

**COST SHARING AGREEMENT FOR DEMOLITION OF SHEET PILE WALL AT  
LOCKHEED WEST SUPERFUND SITE, SEATTLE, WA**

This COST SHARING AGREEMENT (“Agreement”) is made and entered as of this 15<sup>th</sup> day of May, 2017, by and between THE PORT OF SEATTLE (“Port”) and LOCKHEED MARTIN CORPORATION (“Lockheed Martin”). The Port and Lockheed Martin may be referred to individually as a “Party” or collectively as the “Parties.”

**RECITALS**

1. WHEREAS, pursuant to the Second Amended Real Estate Purchase and Exchange Agreement (“Purchase Agreement”) executed September 24, 1992, the Port acquired ownership of the former shipyard of Lockheed Shipbuilding Company in West Seattle (known as “Yard 2”) which included acquisition of certain real property (the “Fee Property”) and a leasehold in certain State of Washington leases (the “Leased Property”);
2. WHEREAS, the near shore sediments of the former Yard 2 are a federal Superfund site, subject to a 2013 Record of Decision (“ROD”) issued by the Environmental Protection Agency (“EPA”) and a 2015 Unilateral Administrative Order (“UAO”) for the remedial action. Lockheed Martin is responsible for designing and implementing the remedial action set forth in the ROD pursuant to the UAO which includes, among other things, the dredging of sediments in the former Yard 2 shipway area;
3. WHEREAS, Lockheed Martin is responsible for the removal of pilings in the submerged Fee Property portion of the Yard 2 shipway as required by the ROD and pursuant to Section 4, subparagraph (c), of the Purchase Agreement;
4. WHEREAS, the Port is responsible for the removal of pilings in the submerged Leased Property portion of the shipway pursuant to Section 7 of the Purchase Agreement and the Port’s separate agreement with the State of Washington Department of Natural Resources (“DNR”);
5. WHEREAS, the Port’s removal of pilings in the submerged Leased Property of the shipway may destabilize the adjacent sheet pile wall located on the uplands Fee Property to the west of the Yard 2 shipway;
6. WHEREAS, Lockheed Martin’s removal of sediments in the former Yard 2 shipway area may further destabilize the adjacent sheet pile wall;
7. WHEREAS, both Lockheed Martin and the Port have an interest in the demolition and stabilization of the sheet pile wall to ensure that the CERCLA remedy is successfully

implemented and therefore enter into this Agreement to share costs in connection with such demolition and stabilization;

### **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto agree as follows:

### **RECITALS INCORPORATED BY REFERENCE**

Each Recital set forth above is incorporated herein by this reference and made a part of the Agreement between the Parties.

### **COVENANTS AND AGREEMENTS**

1. **Sheet Pile Wall**. The Port agrees to permit, plan, design, and perform the work to demolish the sheet pile wall which will involve cutting the wall at the mudline and removing soil behind the wall as necessary to create a sloping transition between the severed wall and adjacent upland area. The sheet pile wall is depicted in Exhibit A attached hereto (Port of Seattle Terminal 5 Pile Removal and Disposal 60% Design Review).
2. **Removal of Pilings**. Lockheed Martin and the Port agree to remove all pilings in the former Yard 2 shipway area pursuant to the following protocol: (i) complete extraction of piling is always preferable to partial removal; (ii) reasonable attempts should be made to completely remove the piling in its entirety before cutting; (iii) piling shall not be broken off intentionally by twisting, bending or other deformation; (iv) if a pile is broken or breaks above the mudline during vibratory extraction, reasonable attempts should be made to entirely remove the broken pile; and (v) any piling left in place (including those below mudline) shall be mapped with GPS coordinates.
3. **Cost Sharing**. Lockheed Martin agrees to share the cost of the sheet pile wall demolition work set forth in section 2 above with the Port on a 50/50 basis subject to a cost cap of \$325,000; provided, however, that if Lockheed Martin and its engineers determine that tie-backs are necessary to further stabilize the wall, Lockheed Martin will pay for and install such tie-backs at its sole cost and expense.
4. **Payment**. Lockheed Martin agrees to pay \$162,500 to the Port within ninety (90) days from the date of this Agreement. Upon completion of the sheet pile wall work, the Port will invoice Lockheed Martin for any remainder due under this Agreement at the following address:

Lockheed Martin Corporation  
Enterprise Business Services—EESH  
2550 N. Hollywood Way, Suite 301  
Burbank, CA 91505-5047  
Attn: Bill Bath  
Email: bjll.bath@lmco.com

Lockheed Martin shall remit payment to the Port within thirty (30) days of receiving such invoice.

5. Third Party Beneficiaries. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the Parties, and their respective successors and assigns, and is made solely and specifically for their benefit. No other person shall have any rights, interest or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

6. No Effect on Prior Agreements. No provision of this Agreement shall be interpreted to terminate, supersede or otherwise alter the Parties' respective obligations under prior agreements, orders and decrees, including without limitation the Purchase Agreement.

7. Amendment. Any modification of this Agreement or any additional obligations assumed by any Party hereto shall be binding only if evidenced by a writing signed by each of the Parties hereto.

8. Governing Law. This Agreement and the legal relations between the Parties hereto shall be governed by and construed and enforced in accordance with the laws of the State of Washington, except to the extent that the applicability of any of such laws may now or hereafter be preempted by Federal law, in which case such Federal law shall so govern and be controlling.

9. Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO HEREBY WAIVES TRIAL BY JURY IN ANY ACTION ARISING OUT OF MATTERS RELATED TO THIS AGREEMENT, WHICH WAIVER IS INFORMED AND VOLUNTARY.

10. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original hereof. All executed counterparts together shall constitute one and the same document, and any initialed pages and signature pages may be assembled to form a single original document.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**PORT OF SEATTLE**, a Washington municipal corporation:

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

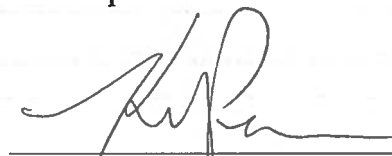
Name:

Title:

Date:

**LOCKHEED MARTIN CORPORATION**,  
a Maryland corporation

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



Name: Kevin Pearson

Title: Director, Environmental Remediation

Date: 5/15/2017