



- Board of Directors
Legal and Claims Committee

3/10/2020 Board Meeting

8-5

Subject

Authorize increase of \$50,000, to an amount not-to-exceed \$350,000, for existing General Counsel contract with Olson Remcho LLP to review and 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 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. This letter requests authorization to increase the contract with Olson Remcho LLP (previously Olson Hagel & Fishburn LLP) to an amount not-to-exceed \$350,000, to complete the process of modifying the Ethics Office policies, procedures, guidelines and applicable provisions of the Administrative Code.

Details

Background

In response to direction from the Board, in January 2018 the law firm Olson Hagel & Fishburn LLP (Olson) was engaged to independently review the findings and recommendations of Wilmer Hale, make recommendations designed to clarify the role and enhance the operational effectiveness of the Ethics Office, and assist in the implementation of any changes authorized by the Board. The firm has been working continuously since January 2018 to complete a comprehensive review and proposed revisions of Metropolitan's ethics rules and policies.

In May 2018, Olson 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. Subsequently, Olson completed its review and recommendations relating to the policies and procedures of the Ethics Office in four phases: (1) reporting structure for Ethics Officer; (2) overall duties of the Audit and Ethics Committee and the Ethics Officer; (3) review and clarification of the jurisdiction, powers, and responsibilities of the Ethics Office, including the conduct of investigations and related matters; and (4) education/training, advice and compliance by the Ethics Office.

Olson made recommendations regarding the reporting structure for the Ethics Officer and recommended that the Audit and Ethics Committee become 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.

Since then, Olson has continued working with the Interim Ethics Officer Mr. Riss and the current Ethics Officer Mr. Salinas and staff to review the Ethics Office policies and procedures and make recommendations for revisions. The process to revise the Administrative Code has included many hours of work by Olson, including over ten video conferences with staff, preparation of multiple drafts of the proposed revisions, several information board letters and other documents, along with extensive presentations to the Audit and Ethics Committee in January, February, March, June, and November 2019. The recommendations were made in collaboration with the staff.

The review and recommendations included, but were not limited to, revision and reorganization of Metropolitan's ethics rules, including the jurisdiction of the Ethics Officer, clarifications and modifications of ethics rules, procedures for investigations by the Ethics Office, public information about the results of Ethics Office investigations, provision of education and advice, rules relating to lobbying, contractors and vendors, ex parte communications involving directors, and penalties for ethics violations.

The Board authorized additional funds for Olson in December 2018 and in May 2019. The current contract maximum is \$300,000. After Mr. Salinas was hired as Ethics Officer in July 2019, he reviewed the previous work of the Ethics Office staff and the Olson firm in depth. As a result of that review, some proposed language was modified.

In November 2019, the Audit and Ethics Committee reviewed the proposed Administrative Code changes and recommended that the Board, after applicable staff communication with the bargaining units, approve the proposed changes. The proposed changes have been provided to the bargaining units and, at their request, the Ethics Officer with Mr. Olson will meet with the bargaining units regarding the proposed changes.

Recently, the firm name was changed from Olson Hagel & Fishburn LLP to Olson Remcho LLP. Mr. Olson has continued to be the lead partner on this project.

The costs incurred to date for this work are approaching the current contract limit of \$300,000. Staff is requesting the authority to increase the maximum payable under this contract by \$50,000 to an amount not-to-exceed \$350,000. It is anticipated that this increase will be sufficient for Mr. Olson to participate with the Ethics Officer in communications with the bargaining units, and complete the final review and approval process, including preparation of any modifications to the currently proposed Administrative Code provisions relating to the Ethics Office policies, procedures, and guidelines, and consideration by the full Board.

Policy

Metropolitan Water District Administrative Code Section 6430(d): Powers and Duties (employment of special counsel)

Metropolitan Water District Administrative Code Section 11104: Delegation of Responsibilities

California Environmental Quality Act (CEQA)

CEQA determination(s) 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 Remcho LLP by \$50,000 to a maximum not-to-exceed \$350,000.

Fiscal Impact: A maximum of \$50,000

Business Analysis: Approval will allow outside counsel to participate with the Ethics Officer in communications with the bargaining units and complete the final review and approval of recommended changes in Metropolitan’s ethics policies and procedures in Metropolitan’s Administrative Code and other documents, as directed by the Board.

Option #2

Do not authorize an increase in the maximum amount payable under this agreement with Olson Remcho LLP.

Fiscal Impact: None.

Business Analysis: Metropolitan will not have access to the expertise and assistance provided by this law firm to participate in communications with the bargaining units and complete the final review and approval of recommended changes to Metropolitan’s Administrative Code and other documents, as directed by the Board. Staff would handle the completion of the process without the participation of the Olson firm.

Staff Recommendation

Option #1



Marcia Scully
General Counsel

2/25/2020
Date