

HARBOR DIVISION

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**MINAH PARK**  
**HELEN J. SOK**

**DATE: MARCH 1, 2016**

**FROM: OFFICE OF THE CITY ATTORNEY**

**SUBJECT: RESOLUTION NO. \_\_\_\_\_ - APPROVE FIRST AMENDMENTS TO AGREEMENT NO. 13-3134 BETWEEN THE CITY OF LOS ANGELES HARBOR DEPARTMENT AND KUTAK ROCK LLP, AGREEMENT NO. 13-3135 BETWEEN THE CITY OF LOS ANGELES HARBOR DEPARTMENT AND NIXON PEABODY LLP AND AGREEMENT NO. 13-3136 BETWEEN CITY OF LOS ANGELES HARBOR DEPARTMENT AND POLSINELLI LLP**

**SUMMARY:**

The Office of the City Attorney recommends that the Board of Harbor Commissioners (Board) extend the term for three outside bond counsel agreements by six months. The current three-year agreements with Kutak Rock LLP, Nixon Peabody LLP and Polsinelli LLP (No. 13-3134, No. 13-3135 and No. 13-3136, respectively) are set to expire on June 18, 2016. The City of Los Angeles Harbor Department (Harbor Department) may undertake a refunding transaction this spring or summer. Although a competitive selection process is underway for new bond counsel agreements for the next three year period (June 2016 to June 2019), these new agreements will most likely not be in effect when bond counsel services are needed for the potential upcoming financing transaction. The proposed six-month extension for the current agreements will allow the Harbor Department to receive uninterrupted service from the current firms, regardless of whether these firms continue as bond counsel under the pending selection process. The amendments only extend the term and do not alter the initial three-year appropriation. The Harbor Department remains financially responsible for payment of expenses under the proposed amendments.

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**SUBJECT: FIRST AMENDMENTS TO AGREEMENT NO. 13-3134, NO. 13-3135  
AND NO. 13-3136 FOR BOND COUNSEL SERVICES**

It is recommended that the Board of Harbor Commissioners (Board):

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. Approve the First Amendments to Agreement No. 13-3134 with Kutak Rock LLP, Agreement No. 13-3135 with Nixon Peabody LLP, and Agreement No. 13-3136 with Polsinelli LLP extending the term of each agreement to a total of three years and six months from June 19, 2013 through December 18, 2016;
3. Authorize the Executive Director and Board Secretary to execute and attest to the said First Amendments for and on behalf of the Board of Harbor Commissioners; and
4. Adopt Resolution No. \_\_\_\_\_.

**DISCUSSION:**

The Office of the City Attorney issued a Request for Proposals (RFP) for bond counsel services on behalf of the Los Angeles World Airports (LAWA) and the Port of Los Angeles (Port) on January 22, 2013. Based on the 2013 RFP, the Port entered into agreements with three firms for three year agreements (Kutak Rock, Nixon and Polsinelli). The term for these agreements expires on June 18, 2016. The Harbor Department's Debt and Treasury Management Division has indicated that the Harbor Department may undertake a refunding transaction beginning in April or May 2016. Both bond counsel and disclosure counsel will be required for this transaction. It is most likely that the bond counsel services required for the transaction will extend beyond the current expiration date of the agreements. Although a new selection process for a bond counsel pool is currently underway ; approval to extend the term of the agreements by six months is requested in order to allow the firms to compete for the transaction work (typically two firms are selected to provide bond and disclosure services) and complete the work if selected. An amendment to extend the term by six months will allow the firms to provide uninterrupted service to the Harbor Department and remove uncertainty as to when a new pool of firms would be available to meet the needs of the Harbor Department.

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At this time a competitive bid would not be advantageous and it is in the Harbor Department's best interest to allow the current law firms to compete for, and if selected, complete the anticipated work. The proposed amendments would extend the term of the existing Agreements by six months to provide the necessary time to complete the financing transaction presently forecast to begin this spring. Additional funding is not required for the upcoming transaction services because payment will be made out of proceeds from the proposed financing transaction.

Although the proposed amendments will extend the term of the agreements beyond the initial three year term without a competitive process, City Council approval is not required because the annual compensation threshold under Administrative Code Section 10.5(b)(2) requiring City Council approval will not be met (as of August 21, 2015, agreements extended beyond three years without a competitive selection process and with annual compensation above \$143,894 require City Council approval).

**ENVIRONMENTAL ASSESSMENT:**

The proposed action is approval to extend the term of three outside bond counsel agreements by six months, which is an administrative activity. As such, 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:**

For most of the Harbor Department's bond counsel work the payments for legal services are made out of the proceeds from the completed financial transactions. For all work that is not directly related to specific transactions, such as advising on matters related to the investment of bond proceeds and legal services regarding continuing disclosure requirements and changes in regulator laws and rules, funds are budgeted in the amount of \$60,000 per firm in the Operating Budget, within the Harbor Department City Attorney's Office Account No. 54410, Division No. 0120, and Program No. 000. The total three-year appropriation for the bond counsel agreements was \$180,000, apportioned between the three law firms. To date the amount expended for all three contracts has been \$73,481. A funding out clause was included in the original Agreement.

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The First Amendments for Kutak Rock LLP (Agreement No. 13-3134), Nixon Peabody LLP (Agreement No. 13-3135) and Polsinelli LLP (Agreement No. 13-3136) do not request additional funding because any payment for the anticipated services would be made out of proceeds from the financing transaction.

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

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SUBJECT: FIRST AMENDMENTS TO AGREEMENT NO. 13-3134, NO. 13-3135  
AND NO. 13-3136 FOR BOND COUNSEL SERVICES

CITY ATTORNEY:

The Office of the City Attorney has reviewed and approved the proposed First Amendments as to form and legality.

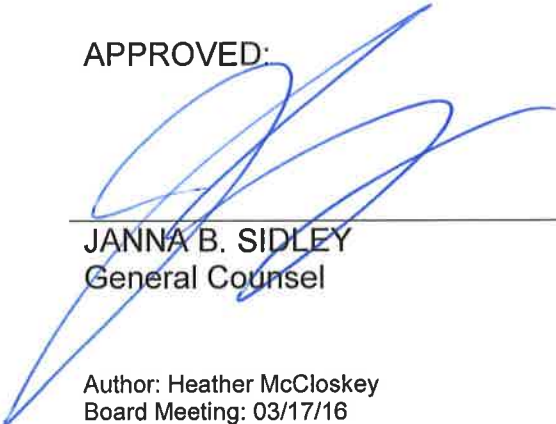
TRANSMITTALS:

1. First Amendment to Agreement No. 13-3134.
2. First Amendment to Agreement No. 13-3135.
3. First Amendment to Agreement No. 13-3136.

FIS Approval:  (initials)  
CA Approval:  (initials)

  
HEATHER McCLOSKEY  
Deputy City Attorney

APPROVED:

  
JANNA B. SIDLEY  
General Counsel

APPROVED:

  
EUGENE D. SEROKA  
Executive Director

Author: Heather McCloskey  
Board Meeting: 03/17/16