

BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND

7/12/18
Item NO: 6.1
DC/msr
dnc

ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO A LICENSE AND CONCESSION AGREEMENT WITH SCHNITZER STEEL INC. FOR A 5-YEAR TERM FOR APPROXIMATELY 2 ACRES OF SUBMERGED LAND ADJACENT TO A PIER ON REAL PROPERTY COMMONLY REFERRED TO AS 1101 EMBARCADERO WEST, LOCATED ADJACENT TO THE SOUTHERLY SIDE OF EMBARCADERO WEST STREET AND THE WESTERLY BOUNDARY OF HOWARD TERMINAL FOR ANNUAL RENT RANGING FROM APPROXIMATELY \$143,000 TO APPROXIMATELY \$165,000.

WHEREAS, Schnitzer Steel Industries, Inc. ("SSII") currently leases approximately 1.8 acres of submerged land from the Port of Oakland ("Port") to berth vessels to an SSII-owned dock located on SSII-owned land pursuant to a 30-year lease that commenced in 1988 and will expire on July 26, 2018; and

WHEREAS, SSII has operated a metal recycling processing plant on real property along the Oakland Inner Harbor, owned by SSII, and commonly referred to as 1101 Embarcadero West in the City of Oakland since the early 1960s; and

WHEREAS, SSII processes and shreds scrap metal on its property and loads the shredded metals onto ocean-going bulk carrier vessels for international export, and SSII needs to be able to continue to use the Port's submerged lands so that the bulk carrier vessels can continue to dock and load the shredded metals for international export; and

WHEREAS, SSII and Port staff have negotiated an agreement to modify the leased premises, change the form of the agreement to a license and concession agreement, and address certain Port concerns regarding safety and possible future improvements to the navigational channel and the Inner Harbor Turning Basin; and

WHEREAS, the Board has reviewed and evaluated Agenda Report Item No. 6.1 (the "**Agenda Report**") to the Agenda of the July 12, 2018 regular meeting of the Board of Port Commissioners (the "**Board**") and related agenda materials, has received the expert testimony of Port staff, and has provided opportunities for and taken public comment; and

WHEREAS, in acting upon this matter, the Board has exercised its independent judgment based on substantial evidence in the record and adopts and relies upon the facts, data, analysis, and findings set forth in the Agenda Report and in related agenda materials and in testimony received.

BE IT ORDAINED BY THE BOARD OF PORT COMMISSIONERS OF THE CITY OF OAKLAND AS FOLLOWS:

SECTION 1. The Board hereby finds and determines the following:

A. All the lands subject to the proposed license and concession agreement ("L&C") are subject to the California tidelands trust doctrine as developed by common law, California legislative acts, and case law (collectively, the "**Tidelands Trust**") and are part of the "Port Area" as defined in Section 725 of the City Charter; and

B. Section 706 of the City Charter gives to the Board the complete and exclusive power and duty for and on behalf of the City to make provisions for the needs of commerce, shipping, and navigation of the Port and to promote the development, construction, and operation of all water front properties including piers, wharves, sea walls, docks, and other improvements; and

C. The proposed L&C will include the following major business points:

- The premises will be expanded from approximately 1.8 acres to approximately 2.0 acres of the Port's submerged lands; and
- The term of the agreement will be 5 years beginning on July 27, 2018; and
- Rent will be approximately \$11,900 per month, which equals the acreage of the submerged premises times the Port's Tariff rate for Submerged Lands; and
- SSII will be required to provide the Port with a security deposit equal to three times the monthly rent.

D. None of the Port's submerged lands comprising the premises are currently needed for Port operations, and the vessels calling at SSII's terminal do not currently interfere with maritime operations at the Port's marine terminals; and

E. SSII has agreed that the Port's submerged lands are subject to the federal navigational servitude and therefore will not have exclusive use of the proposed premises; and

F. The proposed terms and conditions of the L&C are consistent with the Port's duty to use and manage Port property in accordance with the Tidelands Trust, and the private use of Port property pursuant to these amendments will not interfere with the Tidelands Trust.

Section 2. The Board further finds and determines that the proposed L&C was reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA") and the Port CEQA Guidelines. The Board hereby determines that the proposed L&C is categorically exempt from CEQA pursuant to Section 15301(p) of the Port's CEQA Guidelines, which exempts renewals, extensions or amendments to leases or license and concession agreements where the premises or licensed activity was previously leased or licensed to the same or another person, and involving negligible or no expansion of use beyond that previously existing. The proposed L&C to allow SSII to continue its current operations and activities at each the slightly expanded premises meets the criteria for this exemption. Therefore, this action is not subject to CEQA, and no environmental review is required.

SECTION 3. The Board hereby authorizes the Executive Director to:

A. Execute on behalf of the Board the proposed L&C in accordance with the intent and purpose of this Ordinance.

B. Make such additions, modifications, or corrections as necessary to implement the amendments or to correct errors to the proposed L&C, subject to the limitations set forth herein and provided that any such addition, modification or correction does not materially differ from the terms and conditions set forth herein and in the Agenda Report.

SECTION 4. This Ordinance is not evidence of and does not create or constitute (a) a contract, or the grant of any right, entitlement or property interest, or (b) any obligation or liability on the part of the Board or any officer or employee of the Board. Unless and until separate written agreements are duly executed on behalf of the Board as authorized by this Ordinance, is signed as approved as to form and legality by the Port Attorney, and is delivered to other contracting party, there shall be no valid or effective agreement.

DRAFT

President.

Attest: _____
Secretary.

Approved as to form and legality:

Port Attorney