

FIRST AMENDMENT
TO SECOND AMENDED AND RESTATED
REAL ESTATE PURCHASE AND SALE AGREEMENT

This agreement (“Agreement”) is made between Port of Seattle (“Port”) and Lockheed Martin Corporation (“Lockheed Martin”) and amends the Second Amended and Restated Real Estate Purchase and Sale Agreement (“PSA”) between the Port and Lockheed Shipbuilding Company, predecessor to Lockheed Martin, dated September 25, 1992, and attached hereto as Exhibit A. The Port and Lockheed Martin may be referred to individually as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, pursuant to the Second Amended and Restated Real Estate Purchase and Exchange Agreement (“Purchase Agreement”) executed September 25, 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”);

WHEREAS, the near shore sediments of the former Yard 2 are a federal Superfund site (the “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.

WHEREAS, Lockheed Martin is responsible for designing and implementing the remedial action set forth in the ROD and pursuant to the UAO;

WHEREAS, Lockheed Martin anticipates it may leave certain contamination in place on the Fee Property and/or Leased Property as part of the remedial action;

WHEREAS, the Parties acknowledge that the use of Enclosed Fill, as defined in the PSA, as part of the “Southwest Harbor Project” described in Paragraph 4(a)(iv)(C) of the PSA did not occur as the Parties had anticipated in 1992;

WHEREAS, both the Parties desire to amend the Purchase Agreement to clarify their respective long-term responsibilities for the Yard 2 site;

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 agree as follows:

1. 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.
2. Access Agreement. The Parties incorporate by reference the access agreement attached hereto as Exhibit B.
3. Amendment to Purchase Agreement. This Agreement amends the PSA as follows.

- (a) The definition of "Enclosed Fill" found in Paragraph 4(a)(i) (Definitions) shall be modified as follows:

"Enclosed Fill" shall mean any engineered cover, cap or fill, including any barrier, dike, bulkhead, sheet pile wall, breakwater and any and all other supporting or required slope, wall or structure, now or at any time hereafter constructed or placed on the Submerged Fee Property or Submerged Leased Property, or both, by Buyer or Buyer's agents. Notwithstanding the foregoing, "Enclosed Fill" shall not include any construction or placement of materials on the Submerged Fee Property or Submerged Leased Property for the purpose of implementing a habitat improvement project that has received all required agency approvals, nor shall it include any action, engineering controls, or placement of materials on the Submerged Fee Property or Submerged Lease Property for the purpose of bank stabilization, safety, or routine maintenance.

- (b) Paragraph 4(c), "Seller's Indemnity," shall be modified as follows:

Seller agrees to indemnify and hold Buyer harmless with respect to any and all claims, liabilities, losses, liens, costs, penalties, damages (including natural resource damages) or expenses (including reasonable attorneys' fees and fees of environmental consultants) (collectively "Liability") as a result of contamination left in place on the Fee Property and/or Leased Property as part of the remedial action and/or as a result of any action, suit, proceeding, lien or claim in connection with or arising from: . . .

4. 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.

5. Governing Law. The laws of the State of Washington shall govern the validity, enforcement, and interpretation of this Agreement. Any dispute or cause of action under this Agreement shall be resolved in a court of competent subject matter jurisdiction in King County, State of Washington.

6. 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.

7. 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 date indicated below.

PORT OF SEATTLE, a Washington municipal corporation:

By: _____
Name:
Title:

Date:

LOCKHEED MARTIN CORPORATION,
a Maryland corporation

By: _____
Name:
Title:

Date:

[Exhibits intentionally omitted]