

PORT ORDINANCE NO. 4816

ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A FIFTH AMENDMENT TO THE TEMPORARY RENTAL AGREEMENT WITH WEST OAKLAND PACIFIC RAILROAD, LLC, AT THE OUTER HARBOR INTERMODAL RAIL TERMINAL PHASE 1 YARD FOR INTERIM RAIL SWITCHING SERVICES, TO EXTEND THE AGREEMENT TERM FOR ONE ADDITIONAL YEAR THROUGH DECEMBER 31, 2026, WITH A ONE-YEAR OPTION TO EXTEND, RESULTING IN APPROXIMATELY \$6,388 PER CALENDAR YEAR QUARTER OF ADDITIONAL FIXED RENT AND APPROXIMATELY \$160 PER RAIL CAR IN EXCESS OF THE BREAKPOINT; AND FINDING THAT THE PROPOSED ACTION IS EXEMPT UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

WHEREAS, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 6.1, dated November 6, 2025, (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 important services for customers of the Port, 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 in the form of a lease will not interfere with the Tidelands Trust; and

WHEREAS, the Port has an existing temporary rental agreement effective January 1, 2018, as amended by four separate amendments (together, the "TRA"), with West Oakland Pacific Railroad, LLC ("Permittee" or "WOPR"), to use a certain portion of Port owned property at the Outer Harbor Intermodal Rail Terminal Phase 1 Yard ("Premises") to provide interim rail switching services for Port customers; and

WHEREAS, the Port and Permittee have agreed that it is to their mutual benefit to amend certain provisions of the TRA;

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 proposed Fifth Amendment to the TRA with Permittee is exempt from the requirements of the California Environmental Quality Act ("CEQA") because the proposed action consists of leasing of existing structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use, as further defined in Section 15301 of the CEQA Guidelines.

B. Port staff have negotiated and recommend entering into the Fifth Amendment to the TRA, which:

1. Term: Extends the term of the TRA by one one-year extension expiring on December 31, 2026, and provides an additional optional one-year term extension ("Additional Extension Term") at the Port Executive Director's sole discretion (through December 31, 2027); and
2. Compensation and Performance Deposit: Fixed rent and variable rent (per railcar for any railcar in excess of a breakpoint of 240 railcars per quarter) increase by approximately 3% for a fixed rent of approximately \$6,388 per calendar year quarter and approximately \$160 per railcar for any railcar in excess of breakpoint. If the term of the TRA is extended by the Executive Director for the Additional Extension Term, fixed and variable rent shall increase by an additional 3%.
3. Environmental Exhibit: The Environmental Exhibit is updated and replaced with the Port's current form of Environmental Exhibit.

Other terms and conditions of the TRA remain unchanged.

Section 3. The Board hereby authorizes the Executive Director or his designee to execute the Fifth Amendment to the TRA with Permittee, as further described in the Agenda Report, subject to approval as to form and legality by the Port Attorney.

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 Port. 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.

Section 5. This Ordinance shall take effect on the date of its final adoption; provided, however, that if a petition protesting the adoption of this Ordinance is timely and duly submitted to the elections official of the City of Oakland in the manner required under California Elections Code § 9237, the effective date of this Ordinance shall be suspended, and all actions authorized by this Ordinance shall be null and void.

The Board of Port Commissioners, Oakland, California, November 6, 2025. Passed to print for one day by the following vote: Ayes: Commissioners Dominguez Walton, Martinez, Muhammad and President Myres - 4. Noes: 0. Excused: Commissioners Cluver, Leslie and Wong - 3.

Daria Edgerly,

Secretary of the Board