

**PORT OF SEATTLE**  
**MEMORANDUM**

**COMMISSION AGENDA**

<b>Item No.</b>	7b
<b>Date of Meeting</b>	July 26, 2011

**DATE:** July 15, 2011

**TO:** Tay Yoshitani, Chief Executive Officer

**FROM:** Michael Burke, Director, Leasing and Asset Management

**SUBJECT:** Briefing on the Fifth Amendment to the Terminal 18 Lease and the Second Amendment to the Terminal 18 Crane Agreement with SSA Containers, Inc. and SSA Terminals, LLC, and on the First Amendment to the Supplemental Crane Agreement between the Port and the Trustee.

**SYNOPSIS:**

The Port is proposing two amendments to the leases in effect between the Port and SSA Containers, Inc. (SSA) and SSA Terminals, LLC (SSAT) at Terminal 18 (T-18). These amendments reflect the changing nature of the container business, especially the upsizing of vessels calling at T-18. These amendments will also create an incentive to retain and increase container volume at T-18 by waiving the intermodal lift fee for five years. The Port also benefits from these amendments by not being required to purchase new, or replace existing, Port-owned cranes with our limited capital. The Port will lose intermodal lift revenue with these amendments, which is projected to be \$350,000 for this year alone. In addition the Supplemental Crane Agreement between the Port and the Bond Trustee will need to be amended.

The Port of Seattle, SSA Containers, Inc. (SSA), and SSA Terminals, LLC (SSAT) ("SSA" together with "SSAT," hereinafter called "SSAT") have agreed to two proposed amendments to the Terminal 18 Lease and the Terminal 18 Crane Agreement. The Bond Insurer for the T18 bonds, National Public Finance Guarantee Corporation (NPFPG), has reviewed and approved all three amendments.

The proposed amendments serve three purposes:

- **Provide additional tools to retain current and recruit new container business.** By waiving the on-dock lift fee and some volume guarantees, the Port is supporting efforts to recruit new business to Terminal 18 and retain or create jobs. In addition, these amendments facilitate getting larger, more efficient container cranes to Terminal 18 to enable that facility to efficiently handle the larger ships that the current customers of that terminal plan to bring to the Pacific Northwest

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in the near future. The industry trend is clearly to upsize the vessels in the transpacific trade, and the Port needs to be able to handle ships in the 10,000 to 12,000 TEU size. These larger cranes will help retain the current customers of the Port and make the Port more competitive for additional business.

- **Relieve the Port of current obligations for crane purchase, including costs for latent design flaws.** Under the current lease terms, the Port is obligated to replace existing container cranes or provide additional ones at the customer's request due to high volumes. This is a significant financial obligation for the Port. In exchange for the consideration listed above, SSAT waives this requirement and agrees to purchase cranes necessary for their operations. As owners of the cranes, SSAT will be able to respond to market forces more quickly and be responsible for repair of any design flaws that may become apparent.
- **Resolve questions regarding interest accrued from a proposed cash deposit for lease security.** SSAT provided a cash deposit in lieu of bonds for most of its lease security requirement at Terminal 18, and interest accrued from this deposit will be for the benefit of SSAT and used to meet future increases needed in lease deposit as the rent increases.

### **BACKGROUND:**

In the late 1990s, the Port expanded Terminal 18 by over 90 acres and made other improvements. The expansion was funded in part by project-specific bonds guaranteed by terminal revenues, and SSAT agreed with the alternative financing model. The bonds are insured by National Public Finance Guarantee Corporation (NPF), formerly known as MBIA Insurance Corporation (MBIA). Because of this arrangement, any amendments to certain documents, including the lease and the crane agreement, cannot take effect without NPF consent.

Under the structure required by the bond financing on the Terminal 18 project, the Port leased Terminal 18 to the Bond Trustee, currently the Bank of New York Mellon, formerly Chase Manhattan Bank, ("Bond Trustee") under a Base Lease agreement. The Bond Trustee subleased the terminal back to the Port under a Leaseback agreement and the Port sub-subleased the terminal to SSAT under the Terminal 18 Lease.

As noted above, although purchasing cranes has previously been a positive financial investment for the Port, cranes are becoming obsolete faster because of upscaling of container ships. Cranes require a significant upfront cash investment and the shorter life spans make recovering that investment more difficult. SSAT already has the right, through the Crane Agreement, to bring their own cranes onto the Terminal, as long as the cranes do not overload the capacity of the dock. SSAT has ordered six new cranes for Terminal 18. This makes it unlikely SSAT will use any Port cranes beyond any minimum guarantee and that makes it unlikely the Port will adequately recover its investment in any newly purchased cranes.

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The newer generation of container vessels, with 12,000 twenty-foot equivalent unit (TEU) capacity and greater, need cranes that can reach further and higher than the Port's largest cranes can handle. With larger capacity cranes, Terminal 18 will have a market advantage for bringing in additional volume from the carriers such as Maersk, CMA-CGM and MSC, which have made significant commitments to these larger vessels.

As allowed in the existing agreements, SSAT may bring on six new container cranes to Terminal 18 with this expanded capacity. The first of these cranes are expected to arrive in Seattle by the end of the year. SSAT believes the addition of these new cranes is necessary to keep the current customer mix at Terminal 18 satisfied. SSA may also bring on three additional cranes to the terminal next year.

SSAT believes it can purchase cranes more cost effectively than using cranes purchased by the Port. SSAT should be able to purchase the cranes at a lower cost and with faster delivery than the Port because of both market leverage and not needing to factor in overhead required to manage a public bid contract. Port staff estimates these savings are at least 10% of the initial cost of the crane. SSAT has responsibility for maintenance and operational costs for cranes whether it or the Port owns the crane. SSAT also bears the risk of latent design defect costs, such as those the Port has incurred with our cranes at Terminal 46.

By purchasing its own cranes, SSAT relieves the Port of a major financial obligation and allows the Port to use its funds for other high-priority projects without diverting scarce capital resources. With SSAT bringing on their own cranes to the terminal, future use of Port-owned cranes is expected to be at the minimum guarantee levels of the lease, not generating enough return to justify the cost to purchase new cranes.

The waiving of the Port's share of the on-dock intermodal lift fee, currently at \$11.60 per lift, will help draw additional business to the Port. This proposed amendment will waive the fee for five years and will be applicable to any volume beyond a tenant's minimum guarantee. SSAT does not have a minimum guarantee at Terminal 18.

Waiving SSAT crane rent minimum guarantee if annual volumes fall below 250,000 lifts at Terminal 18 helps protect SSAT if business leaves the terminal, helping SSAT justify the risk of purchasing cranes. If volumes fell to this level, SSAT would still pay crane rent for the volume handled by Port-owned cranes on the terminal, but they would not be billed for any shortfall between actual usage and the minimum annual guarantee. It is also likely that when volume levels are below 250,000 lifts per year, there would be no intermodal usage.

Because of the alternative financing used to fund the Terminal 18 expansion, SSAT has had difficulty obtaining a lease bond or letter of credit that complies with the enhanced requirements in the lease. The current lease does not specify which party would get any interest accumulated from a cash deposit. The proposed lease amendment clarifies that

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the interest or earnings from SSAT's cash deposits would accrue to SSAT's benefit and be held by the Bond Trustee to be applied toward future increases in the lease security requirement.

Due to the Most Favored Nations clause in the Terminal 5 lease, the Port must offer Eagle Marine Services Ltd. ("Eagle Marine") a similar incentive on intermodal lift fees, after Eagle Marine meets their minimum guarantee, currently at 51,266 lifts per year. This incentive would only be for the same five-year period and only to the extent that SSAT uses the Terminal 18 on-dock facility and therefore benefits from the waiver of the intermodal fee in a given year. The Terminal 5 lease would need to be modified based on the outcome of negotiations with Eagle Marine. However, Commission approval of the proposed amendments with SSAT will set some part of this incentive in place with Terminal 5 as well.

The proposed Fifth Amendment to Terminal 18 lease and Crane Agreement will not take effect until it has been reviewed and approved by the Credit Facility Issuer, NCFG, as required by the Terminal 18 Lease.

### **MAJOR ELEMENTS OF THE PROPOSED AMENDMENTS:**

The major elements of the proposed amendment to the Terminal 18 Lease and Terminal 18 Crane Agreement are as follows:

#### **1) Fifth Amendment to the Terminal 18 Lease**

- a. Modify Section 4.2, Basic Land Improvements Rent; Intermodal Yard (IY) Facilities Rent and IY Facility Charges, subsection (g), of the Terminal 18 lease where the Port will forgo its portion of the Intermodal Yard Facility Charges for a period of five (5) years, effective January 1, 2011.
- b. Modify Section 4.7, Security of Rent Payments, of the Terminal 18 Lease to allow the Port to provide accumulated interest income, if any, in the event SSAT provides a cash security deposit in place of a letter of credit or a surety bond.

#### **2) Second Amendment to the Terminal 18 Crane Agreement**

- a. Modify Section 5 of the Crane Agreement to relieve the Port of the future capital commitments of replacing Port-owned cranes on Terminal 18. Currently, the Port is potentially obligated to provide additional cranes at Terminal 18 if crane use equals or exceeds 2,000 hours per crane per year and to provide three functional cranes of similar capacity to the MHI cranes on site.
- b. Modify Section 6 of the Crane Agreement to provide for adjustments relating to crane minimum hours, where SSAT is relieved of the crane minimum annual

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guarantee rental charge if the Terminal 18 container volumes fall below 250,000 lifts per calendar year.

- c. This Second Amendment also maintains the requirement of the first amendment for SSAT to bring three new cranes to Terminal 18, replacing the Port's 50-foot gauge IHI cranes.
- d. SSAT also has the option to bring three additional cranes (Phase II cranes) to the terminal. If SSAT brings Phase II cranes onto the terminal, then the Port's three 100-gauge MHI cranes will have no minimum annual guarantee beyond 2015. In addition, SSAT can request the Port to remove the MHI cranes from the terminal within 24 months of installation of the additional three Phase II cranes, but not before December 31, 2018.

### **3) First Amendment to the Supplemental Crane Agreement**

The Supplemental Crane Agreement has always committed the Port to provide up to seven cranes at Terminal 18 in case of an SSA default and the loss of tenant-owned cranes. This requirement would only be enforced? if a new tenant required Port-owned cranes before leasing the terminal and is considered extremely unlikely. This amendment clarifies that there might be tenant-owned cranes on the terminal.

### **OTHER DOCUMENTS ASSOCIATED WITH THIS BRIEFING:**

None.

### **PREVIOUS COMMISSION ACTION OR BRIEFING:**

None.