

**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

11/30/2023
Item No. 6.4
RS/msr



ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A FOURTH AMENDMENT TO THE TEMPORARY RENTAL AGREEMENT WITH WEST OAKLAND PACIFIC RAILROAD, LLC (WOPR) 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, ONE-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 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 6.4, dated November 30, 2023, (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 ("TRA") dated January 1, 2018 with WOPR for continuous interim rail switching services at the Port's OHIT; and

WHEREAS, a First Amendment to the TRA dated January 1, 2019 extended the term through 2019 and established a rent structure comprising both fixed and variable rent; a Second Amendment to the TRA dated January 1, 2020 extended the term through 2021 and added a holdover provision,

established rent and security deposit increases; and a Third Amendment to the TRA dated January 1, 2022 (with an option to extend the term an additional year) extended the term through 2023 and set rent increases; and

WHEREAS, the proposed action will allow for WOPR's use of the OHIT Phase 1 Yard to ensure business continuity and grow revenues;

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 action (Fourth Amendment to the TRA) 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 Fourth Amendment to the TRA, which extends the term through December 31, 2024, allows the Executive Director to extend that term for one additional year through calendar year 2025 (with a 3% increase to fixed and variable rent), provides a 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, with other terms and conditions of the TRA remaining unchanged.

Section 3. The Board hereby authorizes the Executive Director or his designee to execute the Fourth Amendment to the TRA with WOPR, 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.

DRAFT

President.

Attest: _____
Secretary.

Approved as to form and legality:

Port Attorney