



● **Board of Directors**
Legal and Claims Committee

5/11/2021 Board Meeting

7-12

Subject

Authorize contracts for Bond Counsel services with Hawkins Delafield Wood LLP, Jones Hall, A Professional Law Corporation, Nixon Peabody LLP, and Norton Rose Fulbright US LLP, Co-Bond Counsel services with Amira Jackson, Law Offices of Alexis S.M. Chiu, and Curls Bartling P.C., and Disclosure Counsel services with Stradling Yocca Carlson & Rauth, P.C. for the period ending June 30, 2024; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

Executive Summary

Metropolitan establishes a pool of Bond Counsel and Co-Bond Counsel and selects Disclosure Counsel every three years. Bond and/or Co-Bond Counsel are selected from the pool to provide services and advice required for the issuance of bonds by Metropolitan and for other tax and financial matters. The last selection of counsel was approved by the Board in 2018. The contracts with the firms in the current pool expire June 30, 2021. Staff is requesting authority to enter into contracts with four firms for Bond Counsel services, three firms for Co-Bond Counsel services, and a single firm for Disclosure Counsel services through June 2024.

Details

Metropolitan retains outside counsel to assist with the issuance and offering of its bonds, notes, and commercial paper, and negotiation of related agreements, such as extension of liquidity facilities supporting variable rate bonds; to 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 validity of the bonds and the tax exemption of interest on the bonds is circulated to potential investors, delivered at closing, and attached to each bond. Co-Bond Counsel are also engaged by Metropolitan to add additional support and expertise to certain transactions. Co-Bond Counsel can provide a lower-cost support option, depending upon the transaction's scope, complexity, and timing. Metropolitan retains a dedicated and separate Disclosure Counsel in connection with the offering and remarketing of its bonds. Some of the benefits of using a separate Disclosure Counsel include assuring consistency across disclosures, knowledge of ongoing regulatory challenges for California water agencies, and expertise in the development of disclosure policies, continuing disclosure procedures, and training for the Board and staff.

Historically, the Board has authorized, and the General Counsel has executed, three-year contracts with a pool of qualified firms for Bond Counsel and Co-Bond Counsel services. The Board has also previously authorized the execution of a three-year contract with a single firm to provide disclosure counsel services. Expenditures under these contracts are paid from bond proceeds or Metropolitan funds and are generally capped on a transaction by transaction basis, as deemed appropriate by the General Counsel. This practice enables Metropolitan to access the credit markets quickly and efficiently. Before work on a debt transaction begins, Legal Department staff describes the transaction to firms in the pool and solicits fee quotes. Staff assigns responsibilities to Bond and Co-Bond Counsel firms based upon each firm's expertise, experience with the particular transaction structure, fee

quote for the specific transaction, and availability of attorneys. Additional services under the contracts are billed at hourly rates that remain stable for the three-year term of the contracts.

The current contracts for Bond Counsel, Co-Bond Counsel, and Disclosure Counsel expire on June 30, 2021. On February 16, 2021, Metropolitan issued a Request for Proposals and Firm Qualifications to Serve as Bond Counsel, Co-Bond Counsel, or Disclosure Counsel to 15 firms with appropriate experience. Nine firms submitted proposals. Legal Department staff evaluated the proposals based upon: experience involving municipal bond issues nationally, in California, and for water utilities; expertise in financial representation of government agencies; qualifications of the staff to be assigned to Metropolitan matters; location and availability of the staff; general depth of staffing; knowledge of Metropolitan; and fee structure.

Based on the review team's recommendation and concurrence by the Chief Financial Officer, the law firms of Hawkins Delafield & Wood LLP, Jones Hall, A Professional Law Corporation, Nixon Peabody LLP, and Norton Rose Fulbright US LLP are recommended to form the Bond Counsel pool. Amira Jackson, Law Offices of Alexis S.M. Chiu, and Curls Bartling P.C. are recommended to form the Co-Bond Counsel pool. Stradling Yocca Carlson & Rauth, P.C. is recommended to serve as Disclosure Counsel.

The legal costs for bond issues are generally paid from bond proceeds and are contingent on the successful completion of the transaction. For the previous three-year period, for each bond issuance, the combined Bond Counsel and Co-Bond Counsel fees ranged from \$15,000 to \$55,000 and from \$28,000 to \$63,000 for disclosure counsel services. Costs for legal advice on existing bond transactions (for example, remarketing of variable debt or replacement of liquidity facilities), tax law interpretations, and other questions related to tax and financial matters are paid from Metropolitan funds.

It is proposed that Metropolitan enter into contracts with the referenced firms effective through June 30, 2024, to provide services on particular transactions and related legal advice in amounts as the General Counsel deems appropriate during the contract term.

Policy

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

Metropolitan Water District Administrative Code Section 11104: Delegation of Responsibilities

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA (Public Resources Code Section 21065, State CEQA Guidelines Section 15378) because the proposed action involves fiscal decisions that will not cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. In addition, the proposed action is not defined as a project under CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines) and other government fiscal activities, which do not involve any commitment to any specific project, or which may result in a potentially significant physical impact on the environment (Section 15378(b)(4) of the State CEQA Guidelines). Finally, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

CEQA determination for Option #2:

None required

Board Options

Option #1

- a. Authorize the General Counsel to retain the firms listed in this board letter as Bond Counsel, Co-Bond Counsel, and Disclosure Counsel through June 30, 2024; and
- b. Determine that Bond Counsel, Co-Bond Counsel, and Disclosure Counsel fees may be approved by the General Counsel in amounts sufficient to procure Bond Counsel, Co-Bond Counsel, or Disclosure 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.

Business Analysis: The municipal bond market requires the engagement of Bond Counsel and Disclosure Counsel for the issuance and offering of municipal debt. This option would support quick and efficient hiring of Bond Counsel and Disclosure Counsel to respond to favorable market opportunities. Selection of the firms recommended for the Bond and Co-Bond Counsel pool provides options in the event any of the firms are unavailable to participate in a given financing and provides cost alternatives.

Option #2

Do not authorize the General Counsel to retain Bond Counsel, Co-Bond Counsel, and Disclosure Counsel as described in this board letter.

Fiscal Impact: Potential for higher costs with the engagement of Bond Counsel, Co-Bond Counsel, and Disclosure Counsel on a transaction by transaction basis.

Business Analysis: The municipal bond market requires the engagement of Bond Counsel and Disclosure Counsel for the issuance and offering of municipal debt. Not determining that the General Counsel may approve Bond Counsel, Co-Bond Counsel, and Disclosure Counsel fees as described in this board letter would require the Board to frequently take action to approve fees for Bond Counsel, Co-Bond Counsel, and Disclosure Counsel on a schedule that meets market-driven factors, which are unpredictable and likely fast moving.

Staff Recommendation

Option #1



Marcia Scully
General Counsel

4/19/2021

Date