



● **Board of Directors**
Organization, Personnel and Technology Committee

6/8/2021 Board Meeting

7-13

Subject

Authorize an increase in the maximum amount payable under contract with Shaw Law Group by \$150,000 to an amount not to exceed \$550,000 to complete an independent review of allegations of systemic Equal Employment Opportunity related discrimination, harassment and retaliation, and related concerns; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

Executive Summary

In December 2020, Shaw Law Group began a Board-directed independent review of allegations of systemic EEO-related discrimination, harassment, and retaliation, and related concerns. The initial contract authorized a not-to-exceed amount of \$200,000. In March 2021, the Board authorized increasing the not-to-exceed amount to \$400,000. To complete the systemic review and four additional case-specific investigations that arose in the course of the overall review, this item requests authorization to increase the maximum amount payable under the existing contract to \$550,000.

Details

Background

In November 2020, the Board of Directors authorized and directed the Ethics Officer to engage an outside counsel to perform an independent review of systemic allegations. In December 2020, the Ethics Officer executed a contract with Shaw Law Group to perform this review. As initially authorized by the Board of Directors, the maximum amount payable under the contract was \$200,000. Directors informed the Ethics Officer to request additional funding from the Board, if needed, for a comprehensive review.

Under the initial Board authorization, the scope of work for Shaw Law Group includes, but is not limited to, the following areas:

- 1) How EEO-related discrimination, harassment, and retaliation claims are handled by senior management, human resources staff, legal department, and other levels of management, including examination of processes utilized in cases reported by claimants during Metropolitan Board and Committee meetings throughout 2020.
- 2) Effectiveness of processes related to the Diversity, Equity, and Inclusion (DE&I) Council, including confidential interviews of participants.
- 3) Conducting climate assessments on issues including but not limited to the degree of employees' fear of reprisal for reporting violations.
- 4) Compliance with best practices in these and related areas.
- 5) Level of Board of Directors oversight of issues and concerns related to:
 - a) Diversity, equity, and inclusion.
 - b) Handling of EEO-related complaints.
 - c) Fairness and favoritism in employment practices.

- d) Management accountability.
- e) Fostering a safe working environment for LGBTQ employees.
- 6) The experience of women in the trades and apprenticeship program.
- 7) Metropolitan's use of settlement agreements with non-disclosure provisions.

To date, Shaw Law Group has examined a large volume of records, prepared and conducted a climate assessment survey, and conducted 217 interviews of 193 different individuals.

Since the inception of the project, allegations surfaced of retaliation and other specific misconduct related to topics under review. To maintain consistency and continuity, a different attorney at Shaw Law Group was assigned to handle these individual EEO-related investigations through additional task orders under the contract. This additional work was not foreseen at the time of the initial engagement, and the resources required for these additional task orders evolved to ensure thoroughness in the investigation of the various conduct.

In March 2021, the Board authorized an increase of \$200,000 to the contract. Subsequent to the March 2021 meeting, items requiring more time and resources arose, including: (1) additional EEO-related allegations were assigned to Shaw Law Group under this contract; (2) a very high level of participation from employees; and (3) large volume of records provided by Metropolitan. After the May Board meeting, several additional Metropolitan officials requested to be interviewed; and in late May, Shaw Law Group received an additional voluminous document production from Metropolitan.

Shaw Law Group has begun the final phase of its review, which includes analyzing data, developing recommendations, and preparing a final report. The firm is scheduled to present its final report at the July 22, 2021, special meeting of the Organization, Personnel, and Technology Committee.

For these reasons, the Ethics Officer requests authorization to increase the maximum amount payable under this existing contract to \$550,000.

Policy

Administrative Code Sections 8120-8124: Authority to Contract

Administrative Code Section 11104: Delegation of Responsibilities

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 will not cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment and involve continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, the proposed action is not defined as a project under CEQA because it involves the creation of government funding mechanisms or 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).

CEQA determination for Option #2:

None required

Board Options

Option #1

Authorize an increase in the maximum amount payable under contract with Shaw Law Group by \$150,000 to an amount not-to-exceed \$550,000 to complete the independent review of allegations of systemic Equal Employment Opportunity related discrimination, harassment, and retaliation and related concerns.

Fiscal Impact: An additional increase in expenditure for professional services by \$150,000 to an amount not to exceed \$550,000. These funds not previously budgeted will have an impact on the Ethics Office overall budget.

Business Analysis: Necessary to complete a comprehensive review and investigate specific allegations.

Option #2

Do not authorize increase in maximum amount payable under this contract.

Fiscal Impact: Not applicable

Business Analysis: EEO allegations may remain unaddressed and independent review may be limited.

Staff Recommendation

Option #1



Abel Salinas
Ethics Officer

6/3/2021

Date