

HARBOR DIVISION

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DATE: MAY 22, 2013

FROM: OFFICE OF THE CITY ATTORNEY

**SUBJECT: RESOLUTION NO. _____ AGREEMENTS FOR BOND
COUNSEL WITH KUTAK ROCK LLP, NIXON PEABODY LLP, AND
POLSINELLI SHUGHART LLP**

SUMMARY:

The Office of the City Attorney recommends that the Board of Harbor Commissioners (Board) approve the selection of various law firms to provide bond and disclosure counsel services to the Harbor Department (Department). The Department's Debt and Treasury Division has indicated that bond and disclosure counsel assistance will be required in the future with respect to any future bond transactions, the Commercial Paper Notes Program, annual and continuing disclosure services, and any other financing projects 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 is predicated on the issuance of opinion letters by outside law firms regarding the Department's transactional procedures and disclosure. Moreover, the Department may at times require such specialized bond and tax advice that 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 three firms that were selected from a competitive RFP process: (1) Kutak Rock LLP, (2) Nixon Peabody LLP, and (3) Polsinelli Shughart LLP. Each agreement will be for three years for a combined total appropriation request of \$180,000.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners:

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1. 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;
2. Approve the individual and separate Agreements with (1) Kutak Rock, LLP in the amount of \$60,000, (2) Nixon Peabody LLP in the amount of \$60,000 and (3) Polsinelli Shughart LLP in the amount of \$60,000, each for a period of three years from June 19, 2013 through June 18, 2016;
3. Authorize the Executive Director and Board Secretary to execute and attest to the Agreements; and
4. Adopt this Resolution No. _____.

DISCUSSION:

Background and Context- Charter Section 609 authorizes the Board, with 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 the three recommended bond counsel firms: Kutak Rock, LLP, Nixon Peabody LLP and Polsinelli Shughart LLP. These agreements have a combined total appropriation amount of \$450,000 and will expire on June 18, 2013.

During the last three years, Kutak Rock LLP and Nixon Peabody LLP have assisted the Department in the Refunding Revenue Bonds 2011 series A and B and the 2009 Reimplementation of the 2001 Commercial Paper Notes Program, Series A, B, C and D. Nixon Peabody and Kutak Rock have also assisted with the filing of annual disclosure statements in compliance with SEC Rules. Polsinelli Shughart LLP provided legal services for continuing disclosure.

Anticipated Work- The proposed agreements serve to replace the agreements that will expire on June 18, 2013. For the past three years the amount spent for bond counsel has been \$133,533 and the estimated expenses for bond counsel during the 2013-14 fiscal year is \$50,000. The first year budget allocations will be used for on-call work, annual disclosure work, creating a disclosure policy and any financing work related to capital improvement projects.

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In addition, during the term of the proposed agreements, it is anticipated that the Department will renew its Commercial Paper Program and may 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 Department of Water and Power (LADWP), Los Angeles World Airports (LAWA) and the Harbor Department in March 2013. Seven 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 and one finance staff representative from the Harbor Department's Debt and Treasury Management Division. The Review Committee members independently reviewed each of the seven 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 issue, 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;
- As related to the Harbor Department, knowledge of harbor issues 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 as required by law; ability to provide tax expertise in general and on matters relating to bond financings, e.g.,

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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 application 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, the Housing Authority of the City of Los Angeles, or any other City agency or affiliated entity. The Committee determined that Kutak Rock LLP, Nixon Peabody LLP and Polsinelli Shughart LLP best met the eligibility criteria for the Harbor Department and they are recommended for new Agreements. The identified firms have prior work experience and proposed competitive hourly rates. When financing projects come along 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 agreements with three 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.

ECONOMIC BENEFITS:

Approval of the proposed Agreements will support 1 direct and 1 secondary one-year equivalent jobs for the five-county region.

FINANCIAL IMPACT:

Funding for the three proposed new Agreements has been proposed to be budgeted, upon Board approval as part of the annual budget adoption process in the amount of \$50,000 in the FY 2013-14 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

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the annual budget adoption process, upon Board approval. A funding out clause is included in the proposed Agreements. The proposed appropriations for the three bond counsel firms are detailed below:

Firm	FY 13/14	FY14/15	FY15/16	TOTAL
Kutak Rock LLP	\$ 16,670	\$ 16,670	\$ 26,660	\$ 60,000
Nixon Peabody LLP	\$ 16,670	\$ 16,660	\$ 26,670	\$ 60,000
Polsinelli Shughart LLP	\$ 16,660	\$ 16,670	\$ 26,670	\$ 60,000
TOTAL	\$ 50,000	\$ 50,000	\$ 80,000	\$ 180,000

DATE: MAY 22, 2013

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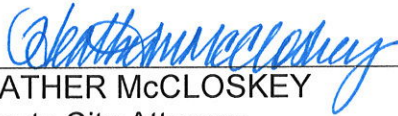
The Office of the City Attorney has reviewed and approved the Agreements as to form and legality.

TRANSMITTALS:

1. List of Proposers
2. Proposed Agreements with Kutak Rock LLP, Nixon Peabody LLP and Polsinelli Shughart LLP

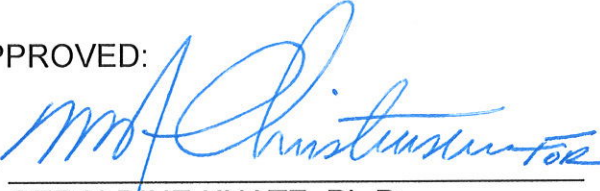
FIS Approval: ef (initials)

CA Approval: jm (initials)


HEATHER McCLOSKEY
Deputy City Attorney


JANNA B. SIDLEY
General Counsel

APPROVED:

By 
GERALDINE KNATZ, Ph.D.
Executive Director