



Serving All of Thurston County
Commission Meeting
Monday, March 25, 2024
5:30 PM

Percival Plaza - Olympics Room
626 Columbia Street NW
Olympia, WA 98501

The meeting agenda is available on the Port's website as of March 20, 2024.
<https://www.portolympia.com/commission>

The public may join the meeting from their computer, tablet or smartphone at:

<https://us02web.zoom.us/j/82643754702>

or Telephone: 1 253 215 8782

Webinar ID: 826 4375 4702

Written public comments may be submitted to commissioncoordinator@portolympia.com by 12:00 p.m. on the date of the meeting. All written comments will be compiled and sent to the Commissioners prior to the meeting.

Verbal public comment is accepted in person at the meeting.

If you are attending the meeting via Zoom, you may raise your hand during the meeting to give public comment.
For those listening by phone, press *9 if you wish to raise your hand and provide comment.

AGENDA

- A. Call to Order
- B. Pledge of Allegiance
- C. Approval of Agenda
- D. Executive Director Report
- E. Public Comment

Individual public comments are limited to 3 minutes per person. Members of the public may comment on agenda items and other port business.

NOTE: Guidelines for public comment can be found in the Commission Rules in Resolution 2022-09 Article VI.

- Comments should be directed to Commission: Comments should be directed to the Commission as a whole and should not include comments about individual Port staff or members of the public.
- Courtesy: All speakers (members of the public, Port staff, and Commissioners) shall be courteous in language and demeanor and shall confine remarks to those facts that are germane and relevant to the question or issue under discussion.

Port of Olympia Mission

Creating economic opportunities and building community for all of Thurston County through responsible resource use.

F. Consent Calendar

1. Assignment of Lease – M&D Food, LLC
2. Bills and Vouchers for November 2023, Batch #44-47.5

Warrants over \$200,000: None

Bills and Vouchers for December 2023, Batch #49-52

Warrants over \$200,000:

Dalton Olmsted & Fuglevand: \$263,192.45

G. Pending Issues or Business

1. None

H. Action Calendar

1. Surplus of Port Property/Capital Budget Amendment: Afsin Yilmaz, Marine Terminal Senior Manager

I. Action/Other Calendar

1. None

J. Advisory Calendar

1. Contract Amendment – Phillips-Burgess: Ben McDonald, Director of Human Resources and Administration

Public Comment on Advisory Item

2. Lease Amendment #5 – Panattoni Option Lease Agreement: Warren Hendrickson, Director of Operations

Public Comment on Advisory Item

K. Commissioner Reports/Discussion

L. Other Business

M. Meeting Announcements

N. Adjourn

COVER MEMO

Briefing Date/Time: March 25, 2024

Staff Contact/Title: Clarita Mattox, Real Estate Senior Manager
claritam@portolympia.com

Subject: M&D Food LLC – Assignment of Space Lease

Purpose: ☐ Information Only ☒ Decision Needed (Consent)

Overview:

This item was an advisory item on Commission meeting of March 11, 2025. It is now coming back for Commission ratification via the consent agenda for ratification of Assignment of the Lease from M&D Food LLC to J & Allen LLC.

Background:

The Port entered into a Restated and Amended Lease Agreement in 2015 with Kyoung Jae Kim, for approximately 1,450 square feet of space in the building commonly known as Airport Retail Building. The lease was granted to Ms. Kyoung to operate the well-known restaurant Red Wagon Burgers. The building is located in the Airport's commercial district at the corner of Tumwater Boulevard and Old Highway 99, in Tumwater.

The agreement provided for a five-year space lease with two additional options to extend the term. Ms. Kyoung assigned the lease to ST&MS Enterprises Inc., in 2016, who in 2017 assigned the lease to the current tenant M&D Food LLC, the current tenant. The tenant has run a very successful restaurant operation. M&D Food LLC wishes to assign the lease now to J&Alen LLC., who will continue to operate as Red Wagon Burgers.

The remaining term of the lease is five years with one option to extend that term for additional five years or through December 2034. Port has conducted its customary due diligence process for J&Alen LLC, and through that process requested a personal guarantee and additional security deposit.

Documents Attached:

Copy of the assignment

Summary & Financial Impact:

The rent will continue to be adjusted annually by 2.5% through December 2029, and commencing January 2030 the rent will be modified to be in accordance with the then Commission policy.

Affected Parties:

The Port, M&D Food LLC, and J&Alen LLC.

Options with Pros & Cons:

The assignment of the lease will secure continuation of a successful small business in Tumwater and secure incoming revenues to the Port for the next ten years.

Staff Recommendation:

Commission to approve ratification of assignment of the space lease from M&D Food LLC to J & Allen LLC, as presented.

PORT OF OLYMPIA
VOUCHER APPROVAL LISTING, Batch # 44-47.5
November

GENERAL FUND

COMPUTER PREPARED	885,256.21
BOND ACCOUNT PAYMENTS	-
VOIDED WARRANT(S) / ELECTONIC PAYMENT(S)	(14,241.87)
PAYROLL	-
ELECTRONIC PAYMENTS	206,488.69
TOTAL GENERAL FUND WARRANTS, BOND ACCOUNT WARRANTS & ELECTRONIC PAYMENTS:	<u>1,077,503.03</u>

General Fund Warrants Issued: 088203-088406
Electronic Payments Issued: 001168-001182
Bond Account Warrants Issued:
Payroll Warrants Issued:
Voided Warrant(s): 082474, 084729, 088214, 088252, 087586
Voided Electronic Payment(s):
Zero Warrants:

We the undersigned Board of Commissioners of the Port of Olympia, Olympia Washington, do hereby authorize the issuance of the warrants described above.

Total Warrants: \$1,077,503.03

Warrants over \$200,000:

Amy Harding, Commission President

Joe Downing, Commission Vice President

Rudy Rudolph, Interim Executive Director

Charles Iyall, Commission Secretary

PORT OF OLYMPIA
VOUCHER APPROVAL LISTING
November

Batch #:
44

WARRANTS ISSUED:

COMPUTER PREPARED issued week ending 11/03/23		
COMPUTER PREPARED	088203-088247	120,582.74
Voided Warrant(s)	082474, 084729, 088214	(8,833.06)
Zero Warrant(s)		

PROJECTS:

COMPUTER PREPARED
Voided Warrant(s)

ELECTRONIC PAYMENTS:

Electronic Payments, issued week ending 11/03/23
COMPUTER PREPARED
Voided Warrant(s)

ACH NUMBERS:

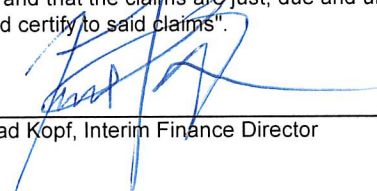
001168

6,692.03

TOTAL WARRANTS

\$ 118,441.71

RCW 42.24.080: "I, the undersigned, do hereby certify under penalty of perjury, that the materials have been furnished the services rendered or the labor performed as described herein, and that the claims are just, due and unpaid obligations of the Port of Olympia, and that I am authorized to authenticate and certify to said claims".



Tad Kopf, Interim Finance Director

PORT OF OLYMPIA
VOUCHER APPROVAL LISTING
November

Batch #:
45

WARRANTS ISSUED:

COMPUTER PREPARED, Issued week ending 11/10/23
COMPUTER PREPARED
Voided Warrant(s)
Zero Checks

WARRANT NUMBERS:

088248-088279

327,348.00

PROJECTS:

COMPUTER PREPARED
Voided Warrant(s)

ELECTRONIC PAYMENTS:

Electronic Payments, issued week ending 11/10/23
COMPUTER PREPARED
Voided Warrant(s)

ACH NUMBERS:

001169-001170

23,496.22

TOTAL WARRANTS

\$ 350,844.22

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Tad Kopf, Interim Finance Director

PORT OF OLYMPIA
VOUCHER APPROVAL LISTING
November

Batch #:
46

WARRANTS ISSUED:

COMPUTER PREPARED, Issued week ending 11/17/23
COMPUTER PREPARED
Voided Warrant(s)
Zero Checks

WARRANT NUMBERS:

088280-088310
088252

146,507.64

(5,368.81)

PROJECTS:

COMPUTER PREPARED
Voided Warrant(s)

ELECTRONIC PAYMENTS:

Electronic Payments, issued week ending 11/17/23
COMPUTER PREPARED
Voided Warrant(s)

ACH NUMBERS:

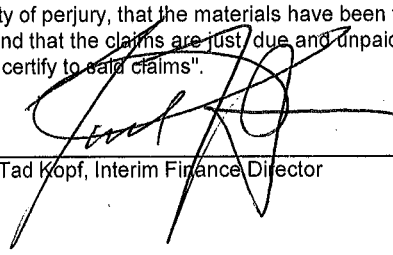
001171-001173

51,180.02

TOTAL WARRANTS

\$ 192,318.85

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Tad Kopf, Interim Finance Director

PORT OF OLYMPIA
VOUCHER APPROVAL LISTING
November

Batch #:
47

WARRANTS ISSUED:

COMPUTER PREPARED issued week ending 11/24/23
COMPUTER PREPARED
Voided Warrant(s)
Zero Checks

WARRANT NUMBERS:

088311-088343

91,061.79

PROJECTS:

COMPUTER PREPARED
Voided Warrant(s)

-
-

ELECTRONIC PAYMENTS:

Electronic Payments, issued week ending 11/24/23
COMPUTER PREPARED
Voided Warrant(s)

ACH NUMBERS:

001174-001176

23,688.75

TOTAL WARRANTS

\$ 114,750.54

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Tad Kopf, Interim Finance Director

PORT OF OLYMPIA
VOUCHER APPROVAL LISTING
November

Batch #:
47.5

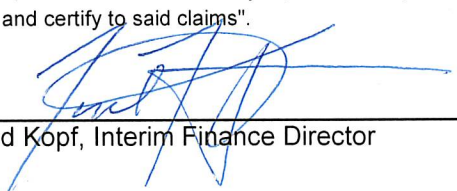
WARRANTS ISSUED:	WARRANT NUMBERS:	
COMPUTER PREPARED issued week ending 11/30/23		199,756.04
COMPUTER PREPARED	088344-088406	
Voided Warrant(s)	087586	(40.00)
Zero Warrant(s)		

PROJECTS:
COMPUTER PREPARED
Voided Warrant(s)

ELECTRONIC PAYMENTS:	ACH NUMBERS:	
Electronic Payments, issued week ending 11/30/23		<u>101,431.67</u>
COMPUTER PREPARED	001177-001182	
Voided Warrant(s)		

TOTAL WARRANTS	<u>\$ 301,147.71</u>
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Tad Kopf, Interim Finance Director



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Dalton Olmsted & Fuglevand: \$263,192.45

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I. Action/Other Calendar

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Public Comment on Advisory Item

2. Lease Amendment #5 – Panattoni Option Lease Agreement: Warren Hendrickson, Director of Operations

Public Comment on Advisory Item

K. Commissioner Reports/Discussion

L. Other Business

M. Meeting Announcements

N. Adjourn

PORT OF OLYMPIA
VOUCHER APPROVAL LISTING, Batch # 49-52
December

GENERAL FUND

COMPUTER PREPARED	917,002.77
BOND ACCOUNT PAYMENTS	-
VOIDED WARRANT(S) / ELECTONIC PAYMENT(S)	-
PAYROLL	
ELECTRONIC PAYMENTS	335,204.09
TOTAL GENERAL FUND WARRANTS, BOND ACCOUNT WARRANTS & ELECTRONIC PAYMENTS:	<u>1,252,206.86</u>

General Fund Warrants Issued: 088407-088592
Electronic Payments Issued: 001182-001195
Bond Account Warrants Issued:
Payroll Warrants Issued:
Voided Warrant(s):
Voided Electronic Payment(s):
Zero Warrants:

We the undersigned Board of Commissioners of the Port of Olympia, Olympia Washington, do hereby authorize the issuance of the warrants described above.

Total Warrants: \$1,252,206.86

Warrants over \$200,000:

088574-Dalton, Olmsted & Fuglevand \$263,192.45

Amy Harding, Commission President

Joe Downing, Commission Vice President

Sarah Tonge, Commissioner

Magdalene Sanders, Commissioner

Rudy Rudolph, Interim Executive Director

Charles Iyall, Commission Secretary

PORT OF OLYMPIA
VOUCHER APPROVAL LISTING
December

Batch #:
49

WARRANTS ISSUED:

COMPUTER PREPARED issued week ending 12/08/23
COMPUTER PREPARED
Voided Warrant(s)
Zero Warrant(s)

WARRANT NUMBERS:

088407-088461

124,705.56

PROJECTS:

COMPUTER PREPARED
Voided Warrant(s)

ELECTRONIC PAYMENTS:

Electronic Payments, issued week ending 12/08/23
COMPUTER PREPARED
Voided Warrant(s)

ACH NUMBERS:

001182-001185

46,094.77

TOTAL WARRANTS

\$ 170,800.33

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Tad Kopf, Interim Finance Director

PORT OF OLYMPIA
VOUCHER APPROVAL LISTING
December

Batch #:
50

WARRANTS ISSUED:

COMPUTER PREPARED, Issued week ending 12/15/23
COMPUTER PREPARED
Voided Warrant(s)
Zero Checks

WARRANT NUMBERS:

088462-088501

182,806.19

PROJECTS:

COMPUTER PREPARED
Voided Warrant(s)

ELECTRONIC PAYMENTS:

Electronic Payments, issued week ending 12/15/23
COMPUTER PREPARED
Voided Warrant(s)

ACH NUMBERS:

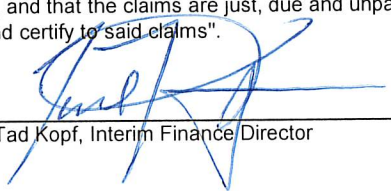
001186-001189

130,989.93

TOTAL WARRANTS

\$ 313,796.12

RCW 42.24.080: "I, the undersigned, do hereby certify under penalty of perjury, that the materials have been furnished the services rendered or the labor performed as described herein, and that the claims are just, due and unpaid obligations of the Port of Olympia, and that I am authorized to authenticate and certify to said claims".


Tad Kopf, Interim Finance Director

PORT OF OLYMPIA
VOUCHER APPROVAL LISTING
December

Batch #:
51

WARRANTS ISSUED:

COMPUTER PREPARED, Issued week ending 12/22/23
COMPUTER PREPARED
Voided Warrant(s)
Zero Checks

WARRANT NUMBERS:

088502-088563

157,989.36

PROJECTS:

COMPUTER PREPARED
Voided Warrant(s)

ELECTRONIC PAYMENTS:

Electronic Payments, issued week ending 12/22/23
COMPUTER PREPARED
Voided Warrant(s)

ACH NUMBERS:

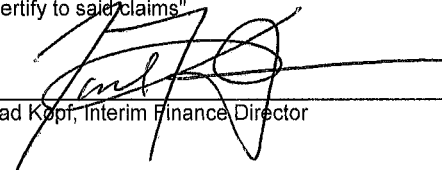
001190-001192

87,623.81

TOTAL WARRANTS

\$ 245,613.17

RCW 42.24.080: "I, the undersigned, do hereby certify under penalty of perjury, that the materials have been furnished the services rendered or the labor performed as described herein, and that the claims are just, due and unpaid obligations of the Port of Olympia, and that I am authorized to authenticate and certify to said claims."


Tad Kopf, Interim Finance Director

PORT OF OLYMPIA
VOUCHER APPROVAL LISTING
December

Batch #:
52

WARRANTS ISSUED:

COMPUTER PREPARED issued week ending 12/29/23
COMPUTER PREPARED
Voided Warrant(s)
Zero Checks

WARRANT NUMBERS:

088564-088592

451,501.66

PROJECTS:

COMPUTER PREPARED
Voided Warrant(s)

-
-

ELECTRONIC PAYMENTS:

Electronic Payments, issued week ending 12/29/23
COMPUTER PREPARED
Voided Warrant(s)

ACH NUMBERS:

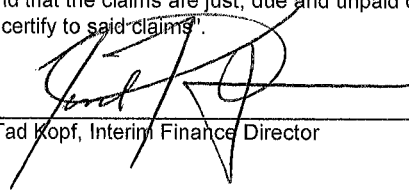
001193-001195

70,495.58

TOTAL WARRANTS

\$ 521,997.24

RCW 42.24.080: "I, the undersigned, do hereby certify under penalty of perjury, that the materials have been furnished the services rendered or the labor performed as described herein, and that the claims are just, due and unpaid obligations of the Port of Olympia, and that I am authorized to authenticate and certify to said claims".



Tad Kopf, Interim Finance Director

COVER MEMO

Briefing Date/Time: March 25, 2024

Staff Contact/Title: Afsin Yilmaz, Marine Terminal Senior Manager
(360) 528-8015, afsiny@portolympia.com

Subject: Surplus of Port Property: Four Flat Deck Rail Cars
2024 Capital Budget Amendment: Purchase of Forklifts

Purpose: ☐ Information Only ☒ Decision Needed

Overview:

This item is an Action item before the Commission. Approval is requested.

The purpose of bringing this issue before the Commission is two-fold:

1. Commission approval to surplus unneeded Port property, and
2. Commission approval of a capital budget amendment to purchase much needed equipment.

Proceeds from the sale of surplus equipment will offset the cost of the capital budget purchase.

Background – Surplus of Port Property (Railcars):

As part of a larger Marine Terminal project funded via a 2011 FRA-WSDOT (Federal Railroad Administration – Washington State Department of Transportation) grant – “Port of Olympia Intermodal Infrastructure Enhancement Project” – the Port procured four used 60-foot flat deck railcars, funded 100% by this grant in the amount of \$155,127.

Since completion of the initial project, these railcars have been rarely used and are no longer considered necessary for Port operations. In addition, a recent inspection has determined that these railcars have significant maintenance needs.

Surplus of Port property is subject to the following governing documents:

- Port Resolution 2024-01
- RCW 53.08.090

The Port-calculated current value of the railcars is \$60,112. Since the value exceeds \$22,000, Port Commission approval is required to surplus them.

Additionally, since these railcars were purchased with a grant, their surplus is also subject to the approval of the FRA, the awarding agency, per the guidance published in:

- 49 CFR 18

On February 28, the Port requested FRA review of the proposed property surplus, a determination of the net grant obligation value in dollars, and approval of the surplus. FRA has advised the Port that its decision on surplus approval and final value determination can be expected by March 22, 2024. Port staff has every reason to believe its request will be successful and is simply awaiting confirmation.

There has been interest from the private sector to purchase the railcars. Upon Commission approval of the surplus property declaration, Port staff will seek competitive bids to maximize the value returned to the Port.

Background – Capital Budget Amendment (Purchase of Forklifts):

While recognizing the presence of unneeded equipment, Port staff has also determined there is a great need for specialized forklifts to serve ongoing Marine Terminal operations. Four forklifts are currently being leased at a gross monthly cost of \$7,884. These forklifts are very difficult to source, and up to four of them are now available to purchase immediately.

These forklifts are multifunctional and may be used to load railroad boxcars as well as tractor trailers. Given their recently established availability for purchase, the Port has been presented with a favorable market opportunity to eliminate unnecessary equipment, purchase needed equipment, and eliminate a \$7,884 monthly lease expense. The total purchase price of four forklifts is \$226,664, including sales tax.

Port Commission approval of an amendment to the 2024 capital budget is necessary because this purchase is not specifically “named” within it.

While the revised capital budget will reflect a net increase, an infusion of additional Port funds is not required:

1. Proceeds from sale of four railcars will offset the cost of up to four forklifts, and
2. If necessary, up to \$200,000 of unobligated funds are available within the capital budget from the Commission-approved “Capital Contingency Projects” line item.

Documents Attached:

PowerPoint Presentation

Summary & Financial Impact:

While the surplus of railcars and the purchase of forklifts would normally be completely independent transactions, they are inextricably linked. The return of funds to the Port from the disposed equipment will enable the purchase of forklifts. The Port will replace unneeded equipment with needed equipment, while simultaneously eliminating almost \$8,000 per month in expenses.

Both Port and FRA approvals are required for the surplus transaction to take place, while also resolving remaining grant obligations to the FRA.

The Port acknowledges the opportunity to procure, maintain, and facilitate the efficient use of maintenance heavy equipment. Unnecessary, space-consuming equipment will be eliminated, and the Port will purchase the type of equipment most needed in daily warehouse operations.

The Port will surplus four railcars via a competitive sale process to the highest bidder and will then use the proceeds to procure up to four forklifts, permanently eliminating \$7,884 in monthly lease costs for immediate financial benefit.

Affected Parties:

Port of Olympia

Federal Railroad Administration (FRA)

WSDOT

Staff Recommendation:

Approval is recommended for:

1. Surplus of four railcars, and
2. Amendment of the 2024 capital budget to purchase up to four forklifts.



PORT of OLYMPIA
Serving All of Thurston County

Surplus of Port Property: Flat Deck Railcars Capital Budget Amendment: Forklifts Purchase

Afsin Yilmaz
Marine Terminal Senior Manager
March 25, 2024



1



Today's Presentation

Action Item – Approval Requested

- Surplus four unneeded flat deck railcars
- Approve an amendment to the 2024 capital budget to purchase up to four needed boxcar special forklifts
- Advisory presentation to the Commission on March 11, 2024



2

History/Current Status

Four 235-Ton 60-Foot Flat Deck Railcars



- 2011 Federal Railroad Administration (FRA) grant funded 100% of the purchase of four flat deck railcars: \$155,127
- Flat deck railcars are rarely used and require extensive maintenance
- Equipment no longer serves Port needs

3



3

History/Current Status (cont'd)

Boxcar Special Forklifts



- Boxcar special forklifts are indispensable for supporting Suzano bulk paper transloading warehouse operations
- Port has leased four forklifts since November 2023
- Gross monthly rental expense \$7,884

4



4

Objectives

- Solve for a critical and immediate need
 - Surplus unneeded limited-use railcar equipment
 - Replace with much needed multifunctional forklift equipment
- Surplus disposal proceeds will be used to purchase “hard to find” forklifts, whose purchase requires amendment of 2024 capital budget
- Purchase of forklifts will permanently eliminate monthly gross rental expense of \$7,884

5



5

Port – FRA Surplus Process

Relevant Guidance

- Port process governed by:
 - Port Resolution 2024-01
 - RCW 53.08.090
- Commission approval to surplus is required when personal property valuation exceeds \$22,000
- FRA disposal valuation anticipated by 3/22/2024

6



6

Questions and Comments

Two Separate Motions Suggested...

- Motion #1:
 - *"...move to authorize Executive Director to surplus the Port's four flat deck railcars, serial numbers OLYX60950, OLYX60951, OLYX60955, and OLYX60956."*
- Motion #2:
 - *"...move to amend the 2024 Marine Terminal capital budget, adding a new named project "Boxcar Special Forklifts" in the amount of \$226,664."*

7

COVER MEMO

Briefing Date:	March 25, 2024
Staff Contact/Title:	Ben McDonald, Director of Human Resources & Admin., benm@portolympia.com; 360-528-8003
Subject:	Phillips Burgess Contract No. 2022-1065
Purpose:	<input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Decision Needed

Background/Overview:

The Port of Olympia has contracted with the law firm of Dickson Frohlich Phillips Burgess to provide miscellaneous legal services including real estate acquisition, development, and permitting, as well as insurance litigation and public records requests.

Additional funds are needed for this contract to continue to provide the Port of Olympia with proper representation for legal matters regarding the subjects listed above.



PORT of OLYMPIA
Serving All of Thurston County

Contract Amendment for Dickson Frohlich Phillips Burgess

Ben McDonald
Director of Human Resources and Administration
March 25, 2024



1



Today's Presentation

Advisory

- Review contract with the Law Office of Dickson Frohlich Phillips Burgess



2

Background

Law Office of Dickson Frohlich Phillips Burgess PLLC

- Heather Burgess
 - Real estate acquisition, development, and permitting
 - Land use - Panattoni
 - Habitat Conservation Plan (HCP)
 - Real estate leasing and transactional support
 - Tenant non-compliance/eviction
- Chris Pierce-Wright
 - Public disclosure requests
 - Land use
 - Real Estate
 - Insurance litigation

3



3

Contract No. 2022-1065

Advisory: Amendment No. 1

Contract History	Amount	Effective Date	End Date
Initial Contract	\$100,000	January 10, 2023	December 31, 2024
Proposed Amendment #1 increase	\$100,000	April 8, 2024	December 31, 2025
New NTE Total	\$200,000		

4



4

Questions and Comments

5



COVER MEMO

Briefing Date/Time: March 25, 2024

Staff Contact/Title: Warren Hendrickson, Director of Operations
360.528.8050, warrenh@portolympia.com

Subject: Lease Amendment #5 – NewMarket Industrial Campus
Ground Lease Option Agreement/Panattoni

Purpose: ☒ Information Only ☐ Decision Needed

Overview:

This is an Advisory agenda item before the Commission. No action is required.

At the April 8, 2024 Commission meeting, Commission approval of this action is planned via the Consent agenda. Approval will authorize the Executive Director to execute the subject lease amendment with SSECC PDC, LLC (Panattoni Development Company, Inc.).

Background:

The Port and SSECC PDC, LLC (Panattoni Development Company, Inc.) entered into a Ground Lease Option Agreement dated July 13, 2020, covering specific premises owned by the Port in the NewMarket Industrial Campus (NMIC) for development of a high-quality business park with a mix of commercial, business, and light industrial uses.

The agreement's Phase Plan and Due Diligence Period sections anticipated completion and approval of the Bush Prairie Habitat Conservation Plan (HCP) within 24 months. That date has subsequently been amended several times, most recently to August 31, 2024. The completion and approval date of the Bush Prairie Habitat Conservation Plan remains uncertain and cannot be reliably predicted. Therefore, a specific calendar date no longer serves either the Port's or the Tenant's interests. Both the Port and Panattoni wish to amend the lease to tie the lease's due diligence period to an "event" – namely the issuance of an Issuance Take Permit by the U.S. Fish and Wildlife Service – rather than a specific calendar date. Revising the HCP completion date will also affect the Due Diligence Period and Good Faith Deposit requirements of the original agreement.

Lease Amendment 5 addresses all issues satisfactorily.

Documents Attached:

- PowerPoint Presentation
- Lease Amendment #5 – NMIC Ground Lease Option/Panattoni

Affected Parties:

- Port of Olympia
- Panattoni Development Company, Inc.
- City of Tumwater

Staff Recommendation for April 8, 2024:

Port staff recommends that the Port of Olympia Commission:

- Authorize the Executive Director to execute Lease Amendment #5 to the Ground Lease Option Agreement with SSECC PDC, LLC (Panattoni Development Company, Inc.).




PORT of OLYMPIA
Serving All of Thurston County

Lease Amendment #5 NewMarket Industrial Campus Panattoni

Warren Hendrickson
Director of Operations
March 25, 2024



1



Today's Presentation

Advisory Only – No Action Required

- NewMarket Industrial Campus (NMIC)
- Habitat Conservation Plan-related
- Panattoni lease amendment



2

Background

Panattoni Development Ground Lease Option

- Ground lease option agreement executed 7/13/2020
- 199 acres in NMIC
- All but 29.27 acres subject to Habitat Conservation Plan (HCP)
- Initial lease option agreement anticipated HCP completion within 24 months of lease execution

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Location



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4

History

Port-Panattoni History

- Jul 2020: Initial execution of option lease agreement
- Oct 2020: Amendment 1 – Development agreement conditions
- Jul 2021: Amendment 2 – Subdivision application and extension of terms
- Jul 2021: Commission approval of Standard Lease Form
- Jan 2022: Amendment 3 – Extension of terms and expense reimbursement
- Feb 2022: Phase 1 & 2 Port Approvals – Subdivision and Lot 1 development
- Mar 2023: Amendment 4 – Extension of terms
- Nov 2023: Commission approval of amendment to Standard Lease Form

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Lease Amendment #5

Language Revision: Calendar-Specific vs. Event-Specific

- Lease amendments #2, #3, and #4 extended HCP calendar end dates
- Lease amendment #4 expiration date 8/31/2024
- Lease amendment #5 will revise HCP stipulation from calendar-specific to event-specific
- Commission has previously approved this concept
 - Swire lease amendment #1 – November 2023
 - Port-City of Tumwater HCP Interlocal agreement – January 2024

6



6

Lease Amendment #5 (cont'd)

Language Revision: Calendar-Specific vs. Event-Specific

- Option agreement will terminate ninety (90) days after issuance of an Incidental Take Permit (ITP) by the U.S. Fish and Wildlife Service
 - ITP indicates U.S. Fish and Wildlife Service formal HCP approval
 - Allows for subsequent City revision of applicable municipal codes
- No later than December 31, 2028

7



7

Next Steps

Future Commission Action

- Authorize the Executive Director to execute Lease Amendment #5
- Action via consent agenda
- 4/8/2024 Commission meeting

8



8

Questions and Comments

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FIFTH AMENDMENT TO OPTION TO GROUND LEASE AGREEMENT

This FIFTH AMENDMENT TO OPTION TO GROUND LEASE AGREEMENT ("Amendment") dated as of April 8, 2024 (the "**Effective Date**") is made by and between the **PORT OF OLYMPIA**, a Washington municipal corporation (the "**Port**") and **SSECC PDC, LLC**, a Delaware limited liability company ("**Developer**"). The Port and Developer entered into an Option to Ground Lease Agreement dated July 13, 2020, concerning approximately one hundred and ninety-nine (199) acres of land located in the NewMarket Industrial Campus in the City of Tumwater, Thurston County, Washington (the "**Option Agreement**"), which property is more particularly described in the Option Agreement (the "**Optioned Property**"). Any capitalized terms used but not defined herein shall have the meaning ascribed to them in the Option Agreement.

WHEREAS, the Option Agreement was amended by First Amendment dated September 14, 2020, to provide for terms and conditions to apply and negotiate a Development Agreement, and to adjust the Due Diligence Period to accommodate potential delays in obtaining a fully executed Development Agreement; and

WHEREAS, the Option Agreement was amended by Second Amendment dated July 12, 2021 to extend the Option Term, Habitat Plan Completion Date, and the Phase Plan form approval period, and to adjust the Due Diligence Period to further accommodate potential delays in completing the Habitat Plan; and

WHEREAS, the Option Agreement was amended by Third Amendment dated December 13, 2021, to extend the Habitat Plan Completion Date, to adjust the Due Diligence Period, as previously amended by the First and Second Amendments to the Option Agreement, to further accommodate potential delays in completing the Habitat Plan, and to set forth conditions by which the expenses for development studies that benefit the Port may be reimbursed; and

WHEREAS, the Option Agreement was amended by Fourth Amendment dated March 1, 2023, to extend the Habitat Plan Completion Date, to adjust the Due Diligence Period, as previously amended by the First, Second, and Third Amendments to the Option Agreement, to further accommodate potential delays in completing the Habitat Plan, and to clarify the timing on the payment of the Good Faith Deposit; and

WHEREAS, the Option Agreement and Due Diligence Period, as amended, anticipated completion and approval of the Bush Prairie Habitat Conservation Plan no later than August 31, 2024; and

WHEREAS, the completion and approval date of the Bush Prairie Habitat Conservation Plan is uncertain and the specific date of August 31, 2024 no longer serves either the Port's or the Developer's interests; and

WHEREAS, the Port and Developer wish to amend the Option Agreement to revise the Habitat Plan Completion Date, to adjust the Due Diligence Period, as previously amended by the First, Second, Third, and Fourth Amendments to the Option Agreement, to further accommodate potential delays in completing the Habitat Plan, and to amend the timing on the payment of the Good Faith Deposit.

NOW THEREFORE, the Parties agree as follows:

1. **Extension of Habitat Plan Completion Date and Due Diligence Period.** The Option Agreement is expressly contingent upon the Developer securing the Due Diligence Reports defined in Section 8.1 of the Option to Ground Lease Agreement. The parties hereby agree that the Due Diligence Period, as defined in Section 8.1 of the Option Agreement, and as previously amended by the First, Second, Third, and Fourth Amendments to the Option to Ground Lease Agreement shall be amended. The Due Diligence period and all contingencies shall continue until the Developer approves in writing the Habitat Conservation Plan, which approval or disapproval by Developer shall occur within sixty (60) days from issuance of an Incidental Take Permit ("ITP") by the USFWS following receipt of the Habitat Conservation Plan and approval of revisions of applicable municipal codes regarding development related to the ITP ("Plan Approval or Disapproval Deadline"), but in no case later than December 31, 2028. The Developer shall determine, in its sole discretion, whether the development of the Premises is feasible, and shall promptly advise in writing the Port of its determination upon completion of Developer's Due Diligence, including but not limited to the Habitat Conservation Plan and all other conditions and contingencies. Additionally, the Option Agreement is expressly contingent upon the approval by Developer in its sole discretion of the Site Development Plan, Airport Layout Plan, actual completion and approval of the Bush Prairie Habitat Conservation Plan by no later than the Plan Approval or Disapproval Deadline, and the availability of "mitigation credits".
2. **Payment of the Good Faith Deposit Note.** The Good Faith Deposit Note is due and payable upon the Habitat Conservation Plan Completion Date as described above in accordance with the terms of the Option Agreement, as amended. The Port will give written notice to the Developer of the Habitat Conservation Plan Completion Date in accordance with the terms of the Option Agreement, as amended, and the Note will then be payable within fifteen (15) business days thereafter.
3. **Full Force and Effect.** The rest and remainder of the Option Agreement and any amendment thereto shall remain in full force and effect and is affirmed and ratified by the signature of the parties.

PORT OF OLYMPIA, a Washington
municipal corporation

SSECC PDC, LLC, a Delaware limited
liability company

By: _____

Title: _____

Date: _____

By: _____

Its: _____

Date: _____

Approved as to Form by Port of Olympia General Counsel

By: _____
Rick Hughes

Date: _____

STATE OF WASHINGTON)
) ss
COUNTY OF THURSTON)

On this _____ day of _____, 20____, personally appeared before me _____, to me known to be the Executive Director at the Port of Olympia, the municipal corporation named in the within and foregoing **Fifth Amendment to Option to Ground Lease Agreement**, and acknowledged to me that he/she signed the same on its behalf, as he/she is so authorized to do, as his/her free and voluntary act and deed for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

(Print Name) _____
NOTARY PUBLIC in and for the State of Washington,
residing at _____
My commission expires: _____

STATE OF WASHINGTON)
) ss
COUNTY OF _____)

On this _____ day of _____, 20____, personally appeared before me _____, to me known to be the _____ at the entity named in the within and foregoing **Fifth Amendment to Option to Ground Lease Agreement**, and acknowledged to me that he signed the same on its behalf, as he is so authorized to do, as his free and voluntary act and deed for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

(Print Name) _____
NOTARY PUBLIC in and for the State of Washington,
residing at _____
My commission expires: _____

RATIFICATION

This **Lease** shall be subject, as a condition subsequent, to ratification by the Port of Olympia Commission within thirty (30) days after the date set forth on Page 1. This Lease shall be effective and binding on the parties until such time (and thereafter if ratified), the Executive Director having the authority to sign this Lease and bind the Port to all of its material terms. If this Lease is not ratified, it shall terminate and be of no further force and effect.

The undersigned confirms that this Lease was ratified by the Port of Olympia Commission on _____, 20__.

Port of Olympia Commission

By: _____

Its: _____

Date: _____

STATE OF WASHINGTON)

) ss

COUNTY OF THURSTON)

On this _____ day of _____, 20__, personally appeared before me _____, to me known to be the President of the Port of Olympia Commission, the municipal corporation named in the within and foregoing **Lease Agreement**, and acknowledged to me that he signed the same on its behalf, as he is so authorized to do, as his free and voluntary act and deed for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

Print Name: _____
NOTARY PUBLIC in and for the State of Washington,
residing at _____
My commission expires: _____