

Draft Proposed Deal Points for POS/SSAT Approval to Sub-lease, Lease amendments to T18 and T30 Leases, and amendment to T18 Crane Agreement

1. SSAT pays POS \$9,000,000/year for 10 years, starting August 1, 2014. SSAT is reimbursed for this payment by APL/EMS. EMS and APL need to give POS a back-up guarantee of this payment if EMS defaults. SSAT shall be liable for payment to POS to the same extent SSAT receives payment from APL/EMS.
2. SSAT MFN land rent clause in both T18 and T30 leases is amended to be a "mutual" MFN, meaning the lease rate can go both down and up for land rent if POS land rent at T5 and T46 (whichever is lower) increases or decreases.
3. MFN definition enhanced to emphasize it is only related to land rent in Elliott Bay for international container terminals. The land rent will be the combination of land and basic container terminal improvements, irrespective of age of the basic improvements and exclusive of special improvements. The provisions in paragraph 5 below will not be used to establish land rent under the MFN.
4. SSAT can opt out of the application of the MFN clause at any time but once they do, the MFN clause for land rent is terminated and removed from both the T18 and T30 leases.
5. The rent schedule at T18 and T30, unless modified by the MFN application, will follow the "MAG" rent plus "Container Volume Lift Rate Fee" schedule at T46 (per section 6. of the 13th Amendment to the T46 lease) through 2025, even if the TTI lease terminates early. After 2025, there will be a market rate adjustment of the land rent MAG based on land values for Port of Seattle international container terminals and including valuation of their improvements and all related issues for these terminals.

In the event that only T18 and T30 are active international container terminals in Port of Seattle (and leased by SSAT or another entity within the Carrix family), such market rate adjustment will look to land rent rates for international container terminals situated in the Puget Sound area to achieve a reasonable benchmark.

The first adjustment will be effective as of January 1 2026 and will occur every five years through the end of the T18 and T30 leases.

The per acre MAG for the ensuing 5-Year Period, and for any period of less than five (5) years remaining at the end of the term, shall be mutually agreed upon between Tenant and the Port not more than twelve (12) months and not less than six (6) months before the beginning of each such 5-Year period.

In the event that the per acre MAG has not been agreed upon by the beginning of the new 5-Year Period, the Port's Chief Executive Officer shall have the unilateral right, at his/her discretion, to increase the per acre MAG rate for the ensuing 5-Year Period in an amount between 2% and 5% per annum increase based on the actual lease paid for the last year of the preceding 5-year period. This will be subject to retroactive adjustment once negotiations for such period have been completed.

Commencing no earlier than twelve (12) months prior to each Adjustment Date, the Port and SSAT shall enter into negotiations with regard to market rate adjustment of the land rent MAG to commence on the Adjustment Date. If by six (6) months prior to any Adjustment Date the Port and SSAT have not agreed upon the amount of the market rate adjustment of the land rent MAG for the ensuing 5-Year Period, the adjustment shall be determined by each party picking an appraiser within 3 weeks after the deadline and each of those two appraisers picking a third to determine the new MAG within 14 days after both have been appointed. The appraisers will attempt to issue a consensus written conclusion with regard to valuation within 14 days. If the three appraisers cannot reach a consensus, each of the three appraisers shall provide a written statement setting forth his/her determination of the market rate adjustment to the MAG (for each, his/her "Adjusted MAG Amount") within an additional 14 days. The MAG as of the Adjustment Date shall be the average of the two Adjusted MAG Amounts with the smallest difference between them.

The three appraisers shall take into consideration the uses permitted under this Lease and all of its terms, conditions and restrictions, including, but not limited to, the per acre MAG, the throughput of TEUs or Lifts per acre, the TEU or Lift rates or other comparable efficiency scale, the use of similar premises and facilities devoted to similar use, the availability of comparable terminal facilities, the character of the premises, other facts necessary for the compensation paid by comparable container terminal operating tenants within Port of Seattle, and if no active international container terminals exist in the Port of Seattle (other than T18 and T30) then consider the above based on such terminals in the full Puget Sound area.

In between market rate adjustments, the land rent will increase every non-market rate adjustment year by not less than 2% regardless of CPI, and with the maximum increase capped at the lesser of the CPI increase or 5%.

6. The Port and SSAT would agree to the following arrangements for the Port-owned cranes at T18:
 - A. IHI cranes: SSAT will have free use of the 3 IHI cranes, with SSAT responsible for any applicable taxes. The Port will remove the cranes from T18 if SSAT requests. The Port will have 12 months from the date of the request to complete the removal, unless SSAT agrees to an extension of time.
 - B. MHI cranes: The Port will transfer ownership of MHI cranes to SSAT at \$1 per crane. The Port and SSAT will each pay 50% of the sales tax.

7. The Port and SSAT would handle stormwater improvements to meet SSAT's current stormwater discharge requirements at T-18 in the following manner:

- SSAT will be solely responsible for compliance with its industrial stormwater permit at T-18.
- To the extent required to achieve regulatory compliance, SSAT would undertake construction of the stormwater infrastructure improvements ("SII") necessary to comply with its industrial stormwater permit at T-18.
- The Port, with regard to expenses incurred on or after June 1, 2013, would share with SSAT, calculated together, the design, and construction costs of the SII at T-18 as follows:
 - i. \$0.00 - \$10 million: SSAT 75%; Port 25%
 - ii. \$10 million - \$20 million: SSAT 25%; Port 75%
 - iii. \$20 million and over: SSAT 50%; Port 50%

Example: If the stormwater costs are \$22 million, the cost sharing would be as follows:
\$0.00 - \$10 million—SSAT \$7.5 million, Port \$2.5 million;
\$10 million-\$20 million—SSAT \$2.5 million, Port \$7.5 million;
\$20 million-\$22 million—SSAT \$1 million, Port \$1 million

Total: SSAT \$11 million; Port \$11 million

8. SSAT would remain solely and continuously responsible for performing ongoing maintenance of the SII and compliance with their industrial stormwater permits. SSAT would also be responsible for the performance and cost of sweeping, cleaning of pipes and catch basins, and other activities that may be necessary to maintain compliance with their industrial stormwater permits.

9. SSAT will have preferential use of a portion of T5 to handle Westwood cargo through 2014 while SSAT has a storage shed for Westwood cargo constructed at T18. SSAT, as compensation for this use of T5, will maintain the Port owned cranes at T5 in a mothballed condition for up to five years, provided, that SSAT shall not be responsible for any replacement parts necessary to maintain the Port owned cranes in a mothballed condition. SSAT will be responsible for all maintenance and repair of all cranes at T5 used by SSAT. SSAT will have preferential use of the Port-owned cranes at T5 through December 31, 2014.

10. SSAT is responsible for all taxes related its use of Terminal 5 (any potential leasehold tax).

11. **[[Stormwater liability. SUBJECT TO FURTHER REVIEW BY THE PARTIES. (parties are still negotiating the terms for handling stormwater liability issues for temporary use at T-5 related to Westwood. The Port may indemnify SSAT for potential liability beyond its operational impacts)]]**