

THE NORTHWEST SEAPORT ALLIANCE
MEMORANDUM

MANAGING MEMBERS
ACTION ITEM

Item No.	<u>9A</u>
Date of Meeting	<u>August 2, 2022</u>

DATE: July 27, 2022

TO: Managing Members

FROM: John Wolfe, CEO

Sponsor: Tong Zhu, Chief Commercial & Strategy Officer

Project Manager: Jennifer Maietta, Director NWSA Real Estate

SUBJECT: Terminal 5 Phase II SSAT Lease – 3rd Amendment
Terminal 5 IY Rail Use and License Agreement
Terminal 18 Ninth Amendment

A. ACTIONS REQUESTED – *Three separate actions*

Third Amendment to the Terminal 5 Lease Agreement: Request Managing Members of the Northwest Seaport Alliance (NWSA) authorization for the Chief Executive Officer or their delegate to enter into the Third Amendment to the Terminal 5 Lease with SSA Terminals (Seattle Terminals), LLC to commit early to Phase 2 of the Terminal 5 Lease eliminating the Phase 1 Plus premises and to certain improvements and the financial responsibility for such improvements not to exceed \$61.5 million and to commence Phase 2 operation on January 1, 2024 in substantially the same form as presented.

Long-term “Intermodal Yard Rail Use and License Agreement” (IY Agreement) for Terminal 5: Request Managing Members of the Northwest Seaport Alliance (NWSA) authorization for the Chief Executive Officer or their delegate to approve the IY Agreement for Terminal 5 for SSAT’s long-term use and management of the Terminal 5 intermodal yard in substantially the same form as presented.

Ninth Amendment to the Terminal 18 Lease Agreement: Request Managing Members of the Northwest Seaport Alliance (NWSA) authorization for the Chief Executive Officer or their delegate to approve the Ninth Amendment to the Terminal 18 Lease with SSA Terminals (Seattle Terminals), LLC to waive the Container volume Lift Rate Fee over the Annual MAG Lifts at Terminal 18 for the calendar years of 2022 and 2023 in substantially the same form as presented.

B. SYNOPSIS

In response to the demands of the marine cargo business since the opening of Terminal 5 Phase 1, SSAT has agreed to commit to the Phase 2 premises early and eliminate the Phase 1 Plus premises Option from the Terminal 5 Lease and enter into a long-term intermodal yard rail agreement for the use and management of the Terminal 5 rail yard.

As part of the overall negotiation for SSAT's commitment to Phase 2 at Terminal 5, the parties have agreed to certain improvements and the financial responsibility for such improvements for the Terminal 5 Phase 2 redevelopment. Furthermore, NWSA would waive the Terminal 18 Container Lift Volume Fee for the calendar years of 2022 and 2023 in exchange for adding Container Volume Lift Fee to Terminal 5 for the duration of the Terminal 5 Lease term, starting January 1, 2024.

C. BACKGROUND

1. Third Amendment to the Terminal 5 Lease Agreement

Overview. Phase 1 of the Terminal 5 redevelopment project was substantially complete and delivered to tenant SSAT effective January 1, 2022. The original Lease provides that commencing the later of January 1, 2024, or substantial completion of Phase 2 of the Terminal 5 redevelopment, SSAT would lease the terminal under the Phase 2 premises, unless SSAT exercised the option to lease a lesser portion of the terminal, referred to as the "Phase 1 Plus Premises", by providing notice to the NWSA no later than June 30, 2023. Due to the demands of the marine cargo business since the opening of Terminal 5, SSAT has elected to commit to the full Phase 2 premises now, prior to the June 30, 2023, option deadline and eliminate the Phase 1 Plus Premises option.

As part of SSAT's commitment to the Phase 2 premises, SSAT has agreed to a Third Amendment to the Terminal 5 Lease ("Third Amendment"). This Third Amendment provides that SSA will coordinate and perform several construction projects for the Phase 2 Premises and purchase, install, and commission a minimum of (2) additional "Super Post Panamax" cranes. In good faith, SSAT has already placed the order for the cranes.

Projects Addressed by Third Amendment.

Work to be completed by SSAT at NWSA Expense. Per the terms of the Third Amendment, SSAT will be responsible for completing two previously approved

projects for which NWSA will reimburse SSAT: the reefer power supply for Phase 1 and Phase 2 Premises and installation of the New Gatehouse Complex.¹

Work to be completed by SSAT but amortized into additional rent. Additionally, SSAT will be responsible to complete the following amortized capital improvement projects at their initial cost to be reimbursed by the NWSA. NWSA will then amortize the cost of these improvements over the remaining term of the Lease by charging an additional capital improvements additional rent to SSA based on the actual cost of these capital improvements amortized over the remaining life of the lease at an estimated cost of capital of 5% subject to adjustment due to market conditions. Should SSAT terminate the lease prior to the termination date; SSA will be responsible for paying any unamortized amount for these amortized capital improvement projects:

- Reefer Demarcation Project – Infrastructure from the electrical vaults in the Phase I and Phase II areas to the reefer plugs; *SSA completes the work with a targeted completion date of January 1, 2025*
- Transtainer Runs installation. *SSA completes the work with a targeted completion date of October 31, 2023*
- Phase II container yard paving. *SSA completes work with a targeted completion date of October 31, 2023*

Work to be performed by NWSA but amortized into additional rent. The NWSA will complete the following work at the NWSA's initial cost, which will also then be included in the amortized capital improvements additional rent charged to the tenant:

- Container Yard Expansion Project - Demo of Container Freight Station (CFS) building, site preparation, stormwater, paving and access improvements. *The NWSA completes the work with a targeted completion date of January 1, 2025*

Funding for projects to be amortized into additional rent. By approving this third amendment, Managing Members would be authorizing additional funding to cover the estimated cost of the following projects (all of which will form the basis of the amortized capital improvements additional rent charged to the tenant over time):

DESCRIPTION	COST
Reefer Demarcation Project	\$15,200,000

¹ These Reimbursable Projects are NWSA's financial responsibility. The reefer power supply for the Phase 1 and Phase 2 Premises was a requirement of the initial Lease. The New Gatehouse Complex was a commitment made in the First Amendment to the Lease approved by the Managing Members on June 1, 2021. SSA is performing this work so it best suits SSA's needs and works with their ongoing operations and will be required to perform this work in compliance with public works requirements.

Transtainer Runs installation	\$ 6,000,000
Phase II Container Yard Paving	\$15,000,000
Container Yard Expansion Project	\$11,800,000
TOTAL	\$48,000,000

The project estimates are very high level and are based on either no design or preliminary design information. A high-level stochastic risk model has been run and the P-85 is \$52.9M and the P-100 is \$61.5M. Due to the accuracy of the estimates, the additional authorized amount requested is \$61.5M.

These amortized capital improvement projects (Reefer Demarcation Project, Transtainer Runs Project and the Phase II Container Yard Paving Project) will be paid over the remaining lease term by the tenant as outlined above.

The program currently has a 2020 MARAD PIDP grant that includes approximately \$3.3M for the Phase II Container Yard Paving Project. Staff has applied for a 2022 MARAD PIDP grant that includes approximately \$6.9M for the Container Yard Expansion Project.

Phase 2 Premises. The Third Amendment would modify the Phase 2 premises as it is currently set forth in the lease. The NWSA and SSA have agreed to permanently reduce the Terminal 5 Phase 2 Premises from an approximately 158.9 acres by approximately 5.5 acres to a new total of approximately 153.4 acres (17.6 acres Preferential Use Area/135.8 acres Leasehold Use Area). The reduced area is acreage that is non-functional for SSAT's long-term operations and consists primarily of the Terminal 5 Administration Building, the Administration Building parking lot and surface streets. Upon the commencement of the Phase 2 premises (targeted for 1/1/24), approximately 5.8 acres of Leasehold Use Area located around and including the Container Freight Station (CFS) building will temporarily be excluded for the duration of the Container Yard Expansion Project. Upon completion of these improvements (targeted for 1/1/25), the approximate 5.8 acres will be incorporated back into the total square footage for the full Phase 2 premises.

Key Terms of Third Amendment:

Premises	<p>Total Acres: 153.4 (permanently reduced by 5.5 Acres)</p> <p>At the commencement of Phase 2, Premises is temporarily reduced by 5.8 acres (CFS Area) for the duration of the Container Yard Expansion Project,</p>
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	then the 5.8 acres is reincorporated into the Phase 2 premises upon completion of the project.
Commitment to Phase 2	All references to and implications of Phase I Plus are deleted from the lease.
Term	Phase 2 shall commence the later of January 1, 2024, or substantial completion of Project B
Rental Rate	<p>The base rental rate is \$159,120 per acre per year to increase annually by CPI with a minimum of 2% or half of the CPI not to exceed 5%</p> <p>Plus, “<u>Additional Rent</u>” for the amortized Capital Improvement Projects based on a flat annuity payment over the remaining term of the lease at a cost of capital of 5%. Should Lessee terminate the lease early, Lessee shall be responsible for any unamortized amount for the Capital improvement Projects prior to the termination date.</p>
Container Volume Lift Rate Fee	Lessee pays a “Container Volume Lift Rate Fee” (\$17.57 in 2021 to be indexed for inflation) when the volume for Terminal 5 exceeds 2,300 boxes per acre per year in a 12-month period upon commencement of Phase 2.
Cranes	Lessee shall purchase, install and commission a minimum of two (2) new Super Post-Panamax cranes.
Capital Improvement Projects	<p>The following costs of these Capital Improvements will be charged to SSA amortized over time as capital improvements additional rent:</p> <ul style="list-style-type: none"> - Reefer Demarcation Project - Transtainer Runs Installation - Phase 2 Container Yard Paving - Container Yard Expansion Project

2. Intermodal Yard Rail Use and License Agreement (IY Agreement) for Terminal 5:

Upon the opening of Terminal 5, MSC under contract with SSAT brought its first rail cargo in January 2022. SSAT is committed to increasing its rail business and is working with MSC to increase current volumes which will further increase upon the completion of Phase 2 of the redevelopment.

The NWSA executed an “Industry Track Agreement” (ITA) with BNSF for Terminal 5, effective October 2021, which allows use of the BNSF-owned rail yard tracks located within the Terminal 5 rail yard and assigns maintenance and operational responsibilities of the track to the NWSA. NWSA proposes to enter into a separate “Intermodal Yard Rail Use and License Agreement” (IY Agreement) with SSAT for the long-term use of the Terminal 5 intermodal yard (IY). This long-term IY Agreement would, upon the commencement of Phase 2, replace the temporary IY Agreement currently in place at the Terminal 5 IY between NWSA and SSAT. The IY Agreement would transfer NWSA’s maintenance and repair obligations under the ITA to SSAT at NWSA’s cost and expense. For use of the IY through the term of the agreement, SSAT guarantees a minimum annual Rail Yard Facility Charge payment equivalent to 130,000 containers times the then-current Tariff 300 rate for the rail intermodal yard. This minimum will provide annual revenue commensurate with the per acre lease rate in the container yard and provide additional revenue if volumes exceed the minimum.

Key Terms of IY Agreement:

Premises	Owner grants SSAT non-exclusive preferential use of the Intermodal Yard at approximately 25.1 acres. Owner will continue to own and control the Intermodal Yard.
Term	Will commence upon commencement of Phase 2 and terminate upon the termination of the T5 Lease Agreement.
Use	SSAT shall use the Intermodal Yard (IY) for all activities related to the loading and discharging of boxes and containers (and/or non-containerized cargos, as applicable) by rail to and from Lessee’s Vessels, and for SSAT’s operations. SSAT has preferential use of the IY. Owner reserves the right to a secondary preferential right to use the Intermodal Yard in conjunction with Owner’s Secondary Use of Terminal 5.
Rail Yard Facility Charge	SSAT will pay an annual Rail Yard Facility Charge payment equivalent to the actual number containers handled by SSAT per Agreement Year (“ <u>Container Volume Amount</u> ”) multiplied by the then-current Tariff 300 rate for the rail intermodal yard (the “ <u>Use Fee</u> ”). SSAT guarantees a minimum volume of 130,000 containers handled by SSAT at the Intermodal Yard per year defined as the Minimum Annual Guarantee (“ <u>MAG</u> ”).

Maintenance & Repair	To be performed by SSAT in accordance with the Industry Track Agreement at the sole cost and expense of the NWSA to be reimbursed quarterly to SSAT with an annual true-up. NWSA may directly set up and pay for preventative maintenance.
Utilities	All utility charges including stormwater will be the responsibility of NWSA

3. Ninth Amendment to the Terminal 18 Lease:

In consideration of and as a condition of SSAT entering into the Third Amendment to the Terminal 5 Lease outlined above, NWSA would need to amend the Terminal 18 Lease to waive the “Container Volume Lift Rate Fee” at Terminal 18 for the calendar years of 2022 and 2023.

D. FINANCIAL IMPLICATIONS

The 2022-2026 Capital Improvement Plan Budget included \$10 million for the Reefer Demarcation project but did not include funds for the other aspects of this agreement. The \$10M for the reefer demarcation project had not yet been authorized by the Managing Members and was the subject of dispute resolution between NWSA and SSAT. The 2023 Capital Improvement Plan will include the full expected cost of the capital projects outlined herein², to include:

DESCRIPTION	COST (Rounded)
Reefer Demarcation Project	\$15,200,000
Transtainer Runs installation	\$ 6,000,000
Phase II Container Yard Paving	\$15,000,000
Container Yard Expansion Project	\$11,800,000
Total	\$48,000,000

Financial Impact

The original financial model discussed during the approval of the T5 expansion program was based on an entire strategy for the Seattle harbor including T18, T30, T46 and T5. That model assumed that T5 Phase 2 would be leased starting 2024 and assumed a lease of the 25-acre intermodal yard. The original model and lease

² The pending IY Improvements project will add an additional \$3,253,000 to this calculation.

did not assume any additional costs associated with the amortized capital improvement projects, discussed herein.

Assuming long term revenue from a customer on all available acres at T46, approval of these three agreements, along with the Managing Member-approved short-term lease of T46 to the US Coast Guard, result in a return similar to the rate of return presented in the original Seattle Harbor strategy which authorized the T5 reconstruction.

E. ATTACHMENTS TO THIS REQUEST

- Third Amendment to Terminal 5 Lease Agreement PowerPoint

F. PREVIOUS ACTIONS OR BRIEFINGS

April 3, 2019, Managing Member Meeting: Managing Members adoption of Terminal 5 Term Lease Agreement with SSA Terminals (Seattle Terminals), LLC as part of the North Harbor Strategy

June 1, 2021, Managing Member Meeting: Managing Members adoption of First Amendment to Terminal 5 Term Lease Agreement

April 6, 2022, Managing Member Meeting: Managing Members adoption of Second Amendment to Terminal 5 Term Lease Agreement