



**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

RESOLUTION NO. 17-01

RESOLUTION APPROVING THE INDIRECT TRANSFER OF OWNERSHIP OF XO COMMUNICATIONS SERVICES, LLC, A LESSEE OF PORT PROPERTY FOR AN EXISTING FIBER OPTICS CABLE, FROM XO HOLDINGS TO VERIZON COMMUNICATIONS, INC.

WHEREAS, the Board has reviewed and evaluated the Agenda Report Item No. 2.1 dated January 26, 2017 ("Agenda Report") and related agenda materials, has received the expert testimony of Port staff, and has provided opportunities for and taken public comment; and

WHEREAS, that 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;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

SECTION 1. Based upon the information contained in the Agenda Report and testimony and other information received, the Board hereby finds and determines as follows:

- A. The Port currently leases approximately 109,711 square feet of tidelands and submerged lands located north of the Oakland-San Francisco Bay Bridge to XO Communications Services, LLC ("Lessee") for a fiber optics cable which runs from Oakland to Treasure Island in San Francisco pursuant to a lease dated April 20, 1999 (the "Lease") between the Port and Nextlink, Lessee's predecessor in interest; and
- B. Lessee is owned and controlled by XO Communications, LLC ("Direct Owner"), and the Direct Owner is owned and controlled by XO Holdings; and
- C. XO Holdings is owned and controlled by two additional tiers of ownership, and all tiers at XO Holdings and above will be transferred to Verizon Communications, Inc. or an affiliate (collectively, "Verizon"); and

- D. While Lessee and Direct Owner will remain the same legal entity, the proposed transfer of interest in XO Holdings and the ownership tiers above XO Holdings constitutes an indirect transfer of ownership of Lessee subject to Board approval under the Lease; and
- E. The proposed consent to the transfer of indirect ownership of Lessee to Verizon has been determined to be exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines, Article 19, Section 15300.4, which exempts the execution of leases or 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. Approval of the proposed change in ownership from XO Holdings to Verizon falls within this class of exemptions. No additional environmental review is required to take the action recommended in the Agenda Report.

SECTION 2. The Board approves and authorizes the Executive Director to execute the proposed Consent to Change of Indirect Ownership ("Consent") at the parent entity level as described in this Resolution. If such Consent is not fully executed within 90 days after the Board's approval of this Resolution, this approval shall become null and void unless extended in writing in the sole and absolute discretion of the Executive Director or his designee.

SECTION 3. This resolution 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. Unless and until a separate written agreement is duly executed on behalf of the Board as authorized by this resolution, is signed as 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.

SECTION 4. This resolution shall be effective immediately upon adoption by the Board.

At the regular meeting held on January 26, 2017

Passed by the following vote:

Ayes: Commissioners Butner, Cluver, Martinez, Story, Yee and President Colbruno – 6

Excused: Commissioner Hamlin – 1

Noes: 0

**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

RESOLUTION NO. 17-02

RESOLUTION (1) APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO APPLY FOR AND ACCEPT FEDERAL AVIATION ADMINISTRATION AIRPORT IMPROVEMENT PROGRAM ("AIP") GRANTS UP TO \$39,200,000, (2) AUTHORIZING THE DIRECTOR OF ENGINEERING TO APPROVE THE PROJECT MANUAL AND PLANS FOR THE CONSTRUCTION OF RUNWAY 12-30 REHABILITATION PROJECT AT OAKLAND INTERNATIONAL AIRPORT; CALLING FOR BIDS THEREFORE; AND EXTENDING THE BID ACCEPTANCE PERIOD FOR UP TO ONE HUNDRED AND EIGHTY (180) DAYS FROM BID OPENING.

WHEREAS, the Board of Port Commissioners ("Board") has reviewed and evaluated the Agenda Report Item 3.1 dated January 26, 2017 ("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, that 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:

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

SECTION 1. Based upon the information contained in the Agenda Report, and testimony received, the Board finds that:

A. It is in the best interest of the Port to approve the submittal and acceptance of Federal Aviation Administration Airport Improvement Program ("FAA AIP") grant applications to the Federal Aviation Administration for all eligible work associated with the **Runway 12-30 Rehabilitation Project ("Runway 12-30 Project")** in an amount not to exceed \$39,400,000.

B. It is in the best interest of the Port to delegate to the Executive Director the authority to finally resolve all bid protests in connection with this project.

SECTION 2. The Board hereby approves the following:

A. Submission of and acceptance of FAA AIP grants for all eligible work associated with the **Runway 12-30 Project** in an amount not to exceed \$39,400,000.

B. Delegation of authority to the Director of Engineering to approve the Plans and Project Manual for **Runway 12-30 Project**.

C. Advertising for bids for the construction of the **Runway 12-30 Project**.

D. Extend the bid acceptance period for the **Runway 12-30 Project** for up to one hundred and eighty (180) days after the bid opening date.

E. Rejection of all other bids received for the **Runway 12-30 Project** and direction that securities accompanying said bids shall be returned to the respective bidders.

SECTION 3. The Board hereby authorizes the Executive Director to:

A. Submit and accept FAA AIP grants on behalf of said Board, and to execute and submit all documents which may be necessary or convenient to complete said applications when said Grant Offers are released by the FAA, up to the amount of \$39,200,000. The Secretary is hereby authorized and directed to attest to the execution of such grant agreements, if deemed necessary.

B. Finally resolve bid protests in connection with this project.

C. Extend the bid acceptance period for the **Runway 12-30 Project** for up to one hundred and eighty (180) days after the bid opening date.

SECTION 4. The Board further finds that:

A. The Director of Engineering or his designee is authorized to approve the project manual and plans for the **Runway 12-30 Project** in advance of construction, pursuant to Government Code Section 830.6.

B. The Secretary of the Board is hereby authorized to advertise for four consecutive days in the official newspaper of the City of Oakland for sealed bids for the project, not less than ten calendar days prior to the date set for receiving said bids.

C. The procedure prescribed by applicable laws, regulations and the contract specifications shall be taken for the execution of said contract.

SECTION 5. The **Runway 12-30 Project** was reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA"). Projects that restore or rehabilitate deteriorated or damaged structures, facilities, or mechanical equipment to meet current standards of public health and safety are exempt from the provisions of CEQA pursuant to CEQA Guidelines, Section 15301 Existing Facilities. This project meets this exemption and will not have a significant effect on the environment.

SECTION 6. This resolution 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 resolution approves and authorizes the execution of an agreement(s) in accordance with the terms of this resolution. Unless and until a separate written agreement(s) is duly executed on behalf of the Board as authorized by this resolution, 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(s).

At the regular meeting held on January 26, 2017

Passed by the following vote:

Ayes: Commissioners Butner, Cluver, Martinez, Story, Yee and
President Colbruno – 6

Excused: Commissioner Hamlin – 1

Noes: 0

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**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

RESOLUTION NO. 17-03

**RESOLUTION APPROVING RETENTION OF ORRICK,
HERRINGTON & SUTCLIFFE LLP AS BOND COUNSEL IN
CONNECTION WITH THE PORT'S POSSIBLE 2017 BOND
REFUNDING TRANSACTION FOR AN AMOUNT NOT TO EXCEED
\$220,000.**

WHEREAS, the Board of Port Commissioners ("Board") has reviewed and evaluated Agenda Report Item 4.3 dated January 26, 2017, and related agenda materials ("Agenda Report"), has received the expert testimony of Port of Oakland ("Port") staff, and has provided opportunities for and taken public comment; and

WHEREAS, that 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;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

SECTION 1. Based upon the information contained in the Agenda Report and testimony received, the Board hereby finds and determines that the agreement with **Orrick, Herrington & Sutcliffe LLP** constitutes an agreement for obtaining professional, technical, and specialized services that are temporary in nature and that it is in the best interest of the Port to secure such services from **Orrick, Herrington & Sutcliffe LLP**.

SECTION 2. The Board hereby:

A. Approves the appointment of **Orrick, Herrington & Sutcliffe LLP**, as Bond Counsel, pursuant to the provisions of Section 6.05 of Port Ordinance No. 867, to render expert assistance to the Port Attorney in connection with the Port's possible 2017 bond refunding transaction in an amount not to exceed \$220,000.

B. Authorizes the Port Attorney to i) execute an agreement with **Orrick, Herrington & Sutcliffe LLP**, and (ii) make such terms, additions, modifications, or corrections as necessary to enter into the agreement or to correct errors, subject to the limitations set forth herein and provided that any such terms, addition, modification, or correction does not exceed the authorized amount herein.

SECTION 3. This resolution 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. Unless and until a separate written agreement is duly executed on behalf of the Board as authorized by this resolution, is signed as 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.

At the regular meeting held on January 26, 2017

Passed by the following vote:

Ayes: Commissioners Butner, Cluver, Martinez, Story, Yee and
President Colbruno – 6

Excused: Commissioner Hamlin – 1

Noes: 0