



AGENDA REPORT

PROPOSED ACTION: Ordinance: Approve and Authorize the Executive Director to Execute a Fourth 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 (OHIT) Phase 1 Yard for One Additional Year Through December 31, 2024, with One, 1-Year Option to Extend; Resulting in Fixed Rent of Approximately \$6,021 per Calendar Year Quarter and Variable Rent of Approximately \$151 per Rail Car in Excess of the Breakpoint, Finding that the Proposed Action is Exempt Under the California Environmental Quality Act. **(Maritime)**

Submitted By: Bryan Brandes, Director of Maritime; Kristi McKenney, Acting Executive Director

Parties Involved:

West Oakland Pacific Railroad, LLC
Mark McClure, President
Oakland, CA

Amount: \$24,086 Annually (Revenue)

EXECUTIVE SUMMARY: 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 at the newly constructed OHIT Phase 1 Rail Yard, located on the Port-owned former Oakland Army Base (OAB) property. In 2018, 2019, and 2021, the Board of Port Commissioners (Board) approved the First, Second, and Third Amendments to the TRA, which extended the term through December 2023 and established a rent structure comprising of fixed and variable rent. Staff seeks approval of the Board to further extend the TRA with modified terms, which would result in annual fixed rent of approximately \$24,086 plus variable rent if the breakpoint (of 240 railcars per quarter) were exceeded.

BACKGROUND & ANALYSIS

As part of its development of the Port-owned former OAB, known as the Seaport Logistics Complex, the Port constructed a new 24-acre rail yard, comprised of manifest and support tracks, to serve both Port customers and, eventually, the City of Oakland (City) customers. The new rail yard (OHIT Phase 1 Yard) cost approximately \$100 million, partially funded by about \$80 million of State and Federal Grant funding. 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 Temporary Rental Agreement (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 rail cars 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.

The TRA expires on December 31, 2023, and an extension requires approval of the Board. As further discussed below, Staff is requesting an extension to the TRA, with modification of various terms.

The OHIT Phase 1 Yard is a new facility, not yet operating near capacity. Staff expects it will take several years to ramp up activity and generate appreciable revenue to the rail operator and the Port. 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.

Staff believes further extension of the TRA with WOPR is necessary to ensure business continuity and grow revenues. However, Staff also believes that various modifications to the terms are necessary for WOPR's continued use of the OHIT Phase 1 Yard. Staff discussed its proposed changes to the revenue structure and other terms with WOPR, who has agreed to a Fourth Amendment with modifications, as follows:

- **Agreement:** Fourth Amendment to TRA with WOPR, LLC, for interim switching services.
- **Effective Date:** January 1, 2024
- **Term, Term Extension, and Holdover:** The term of the Fourth Amendment would cover the period January 1, 2024 through December 31, 2024. The Port's Executive Director, in his or her sole discretion, may extend the term for one additional year through calendar year 2025. If WOPR fails to vacate and surrender the Premises on or prior to the Termination Date, holdover provisions would take effect and during such holding over the Port could modify compensation with seven (7) days' notice before the expiration of any such month. The holdover provisions are unchanged from the current TRA.
- **Termination:** Neither party has an early termination right. This is unchanged from the current TRA.
- **Compensation:** Fixed rent of approximately \$6,021 per calendar year quarter (about \$24,086 annualized) and variable rent of approximately \$151 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, 2025, 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

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)
- Not a "Project" under CEQA, as defined in Public Resources Code § 21065.
- Other/Notes: The proposed Fourth Amendment to extend the term of a TRA through December 31, 2024 with a 1-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 the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use.

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 \$6,021 per calendar year quarter, or about \$24,086 annually, which is consistent with the adopted Maritime operating budget for Fiscal Year 2024. 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.

STAFFING

- No Anticipated Staffing Impact.
- Anticipated Change to Budgeted Headcount.
Reason:
- Other Anticipated Staffing Impact (e.g., Temp Help).
Reason:

**MARITIME AND AVIATION PROJECT
LABOR AGREEMENT (MAPLA):**

LIVING WAGE (City Charter § 728):
Applies?

<p><u>Applies?</u> 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.</p> <p><input type="checkbox"/> <u>Additional Notes:</u></p>	<p>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.</p> <p><input checked="" type="checkbox"/> <u>Additional Notes:</u> The tenant is required to certify that should living wage obligations become applicable, the tenant shall comply with the Living Wage Regulations.</p>								
<p><u>SUSTAINABLE OPPORTUNITIES:</u></p> <p><u>Applies?</u> No.</p> <p><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.</p>	<p><u>GENERAL PLAN</u> (City Charter § 727):</p> <p><u>Conformity Determination:</u></p> <p>No Project – conformity determination not required because proposed action does not change use of or make alterations to an existing facility or create a new facility.</p>								
<p><u>STRATEGIC PLAN.</u> The proposed action would help the Port achieve the following goal(s) and objective(s) in the Port’s Strategic Business Plan:</p> <table border="0"> <tr> <td><input checked="" type="checkbox"/> Grow Net Revenues</td> <td><input type="checkbox"/> Modernize and Maintain Infrastructure</td> </tr> <tr> <td><input type="checkbox"/> Improve Customer Service</td> <td><input type="checkbox"/> Pursue Employee Excellence</td> </tr> <tr> <td><input type="checkbox"/> Strengthen Safety and Security</td> <td><input type="checkbox"/> Serve Our Community</td> </tr> <tr> <td><input type="checkbox"/> Care for Our Environment</td> <td></td> </tr> </table>		<input checked="" type="checkbox"/> Grow Net Revenues	<input type="checkbox"/> Modernize and Maintain Infrastructure	<input type="checkbox"/> Improve Customer Service	<input type="checkbox"/> Pursue Employee Excellence	<input type="checkbox"/> Strengthen Safety and Security	<input type="checkbox"/> Serve Our Community	<input type="checkbox"/> Care for Our Environment	
<input checked="" type="checkbox"/> Grow Net Revenues	<input type="checkbox"/> Modernize and Maintain Infrastructure								
<input type="checkbox"/> Improve Customer Service	<input type="checkbox"/> Pursue Employee Excellence								
<input type="checkbox"/> Strengthen Safety and Security	<input type="checkbox"/> Serve Our Community								
<input type="checkbox"/> Care for Our Environment									