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Item # 8f attach  
Meeting Date: June 11, 2024

**BANK CREDIT PURCHASE AGREEMENT  
TERMINAL 117 RESTORATION SITE HABITAT BANK**

This Bank Credit Purchase Agreement ("Agreement") is made by and between the Port of Seattle, a Washington municipal corporation ("Bank Sponsor" and "Seller"), and Lockheed Martin Corporation, a Maryland Corporation ("Buyer"), each a "Party" and collectively the "Parties."

**1. RECITALS**

1.1. Bank Sponsor is the owner of the Terminal 117 Restoration Site Habitat Bank ("T117 Habitat Bank"), created and administered pursuant to the Natural Resource Restoration and Enhancement Credit Protocol signed by the Bank Sponsor and the National Oceanic and Atmospheric Administration ("NOAA") on behalf of the Elliott Bay Trustee Council ("Trustee Council"), effective December 4, 2019 (the "Credit Protocol," attached as Exhibit 1).

1.2. The purpose of the Terminal 117 Habitat Bank is to provide compensatory mitigation for natural resources damages ("NRD"), including impacts to wetlands, fish habitat, and other critical areas.

1.3. Upon final approval by the Trustee Council, Bank Sponsor will be authorized to obtain, hold, sell, and transfer discounted service-acre year credits ("DSAY Credits") generated by the T117 Habitat Bank, said credits being units of trade representing the increase in ecological value of a site.

1.4. Buyer wishes to purchase from Bank Sponsor, and Bank Sponsor wishes to sell to Buyer, DSAY Credits from the T117 Habitat Bank in order to compensate the Trustee Council for NRD, on and subject to the terms and conditions contained in this Agreement.

**2. AGREEMENT**

NOW THEREFORE, in consideration of the mutual covenants and conditions and promises contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Bank Sponsor and Buyer agree as follows:

**2.1. Purchase/Sale of DSAY Credits**

2.1.1. Purchase/Sale. Bank Sponsor hereby sells to Buyer, and Buyer hereby buys from Bank Sponsor, on and subject to the terms, covenants, and conditions set forth in this Agreement, 500 DSAY Credits.

2.1.2. Purchase Price and Payment. The Purchase Price is ninety-five thousand, eight hundred and no/100 (US\$ \$95,800.00) per DSAY Credit. Buyer agrees to pay the Purchase Price to Bank Sponsor as follows:

(i)

Initial Deposit: \$11,000,000 is due within 60 days of the Effective Date of  
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this Agreement as defined in Section 2.7.1.  
(ii)

First Payment: A minimum payment of \$14,000,000 is due on or before  
February 1, 2025.

(iii)

Second Payment: A minimum payment of \$19,938,480 is due January 14,  
2026.

(iv)

Final Payment: A minimum payment of \$2,961,520 is due on or before  
January 14, 2027.

2.1.3

Payment by ACH. Buyer shall transmit each payment to Seller by ACH, following the instructions set forth in Exhibit 2.

#### 2.1.4

Late Fees. The finance charge for any payments received after the due date is 0.0493% per day based on outstanding balance (including accrued interest) (consistent with Port's tariff).

#### 2.2. Project Information; Limitation on Transfer.

2.2.1. Suitability. Except as provided in section 2.3.3 below, Buyer shall be solely responsible for obtaining determinations from applicable agencies as to whether the DSAY Credits are suitable for Buyer's intended purpose. Bank Sponsor makes no representations or warranties of any kind, express or implied, as to the suitability, utility, applicability, sufficiency, or otherwise, of the DSAY Credits to Buyer, and any and all such representations and warranties are hereby expressly disclaimed by Bank Sponsor and waived by Buyer. Buyer acknowledges and agrees that Bank Sponsor is selling the DSAY Credits specifically for the purpose identified in Section 2.2.2 below, and that this Agreement and the DSAY Credits shall not be transferable by Buyer.

2.2.2. Project. The DSAY Credits shall be used solely for settlement of Buyer's alleged NRD liability pursuant to a consent decree between NOAA, on behalf of the Trustee Council, and Buyer.

#### 2.3. Representations and Warranties

Bank Sponsor represents and warrants to Buyer that:

2.3.1. Upon final approval by the Trustee Council, Bank Sponsor will be authorized by the Trustee Council to operate the T117 Habitat Bank and to obtain, hold, sell, and transfer DSAY Credits; and

2.3.2. Any interest of Bank Sponsor in the DSAY Credits is free and clear of conditions or restrictions, except as otherwise provided in this Agreement, the Bill of Sale, or the Credit Protocol.

2.3.3. Bank Sponsor, and its successors and assigns, will maintain the T117 Habitat Bank

in accordance with any requirements established by the Trustee Council, as outlined in the Credit Protocol. In the event the Trustee Council determines that the T117 Habitat Bank has not been maintained in accordance with its requirements, Bank Sponsor shall be solely responsible for any adaptive management or remedial action, including but not limited to purchase or development of replacement bank credits required by the Trustee Council. In the event that Bank Sponsor does not fulfill this obligation and Buyer is required to purchase replacement credits from the Trustees in order to make up for a deficiency of credits (i.e., less than 500) generated by the T117 Habitat Bank, Bank Sponsor agrees to indemnify Buyer for the cost of the replacement credits as set forth in the Consent Decree between Buyer and the Trustees.

2.3.4. Except for the express representations and warranties in this Agreement (including but not limited to section 2.3.3 above), Seller makes no representations or warranties regarding the DSAY Credits; Bank Sponsor hereby disclaims, and Buyer hereby waives, any and all representations or warranties of any kind, express or implied, concerning the DSAY Credits, including but not limited to the suitability, utility, applicability, sufficiency, or otherwise, of the DSAY Credits to the purposes for which Buyer intends to use the DSAY Credits.

#### 2.4. Closing

2.4.1. Initial Deposit. Buyer shall pay the Initial Deposit, as defined above in 2.1.2(i), by ACH transfer to Bank Sponsor within sixty (60) days of the Effective Date of this Agreement. If the total Initial Deposit is not so paid to Bank Sponsor, then this Agreement shall automatically terminate, and Bank Sponsor shall have no further obligation to sell the DSAY Credits to Buyer under this Agreement.

2.4.2. Consent Decree. Buyer shall use best efforts to negotiate a consent decree resolving its NRD liability with the Trustee Council, to be entered by a federal court of competent jurisdiction on or before February 1, 2025. Bank Sponsor will cooperate with Buyer and/or the Trustee Council if and as reasonably needed to

either (1) incorporate into Buyer's consent decree the necessary terms of the Credit Protocol to effectuate transfer of the DSAY Credits or (2) incorporate such terms into Bank Sponsor's own consent decree with the Trustee Council.

2.4.3. Deposit is Refundable until First Payment. If a consent decree resolving NRD liability as between Buyer and the Trustee Council has not been executed by all signatories on or before February 1, 2025, Buyer may request a refund of its Initial Deposit in writing. Bank Sponsor shall issue such a refund, with no interest, within thirty (30) days of receiving such a request.

2.4.4. Closing Upon First Payment.

(i)

Buyer shall transmit by ACH transfer its First Payment as described above in 2.1.2(ii) on or before February 1, 2025.

(ii)

Within 14 days after Bank Sponsor's receipt of First Payment (in addition to Page 3 of 9

the Initial Deposit) and the Corporate Guarantee described in 2.4.5 below, Bank Sponsor shall deliver a Bill of Sale to Buyer transferring the DSAY Credits to Buyer.

(iii)

The "Closing" or "Closing Date," and the transfer of the DSAY Credits, shall occur when the Bill of Sale is executed by Buyer. Upon Bank Sponsor's receipt of First Payment, the Initial Deposit will no longer be refundable under Section 2.4.3, and no other payments shall be refundable.

2.4.6. Corporate Guarantee. If Buyer chooses to transmit the Purchase Price in installments rather than in its entirety as part of the First Payment, Buyer shall also deliver a corporate guarantee to Buyer, securing the amount of the Purchase Price still outstanding after the First Payment. Such corporate guarantee shall be a good and sufficient corporate surety company bond or other security (hereinafter referred to as the "Bond") in accordance with the provisions of the laws of the State of Washington to secure the full performance by Buyer of all terms and conditions of this Agreement, including payment by Buyer of all amounts payable to the Bank Sponsor during the term of this Agreement. The form and provisions of the Bond, and the identity of the surety thereon, shall be subject to the approval of the Bank Sponsor. Bank Sponsor can provide a sample bond form upon request. The amount of the Bond shall be the amount of the Purchase Price not yet paid as of February 2, 2025. If Buyer fails to provide a bond, Buyer shall be considered in default hereunder and subject to the Bank Sponsor's rights under Section 2.5.2 below. The Bond may provide for termination on the anniversary date thereof upon not less than one (1) year's written notice to the Bank Sponsor if the Agreement is not in default at the time of said notice. In the event of any such termination, Buyer shall obtain a new Bond, also subject to Bank Sponsor approval, to replace the Bond being so terminated to be effective on or before the date of termination. Subject to Bank Sponsor's approval, Buyer may, in lieu of a Bond, obtain a guaranty from a party acceptable to the Bank Sponsor in its sole discretion and subject to the guarantor executing a guaranty form acceptable to the Port in its sole discretion.

2.4.7. Second Payment. Buyer shall transmit by ACH transfer its Second Payment as described above in 2.1.2(iii) on or before January 14, 2026.

2.4.8. Final Payment. Buyer shall transmit by ACH transfer its Second Payment as described above in 2.1.2(iv) on or before January 14, 2027.

2.4.9. Limits on Closing Date. The Closing Date shall not be modified without the written approval of Bank Sponsor and Buyer.

2.4.10. Conveyance; Notice of Transfer. At Closing, Bank Sponsor shall convey to Buyer the DSAY Credits, free of conditions or restrictions, except as expressly provided for in this Agreement, the Bill of Sale, or the Credit Protocol. Conveyance shall be in the form of a Bill of Sale. In addition, Bank Sponsor will provide notification in writing and an updated bank credit ledger to the Buyer and Trustee Council notifying them that the DSAY Credits have been transferred by the Bank

Sponsor to the Buyer for the purposes detailed in Section 2.2.2 of this Agreement.  
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2.4.11. Taxes; Costs. Buyer shall pay any sales tax or other tax due from the sale or purchase of the DSAY Credits under this Agreement, and shall defend, indemnify, and hold harmless Bank Sponsor from any and all claims, costs, fees (including but not limited to attorney fees), and expenses related to such taxes; Buyer's obligation under this section shall survive Closing. Except as provided above, each Party shall pay its own costs and attorney fees related to this Agreement and the transaction thereunder.

2.5. Termination; Default; Remedies

2.5.1. Termination. This Agreement may be terminated by Buyer at any time prior to Closing upon 10 days' written notice to Bank Sponsor. Upon termination and request by Buyer, Bank Sponsor shall refund the Initial Deposit, with no interest, to Buyer within thirty (30) days of receiving such request in writing. Once such refund has been transmitted, neither Party shall have any further obligation to the other under this Agreement.

2.5.2. Default by Buyer. If Buyer fails, without legal excuse or termination of this Agreement, to complete the purchase of the DSAY Credits in accordance with the terms of this Agreement, then Bank Sponsor may pursue payment of the remaining amount due, plus any applicable late fees pursuant to paragraph 2.1.4, through the Corporate Guarantee provided in in 2.4.6. At Bank Sponsor's discretion, in lieu of pursuing compensation under the Corporate Guarantee, the Parties may instead agree to terminate this Agreement and have Buyer return the pro-rata number of DSAY Credits not paid in full by the date of termination based on the price of US\$ 95,800.00 per DSAY Credit plus any applicable late fees.

2.5.3. Default by Bank Sponsor. If Bank Sponsor fails, without legal excuse, to complete the sale of the DSAY Credits by March 1, 2025, then Buyer may terminate this Agreement and recover the entire amount of the Initial Deposit and any other money paid by Buyer to Bank Sponsor for the DSAY Credits, with no interest, as liquidated damages as the sole and exclusive remedy available to Buyer for such failure. Buyer shall not be entitled to specific enforcement of transfer of the DSAY Credits, or consequential damages such as lost profits or damages, or any other remedy, for such failure or for any other claim related to this Agreement. Buyer may request a refund of all payments made no later than February 1, 2025. Bank Sponsor shall issue such a refund, within thirty (30) days of receiving such a request.

2.6. Notice

2.6.1. Except as may be otherwise expressly provided for herein, all notices required or permitted to be given under this Agreement shall be in writing and shall be delivered or sent: (a) in person; (b) by U.S. Mail, postage prepaid and certified with return receipt requested, and addressed as set forth below; (c) by nationally recognized overnight delivery service, prepaid, and addressed as set forth below; or (d) by email if a Party agrees to notice by email and provides an email address. Either Party may change its address by notifying the other Party in writing of the change of address. Notice shall be effective upon receipt or refusal of delivery by  
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the addressee for notice delivered in person or sent by U.S. Mail or courier, and shall be effective upon the addressee's written acknowledgement of receipt other than by an automated response for notice sent by email.

2.6.2. If to Bank Sponsor:

Port of Seattle  
Attn: Deputy General Counsel  
Attn: Sr. Manager, Maritime Environmental Planning  
2711 Alaskan Way  
P.O. Box 1209  
Seattle, WA 98111

As of the date of this Agreement:  
Elizabeth Black, black.e@portseattle.org  
Jon Sloan, sloan.j@portseattle.org  
If to Buyer:

Lockheed Martin Corporation  
Attn: Assistant General Counsel  
6801 Rockledge Drive  
Bethesda, MD 20817

As of the date of this Agreement:

Todd Billmire, todd.billmire@lmco.com

Brian Thorne, brian.thorne@lmco.com

#### 2.7. Miscellaneous

2.7.1. Effective date. The Effective Date of this Agreement shall be the last date of signature below by Bank Sponsor and Buyer.

2.7.2. Assignment. Buyer's rights under this Agreement, and any DSAY Credits purchased (or to be purchased) by Buyer under this Agreement, shall not be assigned, sold, gifted, alienated, encumbered, apportioned, transferred, or otherwise disposed of (collectively "assign"), in whole or in part, either voluntarily or by operation of law, to any other person or entity, and any DSAY Credits to be purchased (or to be purchased) by Buyer under this Agreement shall not be used for any purpose other than as stated in this Agreement, without the prior written consent of Bank Sponsor, in its sole and absolute discretion. Any attempt to assign or otherwise transfer or use the DSAY Credits shall be null and void. This provision shall survive Closing and shall not be merged into the Bill of Sale. Subject to the foregoing limitation, this Agreement shall inure to the benefit of and be binding upon the Parties' respective successors and assigns.

2.7.3. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties with respect to the purchase and sale of the DSAY Credits, and supersedes and replaces any prior agreements and understandings, whether oral or written, between them with respect to said matters.

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2.7.4. Time. Time is of the essence of this Agreement.

2.7.5. Governing Law; Venue. This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington, without regard to its conflicts of laws principles. Venue of any dispute shall be in King County, Washington.

2.7.6. Amendment; Waiver. No change or modification of this Agreement shall be valid unless the same is in writing and signed by the Parties. No waiver of any provision of this Agreement shall be valid unless in writing and signed by the Party against whom it is sought to be enforced. No waiver of any provision of this Agreement shall constitute a waiver of any other provision of this Agreement, whether or not similar, nor shall any waiver constitute a waiver of any preceding, succeeding, or continuing occurrence or condition, unless expressly stated in the waiver.

2.7.7. Captions. The captions of this Agreement have no effect upon its interpretation and are for convenience and ease of reference only.

2.7.8. Severability. The unenforceability, invalidity, or illegality of any provision hereof shall not render any other provision unenforceable, invalid, or illegal.

2.7.9. Computation of Time. If any date set forth in this Agreement for the delivery of any document or the happening of any event should, under the terms hereof, fall on a weekend or legal holiday as defined in RCW 1.16.050, then such date shall be automatically extended to the next succeeding weekday that is not such a holiday.

2.7.10. Attorneys' Fees. In the event either Party to this Agreement finds it necessary to bring an action at law or other proceeding against the other Party to enforce any of the terms, covenants, or conditions of this Agreement or any instrument executed pursuant to this Agreement, or by reason of any breach or default under this Agreement, the prevailing party in any such action or proceeding (and any appeal thereof) shall be paid all costs and reasonable attorneys' fees by the other Party. This provision shall survive Closing and shall not be merged into the Bill of Sale.

2.7.11. Acts Beyond Party's Control. Neither Party to this Agreement shall be in default or violation as to any obligation created hereby and no condition precedent or subsequent shall be deemed to fail to occur if such Party is prevented from fulfilling such obligation by, or such condition fails to occur due to, forces beyond such Party's reasonable control, including without limitation, destruction or impairment of facilities resulting from breakdown not resulting from lack of ordinary care and maintenance, flood, earthquake, slide, storm, lightning, fire, epidemic, war, riot, civil disturbance, sabotage, proceeding by court or public

authority, or act or failure to act by court, public authority, or third party, which forces by exercise of due diligence and foresight such Party could not reasonably have expected to avoid; provided, however, that the foregoing shall not apply with respect to any actions taken or events caused by such Party's own employees, or with respect to the payment of any amount due to the other Party under this

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Agreement.

2.7.12. No Joint Venture. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, or other arrangement between Buyer and Bank Sponsor. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person, firm, organization, or corporation not a party to this Agreement, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.

2.7.13. Counterparts/Faxes. This Agreement may be executed in one or more counterparts with like effect as if all signatures appeared on one copy. Facsimile transmission of any signed original document (other than the Bill of Sale), and retransmission of any signed facsimile transmission shall be the same as delivery of an original. At the request of either party, the Parties shall confirm facsimile transmitted signatures by signing an original document.

2.7.14. Commissions. Each Party represents and warrants that it is not represented by any broker, agent, or other person in connection with any of the transactions contemplated by this Agreement, and that it has not dealt with any broker, agent, or other person to which a commission or other fee is due in connection with any of the transactions contemplated by this Agreement, and that insofar as it knows, no broker, agent, or other person is entitled to any commission, charge, or fee in connection with any of the transactions contemplated by this Agreement. Each Party agrees to indemnify, defend, and hold harmless the other Party against any loss, liability, damage, cost, claim, or expense, including interest, penalties, and reasonable attorney fees, that the other Party incurs or suffers by reason of a breach by the first Party of the representations and warranties set forth in this section.

2.7.15. Disclosure of Public Records. The Parties understand and acknowledge that the Port of Seattle is subject to the State of Washington Public Records Act. If either Party, or any person to whom a Party transmits any information pursuant to this Agreement, is legally required to disclose such information, including without limitation information subject to the State of Washington Public Records Act, then such Party will endeavor to provide written notice to the other Party prior to any such disclosure. Unless a protective order is obtained and provided to the Party subject to the disclosure request, the Party will release to the public the requested information, including any confidential information.

2.7.16. Port of Seattle Authority. The sale of personal property by the Port of Seattle is subject to all applicable requirements of RCW Title 53 and all other statutes, regulations, rules, orders, and law of any kind applicable to a sale of personal property by the Port of Seattle, and Port of Seattle resolutions and policies regarding the sale of personal property, including those related to the sale of mitigation bank credits. The Port of Seattle's authority to enter into this Agreement, to sell the DSAY Credits, and to perform its obligations under this Agreement, is subject to the approval of this Agreement and all terms of this transaction, or the delegation of authority for such approvals, by the Port of Seattle Port Commission in open public meeting, and the successful completion of all appropriate notice, approval, and

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review processes necessary for the sale by the Port of Seattle, including any appeals.

PORT OF SEATTLE,  
Bank Sponsor/Seller

LOCKHEED MARTIN CORPORATION,  
Buyer

By:

By:

Stephen P. Metruck, Executive Director

Date:

Kevin Pearson, Director –  
Environmental Remediation

Date:

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