

## AGENDA REPORT

**Ordinance:** Approve and Authorize the Executive Director to Enter into a New Lease Agreement 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 and Adjacent to the Westerly Boundary of Howard Terminal with Schnitzer Steel Industries, Inc., for a 5-Year Term Through July 26, 2023, Resulting in Annualized Rent Ranging from Approximately \$143,000 to Approximately \$165,000 (**Maritime**)

**MEETING DATE:** 7/12/2018

**AMOUNT:** \$154,000 average annualized rent (\$854,000 total) Revenue

**PARTIES INVOLVED:** Schnitzer Steel Industries, Inc. - Portland, OR  
Michael Henderson, Co-President

**SUBMITTED BY:** John C. Driscoll, Director of Maritime

**APPROVED BY:** J. Christopher Lytle, Executive Director

**ACTION TYPE:** Ordinance

### **EXECUTIVE SUMMARY**

Schnitzer Steel Industries, Inc. ("SSII") currently leases submerged land from the Port of Oakland ("Port") to berth its vessels to an SSII-owned marine terminal on SSII-owned land, pursuant to a 30-year lease agreement that expires on July 26, 2018. In June 2018, Port staff and SSII reached agreement on a new lease, which would provide a term of 5 years (through July 26, 2023), increase compensation payable to the Port, and modify the leasehold premises. Staff is requesting the Board's authorization to execute the proposed new lease with SSII.

### **BACKGROUND**

Since the early 1960s, SSII has operated a metal recycling processing plant along the Oakland Inner Harbor (further referred to herein as "SSII Oakland"). The SSII Oakland facility is located on approximately 26.5 acres along the Port's Inner Harbor Area, bordered by the following Port-owned properties: (1) the Berths 60-63 Marine Terminal to the west, (2) the Roundhouse to the northwest, and (3) the Berths 67-68 Marine Terminal to the east (see Exhibit A.

SSII Oakland receives its scrap metal material primarily by truck, and sometimes by rail. After sorting the delivered material, SSII shreds the scrap metal for loading onto vessels.

Shredding occurs during nighttime hours due to energy demand considerations arranged between SSII and Pacific Gas & Electric. The shredded metals are loaded onto ocean-going bulk carrier vessels for international export.

SSII owns its property, with the exception of small parcels of land and water it leases from the Port. The vessel loading equipment and dock are owned by SSII and located on SSII-owned property, with the exception of two mooring dolphins and a catwalk, which are located on Port-owned submerged lands (water) (see Exhibit B). To support its operations, SSII historically has leased various parcels of uplands and submerged lands owned by the Port, as well as lands formerly owned by the Union Pacific Railroad (“UP”) but now owned by the Port. Currently, SSII leases the following lands from the Port:

- **Approx. 1.8 acres of submerged land (water)** – 30-yr lease expires on July 26, 2018. This lease is the subject of this Agenda Report.
- **Approx. 1.4 acres of land formerly owned by UP adjacent to the Roundhouse** (now owned by Port) – renews annually, unless terminated earlier.
- **Approx. 1.0 acre of miscellaneous lands** along Embarcadero Street and adjacent to the Roundhouse – month to month.

SSII’s current lease allows it to both import and export other bulk commodities (except coal and sulfur). However, SSII does not currently handle any bulk commodities other than scrap metal. The proposed new lease would maintain this provision.

In late 2015, SSII approached the Port requesting to negotiate an extension to its lease for the submerged lands. In June 2018, Port staff and SSII reached agreement on a new lease for SSII’s continued use of Port-owned submerged land.

## **ANALYSIS**

Exhibit C summarizes the terms of the new lease agreed upon by the parties. Highlights include the following:

- The premises are expanded from approx. 1.8 acres to approx. 2.0 acres;
- The term is 5 years;
- Rent is approximately \$11,900 per month (SSII currently pays approx. \$3,100 per month), which equals the product of the leasehold acreage and the Submerged Land rate in Tariff 2-A. Rent escalates annually at the greater of 3% or the percentage increase in the applicable rate in Tariff 2-A;
- SSII is required to provide the Port with a Security Deposit equal to three times the monthly rent;

The approximate 2 acres of submerged land that SSII would lease from the Port are not currently needed for Port operations. SSII’s vessels do not currently interfere with maritime operations at the Port’s marine terminals. Occasionally, safety concerns arise when large container ships need to turn in the Inner Harbor Turning Basin; at these times, the San Francisco Bar Pilots requests SSII to move its vessels westward on SSII’s dock.

In addition to serving the recycling industry, SSII provides over 120 local jobs and is a significant contributor to the local economy and tax base.

### **BUDGET & STAFFING**

The proposed new lease with SSII would result in annualized revenues ranging from \$143,000 to \$165,000. Considering partial contract years in both FY 2018-19 (first year) and FY 2023-24 (last year), total estimated revenue over the 5-year lease term is estimated at \$854,000. This revenue was included in the FY 2018-19 Operating Revenue Budget. Rent is estimated based on the acreage of the premises, the Submerged Land rate of \$0.135 per square foot per month set forth in Tariff No. 2-A as of May 1, 2018, and an assumed 3% annual rent increase.

The proposed lease has no impact on staffing.

### **MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)**

The action to enter into a new lease does not fall within the scope of the Port of Oakland Maritime and Aviation Project labor Agreement (MAPLA) and the provisions of the MAPLA do not apply to this action. However, if in the future, tenant construction work under this new lease exceeds the thresholds required for coverage under the MAPLA, the provisions of MAPLA will apply to that work.

### **STRATEGIC PLAN**

The action described herein would help the Port achieve the following goals and objectives in the Port's Strategic Business Plan (2018-2022).

<https://www.portofoakland.com/wp-content/uploads/Port-of-Oakland-Strategic-Plan.pdf>

Goal: Grow Net Revenue

### **LIVING WAGE**

Living wage requirements, in accordance with the Port's Rules and Regulations for the Implementation and Enforcement of the Port of Oakland Living Wage Requirements (the "Living Wage Regulations"), apply to this agreement as the tenant employs 21 or more employees working on Port-related work and the tenancy agreement is greater than \$50,000. In addition, for future construction and maintenance services under this contract, construction prevailing wage requirements shall apply.

### **SUSTAINABILITY**

The tenant has not proposed any development. If the tenant decides to develop the site in the future, the tenant must comply with the 2000 Sustainability Policy and complete the Sustainability Opportunities Assessment Form.

## **ENVIRONMENTAL**

This action was reviewed in accordance with the requirements of the California Environmental Quality Act (CEQA) and the Port's CEQA Guidelines Section 15301(p) of the Port's CEQA Guidelines, the Port has determined that renewals, extensions, or amendments to leases or to license and concession agreements, or the execution of 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, are categorically exempt from CEQA. Therefore, this action is not subject to CEQA and no environmental review is required.

## **GENERAL PLAN**

This action does not change the use of any existing facility, make alterations to an existing facility, or create a new facility; therefore, a General Plan conformity determination pursuant to Section 727 of the City of Oakland Charter is not required.

## **OWNER-CONTROLLED INSURANCE PROGRAM (OCIP)**

The Owner Controlled Insurance Program (OCIP) does not apply to the matters addressed by this report, as they are not capital improvement construction projects.

## **OPTIONS**

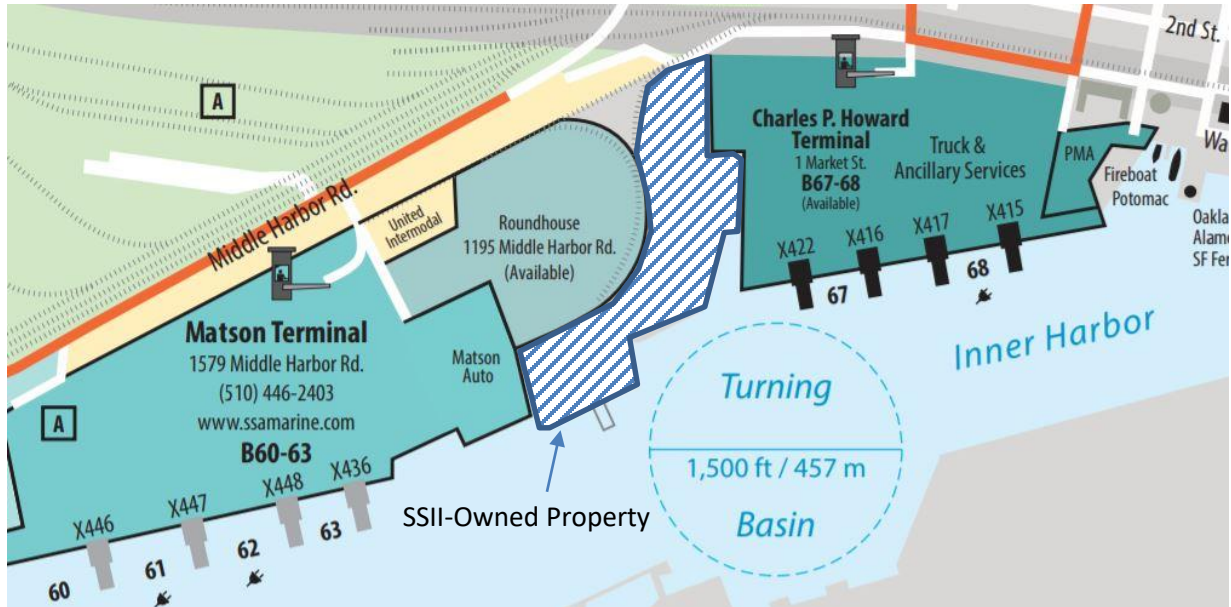
Staff has identified the following options for the Board's consideration:

1. Approve the proposed new lease with SSII for Port-owned submerged land, as outlined in this report. This is the recommended option.
2. Approve a new lease with SSII for Port-owned submerged land, with other terms than those described herein, as may be directed by the Board.
3. Do not approve the proposed new lease with SSII for Port-owned submerged land. Under this option, SSII's continued use of Port-owned submerged land would be on a month-to-month basis pursuant to the holdover provision of the existing lease, which is set to expire on July 26, 2018.

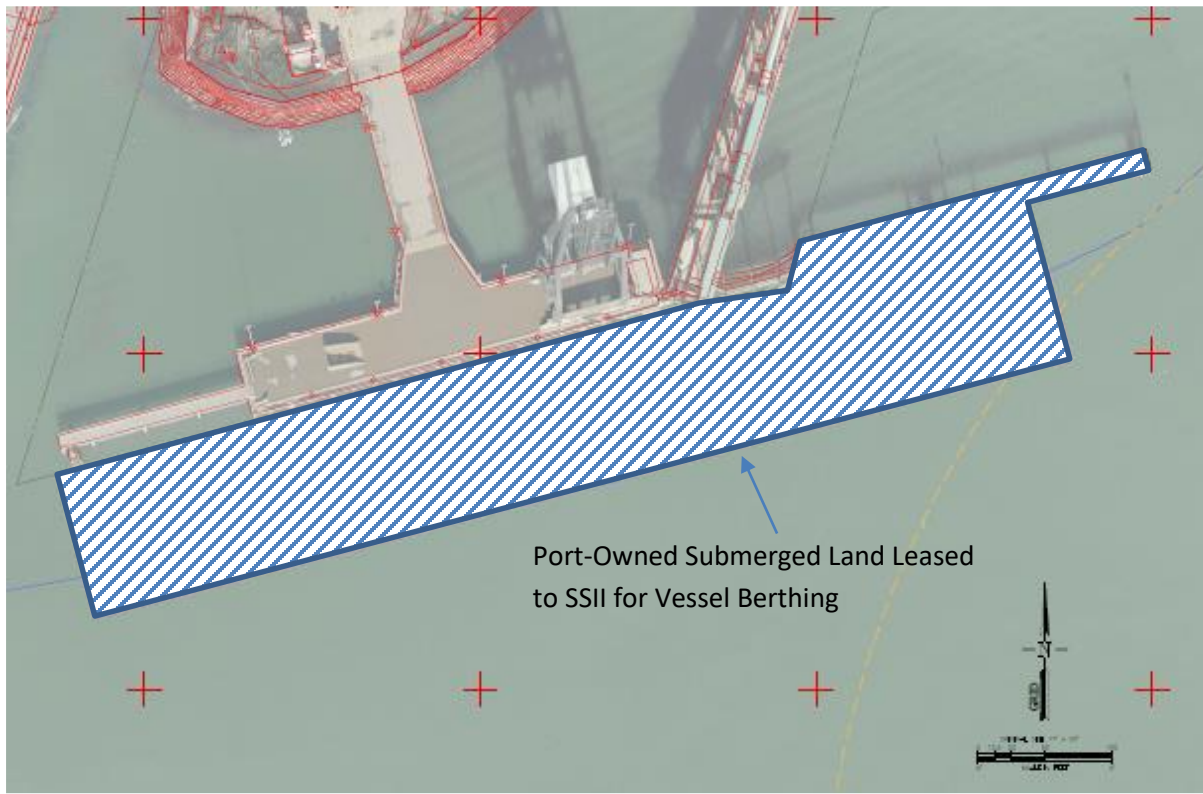
## **RECOMMENDATION**

Approve and authorize the Executive Director to enter into a new lease agreement with Schnitzer Steel Industries, Inc., for approximately 2 acres of Port-owned submerged land in the Oakland Inner Harbor, for a 5-year term expiring on July 26, 2023, with initial rent of \$0.135 per square foot per month, and other terms as detailed in this Agenda Report.

**Exhibit A - SSII-Owned Oakland Facility**



**Exhibit B - SSII Submerged Land Leasehold**



## Exhibit C

### Summary of Proposed Key Terms for SSII Submerged Land Lease

	Description
<b>Effective Date</b>	<ul style="list-style-type: none"> <li>July 27, 2018</li> </ul>
<b>Term</b>	<ul style="list-style-type: none"> <li>The Term is 5 years</li> </ul>
<b>Rent</b>	<ul style="list-style-type: none"> <li>Starting on July 27, 2018, the Monthly Rent is \$0.135/sf/mo, subject to annual escalations</li> </ul>
<b>Rate Escalations; Lease/Contract Year</b>	<ul style="list-style-type: none"> <li>The Monthly Rent is subject to one increase per Lease Year by an amount equal or greater (a) 3% or (b) the percentage increase based upon the most recent rate for Submerged Land (water) in the Port's Tariff NO. 2-A</li> <li>The Lease Year is defined as the 12-month period beginning on January 1 of a calendar year and ending on December 31 of that same calendar year</li> </ul>
<b>Security Deposit</b>	<ul style="list-style-type: none"> <li>In accordance with Port Administrative Policy No. 509, SSII shall deposit with the Port, keep, and maintain during the entire Term a deposit in the sum of three (3) months Monthly Rent</li> </ul>
<b>Delinquency Charge</b>	<ul style="list-style-type: none"> <li>If unpaid, Monthly Rent will become delinquent if the Port does not receive it on or before the tenth (5<sup>th</sup>) day of each month</li> </ul>
<b>Premises</b>	<ul style="list-style-type: none"> <li>Approximately 88,129 square feet (2.02 acres) of Submerged Land; subject to final survey confirmation</li> </ul>
<b>Use of Premises</b>	<ul style="list-style-type: none"> <li>Docking and mooring ocean-going vessels adjacent to real property owned by SSII for purposes of loading and/or discharging steel and nonferrous scrap and other bulk cargo (excluding coal and sulfur) – unchanged from current lease</li> </ul>
<b>Dredging</b>	<ul style="list-style-type: none"> <li>Upon obtaining all necessary permits, SSII may dredge the Premises at its sole cost and expense</li> <li>SSII is solely liable for cost and responsibility for the proper disposal of any and all sediments, soli, and other materials dredged or removed from the Premises in connection with any dredging</li> </ul>
<b>Environmental Incl. Air Quality</b>	<ul style="list-style-type: none"> <li>The Port's updated "Environmental Responsibilities" Exhibit has been included in the lease. Some of the new air quality provisions that apply to other Port facilities are inherently limited in their application to the proposed leasehold, given that SSII's facility is almost entirely on private land, the vessel fleet is not required by law to use shore power, and the dock is not equipped with shore power.</li> </ul>