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City of Tacoma
City Clerk's Office
747 Market Street
Tacoma, Washington 98402

INTERLOCAL OPERATING AGREEMENT BETWEEN THE GREATER TACOMA REGIONAL CONVENTION CENTER PUBLIC FACILITIES DISTRICT AND THE CITY OF TACOMA

THIS INTERLOCAL AGREEMENT ("Operating Agreement") is made and entered into this 1st day of November, 1999, between the GREATER TACOMA REGIONAL CONVENTION CENTER PUBLIC FACILITIES DISTRICT ("District") and THE CITY OF TACOMA ("Tacoma"), collectively the "Parties".

RECITALS

WHEREAS, starting in 1996, Tacoma, in collaboration with the Tacoma Pierce County Visitor and Convention Bureau, began a series of marketing, feasibility, and design studies for the Bicentennial Pavilion, and

WHEREAS The studies concluded that the size and amenities of the Pavilion are below market standards and that in it's existing condition, the pavilion can capture only a limited share of conventions held in the region; the studies also determined that the existing site for the Pavilion has limited potential for expansion. The City thus decided that a new regional convention center would make more sense than a remodel of the current facility, and

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WHEREAS construction of a new regional convention center is projected to generate in excess of $45 million of economic impact to the region with over 300 events and 250,000 attendees scheduled in the new convention center by the year 2005; the events would fill hotel rooms, restaurants, and shopping and entertainment districts in the region on a regular basis, and

WHEREAS Tacoma desires to build and operate a new regional convention center ("Convention Center") which will be located between Pacific Avenue and Market Street and South 15th and South 17th Streets fronting Pacific Avenue at the 15th Street entrance into the city; the preferred site links the downtown core and Union Station/University of Washington District; the Convention Center will span over Commerce Street, the preferred route for Sound Transit's "Link" light rail system; and the site is large enough to accommodate parking and the long-term expansion needs of the Convention Center and includes property already owned by the City.

WHEREAS Tacoma is now appraising properties within this site and is negotiating for purchase and sale of the properties, relocation of owners, tenants, and businesses in the area, and has already appropriated and expended funds for the initial study, analysis of site locations, and preliminary design studies, and

WHEREAS Tacoma, contingent upon approval of the City Council, will issue up to $51,000,000 in bonds to pay for site acquisition, preconstruction activities, and the design, construction, management, operation, and maintenance of the Convention Center, and

WHEREAS Tacoma has identified potential funding sources available to the City to service the bond debt and requires additional funding sources outside of the City to support the construction and operation of the Convention Center, and

WHEREAS the Laws of Washington, Chapter 165, 1999 Regular Session, Sections 1 through 23, authorize the legislative authorities of any contiguous group of cities located in a county or counties, each with a population of less than one million, to enter into an agreement under RCW 39.34 for the creation and joint operation of a public facilities district to facilitate the construction and operation of a regional convention center, and

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WHEREAS the Cities of Fife, Lakewood, Tacoma, and University Place, pursuant to authorization from the legislative bodies of each jurisdiction, have agreed to participate in the construction and operation of the Convention Center through the creation of the Convention Center Public Facilities District pursuant to that certain Interlocal Agreement authorized pursuant to Resolution No. 34548, and

WHEREAS the District Charter provides that the District will enter into an agreement or agreements with Tacoma for the design, development, construction, and operation of the Convention Center which shall provide that Tacoma shall advertise for, select, and enter into agreements with the contractor or contractors for the design, development, and construction of the Convention Center; Tacoma shall oversee and make all decisions relative to the design, development, and construction of the Convention Center; and Tacoma shall manage and administer the contracts relative to the design, development, and construction of the Convention Center, which development may include a public/private partnership, and

WHEREAS the District Charter also provides that the public facilities district will assist in financing the construction and operation of the Convention Center by imposing a State sales and use tax credit of 0.033 percent within the District as well as admission and parking taxes, and

WHEREAS the Parties have agreed that the District will, in consideration for Tacoma's agreement to use these funds for the design, construction, and operation of the Convention Center in the City of Tacoma, pay its revenues collected and received which are generated from the State sales and use tax and admission and parking taxes to Tacoma for deposit into an Enterprise fund to service the debt issued by the City for the Design and Construction of the Convention Center, as well as payment of management and operating expenses and the expenses of the District, and

WHEREAS the City will hold title to the Convention Center inclusive of the real property, buildings, fixtures, furnishings, appurtenances, and improvements, and

WHEREAS the District and Tacoma, as public agencies, have the authority pursuant to RCW 39.34 to enter into Interlocal agreements to provide services and facilities through the joint and cooperative exercise of powers, privilege, and authority, and

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WHEREAS both Parties agree that development of the Convention Center will benefit the public and stimulate economic development throughout the region, and

WHEREAS the parties understand and agree that the District will have no obligation to issue bonds to support the design and construction of the Convention Center and that the City will, upon approval of the City Council, issue such bonds for which there will be no recourse against the District for payment therefor, and

WHEREAS the Parties desire to enter into an Interlocal Agreement for the purpose of setting forth, in writing, their mutual agreement and undertakings by which they will, contingent upon adequate funding sources, jointly and cooperatively undertake to finance and commence construction, operation, and maintenance of the Convention Center in the City of Tacoma;

NOW, THEREFORE, in consideration of the mutual understanding, undertaking, and promises contained herein inclusive of the recitals above and the benefits to be realized by each party and in consideration of the benefit to the general public by the creation and operation of a regional convention center located in Tacoma, it is agreed by and between the parties as follows:

1. PURPOSE, INTENT, AND UNDERSTANDING. The purpose of the Operating Agreement is to set forth, in writing, the terms and conditions under which the Parties will, contingent upon adequate funding sources, jointly and cooperatively undertake to finance and commence the design, construction, operation, and maintenance of a regional convention center ("Convention Center") in Tacoma before January 1, 2003, pursuant to the Laws of Washington, Chapter 165, 1999 Regular Session, Sections 1 through 23.

The Operating Agreement is not intended by the Parties to establish the design and performance criteria for the design and construction of the Regional Convention Center. It is understood and agreed by the Parties that Tacoma will be responsible for and make all decisions relative to the location, design, construction, operation, management, and future expansion of the Convention Center; that Tacoma will advertise for, select, and enter into agreements with, the contractor or contractors for the design and construction of the Convention Center; that Tacoma will administer and manage the contracts for the design and construction of the Convention Center; that Tacoma will directly, or through third parties, manage and

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operate the Convention Center and make all decisions relative to the management and operation of the Convention Center; that Tacoma will retain sole ownership interest in all property including but not limited to personal and real property acquired with funds paid to Tacoma by the District for Deposit into the Regional Convention Center Enterprise Fund. The District will not be a party to these agreements.

It is intended that the Convention Center will be located between Pacific Avenue and Market Street and South 15th and South 17th Streets fronting Pacific Avenue at the 15th Street entrance into the City; that the Convention Center facility will span over Commerce Street, the preferred route for Sound Transit's light rail link with downtown Tacoma; and that the site is large enough to accommodate parking and the long-term expansion needs of the Regional Convention Center.

It is intended that Tacoma will construct a 130,000 to 150,000 gross square foot Regional Convention Center facility capable of hosting local, state, and regional conventions ranging between 300 and 1500 delegates and banquets of up to 2000 people; that current long-term expansion plans for the Convention Center call for the construction of an additional 150,000 gross square feet of exhibit hall space, which space would occupy the location currently intended for use as a public parking facility; and that at the time of expansion, structured parking may be constructed to accommodate parking needs for the Convention Center.

It is understood that the Operating Agreement is entered into by Tacoma in reliance upon the assurances and covenants of the District that it will timely and lawfully impose the allowed State sales and use tax and parking and admissions taxes and continue to collect revenues available to the District and pay these funds to Tacoma to fund and commence the construction, management and operation of the Convention Center. This Agreement is entered into by the District with the specific understanding and relying on the assurances and covenants of Tacoma that the agreement of the District to contribute its tax revenues to the City will fund and cause the commencement of construction of the Convention Center and will fund and support the management and operation of the Convention Center. It is further understood that the obligation of Tacoma to construct and support the management and operation of the Convention Center is contingent upon Tacoma issuing bonds for this purpose.

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2. TERM.

2.1 Perpetual. The term of the Operating Agreement shall be perpetual except as may be otherwise provided herein.

2.2 Impossibility of Performance. The Operating Agreement shall terminate under circumstances where both Parties mutually agree in writing that by operation of law, court order, or as a result of other facts and circumstances whether within the control of the Parties or not, it is impossible or impractical to finance, design, develop, or construct, manage, or operate the Convention Center. In the event that Tacoma determines that it is impossible or impractical to finance, design, develop, construct, manage, or operate the Convention Center facility, the Parties agree to meet and enter into good faith negotiations regarding whether the Project has become impossible or impractical.

3. AMENDMENTS. The Operating Agreement and any collateral instruments referenced herein contain the entire agreement between the Parties hereto and shall not be modified or amended in any manner except by an instrument in writing executed by the Parties hereto. Previous drafts of the Operating Agreement or any portions thereof shall not be utilized in any manner by either Party should any dispute arise as to the intent of this Agreement.

4. ADMINISTRATION. The Operating Agreement does not establish or create a separate legal entity or a joint board. The City Manager of Tacoma shall be responsible for administering the joint and cooperative undertaking of the project as described herein and shall be the administrator of the Operating Agreement.

5. RIGHTS, DUTIES, AND OBLIGATIONS. The Parties mutually agree as follows:

5.1 District. The obligations, rights, and duties of the District shall be as follows:

a. The District shall, upon collection, pay, or cause to be paid, all funds collected and received by or on behalf of the District from the State sales and use tax and admission and parking taxes imposed by the District, to Tacoma for deposit into the Regional Convention Center Enterprise Fund. Such funds once deposited shall become funds of the City and shall be used primarily for the debt service for bonds issued by Tacoma to fund the design, development, and construction of the Convention Center inclusive of costs of

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pre-development and property acquisition. The duration of the District's obligations described above shall be consistent with the duration of the debt obligation of the City for the bonds issued but shall be no longer than the maximum time period allowed by law.

b. The District shall have the right, for purposes of determining compliance with the Operating Agreement, to periodically review documents relative to the expenditure by the City of funds paid by the District to the City for deposit into the Regional Convention Center Enterprise Fund.

c. The District shall have the right, for purposes of determining compliance with this Agreement, to review reports prepared by or on behalf of Tacoma relative to the status of the construction of the Regional Convention Center. Such reports will generally include a description of the progress of work compared to the allocated budget and completion dates relative to the construction schedule.

d. The District shall have the right, for purposes of determining compliance with this Agreement, to review annual reports prepared by or on behalf of the City, which pertain to the management and operation of the Regional Convention Center.

e. The District shall have the right to exercise any of the remedies provided herein in the event of a material breech of this agreement by Tacoma.

5.2 Tacoma. The obligations, rights, and duties of Tacoma shall be as follows:

a. The funds received by Tacoma from the District and deposited into the Regional Convention Center Enterprise Fund shall be used exclusively by Tacoma for (1) debt service of the bonds issued by Tacoma for site assembly, predevelopment activities, the design, and construction of the Regional Convention Center; (2) payment of expenses for the management and operation of the Regional Convention Center inclusive of maintenance, repair, and improvements; and (3) payment of expenses of the District as authorized pursuant to the District Charter or this Agreement. Such funds once deposited shall become funds of Tacoma and shall be used primarily for the debt service. The duration of the District's obligations described above shall be consistent with the duration of the debt obligation of the City

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for the bonds issued but shall be no longer than the maximum time period allowed by law. Tacoma shall, upon invoice from the District, pay from the Regional Convention Center Enterprise Fund, the reasonable expenses of the District as authorized pursuant to the District Charter or the Operating Agreement.

b. Tacoma shall indemnify and hold harmless the District, its officers, and directors from and against any and all claims, demands, or causes of action of whatsoever kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees sustained by the District or any third party arising out of, or by reason of, or resulting from or of the acts, errors, or omissions of the District, its officers, or directors related to or in any way arising out of the performance of their duties under this Agreement or the District Charter. Provided that the indemnity provided herein shall apply only to those claims, demands, or causes of action of whatsoever kind or nature and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees which exceed the dollar limits as set forth in any public liability insurance policy obtained by the District and only for the amounts which exceed those limits.

c. Tacoma, without limiting such immunities as the District or other persons may have under applicable law, shall have no monetary recourse whatsoever against the District or its officials or directors for any loss or damage arising out of the District, its officers, or directors, exercising their authority pursuant to this Agreement or the District Charter.

d. Tacoma will, contingent upon available funding and Council approval of issuance debt, commence design and construction of a Regional Convention Center in the City of Tacoma to be located between Pacific Avenue and Market Street, and South 15th and South 17th Streets fronting Pacific Avenue, at the 15th Street entrance into the City, which facility will be approximately 130,000 to 150,000 gross square feet and will be operated and maintained by the City for the duration of the obligation of the District as a Regional Convention Center facility.

e. Tacoma will undertake all financial responsibility for payment of the costs and expenses associated with the pre-construction activities, site assembly, design, development, and construction of the Regional Convention Center,

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payment of which shall be made from bonds issued and guaranteed by Tacoma which debt service will be achieved first through funds deposited by the District into the Enterprise Fund and next through other revenue sources as determined by Tacoma, but with no recourse to the District.

f. Tacoma shall make available, upon request by the District, documents relative to the expenditure by Tacoma of funds paid to Tacoma for deposit into the Regional Convention Center Enterprise Fund so that the District can determine such funds are being expended in compliance with this Agreement.

g. Tacoma shall provide to the District copies of Regional Convention Center status reports for its review to determine compliance with this Agreement.

h. Tacoma shall provide copies to the District of annual reports prepared by or on behalf of Tacoma relative to the management and operation of the Convention Center for its review to determine compliance with this Agreement.

i. Tacoma shall, on a limited basis, provide in-kind services to the District as follows: provision of meeting space, clerical services, legal counsel, and financial services to provide for the custody, investment, and accounting of all funds of the District and assist in the administration of the financial affairs of the District as necessary for the District and consistent with such applicable financial operations identified at Section 1.06.210 of the Tacoma Municipal Code. The District shall reimburse the City for its reasonable costs of such financial services as soon as practicable when funds become available to the District.

6. REMEDIES.

6.1 Remedies Available. Tacoma and the District have the right to exercise any and all of the following remedies, singly or in combination, in the event that Tacoma or the District violates any material provision of this Agreement:

a. Commence an action for equitable or other relief, including injunctive relief, or
b. Seek a writ of mandamus to compel performance, or

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c. Commence an action seeking specific performance of any provision which reasonably lends itself to such remedy.

6.2 Procedure. Before exercising any of the available remedies the party alleging a breach ("Party") shall follow the procedure below.

a. Notice of Violation. In the event that the Party believes that the other party has not complied with the terms of this Agreement and is a defaulting party ("Defaulting Party"), the Party shall notify the Defaulting Party in writing, by certified mail, of the nature of the alleged non-compliance.

b. The Defaulting Party's Right to Cure or Respond. The Defaulting Party shall have 10 days from the receipt of notice described above, to (a) respond to the Party, or (b) to cure such default or, in the event that by the nature of the default such default cannot be cured within the 10-day period, initiate steps to remedy such default as promptly as possible. The duty to cure includes the duty to cure all harms caused by the acts or omissions of the Defaulting Party. At the end of the 10-day period, the Defaulting Party shall notify the Party, in writing, of the steps it has taken to cure the default, if any; if the cure is not complete, the reason it is not complete and the projected date for completion; and if the default is disputed, the complete basis for that contention.

c. If the Party determines that the Defaulting Party did not cure or initiate steps to cure to the Party's satisfaction, after the notice required herein was provided, then the Party may exercise its available remedies.

7. NOTICES. All notices which may be or are requested to be given pursuant to this Agreement shall be deemed given when hand delivered, or when deposited in the United States Mail, postage prepaid, and marked registered or certified mail, return receipt requested, and addressed to the Parties at the following addresses unless otherwise provided for herein:

To the City: Ray E. Corpuz, Jr.
City Manager
City of Tacoma
747 Market Street, Suite 1200
Tacoma, Washington 98402

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With a copy to: Robin S. Jenkinson
City Attorney
City of Tacoma
747 Market Street, Suite 1120
Tacoma, Washington 98402-3767

To District: President of the Regional Convention Center Public Facilities District

8. **PROPERTY.** All property acquired as a result or pursuant to this agreement shall be and become the property of Tacoma.

9. **FILING.** A copy of this Agreement shall be filed with the City Clerk of Tacomaand the Pierce County Auditor; provided, however, that failure to file shall not affect the validity of this Agreement.

10. **WAIVER.** The waiver by one Party of the performance of any covenant, condition, or promise shall not invalidate this Agreement nor shall it be considered a waiver by such Party of any other covenant, condition, or promise hereunder. The waiver by either or both Parties of the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time. The exercise of any remedy provided by law or the provisions of this Agreement shall not exclude other consistent remedies unless they are expressly excluded.

11. **VENUE.** The venue for any dispute related to this Agreement shall be Pierce County, Washington.

12. **EXCULPATION.** Notwithstanding anything contained to the contrary in any provision of this Agreement, it is specifically agreed and understood that there shall be absolutely no personal liability on the part of any individual officers or directors of Tacoma or the District with respect to any of the obligations, terms, covenants, and conditions of this Agreement.

13. **GENERAL PROVISIONS.** This Agreement contains all of the agreements of the Cities with respect to any matter covered or mentioned in this Agreement, and no prior agreement shall be effective for any purpose. No provision of this Agreement may be amended or modified except by written agreement signed by the Cities.

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14. SEVERABILITY. If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first written above.

CITY OF TACOMA

Ray E. Corpuz, Jr.
City Manager

Public Facilities District

President
Public Facilities District

Countersigned:

Peter Luttropp, Finance Director

William Pugh, Department Director

Attest:

Rick Rosenblatt 10/29/99
City Clerk

Approved as to form and legality:

City Attorney, Assistant

Risk Manager

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