



- Board of Directors

7/13/2021 Board Meeting

8-1

Subject

Effective July 23, 2021, waive attorney-client privilege and direct staff to publicly post the report by Shaw Law Group concerning 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. [Conference with legal counsel – potential litigation (unknown number of cases); may be heard in closed session pursuant to Gov. Code Section 54956.9(d)(1)]

Executive Summary

To share the contents of Shaw Law Group's final report transparently with the public, this item recommends that the Board of Directors waive the attorney-client privilege with respect to the firm's report of results and recommendations. This matter has been agendized with an optional closed session conference with legal counsel in the event that directors request discussion of any issue recommended for closed session.

Details

Background

In November 2020, the Board of Directors authorized and directed the Ethics Officer to engage outside counsel to conduct an independent review of allegations of systemic EEO-related discrimination, harassment, and retaliation, and related concerns at Metropolitan. The Shaw Law Group has completed the review and its report to the Board. For the report to be made available to the public, the Board of Directors must knowingly waive the attorney-client privilege applicable to the report.

Upon a waiver of the privilege, and at the direction of the Board, the Shaw Law Group is prepared to publicly report and discuss its results and recommendations at the July 27, 2021 Special Organization, Personnel and Technology Committee meeting.

Metropolitan's engagement with Shaw Law Group formed an attorney-client relationship and their work product, including the report of results and recommendations, is therefore protected by the attorney-client privilege. However, directors have expressed a desire for as much transparency to the public as possible with respect to Shaw Law Group's assessment and report. Shaw Law Group is not authorized to waive the privilege on Metropolitan's behalf; therefore, the Board will have the opportunity to waive the privilege at the July 13, 2021 Board meeting.

To ensure a well-informed consideration of the waiver at the July 13, 2021 Board meeting, directors will have the opportunity to review Shaw Law Group's report beginning July 9, 2021, through a secure document-sharing platform. Metropolitan's General Counsel will receive the report at the same time as the Board to prepare for legal questions directors might have at the July 13, 2021 meeting.

The sole purpose for directors' confidential review of the report is to determine whether to waive the privilege and authorize public release. The report is not subject to changes, amendments, or recommendations. The only change to the report that would occur as a result of the Board's action would be that the report would no longer be protected by the attorney-client privilege or marked *draft*, and may include redactions should the Board determine and direct staff to keep a portion of the contents privileged. Directors have been advised that they are prohibited from sharing the report and any of its contents unless and until the report becomes public on July 23, 2021.

If the Board of Directors waives the attorney-client privilege to facilitate public disclosure of the final report, there is no intention to waive other privileged aspects of Shaw Law Group's work, including but not limited to communications with the Ethics Office or with witnesses, investigative materials, work-product, or any contents of investigatory records that Metropolitan provided for the review.

Policy

Metropolitan Water District 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 involves organizational or administrative activities that will not result in direct or indirect physical changes in the environment (Section 15378(b)(5) of the State CEQA Guidelines).

CEQA determination for Option #2:

None required

Board Options

Option #1

Waive attorney-client privilege and authorize the public release on July 23, 2021, of Shaw Law Group's report for presentation at the July 27, 2021 meeting of the Special Organization, Personnel and Technology Committee.

Fiscal Impact: Not applicable

Business Analysis: Not applicable

Option #2

Do not waive attorney-client privilege or authorize public release of Shaw Law Group report in its current form and discuss the report in closed session on July 27, 2021.

Fiscal Impact: Not applicable

Staff Recommendation

Option #1



Abel Salinas
Ethics Officer

7/8/2021

Date



Marcia Scully
General Counsel

7/8/2021

Date