AGENDA REPORT

Ordinance: Approval of First Supplemental Agreement to Berth 34 Backland Lease with Everport Terminal Services, Inc., to Extend Term through June 30, 2023; and Approval of Fifth Supplemental Agreement to Berth 35-38 Lease with Everport Terminal Services, Inc., to Address a New Tenant-Owned Crane, Removal of a Port-Owned Crane, Remove Port Obligation to Buy Tenant-Owned Cranes, and Make Other Minor Modifications; Together Resulting in Gross Revenue Loss of $1.3 Million and Expense of Approximately $700,000 Through June 30, 2023, which Revenue and Expense are Expected to be Fully Offset by Terms of the Proposed Supplemental Agreements. **(Maritime)**

MEETING DATE:	10/8/2020
AMOUNT:	($1.3 million) (FY 2021-2023) Revenue (fully offset by savings; no net loss) $500,000 (FY 2021 – One Time) Non-Operating Expense $200,000 (FY 2021 – One Time) Operating Expense
PARTIES INVOLVED:	Everport Terminal Services, Inc. (George Lang, President)
SUBMITTED BY:	Bryan Brandes, Director of Maritime
APPROVED BY:	Danny Wan, Executive Director
ACTION TYPE:	Ordinance

EXECUTIVE SUMMARY:

Everport Terminal Services, Inc., currently leases approximately 75 acres of marine terminal property at Berths 34-38 within the Port of Oakland's ("Port's") Maritime area ("Seaport") under two separate lease agreements. Port staff is proposing to amend both agreements to align term lengths; address the delivery and operation of a new tenant-owned crane; address the removal of an older Port crane; adjust certain compensation and reporting requirements; and modify miscellaneous other terms.

BACKGROUND

In 2002, the Port entered into a Non-Exclusive Preferential Assignment Agreement ("NEPAA," also referred to as "Lease") with Everport Terminal Services, Inc. ("Everport") for approximately 60 acres of land at Berth 35-38, commonly known as the Ben E. Nutter Container Terminal ("Nutter Terminal"). The Nutter Terminal NEPAA has been amended several times and is scheduled to expire on June 30, 2023.

In 2014, the Port entered into a separate NEPAA (or "Lease") with Everport for about 15 acres of adjacent backland property at Berth 34 ("Berth 34 Backland"). The Berth 34 Backland NEPAA expired on June 30, 2018 and has been in month-to-month holdover since then, and rent was last increased 7% on July 1, 2019. Refer to Exhibit A for a map depicting the location of the premises for both NEPAAs within the Seaport.

Everport recently notified the Port that it would like to replace the last remaining Port-owned crane at the Nutter Terminal with a new tenant-owned crane. In addition, Everport has requested that the term of the Berth 34 Backland NEPAA be extended to align with the Nutter Terminal NEPAA, at current rates. During the negotiations for these requests, the parties also discussed other lease terms to be modified/addressed, which are described in the Analysis section below.

The Port and Everport have also just begun a larger negotiation to combine the two NEPAAs under a single modernized lease that would, among many other points, extend the term past June 30, 2023. This negotiation will be complex and lengthy; the time-sensitive actions proposed in this Report cannot wait until this negotiation is completed.

ANALYSIS

The proposed modifications to the Berth 34 Backland NEPAA and the Nutter Terminal NEPAA are detailed below (also see Exhibit B):

- **Berth 34 Backland NEPAA.** The proposed amendment ("Proposed First Supplement") would extend the term through June 30, 2023, and set fixed monthly rent at $1,772,626, which is the current rent. This NEPAA has no variable rent provisions. These two modifications will provide some level of stability for Everport and the Port from both revenue and operational perspectives.

- **Nutter Terminal NEPAA.** The proposed amendment ("Proposed Fifth Supplement") would provide for the following:

    - **Removal of Interior Point Intermodal ("IPI") Cargo Reporting Requirements and Rates.** The parties have agreed to remove IPI compensation and reporting provisions. From a reporting perspective, both parties have found this requirement to be difficult to achieve due to concerns and delays from the ocean carriers. It has caused lease administration problems and delays in the Port collecting variable rent through the year-end reconciliation process. From a revenue perspective, the removal of IPI rates is projected to result in a loss of rent to the Port of approximately $63,000 per year through term expiration (Fiscal Years 2021 through 2023). Port staff believes this concession to be reasonable when evaluating the "package" of proposed changes to the Lease.

- **Purchase, Delivery and Operation of New Tenant-Owned Crane**. Everport, at its sole cost, will purchase and place into service a new gantry crane by no later than December 31, 2022.[1] The Port's projected cost for oversight support in reviewing design plans, other submittals etc.) is estimated at $200,000. Port staff is supportive of this action, as it will allow Everport to more efficiently handle cargo on a growing number of larger ships and represents a significant investment by Everport in the Seaport.

- **Removal and Demolition of Port-Owned Crane.** The Port, at its sole cost, will remove the last remaining Port-owned crane at the Nutter Terminal (Crane X-437) by December 31, 2021 to accommodate Everport's new crane. Staff plans to demolish the crane at a projected cost of $500,000, of which approximately $425,000 is third-party costs and the balance is Port labor.[2] Crane X-437 is an older (Post-Panamax) crane that Everport almost never uses in its daily operations. Given the age of the crane and the market for used cranes, Port staff believes that removal and demolition is the best course of action. If Everport does not place its new crane into service by December 31, 2022, Everport will reimburse the Port its costs for removal of X-437.

- **Crane Removal Credit.** The parties have agreed to an annual crane rental credit of $279,995 per year through lease expiration (June 30, 2023), which would become effective when Everport's new crane is put into service (estimated July 2021). The total rent credit through lease expiration would therefore be $559,990. The calculation of the credit is based on compensation terms in the current Nutter Terminal NEPAA. Port staff believes this concession to be reasonable when evaluating the "package" of proposed changes to the Lease.

- **Removal of Port's Obligation to Buy-Back Everport's Cranes.** In 2010, when Everport put into service three new Everport-owned cranes at the Nutter Terminal, the Port agreed to grant Everport a right to sell the cranes to the Port at fair market value. Everport currently has that right through June 30, 2023, regardless of any extension to the NEPAA beyond the current expiration of June 30, 2023. These cranes are newer than Crane X-437, can be raised, and are likely to have remaining fair market value in June 2023, particularly if they have

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[1] While it's currently estimated that the new crane will arrive in the summer of 2021, the parties agreed to a 1.5-year buffer in case of significant delays with designing, fabricating and shipping the new crane. Until the new crane is put into service, the crane removal credit does not go into effect.

[2] The cost could vary significantly from this estimate; the Port will receive bids in October 2020.

been raised by Everport and if they stay on the terminal for operation.[3] The Proposed Fifth Supplement would eliminate Everport's right to sell its cranes to the Port and therefore the Port's obligation to buy them. Port staff believes removing this requirement significantly reduces the Port's financial exposure and helps achieve the Maritime Division's overall goal of divesting the Port's ownership in cranes at the Seaport.

- **Other Terms.** The parties also agree to modify a few other more minor provisions, such as specifying the submittal requirements should Everport decide to raise any of its existing cranes at the Nutter Terminal.

Given the importance of Everport as a Port tenant, and the desire to ensure its long-term viability at the Seaport, the Port recommends that the Board of Port Commissioners authorize the Executive Director to approve the two proposed NEPAA amendments, as described above.

BUDGET AND STAFFING

The projected impacts of the proposed amendments to the B34 Backland and Nutter Terminal NEPAAs are as follows:

- In total, over the remaining three years of the Nutter Terminal and B34 Backland NEPAAs, the revenue loss to the Port will be about $1.3 million as compared to current revenue projections, as follows:
    - In Fiscal Year ("FY") 2020-21, compensation will decrease by about $152,000 as a result of fixing the B34 Backland rent at current rates and removing of the IPI cargo provisions under the Nutter Terminal lease.[4]
    - In FY 2021-22, compensation will decrease by about $525,000, as a result of the same changes as FY 2021-22, plus the crane removal credit.
    - In FY 2022-23, compensation will decrease by about $622,000 as a result of the same changes as FY 2021-22.
- Additionally, in FY 2020-21 the Port will spend an estimated $700,000 to oversee the installation of the new Everport-owned crane and to demolish Crane X-437. These costs have been included in the Adopted FY 2020-21 Budget. Depending on the final schedule of crane activities, some of these costs may slip into FY 2021-22.

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[3] Given the market for used cranes that have to be relocated, it is likely the Port would lose money if it had to buy the cranes from Everport and then move or sell them.

[4] The $152,000 decrease assumes a rent increase effective November 1, 2020, under holdover given current market conditions. We note that relative to the FY2020-21 adopted revenue budget, the decrease is about $240,000 because revenue budget assumptions were more aggressive.

Removing Everport's right to sell its cranes to the Port has significant financial value, and the action itself brings the Port one step closer to its goal of fully divesting its ownership in cranes at the Seaport. The financial benefit of removing Everport's option to sell cranes to the Port is expected to fully offset these revenue losses and related expenditures associated with the proposed amendments.[5]

Comparison of Current and Proposed Rent, Expenses, and Net Cashflow

	Current Compensation Terms			Proposed Compensation Terms		
	FY 21	FY 22	FY 23	FY 21	FY 22	FY 23
B34 Backland Rent	$1,861,257	$1,954,320	$2,052,036	$1,772,626	$1,772,626	$1,772,626
Nutter Terminal Rent (fixed + variable)	$10,006,092	$10,108,514	$10,212,472	$9,943,092	$9,765,519	$9,869,477
Crane Removal				($700,000)		
Net Cashflow	**$11,867,349**	**$12,062,834**	**$12,264,508**	**$11,015,718**	**$11,538,145**	**$11,642,103**

The proposed amendments do not have any impact to staffing.

MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)

The Port of Oakland Maritime and Aviation Project Labor Agreement ("MAPLA") does not apply to the proposed action because it does not include any work that is part of the Port's Capital Improvement Program.

STRATEGIC PLAN

The action described herein would help the Port achieve the following goals and objectives in the Port's Strategic Business Plan (2018-2022).

https://www.portofoakland.com/wp-content/uploads/Port-of-Oakland-Strategic-Plan.pdf

Goal: Improve Customer Service
Goal: Modernize and Maintain Infrastructure

LIVING WAGE

Living wage requirements, in accordance with the Port's Rules and Regulations for the Implementation and Enforcement of the Port of Oakland Living Wage Requirements (the

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[5] This is a preliminary and somewhat conservative estimate - the Port's value of divesting itself of its crane buy-back obligations could be worth more than $1.3 million.

“Living Wage Regulations”), apply to this agreement as the tenant employs 21 or more employees working on Port-related work and the tenancy agreement is greater than $50,000.

SUSTAINABILITY

Port staff have reviewed the Port’s 2000 Sustainability Policy and did not complete the Sustainability Opportunities Assessment Form. There are no sustainability opportunities related to this proposed action because it does not involve a development project, purchasing of equipment, or operations that presents sustainability opportunities. However, we note that the new Everport-owned crane will be electric, as are all existing marine terminal cranes at the Seaport.

ENVIRONMENTAL

These proposed amendments were reviewed in accordance with the requirements of the California Environmental Quality Act (“CEQA”). This action is exempt from CEQA under Section 15301 of the CEQA Guidelines, which exempts the operation, leasing, licensing, and minor alteration of existing structures and facilities, involving negligible or no expansion of existing or former use. The new crane will not increase activity at the terminal.

GENERAL PLAN

Pursuant to Section 727 of the City of Oakland Charter, these amendments have been determined to conform to the policies for the transportation designation of the Oakland General Plan.

OWNER-CONTROLLED INSURANCE PROGRAM (OCIP)

The Owner Controlled Insurance Program (“OCIP”) does not apply to the matters addressed by this Agenda Report as they are not capital improvement construction projects.

OPTIONS

Staff has identified three options for the Board’s consideration:

1. Approve the proposed amendments to the B34 Backland and Nutter Terminal NEPAAs with Everport as described in this Agenda Report. This is the recommended option.

2. Approve the proposed amendments to the B34 Backland and Nutter Terminal NEPAAs with Everport under different terms and conditions than those described in this Report, as may be directed by the Board.

3. Do not approve the proposed amendments to the Nutter Terminal and B34 Backland NEPAAs with Everport.

RECOMMENDATION

Staff recommends that the Board adopt an ordinance and authorize the Execute Director to:

- Execute the Proposed First Supplement to the Non-Exclusive Preferential Assignment Agreement with Everport Terminal Services, Inc., for the Berth 34 Backland Area to extend the length of term to June 30, 2023, and set rent at $1,772,626 annually; and

- Execute the Proposed Fifth Supplement to the Non-Exclusive Preferential Assignment Agreement with Everport Terminal Services, Inc., for the Berth 35-38 Nutter Terminal to remove IPI cargo provisions, allow for the delivery and operation of a new tenant-owned crane, allow for the demolition and removal of a Port-owned crane (Crane X-437), apply a crane removal credit as a result of the removal of Crane X-437, remove Everport's right to sell its cranes to the Port, and other related miscellaneous provisions as described in this Agenda Report.

Exhibit A
Map Depicting Location of Everport Terminal

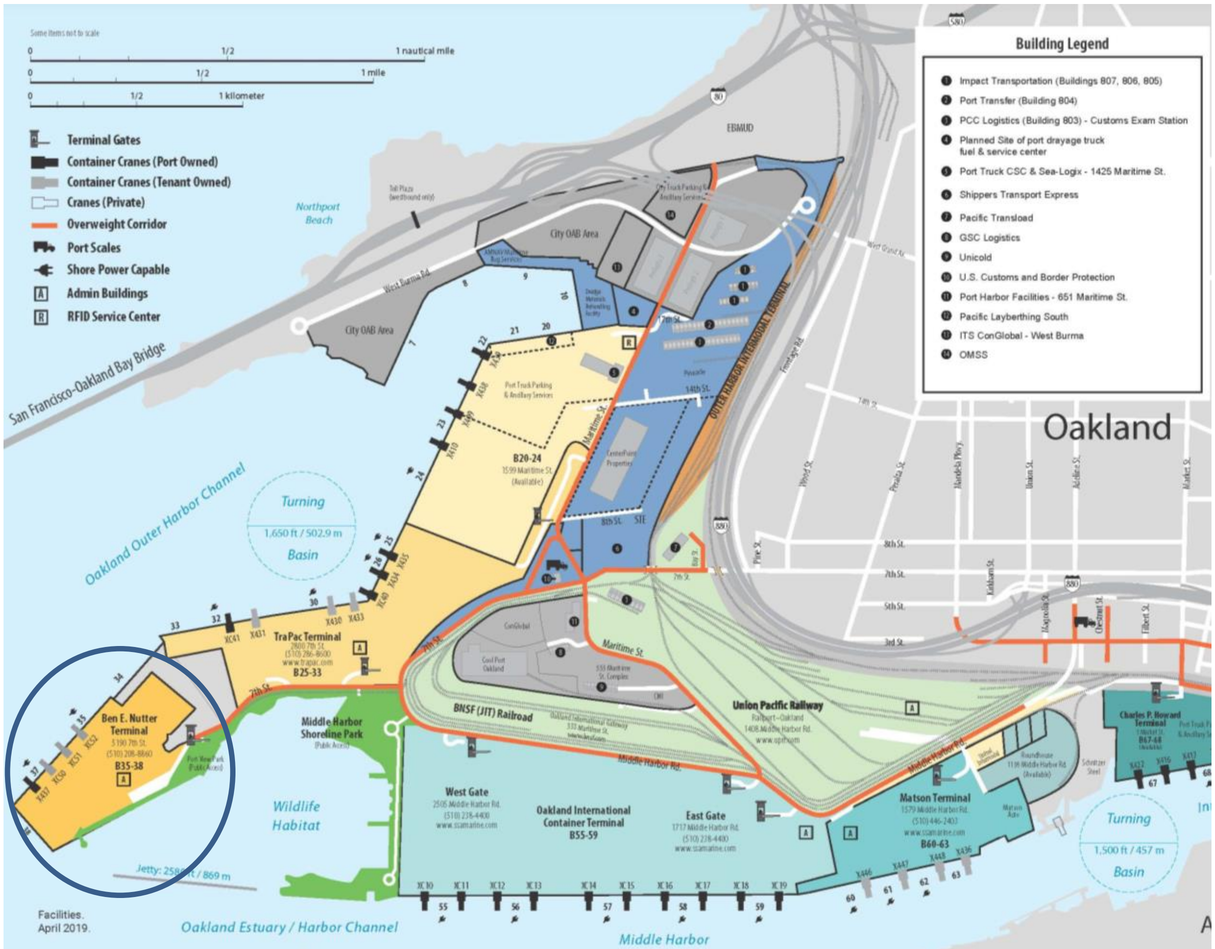

Exhibit B
Summary of Proposed New Terms

Proposed Term	Description
B34 Backland NEPAA	
Term	Extend term through 6/30/2023.
Fixed Rent	Set fixed rent at current terms ($1,772,626) through expiration (6/30/23).
Nutter Terminal NEPAA	
IPI Cargo	Eliminate IPI cargo BPLs and rates from compensation and reporting provisions through end of term (6/30/23).
Removal of Port Owned Crane X-437 and Crane Removal Credit	Port removes X-437 at its sole cost by 12/31/21. Annual credit reflecting the crane's removal from the leasehold is $279,995 per year through 6/30/23 and shall be applied on first day of second month following Everport's new crane put into service.
New Crane Purchase	Everport's new crane will be put into service by 12/31/2022 and follow Port's crane guidelines and requirements. Should the new crane not be placed into service by 12/31/2022, Everport will reimburse Port for total costs incurred for the removal of X-437 by 2/15/2023.
Crane Raising	While not a lease requirement, should Everport decide to raise its cranes, it must obtain Port approval for the design (as this has potential implications on the wharf structure) and submit specific documents for approval.
ETS Right to Sell ETS-Owned Cranes to Port	Port is no longer obligated to buy back any of Everport's cranes (existing or new) at the end of the term.