

PORT ORDINANCE NO. 4502

ORDINANCE AUTHORIZING AND APPROVING A FIRST AMENDMENT TO THE TEMPORARY RENTAL AGREEMENT WITH WEST OAKLAND PACIFIC RAILROAD LLC FROM JANUARY 1, 2019, THROUGH JUNE 30, 2019, WITH TWO ADDITIONAL 3-MONTH EXTENSION OPTIONS FOR RAIL SWITCHING SERVICES AT THE RAILYARD AT A FIXED COMPENSATION OF \$5,000 PER CALENDAR YEAR QUARTER AND VARIABLE COMPENSATION OF \$125 PER RAIL CAR IN EXCESS OF THE BREAKPOINT.

WHEREAS, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 2.2, dated November 29, 2018 (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; 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 Port has an existing Temporary Rental Agreement ("TRA") with West Oakland Pacific Railroad LLC ("WOPR") for interim rail switching services at the newly-constructed Oakland Harbor Intermodal Terminal ("OHIT") Phase 1 Yard, located on the Port-owned former Oakland Army Base property.

B. The current TRA provides for no rent or other compensation to the Port, but allows WOPR to move rail cars as needed to serve Port tenants.

C. The Port and WOPR have reached agreement on the following key terms of a First Amendment to the TRA:

- i. Term: January 1, 2019 through June 30, 2019 with up to two (2) additional 3-month extensions exercisable at the sole discretion of the Executive Director of the Port ("Executive Director");
- ii. Monthly Rent: \$5,000 fixed rent per Calendar Year quarter plus variable rent of \$125 per railcar in excess of a breakpoint of 240 railcars per quarter;

- iii. Security Deposit: \$20,000;
- iv. Use of Premises: Interim rail switching services; and
- v. Environmental: WOPR will comply with the most recent form of the Port's Environmental Exhibit.

D. The proposal to authorize the Executive Director to execute a First Amendment to the TRA with WOPR has been reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA"), and the Port's CEQA Guidelines. The proposed First Amendment to the TRA is categorically exempt from CEQA pursuant to Section 15301(p) of the Port's CEQA Guidelines which exempts renewals, extensions or amendments to leases or license or concession agreements where the premises or licensed activity was previously leased or licensed to the same or another person, and involving negligible or no expansion of use beyond that previously existing.

SECTION 3. The Board approves the First Amendment to the TRA as set forth in the Agenda Report and authorizes the Executive Director to execute the First Amendment to the TRA with WOPR with a maximum term not to extend beyond December 31, 2019 (which includes two 3-month extension options), at a quarterly fixed rent of \$5,000, a variable rent of \$125 per railcar for any railcar above a breakpoint of 240 railcars per quarter and as further set forth in the Agenda Report.

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 Board. This ordinance approves and authorizes the execution of an agreement in accordance with the terms of this ordinance. Unless and until a separate written agreement is duly executed on behalf of the Board as authorized by this ordinance, is signed and approved as to form and legality by the Port Attorney, and is delivered to other contracting party, there shall be no valid or effective agreement.

The Board of Port Commissioners, Oakland, California, November 29, 2018. Passed to print for one day by the following vote: Ayes: Commissioners Colbruno, Cluver, Martinez, Story and President Butner - 5. Recused: Commissioner Lee - 1. Noes: 0.

Daria Edgerly

Secretary of the Board