

## AGENDA REPORT

**Resolution:** For the Ben E. Nutter Terminal Pavement Maintenance Project (i) Approve a Project Budget in an Amount Not-To-Exceed \$2,195,560; (ii) Authorize the Executive Director to Enter Into a Contract with Oliver de Silva dba Gallagher & Burk, Inc. in an Amount Not-To-Exceed \$1,667,875; and (iii) Authorize the Executive Director to Execute Contract Change Orders to the Extent Necessary in an Amount Not-to-Exceed \$333,575. **(Engineering/Maritime)**

**MEETING DATE:** 5/28/2020

**AMOUNT:** \$2,195,560 Operating Expense

**PARTIES INVOLVED:** Oliver de Silva Inc. dba Gallagher & Burk, Inc.  
David de Silva, President  
Oakland, California

**SUBMITTED BY:** Kristi McKenney, Chief Operating Officer  
Delphine Prevost, Acting Director of Maritime

**APPROVED BY:** Danny Wan, Executive Director

**ACTION TYPE:** Resolution

### **EXECUTIVE SUMMARY**

Staff is requesting project budget and approval to award a construction contract for the Ben E. Nutter Terminal Pavement Maintenance Project, for a total cost not to exceed \$2,195,560. This includes a \$1,667,875 contract with Oliver de Silva dba Gallagher & Burk, Inc., a contingency of \$333,575 for change orders, and \$194,140 for consultant support and permitting. The project will replace approximately 11.25 acres of pavement in areas being utilized by the Tenant for their day- to-day operations. The project will take approximately 3 months to complete.

### **BACKGROUND**

The Non-Exclusive Preferential Assignment Agreement (“NEPAA”) with Everport Terminal Services, Inc. (“Tenant”), dated April 16, 2002, obligates the Port of Oakland (“Port”) to maintain pavement that has degraded from reasonable wear and tear.

To meet this obligation, Staff routinely inspects the Ben E. Nutter Terminal (“Terminal”) to monitor the condition of the asphalt pavement. Staff also maintains communications with the Tenant to understand the operational usage of the various Terminal areas and to recognize any concerns that the Tenant may have over the condition of pavement in a specific area. When evaluating areas for inclusion in the Ben E. Nutter Terminal

Pavement Maintenance Project (“Project”), Staff considered the physical condition of the existing pavement in addition to the importance of the particular section of pavement to the Tenant’s operations.

The Project will replace 6 separate areas totaling approximately 11.25 acres of pavement in high-traffic areas such as the wharf stringer, gate complex, and portions of the backlands stacking area. These areas are currently distressed. Deterioration ranges from 1/8” to 3/4” wide x 1/4” to 2” deep cracks with exposed, loose, or missing aggregate. These areas are being utilized by the Tenant for their day- to-day operations.

## **ANALYSIS**

The maintenance repairs will consist of a three-inch deep pavement mill and asphalt overlay for most of the Project areas. This method is effective at repairing asphalt areas with cracks greater than 1/2-inch wide and one to two-inch-deep divots for the short-term (3-5 years) of extended pavement life. The cracking observed was not indicative of a failure of the base rock substrate or inadequate pavement section design strength. However, there are some small areas near the gate complex where there is evidence that a base failure has occurred and will therefore require a full-depth replacement of the pavement section (asphalt and base rock). This work is included as part of the Project.

Staff solicited bids through a formal Public Works construction bidding process in accordance with Port Ordinance No. 4321. Pre-bid meetings were held via teleconference on March 17, 2020 and April 6, 2020. On April 20, 2020 4 (four) bids were received. The bids are listed in Table 1 below.

Table 1. Ben E. Nutter Terminal Pavement Maintenance Project Bid Summary

<b>Bidder</b>	<b>Location</b>	<b>Total Bid Price (Low to High)</b>
Oliver de Silva Inc. dba Gallagher & Burk, Inc.	Oakland, CA	\$1,667,875.00
O. C. Jones & Sons, Inc.	Oakland, CA	\$1,695,760.00
A. Teichert & Son Inc. dba Teichert Construction	Pleasanton, CA	\$1,845,226.00
McGuire & Hester	Oakland, CA	\$1,891,459.00

The bids were evaluated in accordance with the Port’s Non-Discrimination, Small and Local Business Utilization Policy and Oliver de Silva Inc. dba Gallagher & Burk, Inc. (“Gallagher and Burk”) was determined to be the lowest responsive, responsible bidder. Gallagher & Burk is appropriately licensed and experienced to perform the work. Therefore, staff recommends authorization for the Executive Director to award a contract for the Ben E. Nutter Terminal Pavement Maintenance Project to Gallagher & Burk in the amount not-to-exceed \$1,667,875.00. Additionally, staff recommends authorization for the Executive Director to

execute contract change orders in an amount not-to-exceed \$333,575.00 (20% of bid value) for construction contingency. A higher than typical construction change order contingency is requested to mitigate any issues that may arise due to 1) coordinating the construction with the active Tenant's operations and real-time vessel schedules and 2) the inability to provide the typical on-site pre-bid inspection tour for contractors under Alameda County shelter in place health and safety requirements. The work is estimated to take approximately three (3) months to complete.

## **BUDGET & STAFFING**

This project is included in the Adopted FY 2019-20 and Proposed FY 2020-21 Operating Expense Budgets. The Operating Expense Budget amount requested is \$2,195,560 and does not include Port Labor.

The proposed Project budget is as follows:

Table 2. Proposed Project Budget

	<b>Design Phase</b>	<b>Construction Phase</b>	<b>Total Proposed Project Budget<sup>2</sup></b>
Consultant <sup>1</sup>	\$94,110	\$50,000	\$144,110
Construction Award <sup>3</sup>	n/a	\$1,667,875	\$1,667,875
Construction Contingency	n/a	\$333,575	\$333,575
Other Related Costs <sup>4</sup>	n/a	\$50,000	\$50,000
<b>Totals</b>	<b>\$94,110</b>	<b>\$2,101,450</b>	<b>\$2,195,560</b>

<sup>1</sup>Consultant costs include design, materials testing, and special testing.

<sup>2</sup>Staff may exceed the individual category cost of Consultants and Other Related Costs if: i) the effort is needed, and ii) the total spent on these items do not exceed the sum of these two category costs as shown in the Table.

<sup>3</sup>Contractor's bid amount.

<sup>4</sup>Other Costs include permitting and outside legal costs.

There is no anticipated impact to staffing.

## **MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)**

The Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) does not apply because this contract is for Maintenance that is not funded through the CIP within the Maritime and Aviation areas.

## **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: *Modernize and Maintain Infrastructure*
- Goal: *Improve Customer Service*
- Goal: *Strengthen Safety and Security*

## **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 "Living Wage Regulations"), do not apply because the contract is a construction contract covered by state prevailing wage rules.

## **SUSTAINABILITY**

Port Staff reviewed the Port's 2000 Sustainability Policy and did not complete the Sustainability Opportunities Assessment Form. Port Staff concluded that there are no sustainability opportunities associated with the Construction of the Ben E. Nutter Terminal Pavement Maintenance Project.

## **ENVIRONMENTAL**

California CEQA Determination: The Port has determined that the proposed project is categorically exempt from the California Environmental Quality Act (CEQA) Guidelines pursuant to Section 15301, Existing Facilities. CEQA does not apply to the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment or topographic features, involving negligible or no expansion of existing or former.

## **GENERAL PLAN**

This project involves maintenance of existing facilities being used in conformance with the Oakland General Plan, pursuant to Section 727 of the City of Oakland Charter, and will not change the use of any facility(ies).

## **OWNER-CONTROLLED INSURANCE PROGRAM (OCIP)**

As the construction project is not a capital improvement project, the applicable Owner Controlled Insurance Program (OCIP) coverages and provisions do not apply to the construction phase.

## **OPTIONS**

The following are options for the Board's consideration:

- 1) Approve the actions as outlined in this agenda report. This is the recommended option.
- 2) Do not approve the actions outlined in this agenda report. Reject all bids and direct staff to change the scope of the project and rebid the project.

## **RECOMMENDATION**

Staff recommends that the Board adopt a resolution for the following:

- 1) Approve a Project Budget in an Amount Not-To-Exceed \$2,195,560;
- 2) Authorize the Executive Director to Enter Into a Contract with Oliver de Silva Inc. dba Gallagher & Burk, Inc. in an Amount Not-To-Exceed \$1,667,875; and
- 3) Authorize the Executive Director to Execute Contract Change Orders to the Extent Necessary in an Amount Not-to-Exceed \$333,575.

Figure A - Site Location Map

