



**COMMISSION
AGENDA MEMORANDUM**

Item No. 6g

ACTION ITEM

Date of Meeting July 24, 2018

DATE: July 6, 2018

TO: Stephen P. Metruck, Executive Director

FROM: Kathy Bahnick, Senior Manager Environmental Programs, Maritime *KAS*
Brick Spangler, Senior Environmental Program Manager, Maritime *BS*
Elizabeth Black, Senior Port Counsel *EB*

SUBJECT: Amendment to 1992 Second Amended and Restated Real Estate Purchase and Sale Agreement with Lockheed Martin regarding Yard II site (Terminal 5)

ACTION REQUESTED

Request Commission authorization for the Executive Director to sign an amendment to the Port's 1992 Purchase and Sale Agreement with Lockheed Martin in order to protect the Port from long-term liability at the Lockheed West Superfund Site near Terminal 5.

EXECUTIVE SUMMARY

In 1992, in anticipation of the Southwest Harbor Redevelopment Project, the Port of Seattle purchased aquatic and upland property on what is now the north end of Terminal 5 from Lockheed Martin. The submerged portion of the property is a Superfund cleanup site known as the Lockheed West Superfund Site (Site). Lockheed Martin is the sole responsible party for the Site and is performing all of the necessary design and cleanup work.

In 1992, it was anticipated that Lockheed Martin would perform the EPA-required cleanup of the Site and the Port would construct a large redevelopment of Terminal 5, such that Lockheed Martin's long-term liability for the Site would terminate upon completion of the cleanup work. The then-anticipated redevelopment of submerged lands north of Terminal 5 did not occur, and EPA did not issue its Record of Decision (ROD) for the Site until 2013.

Lockheed Martin has been working with EPA to design the cleanup, and the Port has actively participated in reviewing and providing comments on the proposed cleanup design. Cleanup construction activities are now scheduled to start in August 2018. As part of the EPA-approved final cleanup design, there is the potential for contamination above selected cleanup levels to remain on Port-owned submerged property, which was not anticipated in 1992. Because of this change, and because of the changes to the Port's 1992 redevelopment plans, the Port and Lockheed Martin have agreed to amend the indemnity provisions of the Purchase and Sale Agreement so that Lockheed Martin retains long-term liability for any contamination left behind on the Site.

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Commission authorization for the Executive Director to sign this amendment is required because the original 1992 Purchase and Sale Agreement required Commission authorization.

ALTERNATIVES AND IMPLICATIONS CONSIDERED

Alternative 1 – Do Not Sign the Amendment

Cost Implications: Potential long-term costs associated with the Site.

Pros:

- (1) None.

Cons:

- (1) Under the current agreement, Lockheed Martin’s indemnity for the Site is extinguished if the Port places any “enclosed fill” (as defined in the agreement) on the property.
- (2) Under the current agreement, Lockheed Martin’s indemnity for the Site expires when the cleanup is complete.

This is not the recommended alternative.

Alternative 2 – Sign the Amendment

Cost Implications: None

Pros:

- (1) Under the proposed amendment to the agreement, Lockheed Martin would retain liability for contamination left on the Site even if the Port places an “enclosed fill” on the property.
- (2) Under the proposed amendment to the agreement, Lockheed Martin retains long-term liability for contamination left behind as part of the cleanup.
- (3) The proposed agreement further enhances the Port’s collaborative working relationship with Lockheed Martin.

Cons:

- (1) None.

This is the recommended alternative.

FINANCIAL IMPLICATIONS

None; the proposed amendment protects the Port from potential costs associated with long-term liability at the Site.

ATTACHMENTS TO THIS REQUEST

- (1) First Amendment to Second Amended and Restated Purchase and Sale Agreement

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PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

June 13, 2017 – The Commission authorized the Port to execute a cost-sharing agreement with Lockheed Martin for the Terminal 5 Pile Removal project, through which Lockheed Martin agreed to reimburse the Port up to \$325,000 for removal of a sheet pile wall that would be affected by Lockheed Martin’s cleanup work.

September 22, 1992 – The Commission authorized the execution of the Second Amended and Restated Real Estate Purchase and Sale Agreement with Lockheed Martin.

May 14, 1991 – The Commission authorized the execution of an amendment to the earnest money agreement with Lockheed Martin and all documents required to close the agreement.

February 12, 1991 – The Commission authorized the Port to execute an amendment to the original earnest money agreement that would increase the amount placed in escrow from \$450,000 to \$5,000,000.

July 11, 1989 – The Commission authorized the Port to execute an earnest money agreement with Lockheed Martin for the purchase of their Yard II site; the Port agreed to place \$450,000 into escrow as earnest money.