PORT OF OAKLAND

11/6/2025

AGENDA REPORT

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<tr><td colspan="2"><u>PROPOSED ACTION</u>: Ordinance: Approve and Authorize the Executive Director to Execute a Fifth Amendment to the Temporary Rental Agreement with West Oakland Pacific Railroad, LLC, to Provide Interim Rail Switching Services at the Port's Outer Harbor Intermodal Terminal Phase 1 Yard for One Additional Year Through December 31, 2026, with One, 1-Year Option to Extend; Resulting in Fixed Rent of Approximately $6,388 per Calendar Year Quarter and Variable Rent of Approximately $160 per Rail Car in Excess of the Breakpoint, and Finding that the Proposed Action is Exempt Under the California Environmental Quality Act. (Maritime)</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>:
West Oakland Pacific Railroad, LLC
Phil Tagami, President and CEO
Oakland, CA</td><td><u>Amount</u>: $25,553 annually (Operating Revenue)</td></tr>
<tr><td colspan="2"><u>EXECUTIVE SUMMARY</u>: Effective January 1, 2018, the Port of Oakland (Port) entered into a Temporary Rental Agreement (TRA) with West Oakland Pacific Railroad, LLC (WOPR) for interim rail switching services for Port customers at the Outer Harbor Intermodal Rail Terminal Phase 1 Yard (OHIT Phase 1 Yard), located on the Port-owned former Oakland Army Base (OAB) property. In 2018, 2019, 2021, and 2023, the Board of Port Commissioners (Board) approved the First, Second, Third, and Fourth Amendments to the TRA, which extended the term through December 2025 and established a rent structure comprising of fixed and variable rent. Port Staff seeks approval of the Board to further extend the TRA with modified terms, which would result in annual fixed rent of approximately $25,553 plus variable rent if the breakpoint (of 240 railcars per quarter) were exceeded.</td></tr>
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BACKGROUND & ANALYSIS

As part of its development of the Port-owned former OAB, known as the Seaport Logistics Complex, the Port constructed a 24-acre rail yard, comprised of manifest and support tracks, to serve Port customers and, eventually, the City of Oakland customers (only the portion serving Port customers has been constructed). The OHIT Phase 1 Yard became fully operational in late 2016.

In 2016 and 2017, WOPR and its related entities maintained various agreements with the Port and Class 1 Railroads to handle as-needed rail traffic at the OHIT Phase 1 Yard. Effective January 1, 2018, the Port and WOPR entered into a 1-year TRA for continuous (though minimal) interim rail switching services. This agreement provided no rent or other compensation to the Port but allowed WOPR to move railcars to serve Port tenants. In late 2018, the Board approved a First Amendment to the TRA, which extended the term through 2019 and established a rent structure comprising both fixed and variable rent. In late 2019, the Board approved a Second Amendment to the TRA, which extended the term through 2021, added a holdover provision, and established rent and security deposit increases. In late 2021, the Board approved a Third Amendment to the TRA that extended the term through 2023 and set increases to rent. In late 2023, the Board approved the Fourth Amendment to the TRA that extended the term through 2025 and set increases to rent. Currently, the OHIT Phase 1 Yard serves three Port tenants and WOPR collects revenue under contractual arrangements with the Class 1 Railroads to provide rail service to these tenants.

The TRA expires on December 31, 2025, and an extension requires approval of the Board. As further discussed below, Port Staff is requesting an extension to the TRA, with modification of various terms. Port Staff discussed its proposed changes to the revenue structure and other terms with WOPR, who has agreed to a Fifth Amendment with modifications, as follows:

- **Agreement:** Fifth Amendment to TRA with WOPR, LLC, for interim switching services.

- **Effective Date:** January 1, 2026

- **Term and Term Extension:** The term of the Fifth Amendment would cover the period of January 1, 2026 through December 31, 2026. The Port's Executive Director, in their sole discretion, may extend the term for one additional year through calendar year 2027.

- **Termination:** Neither party has an early termination right unless the parties mutually agree in writing to terminate this TRA upon the execution of a subsequent new agreement.

- **Compensation:** Fixed rent of approximately $6,388 per calendar year quarter (about $25,553 annualized) and variable rent of approximately $160 per railcar for any railcar in excess of a breakpoint of 240 railcars per quarter. The breakpoint resets on the first day of each quarter. This is a 3% increase to the fixed and variable rent from the rates in the current TRA. There is no change to the breakpoint from the current TRA.

- **Escalations to Compensation:** If the term of the TRA is extended by the Executive Director, effective January 1, 2027, Fixed and Variable Rent shall increase by 3%.

- **Security Deposit:** $30,000. This is unchanged from the current TRA.

- **Maintenance:** Port retains maintenance responsibilities for the rail yard infrastructure. WOPR maintains its equipment. This is unchanged from the current TRA.

- **Environmental:** WOPR will comply with the Port's current form of Environmental Exhibit, including requirements to provide data to the Port, and confer with the Port regularly regarding air quality initiatives.

OTHER FINDINGS AND PROVISIONS

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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: The proposed Fifth Amendment to extend the term of a TRA through December 31, 2026 with a one-year option to extend, modify compensation, and change other business terms as described herein, is categorically exempt from CEQA pursuant to Section 15301 of the CEQA Guidelines, which exempts leasing, of existing public or private structures, facilities, mechanical equipment, or topographical features, involving no expansion of existing use.

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BUDGET

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

☒ Operating ☐ Non-Operating ☐ Capital

Analysis: The proposed amendment to the TRA would result in fixed revenue of about $6,388 per calendar year quarter, or about $25,553 annually, which is consistent with the adopted Maritime operating budget for Fiscal Year 2026. It is uncertain whether the breakpoint will be exceeded. Therefore, Staff is currently assuming no variable rent during the term of the proposed amendment. No appreciable expense by the Port is anticipated during the term of the TRA.

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STAFFING

☒ No Anticipated Staffing Impact.

☐ Anticipated Change to Budgeted Headcount.

Reason:

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

Reason:

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MARITIME AND AVIATION PROJECT LABOR AGREEMENT (MAPLA):

Applies? No (Not Aviation or Maritime CIP Project) – proposed action is not covered work on Port's Capital Improvement Program in Aviation or Maritime areas above the threshold cost.

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LIVING WAGE (City Charter § 728):

Applies?

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<tr><td>☐ <u>Additional Notes</u>:</td><td>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>: There are no sustainability opportunities related to this proposed action because it does not involve a development project, purchasing of equipment, or operations that present sustainability opportunities at this time, given the interim nature of the proposed TRA amendment.</td><td><u>GENERAL PLAN</u> (City Charter § 727):

<u>Conformity Determination</u>:

Not Required – conformity determination not required because proposed action does not change use of or make alterations to an existing facility, or create a new facility.</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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