

HARBOR DIVISION

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DATE: JULY 12, 2016

FROM: OFFICE OF THE CITY ATTORNEY

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

SUMMARY:

The Office of the City Attorney requests that the Board of Harbor Commissioners (Board) approve the selection of four 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, the Department's Commercial Paper Notes Program, annual continuing disclosure services, and any other type of financing related to capital improvement projects. 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. The Office of the City Attorney requests the Board to approve and award agreements to four firms that were selected from a competitive selection process: (1) Hawkins, Delafield & Wood LLP, (2) Kutak Rock LLP, (3) Nixon Peabody LLP and (4) Polsinelli LLP. Each agreement will be for three years for a combined total appropriation request of \$180,000. The Harbor Department will be financially responsible for payment of expenses under the proposed agreements.

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RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners:

1. Find that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II, Section 2(f), of the Los Angeles City CEQA Guidelines as determined by the Director of Environmental Management;
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 \$45,000, (2) Kutak Rock LLP in the amount of \$45,000, (3) Nixon Peabody LLP in the amount of \$45,000, and (4) Polsinelli LLP in the amount of \$45,000, 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.

Bond Counsel and Recent Work- For the last three years the Department has had agreements with three of the recommended bond counsel firms: Kutak Rock LLP, Nixon Peabody LLP and Polsinelli LLP. These agreements have a combined total appropriation amount of \$180,000 and, having been amended one time for a six-month extension, will expire on December 18, 2016. The first amendment was done in order to allow for continuous service during the transition period between the existing agreements and the proposed new agreements, as a result of an expected bond transaction starting in early July. At the time of the issuance of the Request for Proposals, it was unknown whether the current firms would be selected for a new contract period, and therefore the six month agreement extension was requested from and approved by the Board.

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During the last three years, Kutak Rock LLP and Nixon Peabody LLP have assisted the Department in the Refunding Revenue Bonds 2014 series A, B, and C, 2015 series A and B and the 2015 renewal of Commercial Paper Notes Program. Nixon Peabody and Kutak Rock have also assisted with the filing of annual disclosure statements in compliance with Securities Exchange Commission (SEC) Rules in 2013, 2014 and 2015. During the past three years, \$68,666 has been spent on bond counsel services, which does not include amounts paid out of cost of issuance for each bond sale transaction. Payments from cost of issuance over the three year period have been \$150,928 for Kutak Rock LLP and \$70,000 for Nixon Peabody LLP.

Anticipated Work- The proposed agreements will replace the three existing agreements. However, in the event of an overlap in time for services provided in July, the firm or firms selected to provide bond and disclosure counsel services will be paid from the cost of issuance under the existing agreements. Thereafter, no services will be requested from the existing agreements and they will expire on December 18, 2016 pursuant to the terms of those agreements.

For bond counsel services during the 2016-17 fiscal year, the estimated expenditure is budgeted at \$30,000. 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 renew its Commercial Paper Program and issue bonds to meet the needs of its Capital Improvement Program. 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 at the joint request of the Los Angeles World Airports (LAWA) and the Harbor Department in February 2016. Eight firms responded and each proprietary department convened a separate Review Committee.

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 and the Harbor Department's Director of Debt and Treasury

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Management. The Review Committee members independently reviewed each of the eight applications 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 Departments 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.

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; Nixon Peabody LLP; and Polsinelli 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 four selected firms for the roles of bond and disclosure counsel and as a result the Harbor Department should receive competitive fee structures.

In addition to the three firms previously under contract with the Department, a fourth firm is recommended for approval, namely, Hawkins, Delafield & Wood LLP. This recommendation is made in order to expand opportunities to more firms, increase competition among the firms in the pool and ensure ongoing expertise among a larger group of lawyers familiar with the Harbor Department's operations profile and finance program. Hawkins was selected as the fourth firm not only due to the firm's expertise

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and qualifications in general but also because the proposed lead attorney has prior bond counsel experience with the Harbor Department. The addition of this fourth firm was approved by all three members of the Review Committee. No additional funds are requested in order to add the firm, rather the existing budget for bond counsel services will be divided equally among the four firms. In the event a firm requires additional budget allocation, funds may be re-allocated from the overall budget during a particular fiscal year or an amendment to increase funds may be proposed for approval by the Board, if and when the need should arise.

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 agreements with four law firms for bond counsel services. As an administrative activity, the Director of Environmental Management has determined that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with Article II, Section 2(f), of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

Funding for the four proposed new Agreements has been budgeted, as part of the annual budget adoption process in the amount of \$60,000 in the FY 2016-17 Operating Budget, within the Harbor Department City Attorney's Office Account No. 54410, Division No. 0120, and Program No. 000. Funding for future fiscal years if necessary will be requested to be budgeted as part of the annual budget adoption process, upon Board approval. A funding out clause is included in the proposed Agreements. The proposed appropriations for the four bond counsel firms are detailed below:

Firm	FY 16/17	FY17/18	FY18/19	TOTAL
Hawkins Delafield & Wood LLP	\$15,000	\$15,000	\$15,000	\$45,000
Kutak Rock LLP	\$15,000	\$15,000	\$15,000	\$45,000
Nixon Peabody LLP	\$15,000	\$15,000	\$15,000	\$45,000
Polsinelli LLP	\$15,000	\$15,000	\$15,000	\$45,000
TOTAL	\$60,000	\$60,000	\$60,000	\$180,000

DATE: JULY 12, 2016

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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. List of Proposers
2. Proposed Agreements with Hawkins Delafield & Wood LLP; Kutak Rock LLP; Nixon Peabody LLP; and Polsinelli LLP

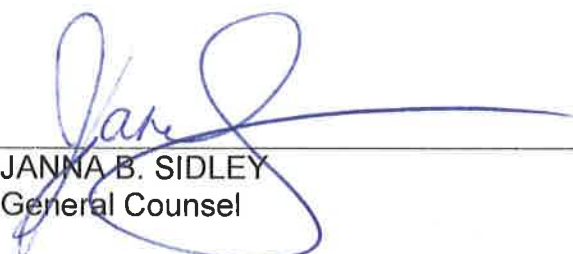
FIS Approval: MB (initials)

CA Approval: MB (initials)



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Deputy City Attorney

APPROVED:



JANNA B. SIDLEY
General Counsel

APPROVED:



FOL EUGENE D. SEROKA
Executive Director