

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA

Item No. 6c
Date of Meeting February 23, 2010

DATE: January 6, 2010

TO: Tay Yoshitani, Chief Executive Officer

FROM: Ralph Graves, Managing Director, Capital Development Division
Michael Burke, Senior Manager, Container Leasing and Operations
Paul Bintinger, Senior Port Counsel

SUBJECT: SSA Terminals, LLC Settlement Agreement

ACTION REQUESTED:

Port staff requests Commission authorization for the Chief Executive Officer to enter into a settlement agreement with SSA Terminals, LLC (SSAT) for certain unpaid rent for Terminal 25/28.

PROJECT BACKGROUND AND JUSTIFICATION:

SSAT leases portions of Terminal 25 and 28 under a Term Lease dated July 8, 2005. Under an August 8, 2007, Restated First Amendment to that Term Lease, SSAT also agreed to lease Terminal 30 (T30). The lease for the T30 area was to commence following the Port's completion of certain major improvements to the T30 site. The Port expected those improvements to be completed by June 1, 2009, and specifically informed SSAT of that fact.

In reliance on that commitment, SSAT relocated three tenant-owned cranes from its T18 site to T30. It also moved all of the operations associated with Matson Navigation from T25 to T18. However, as a result of an error occurring during the design of the T30 improvements, the cranes relocated from T18 could not operate until approximately August 3, 2009. These cranes are electrically powered by a cable that spools in and out of a trough in the apron deck as the crane moves from side-to-side. However, the constructed power cable trough was not wide enough to accommodate the diameter of the power cable on the relocated cranes.

As a result, SSAT was forced to incur costs to procure and install a new, smaller cable from Germany. SSAT also refused to pay rent for Terminal 25/28 for the months of June

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and July 2009 because SSAT could not – as a result of having relocated its operations to T18 – make any use of those areas.

The proposed settlement agreement resolves all of the potential claims between the Port and SSAT regarding the problem with the cable trough and any associated delays. Under the settlement agreement, SSAT agrees to pay the Port \$25,081.17 (inclusive of leasehold excise tax) for the limited use it made of the Terminal 25/28 area during the months of June and July 2009 and forego any potential claim for increased costs of operation. The Port agrees to forego any further claim for rent for Terminal 25/28 for the months of June and July 2009. SSAT will obtain compensation for any additional costs it incurred in procuring and installing a new cable directly from the designer of record of the T30 project.

It is important to note that the delay in opening T30 will not shorten the overall length of the lease for T30. Instead, the lease term remains 30 years from the date of opening – August 3, 2009, rather than June 1, 2009. The lease term for Terminal 25/28 will actually extend an additional two months to match. Thus, no rental income will actually be lost for Terminals 25, 28 and 30 as a result of the cable trough issue; instead, it will only be deferred by approximately two months in 2039.

As a partial offset to the decline in current rental income on Terminals 25, 28 and 30, the Chief Executive Officer has reached a settlement with Berger/ABAM Engineers Inc., the designer of record for the T30 project. Under that agreement, Berger/ABAM has agreed to pay the Port \$185,000. Although Commission approval of that agreement is not required under Resolution No. 3605, the agreement will not – as a result of the interrelated nature of the underlying claims between the parties – generally be effective until execution of the settlement agreement with SSAT.

Port staff requests approval for the Chief Executive Officer to enter into a settlement agreement with SSAT related to rent for Terminal 25/28 and other operational impacts during the period the terminal operation was impacted by issues with the cable trough. A copy of the proposed agreement is attached.

OTHER DOCUMENTS ASSOCIATED WITH THIS REQUEST:

- Proposed settlement agreement

ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS:

Do Nothing: The Port will be required to commence suit to collect unpaid rent and will be exposed to potential claims for operational impacts suffered by SSAT as well as claims for rent relief. In addition, the settlement with Berger/ABAM may be undermined. This is not the recommended alternative.

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Approve Settlement with SSAT: The settlement agreement with SSAT resolves all claims between the Port and SSAT related to the rent to be paid for Terminal 25/28 and any other impacts from the issue with the T30 cable trough. This is the recommended alternative.

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS:

May 5, 2009, item 6f Cable Replacement and Installation for the Terminal 30 Upgrade Project.