

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

May 16, 2006 Board Meeting

8-10

Subject

Authorize amending contract for legal services with Hunt, Ortmann, Blasco, Palffy & Rossell to increase compensation by \$50,000 [**Conference with legal counsel - existing litigation (*Shank/Balfour Beatty, a Joint Venture vs. Metropolitan Water District of Southern California*, LASC Case No. BC283438 (consolidated with BC283439, Court of Appeal Case No. B184987)); to be heard in closed session pursuant to Gov. Code Section 54956.9(a)]**]

Description

Metropolitan entered into three contracts with the Joint Venture of Shank/Balfour Beatty (SBB) for construction of the Riverside Badlands, Arrowhead East and Arrowhead West tunnels as part of the Inland Feeder project (project). Due to water intrusion into the Arrowhead tunnels that jeopardized the United States Forest Service permit for tunnel construction, in April 2000, pursuant to board authority, the Arrowhead East and Arrowhead West tunnel contracts were terminated subject to lining of the mined portion of the Arrowhead East Tunnel and ancillary work to secure the sites. SBB thereafter submitted claims for suspension and termination costs on the Arrowhead East and West contracts including losses alleged by its vendors and subcontractors. SBB subsequently filed suit in Los Angeles County Superior Court.

The total claims were for approximately \$21 million. On May 11, 2004 the Board authorized a partial settlement resolving all claims of SBB and its subcontractors IAFD and Coast Geo for \$3,836,271. The remaining issues at the time of trial were the claims of SBB's pipe vendor, Ameron, for \$11,552,355 plus interest (approximately \$15 million at the time of trial).

Trial started September 22, 2004 and concluded on October 18, 2004. The court ordered the parties back for closing arguments on November 8, 2004 and asked the parties to submit proposed statements of decision by November 4, 2004. Judgment was entered for SBB on June 14, 2005 in the sum of \$1.9 million without interest. In September 2005 the trial court awarded Metropolitan its costs of suit determining that Metropolitan was the prevailing party pursuant to a CCP Section 998 statutory offer of compromise. (Ameron rejected Metropolitan's offer to compromise of \$3 million prior to trial).

Ameron appealed. SBB/Ameron's opening brief was filed on March 27, 2006. Metropolitan's respondent's brief and cross appeal is due on April 27, 2006.

Hunt, Ortmann, Blasco, Palffy & Rossell (Special Counsel) represented Metropolitan through trial. Special Counsel was retained to represent Metropolitan through the appeal. Special Counsel submitted its budget in the sum of \$145,000 through conclusion of oral argument on appeal. The General Counsel is seeking authority to amend Special Counsel's contract by the additional \$50,000 necessary to complete the appeal.

Policy

Metropolitan Water District Administrative Code Section 6431: Authority to Obtain Expert Assistance

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed actions are not defined as a project under CEQA because they involve continuing administrative activities (Section 15378(b)(2) of the State CEQA Guidelines). In addition, the proposed actions are not subject

to CEQA because they involve 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 actions are not subject to CEQA per Sections 15378(b)(2) and 15378 (b)(4) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

Board Options/Fiscal Impacts

Option #1

Adopt the CEQA determination and authorize the amendment of the contract with Hunt, Ortmann, Blasco, Palffy & Rossell to increase the maximum payable by \$50,000 to \$150,000.

Fiscal Impact: The May action will result in additional funds of \$50,000 over the General Counsel's authority of \$100,000.

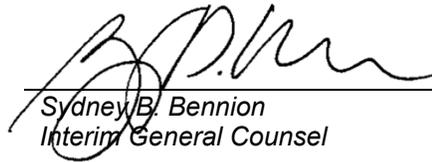
Option #2

Do not use Special Counsel which would significantly impair Metropolitan's ability to defend against appeal.

Fiscal Impact: Unknown

Staff Recommendation

Option # 1



Sydney B. Bennion
Interim General Counsel

04/27/2006
Date