

HARBOR DIVISION

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DATE: SEPTEMBER 4, 2019

FROM: OFFICE OF THE CITY ATTORNEY

**SUBJECT: RESOLUTION NO. _____ AGREEMENTS FOR BOND COUNSEL
LEGAL SERVICES WITH HAWKINS, DELAFIELD & WOOD LLP; KUTAK
ROCK LLP; AND NIXON PEABODY LLP**

SUMMARY:

The Office of the City Attorney requests that the Board of Harbor Commissioners (Board) approve the selection of three law firms to provide bond and disclosure counsel services to the Harbor Department (Department). The Department's Debt and Treasury Management Division will require bond and disclosure counsel assistance in the future with respect to any upcoming bond transactions, annual continuing disclosure services, and any other type of financing related to capital improvement projects. The Office of the City Attorney requests the Board to approve and award agreements to three firms that were selected from a competitive selection process: (1) Hawkins, Delafield & Wood LLP, (2) Kutak Rock LLP, and (3) Nixon Peabody LLP. Each agreement will be for three years for a combined total appropriation request of \$180,000. These are the only firms on retainer for bond counsel matters. The Harbor Department will be financially responsible for payment of expenses under the proposed agreements.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners:

1. Find that the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of the California

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Environmental Quality Act (CEQA) under Article II, Section 2(f), of the Los Angeles City CEQA Guidelines;

2. Find in accordance to Charter Section 1022 that the scope of work of the proposed Agreements can be more economically and feasibly provided by an independent contractor than by City employees;
3. Approve the individual and separate Agreements with (1) Hawkins, Delafield & Wood LLP in the amount of \$60,000, (2) Kutak Rock LLP in the amount of \$60,000, and (3) Nixon Peabody LLP in the amount of \$60,000, each for a period of three years;
4. Authorize the Executive Director and Board Secretary to execute and attest to the Agreements; and
5. Adopt this Resolution No. _____.

DISCUSSION:

Background and Context- Charter Section 609 authorizes the Board, with City Council consent, to issue revenue bonds to finance Department projects. Charter Section 275 authorizes the Board, with the written consent of the City Attorney, to retain outside counsel to assist the City Attorney in providing legal services to the Department. Outside bond and disclosure counsel services are an absolute necessity because the ability to close any bond or commercial paper transaction, and thereby sell the transaction to the financial market at competitive rates, is predicated on the issuance of opinion letters by outside independent law firms regarding the Department's transactional procedures and disclosure. Moreover, the Department may at times require such specialized bond and tax advice where reliance upon outside law firms for these services is required.

Bond Counsel and Recent Work- For the last three years, the Department has had agreements with four bond counsel firms: Hawkins, Delafield & Wood LLP, Kutak Rock LLP, Nixon Peabody LLP and Polsinelli LLP. These agreements had a combined total appropriation amount of \$180,000.

During the last three years, Kutak Rock LLP and Nixon Peabody LLP have assisted the Department in issuing 2015 Series A, 2016 Series A, B and C and the pending 2019 Series A, B, C-1 and C-2 Refunding Revenue Bonds. Nixon Peabody LLP assisted with rebate calculations for the 2009 Series A, B and C Refunding Revenue Bonds. Kutak Rock LLP and Polsinelli LLP also assisted with the filing of annual disclosure statements in compliance with Securities Exchange Commission (SEC) Rules in 2016, 2017 and 2018. During the past three years, \$29,970 has been spent on bond counsel services, which does not include amounts paid out of cost of issuance for each bond sale

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transaction. During the past three years, a total of \$45,000 has been paid to Kutak Rock LLP from the costs of issuance.

Anticipated Work- The proposed three agreements will replace the four existing agreements. For bond counsel services during the 2019-20 fiscal year, the estimated expenditure is budgeted at \$18,000. The first year budget allocations will be used for on-call work, including any financing related to the Department's capital improvement projects, and legal services connected to assisting the Department with its annual disclosure obligations.

During the term of the proposed agreements, it is anticipated that the Department will require legal services related to its outstanding bonds. When the Department undertakes an issuance, fee proposals will be requested from each firm to provide either bond counsel or disclosure counsel services and the most competitive firm for each type of work will be selected for the transaction (i.e. two firms hired). Fees for these financial transactions will be paid as part of the cost of the issuance. Bond counsel will also provide legal services for any other transactions as well as provide disclosure, tax and other advice with respect to the Harbor Department's existing debt.

Selection Process- The Office of the City Attorney issued a Request for Proposals (RFP) for bond counsel in February 2019 and six firms responded. The Harbor Department's Review Committee consisted of one Harbor Department Deputy City Attorney, the Harbor Department's Deputy Executive Director and Chief Financial Officer, the Harbor Department's Director of Debt and Treasury Management and one Harbor Department Finance Manager. The Review Committee members independently reviewed each of the six proposals based on the eligibility criteria detailed in the RFP, as described below:

- Service as bond counsel in at least ten (10) municipal financings within the last calendar year;
- Ability as a nationally recognized bond counsel to provide a written opinion to the legality of any bond, note or certificate issued, including the tax exemption of any such issue, acceptable to the underwriting syndicates and investment firms who may bid on revenue debt offerings of the Department and readily acceptable to other investors to whom the bonds will be marketed;
- Expertise in and knowledge of federal, state and local laws and rules applicable to the financing activities of the Harbor Department; and
- As related to the Harbor Department, knowledge of port authorities and port operations relating to bond issues.

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After reviewing the proposals, the Committee members discussed and evaluated the ability of the law firms to provide advice on disclosure issues; ability to provide tax expertise in general and on matters relating to bond financings, e.g., private activity use; familiarity with federal and other disclosure requirements and ability to provide services on a continuing and uninterrupted basis. The proposal review process also included a conflict check to assess all potential and/or actual conflicts of interest relating to the firm's representation of the City, its proprietary departments, or any other City agency or affiliated entity.

The Committee agreed that Hawkins, Delafield & Wood LLP; Kutak Rock LLP; and Nixon Peabody LLP best met the eligibility criteria and each firm is recommended for selection. The identified firms have extensive experience in the municipal finance sector, specifically with port authorities, and proposed competitive hourly rates. When financing projects are necessary, there will be competition among the three selected firms for the roles of bond and disclosure counsel and as a result the Harbor Department should receive competitive fee structures.

The selection process described herein complies with the Office of the City Attorney law firm selection procedures City-wide and was managed by the Office of the City Attorney's Outside Counsel Oversight Division.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of professional services agreements with three law firms for bond counsel services, which is an administrative activity. Therefore, the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of CEQA in accordance with Article II, Section 2(f), of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

The proposed action is for the approval of three Agreements for legal services for a three-year term and compensation authority of \$180,000. The Harbor Department is financially responsible for payment for legal services rendered under the proposed Agreements. Funding in the amount of \$60,000 has been included as part of the annual budget adoption process in the Fiscal Year 2019-20 Operating Budget within the Harbor Department City Attorney's Office Account No. 54410 (Legal Fees & Services), Division No. 120 and Program No. 000. Funding for future fiscal years, if necessary, will be requested as part of the annual budget adoption process, upon Board approval.

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A funding out clause is included in the Agreements. This clause stipulates that if, in any subsequent fiscal year, funds are not appropriated by the City for the work required by the agreement, then the agreement shall be terminated. However, the termination would not relieve the parties of liability for any obligation previously incurred.

The proposed appropriations for the three bond counsel firms are detailed below:

Firm	FY 19/20	FY20/21	FY21/22	TOTAL
Hawkins Delafield & Wood LLP	\$20,000	\$20,000	\$20,000	\$60,000
Kutak Rock LLP	\$20,000	\$20,000	\$20,000	\$60,000
Nixon Peabody LLP	\$20,000	\$20,000	\$20,000	\$60,000
TOTAL	\$60,000	\$60,000	\$60,000	\$180,000

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CITY ATTORNEY:

The Office of the City Attorney has reviewed and approved the Agreements as to form and legality.

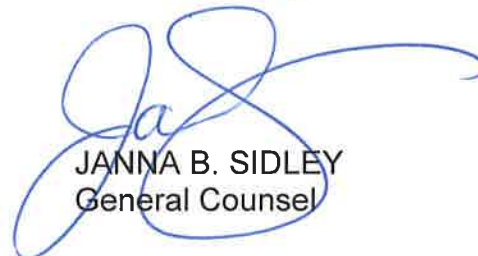
TRANSMITTALS:

1. Proposed Agreement with Hawkins Delafield & Wood LLP
2. Proposed Agreement with Kutak Rock LLP
3. Proposed Agreement with Nixon Peabody LLP


FIS Approval: 

CA Approval: 


HEATHER McCLOSKEY
Deputy City Attorney


JANNA B. SIDLEY
General Counsel

APPROVED:


FOR EUGENE D. SEROKA
Executive Director