



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

12/11/2018 Board Meeting

8-12

Subject

Authorize increase of \$100,000, to an amount not-to-exceed \$200,000, for existing General Counsel contract with Olson Hagel & Fishburn LLP to make recommendations to modify the Ethics Office policies, procedures, guidelines and applicable provisions of Metropolitan's Administrative Code; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

Executive Summary

In July 2017, at the request of the Chairman of the Board, the General Manager entered into a contract for legal services with Wilmer Cutler Pickering Hale and Dorr LLP (Wilmer Hale) to review the policies and procedures of Metropolitan's Ethics Office and provide recommendations for consideration by Metropolitan's Board. In September 2017, the Metropolitan Board accepted the resignation of Metropolitan's Ethics Officer and appointed Metropolitan's Auditor to serve as the interim Ethics Officer. In February 2018, Wilmer Hale made a presentation to the Executive Committee regarding their review of the policies, procedures, and governance of the Ethics Office. After the presentation, the Board recommended that staff work with new counsel to propose appropriate actions to assist in the implementation of policies approved by the Board. The areas of discussion include the reporting structure for the Ethics Officer and the policies, procedures, guidelines, and applicable Administrative Code provisions relating to the work of the Ethics Office. In January 2018 the law firm Olson Hagel & Fishburn (Olson Hagel) was engaged to independently review the findings and recommendations of Wilmer Hale, make recommendations designed to clarify the role, enhance the operational effectiveness of the Ethics Office, and assist in the implementation of any changes authorized by the Board.

In May 2018 Olson Hagel provided the Board with an initial review of the Wilmer Hale report and discussed the requirements of SB 60 relating to Metropolitan's Ethics Office. Olson Hagel made recommendations regarding the reporting structure for the Ethics Officer and recommended that the Audit and Ethics Committee becomes a standing committee. At the direction of the Board, the firm worked with staff to prepare proposed amendments to the Administrative Code to implement the recommendations that were approved by the Board. The proposed Administrative Code changes were reviewed by the Audit and Ethics Committee in September 2018 and, as modified by the Committee, approved by the Board in November 2018.

Olson Hagel is now preparing recommendations for the policies and procedures of the Ethics Office including, but not limited to the procedures for investigations by the Ethics Office and publication of findings by Ethics Officer. It is anticipated that recommendations will be presented to the Audit and Ethics Committee and the Board for consideration in early 2019.

The costs incurred to date for this work are approaching the initial contract limit of \$100,000. Staff is requesting the authority to increase the maximum payable under this contract by \$100,000 to an amount not-to-exceed \$200,000. It is anticipated that this increase will be sufficient to complete the review and approval process to modify the Ethics Office policies, procedures, and guidelines including applicable Administrative Code provisions.

Policy

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

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

Authorize the General Counsel to increase the amount payable under its agreement with Olson Hagel & Fishburn LLP by \$100,000 to a maximum amount payable not-to-exceed \$200,000.

Fiscal Impact: The sum of \$100,000 is added to this agreement for the provision of the authorized legal services

Option #2

Do not authorize an increase in the maximum amount payable under this agreement with Olson, Hagel & Fishburn LLP, effectively terminating this contract.

Fiscal Impact: No known fiscal impact but Metropolitan will not have access to the expertise and assistance provided by this law firm to complete the review and revision of the Ethics Office policies and procedures

Staff Recommendation

Option # 1



Marcia Scully
General Counsel

12/5/2018

Date