

PORT ORDINANCE NO.4530

ORDINANCE APPROVING AND AUTHORIZING 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 FOR AN ANNUAL RENT RANGING FROM APPROXIMATELY \$3.4 MILLION TO \$4.8 MILLION, AUTHORIZING PAYMENT OF UP TO \$300,000 FOR DUST CONTROL REIMBURSEMENT, AND AUTHORIZING APPROXIMATELY \$7 MILLION IN CAPITAL BUDGET FOR PAVEMENT IMPROVEMENTS.

WHEREAS, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 6.5, dated July 25, 2019 (the "Agenda Report") and related agenda materials, has received the expert testimony of Port of Oakland ("Port") staff, and has provided opportunities for and taken public comment; and

WHEREAS, Section 706 of the City of Oakland ("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 waterfront properties, including piers, wharves, sea walls, docks, and other improvements; and

WHEREAS, the proposed action will provide service for members of the public who use the waterfront, and is consistent with the Port's duty to use and manage Port property in trust for the people of the State of California (the "Tidelands Trust"), and the private use of Port property pursuant to the proposed lease will not interfere with the Tidelands Trust; now, therefore

BE IT ORDAINED by the Board of Port Commissioners of the City of Oakland as follows:

Section 1. 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.

Section 2. The Board hereby finds and determines as follows:

A. The Port owns approximately 32 acres of land on the former Oakland Army Base east of Maritime Street, which area is referred to as the Seaport Logistics Complex (the "Premises"); and

B. The Premises are currently leased to Shippers Transport Express, Inc. ("STE") on a month-to-month Space Assignment Agreement and STE desires to lease the Premises through a longer-term agreement; and

C. Port staff have negotiated and recommend entering into a Lease with STE under the following key terms, as further described in the Agenda Report:

Premises: Approximately 31.8 acres of land on the former Oakland Army Base east of Maritime Street. 29 acres are "Usable" acres, 13.1 acres of which are paved, and 15.9 acres of which are rocked. The Port may reduce the Premises by up to 10 Usable acres with 180 days' prior written notice. STE may permanently reduce the Premises by up to 5 Usable and contiguous acres, previously identified by the parties, with 180 days' prior written notice.

Parties: Port and Shippers Transport Express, Inc.

Permitted Use: Assemble, distribute, store, and handle wheeled containerized cargo or merchandise immediately prior or subsequent to movement of cargo through the marine terminal area.

Term: Commencing on October 1, 2019, and terminating on June 30, 2032. The Port can terminate with six months' prior written notice. Each Lease Year begins on July 1.

Rent: Initially \$289,861.30 per month, increasing July 1 of each Lease Year by the greater of: the percentage increase in the Consumer Price Index over the prior 12 months; 3%; and the percentage increase in the applicable rate of Tariff No. 2-A over the prior 12 months. Rent may be decreased proportionally for any reduction in Usable acres as provided for in the Lease.

Performance Deposit: One times' the current monthly rent, initially \$289,861.30.

Maintenance: STE to maintain and repair all asphalt surfaces and asphalt sub-base, as well as perform annual inspections of the asphalt. Port shall have no maintenance, repair, rehabilitation, reconstruction, cleanup, removal, or security obligations of any kind.

Pavement Work: Port to pave the Premises by December 31, 2020, to provide a minimum of 29 usable paved acres, which cost is currently estimated to be \$7 million ("Pavement Work").

Dust Control: STE to continue performing dust control measures until the Port issues a Notice of Completion of the Pavement Work. Port will reimburse STE for dust control measures performed from February 2018 to September 30, 2019 in the amount of \$164,000, and for work performed after October 1, 2019 in the amount of up to approximately \$9,400 per month for the cost to rent and operate the water truck.

Charging Stations: Port to design and construct ten charging stations pursuant to the February 7, 2019 Memorandum of Understanding with the Port of Long Beach and Port Resolution 19-03.

D. The Board further finds and determines that:

1. The proposed approval of the Lease is exempt from the requirements of the California Environmental Quality Act ("CEQA") under Section 15301(p) of the CEQA Guidelines,

which exempts renewals, extensions, or amendments to leases where the premises was previously leased to the same or another person and involves negligible or no expansion of use beyond that previously existing;

2. The proposed Pavement Work is categorically exempt from CEQA under Section 15031 of the CEQA Guidelines, which exempts maintenance and repairs involving no expansion of use; and
3. The ten charging stations to be constructed comply with CEQA because the activity is covered by the Oakland Army Base Redevelopment Project Environmental Report and no further CEQA review is required, as further described in Port Resolution 19-03.

Section 3. The Board hereby approves and authorizes the Executive Director or his designee to execute the proposed Lease with **Shippers Transport Express, Inc.** (and such additional documents as may be necessary to consummate the transaction) for the Premises, as further described above and in the Agenda Report, subject to approval as to form and legality by the Port Attorney. The Board also approves the Port's reimbursement of STE's dust control expenditures of up to \$300,000, and approves a capital budget authorization of approximately \$7 million for Pavement Work, as further described 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 a separate written agreement is 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 the other contracting party, there shall be no valid or effective agreement.

The Board of Port Commissioners, Oakland, California, July 25, 2019. Passed to print for one day by the following vote: Ayes: Commissioners Colbruno, Lee, Leslie, Martinez, Story and President Cluver - 6. Excused: President Butner - 1 Noes: 0.

Daria Edgerly

Secretary of the Board