

**AMENDMENT TO LEASE AGREEMENT
(Shorelands)**

THIS FIRST AMENDMENT TO LEASE AGREEMENT (“Amendment”) is entered into this ___ day of _____ 2020 by and between the Foss Waterway Development Authority, a public corporation chartered by the City of Tacoma (“FWDA”), with respect to the FWDA Property only, and the city of Tacoma (“City”) with respect to the City Property only, and Foss Harbor Marine, LLC, a Washington limited liability company (“Lessee”).

RECITALS

A. FWDA, the City, and Foss Waterway Marine LLC were public parties to a Lease Agreement (Shorelands) dated July 10, 2001 (the “Lease Agreement”), under which Foss Waterway Marine LLC leased from FWDA and the City, respectively, the FWDA Property and the City Property, as those terms are defined in the Lease Agreement (collectively, the “Premises”). Lessee is the successor to Foss Waterway Marine LLC.

B. Lessee owns a 416-slip marina (the “Marina”) spanning the Foss Waterway waterfront from Site 8 through Site 11 and located in part on the Premises. Lessee owns Site 11 and has agreements for the purchase of Site 10, the development of Sites 10 and 11, and the lease of 921 Dock Street commonly called the “Municipal Dock” (“Muni Dock”).

C. Foss Waterway Marine LLC on or about January 1, 2001, entered into an Aquatic Lands Lease (Commercial) No. 22-072500 (the “DNR Lease”) with the Washington State Department of Natural Resources (“DNR”), with respect to the state-owned aquatic lands on which a portion of the Marina is located. Lessee is the successor to Foss Waterway Marine LLC with respect to the DNR Lease.

D. FWDA is the owner of the real property (a portion of the Premises) legally described on Exhibit A to this Agreement and improvements, located along the western edge of the Waterway and to the east of Site 10 and Site 11, and which contains a portion of the Marina (the “FWDA Property”) and FWDA has agreed to modify and extend the Lease Agreement as to such property on the terms and conditions contained in this Amendment.

E. The City is the owner of the real property legally described on Exhibit B to this Agreement, and improvements located along the western edge of the Waterway and to the east of that property commonly known as Site 8 and Site 9, and which also contains a portion of the Marina (the “City Property”); and the City has agreed to modify and extend the Lease Agreement as to such property on the terms and conditions contained in this Lease Amendment.

F. The Lease Agreement commenced July 10, 2001 and expires on December 31, 2030.

G. Under the Lease Agreement, FWDA or the City may elect to convert all or a portion of the Premises known as the Muni Dock Moorage area to open space, transient moorage, or any other public service (the “Specified Moorage”), in which event either party may

deliver notice of such election to Lessee as prescribed by the Lease Agreement. On receipt of notice from FWDA or the City, Lessee must exercise its partial lease termination option as to the DNR Lease.

H. In the event FWDA or the City elect to convert all or a portion of the Muni Dock Moorage area to a public service as described above the City has agreed to reimburse Lessee for certain costs under Section 8.3 of the Lease Agreement.

I. The parties wish to amend the Lease Agreement to provide for a revised term of thirty (30) years, commencing on the mutual execution of this Amendment and revised provisions for conversion of a portion of the Muni Dock Moorage area to a public service and the payments due Lessee.

AGREEMENT

In furtherance of the Recitals set forth above, which are incorporated herein by reference, and in consideration of the mutual promises and covenants set forth below, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties acknowledge and agree to the following:

1. Term. Section 2 of the Lease Agreement is hereby amended to read as follows:

1.1 Amended Term. The term of the Lease Agreement (the "Term") will commence on the date set forth in the first paragraph of this Amendment and will terminate thirty (30) years from the date of mutual execution of the First Amendment to Lease Agreement, or _____, 2048.

1.2 Lessor's Good-Faith Cooperation. FWDA and the City acknowledge that the term of this Lease prior to amendment was to be coextensive with the term of the DNR Lease. In light of the amendment of the Term of this Lease Agreement, FWDA and the City agree to cooperate in good faith and to provide reasonable assistance to Lessee in extending the term of the DNR Lease.

2. Section 8.3 of the Lease Agreement is hereby amended to read as follows:

In the event the City or FWDA desires to convert all or part of the Muni Dock Moorage area to open space, transient moorage or any other public service, either entity shall have the right to cause Lessee to exercise its partial release option under Section 3.2 of the DNR Lease. Prior to exercising this right: a) prior to exercising this right, the City or FWDA must hold permits to allow the cleanup and redevelopment of the Muni Dock site and the Muni Dock Moorage area, and have financing sufficient to complete the proposed improvements; and b) the City or FWDA (whichever is exercising the right) shall have cooperated with Lessee to design the proposed improvements to minimize the impact on the marina and its operation. To exercise such right, City or FWDA shall deliver not less than one hundred fifty (150) days written notice to Lessee (which notice will specify the portion of the moorage within the Muni Dock Moorage Area to be affected (the "Specified First Amendment to Lease Agreement (Shorelands)

Moorage"), will include the date on which the Specified Moorage shall be released from the applicable DNR Lease, and shall state that such area will be used only for open space, transient moorage or other public services), and Lessee shall promptly exercise its option such that the DNR Lease terminates with respect to the Specified Moorage on or before such date. Prior to the effective date of such termination, Lessee agrees to terminate any remaining tenant and other rights to use such area. All docks, floats, ramps and related equipment used in connection with the operation of the Specified Moorage shall be surrendered to the City in good condition and repair unless City gives Lessee written notice to remove any such equipment, in which case Lessee shall remove same from the Specified Moorage at no cost to City and repair any damage caused by such removal. Simultaneously with the effective date of such termination and provided Lessee has complied with its obligations under this Section 8.2, the City agrees to reimburse Lessee the amount set forth in Section 8.3 hereof for the termination of the Specified Moorage and the docks, floats, ramps and related equipment conveyed to the City pursuant to this Section 8.2.

3. Section 8.3 of the Lease Agreement is hereby amended to read as follows:

If the City or FWDA exercise its right to terminate the DNR Lease as to the Specified Moorage under Section 8.2 above, the City will pay Lessee the fair market value, calculated as of the date of Lessee's partial termination of the DNR Lease and based upon normal appraisal and valuation methods, of the Marina slips lost by result of the early termination, including without limitation the Specified Moorage(s) and the docks, floats, ramps, and related equipment. The Marina slips for which Lessee is entitled to payment hereunder are limited to in-water structures (including access ramps).

4. Defined Terms. All capitalized terms, unless otherwise defined in this Amendment, will have the meaning given in the Lease Agreement.

5. Full Force and Effect. Except as specifically amended by this First Amendment to Lease Agreement, the remainder of the Lease Agreement remains in full force and effect and binding on the parties.

6. Counterparts. This First Amendment to Lease Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which, together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed the First Amendment as of the Effective Date.

CITY OF TACOMA, a Washington municipal corporation

By: _____
Printed Name: _____
Title: _____
Date: _____

Approved as to Form:

FOSS WATERWAY DEVELOPMENT
AUTHORITY, a public corporation chartered by the
City of Tacoma, Washington

By: _____
Printed Name: _____
Title: _____
Date: _____

FOSS HARBOR MARINE, LLC, a Washington
limited liability company

By: _____
Printed Name: _____
Title: _____
Date: _____