

**SECOND AMENDMENT TO FOSS WATERWAY DEVELOPMENT AUTHORITY  
LOAN AGREEMENT**

**THIS SECOND AMENDMENT** is made and entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 2017 (“Effective Date”), by and between the **CITY OF TACOMA**, a first class municipal corporation of the State of Washington (“City”) and **FOSS WATERWAY DEVELOPMENT AUTHORITY**, a public corporation chartered by the City of Tacoma pursuant to chapter 35.21 RCW and Chapter 1.60 of the Tacoma Municipal Code (“Borrower” or “FWDA”).

**WHEREAS** the City and FWDA entered into a Loan Agreement, dated November 14, 2007, and

**WHEREAS** the parties entered into the First Amendment in October 2014, to add additional properties to the list of assets that secure the \$4.1 million General Fund loan, and

**WHEREAS** to date, the remaining balance of the General Fund loan is \$2,456,525, and

**WHEREAS** the original 10 year term of the loan expires November 14, 2017, and the FWDA needs additional time to market and sell remaining properties on the Foss Waterway to generate the cash necessary to repay the loan, and

**WHEREAS** the parties agree that an extension of the term is reasonable, and

**WHEREAS** the Tacoma City Council authorized this loan extension via Resolution No. \_\_\_\_\_ October 10, 2017.

**NOW, THEREFORE**, in consideration of the mutual promises and obligations hereinafter set forth, the parties agree as follows:

1. The term for the loan expires December 31, 2020 and the Promissory Note, attached as Exhibit E to the 2007 Loan Agreement is hereby amended and attached.
2. All other terms of the Loan Agreement, together with all exhibits, are hereby ratified and shall remain in full force and effect, unaltered by this Amendment.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Amendment effective as of the Effective Date first written above.

**CITY OF TACOMA**

**FOSS WATERWAY DEVELOPMENT  
AUTHORITY**

\_\_\_\_\_  
Elizabeth A. Pauli, City Manager

\_\_\_\_\_  
Norm Gollub, Executive Director

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

\_\_\_\_\_  
Andy Cherullo, Finance Director

Approved as to Form:

\_\_\_\_\_  
Deputy City Attorney

\_\_\_\_\_  
City Clerk

## Exhibit E

### PROMISSORY NOTE Balfour Dock, Pier and Moorage

**\$4,100,000.00**      Date: December 31, 2020

**FOR VALUE RECEIVED**, the Foss Waterway Development Authority, a public corporation chartered by the City of Tacoma pursuant to Chapter 35.21 RCW and Chapter 1.60 of the Tacoma Municipal Code (“Borrower”), by and through its Executive Director, promises to pay in lawful money of the United States to the order of the City of Tacoma, a Washington first class city (“Lender”), at 747 Market Street, Tacoma, Washington 98402, attention City Treasurer, or at such other place as Lender may from time to time designate in writing, the principal sum of Four Million One Hundred Thousand and No/100 United States Dollars (\$4,100,000.00), or so much thereof as is advanced hereunder, with interest on the unpaid principal from the date hereof at the equivalent rate of the City Treasurer’s quarterly pooled interest earnings rate.

This note (the “Note”) is given pursuant to a Loan Agreement of even date herewith between Lender and Borrower (the “Loan Agreement”). Borrower shall be entitled to disbursement of loan proceeds as provided in the Loan Agreement and this Note shall be governed by the Loan Agreement.

No interim payments upon principal shall be required under this Note. The Borrower shall provide interest-only payments to the City on a quarterly basis as described below. The entire outstanding principal balance, together with any and all accrued interest and any costs and expenses due hereunder shall be payable in full on or before December 31, 2020 (the “Maturity Date”).

Upon disbursement as provided in the Loan Agreement, the outstanding principal balance shall bear interest at the rate equal to the composite interest rate earned on the investments of the City Treasury’s pooled cash portfolio for the previous calendar quarter, adjusted on the first day of each quarter. Interest on the outstanding principal balance shall accrue from the date of disbursement and shall be computed on the principal amount of the Draw outstanding on the basis of a 360-day year of twelve 30-day months for the amount of time the principal amount of the Draw is outstanding, up to and including the Maturity Date or prepayment. Principal of and interest on the Note shall be payable as described below.

Interest on the outstanding principal balance shall be payable to the City, quarterly on the first business day of each January, April, July, and October, commencing April 1, 2007. Upon the final payment of principal of and interest on the Note, the City shall surrender the Note to the FWDA for destruction or cancellation in accordance with law.

If any payment is not made when due, or if an Event of Default occurs under any of the Loan Agreement or Security Agreement of even date herewith between Borrower and Lender (collectively, an “Event of Default”), such failure or default shall constitute a default hereunder. In the event of such default, at the option of Lender, without prior notice, the entire balance of this Note shall immediately become due and payable. Timely payment is of the essence of this Note.

If suit is brought on this Note, or if it is placed in the hands of an attorney for collection, after any default, Borrower promises to pay all costs of collection, including actual attorneys' fees incurred thereby and fees in any bankruptcy or appellate proceeding, whether or not a suit is filed.

Borrower and all endorsers and all persons liable or to become liable on this Note, waive demand, presentment and protest, waive notice of demand, protest, dishonor and nonpayment, consent to any and all renewals and extensions of the time and payment hereof and further agree that at any time the terms of payment hereof may be modified or security released by agreement between Lender and Borrower without affecting the liability of any party to this Note or any person liable or to become liable with respect to any indebtedness evidenced thereby.

The term “Lender” as used herein shall include all future holders of this Note and any successors or assigns of Lender. The term “Borrower” shall include all successors and assigns of Borrower.

This Note governed by the laws of the State of Washington, excluding its choice of law rules that may otherwise require the application of the law of another jurisdiction.

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**NOTICE IS HEREBY GIVEN THAT ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, MODIFY LOAN TERMS, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**

