



- Board of Directors  
*Legal and Claims Committee*

1/13/2015 Board Meeting

**8-6**

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## **Subject**

Authorize contracts for special bond counsel services with Nixon Peabody LLP, Stradling Yocca Carlson & Rauth, P.C., Hawkins Delafield & Wood LLP and Fulbright & Jaworski LLP and co-special bond counsel services with Law Offices of Alexis Chiu, Curls Bartling P.C. and Schiff Hardin LLP for the period ending June 28, 2018

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## **Executive Summary**

Metropolitan establishes a pool of bond counsel and co-bond counsel every three years. Counsel are selected from the pool to provide opinions and advice required for the issuance of debt by Metropolitan and for other tax and financial matters.

The last pool was approved in 2011. The contracts with the firms in the pool expire in December 2014 and February 2015. Staff is requesting authority to enter into contracts with four firms for bond counsel services and three firms for co-bond counsel services to establish the pool through June 2018.

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## **Details**

Metropolitan retains outside counsel to assist Metropolitan with the issuance of its bonds, notes and commercial paper and negotiation of related agreements, such as extension of liquidity facilities supporting variable rate bonds, advise on interest rate swaps and other instruments connected with such indebtedness, and to provide legal and tax advice on matters affecting Metropolitan's finances. The municipal bond market requires the engagement of bond counsel for the issuance of municipal debt. An opinion from nationally recognized bond counsel as to the enforceability of bonds and the tax exemption of bond interest is typically circulated to potential investors, delivered at closing and attached to each bond.

Historically, the Board has authorized, and the General Counsel has executed, three-year contracts with a pool of qualified firms for lead special bond counsel and co-special bond counsel services. Expenditures under these contracts are paid from bond proceeds and are generally capped on a transaction by transaction basis, as deemed appropriate by the General Counsel. This enables Metropolitan to access the credit markets quickly and efficiently. Before work on a bond issue begins, Legal Department staff describes the transaction to firms in the pool and solicits fee quotes. Staff assigns bond counsel responsibilities to a lead bond counsel firm and a co-bond counsel firm within the pool, based upon each firm's expertise, experience with the particular transaction structure, fee quote for the specific transaction and availability of attorneys.

The current contracts for special bond counsel and co-special bond counsel have either expired on December 31, 2014 or will expire on February 15, 2015. Metropolitan issued a Request for Proposals for Special Counsel dated September 17, 2014, to 50 firms that the "Bond Buyer" listed as nationally recognized bond counsel with offices in Metropolitan's service area. Fourteen firms responded.

Representatives of the Legal Department and the Office of the Chief Financial Officer evaluated the proposals and interviewed ten selected firms. The firms were ranked according to experience involving tax-exempt bond issues nationally, in California and for water utilities; expertise in related financial representation of government

agencies; qualifications of the staff to be assigned to Metropolitan, including bond attorneys and tax counsel; location and availability of the staff; general depth of staffing; knowledge of Metropolitan; and fee structure.

The review team concurred on four firms to serve as lead bond counsel and three firms to serve as co-bond counsel. Based on the review team's recommendation, the law firms of Nixon Peabody LLP, Stradling Yocca, Carlson & Rauth, P.C., Hawkins Delafield & Wood LLP, and Fulbright & Jaworski LLP are recommended to form the lead special bond counsel pool. Schiff Hardin LLP along with the small business enterprise law firms of Alexis S. M. Chiu and Curls Bartling P.C. are recommended to form the pool of co-bond counsel.

The legal costs for bond issues are paid from bond proceeds as a cost of issuance. For bond issues during the last three years, the combined bond counsel fees ranged from \$10,000 for remarketing of Securities Industry and Financial Markets Association indexed bonds to \$330,000 for swap terminations and an associated water revenue refunding bond issue. Costs for legal advice from bond counsel on existing bond transactions, tax law interpretations and other questions related to financial matters are operations and maintenance costs.

It is proposed that Metropolitan enter into contracts with these firms effective through June 28, 2018 to provide services on particular transactions and related legal advice in amounts as the General Counsel deems appropriate during the contract term.

## Policy

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Metropolitan Water District Administrative Code Section 6430: General Counsel's employment of attorneys to render special counsel services

## California Environmental Quality Act (CEQA)

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CEQA determination for Options #1 and #2:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities (Section 15378(b)(2) of the State CEQA Guidelines). In addition, the proposed action is not subject to CEQA because it involves other government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment (Section 15378(b)(4) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to the provisions of CEQA pursuant to Sections 15378(b)(2) and 15378(b)(4) of the State CEQA Guidelines.

CEQA determination for Option #3:

None required

## Board Options

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### Option #1

Adopt the CEQA determination that the proposed action is not defined as a project under CEQA, and

- a. Authorize the General Counsel to retain the firms listed in this board letter as special bond counsel and co-special bond counsel through June 28, 2018; and
- b. Determine that special bond counsel fees may be approved by the General Counsel in amounts sufficient to procure special bond counsel and co-special bond counsel services for bond issues and for legal advice, as described in this board letter.

**Fiscal Impact:** Variable, depending on number and structure of bond and financial transactions

### Option #2

Adopt the CEQA determination that the proposed action is not defined as a project under CEQA, and

- a. Authorize the General Counsel to retain some of the firms listed in this board letter as special bond counsel and co-special bond counsel through June 28, 2018; and
- b. Determine that special bond counsel fees may be approved by the General Counsel in amounts sufficient to procure special bond counsel and co-special bond counsel services for bond issues and for legal advice, as described in this board letter.

**Fiscal Impact:** Variable, depending on number and structure of bond and financial transactions

**Option #3**

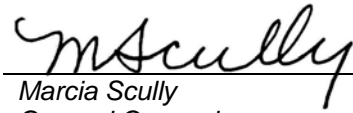
Do not retain special bond counsel and co-special bond counsel.

**Fiscal Impact:** Inability to market bonds. An opinion of nationally recognized bond counsel is required for marketing of tax-exempt bonds.

**Staff Recommendation**

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Option #1



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Marcia Scully  
General Counsel

12/29/2014

Date

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