

**AGREEMENT FOR TRANSFER OF  
FOSS WATERWAY PARKS**

THIS AGREEMENT FOR TRANSFER OF FOSS WATERWAY PARKS (the “Agreement”) is dated as of \_\_\_\_\_, 2020 (for reference purposes only) and is by and between the FOSS WATERWAY DEVELOPMENT AUTHORITY (“FWDA”), a public corporation organized under the laws of the State of Washington, the METROPOLITAN PARK DISTRICT OF TACOMA (“Metro Parks”), a municipal corporation organized under the laws of the State of Washington, and the CITY OF TACOMA (the “City”), a Washington municipal corporation and first-class city. FWDA, Metro Parks and the City are sometimes collectively referred to as the “Parties.”

**RECITALS**

A. The FWDA was established by the City in 1996 to assist in redeveloping certain real property in and along the Foss Waterway, by acquiring, managing and disposing of real property, securing financing, undertaking or providing for redevelopment and entering into agreements with developers proposing to develop projects along the Waterway.

B. Beginning in 1997, the City and FWDA executed a series of Operating Agreements to guide the FWDA's work, the final extension of which expires December 31, 2020. The FWDA is in the process of dissolving and its responsibilities and obligations are being assumed by the City.

C. The FWDA has successfully designated all public access and parks along the waterway including park development, design, and initiated fundraising for parks not yet completed.

D. The FWDA was not intended to be a permanent entity, and after more than twenty years and the substantial completion of the FWDA's mission, the FWDA and the City concur that the time is right to conclude the work of the FWDA and transition the park properties to Metro Parks.

E. FWDA currently owns the Melanie Jan LaPlant Dressel Park, Waterway Park, and the southerly portion of George H. Weyerhaeuser Jr. Park, which are more particularly depicted and described in Exhibit A (the “FWDA Parks”).

F. Metro Parks was created in 1907 for the management, control, improvement, maintenance, design and acquisition of parks, parkways, boulevards, avenues, playgrounds, and aviation landings, and to conduct forms of recreation or business judged desirable or beneficial for the public within the City and certain areas of Pierce County.

G. For over fifteen years, FWDA, Metro Parks, and the City have worked together to plan a system of parks and open space along the Thea Foss Waterway. These efforts assumed that Metro Parks would be the ultimate owner of the park properties along the Foss, as long as the properties had been properly remediated and supported by sustainable long-term maintenance and operations funding.

H. The Parties find it mutually beneficial and in the public's best interest to transfer the FWDA Parks to Metro Parks and then to collaborate on the development of the FWDA Parks and funding the operations and maintenance of the Parks.

I. Chapter 39.33 RCW (Intergovernmental Disposition of Property) permits local government units to transfer or exchange title to real property on such terms and conditions as may be mutually agreed upon by the proper authorities of said local government units.

In consideration of the mutual promises and undertakings hereinafter set forth and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

### **AGREEMENT**

1. Recitals. The recitals are incorporated herein by reference.
2. Conditions to Transfer of the Parks. FWDA, or its successors or assigns, and the City shall transfer ownership of the FWDA Parks to Metro Parks when all of the following conditions are satisfied:
  - A. The City has executed a Hazardous Substances Indemnification Agreement in which the City indemnifies Metro Parks and its successors from any claims or liability relating to any hazardous substances at the FWDA Parks, substantially in the form attached as Exhibit B;
  - B. Metro Parks has reviewed and approved a preliminary commitment for title insurance for the FWDA Parks; and
  - C. The Parties have identified adequate and sustainable funding sources for the ongoing operations and maintenance of the Parks in mutually agreeable amounts.
3. Transfer Instruments. FWDA shall convey the FWDA Parks to Metro Parks by quitclaim deed, will assign the Berg Scaffolding Lease associated with Waterway Park, and will transfer all of the improvements related to the FWDA Dock by bill of sale.

4. Obligations at Closing.
  - A. Closing Costs. The Parties will split all closing costs associated with the conveyance of the Parks.
  - B. Consent Decree. At or prior to closing and at no cost to Metro Parks, Metro Parks will become party to that certain Consent Decree, among the FWDA, the City and the Washington State Department of Ecology, dated October 19, 1994, which was comprehensively amended April 30, 2002, and re-titled Consent Decree – First Comprehensive Amendment and entered in Pierce County Superior County under Cause No. 94-2-10917-6, as it may be further amended (the “Consent Decree”).
  - C. Closing Date. Closing shall occur on or before December 31, 2020.
5. Representations and Warranties Regarding the Parks Upon Transfer. The FWDA and the City jointly and severally represent and warrant to Metro Parks at the time of conveyance to Metro Parks and with regard to the FWDA Parks as follows:
  - A. The FWDA and the City will have provided to Metro Parks all environmental documents and records related to the Parks, including leases, contracts, environmental reviews, notices from any governmental bodies affecting the FWDA Parks, the operation and/or the management of the FWDA Parks.
  - B. The FWDA and the City are in full compliance with the Consent Decree – First Comprehensive Amendment (and any subsequent amendments, additions or changes) (collectively the “Consent Decree”).
  - C. The remedial action of the FWDA Parks has been completed in accordance with all applicable requirements and no further action is necessary.
  - D. No containment system, treatment system or monitoring system is installed in the Parks that require any present or future operation or maintenance obligations.
6. Possession, Operation and Maintenance of the FWDA Parks.
  - A. Metro Parks shall have possession of the FWDA Parks upon Closing at which time Metro Parks will be responsible for the operations and maintenance of the FWDA Parks.
  - B. Upon the termination of the Berg Lease at Waterway Park, the City agrees to remove any remaining improvements on Waterway Park that Metro Parks is not incorporating into its park design and perform at its sole expense such remedial and cleanup work as required by law to make Waterway Park suitable for development as a public park.

7. Funding for the Parks.

A. Initial Source of Operations and Maintenance Funding. FWDA has transferred \$500,000 to the Greater Tacoma Community Foundation (the "Foundation") for future use for the Parks. As provided in the Gift Agreement attached as Exhibit C, earnings shall be used for operations and maintenance costs and funds may be drawn by the entity providing operations and maintenance of the FWDA Parks.

B. Melanie's Park. The City will transfer Seven Hundred and Fifty Thousand Dollars (\$750,000.00) to Metro Parks on or before March 31, 2021 which funds were appropriated for the cost of improvements to Melanie's Park. Metro Parks shall only use these funds to pay for the improvements to Melanie's Park.

C. Future Sources of Funding. The parties acknowledge and agree that Metro Parks' acceptance of the FWDA Parks will result in an increase in Metro Parks' operations and maintenance costs. These additional costs will be funded by the City through the 2016 Interlocal Agreement Relating to Parks and Facility Operations and Maintenance and pursuant to the Fourth Amendment to Agreement of Marina Lease by and between Foss Waterway Development Authority and Foss Waterway Management LLC dated January 1, 2015, which Lease will be assigned from the FWDA to the City or such other funding source that is mutually agreeable to Metro Parks and the City. The Parties acknowledge that the Fourth Amendment to Agreement of Marina Lease by and between Foss Waterway Development Authority and Foss Waterway Management LLC dated January 1, 2015, which Lease will be assigned from the FWDA to the City (as Landlord), specifies beginning in 2026, the Landlord has agreed to place the Annual Rent with the Greater Tacoma Community Foundation and dedicate it to the ongoing maintenance of the Parks. The Annual Rent is expected to be \$60,000 per year plus any increase in the CPI.

8. Indemnification.

A. Metro Parks Indemnification. Metro Parks shall defend, indemnify and hold FWDA and the City, and their officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney's fees, arising out of or resulting from the acts, errors or omissions of Metro Parks in performance of this Agreement, except for injuries and damages caused by the sole negligence or wrongful; acts or omissions of the City and/or FWDA. It is further specifically and expressly understood that the indemnification provided herein constitutes Metro Parks' waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

B. City Indemnification. The City shall defend, indemnify and hold Metro Parks, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney's fees, arising out of or resulting from the acts, errors or omissions of the City in performance of this Agreement, except for injuries and damages caused by the sole negligence or wrongful; acts or omissions of Metro Parks. It is further specifically and expressly understood that the indemnification provided herein constitutes the City's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

C. FWDA Indemnification. FWDA shall defend, indemnify and hold Metro Parks, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney's fees, arising out of or resulting from the acts, errors or omissions of FWDA in performance of this Agreement, except for injuries and damages caused by the sole negligence or wrongful; acts or omissions of Metro Parks. It is further specifically and expressly understood that the indemnification provided herein constitutes the FWDA's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

D. Liability Limitation for Concurrent Negligence. In the event of liability for damages of any nature whatsoever arising out of the performance of this Agreement and caused by or resulting from the concurrent negligence of Metro Parks, the City and/or FWDA, each party's liability hereunder shall only be to the extent of that party's negligence.

9. Continuation and Survival of Representations, Warranties and Indemnities. All representations and warranties by the respective parties contained herein are intended to and shall remain true and correct as of the time of closing, shall be deemed to be material, and shall survive the execution and delivery of the deed and the transfer of title. All indemnities by the respective parties contained herein are intended to and shall survive the execution and delivery of the deed and the transfer of title.
10. No Third Party Beneficiaries. Nothing in this Agreement expressed or implied is intended or shall be construed to give to any person other than the FWDA, Metro Parks and the City any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenant, condition or provision herein contained; and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the FWDA, Metro Parks and the City.

11. Notices. All notices, demands or requests that may or are required to be given by any party to another under this Agreement shall be given in writing and delivered personally, sent by U.S. certified mail, postage prepaid, return receipt requested, or nationally recognized overnight air carrier, or by electronic mail (e-mail) and addressed to the parties at the addresses below:

If to FWDA: Norman Gollub  
Foss Waterway Development Authority  
535 Dock Street, Suite 204  
Tacoma, WA 98402-4630  
E-Mail: ngollub@thefoss.com

Copy to: Gerry Johnson  
Pacifica Law Group  
1191 – 2<sup>nd</sup> Avenue, Suite 2000  
Seattle, WA 98101-3404  
E-Mail: Gerry.Johnson@pacificalawgroup.com

If to Metro Parks: Debbie Terwilleger  
Metropolitan Park District of Tacoma  
4702 S. 19<sup>th</sup> Street  
Tacoma, WA 98405-1175  
E-Mail: debbiet@tacomaparks.com

Copy to: Mark R. Roberts  
Roberts Johns & Hemphill PLLC  
7525 Pioneer Way, Ste. 202  
Gig Harbor, WA 98335  
E-Mail: mark@rjh-legal.com

If to City: Jennifer S. Hines, Esq.  
Real Property Services Manager  
City of Tacoma  
747 Market Street, Room 737  
Tacoma, WA 98402  
E-Mail: jhines@cityoftacoma.org

Copy to: Steve Victor  
Assistant City Attorney  
City of Tacoma  
747 Market Street, Room 1120  
Tacoma, WA 98402  
E-Mail: svictor@cityoftacoma.org

Notices shall be deemed to have been given upon receipt or attempted delivery where delivery is not accepted. Any party to this Agreement may change its

address and/or those receiving copies of notices upon written notice given to the other.

12. Modification. Any changes to this Agreement requested by any party may only be effected if mutually agreed upon in writing and signed by duly authorized representatives of all parties.
13. Time. Time is of the essence of this Agreement and of each covenant and act that is to be performed at or within a particular time.
14. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Washington.
15. Severability. If any provision of this Agreement is determined to be invalid or unenforceable, then that provision and the remainder of this Agreement shall continue in effect and be enforceable to the fullest extent permitted by law. It is the intention of the Parties that if any provision of this Agreement is capable of two constructions, one of which would render the provision void, and the other of which would render the provision valid, then the provisions shall have the meaning that renders it valid.
16. Interpretation. The headings or titles of the sections of this Agreement are intended for ease of reference only and shall have no effect whatsoever on the construction or interpretation of any provision of this Agreement. All provisions of this Agreement have been negotiated at arm's length and this Agreement shall not be construed for or against any party by reason of the authorship or alleged authorship of any provision hereof. This Agreement shall be interpreted and construed according to the laws of the State of Washington; venue shall only be in Pierce County, Washington.
17. Dispute Resolution. In the event of a dispute between the Parties arising out of or related to the Agreement, the Parties agree to follow the procedures in this Section prior to filing or initiating a lawsuit. The Parties shall make their best efforts to resolve disputes as expeditiously as possible through negotiations at the lowest possible decision-making level, and in the event such negotiations are unsuccessful, the matter shall be referred to the Metro Parks' Executive Director and the City Manager on behalf of the City and FWDA. If those officials are unable to resolve the dispute within a period of fifteen (15) days after the matter has been formally referred to them for resolution, they shall meet during the immediately succeeding seven (7) days to select a mediator to assist in the resolution of such dispute. The Parties agree to participate in the mediation with the agreed upon mediator for a reasonable amount of time and in good faith. The cost of the mediation shall be shared equally between the Parties to the mediation.

18. Attorney's Fees. In any action arising out of or relating to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, expert witness fees and costs.
19. Authority. Each party represents to the other that it has full power, authority and legal right to execute, deliver and perform this Agreement, and all other documents and certificates contemplated hereby, and the execution, delivery and performance thereof have been duly authorized.
20. Counterparts. This Agreement may be executed in counterparts for the convenience of the Parties, and such counterparts shall together constitute one Agreement.

FWDA:

FOSS WATERWAY DEVELOPMENT AUTHORITY, a Washington public corporation

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Metro Parks:

METROPOLITAN PARK DISTRICT OF TACOMA, a Washington municipal corporation

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

City:

CITY OF TACOMA, a Washington municipal corporation

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_



**EXHIBIT A**  
**DEPICTION AND LEGAL DESCRIPTION OF FWDA PARKS**  
**MELANIE JAN LAPLANT DRESSEL PARK**



**Property Name:** Melanie Jan LaPlant Dressel Park  
**Parcel Numbers:** 8950001971  
**Address:** 1147 Dock Street  
**Square Footage:** 30,597 SF or .70 acres

**Assessor's Legal:** Section 04 Township 20 Range 03 Quarter 24 TACOMA TIDELANDS:  
TACOMA TIDELANDS S 1/2 L 12, L 13 & 14 & N 1/2 L 15 B 62 SEG G 0662

**Site History:** Not under the Area Wide Consent Decree. DOE No Further Action Letter applies.

**Additional Information:** DOE Restrictive Covenants apply; no pile driving in or along shoreline. DOE staff person involved in remediation of mercury along shoreline was Joyce Mercuri. FWDA pays FWOA for mowing this park as needed once or twice a year.

## WATERWAY PARK



**Property Name:** Waterway Park  
**Parcel Numbers:** 8950001791 (South Parcel) and 8950001761 (North Parcel)  
**Address:** 2130 & 2110 E. "D" Street  
**Square Footage:** 85,813 SF and 75,000 SF: combined 160,81 SF or 3.69 acres

### Assessor's Legal:

8950001791 - Section 04 Township 20 Range 03 Quarter 43 TACOMA TIDELANDS: TACOMA TIDELANDS SE 04 & NE 09 20-03E SEG'D FOR TAX PURPOSES ONLY PER R90962 DESC AS L 13 THRU 23 B 55 TOG/W L 18 THRU 23 B 7119 & TOG/W L 14 THRU 23 B 7120 OF TACOMA LD CO 1ST EXC FOLL DESC PROP: COM SE COR L 23 SD B 7120 TH N ALG E LI SD B 7120 44 FT TH SWLY TO A PT ON S LI L 23 SD B 7120 SD PT 125 FT W OF SE COR L 23 TH E ALG S LI SD L 23 DIST OF 125 FT TO POB EXC THAT POR CYD TO CY OF TACOMA FOR R/W PER ETN 4074655 OUT OF 179-0 2071190020, 003-1, 2071200020, 003-1 SEG I-0656CL 04-16-97 DC05/26/06LW

8950001761 - Section 04 Township 20 Range 03 Quarter 43 TACOMA TIDELANDS: TACOMA TIDELANDS SE 04 & NE 09 20-03E L 3 THRU 12 B 55 EXC THAT POR CYD TO CY OF

TACOMA FOR R/W PER ETN 4074656 OUT OF 176-0, 177-0 & 178-0 SEG I0656CL 04/16/97  
DC05/26/06LW

**Current Use:** All of Parcel 8950001791 and most of parcel 8950001761 is leased to Berg Scaffolding by the FWDA. FWDA may use the area waterward of the fence line for public access and human powered watercraft activities.

**Berg Lease:** Expired April 23, 2021. Rent \$2,785.38 per month plus leasehold excise tax.

**Site History:** Not under the Area Wide Consent Decree. A Consent Decree with DOE is in force on parcel 8950001761 which is known as the American Plating Site. Remediation has been completed by the FWDA and a site closure will occur with redevelopment of the property as a park.

**Additional Information:**

October 11, 2017 letter to Gollub references an Environmental Covenant, but nothing is recorded.

**GEORGE H. WEYERHAEUSER JR. PARK  
(FWDA Parcels)**



**Portion from FWDA to Metro Parks**





**Property Name:** George H. Weyerhaeuser Jr. Park  
**Parcel Numbers:** 8950001822 (north parcel) 8950001832 (south parcel) to Metro Parks  
**Address:** 2119 & 2101 Dock Street  
**Square Footage:** 30,000 SF & 23,997 SF combined total 1.24 acres  
**Assessor's Legal:**

8950001822 - Section 04 Township 20 Range 03 Quarter 34 TACOMA TIDELANDS LAND ONLY LOT 1 THRU 6 INCL BLK 57 SUBJ TO EASE OF RECORD PER AFN 83-08-11-0336 (DCD1078CA10-24-85)

8950001832 - Section 04 Township 20 Range 03 Quarter 34 TACOMA TIDELANDS: TACOMA TIDELANDS L 7 THRU 12 B 57 SUBJ TO EASE EXC FOLL DESC PROP BEG SW COR B 57 TH N ALG W LI SD B 57 TO NW COR L 7 SD B 57 TH E ALG N LI SD L 7 DIST OF 12 FT TH SELY TO A PT ON S LI SD B 57 SD PT BEING 68 FT E OF SW COR SD B 57 TH W ALG S LI SD B 57 68 FT TO POB SE OF SW 04-20-03E APPROX 24,000 SQ FT OUT OF 183-0 SEG S-0347 DL ES

**Site Characteristics:** Environmental clean-up of shoreline to inner harbor line by Department of Ecology. Capping with 6" of impervious surface or 3' of clean soil by City of Tacoma with development of park.

**Additional Information:** Restrictive Covenants for protection of the in-water capping system under the Superfund clean-up. Restrictive Covenants on file at Foss Waterway Development Authority or documents are available through Pierce County Records. The bank is part of the City's habitat enhancement area under the Superfund clean-up.

**Additional Information:**

FWDA has been paying \$5,000/year to FWOA for maintenance of that park

**EXHIBIT B  
HAZARDOUS SUBSTANCES INDEMNIFICATION AGREEMENT**

<p><b>HAZARDOUS SUBSTANCES INDEMNIFICATION AGREEMENT</b></p> <p><b>RELATED TO</b></p> <p><b>FOSS WATERWAY PARKS</b></p>
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THIS HAZARDOUS SUBSTANCES INDEMNIFICATION AGREEMENT (the "Agreement") is dated as of \_\_\_\_\_, 2020 (for reference purposes only) and is by and between the CITY OF TACOMA (the "City"), a Washington municipal corporation and first-class city and the METROPOLITAN PARK DISTRICT OF TACOMA ("Metro Parks"), a municipal corporation organized under the laws of the State of Washington.

**WITNESSETH**

WHEREAS, the parties entered into the Agreement For Transfer of Foss Waterway Parks dated \_\_\_\_\_, 2020 (the "FWDA Transfer Agreement") for the transfer of the Melanie Jan LaPlant Dressel Park, Waterway Park, and the southerly portion of George H. Weyerhaeuser Jr. Park, which are legally described in Exhibit A (the "FWDA Parks").

WHEREAS, as a condition to Metro Parks' acceptance of the FWDA Parks and becoming a party to that certain Consent Decree, among the FWDA, the City and the Washington State Department of Ecology, dated October 19, 1994, which was comprehensively amended April 30, 2002, and re-titled Consent Decree – First Comprehensive Amendment and entered in Pierce County Superior County under Cause No. 94-2-10917-6, as it may be further amended (the "Consent Decree"), the City has agreed to provide an indemnity to Metro Parks as provided herein.

NOW, THEREFORE, in consideration of the mutual benefits to be derived by the parties, it is agreed as follows:

**INDEMNITY AGREEMENT**

1. The City shall defend, indemnify and hold Metro Parks, its successors in interest, its elected officials and employees harmless from and against any and all claims, demands, causes of action, damages, liabilities, losses and expenses, and all costs of

review and/or defense, including, without limitation, attorney's fees relative thereto caused by or resulting from the presence of any substance or material on or beneath the FWDA Parks, including but not limited to any substance or material that could be considered an environmental contaminant as defined herein.

2. This agreement by the City to indemnify and hold Metro Parks harmless is to apply to claims brought by any third party based upon any state or federal statutory or common law and shall include but not be limited to claims for or related to the clean-up, storage, treatment, handling, disposal, or transportation, or presence of or threatened release or discharge of any contaminants at, to, from, beneath, or near the FWDA Parks, and any property damage or damages for personal injury related thereto.

3. This agreement to indemnify and hold harmless is to apply to all claims, arising from contamination which occurred prior to transfer of the FWDA Parks title to Metro Parks, except it shall not apply to any contamination occurring on the FWDA Parks resulting directly from action or direction of Metro Parks in violation of the Consent Decree, or and restrictive covenants recorded against the respective FWDA Parks.

4. The City agrees to be responsible for any and all obligations or requirements provided pursuant to the Consent Decree, its amendments and/or as otherwise provided in the FWDA Transfer Agreement. The City agrees to reimburse Metro Parks for any costs or fees, including attorney's fees incurred by Metro Parks and associated with any of Metro Parks' obligations pursuant to the Consent Decree and/or its amendments.

5. In the event a claim is made against Metro Parks, giving rise to an obligation on the part of the City to defend Metro Parks under the agreement to indemnify and hold harmless set forth above, the City shall defend such claims. After the claim against Metro Parks has been terminated, either through litigation or settlement, Metro Parks shall be liable for that portion of costs and damages attributable to its conduct, and the City and Metro Parks shall attempt to reach a settlement agreement allocating to Metro Parks a portion paid in settlement or judgment arising from the claim and costs of defense, if any, allocable to contamination for which Metro Parks is responsible. If the parties are unable to reach a settlement agreement, they shall select a mutually agreeable arbitrator to decide upon a fair and appropriate allocation. If the parties are unable to decide upon a mutually agreeable arbitrator within 30 days following written demand thereof, then either party may apply to the Pierce County Superior Court for the appointment of an arbitrator. Any arbitration shall be conducted according to the arbitration laws of the state of Washington.

6. The provisions of this Agreement, shall survive the closing of the FWDA Parks transaction and be in addition to the terms in the FWDA Transfer Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date below each signature.

<p>CITY OF TACOMA, a Washington municipal corporation</p> <p>By: _____ Name: _____ Title: _____ Date: _____</p>	<p>METROPOLITAN PARK DISTRICT OF TACOMA, a Washington municipal corporation</p> <p>By: _____ Name: _____ Title: _____ Date: _____</p>
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## **EXHIBIT A**

### **LEGAL DESCRIPTION OF FWDA PARKS**

#### **MELANIE JAN LAPLANT DRESSEL PARK**

**Tax Parcel Number:** 8950001971

**Address:** 1147 Dock Street

**Assessor's Legal:** Section 04 Township 20 Range 03 Quarter 24 TACOMA TIDELANDS:  
TACOMA TIDELANDS S 1/2 L 12, L 13 & 14 & N 1/2 L 15 B 62 SEG G 0662

#### **WATERWAY PARK**

**Tax Parcel Numbers:** 8950001791 (South Parcel) and 8950001761 (North Parcel)

**Address:** 2130 & 2110 E. "D" Street

**Assessor's Legal:**

8950001791 - Section 04 Township 20 Range 03 Quarter 43 TACOMA TIDELANDS: TACOMA TIDELANDS SE 04 & NE 09 20-03E SEG'D FOR TAX PURPOSES ONLY PER R90962 DESC AS L 13 THRU 23 B 55 TOG/W L 18 THRU 23 B 7119 & TOG/W L 14 THRU 23 B 7120 OF TACOMA LD CO 1ST EXC FOLL DESC PROP: COM SE COR L 23 SD B 7120 TH N ALG E LI SD B 7120 44 FT TH SWLY TO A PT ON S LI L 23 SD B 7120 SD PT 125 FT W OF SE COR L 23 TH E ALG S LI SD L 23 DIST OF 125 FT TO POB EXC THAT POR CYD TO CY OF TACOMA FOR R/W PER ETN 4074655 OUT OF 179-0 2071190020, 003-1, 2071200020, 003-1 SEG I-0656CL 04-16-97 DC05/26/06LW

8950001761 - Section 04 Township 20 Range 03 Quarter 43 TACOMA TIDELANDS: TACOMA TIDELANDS SE 04 & NE 09 20-03E L 3 THRU 12 B 55 EXC THAT POR CYD TO CY OF TACOMA FOR R/W PER ETN 4074656 OUT OF 176-0, 177-0 & 178-0 SEG I0656CL 04/16/97 DC05/26/06LW

#### **GEORGE H. WEYERHAEUSER JR. PARK**

**Tax Parcel Numbers:** 8950001822 and 8950001832

**Address:** 2119 & 2101 Dock Street

**Assessor's Legal:**

8950001822 - Section 04 Township 20 Range 03 Quarter 34 TACOMA TIDELANDS LAND ONLY LOT 1 THRU 6 INCL BLK 57 SUBJ TO EASE OF RECORD PER AFN 83-08-11-0336 (DCD1078CA10-24-85)

8950001832 - Section 04 Township 20 Range 03 Quarter 34 TACOMA TIDELANDS: TACOMA TIDELANDS L 7 THRU 12 B 57 SUBJ TO EASE EXC FOLL DESC PROP BEG SW COR B 57 TH N ALG W LI SD B 57 TO NW COR L 7 SD B 57 TH E ALG N LI SD L 7 DIST OF 12 FT TH SELY TO A PT ON S LI SD B 57 SD PT BEING 68 FT E OF SW COR SD B 57 TH W ALG S LI SD B 57 68 FT TO POB SE OF SW 04-20-03E APPROX 24,000 SQ FT OUT OF 183-0 SEG S-0347 DL ES

**EXHIBIT C**  
**DEVELOPMENT CONTRIBUTION AGREEMENT**  
**4<sup>th</sup> Amendment to the**  
**Memorandum of Lease**  
**Between**  
**Foss Waterway Development Authority**  
**And**  
**Foss Waterway Management LLC**

**DEVELOPMENT CONTRIBUTION AGREEMENT**

This DEVELOPMENT CONTRIBUTION AGREEMENT ("Agreement") is made effective as of Jan 1, 2014, by and between FOSS WATERWAY DEVELOPMENT AUTHORITY, a Washington public development authority chartered by the City of Tacoma, and its successors and assigns ("FWDA"), and FOSS WATERWAY MANAGEMENT LLC, a Washington limited liability company ("FWM") (collectively, the "Parties").

**RECITALS**

A. FWDA is landlord and FWM is tenant under the Agreement of Marina Lease dated March 16, 2006 ("Initial Lease"), as amended by the Amendment No. 1 Marina Lease last executed on March 29, 2007, Amendment to Agreement of Marina Lease dated December 31, 2011, Second Amendment to Agreement of Marina Lease dated January 1, 2013, Third Amendment to Agreement of Marina Lease dated January 1, 2014, and Fourth Amendment to Agreement of Marina Lease of even date herewith ("Fourth Amendment") (collectively, the "Marina Lease"), concerning certain real property, including the improvements thereon, located on the Thea Foss Waterway in Tacoma, Washington ("Property"). Portions of the Property are aquatic lands leased from the State of Washington Department of Natural Resources by FWDA and the City of Tacoma as co-tenants under the Aquatic Lands Lease No. 22-002775 ("DNR Lease").

B. The Fourth Amendment adjusts certain obligations of the Parties under the Marina Lease commencing as of January 1, 2015 and continuing throughout the term of the Marina Lease (which expires December 31, 2025, subject to certain extension rights).

C. In consideration of the mutual promises and covenants set forth in the Fourth Amendment, the Parties desire that FWM make a payment to FWDA as follows, to be applied by FWDA as set forth herein.

**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:

**ORIGINAL**

1. Development Payment. Contemporaneously with its execution and delivery of this Agreement, FWM shall pay to FWDA One Million Five Hundred Thousand Dollars (\$1,500,000.00) (“Development Payment”). In the event that the Development Payment is subject to any tax or charge causing a potential tax obligation for FWM, FWM shall be responsible for timely paying such tax or charge at its sole cost and expense. FWM shall indemnify, defend and hold FWDA harmless from and against any assessment, imposition, lien or other FWM liability related to any such taxes, unless such taxes were collected by FWDA from FWM.

2. Disposition of Development Payment. Upon receipt of the Development Payment, FWDA hereby agrees to (a) apply One Million Dollars (\$1,000,000.00) of the Development Payment towards the repayment of the General Fund Loan FWDA incurred to fund the construction of the Marinas and (b) place Five Hundred Thousand Dollars (\$500,000.00) of the Development Payment in a reserve fund established by FWDA with the Greater Tacoma Community Foundation and dedicated to the ongoing maintenance of the George H. Weyerhaeuser Jr. Park, Central Park and Waterway Park on the Thea Foss Waterway.

3. Termination Payment. In the event that the Marina Lease is terminated on or before December 31, 2024, for reasons other than the default or breach of FWM under the Marina Lease or any default or breach under the DNR Lease caused by FWM, and so long as FWM is not in default under the Marina Lease, FWDA shall pay FWM a lease termination payment at termination (the “Termination Payment”) that is equal to the applicable termination payment as shown on Exhibit A to this Agreement.

4. Fourth Amendment. In consideration of the promises made herein, FWDA and FWM agree to execute and deliver the Fourth Amendment simultaneously with the execution and delivery of this Agreement. If the mutual execution and delivery of the Fourth Amendment is delayed or otherwise does not occur simultaneously with the mutual execution and delivery of this Agreement, this Agreement shall be voidable by FWDA upon written notice to FWM.

5. Entire Agreement. This Agreement constitutes the entire agreement between FWDA and FWM with respect to the subject matter of this Agreement.

6. Counterparts. This Agreement may be executed in one or more facsimile or PDF counterparts, each of which shall be deemed the original, but which together shall constitute one and the same instrument.

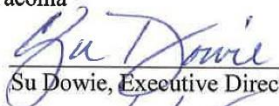
7. Authority. FWDA and FWM each represent and warrant to the other that the person executing this Agreement on such party’s behalf has executed the Agreement pursuant to proper and presently effective authorization.

**ORIGINAL**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

**FWDA:**


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

By:   
Su Dowie, Executive Director

Date: 1/1/15

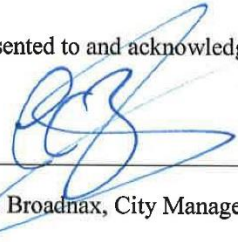
**FWM:**

FOSS WATERWAY MANAGEMENT  
LLC, a Washington limited liability  
company


By:   
Dwight Jones

Date: 1/1/2015

Consented to and acknowledged by:

  
T. C. Broadnax, City Manager

Approved as to form:

  
City Deputy Attorney

**ORIGINAL**

EXHIBIT A  
EARLY TERMINATION

Year	Amount of Termination Payment
2015	\$1,500,000.00
2016	\$1,350,000.00
2017	\$1,200,000.00
2018	\$1,050,000.00
2019	\$900,000.00
2020	\$750,000.00
2021	\$600,000.00
2022	\$450,000.00
2023	\$300,000.00
2024	\$150,000.00
2025	\$00.00

**ORIGINAL**

