

- **Board of Directors**
Legal and Human Resources Committee

January 8, 2008 Board Meeting

7-6

Subject

Authorize amending contract for consulting/legal services from \$100,000 to a maximum of \$300,000 with Akerman Senterfitt to assist with implementation of an electronic discovery litigation readiness program

Description

New federal rules regarding how electronically stored information (ESI) is disclosed and produced in litigation are having major effects on Metropolitan as well as most public agencies. Electronic data is a primary tool in doing business. Electronic data is created, stored, and communicated through computer systems, transmitted within and outside Metropolitan via email, including laptops, Blackberries, and other devices. Every time an electronic document is created, and each time it is transmitted, it is stored in multiple locations.

When the demands of litigation require a public entity to identify and produce all ESI related to a dispute, the challenges can be very costly and overwhelming. The new rules impose duties regarding ESI identification and disclosure that litigants must fulfill shortly after litigation is filed. The new rules require that every organization be prepared for the challenges of electronic discovery.

Moreover, as soon as a public entity reasonably anticipates that a dispute will escalate into litigation, it has a duty to preserve all ESI that is related to the dispute and is reasonably accessible (litigation holds). ESI preservation is problematic because ESI is so dynamic in nature and because ESI may be stored in multiple places. Events that create a reasonable anticipation of litigation may include receipt of a Government Tort Claim, a letter threatening suit, an internal complaint, or other known facts that suggest a lawsuit may be filed.

Several law firms offering electronic discovery (e-discovery) services were asked to provide proposals. Two firms were interviewed by the General Counsel and the Akerman Senterfitt firm was retained as outside counsel to advise a Metropolitan team comprised of Legal, Information Technology, Records Management, Human Resources and others on potential e-discovery solutions. Along with outside counsel, Metropolitan's legal staff has taken the lead in coordinating team efforts in the development of appropriate policies and procedures and the recommendation of hardware and software to implement the Metropolitan e-discovery program.

Michael Simon and Ralph Losey of Akerman Senterfitt continue to assist and advise Metropolitan with the development, implementation and supervision of an e-discovery program. It is recommended that the General Counsel be authorized to amend its existing contract with Akerman Senterfitt by \$200,000 to a maximum of \$300,000.

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 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 CEA 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

Option #1

Adopt the CEQA determination and authorize the amendment of the contract with Akerman Senterfitt to increase the maximum payable by \$200,000 for a total of \$300,000.

Fiscal Impact: Up to \$200,000

Business Analysis: Akerman Senterfitt's expertise is critical in assessing and implementing an e-discovery compliance program.

Option #2

Do not hire Akerman Senterfitt to assist with a new e-discovery compliance program.

Fiscal Impact: Significant exposure to excessive damages in the event Metropolitan does not meet its burden in preserving ESI

Staff Recommendation

Option #1



Karen L. Tachiki
General Counsel

12/18/2007
Date