

## AGENDA REPORT

**Ordinance:** Approve and Authorize the Executive Director to Execute a Lease with Shippers Transport Express, Inc. for Approximately 32 Acres of the Seaport Logistics Complex for a Term Extending Through June 30, 2032, Resulting in Annual Rent Ranging From Approximately \$3.4 Million to \$4.8 Million; Authorize up to \$300,000 for Dust Control Reimbursement; and Authorize Approximately \$7.0 Million for Certain Pavement Improvements (**Maritime**)

**MEETING DATE:** 7/25/2019

**AMOUNT:** Average of \$4.0 million per year (FY 2020 through FY 2032)  
Revenue  
  
\$300,000 (FY 2020 - FY 2021)  
Operating Expense  
  
\$7.0 Million (FY 2020 - FY 2021, One-Time)  
Capital Expenditure

**PARTIES INVOLVED:** Shippers Transport Express, Inc., Oakland, CA  
Guy Sanderson, General Manager

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

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

**ACTION TYPE:** Ordinance

### **EXECUTIVE SUMMARY**

Shippers Transport Express, Inc. ("STE") currently leases approximately 32 acres of land located on the former Oakland Army Base ("OAB") east of Maritime Street (now known as the Seaport Logistics Complex), on a month-to-month Space Assignment Agreement. Port Staff ("Staff") have negotiated terms for an approximate 13-year lease for a term extending through June 30, 2032, resulting in about \$4.0 million of average annual revenue to the Port, and expenditures by the Port of about \$7.3 million. Staff is requesting the Board's authorization to enter into a lease with STE.

### **BACKGROUND**

STE has operated a containerized cargo staging yard at the Port's Maritime Area ("Seaport") since 2003. STE originally occupied a 20-acre site (Site 1) in the Port's Middle Harbor Area located adjacent to the Joint Intermodal Terminal. In 2015, STE had to vacate Site 1 due to

redevelopment activities associated with the construction of the Cool Port Oakland facility. STE relocated to a temporary yard area on the Seaport Logistics Complex, in an area that is currently part of the CenterPoint Oakland Development I, LLC ("CenterPoint") leasehold (Site 2). STE leased Site 2 from the Port on a month-to-month basis while the Port conducted site improvements at a larger, nearby parcel also located in the Seaport Logistics Complex (Site 3), with the intent of relocating STE once again before delivery of CenterPoint's leasehold.

To that end, in December 2017, the Port completed various improvements (grading, lighting, firewater, etc.) to Site 3 at a cost of \$5.7 million to the Port. In January 2018, STE was relocated to Site 3. STE continues to occupy Site 3 on a month-to-month basis through a Space Assignment Agreement. Site 3 comprises 32 acres of which 29 acres are useable yard area (specifically, 13.1 acres of asphalt pavement with lighting and fencing ("Paved") and 15.9 acres of rocked area with lighting and fencing ("Rocked")). Since operations began at Site 3, the Port has discovered that the Rocked surface is not adequate for STE's operations, resulting in frequent potholing (especially during and after the rainy season) and dust (during dry months). As a result, Port staff has had to perform much more maintenance than anticipated, and directed STE to procure a water truck to suppress dust.

In 2018, STE and the Port commenced negotiations for a long-term lease agreement ("Proposed Lease") for Site 3 (the "Premises"). Refer to the site map attached as Exhibit A. The Port and STE reached agreement in May 2019 on proposed lease terms as described in this Agenda Report (the Proposed Lease).

## **ANALYSIS**

STE is a critical Port tenant that promotes cargo transportation efficiencies with the movement of containers into and out of the Seaport, especially the Oakland International Container Terminal ("OICT"; Berths 55-59), during off-peak periods. The STE facility serves as a staging yard where containers are pre-positioned outside waterfront facilities and available for customer pick-up or delivery. With these activities occurring outside a marine terminal, peak period traffic volumes and overall truck trips are decreased at marine terminals.

STE currently pays the Port \$289,861 per month (about \$3.5 million annually) under a Space Assignment at Tariff 2-A rates for 29 acres of useable yard area as described above.

STE desires a long-term lease from the Port for business stability. Long-term operations require a fully paved surface, not the current mix of Paved and Rocked land. Consequently, as a condition of this Proposed Lease, the Port has agreed to pave the Premises ("Pavement Work") by December 31, 2020, providing a minimum of 29 usable asphalt acres. The current estimated cost to complete this work is \$7.0 million. In turn, STE will pay the higher Paved land rate upon completion of the Pavement Work. STE also has agreed to maintain and repair all above and below ground infrastructure and improvements. To ensure Port assets are maintained, the Proposed Lease requires that, on an annual basis, (a) maintenance inspections will be conducted by STE, (b) inspection reports will be sent to Port for review, and (c) meetings will be held by the Port and STE to discuss the submitted report and maintenance action plan. These annual reports and yearly meetings will ensure asphalt surfaces and asphalt sub-base sections are maintained and repaired as required in the Proposed Lease.

On January 24, 2019, the Board approved Resolution No. 19-05 authorizing \$262,000 for design work for the Pavement Work. Design work is underway and Staff anticipates commencing construction of the Pavement Work in mid-2020.

Highlights of Proposed Lease Key Terms:

The key terms of the Proposed Lease are summarized below and further detailed in Exhibit B:

- **Term.** The term shall be effective October 1, 2019, and expire on June 30, 2032. There is no option to extend after June 30, 2032.
- **Termination.** Port can terminate the Proposed Lease with or without cause with six (6) months' prior written notice. STE does not have an early termination right.
- **Compensation.** Fixed Monthly Rent remains unchanged at \$289,861 per month (approximately \$3.5 million annualized) in the first Contract Year ("CY"), increasing to approximately \$397,000 per month (\$4.8 million annualized) in its last CY (FY 2032). For simplicity, these numbers do not include rent abatement in CY1 and CY2 during the construction period of proposed Pavement Work (see bullet below).
- **Rent Abatement.** Rent abatement is provided in CY1 and CY2 to accommodate the loss of functional acreage during Pavement Work. Specifically, 1 acre of Rocked and 1 acre of Paved will be abated during the Pavement Work period. This rent abatement is estimated at a total of approximately \$250,000.
- **Monthly Rent Increase.** Monthly Rent shall increase on July 1 of each Contract Year, by an amount equal to the greater of (a) the percentage increase in CPI over the preceding 12-month period, (b) three percent (3%), and (c) the percentage increase in the applicable rate in Port Tariff No. 2-A.
- **Right to Reduce Premises.** Port may reduce the Premises by up to approximately ten (10) contiguous or non-contiguous useable acres for the purposes of accommodating nearby development activities (including but not limited to the 7<sup>th</sup> Street Grade Separation project). STE may reduce the Premises up to five (5) contiguous useable acres once during the term.
- **Environmental.** STE is participating in a California Air Resources Board ("CARB") Zero and Near Zero Freight Facilities ("ZANZEFF") grant and will obtain and operate ten (10) Class 8 Zero-Emission Drayage Trucks for its operations. As part of the ZANZEFF grant project, the Port entered into a Memorandum of Understanding ("MOU") with the Port of Long Beach dated February 7, 2019, and committed to design and install ten charging stations (thereby providing a grant match of at least \$1.25 million). On January 24, 2019, by Resolution 19-03, the Board authorized up to \$2.0 million to construct charging infrastructure.

STE is responsible to adhere to the Environmental Responsibilities Exhibit to Proposed Ground Lease ("Environmental Exhibit") which includes, among other matters, that STE

comply with Environmental Ordinance No. 4345 as well as a variety of other environmental requirements specific to the Premises, including, without limitation, the Final Remedial Action Plan, Oakland Army Base, Oakland, California ("RAP/RMP"), Port Storm Water Ordinance No. 4311, and the Seaport Air Quality 2020 and Beyond Plan.

In summary, the Proposed Lease provides the Port with escalating fixed rent over a 13-year term, and transfers maintenance obligations. Equally advantageous, after STE's tenancy, the Port will have an improved and highly marketable property.

## **BUDGET & STAFFING**

Revenue of approximately \$3.5 million under the Proposed Lease has been included in the upcoming FY 2019-20 Operating Budget. Proposed Lease terms are consistent with the Budget, and are further detailed below and in Exhibit B.

- In CY1 (FY 2019-20) and CY2 (FY 2020-21) fixed annual rent will be abated approximately \$122,000 and \$126,000, respectively, for the loss of usable land during the Pavement Work. Also, Pavement Work will occur in these two CYs. Therefore, net cashflow in these years is expected to be about \$1.2 million and -\$1.3 million, respectively (also see bullet below).
- In CY3 (FY 2021-22), Staff assumes that all Pavement Work has been completed and the Port has exercised its option to reduce the Premises by 5 acres (for the 7<sup>th</sup> Street Grade Separation Project), resulting in a total of 24 usable acres. The combination of higher rent for Paved land and the reduction of the Premises results in fixed rent of approximately \$3.5 million in CY3, increasing each year thereafter. The final year of revenue (CY13) is projected to be approximately \$4.8 million.
- We note that if the 5-acre reduction does not occur, revenue would be \$700,000 higher. We also reiterate that up to an additional 10 acres, at the Port's discretion, may be removed from the Premises due to other Port improvements.

As part of the Proposed Lease, Staff has agreed to reimburse STE for dust control measures in the amount of \$164,000 for costs incurred from February 1, 2018 through September 30, 2019. Dust control expenses incurred post October 1, 2019 will be reimbursed to STE at the lesser of actual costs or \$9,400 per month. This expense has been included in the FY 2019-20 Operating Expense Budget.

The Pavement Work is expected to be completed by December 31, 2020, at an estimated cost of \$7 million, which includes Staff labor and construction costs. This expenditure has been included in the Port's Capital Budget as a pipeline project, with \$2 million allocated to FY 2020 and \$5 million allocated to FY 2021.

A summary of revenue and expenses is detailed in Table 1 below.

**Table 1. Proposed Rent and Expenses, and Net Cashflow**

	<b>FY 20</b>	<b>FY 21</b>	<b>FY 22</b>	<b>FY 23</b>	<b>FY 24</b>	<b>FY 25 - FY 32</b>
Fixed Rent	<b>\$3,478,000</b>	<b>\$3,890,000</b>	<b>\$3,548,000</b>	<b>\$3,654,000</b>	<b>\$3,764,000</b>	<b>\$34,473,000</b>
Rent Abatement	(\$122,000)	(\$126,000)	\$0	\$0	\$0	\$0
Dust Control Reimbursement (Operating Expense)	(\$239,000)	(\$56,000)	\$0	\$0	\$0	\$0
Pavement Work (Capital Expense)	(\$2,000,000)	(\$5,000,000)	\$0	\$0	\$0	\$0
<b>Net Cashflow</b>	\$1,118,000	(\$1,293,000)	\$3,548,000	\$3,654,000	\$3,764,000	\$34,473,000

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

The action to enter into this Proposed Lease with STE 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.

The action approving the Capital project, Pavement Work, does 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.

### **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

Goal: Modernize and Maintain Infrastructure

### **LIVING WAGE**

Based on the Proposed Lease and information provided by the Agenda Report, living wage requirements may apply to these agreements because the agreement is for a value greater than \$50,000. However, the condition of the tenants employing 21 or more employees must also be met for the tenants to comply with the living wage requirements and all of its obligations. In addition, for the planned construction work contemplated under this Lease, prevailing wage requirements will apply.

## **SUSTAINABILITY**

STE is participating in a California Air Resources Board grant and will obtain ten (10) Class 8 Zero-Emission Drayage Trucks for its operations. Port will install ten (10) truck charging stations at STE's Premises as approved in prior Board action, Port Resolution 19-03 authorizing up to \$2.0 million to construct charging infrastructure.

Additionally, this proposed Lease incorporates the updated "Environmental Responsibilities" Exhibit, which requires STE to adhere to any Maritime Air Quality Improvement (MAQIP) 2020 and Beyond Plan requirements including but not limited to, 1) providing annual equipment and operational data for emissions inventories, 2) meeting with Staff annually to evaluate feasibility of using zero-emissions equipment, and 3) participate in pilot projects of new zero-emission equipment.

## **ENVIRONMENTAL**

The proposal to authorize the Executive Director to enter into a longer-term lease agreement with STE for 32 acres with the Seaport Logistics Complex as described in this Agenda Report was reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA") and the Port CEQA Guidelines. Lease amendments are categorically exempt from CEQA pursuant to Section 15301(p) of the Port CEQA Guidelines, which exempts renewals, extensions or amendments to leases or 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. Furthermore, the proposed pavement repairs and improvements are categorically exempt from CEQA pursuant to Section 15301, which exempts maintenance and repairs involving no expansion of use. The ten charging stations to be constructed as part of the ZANZEFF project were previously determined by the Board in January 2019 to be covered in the Oakland Army Base Redevelopment Project Environmental Impact Report and no further CEQA review is required (Resolution 19-03).

## **GENERAL PLAN**

This action is limited to property agreements that do not change the approved projects under the Army Base Master Plan, which have been found to be in conformance with the City of Oakland General Plan. Any work authorized by these agreements is consistent with the Master Plan.

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

The action to approve the execution of the Proposed Lease is not subject to the Port's Owner Controlled Insurance Program ("OCIP") as it is not a capital improvement construction project. However, the pavement construction and design project that the Port will conduct as a part of this Proposed Lease is a capital improvement project, the applicable OCIP coverages and provisions apply to the construction phase.

## **OPTIONS**

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

1. Authorize the Executive Director to execute a lease with STE, as described herein.
2. Authorize the Executive Director to execute a lease with STE under different terms than those stated in this Agenda Report.
3. Do not authorize the Executive Director to execute a lease with STE, and direct Staff to pursue alternative uses of the subject property, including but not limited to allowing STE to continue leasing the premises under a Space Assignment Agreement on a month-to-month basis.

## **RECOMMENDATION**

Staff recommends that the Board approve and authorize the Executive Director to execute a Lease with Shippers Transport Express, Inc, for a term through June 30, 2032, resulting in (a) annual rent ranging from approximately \$3.4 million to \$4.8 million; (b) dust control reimbursement expenditure of up to \$300,000; and (c) a capital expenditure of approximately \$7.0 million for certain pavement work, all as described herein.

## EXHIBIT A

### Site Map for Shippers Transport Express, Inc.

# SEAPORT FACILITIES





## **EXHIBIT B**

### **Summary of Proposed Key Term for Shippers Transport Express, Inc.**

<b>Form of Agreement</b>	<ul style="list-style-type: none"><li>• Lease</li></ul>
<b>Effective Date</b>	<ul style="list-style-type: none"><li>• October 1, 2019</li></ul>
<b>Lease Term, Termination, &amp; Options to Extend</b>	<ul style="list-style-type: none"><li>• October 1, 2019 through June 30, 2032.</li><li>• Each Lease Year (aka Contract Year) shall be the 12-month period beginning on July 1 of a calendar year and ending on June 30 of the following calendar year. Lease Year 1 will be a partial Lease year beginning on September 1, 2019 and ending on June 30, 2020.</li></ul>
<b>Premises</b>	<ul style="list-style-type: none"><li>• Approximately 31.8 acres.</li><li>• Compensation based on 29 "Useable" acres.</li><li>• 13.1 acres (570,636 square feet of paved land with lighting and fencing).</li><li>• 15.9 acres (692,604 square feet) of rocked land with lighting and fencing).</li></ul>
<b>Port Recapture Area</b>	<ul style="list-style-type: none"><li>• The Port has the right, in its sole discretion, to reduce the Premises up to ten (10) contiguous or non-contiguous "useable" acres at any time during the term of this agreement, on a temporary or permanent basis for purposes of development activities associated with long-term development of the former Oakland Army Base property, including without limitation the reconstruction of 7<sup>th</sup> Street.</li><li>• The Port shall provide STE with no less than 180 days prior written notice of the Port's intention to recapture a portion of the Premises or to return the recaptured area to STE.</li><li>• Monthly Rent will be reduced to reflect the change in the useable acreage of the Premises.</li><li>• Port is responsible to perform and pay for any fence/gate modifications necessary to secure STE's remaining premises and the Port's "Recapture Area".</li></ul>
<b>STE Premises Reduction Right</b>	<ul style="list-style-type: none"><li>• STE has the right, in its sole discretion, to reduce the Premises up to five (5) useable and contiguous acres once during the term of Lease, on a permanent basis.</li><li>• STE shall provide the Port with no less than 180 days prior written notice of STE's intention to reduce its Premises up to 5 useable contiguous acres.</li><li>• STE may reduce a portion of its Premises only within/from the "5 Acres Remainder Parcel" as outlined in the Lease as Exhibit B.</li></ul>

	<ul style="list-style-type: none"> <li>Monthly Rent will be reduced to reflect the change in the useable acreage of the Premises.</li> <li>STE is responsible to perform and pay for any fence/gate modifications necessary to secure STE's remaining premises and the area "handed back" to the Port.</li> </ul>
<b>Rent and Rent Escalations</b>	<ul style="list-style-type: none"> <li>As of the Effective Date, STE shall pay Monthly Rent of \$289,861.30 <ul style="list-style-type: none"> <li>570,636 SF of land (paved, lit, and fenced) at \$0.264 per square foot per month = \$150,647.90; plus</li> <li>692,604 SF of land (rocked, lit, and fenced) at \$0.201 per square foot per month = \$139,213.40.</li> </ul> </li> <li>During the Construction Period for Pavement Work the Port will adjust compensation as follows: reduce the useable acreage by 1 acre of paved land and 1 acre of rocked land.</li> <li>Upon the Port's issuance of the Notice of Completion for the Pavement Work, STE shall pay the then-current rate for Land – Paved with Lighting and Fencing in Item 10160 of Tariff No. 2-A on the useable acreage of the Premises.</li> <li>Monthly Rent will increase on July 1 of each Lease Year, by an amount equal to the greater of (i) the % increase in CPI over the preceding 12-month period, (ii) three percent (3%) of the Monthly Rent as of June 30 of the immediately preceding Lease Year, and (iii) the percentage increase in the rate for land (Paved/Lit/Fenced and Rocked/Lit/Fenced) in Item 10160 of Tariff No. 2-A over the preceding 12-month period.</li> <li>Notwithstanding the above, Monthly Rent shall never decrease unless it is due to the Port's and/or STE's rights to reduce the Premises.</li> </ul>
<b>Performance Deposit</b>	<ul style="list-style-type: none"> <li>An amount equal to one (1) months' Monthly Rent, or \$289,861.30.</li> <li>The Performance Deposit shall be increased whenever Monthly Rent is increased so that the Performance Deposit is equal to at least one (1) times the then Monthly Rent.</li> </ul>
<b>Maintenance Responsibilities</b>	<ul style="list-style-type: none"> <li>The Port shall have no maintenance, repair, rehabilitation, reconstruction, cleanup, removal or security obligations of any kind with respect to the Premises, whether structural or nonstructural, including pavement maintenance (maintenance, repair, failure of subgrade, and normal wear/tear). STE shall maintain and repair all asphalt surfaces and asphalt sub-base. STE shall perform yearly inspections on the asphalt and maintain/repair as noted in Lease.</li> </ul>

	<ul style="list-style-type: none"> <li>Port will reimburse STE's costs incurred for dust control covering the period starting February 16, 2018 and ending on the day Pavement Work concludes. Port's reimbursement will be limited to third-party vendor costs related to rental of the water truck and STE's staff costs to operate the rental water truck. Port will require invoice from the water truck company to STE and proof of STE's payment to water truck company to reimburse the water truck rental costs. The Port will require payroll information for reimbursement for the applicable STE staff person(s) who have operated the rental water truck.</li> </ul>
<b>Payment Terms</b>	<ul style="list-style-type: none"> <li>Monthly Rent is due and payable on the first day of each month; grace of 10 days</li> <li>All other payments are due 30 days after date of invoice.</li> <li>Delinquency rate is 0.06% per day.</li> </ul>
<b>Use of Premises</b>	<ul style="list-style-type: none"> <li>STE agrees the Premises shall be used only to assemble, distribute, store, and handle wheeled containerized cargo or merchandise immediately prior to or subsequent to carriage by water and movement through marine terminal area for the performance of activities related to the movement of such cargo.</li> </ul>
<b>Tenant Improvements</b>	<ul style="list-style-type: none"> <li>Tenant must obtain the Port's prior written approval to make any improvements to the Premises.</li> <li>Port notes that STE has installed portable office trailers on the Premises. STE is required to pay for all utility connections and ongoing utility costs and, must remove the portable office trailers upon expiration of the lease, at its sole cost.</li> <li>STE, at STE's sole cost, is responsible to pay and perform the permanent and/or temporary relocation of the portable office trailers, and any other STE-installed structures, for purposes of allowing the Port to construct the "Planned Port Improvements". STE is responsible to pay and perform other activities associated with relocations, including utility connections, relocations, etc. If Port, in its sole discretion, elects to perform utility connections/relocations, STE shall reimburse Port all of Port's costs to do so, including Port labor.</li> </ul>
<b>Dust Control</b>	<ul style="list-style-type: none"> <li>STE shall continue performing dust control measures until the Port completes the Pavement Work and issues Notice of Completion. Port will reimburse STE for the period of February 16, 2018 to September 30, 2019 in the amount of \$164,000.00. Costs incurred post October 1, 2019 will be reimbursed at a max of \$9,400 per month for the rental of a water truck and direct STE staff time for operating the water truck.</li> </ul>

<p><b>Planned Port Improvements</b></p>	<ul style="list-style-type: none"> <li>• The Port will provide 29 paved useable acres within the Premises, at the Port's sole cost, by June 30, 2020.</li> <li>• STE shall promptly clear the areas of work in accordance with the construction phasing, as requested by the Port.</li> <li>• The "Pavement Work" will include and provide approximately 1 acre of pavement with adequate load limitations to handle "Container Flips". This area will shall be designated as the "Flip Area". No "Flips" shall occur outside this designated zone.</li> </ul>
<p><b>Truck RFID Data</b></p>	<ul style="list-style-type: none"> <li>• STE to install technology and provide Port with in-gate and-out-gate RFID data for the main gate throughout term of lease; data must be sent directly to Port's TMS in an acceptable format. Data transmission to commence no later than 180 days after the effective date of the Lease.</li> </ul>
<p><b>Handback</b></p>	<ul style="list-style-type: none"> <li>• Port and STE to perform joint inspection not less than one year prior to end of lease term. Any repairs or necessary maintenance identified in this inspection must be completed at SSAT's sole cost prior to the end of the lease term.</li> </ul>
<p><b>Environmental</b></p>	<ul style="list-style-type: none"> <li>• Standard form of Environmental Responsibilities Exhibit</li> <li>• Comply with Port of Oakland Comprehensive Truck Management Program.</li> <li>• STE is participating in a CARB Zero and Near Zero-Emissions Freight Facilities (ZANZEFF) grant. STE will obtain ten (10) Class 8 Drayage Trucks by utilizing grant funds.</li> <li>• Port to design and construct electrical infrastructure for ten (10) Zero Emissions charging stations at the STE facility as its contribution to the ZANZEFF grant project.</li> <li>• STE shall be responsible for all costs associated with use of electricity through infrastructure constructed by the Port, including but not limited to, capacity charges. STE shall be responsible to perform and pay for all maintenance associated with the charging stations.</li> </ul>