

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA

Item No. 6f

Date of Meeting April 14, 2009

DATE: March 16, 2009

TO: Tay Yoshitani, Chief Executive Officer

FROM: Michael Burke, Senior Manager, Container Leasing and Operations
Michael Campagnaro, Manager, Container Leasing and Operations

SUBJECT: Various lease amendments to the Terminal 18 lease.

ACTION REQUESTED:

Request for authorization for the Chief Executive Officer to Execute Second Amendment to Base Lease, Second Amendment to Leaseback, and Second Amendment to Subordination, Nondisturbance and Novation Agreement in connection to the Terminal 18 Lease between SSA Terminals, LLC (SSAT), SSA Containers, Inc. (SSA), and the Port of Seattle.

BACKGROUND:

In the late 1990's, the Port of Seattle started work on expanding Terminal 18 by over 90 acres as well as other improvements. A significant portion of this expansion was funded by a unique form of alternative financing to help the Port preserve financial capacity for other projects. SSA agreed to cooperate with this financing mechanism to help the Port be able to proceed with the Terminal 18 expansion. This financing mechanism created project-specific bonds for Terminal 18 funded by the terminal revenues. These bonds were insured by MBIA. Because of this, MBIA is interested and has control over any decisions that could affect the ability of the terminal revenues to repay the bond debt.

Under the structure required by the bond financing on the Terminal 18 project, the Port leased Terminal 18 to the Bond Trustee, Chase Manhattan Bank, under a Base Lease agreement. The Bond Trustee then subleased the terminal back to the Port under a Leaseback agreement. The Port then sub-subleased the terminal to SSAT and SSA under the Terminal 18 Lease. This structure allows the Port, in case of a default, the option but not the obligation, to cure the default.

On December 13, 2005 the Commission authorized Port staff to execute a lease amendment to the Terminal 18 lease between the Port of Seattle, SSAT and SSA (collectively, "SSAT"). In

COMMISSION AGENDA

T. Yoshitani, Chief Executive Officer

March 16, 2009

Page 2 of 4

order to complete the transaction of this document for the Commission authorization on December 13, 2005 (Item 7b), corresponding amendments to the Base Lease, Leaseback and Subordination, Nondisturbance and Novation Agreement are required. The December 13, 2005, commission memo inadvertently failed to mention the need for Port Commission approval to amend these documents. Port staff now requests Commission authorization for the execution of the Second Amendment to the Base Lease, Leaseback, and Subordination, Nondisturbance and Novation, agreements. These amendments for the three agreements are required because the Terminal 18 leased area was reduced by approximately 0.67 acres requiring an updated legal description. All elements of the December 13, 2005, authorized lease amendment have been implemented.

A copy of the previous commission action on December 13, 2005, the proposed Third Amendment to the Terminal 18 lease (signed by SSAT), and the proposed amendments to the Base Lease, Leaseback and Subordination, Nondisturbance and Novation Agreement are attached hereto.

The proposed Third Amendment to Terminal 18 lease, Second Amendment to the Leaseback, and the Second Amendment to Base Lease require MBIA and Bond Trustee review and approval before they can take effect.

MAJOR ELEMENTS OF PROPOSED AMENDMENTS:

The major elements of the previously approved lease amendment and the proposed amendments to the Base Lease and the Leaseback are as follows:

- 1) Revise the legal description, lease lines and acreage of the Site area.
 - a. Adjustment of final lease line
 - b. Reduction in acreage by 0.67 acres as result of longshore parking on city right of way, which therefore could not be fenced and controlled by SSAT.
 - c. Relocation of Kinder Morgan Energy Partners, a Port tenant, from the center berth area to the north berth area resulting in decrease of acreage from 1.5 to 0.9 acres.
- 2) Memorialize the GATX pipeline relocation.
- 3) Address the applicability of the Drop Dead Date.
- 4) Document the Port's commitment to undertake certain improvements at the Site.
- 5) Clarify Lessee's maintenance obligations.

COMMISSION AGENDA

T. Yoshitani, Chief Executive Officer

March 16, 2009

Page 3 of 4

- 6) Update the Special Improvements rent schedule based on final accounting for certain Special Improvements (described in the Revised Exhibit G to the Terminal 18 Lease).
- 7) The Second Amendment to the Base Lease, Second Amendment to the Leaseback, and the Second Amendment to the subordination Nondisturbance and Novation Agreement will not be effective until the bond insurer (MBIA) has given its written approval.

ALTERNATIVES CONSIDERED/RECOMMENDED ACTION:

None.

FINANCIAL IMPLICATIONS:

Source of Funds

No funds needed.

Financial Analysis Summary

Business Unit (BU)	Container Operations
Effect on business performance	<p>This lease amendment will have no effect on business performance.</p> <p>All components of this lease amendment which impact rental income have already been implemented, based on Commission approval on 12/13/05 for the 2nd Amendment to the Terminal 18 lease with SSA (<i>renamed here the 3rd Amendment</i>), as explained in the Background section of this Commission Memo.</p>

ADDITIONAL INFORMATION:

When Port Commission Authorization was obtained on December 13, 2005, it was for the execution of the Second Amendment to the SSAT lease. However, before that amendment could be fully executed, the Port Commission authorized another amendment to the SSAT lease on April 11, 2006, which was fully executed. Accordingly, that amendment became the Second Amendment. The proposed Second Amendment authorized by the Port Commission on December 13, 2005 is now known as the Third Amendment to the lease.

PREVIOUS COMMISSION ACTIONS:

- April 11, 2006 – Authorization for the Chief Executive Officer to execute Second Amendment to lease with SSAT at Terminal 18.

COMMISSION AGENDA

T. Yoshitani, Chief Executive Officer

March 16, 2009

Page 4 of 4

- December 13, 2005 – Authorization for the Chief Executive Officer to execute Second Amendment (now changed to Third Amendment), to the Terminal 18 lease and First Amendment to the Crane Agreement.
- June 27, 2000 – Authorization to execute First Amendment to the Terminal 18 lease with SSAT, and First Amendments to Base Lease and to Leaseback agreements.
- October 21, 1999 – Authorization to enter into a new Base Lease, Leaseback, and Terminal 18 Lease with alternative financing alternatives.