industry Data Security Standard developed and published by the Payment Card Industry Security Standards Council, as such standards may be amended from time to time by the Council (the "PCI Rules").

(g) **Termination of Supplier Site.** Supplier will give Costco at least thirty (30) days' written notice prior to any termination of the Supplier Site, whether during or after the Program term.

7. **PAYMENT.** Payment terms are set forth on the applicable Item Agreement. Supplier shall not assign or factor its account without prior written notice by Supplier to Costco's accounting department. Said assignee or factoring third party is only entitled to the payment validly owed to Supplier and said assignment does not confer upon assignee or factor any other rights. Once the account has been assigned to a third party, the assignment may not be changed or discontinued without the prior written consent of both the Supplier and such third party and prior written notice to Costco's accounting department.

8. **DELIVERY; TITLE; RISK OF LOSS.** Supplier will be responsible for making all claims with the carrier in writing for all losses or damages, regardless of whether Costco or Supplier arranges carriage, designates the carrier and/or pays the freight. Sales are on a delivered basis and Supplier's delivery of the Product will occur and, unless otherwise specified in **Exhibit A**, title and risk of loss will pass to Costco only when and to the extent conforming Product has been received at the Costco Warehouse or depot designated in the Purchase Order and a Costco employee has signed the bill of lading or other shipping document acknowledging that receipt.

9. **LATE SHIPMENT.** Costco may at any time cancel any shipment not actually received by Costco by the "Ship To Arrive Date" shown on the Purchase Order, without cost to or further obligation by Costco. Supplier shall notify Costco immediately if any shipment will not occur in time to arrive by the "Ship To Arrive Date". Supplier may ship back orders and late shipments only to the extent authorized in writing by Costco and only on a freight prepaid basis at Supplier's expense.

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10. ABILITY TO SELL; COMPLIANCE WITH LAWS.

(a) **Ability to Sell.** Supplier represents and warrants to Costco that:

(i) Supplier has the right, power and authority to enter into this Agreement;

(ii) The sale of the Product to Costco will not violate the distribution rights of others and Supplier is not a party to any agreement or understanding, and there is no other impediment or restriction, that limits, prohibits or prevents it from selling and delivering the Product to Costco or that limits, prohibits or prevents Costco from reselling the Product;

(iii) the Products sold to Costco are genuine, valid, and correct and may be used for their intended purposes;

(iv) the Product, including the Supplier Trademarks, and its resale will not infringe any patent, trademark, trade dress, trade name, copyright or other proprietary right of any third party;

(v) Supplier and its subcontractors, suppliers, and/or operators who provide any products or perform any services in connection with the Product do not use any form of compulsory prison or slave labor, or illegal child labor and do not physically abuse their workers; and

(vi) the Product and all materials provided by Supplier to advertise, promote and sell the Product comply with all Laws.

(b) **Compliance with Laws and Agreement Documents.** Supplier will

(i) comply with all Laws applicable to the Program and to the performance of its obligations under this Agreement;

(ii) honor the Product in accordance with the terms of the Agreement Documents and the terms and conditions applicable to the Product; and

(iii) give prompt written notice to Costco of any facts it learns indicating that any representation or warranty set forth in this Agreement is no longer fully true and correct.

11. **BROKERS.** Supplier has not and will not use or otherwise involve an agent, broker or other third party intermediary (other than legal counsel) to assist in securing this Agreement ("**Broker**"), or, if Supplier has used or does use a Broker, Supplier agrees that it is solely responsible for any payments due to the Broker related to or as a result of this Agreement and/or any Program.

12. FRANCHISEES.

(a) **Franchisee Addendum.** If Supplier has current franchisees or enters into a franchise agreement at any time during a Program Term, Supplier will:

(i) offer each franchisee the ability to participate in the Program; and

(ii) ensure that each franchisee that participates in the Program executes a Franchisee Addendum (**Exhibit A-1**) to be provided by Costco or enter into its own Ticket/Gift Card Program agreement.

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(b) **Franchisee Locations.** Supplier will:

- (i) obtain or create, and maintain, a toll free telephone number or website from which a Customer may obtain a list of franchisees that accept the Product and where the Product may be redeemed, and
- (ii) display such toll free number or website clearly in the terms and conditions displayed on the Product and Marketing Materials.

13. REJECTION; REVOCATION OF ACCEPTANCE.

(a) **Right to Reject, Revoke and Return.** Costco may, at any time, reject (or revoke acceptance of) and return to Supplier any Product:

- (i) that does not conform to the Product described in this Agreement or the applicable Purchase Order, or that is shipped contrary to Costco's instructions, or that is in excess of the quantities covered by a Purchase Order;
- (ii) that Costco reasonably believes contains any defect or inaccurate information, violates any Laws or infringes any intellectual property right of any third party;
- (iii) that Costco is unable to sell due to any force majeure event (including without limitation any act of God or the public enemy, expropriation or confiscation of facilities, changes in Laws, war, rebellion, civil disturbance, sabotage, or riot, floods or unusually severe weather that could not reasonably have been anticipated, fires, explosions, or other catastrophic events, strikes or other concerted acts of employees, or lockouts) that cancels, in whole or in part the Program or the event, activity or experience for which the Product could have been redeemed; or
- (iv) returned by any Customer for any reason set forth in Sections 13(a) (i), (ii) or (iii).

(b) **Returns.** Payment of any invoice does not limit Costco's right to reject or revoke acceptance in accordance with the terms of this Agreement. For returns made under this Section 13, Supplier shall reimburse Costco for the full purchase price paid by Costco for such Product together with all actual costs and expenses incurred by Costco in returning any such Product, including without limitation, any amounts over and above any negotiated defective allowance.

(c) **Right to Terminate without Penalty.** Costco will not be liable to Supplier for any damages or losses of any kind with respect to any Product for which it exercises its rights under Section 9 (*Late Shipment*), Section 13(a) (*Rejection; Revocation of Acceptance*), or Section 15 (*Refunds; Offsets; Reserve*). In the event Supplier's payment terms include a cash discount, such discount is not refundable to Supplier upon return of any Product under this Section 13.

14. **RETURN OF UNSOLD AND/OR UNUSED PRODUCTS.** In addition to Costco's right to return Products pursuant to Section 13 (*Rejection; Revocation of Acceptance*), Costco may return to Supplier any unsold and/or unused Products in accordance with the terms of **Exhibit A**. For any unsold and unused Product returned, Supplier shall reimburse Costco for the full purchase price paid by Costco for such Product, together with all actual costs and expenses incurred by Costco in returning any such Product, including without limitation, any amounts over and above any negotiated defective allowance.

15. **REFUNDS; OFFSETS; RESERVE.** Without limiting any other rights of Costco, Costco may offset any amounts due to Costco under Sections 13 or 14 against amounts Costco owes or may owe to Supplier in the future. Costco may also offset costs associated with monies owed for regulatory fines or penalties (including associated attorneys' fees), and any other amounts owed or to be owed by Supplier against amounts Costco owes to Supplier. Costco may, at any time during any Program, or at the end of a Program, at the close of a business relationship, or otherwise, hold back a reasonable reserve for future claims (including, without limitation, Customer returns) against amounts owed to Supplier. In the event there remains an outstanding balance owed Costco after such offset, Supplier shall immediately pay said balance to Costco.

16. **INDEMNIFICATION BY SUPPLIER.** Supplier shall defend, indemnify and hold harmless Costco, its parents, subsidiaries, affiliates, and their respective officers, directors, employees, agents and representatives (collectively "**Costco**

TICKET/GIFT CARD PROGRAM AGREEMENT

Indemnitees") from and against all claims, actions, liabilities, damages, losses, fines, penalties, judgments, sanctions, expenses and costs (including but not limited to reasonable attorneys' fees and expert fees) arising out of or in connection with:

(a) **Indemnification Obligations.**

- (i) Supplier's breach of any part of the Agreement Documents;
- (ii) any redemption, return or refund for Products by or for any Customer who purchased Products, or any third party who obtained Products;
- (iii) counterfeit or fraudulent Products;
- (iv) any actual or alleged infringement or misappropriation of any patent, trademark, trade dress, trade name, copyright or other proprietary rights of others by the Supplier Trademarks, the Product, Marketing Materials, any artwork or other materials provided by Supplier in connection with the Program or any products or services provided in connection with the Product;
- (v) any actual or alleged injury to any person, damage to any property, or any other damage or loss, by whomsoever suffered, claimed to result in whole or in part from the use of the Product or the products or services provided in connection with the Product;
- (vi) any actual or alleged violation of any Laws relating to the Program, Product, Marketing Materials and/or the products or services provided in connection with the Product; or
- (vii) any act, activity or omission of Supplier or any of its affiliates, employees, representatives, agents or contractors in connection with this Agreement, including while on Costco's premises in connection with the Program.

(b) **Costco Warranties.** These indemnities and obligations of Supplier will not be affected, expanded or limited in any way by Costco's extension of warranties to its Customers, or by any approval, specification, act or omission of Costco. Supplier shall have no obligation to defend, indemnify and hold harmless Costco for Costco's sole negligence or intentional wrongful acts.

17. **INSURANCE.**

(a) **Coverage Required.** Supplier shall obtain and maintain, as long as this Agreement is in effect, a policy or policies of:

(i) **Commercial General Liability** (including product and completed operations, personal and advertising injury, property damage and contractual liability coverage), with a minimum of \$2,000,000 General Aggregate limit; \$2,000,000 Products and Completed Operations Aggregate limit; and \$1,000,000 each occurrence, written on an occurrence form.

If Supplier employees or representatives enter Costco's premises, Supplier shall obtain and maintain:

(ii) **Workers' Compensation** Insurance with statutory limits and **Employers' Liability** (Stop-Gap Liability) insurance with minimum limits of \$1,000,000 per accident combined single limit for bodily injury; and

(iii) **Automobile Liability** Insurance with \$1,000,000 per accident combined single limit for bodily injury and property damage limits for each accident, including owned, non-owned and hired vehicles.

Coverage and limits referred to above will not in any way limit the liability of Supplier.

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(Puerto Rico Suppliers) Supplier shall also maintain insurance policies of workers compensation insurance through the State Insurance Fund (Fondo del Seguro del Estado) for Suppliers whose employees enter Costco's premises in Puerto Rico.

(b) **Certificate of Insurance.** Upon the execution of this Agreement, Supplier will deliver to Costco a Certificate of Insurance at all times naming Costco Wholesale Corporation and any subsidiary, proprietary company or corporation, partnership or joint venturer thereof as "Additional Insureds" with respect to General Liability and Automobile Liability policies, and attach the Broad Form Vendor Endorsement (ISO CG2015 1185) executed in favor of the Additional Insureds to the Certificates of Insurance, protecting all parties from all liabilities arising out of Supplier's obligations as set forth in this Agreement. Supplier's insurers must be Best's rated B+, VII or better.

(c) **Cancellation.** Policy limits may not be reduced, terms changed, or policy canceled with less than thirty (30) days prior written notice to Costco. Supplier's insurance will be primary with respect to all obligations assumed by Supplier pursuant to this Agreement and will contain a waiver of subrogation against Costco and its insurance carrier with respect to all obligations assumed by Supplier under this Agreement.

(d) **Multiple Locations; Franchisees.** Supplier's policies shall cover any locations participating in the Program that are owned by Supplier and Supplier shall ensure that all participating franchisees comply with the same insurance requirements as set forth above.

18. **RECALLS.** In the event any Product must be recalled (e.g., due to a printing error or closure of Supplier's facility, etc.), Costco shall handle the recall notices. Supplier shall be responsible for all actual costs and expenses associated with the recall and shall promptly reimburse Costco for all such costs and expenses, including refunds to Customers and Costco's cost of unsold Product.

19. **TAXES.** Unless otherwise agreed by the parties in writing:

(a) **Supplier's Pricing.** Costco does not believe that its purchase or sale of the Product imposes any obligation for Costco to collect or remit any state or local amusement or admission fees or taxes, or sales or use taxes. Supplier recognizes its responsibility to the taxing authorities for remitting any fees or taxes owed in connection with Supplier's sale of the Product to Costco or the ultimate use or redemption of the Product by the Customer. As a result, (i) Supplier's pricing for the Product to Costco must include all state and local fees and taxes, or (ii) Supplier must charge and collect such fees and taxes from the Customer upon use or redemption of the Product.

(b) **Remittance of Fees and Taxes.** Supplier, and not Costco, will be solely responsible for collecting and remitting all fees and taxes described in Section 19(a). If Supplier does not remit all such fees and/or taxes to the appropriate agencies and/or if the same fees and/or taxes are subsequently assessed against Costco, Supplier shall reimburse Costco for all fees and/or taxes that Costco has paid and Supplier shall defend, indemnify and hold harmless Costco against all claims, investigations, losses, penalties, interest and expenses (including attorneys' and expert fees) arising out of or in connection with Costco's payment or non-payment of such fees and/or taxes.

(c) **Supplier's Responsibility.** Supplier, and not Costco, will be solely responsible for collecting and remitting all fees and taxes based on the revenue, gross receipts or net income earned or received by Supplier.

20. **REMEDIES; DISCLAIMER.** THE EXERCISE OF ANY REMEDY UNDER THIS AGREEMENT WILL NOT PREJUDICE ANY OTHER RIGHT OR REMEDY AVAILABLE TO EITHER PARTY. UNDER NO CIRCUMSTANCES, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE) OR ANY OTHER CLAIM OR CAUSE OF ACTION, WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE; PROVIDED, HOWEVER, THAT THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO SUPPLIER'S OBLIGATIONS UNDER SECTIONS 16 (*Indemnification by Supplier*), 19 (*Taxes*) OR A BREACH UNDER SECTION 28 (*Confidentiality*).

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21. ARBITRATION. All claims and disputes that (a) are between Supplier and Costco or either's subsidiaries, parents, affiliates, officers, directors and/or employees, and (b) arise out of or relate to this Agreement or its subject matter, interpretation, performance or enforcement, or any other agreement, transaction or occurrence between Supplier and Costco (including without limitation any tort or statutory claim) ("**Dispute**") will be arbitrated under the Commercial Arbitration Rules of the American Arbitration Association ("**AAA**"), in English at Seattle, Washington, before one neutral arbitrator who may be a national of any party and who is a member of the AAA's Large Complex Case Panel. All documents and information relevant to the Dispute in the possession of any party will be made available to the other party not later than sixty (60) days after the demand for arbitration is served, and the arbitrator may permit such depositions or other discovery deemed necessary for a fair hearing. The arbitrator will have the power to require discovery of third parties (including testimony and documents) to the fullest extent allowed by the laws of the State of Washington. The hearing may not exceed two days. The award will be rendered within one hundred twenty (120) days of the demand. The arbitrator may award interim and final injunctive relief and other remedies, but may not award punitive, exemplary, treble, or other enhanced damages. To the fullest extent permitted by law, no arbitration under this Agreement may be joined to an arbitration involving any other party, whether through class arbitration proceedings or otherwise. No time limit herein is jurisdictional. Any award of the arbitrator (including awards of interim or final remedies) may be confirmed or enforced in any court having jurisdiction. Notwithstanding the above, Costco or Supplier may bring court proceedings or claims against each other (i) solely as part of separate litigation commenced by an unrelated third party, or (ii) if not first sought from the arbitrator, solely to obtain in the state or federal courts in King County, Washington, temporary or preliminary injunctive relief or other interim remedies pending conclusion of the arbitration. In the case of contradiction between the provisions of this Section and the Commercial Arbitration Rules of AAA, this Section will prevail. The limitations on remedies described above may be deemed inoperative to the extent necessary to preserve the enforceability of the agreement to arbitrate. If any provision of this agreement to arbitrate is held invalid or unenforceable, it will be so held to the minimum extent required by law and all other provisions will remain valid and enforceable.

For Product sold in Puerto Rico, this arbitration section provides for MANDATORY ARBITRATION in Seattle, Washington. Supplier acknowledges and agrees that (1) it has freely and voluntarily accepted these arbitration and dispute provisions as part of the negotiation of the Agreement Documents, (2) it has received consideration for agreeing to arbitrate, (3) it has had the opportunity to consult with counsel as to whether or not to agree to arbitration, and (4) this agreement to arbitrate covers, without limitation, any claims with respect to matters relating to distribution rights of any of the parties arising under the Agreement Documents or any applicable Laws. If for any reason this agreement to arbitrate is held invalid or unenforceable with respect to any claim or dispute, then the exclusive forum for that claim or dispute will be the federal or state courts in King County, Washington.

22. ATTORNEYS' FEES. The prevailing party in any arbitration or court action or proceeding will be awarded its reasonable attorneys' fees, expenses and costs (including expert fees).

23. GOVERNING LAW; VENUE. This Agreement will be governed by and construed in accordance with the laws of the State of Washington without regard to choice of law principles. Supplier hereby irrevocably consents to the exclusive, personal jurisdiction and exclusive venue of the federal and state courts in King County, Washington, for any court action or proceeding.

24. SEVERABILITY. If a provision of this Agreement is ultimately held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected.

25. COSTCO'S INTELLECTUAL PROPERTY. The ownership and exclusive use of the trademarks, service marks, trade names, trade dress, logos and other intellectual property owned by or under license to Costco and/or its affiliates, which include "Costco Wholesale" (and all derivatives thereof) and "Kirkland Signature" (and all derivatives thereof) (collectively, "**Costco IP**") will remain vested in Costco and/or such affiliates as the case may be, and Supplier will have no rights or interest in them. Supplier will obtain prior written consent from Costco prior to using the Costco IP in any manner and if approved, will comply with Costco's usage guidelines. Supplier shall not contest, directly or indirectly, the ownership, validity, or enforceability of the Costco IP or use any confusingly similar marks, logos, trade dress or identifiers. All goodwill arising from any use of the Costco IP will inure solely to the benefit of Costco.

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26. **SUPPLIER TRADEMARKS.** Subject to the terms and conditions of this Agreement, Supplier grants to Costco a non-exclusive, nontransferable right to use the Supplier Trademarks for the sole purposes of promoting the Program, and promoting, selling and distributing the Product. The Supplier Trademarks will remain the property of Supplier. All goodwill arising from any use of the Supplier Trademarks will inure solely to the benefit of Supplier.

27. **MARKETING MATERIALS.**

(a) **Marketing Materials.** Prior to any promotion, sale or other use, Supplier will provide Costco with all Marketing Materials, together with a sample of the Product. All Marketing Materials and Products are subject to Costco's approval prior to use. Once approved by Costco, Supplier will not modify any Marketing Materials or Products without Costco's prior written approval.

(b) **Costs of Marketing Materials.** Unless otherwise specified in **Exhibit A**, Supplier will be solely responsible for paying costs and expenses for the development, production and distribution of all Marketing Materials and Products.

(c) **Approval.** All Marketing Materials are subject to Costco's approval prior to use; provided, however, that Costco's approval of the Marketing Materials and Products and suggested revisions do not relieve Supplier of its obligation to ensure that all Marketing Materials and Products comply with all Laws.

(d) **No Reliance.** Further, Supplier acknowledges and agrees that it may not rely on any verbal or written representations made by Costco concerning Supplier's legal obligations in connection with the Marketing Materials and Products.

28. **CONFIDENTIALITY.**

(a) **Definition of Confidential Information.** Supplier may be exposed to confidential information of Costco. "Confidential Information" means non-public information, whether written, oral, recorded on tapes or in any other media or format, that Costco designates confidential or which, under the circumstances surrounding disclosure, ought to be treated as confidential. Confidential Information includes, without limitation, information relating to Costco's vendors, employees, business plans, marketing plans, product plans, processes, strategies, know-how, forecasts, and/or sales or financial information and Customer Information.

(b) **Exceptions.** Confidential Information does not include information that Supplier can conclusively establish: (i) entered the public domain without Supplier's breach of any obligation owed to Costco and without any wrongdoing by any third party; (ii) was lawfully disclosed to Supplier from a source other than Costco; or (iii) is or was rightfully in Supplier's possession prior to disclosure by Costco.

(c) **Limited Disclosures.** Supplier agrees, both during and after the close of the business relationship with Costco, to hold the Confidential Information in the strictest confidence and not to disclose such Confidential Information to any third party. Supplier will, however, be permitted to disclose relevant aspects of such Confidential Information to its officers, employees, attorneys, auditors by a public accounting firm, or a federal or state government agency, on a need-to-know basis in order to perform its obligations under this Agreement, provided that it has undertaken to protect the Confidential Information to the same extent as required under this Agreement. Supplier shall give Costco notice immediately upon learning of any unauthorized use or disclosure of Confidential Information.

(d) **Legal Process.** In the event Supplier is served with any subpoena or other legal process requiring or purporting to require the disclosure of any Confidential Information, Supplier shall promptly notify Costco and shall cooperate fully with Costco and its legal counsel in challenging, opposing, seeking to limit or appealing any such legal process to the extent deemed appropriate by Costco.

TICKET/GIFT CARD PROGRAM AGREEMENT

29. CHANGE IN CONTROL; ASSIGNMENT; SALE OF BUSINESS.

(a) **Change in Control.** In the event of a merger, acquisition or change in actual or voting control of Supplier, Costco shall have the option but not the obligation to cancel any Purchase Order that in whole or in part has not been fully performed.

(b) **Assignment.** Any assignment of the Agreement Documents without Costco's prior written consent is void and if approved, the Agreement Documents will be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns.

(c) **Sale of Supplier's Business.** If Supplier sells its business (whether by merger, asset sale, change in control, sale of ownership interests or otherwise), Supplier shall cause the purchaser to be bound by the terms and conditions of the Agreement, including without limitation,

(i) the obligation to honor the Product in accordance with the terms of the Agreement Documents and the Product terms and conditions, and

(ii) the obligation to ensure that any franchisee that has signed the Franchisee Addendum (**Exhibit A-1**), continues to honor the Product in accordance with the Product terms and conditions, unless the franchisee has entered into its own Ticket/Gift Card Program agreement .

If Supplier sells its business (whether by merger, asset sale, change in control, sale of ownership interests or otherwise) and the purchaser refuses to be bound by the Agreement and to honor the Product, Supplier shall reimburse Costco, within thirty (30) days of Costco's request, for the following:

(iii) the full purchase price paid by Costco for any unsold Products in Costco's inventory at the time of the sale of the business;

(iv) the value of any Products purchased by Costco Customers but not yet redeemed at the time of the sale of the business; and

(v) all actual costs and expenses incurred by Costco in (a) notifying Customers that the Products will not be honored by the purchaser and/or franchisees and (b) processing any Product returns by Customers.

30. **NO PUBLICITY.** Other than as specifically authorized herein, neither party may, without the prior written consent of an officer of the other party, refer to the other party or any of its affiliates in any manner in press releases, advertising or other public or promotional statements.

31. **RELATIONSHIP OF THE PARTIES.** The relationship between Costco and Supplier is that of an independent contractor and Supplier agrees that it has not and shall not hold itself out as, nor will Supplier be deemed to be, an agent of Costco.

32. **NON-EXCLUSIVITY.** Nothing in this Agreement will prohibit either party from purchasing from or selling to other vendors and offering for sale similar products.

33. **CONSTRUCTION.** Costco and Supplier acknowledge that each party and its counsel have had an opportunity to review this Agreement and no ambiguity will be construed against any party based on a claim that party drafted the ambiguous language.

34. **CONFLICT.** In case of any conflict between this Agreement or any **Exhibit A** and an Item Agreement, the Item Agreement will control. In the case of any conflict between this Agreement and any **Exhibit A**, the **Exhibit A** will control.

TICKET/GIFT CARD PROGRAM AGREEMENT

35. **AMENDMENT.** This Agreement (along with any of its exhibits) may not be changed, modified or amended except in a writing signed by both parties that specifically references an amendment.

36. **WAIVER.** The failure by either Costco or Supplier to insist upon strict performance of any of the provisions contained in this Agreement will in no way constitute a waiver of its rights as set forth in this Agreement, at law or in equity, or a waiver of any other provisions or subsequent default by the other party in the performance of or compliance with any of the terms and conditions set forth in this Agreement.

37. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which will be considered an original and all of which together will constitute one and the same instrument.

38. **SURVIVAL.** The following sections will survive the end of the business relationship or expiration or termination of this Agreement or any Program: Sections 1, 10(b)(ii), 13-16, 18-26, 28, 30-39.

39. **ENTIRE AGREEMENT.** This Agreement, any other Agreement Documents and any exhibits to this Agreement signed and dated by both parties (which exhibits are incorporated into this Agreement by this reference) set forth the entire agreement and understanding between Costco and Supplier as to the subject matter hereof and supersede all prior discussions, agreements and understandings of any kind relating to such subject matter.

IN WITNESS WHEREOF, the parties have entered into this Agreement effective as of the date first set forth above.

COSTCO WHOLESALE CORPORATION

Riverside County Regional Park
Supplier and Open-Space District

By GMM _____
(GMM

By _____
(Signature of Owner, Officer or other
Authorized Employee)

(Print Name)

Chairman of the Board

(Print Name and Title)

(Date)

(Date)

By _____
(Buyer

(Print Name)

(Date)

FORM APPROVED COUNTY COUNSEL

BY: Synthia M. Gunzel 2-4-15
SYNTHIA M. GUNZEL DATE

EXHIBIT A
and
EXHIBIT A-1

**EXHIBIT A
TICKET/GIFT CARD PROGRAM
(NON-FOOD)**

[To Be Completed by Supplier]

This Exhibit A is made and entered into this _____ day of _____, 201____
pursuant and subject to the Ticket/Gift Card Program Agreement between Costco Wholesale Corporation
("Costco") and _____ ("Supplier")
dated _____, 201____ (the "**Agreement**"). Capitalized terms not defined in this Exhibit A
will have the meanings given to them in the Agreement.

I. Description of Product and Program. [Do NOT include cost or suggested sell price.]

II. Term of Program. Start Date: _____ End Date: _____

III. Supplier's Obligation to Collect and Remit Taxes. [Check only one.]

_____ Supplier will include in the Supplier's price to Costco all fees and taxes owed in connection
with Supplier's sale of the Product to Costco and the use or redemption of the Product by
the Customer.

_____ Supplier will collect from the Customer all fees and taxes owed in connection with the use
or redemption of the Product by the Customer.

IV. Returns of Unsold and Unused Products. Costco may return any unsold and unused Product
during the term of the Program and/or after the termination or expiration of the Program. All returns
under this Section must be returned to Supplier no later than _____ days after the expiration or
termination of the Program.

V. Marketing Materials; Legal Obligations.

(a) Pursuant to the Agreement, Supplier shall pay Costco for all costs and expenses incurred by
Costco for the development, production and distribution of Marketing Materials (but not display
pallets) within thirty (30) days of Costco's delivery to Supplier of an invoice for any such costs and
expenses.

(b) All Marketing Materials are subject to Costco's approval prior to use; provided, however, that
Costco's approval of the Marketing Materials and Products and suggested revisions do not relieve
Supplier of its obligation to ensure that all Marketing Materials and Products comply with all Laws.

Costco Initials: _____ Supplier Initials: _____

(c) Further, Supplier acknowledges and agrees that it may not rely on any verbal or written representations made by Costco concerning Supplier's legal obligations in connection with the Marketing Materials and Products.

(d) Without limiting any other obligations related to privacy, confidentiality, security or any other terms of the Agreement, Supplier agrees that if it collects any customer bank account number, debit or credit card number, or other payment card number or information, Supplier shall comply in all respects with the PCI Rules.

VI. Supplier Trademarks.

VII. Termination and Suspension of Program.

(a) Either party may terminate the Program at any time, with or without cause, by providing the other party with at least fourteen (14) days' prior written notice. Costco may remove the display pallet from any and all Costco Warehouse floors at any time between the date Costco gives or receives notice and the effective date of termination and return the Product to Supplier pursuant to Section IV. above.

(b) Costco may remove a Program from a Warehouse if sales of the Product are poor, as determined in Costco's sole discretion. In such event, Costco may return such Products to Supplier during the term of the Program or following termination of the Program, subject to the time limit set forth in Section IV. above.

(c) Further, Costco may immediately suspend the Program (and remove any display pallet from any and all Costco Warehouse floors) for any reason. If the cause of the suspension is resolved to Costco's sole satisfaction, Costco will lift the suspension and return the pallet(s) to the Costco Warehouse floor(s). If not resolved, Costco may return the Product to Supplier pursuant to Section IV above.

(d) Costco will have no liability to Supplier of any kind due to Costco's exercise of any of its rights under this Section VII. Supplier will continue to honor any Product sold to Customers prior to the suspension, expiration or termination of the Program.

VIII. Franchisees. If Supplier franchises its business, for each franchisee that agrees to participate in the Program and honor the Product (for all current and future franchisees) Supplier will ensure that each franchisee executes a Franchisee Addendum.

At its sole discretion, Costco may agree to enter into a separate Ticket/Gift Card Program Agreement with certain franchisees as determined by Costco.

If Supplier owns multiple locations at which the Product will be honored, Supplier will provide to Costco a list of those locations.

Similarly, if a franchisee executing a Franchisee Addendum owns multiple locations at which the Product will be honored, the franchisee will list those locations on the Franchisee Addendum.

[Signature page follows]

Costco Initials: _____

Supplier Initials: _____

N WITNESS WHEREOF, the parties have entered into this Program (Non-Food) effective as of the date first set forth above.

COSTCO WHOLESALE CORPORATION

SUPPLIER _____

By _____
(GMM)

By _____
(Signature of Owner, Officer or other
Authorized Employee)

(Print Name)

(Print Name and Title)

(Date)

(Date)

By _____
(Buyer)

(Print Name)

(Date)

[Signature Page to Exhibit A of COSTCO WHOLESALE Ticket/Gift Card Program Agreement]

Costco Initials: _____

Supplier Initials: _____



VENDOR PURCHASE PROGRAM AGREEMENT

Date: _____ New Supplier: Yes No (New suppliers must submit a Certificate of Insurance with this form)

Supplier Name: _____ BBA Supplier #: _____ Department: _____

Contact Name: _____ Fed ID # _____

Phone.... Country code (if necessary): _____ Area code: _____ Prefix: _____ Number: _____ Extension: _____

Is this company 51% owned by a woman or minority? Yes No

This Agreement incorporates the Costco Wholesale Standard Terms, as they may be amended from time to time, and any applicable signed agreements between us.

Purchase Order / Correspondent	Address: _____
	City: _____ State/Province: _____ Zip/Postal Code: _____
	Country: _____ Email: _____
	Fax.... Country code (if necessary): _____ Area code: _____ Prefix: _____ Number: _____ Extension: _____
	Fax.... Country code (if necessary): _____ Area code: _____ Prefix: _____ Number: _____ Extension: _____

Accounts Payable / Remittance	Name: _____	Factor: <input type="checkbox"/> Yes <input type="checkbox"/> No
	Address: _____	(Yes = remittance is sent to another company)
	City: _____ State/Province: _____ Zip/Postal Code: _____	
	Country: _____ Email: _____	

AP Contact / Extranet Administrator	Name: _____
	Email: _____
	Phone.... Country code (if necessary): _____ Area code: _____ Prefix: _____ Number: _____ Extension: _____

A/P Contact name given will be your company's Extranet Administrator

EFT / EDI	Payment Method: EFT (Electronic Funds Transfer). Send e-mail to cft@costco.com
	EDI (Electronic Data Interchange) Requirements: Send e-mail to edi@costco.com

Order Desk Contact	Name: _____
	Phone.... Country code (if necessary): _____ Area code: _____ Prefix: _____ Number: _____ Extension: _____

Representative	Company: _____
	Address: _____
	City: _____ State/Province: _____ Zip/Postal Code: _____
	Country: _____ Email: _____
	Phone.... Country code (if necessary): _____ Area code: _____ Prefix: _____ Number: _____ Extension: _____
	Fax.... Country code (if necessary): _____ Area code: _____ Prefix: _____ Number: _____ Extension: _____

Terms / Discounts and Logistics Information	Region: <input type="checkbox"/> All US <input type="checkbox"/> BA <input type="checkbox"/> BD <input type="checkbox"/> E-Comm <input checked="" type="checkbox"/> LA <input type="checkbox"/> MW <input type="checkbox"/> NE <input type="checkbox"/> NW <input type="checkbox"/> PR <input type="checkbox"/> SD <input type="checkbox"/> SE <input type="checkbox"/> TX <input type="checkbox"/> JP <input type="checkbox"/> KO <input type="checkbox"/> TW <input type="checkbox"/> UK
	<input type="checkbox"/> All CN <input type="checkbox"/> Western CN <input type="checkbox"/> Eastern CN <input type="checkbox"/> CN E-Comm <input type="checkbox"/> Other _____
	Supplier minimum order: _____ Minimum order type (select one): <input type="checkbox"/> Cube <input type="checkbox"/> Dollars <input type="checkbox"/> Masterpack <input type="checkbox"/> Pounds <input type="checkbox"/> Other _____
	Payment Terms: _____ % disc. calculated: _____ (G=gross/N=net) inv. if paid within _____ days from _____ ROG (ROG/DOI) final payment due within <u>60</u> days (DOI must be approved by Costco VP)
	New Warehouse Payment Terms: _____ % ROG Home Delivery: <input type="checkbox"/> Yes <input type="checkbox"/> No
	DFI type: _____ % DFI type: _____ % DFI type: _____ % (Only one DFI can be a spoils allowance)
	Chain DFI's: <input type="checkbox"/> Yes <input type="checkbox"/> No
	Freight Allowance: _____ % (of inv. subtotal) Freight Allowance: \$ _____ Frt Charge: \$ _____ per _____ (C=CWT, I=Item)
	Freight Terms: _____ (COL = collect, PPD = prepaid, VEN = supplier prepays freight and adds to invoice)
	Misc. charge per PO: _____ % Misc. charge per PO: \$ _____ Handling Charge per PO: \$ _____

Days between receipt of PO and shipment: _____ New Warehouse Allowance: _____

For import item, Costco takes possession / ownership in City: _____ State/Province: _____ Country: _____

For RTV, salvage for credit, and/or destroy for credit transactions, deduct at Net Landed Cost:

Buyer: _____ (Signature) _____ (Print Name) Date: _____

GMM: _____ (Signature) _____ (Print Name) Date: _____

Supplier: _____ (Signature of owner, Officer or Other Authorized Employee) _____ (Print Name and Title) Date: _____

**EXHIBIT A-1
FRANCHISEE ADDENDUM**

This Franchisee Addendum is made and entered into this _____, 201____ by and among Costco Wholesale Corporation ("**Costco**") and Supplier and Franchisee listed below, pursuant and subject to the Ticket/Gift Card Program Agreement between Costco and Supplier dated _____, 201____ (the "**Agreement**").

Supplier: _____

Franchisee: _____

Address: _____

Address: _____

Contact: _____

Contact: _____

Contact Tel. No.: _____

Contact Tel. No.: _____

Capitalized terms not defined in this Franchisee Addendum will have the meanings given to them in the Agreement.

Agreement to Honor Product

By executing this Franchisee Addendum, Franchisee agrees to honor the Product, in accordance with the terms and conditions applicable to the Product, at the Franchisee location listed above and at all locations listed on the attached Attachment A, including in the event of Supplier's bankruptcy or other corporate failure ("Event"), for a minimum of 6 months following that Event.

Franchisee acknowledges that Costco has the right to notify its Customers if any Franchisee location listed in this Franchisee Addendum or Attachment A refuses to accept the Product at any time during the Program or as set forth in this Addendum.

IN WITNESS WHEREOF, the parties have entered into this Franchisee Addendum effective as of the date first set forth above. Each party represents and warrants that the persons signing below are authorized to execute this Franchisee Addendum on behalf of their respective companies. This Franchisee Addendum may be signed in counterparts, which together shall constitute one agreement.

COSTCO WHOLESALE CORPORATION	FRANCHISEE <i>[Fill in full legal name]</i>
-------------------------------------	--

By Buyer _____

By _____

(Signature of Owner or Officer)

(Print Name)

(Print Name and Title)

(Date)

(Date)

SUPPLIER <i>[Fill in full legal name]</i>
--

By _____

(Signature of Owner or Officer)

(Print Name and Title)

(Date)

Costco Initials: _____

Supplier Initials: _____

[To be filled out by a Franchisee with multiple locations]

**ATTACHMENT A
List of Locations**

Name of Location	Street Address (No P.O. boxes)	Contact Person	Contact Person Telephone Number

Costco Initials: _____ Supplier Initials: _____