

**PORT OF SEATTLE**  
**MEMORANDUM**

**COMMISSION AGENDA**  
**ACTION ITEM**

<b>Item No.</b>	4e
<b>Date of Meeting</b>	May 26, 2015

**DATE:** May 18, 2015  
**TO:** Ted Fick, Chief Executive Officer  
**FROM:** Mark C. Griffin, Director, Real Estate Development  
**SUBJECT:** Des Moines Creek Business Park – Revised Ground Lease and Option Agreement

**ACTION REQUESTED**

Request Commission authorization for the Chief Executive Officer to execute a modified ground lease and an option agreement amendment with Panattoni Development substantially in the attached form to support development of the FAA’s new regional offices.

**SYNOPSIS**

On June 10, 2014, the Commission approved an option agreement and related form of ground lease with Panattoni Development to develop the Des Moines Creek Business Park (DMCBP). The federal General Services Administration (GSA) recently awarded Panattoni the right to construct the Federal Aviation Administration’s (FAA) new regional offices at the south end of the DMCBP site. The approved ground lease has provisions related to condemnation, insurance and indemnification that federal government tenants cannot comply with due to federal law. This action authorizes a modified ground lease with Panattoni to permit a sublease between Panattoni and the GSA and an amendment to the option agreement to substitute phase three of the DMCBP project for phase two of the project to enable construction of the FAA facility.

**BACKGROUND**

The Commission authorized execution of an Option to Ground Lease Agreement (Option Agreement) with Panattoni Development at the June 10, 2014, meeting to develop the DMCBP. This action included approval of a form of ground lease that Panattoni would execute for each phase of the DMCBP project.

In April 2015, the GSA awarded Panattoni the right to construct the FAA’s new regional offices at the south end of the DMCBP site as phase three of the project (See **Attachment 1 – Master Plan** for a depiction the project’s three phases). The GSA chose Panattoni from a competitive process that included consideration of several other sites in the region. Panattoni will build an approximately 300,000 square foot office building and associated parking to house about 1,600 FAA employees. Panattoni will enter into a 20-year sublease with the GSA and must complete delivery and full occupancy of the FAA facility by August 1, 2017.

The current approved form of ground lease states that any sublease is “subject to all of the covenants, conditions, agreements and terms of this agreement.” This is a typical provision found in

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most ground leases, including the Port's agreements. In reviewing the approved form of ground lease, however, GSA identified a number of provisions that conflict with its required form of sublease with Panattoni given the federal laws, regulations and policies to which federal government tenants are subject. The ground lease provisions to which GSA cannot comply are generally those related to insurance, indemnification, condemnation, environmental liability, and binding mediation and arbitration.

Staff proposes to enter into a modified ground lease with Panattoni that addresses the GSA's concerns. The modified ground lease provides the Port's consent to Panattoni's sublease with the GSA as a permitted sublease. In return for the Port's consent to the GSA sublease, Panattoni will agree to remain responsible for any deficiencies stemming from the variances from the original form of ground lease required by the GSA. The proposed modified form of ground lease is included as **Attachment 2**.

Staff also proposes to enter into an amendment to the Option Agreement. The FAA facility will be constructed on the area currently designated as phase three of the master plan (see Attachment 1). The phase three acreage will now be under lease sooner than the area designated as phase two. The proposed amendment allows for substitution of the acreage, rental rate and required lease-up dates between the two phases such that the FAA facility will now be considered phase two and the remaining area currently designated as phase two will be deemed phase three. The proposed option agreement amendment is included as **Attachment 3**.

## **FINANCIAL IMPLICATIONS**

The proposed action accelerates Panattoni's lease-up of the DMCBP project and the revenue the Port will receive from both land rent and reimbursement of the frontage improvement in lieu fees that the Port advanced to the City to complete the street improvements to 24<sup>th</sup> Avenue S. and S. 216<sup>th</sup> Street required for the project.

## **STRATEGIES AND OBJECTIVES**

This action supports the Airport's objective to "maximize non-aeronautical net operating income consistent with current contracts, appropriate use of airport properties and market demand."

## **TRIPLE BOTTOM LINE**

### ***Economic Development***

The FAA facility will create a few hundred construction jobs and will house approximately 1,600 FAA staff upon completion.

### ***Environmental Responsibility***

The GSA requires the FAA facility to be Leadership in Energy & Environmental Design (LEED) Gold certified which will help ensure a quality and environmentally friendly facility.

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### ***Community Benefits***

The City of Des Moines (City) has worked closely with Panattoni and the Port in supporting Panattoni's pursuit of the FAA facility and enthusiastically supports location of the facility in the City.

### **ALTERNATIVES AND IMPLICATIONS CONSIDERED**

**Alternative 1)** – Do not modify the ground lease and option agreement. The FAA facility would be located elsewhere in the region. This would slow the receipt of additional non-airline revenue from the DMCBP project.

There is no upside to maintaining the current approved form of ground lease as it relates to the GSA sublease for the FAA facility. Panattoni agrees to cure any deficiencies arising from the variances needed by the GSA from the current approved form of ground lease. This effectively keeps the Port in the same position as it would have been under the current approved form of ground lease in the event of any disputes. This is not the recommended alternative.

**Alternative 2)** – Modify the ground lease and option agreement. The modified ground lease agreement will enable Panattoni's development of the FAA facility and generate additional non-airline revenue from the DMCBP project sooner than currently projected. Given these benefits, there is no downside to modifying the ground lease to allow for the GSA sublease for the FAA facility, particularly given Panattoni's agreement to satisfy any deficiencies that may result from the variances needed by the GSA from the current approved form of ground lease. **This is the recommended alternative.**

### **ATTACHMENTS TO THIS REQUEST**

- Attachment 1 – DMCBP Master Plan
- Attachment 2 – Revised Form of Ground Lease
- Attachment 3 – Proposed First Amendment to Option to Ground Lease Agreement

### **PREVIOUS COMMISSION ACTIONS OR BRIEFINGS**

- October 28, 2014 – Commission authorized execution of a First Addendum to the Amended and Restated Second Development Agreement with the City.
- June 10, 2014 – Commission authorized execution of an option agreement and related ground lease agreements with Panattoni Development Company, Inc. or an affiliated entity; and (2) an Amended and Restated Second Development Agreement with the City.
- June 5, 2012 – Commission authorized the execution of the second development agreement with the City and a ground lease with Puget Sound Energy.
- November 9, 2010 – Commission passed Resolution No. 3646 at second reading, surplusing right of way needed by the City.

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- November 2, 2010 – Commission authorized acquisition of the abandoned streets within the DMCBP site and passed Resolution No. 3646 at first reading, surplusing right of way needed by the City.
- July 22, 2008 – Commission authorized execution of the first addendum to the first development agreement with the City.
- February 27, 2007 – Staff briefing on progress on the business park project.
- June 8, 2006 – Staff briefing on the completed conceptual master plan.
- August 23, 2005 – Commission authorized preparation of the conceptual master plan.
- June 28, 2005 – Commission authorized the execution of the first development agreement with the City.