Port of Oakland

4/24/2025

AGENDA REPORT

<table>
<tr><td colspan="2"><u>PROPOSED ACTION</u>: Ordinance: Approve and Authorize the Executive Director to Execute the Tenth Supplemental Agreement with BNSF Railway Company for the Joint Intermodal Terminal to Extend the Term through December 31, 2025, Provide One Option to Extend the Term by One Year, Modify Compensation Resulting in a Revenue Reduction of Approximately $3.2 Million in FY 2026, and Modify Other Provisions Related to Term and Potential Future Rail Service; and Find that the Proposed Action is Exempt Under the California Environmental Quality Act.</td></tr>
<tr><td colspan="2"><u>Submitted By</u>: Bryan Brandes, Maritime Director; Kristi McKenney, Executive Director</td></tr>
<tr><td><u>Parties Involved</u>: BNSF Railway Company; Randy Harvell, Director Intermodal Operations; Fort Worth, TX</td><td><u>Amount</u>:
FY 2025: $4.4 million (operating revenue)
FY 2026: $1.2 million (operating revenue)
(revenue loss of $3.2 million)

FY 2025 Budget: $3.9 million
FY 2026 Budget: under development</td></tr>
<tr><td colspan="2"><u>EXECUTIVE SUMMARY</u>: BNSF Railway Company (BNSF) has been leasing the 84-acre Joint Intermodal Terminal (JIT) from the Port since 2001 pursuant to a lease agreement (Lease). The Lease was most recently amended in 2021 and then expired on December 31, 2024. BNSF continues to occupy and operate the JIT in holdover. Recently, Port Staff and one of the Port's marine terminal tenants have been discussing the potential conversion of the JIT into on-dock rail facilities. Considering these discussions, and declining cargo activity at the JIT, the proposed Tenth Supplemental Agreement (10th Supplement) would extend the Lease through December 31, 2025; provide a 1-year extension through December 2026; reduce compensation payable to the Port; and provide the parties with an early termination right during the extension year.</td></tr>
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<u>BACKGROUND & ANALYSIS</u>

The Port built the JIT in the late 1990s/early 2000s at a cost of approximately $72 million with a mix of cash, bonds and grants. The JIT is in the heart of the Port's Maritime Area (Seaport; see Figure 1) and was envisioned as a joint facility served by both Union Pacific Railroad (UP) and BNSF. The "joint operations" concept did not come to fruition and the JIT has been leased to BNSF since it was built, pursuant to a Lease dated December 18, 2001, as amended. The Lease was most recently amended in 2021 and expired on December 31, 2024, and BNSF is currently in holdover at compensation terms unchanged from those in effect upon expiration.

Intermodal cargo activity at the Port is very limited and, in recent years, much of it has been handled by UP on its private railyard (Railport) adjacent to the Seaport. BNSF's activity has been declining since its peak in 2005 (203,427 lifts), but the most significant decline has occurred since 2021. Calendar Year 2024 lifts are the lowest on record

(13,992 lifts). For context, the capacity of the JIT is estimated at 260,000 lifts. The terms of the Lease have largely insulated the Port from cargo activity declines by requiring BNSF to pay minimum fixed rent (i.e., “guaranteed” rent); however, the activity trends have also prevented the Port from appreciably growing revenue from the JIT and capturing the full value of the property.

Port Staff and BNSF began negotiations for a new long-term lease many months before Lease expiration. Then, in fall 2024, BNSF advised Port Staff that a significant reduction in the rent payable to the Port would be necessary for BNSF to continue its investment in the JIT (i.e., its operations, maintenance, business development initiatives, etc.). In parallel with these negotiations, SSA Terminals, Inc. (SSAT), which operates the Oakland International Container Terminal (OICT) across the street from the JIT has expressed interest in potentially converting the JIT to an on-dock rail facility. Simply put, on-dock rail is a system that allows the transfer of marine cargo from the wharf to the rail yard without the use of an on-road truck because the rail tracks are incorporated into the marine terminal.

Given these factors, Port Staff and BNSF have negotiated a 10th Supplement to the Lease, which includes the following key terms:

- **Term**: Extended one year through December 31, 2025.
- **Option to extend term**: Term will automatically renew on January 1, 2026, unless expressly terminated, for a period of one year.
- **Maximum Term**: December 31, 2026. If the Lease were to remain in effect after this date, it would be in holdover or under a future amendment or new lease.
- **Early Termination**: Prior to December 31, 2025, the parties can terminate the Lease early by mutual agreement. Between December 2025 and December 2026, each party has the right to terminate the Lease early, for any reason, with 90 days’ prior notice.
- **Compensation in 2025**: For calendar year 2025, BNSF will pay fixed rent of \$2 million in equal monthly installments, compared to \$3.8 million in calendar year 2024. The breakpoint and rates are unchanged from calendar year 2024. Note that the Lease runs on a calendar contract year.
- **Compensation in 2026**: For calendar year 2026, if applicable, BNSF will pay only based on activity; there will be no more fixed (i.e., “guaranteed”) rent. The rates are unchanged from calendar year 2025. Based on recent activity levels, annualized revenue would be in the range of \$400,000 to \$500,000.
- **Access to potential future on-dock rail facilities**: The Port agrees to negotiate in good faith to provide BNSF with access to the proposed on-dock facility, and any other Port-owned or Port-controlled rail facility that BNSF may need to serve the proposed on-dock facility. Such access, if granted, would be the subject of separate agreements that have yet to be negotiated. Nothing in the 10th Supplement guarantees any specific terms or execution of any such agreement(s).

- **Miscellaneous**: Updated delinquency provisions.

As of the writing of this Report, it is not known with certainty if/when the Lease will terminate for the purpose of potentially effectuating on-dock rail. Regardless, the proposed terms of the 10th Supplement would ensure (a) the Port has the flexibility to implement the proposed on-dock rail effort, (b) the Port receives at least $2 million in calendar year 2025, (c) the Port receives compensation for each lift handled in calendar year 2026, if applicable, and (d) if on-dock rail is not effectuated by December 31, 2026, BNSF has the ability to continue operating the JIT in holdover (or under a new/amended lease) at rates that will be negotiated in the future.

OTHER FINDINGS AND PROVISIONS

ENVIRONMENTAL REVIEW

The proposed action was analyzed under the California Environmental Quality Act (CEQA) and was found to be:

☒ Categorically exempt under the following CEQA Guidelines Section:

15301 (Existing Facilities)

☐ "Common Sense" exemption under CEQA Guidelines Section 15061(b)(3).

☐ Other/Notes:

BUDGET

☐ Administrative (No Impact to Operating, Non-Operating, or Capital Budgets); OR

☒ Operating ☐ Non-Operating ☐ Capital

Analysis: Because the Lease runs on a calendar contract year, fiscal year revenue does not necessarily match calendar year revenue. To value the proposed action, we have assumed that the Lease remains in effect through June 30, 2026 (i.e., through FY26 or halfway through the extension year).

In FY 2025, compared to budget, the proposed action has a positive revenue impact of $565,000 (for a total of $4.4 million) due to the new requirement that fixed rent be paid in equal monthly installments. This can be explained as follows: currently, the Lease is on a calendar year and the Port gets paid monthly based on activity, with a lump sum reconciliation at year-end. The 10^{th} Supplement moves a portion of that lump sum forward into FY 2025, so the positive variance is solely an artifact of timing.

Revenue in FY 2026 from BNSF is estimated at a maximum of $1.2 million, down about $3.2 million from FY 2025. Thereafter, or upon earlier termination of the Lease, revenue from the JIT will depend on (a) the negotiated terms for the on-dock rail facility, if any; and/or (b) the negotiated terms for BNSF's continued occupancy of the JIT; and/or (c) any other negotiated agreement for the JIT. Staff will incorporate these future revenue estimates in the Maritime Division FY 2026-FY2030 operating revenue budget.

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<tr><td colspan="2"><u>STAFFING</u>

☒ No Anticipated Staffing Impact.

☐ Anticipated Change to Budgeted Headcount.

<u>Reason</u>:

☐ Other Anticipated Staffing Impact (e.g., Temp Help).

<u>Reason</u>:</td></tr>
<tr><td><u>MARITIME AND AVIATION PROJECT LABOR AGREEMENT (MAPLA)</u>:

<u>Applies?</u> No (Other) - see explanation below.

☐ <u>Additional Notes</u>: No improvements are contemplated.</td><td><u>LIVING WAGE</u> (City Charter § 728):

<u>Applies?</u>

No (Not Covered Entity) – proposed action involves entity not covered by Living Wage requirements because it is not a covered service provider or tenant, does not employ at least 21 employees, or receive from or pay to Port at least $50,000.

☐ <u>Additional Notes</u>:</td></tr>
<tr><td><u>SUSTAINABLE OPPORTUNITIES</u>:

<u>Applies?</u> No.

<u>Reason</u>: This Lease amendment does not involve any equipment or development.</td><td><u>GENERAL PLAN</u> (City Charter § 727):

<u>Conformity Determination</u>:

Maritime/Aviation – proposed action conforms to policies for transportation designation of the General Plan.</td></tr>
<tr><td colspan="2"><u>STRATEGIC PLAN</u>. The proposed action would help the Port achieve the following goal(s) in the Port's Strategic Plan:

☐ Capture Our Market and Grow the Economic Base

☒ Modernize and Upgrade Infrastructure

☐ Transition to Zero-Emissions and Build Climate Resilience

☐ Maximize Land Use Value and Revenues

☐ Workforce Training and Jobs Development

☐ Create Opportunities for Local Businesses and Community Economic Development</td></tr>
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Figure 1. Location of JIT Within the Seaport