

AGENDA REPORT

Resolution: Approval of the Retention of Orrick, Herrington & Sutcliffe LLP as Bond Counsel in Connection with the Possible 2017 Bond Refunding Transaction(**Port Attorney**)

MEETING DATE: 1/26/2017

AMOUNT: \$220,000

PARTIES INVOLVED: **Orrick, Herrington & Sutcliffe LLP**, San Francisco, CA,
Chas Cardall, Partner

SUBMITTED BY: Danny Wan, Port Attorney

APPROVED BY: Danny Wan, Port Attorney

ACTION TYPE: Resolution

EXECUTIVE SUMMARY

This action would authorize the Port Attorney to retain 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.

BACKGROUND

Pursuant to the Board of Port Commissioners' ("Board") By-Laws and Administrative Rules, the Board has assigned to the Port Attorney the authority to retain special legal counsel, legal experts, and other consultants to provide legal services for the Port.

On July 14, 2016, the Board approved the retention of outside counsel and consulting firms for Fiscal Year 2016-17, subject to adjustments under the Port Attorney's contracting authority. At that time, the Port Attorney determined to seek Board approval of Bond Counsel at the time the possible 2017 bond refunding transaction informational report would be presented to the Board.

ANALYSIS

Early in 2016, the Port Attorney issued a Request for Proposals ("RFP") seeking proposals from law firms who could provide legal services to the Port. The proposals were reviewed and evaluated by the Port Attorney's Office. Orrick, Herrington & Sutcliffe LLP provided a proposal to the Port to act as bond counsel for the Port as part of the above-referenced RFP. Bond

counsel serves an essential function in a public financing transaction by opining as to the validity of the bonds and excludability of interest on the bonds from gross income for federal income tax purposes, as well as assisting the finance team in structuring, drafting documents, executing and closing the transaction. The Port Attorney chose Orrick, Herrington & Sutcliffe LLP based on a variety of factors including the Port's needs, the firm's expertise, rates and other criteria. Orrick, Herrington & Sutcliffe LLP is a top-ranked bond counsel firm, with extensive experience in public finance, including airport and seaport financings. Orrick, Herrington & Sutcliffe LLP has served as special tax counsel to the Port since November 2013. As such, Orrick has considerable knowledge of the Port's existing financings.

BUDGET & STAFFING

The amount to be paid to Bond Counsel will come from the bond proceeds, so there will be no budget impact.

MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)

The matters contained in this Agenda Report do not fall within the scope of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) and the provisions of the MAPLA do not apply.

STRATEGIC PLAN

The action described herein would help the Port achieve the following goals and objectives in the Port's Strategic Plan (<http://www.portofoakland.com/pdf/about/strategicPlan2011-2015.pdf>)

- Goal A: Create sustainable economic growth for the Port and beyond.

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 to these agreements because the proposed outside legal counsel is not involved in a Port Aviation or Port Maritime business.

ENVIRONMENTAL

CEQA Determination: The action to retain outside counsel was reviewed in accordance with the requirements of the California Environmental Quality Act (CEQA), and the Port CEQA Guidelines. General policy and procedure making are not projects under CEQA. Furthermore, the general rule in Section 15061(b) (3) of the CEQA Guidelines states that CEQA applies only to activities that have a potential for causing a significant effect on the environment. It can be seen with certainty that there is no possibility that retaining the outside counsel will result in a physical change in the environment; therefore, this action is not subject to CEQA.

GENERAL PLAN

This action does not change the use of any existing facility, make alterations to an existing facility, or create a new facility; therefore, a General Plan conformity determination pursuant to Section 727 of the City of Oakland Charter is not required.

OWNER-CONTROLLED INSURANCE PROGRAM (OCIP)/ PROFESSIONAL LIABILITY INSURANCE PROGRAM (PLIP)

This action is not subject to the Port's Owner Controlled Insurance Program (OCIP) or Professional Liability Insurance Program (PLIP) as it is not a capital improvement construction project or design project supporting such construction.

OPTIONS

- 1) Authorize the Port Attorney to retain 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.
- 2) Do not authorize the Port Attorney to retain 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.

RECOMMENDATION

It is recommended that the Board adopt a resolution authorizing the Port Attorney to retain 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. It is further recommended that the Board find and determine that executing a retention agreement with Orrick, Herrington & Sutcliffe LLP will constitute 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.