

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA

Item No. 5b

Date of Meeting February 9, 2010

DATE: February 4, 2010

TO: Tay Yoshitani, Chief Executive Officer

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

SUBJECT: Conditional Consent to Assignment of the lease between the Port of Seattle, Westway Feed Products, Inc., and Feed Merger Sub LLC.

ACTION REQUESTED:

Request Port Commission authorization for the Chief Executive Officer to execute the Conditional Consent to Assignment of the lease between the Port of Seattle, Westway Feed Products, Inc., and Feed Merger Sub LLC.

SYNOPSIS:

Westway Feed Products, Inc. (Assignor) has been using the southerly berth at Terminal 18 (T-18) for product transfer since July 23, 1996. As of May 1, 2009, the Lessee entered into a merger Transaction Agreement with Feed Merger Sub LLC (Assignee). Effective May 28, 2009, the Assignee changed its name to Westway Feed Products LLC. This name change action did not involve any further transfer or assignment of Assignee's lease. The Assignee has been a Port tenant for over ten year and has a good rent payment history. It is standard Port practice to only consent to lease assignments on a conditional basis. The conditional nature of lease assignments primarily pertains to the Assignor remaining liable and responsible under all terms of the lease despite the Port's consent of lease assignment to Assignee.

MAJOR ELEMENTS OF THE PROPOSED CONDITIONAL CONSENT TO ASSIGNMENT:

The major elements of the proposed conditional consent to assignment (attached) are as follows:

1. As of the Effective Date, Assignor will, excepting only the necessity of this Consent, absolutely and unconditionally assign and transfer, by means of merger, to Assignee all of Assignor's right, title, and interest in and to the Lease, subject to all the terms and conditions, covenants, and agreements contained in the Lease.

COMMISSION AGENDA

Tay Yoshitani, Chief Executive Officer

February 4, 2010

Page 2

2. Assignee has documented terms satisfactory to the Port compliance with Paragraph 5 (Bond or Other Surety) of the Lease, by consenting to the retention by the Port of the security previously provided by Assignor.

Budget/Authorization Summary

Previous Authorizations	None
Current request for authorization	None
Total Authorizations, including this request	None
Remaining budget to be authorized	None

Source of Funds

No funds needed.

Financial Analysis Summary

CIP Category	N/A
Project Type	N/A
Risk adjusted Discount rate	N/A
Key risk factors	<ul style="list-style-type: none">• The proposed assignee, Westway Feed Products LLC, is a newly formed LLC and the wholly owned subsidiary of Sherman WSC Acquisition Corp. The assignor, Westway Feed Products, Inc., has merged with and into the assignee, Westway Feed Products LLC.• The risk associated with assigning this lease to a newly formed LLC has been mitigated, as the assignor remains liable for all terms and conditions of the lease for the duration of the lease.
Project cost for analysis	N/A
Business Unit (BU)	Container Support Properties
Effect on business performance	This lease assignment has no impact on business performance
IRR/NPV	N/A

ALTERNATIVES CONSIDERED:

Approve Conditional Consent to Assignment: Approval of the assignment of the Lease will allow for the continued operation of Westway Feed Products, Inc at Terminal 18. The Port benefits from approving this assignment because it will secure a continued revenue stream for the Port. *This is the recommended alternative.*

Not Approve Conditional Consent to Assignment: The proposed assignment is to allow the merger of Westway Feed Products, Inc. into a newly formed, shell subsidiary of

COMMISSION AGENDA

Tay Yoshitani, Chief Executive Officer

February 4, 2010

Page 3

Shermen WSC Acquisition Corporation (a public company). By operation of law, all of the assets and obligations of Westway Feed Products, Inc. will become the assets and obligations of this new subsidiary. Thus, without the proposed Consent to Assignment, the Port will have no contract obligation with Feed Merger Sub LLC as it has today with Westway Feed Products, Inc.

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS:

On February 10, 2009, the Commission approved execution of Second Amendment to lease.

On October 12, 1999, the Commission approved execution of First Amendment to lease.

On July 23, 1996, the Commission approved new lease agreement.