



**COMMISSION  
AGENDA MEMORANDUM**

**Item No.**

6i

**ACTION ITEM**

**Date of Meeting**

August 11, 2020

**DATE:** July 31, 2020  
**TO:** Stephen P. Metruck, Executive Director  
**FROM:** Elizabeth C. Black, Senior Port Counsel  
**SUBJECT:** Settlement with Great American Insurance Company

**Amount of settlement:** \$35,000,000

**ACTION REQUESTED**

Authorization for the Executive Director to execute a settlement agreement with Great American Insurance Company.

**EXECUTIVE SUMMARY**

The Port has an opportunity to resolve without litigation a dispute with an insurance carrier regarding the insurer's scope of coverage for historic environmental contamination. With this settlement, the Port will receive an immediate payment of approximately \$25,000,000 and will be eligible to receive more than \$10,000,000 in additional payments in future years.

**KEY DETAILS AND JUSTIFICATION**

From 1963-1985, the Port had primary insurance coverage through predecessors to Great American Insurance Company (GAIC). Under those policies and subject to a reservation of its rights to deny coverage, GAIC has provided defense and indemnity coverage to the Port for environmental investigation and cleanup costs associated with the Lower Duwamish Waterway, Harbor Island/East Waterway, and Terminal 91 (the "Contaminated Sites") and has paid over \$32 million to the Port to date.

GAIC's defense obligation generally includes legal fees and investigation costs associated with historically contaminated sites, whereas its indemnity obligation generally includes cleanup and remediation costs. There is no cap to defense costs until indemnity costs are exhausted. GAIC's indemnity obligation is capped for each year of coverage ranging from \$25,000 to \$2 million per occurrence or, GAIC argues, in aggregate.

The Port and GAIC share a mutual interest in resolving their dispute regarding the scope of GAIC's coverage obligation in order to avoid litigation and have reached tentative agreement to resolve the Port's claims through the attached settlement agreement.

The agreement includes the following key terms: GAIC will make an immediate payment to the

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Port in the amount of \$24,938,485, representing certain past and future costs associated with the Contaminated Sites. GAIC will agree to reimburse up to an additional \$10,188,969 in certain indemnity costs associated with Terminal 91, will defend the Port at Terminal 91 until those indemnity costs have been paid, and will voluntarily continue funding some of the Port's ongoing cost recovery efforts associated with the Contaminated Sites. The agreement will resolve all claims with respect to the Contaminated Sites, and both parties will reserve all of their rights regarding other potential claims.

**ALTERNATIVES AND IMPLICATIONS CONSIDERED**

Alternatives and implications have been considered and discussed in attorney-client privileged communications. Counsel for the Port recommends that the proposed settlement be approved.

**FINANCIAL IMPLICATIONS**

The Port will receive an immediate payment of \$24,938,485 following execution of the agreement and will be eligible to receive more than \$10,000,000 in additional payments in future years. GAIC will cease its ongoing funding of certain costs associated with the Contaminated Sites, such that the Port will likely see an increase in its direct expenses for certain costs such as legal fees. These potential costs will be addressed as part of the annual budget process each year.

**PREVIOUS COMMISSION ACTIONS OR BRIEFINGS**

April 23, 2019 – The Commission authorized a settlement agreement with Lamorak Insurance Company and Bedivere Insurance Company, both formerly known as OneBeacon Insurance Company.

May 22, 2018 – The Commission authorized a proposed settlement agreement with Great American Insurance Company to resolve remaining claims relating to defense costs for environmental investigation and cleanup incurred through December 31, 2014.

October 27, 2015 – The Commission authorized the proposed 2015 Addendum Agreement to the 2014 Duty to Defend Settlement Agreement and Partial Release between the Port of Seattle and GAIC.

August 19, 2014 – The Commission authorized the proposed 2014 Duty to Defend Settlement Agreement and Partial Release between the Port of Seattle and Great American Insurance Company and Great American Insurance Company of New York.

**ATTACHMENTS TO THIS REQUEST**

- (1) Proposed Settlement Agreement