

**FIRST AMENDMENT TO
THIRD OPERATING AGREEMENT BETWEEN
THE CITY OF TACOMA AND
FOSS WATERWAY DEVELOPMENT AUTHORITY**

THIS FIRST AMENDMENT TO THIRD OPERATING AGREEMENT (this "First Amendment") is made and entered into as of the ____ day of _____, 201____, by and between THE CITY OF TACOMA (the "City"), a Washington municipal corporation and first-class charter city, and the FOSS WATERWAY DEVELOPMENT AUTHORITY (the "FWDA"), a Washington public corporation chartered by the City, (collectively the "Parties"). In consideration of the mutual promises, benefits and covenants contained herein, the Parties agree to the terms and conditions of this First Amendment.

RECITALS:

1. The City and the FWDA previously entered into that certain **THIRD OPERATING AGREEMENT** dated January 11, 2011, (together with this First Amendment the "Agreement"); and

2. The parties desire to amend the Agreement in order to (1) extend the effective term of the Agreement, and (2) harmonize language and requirements currently in Sections 9.2 and 9.3 of the Agreement all as set forth below;

NOW, THEREFORE, the parties hereby amend the Agreement, as follows:

1. Section 2.1 of the Agreement is hereby deleted and replaced with the following:

2.1 The effective date and term of this Agreement shall be upon approval of the City council and the term shall extend until December 31, 2020 unless the City gives written notice to the FWDA at least one hundred eighty (180) days prior to December 31, 2018 of its intention to terminate this Agreement at the end of the City's 2017-18 budget biennium. In the event the City gives such a termination notice, the Parties will either renegotiate the terms of this Agreement or develop and commence a transition process, concluding in the orderly dissolution of the FWDA on a date determined by the Parties consistent with requirements of TMC 1.60.430.

2. Section 9.3 of the Agreement is hereby revised to read as follows:

9.3 *Capital Budget.* The City will timely notify the FWDA of the City's budgeting schedule and submittal requirements. The FWDA will, in accordance with the City budgeting schedule and budget requirements, timely prepare and submit to the City for review by the City Manager, or his or her designee, a

proposed FWDA biennial capital budget in a form acceptable to the City. The Foss Capital Improvement Plan shall conform to the City's six-year Capital Improvements Plan and shall, upon approval, be included therein. City support for the annual Foss Capital Improvement Plan is specifically subject to available City resources to be determined through its regular budget process. In budgeting City resources for the approved Foss Capital Improvement Plan, the City will take into account FWDA Proceeds available for this purpose.

3. Except as expressly modified or amended by this First Amendment, all other terms and conditions of the Agreement remain the same and in full force and effect.

FIRST AMENDMENT TO THIRD OPERATING AGREEMENT

IN WITNESS WHEREOF the parties hereto have executed this First Amendment as of the day and year first written above.

CITY OF TACOMA, WASHINGTON

FOSS WATERWAY DEVELOPMENT
AUTHORITY

By _____
T.C. Broadnax, City Manager

By 
Susan M. Dowie, Executive Director

Andrew Cherullo, Director
Finance Department

Approved as to form:

Deputy City Attorney

Attest:

Doris Sorum, City Clerk

Ricardo Noguera, Director
Community and Economic Development
Department

Saada Gegoux, Risk Manager