

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

February 14, 2006 Board Meeting

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7-5

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**Subject**

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Authorize General Counsel to negotiate and execute contracts for special bond counsel and co-special bond counsel

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**Description**

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Metropolitan retains outside law firms that are nationally recognized bond counsel to assist Metropolitan with the issuance of its debt obligations and its interest rate swap program. Historically, the contracts for lead special bond counsel and co-special bond counsel have been executed for three-year terms to enable Metropolitan to efficiently access the credit markets. As the need for the bond counsel arises, Legal Department staff will assign the bond counsel responsibilities among firms within the pool, based upon fees quoted for the upcoming transaction or other project, availability of attorneys, expertise with particular transaction structures and other factors. The current contracts for special bond counsel and co-special bond counsel expired on December 31, 2005.

To establish a pool of pre-qualified law firms to serve as special bond counsel and co-special bond counsel for Metropolitan for future bond issuances and interest rate swap transactions, Metropolitan issued a Request for Proposals for Special Counsel (RFP), dated November 8, 2005. Metropolitan received timely responses from twelve firms, including eight proposals for lead bond counsel and four co-counsel firms.

Representatives of Metropolitan's Legal Department, the Office of the Chief Financial Officer and Metropolitan's outside financial advisor evaluated the proposals and concurred on four firms to serve in the lead special bond counsel pool for the next three years. The Review Team recommended that the law firms of Hawkins Delafield & Wood; Nixon Peabody; Orrick Herrington & Sutcliffe; and Fulbright & Jaworski form the pool to serve as lead special bond counsel for the next three years. The Review Team also recommend the small business enterprise law firms of Law Office of Alexis S. M. Chiu; Niesar Curls Bartling; Quateman LLP; and Robinson & Pearman to form the pool to serve as co-special bond counsel for the same term.

It is proposed that Metropolitan enter into contracts with these firms through December 31, 2008, to provide services on particular transactions as the General Counsel deems appropriate during the contract term.

The firms were ranked according to experience involving tax-exempt bond issues and interest rate swaps; experience with Metropolitan; expertise in related financial representation of government agencies; qualifications of staff to be assigned to Metropolitan; fee structure; adequacy of insurance; and other relevant factors.

The fees and charges of special bond counsel and co-special bond counsel will be capped on a transaction-by-transaction basis, as negotiated for each transaction. Fees for special projects not included within a particular bond issue will be billed on an hourly basis. Indicative hourly rates of the lead attorneys representing Metropolitan from each of the above firms are listed on [Attachment 1](#).

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**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 Option #1:

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 #2:

None required

**Board Options/Fiscal Impacts**

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**Option #1**

Adopt the CEQA determination and authorize the General Counsel to retain the firms listed on **Attachment 1** as special bond counsel for the three years ending December 31, 2008, at maximum fees negotiated on a transaction-by-transaction or project basis.

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

**Option #2**

Do not retain special bond counsel.

**Fiscal Impact:** Inability to issue bonds. Special bond counsel must participate in bond issues sold in the tax-exempt bond markets.

**Staff Recommendation**

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Option #1

  
Jeffrey Kightlinger  
General Counsel

1/20/2006  
Date

**Attachment 1 – Special Counsel Fees**

BLA #4264

**INDICATIVE HOURLY RATES FOR SPECIAL BOND COUNSEL\***

<b>Firm Name</b>	<b>Category</b>	<b>Hourly Rate</b>
Hawkins Delafield & Wood	Special bond counsel (Large firm)	\$468 <sup>1</sup>
Fulbright & Jaworski	Special bond counsel (Large firm)	\$486 <sup>2</sup>
Nixon Peabody	Special bond counsel (Large firm)	\$486 <sup>2</sup>
Orrick Herrington & Sutcliffe	Special bond counsel (Large firm)	\$445
Law Office of Alexis S. M. Chiu	Co-Special bond counsel	\$295
Niesar Curls Bartling	Co-Special bond counsel	\$250
Quateman LLP	Co-Special bond counsel	\$375
Robinson & Pearman	Co-Special bond counsel	\$295

\*All fees are subject to cap on a transaction or project basis.

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<sup>1</sup> Reflects 15% discount from normal hourly rates.

<sup>2</sup> Reflects 10% discount from normal hourly rates.