

THE NORTHWEST SEAPORT ALLIANCE
MEMORANDUM

MANAGING MEMBERS
ACTION ITEM

Item No.	8B
Date of Meeting	June 1, 2021

DATE: May 25, 2021

TO: Managing Members

FROM: John Wolfe, Chief Executive Officer

Sponsor: Tong Zhu, Chief Commercial and Strategy Officer

Project Manager: Dana Henderson, General Counsel

SUBJECT: First Amendment to Terminal 5 Term Lease Agreement

A. ACTION REQUESTED

Authorization for First Amendment to Terminal 5 Term Lease Agreement.

B. SYNOPSIS

Lease amendments to the Terminal 5 Term Lease Agreement between Northwest Seaport Alliance (NWSA) and SSA Terminals, LLC (SSAT), effective April 2, 2019 ("Lease"), are needed to address three main developments that were unforeseen when the Lease was executed. First, the timing of NWSA's work for Phase 1 of the T5 Modernization Program (Program) has shifted such that the cranes that are being purchased by SSAT will arrive before all the Phase 1 project work is completed. Secondly, repairs are needed at the existing gatehouse due to heaving of existing slag from water intrusion in order to open Terminal 5 for operations in January of 2022. Lastly, staff is recommending that NWSA commit to building a new gatehouse at Terminal 5 in time for Phase 2 operations so as to avoid the need for future disruption of Terminal 5 operations due to the need for future repeated repairs of the existing gatehouse and to improve issues relating to truck queuing in and around Terminal 5 and the Spokane Street Swing Bridge.

Unrelated to the crane delivery and the gatehouse complex, NWSA and SSAT have reached agreement that the parties would share equally the costs of the Terminal 5 Stormwater Treatment System (STS) beyond the Lease's \$30M allowance, but not

including in-house staff costs. This agreement is captured by the proposed Lease Amendment.

The Lease Amendment would be effective upon Managing Members' approval.

C. BACKGROUND

A full copy of the proposed First Amendment to the Terminal 5 Term Lease Agreement ("Lease Amendment") is attached hereto.

Crane Delivery. Under the Terminal 5 Lease, SSAT is responsible to provide four (4) Cranes to be used at the Premises for the term of the Lease. In the event that NWSA has not substantially completed its Phase 1 project work by January 1, 2022, the Lease provides that NWSA would be responsible for any delay costs incurred by SSAT associated with delivery of the cranes. Per SSAT's contract with ZPMC (the crane manufacturing company), the delay costs are estimated at \$3,000 per crane per day if cranes are completed but Terminal 5 is unable to take delivery, and this number is approximately ten times higher if the cranes are waiting on the delivery vessel in Seattle and are unable to be unloaded.

Because the timing of NWSA's Phase 1 project work shifted later into 2021, NWSA notified SSAT so that the timing of delivery of the cranes could be better coordinated in an attempt to avoid crane delay costs. SSAT was able to delay construction of the cranes for some time. The cranes are now complete, and ready for delivery to Terminal 5 around June 22nd, 2021. The wharf structural work for the cranes will be completed in time for the new crane delivery date, but not all of the Phase 1 project work will be complete by crane delivery. Given that the cranes will arrive before the Phase 1 project work is complete, a Lease amendment is needed to delineate crane delivery conditions between the parties.

Both parties seek the Lease Amendment relating to the Cranes. SSAT seeks additional assurances relating to the cranes as there will be construction continuing on-site after crane delivery, and the proposed Lease Amendment brings down NWSA's exposure to crane delay costs given the timing of crane delivery.

Substantive elements of the Lease Amendment with regard to the crane delivery include:

- Crane Delivery Conditions include:
 - NWSA agrees to provide a certification from consulting engineering firm Moffatt and Nichol that the wharf is structurally sound to receive the cranes;

- NWSA must complete installation of the crane pin sockets; and
 - NWSA must complete the electrical infrastructure to allow for commissioning of the cranes.
- Clarification that other Phase 1 Project items that are still under construction need not be complete for crane delivery and offload.
- SSA agrees to schedule the cranes on its all-risk property insurance policy upon offload of the cranes to the wharf.
- NWSA agrees that if the defined Crane Delivery Conditions are not complete before crane arrival, NWSA will pay all third-party costs incurred by SSAT on a day-for-day basis until the conditions have been met.¹ Expected completion date of the Crane Delivery Conditions is June 7, 2021, with expected crane arrival date of June 22, 2021.
- NWSA agrees to indemnify SSA for cranes being on Terminal 5 six months before operations commence (and while construction remains active on the terminal). This indemnity obligation does not include:
 - Any loss that is the responsibility of ZPMC, the crane company.²
 - Any loss that is insured. This is whether covered by ZPMC, SSA³, the general contractor, NWSA/Port of Seattle, or otherwise.
- If NWSA has not completed all Phase 1 project work as set forth in Schedule 1-A of Project A (as amended in this Lease Amendment) by January 1, 2022, NWSA will pay SSA's carrying costs for the cranes until the work is Substantially Complete. Those carrying costs are SSA's costs for depreciation, interest, and insurance on the cranes at approximately \$280,000/month, pro rated for partial months. Phase 1 expected completion date is December 31, 2021.

Gate House Complex. In preparing for operations at Terminal 5, beginning in late 2020, SSAT reported concerns regarding paving north of the gate complex and deflection of non-structural components of the gate complex canopy. Geotechnical consultants hired by the Port of Seattle/NWSA investigated the cause of the damage and determined the existing gate complex is likely suffering from heaving and expansion of existing buried slag. This heaving and expansion of the slag has caused damage to the structure and pavement around the truck scales and to the canopy.

The gate complex was built in 1998 on top of this existing slag. The slag in its normal state would not usually cause any issues to the gate complex. The consultants' opinion

¹ Note, these costs include demurrage, storage, and other expenses that, if the cranes are in Seattle waiting to be offloaded, could be approximately \$30,000/day. In reality, this is a clarification but not a change from the current Lease which obligates NWSA to pay all delay costs incurred by SSAT as a result of delayed delivery of the cranes.

² ZPMC holds risk of loss and is insured for all loss to the cranes until commissioning is complete, which is estimated to be 90 days after crane arrival.

³ Note that SSA has "all risk" insurance on these cranes.

is that water intrusion during a storm drain line repair project in 2018 caused the slag to heave and expand. Sections 9.1 and 9.2 of the Lease put responsibility on NWSA for maintenance and repair of damage due to the displacement of soils caused by water intrusion over, under or behind the seawall, or to the paving system if due to the settling of soil, other fill or native soils. As such, repair of the gate house due to heaving from water intrusion would very likely be a NWSA responsibility under the Lease regardless of when the issue arose.

Terminal 5 operations require a functional gate, as it is critical to the overall terminal operation. The proposed Lease Amendment addresses the immediate need for repairs and a longer-term solution for the terminal. The Lease Amendment aligns with staff recommendation that the gate be addressed in phases: first, repair the existing gate house complex so it is functional for Phase 1 operations; and secondly, design and construct a permanent gate complex elsewhere on the terminal (off the existing slag area) so as to avoid the need for future repairs caused by water intrusion. If repairs to the existing gate house are not made by the end of this year, SSAT has indicated that it will dispute delivery of the terminal and seek to delay commencement of operations at T5 due to concerns for safety and impact of the current condition of the existing gate house on operations.⁴ The proposed Lease Amendment specifies the repair work to be completed by January 1, 2022, and confirms SSAT's agreement that repairs are sufficient to commence operations. The repair work is expected to cost \$2,000,000 - \$4,000,000.

Relatedly, the proposed Lease Amendment commits NWSA to building a new gate complex by December 2023. The cost for a new gate house complex is estimated to be \$10,000,000. An important benefit of the proposed new gate complex will be to provide additional truck queuing space on the terminal itself and off of public right-of-way, which is expected to improve overall terminal operations and alleviate congestion in the area. During construction of the new gate complex, a temporary truck access to the terminal would be created to allow operations to continue without interruption. Construction of a new gate house complex avoids the risk that continued repairs to the existing gate complex would trigger the need to shut all or part of the complex down during terminal operations which would likely be very disruptive to our tenant and its customers.

A new gate complex can be completed in 18 – 24 months in time for Phase 2 operations if SSAT elects to take Phase 2. If SSAT does not take Phase 2, a new gatehouse would be an important and attractive feature of T5 for other future tenants. Regardless if SSAT takes on Phase 2 or not, a functional and uninterrupted gate operation will be needed and critical to the overall terminal operation.

⁴ The current pavement situation could be a safety hazard. A truck cannot safely transverse that area north of the gate complex.

Excess Stormwater Costs. The Lease includes a provision that NWSA will reimburse SSAT for up to \$30M in costs associated with SSA's design and construction of a STS at Terminal 5. The Lease is silent on how costs over \$30M will be allocated, and the parties have agreed to share such costs equally, provided that in house staff costs are not included. This agreement is captured in the Lease Amendment.

D. FINANCIAL IMPLICATIONS

The estimated known cost associated with a new gate house is between \$12M and \$14M dollars. Financial modeling indicates that every \$10M in current dollars reduces the return on investment by approximately 0.15% to 0.2%. The project as approved in April 2019 had a 5.5% return on investment over 30 years. The impact to the rate of return cannot be determined at this time for the potential stormwater costs above \$30M.

E. ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS

- **No Action Alternative:** The Lease would not be amended. This is not recommended as it could result in NWSA paying very significant crane delivery delay expenses, and could result in SSA delaying operations at Terminal 5 due to the current condition of the gatehouse. Additionally, there would be a remaining question on whether or not the parties would share excess stormwater treatment system costs beyond \$30M.
- **Recommended Action:** Authorize the Chief Executive Officer to enter into and execute the proposed First Amendment to the Terminal 5 Term Lease Agreement in substantially the same form as presented.

F. ENVIRONMENTAL IMPACTS / REVIEW None.

G. ATTACHMENTS TO THIS REQUEST

- PowerPoint presentation.
- Draft Proposed First Amendment to the Terminal 5 Term Lease Agreement

H. PREVIOUS ACTIONS OR BRIEFINGS

Date	Action	Amount
March 3, 2021	T-5 Modernization - Program Update	\$0
February 2, 2021	T-5 Modernization - Upland Elements Construction Authorization	\$0

First Amendment to Terminal 5 Term Lease Agreement

June 1, 2021

Page 6 of 6

October 6, 2020	T-5 Modernization - Program Update	\$0
September 1, 2020	T-5 Modernization - Tribal Agreement Update	\$0
August 4, 2020	T-5 Marine Building - Approval to advertise for North Building construction only	\$0
July 2, 2020	T-5 Marine Building - Authorization to advertise for North and South Buildings construction request	\$0
July 2, 2020	T-5 Modernization - Program Update	\$0
April 7, 2020	T-5 Modernization - Program Update	\$0
January 14, 2020	T-5 Modernization - Program Update	\$0
October 1, 2019	T-5 Modernization - Program Update	\$0
August 6, 2019	T-5 Modernization - Program Update	\$0
June 4, 2019	T-5 Program Update	\$0
May 20, 2019	Program Authorization for Construction of Berth Modernization Program	\$0
April 2, 2019	Additional Program Funding and Authorization to Fund T-5 Modernization Program	\$314,150,000
February 26, 2019	Authorization to advertise for construction	\$0
February 5, 2019	Pre-authorization Program Briefing	\$0
November 13, 2018	Motion to prepare construction documents for authorization to advertise	\$0
August 1, 2017	Railroad quiet zone funding, tribal payments, and Agreements	\$5,650,000
October 4, 2016	Additional Funding, Seattle City Light Agreement, and Project Labor Agreement	\$8,200,000
June 7, 2016	DEIS Briefing	\$0
November 4, 2015	Additional SEPA and Design Funding	\$2,000,000
October 13, 2015	Test Pile Bids Exceeded Engineer's Estimate	\$0
July 14, 2015	Additional Design Authorization	\$5,000,000
June 3, 2014	Initial Design Authorization	\$4,700,000
May 13, 2014	T-5 Berth Modernization Briefing	\$0
March 12, 2014	Additional Pre-Design Authorization	\$150,000
October 27, 2013	Initial Pre-Design Authorization	\$150,000
TOTAL		\$340,000,000



Item No.: 8B
Date of Meeting: June 1, 2021

1st Amendment to Terminal 5 Term Lease Agreement

Presenter Dana Henderson, NWSA General Counsel

Action Requested – Authorize 1st Amendment to Terminal 5 Lease Agreement

Authorize the Chief Executive Officer to enter into and execute the First Amendment to the Terminal 5 Term Lease Agreement in substantially the same form as presented.



3 Main Issues in 1st Amendment to T5 Lease

Requested by both parties, the proposed amendment addresses:

- **Crane Delivery Conditions and related expectations**
- **Gatehouse Complex**
- **Stormwater Treatment System Costs**

Amendment to take effect upon approval by Managing Members

Crane Delivery – Timing and Current Lease – Issue to be resolved

- **Work for Phase 1 of the T5 Modernization Program has shifted such that the cranes will arrive before all the Phase 1 project work is completed.**
- **Lease puts risk of crane delay costs on NWSA if Phase 1 work is not complete upon delivery.**
- **Delay is at least \$3,000/crane/day.**
- **Cranes previously delayed per NWSA request due to project delay but are now ready for delivery on June 22, 2021.**
- **Phase 1 work will not be finished by June 22, but all structural work on the wharf will be complete to allow for offload of the cranes on the wharf.**
- **SSA is open to Lease Amendment to draw down NWSA exposure to crane delivery delay costs.**

Crane Delivery – Lease Amendment

Solution to Risk of Crane Delivery Delay

- **Crane Delivery Conditions include:**
 - NWSA agrees to provide a certification from consulting engineering firm that the wharf is structurally sound to receive the cranes;
 - NWSA must complete installation of the crane pin sockets; and
 - NWSA must complete the electrical infrastructure to allow for commissioning of the cranes.
- **SSA confirms other Phase 1 Project items need not be complete for crane delivery and offload.**
- **SSA agrees to schedule the cranes on its all-risk property insurance policy upon offload.**

Note: Crane Delivery Conditions are expected by June 7, 2021, 2 weeks prior to crane arrival.

Crane Delivery – Lease Amendment Solution to Risk of Crane Delivery Delay, Cont.

- **If Crane Delivery Conditions are not complete before crane arrival, NWSA to pay all third-party costs incurred on a day-for-day basis until the conditions have been met.**
- **NWSA agrees to indemnify SSA for cranes being on Terminal 5 six months before operations commence, except for:**
 - Any loss that is the responsibility of ZPMC, the crane company.
 - Any loss that is insured.
- **If NWSA has not completed all Phase 1 project work by January 1, 2022, NWSA to pay crane carrying costs until the work is Substantially Complete.**
 - SSA's costs for depreciation, interest, and insurance (\$280,000/month, pro rated for partial months)

Note: Phase 1 project work on target to be complete by Jan. 1, 2022

Cranes are en route from Shanghai (5/24/21)



Gate House Complex: Issue to be resolved

- Late 2020, SSAT reports concerns re: paving north of the gate complex and deflection of non-structural components of the canopy. Concern that condition of gate house could impact opening of T5.
- Geotechnical consultants determined the damage due to heaving and expansion of existing buried slag, likely due to water intrusion during a 2018 storm drain repair.
- Heaving and expansion of the slag has caused damage to the structure and pavement around the truck scales and to the canopy.
- Sections 9.1 and 9.2 of the Lease put responsibility on NWSA for maintenance and repair of damage due to the displacement of soils caused by water intrusion.
- Repair likely a NWSA responsibility under Lease regardless of when the issue arose.



Gate House Complex: Lease Amendment Solution

Gate to be addressed in phases:

- 1) Repair the existing gate house complex to be functional for Phase 1 operations by January 1, 2022.
(becomes a Phase 1 project deliverable)**
- 2) Design and construct a permanent gate complex elsewhere on the terminal (off the existing slag area) so as to avoid the need for future repairs by December 2023.**

Amendment Obligates NWSA to build new Gate House Complex

- **Estimated Cost: \$10,000,000.**
- **Benefits:**
 - Additional truck queuing space on the terminal
 - Improve terminal operations and alleviate congestion.
 - During construction, a temporary truck access would allow operations to continue without interruption.
 - Avoids risk that continued repairs to the existing gate complex would trigger the need to shut all or part of the complex down during terminal operations.
- **Completed in 18 – 24 months in time for Phase 2 operations.**

Excess Stormwater Treatment Cost – Lease Amendment Solution

- **Lease provides that NWSA will reimburse SSAT for up to \$30M in costs associated with SSA's design and construction of a STS at Terminal 5.**
- **Lease is silent on how costs over \$30M will be allocated.**
- **Lease Amendment provides parties to share excess costs equally, provided that in house staff costs are not included.**



1st Amendment to Terminal 5 Term Lease Agreement - Alternatives

- **No Action Alternative: The Lease would not be amended.**
Not recommended as could result in:
 - NWSA paying significant crane delivery delay expenses;
 - SSA delaying operations at Terminal 5 due to the current condition of the gatehouse; and
 - Open question on responsibility for excess stormwater treatment system costs beyond \$30M.
- **Recommended Action:** Authorize the First Amendment to the Terminal 5 Term Lease Agreement in substantially the same form as presented.

First Amendment to Terminal 5 Term Lease Agreement

ACTION REQUESTED:

Authorize the Chief Executive Officer to enter into and execute the First Amendment to the Terminal 5 Term Lease Agreement in substantially the same form as presented.