

PORT ORDINANCE NO. 4790

ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A TENTH SUPPLEMENTAL AGREEMENT TO THE LEASE 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 RELATING TO TERM AND POTENTIAL FUTURE RAIL SERVICE; 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 6.2, dated April 24, 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 Joint Intermodal Terminal Lease Agreement ("Lease") with BNSF Railway Company ("BNSF" or "Lessee"), a Delaware Corporation, dated as of December 18, 2001, and recorded February 19, 2002, as amended, for operation of the approximately 84-acre Joint Intermodal Terminal ("JIT"), which expired on December 31, 2024, and BNSF is currently in holdover at compensation terms unchanged from those in effect at the time of expiration; and

WHEREAS, BNSF's cargo activity has been declining in recent years and BNSF has advised the Port that a reduction in the rent payable to the Port would be necessary for BNSF to continue its investment in the JIT; and

WHEREAS, the Port and BNSF have agreed that it is to their mutual benefit to amend certain provisions of the Lease and enter into a negotiated 10th Supplement to the Lease; now, therefore,

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

Section 1. The Board hereby finds and determines that the proposed action is categorically exempt from the California Environmental Quality Act ("CEQA") under Section 15301 of the CEQA Guidelines because the proposed action consists of activities that involve negligible or no expansion of an existing use.

Section 2. The Board hereby approves and authorizes the Executive Director or her designee to:

A. Execute the proposed 10th Supplement to the Lease with BNSF for the Premises, with the following terms, as further described in the Agenda Report, subject to approval as to form and legality by the Port Attorney:

- Term: Extend 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 additional year.
- 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: 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. For calendar year 2026, if applicable, BNSF will pay only based on activity; there will be no more fixed (i.e., "guaranteed") rent, and the breakpoint and rates are unchanged from calendar year 2025.
- Miscellaneous: Delinquency provisions are updated.
- 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 would need to be negotiated and no specific terms or execution of any such agreement is provided in the 10th Supplement.

B. Make any additions, modifications, or corrections as necessary to implement the Agreement, provided that any such addition, modification, or correction does not materially differ from the terms and conditions set forth herein and in the Agenda Report, subject to approval as to form and legality by the Port Attorney.

C. Furthermore, if the proposed Agreement is not fully executed within thirty (30) days after the effective date of the Board's approval, the approval shall be null and void unless extended at the sole and absolute discretion of the Executive Director or her designee.

Section 3. 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 4. 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, April 24, 2025. Passed to print for one day by the following vote: Ayes: Commissioners Cluver, Dominguez Walton, Lee, Leslie, Martinez, Myres and President Colbruno - 7. Noes: 0.

Daria Edgerly,

Secretary of the Board