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OFFICE OF THE CITY CLERK  
OAKLAND  
2015 JAN -8 PM 4:39

# AGENDA REPORT

**TO:** HENRY L. GARDNER  
INTERIM CITY ADMINISTRATOR

**FROM:** Sean Whent

**DATE:** January 7, 2014

**SUBJECT:** Extension of Contracts with (1) Police Performance Solutions, LLC for Police Monitoring Services and (2) Warshaw & Associates Inc. For Compliance Director Services in the Matter of Delphine Allen et al v. City of Oakland

City Administrator  
Approval

Date

1/8/15

**COUNCIL DISTRICT:** City-Wide

## RECOMMENDATION

Staff Recommends approval of two resolutions:

(1) Resolution Authorizing up to a One-Year (Through January 20, 2016) Extension of the Professional Services Agreement Between the City of Oakland and Police Performance Solutions, LLC. for Monitoring and Technical Assistance Services in Delphine Allen v. City Of Oakland, in an Amount Not To Exceed Nine Hundred Fifty Thousand Dollars (\$950,000) and for a Total Contract Price Not to Exceed Four Million Two Hundred Ninety Four Thousand Three Hundred Twenty Dollars (\$4,294,320) and Waiving the Competitive Advertising and Request for Proposals/Qualifications Requirements; and,

(2) Resolution Authorizing up to a One-Year (Through January 20, 2016) Extension of the Professional Services Agreement Between the City of Oakland and Warshaw & Associates Inc., to Provide Compliance Director Services to the City in Delphine Allen v. City Of Oakland, in an Amount Not To Exceed One Hundred Sixty Five Thousand Dollars (\$165,000) and for a Total Contract Amount Not to Exceed Three Hundred Thirty Thousand Dollars (\$330,000) and Waiving the Competitive Advertising and Request for Proposals/Qualifications Requirements

## REASON FOR URGENCY

The contracts end on January 20, 2015 and must be extended in order for the City to meet compliance requirements in the case of Delphine Allen v. City of Oakland. The contracts relate to pending litigation which the Council has continued to discuss as a full body in closed session; therefore, the matter is being scheduled directly with the Council.

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## OUTCOME

To continue receiving monitoring and compliance director services in the above-referenced case in order for the City to establish a record of sustainable compliance with the police reforms.

## BACKGROUND/LEGISLATIVE HISTORY

### The Riders Case

In 2000, over 100 plaintiffs filed *Delphine Allen et al. v. City of Oakland*, USDC Case no. C00-4599 TEH (the "Riders case"), alleging that four Oakland police officers violated their civil rights by planting evidence, committing perjury and using excessive force. The City terminated the four officers and an arbitrator upheld the terminations of the three officers who challenged their terminations. The Alameda County District Attorney dismissed numerous criminal cases because the four officers' testimony was deemed unreliable, and released a number of the plaintiffs who were in custody. The District Attorney criminally prosecuted three of the defendant officers; and the fourth officer fled and has not been located.

In 2003, the City Council approved the Negotiated Settlement Agreement ("NSA") to resolve the Riders case and the Court issued an order approving the NSA and retained jurisdiction to oversee the police reforms. Under the NSA, the City agreed to institute the institutional reforms needed to meet police constitutional standards and to work with an independent monitor who would help the Court oversee compliance. The parties subsequently executed a Memorandum of Understanding ("MOU") and an Amended Memorandum of Understanding ("AMOU") that superseded the NSA, and the City continues to implement the remaining compliance tasks.

### The Independent Monitor's Contracts

In 2009, the Oakland Police Department selected Robert S. Warshaw/Police Performance Solutions, Inc., (formerly Alexandria Group of MPRI) to serve as independent monitor under the MOU, and the Council approved the professional services agreement for two years in the amount of \$1,500,000. In June 2010, the Council approved a resolution increasing the budget amount of the contract with Robert S. Warshaw/Police Performance Solutions, Inc., in the amount of \$100,320 to cover technical assistance services. In June 2011, the Council approved a two-year extension of the contract with Robert S. Warshaw/Police Performance Solutions LLC for \$1,684,000, which expired on January 20, 2014. In February 2012, the Council approved a resolution increasing the budget amount of the contract with Robert S. Warshaw/Police Performance Solutions, LLC. in the amount of \$100,000 to cover technical assistance services. In December 2013, the Council waived advertising and competitive processes and approved a one-year extension of the contract with Robert S. Warshaw/Police Performance Solutions LLC for \$910,000 with an expiration date of January 20, 2015.

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The Compliance Director's Contracts

On December 12, 2012, the Court issued an Order providing for the appointment of a Compliance Director "to bring Defendants (City) into sustainable compliance with the NSA and AMOU" and further providing that the Compliance Director would report directly to the Court and serve as the Court's agent; and on March 4, 2013 the Court appointed Thomas C. Frazier as the Compliance Director (Order Appointing compliance Director, March 4, 2013; Order Re Compliance Director, December 12, 2012). On February 12, 2014, the Court issued an Order that stated that Thomas C. Frazier was terminated as Compliance Director, and further stated that all authority previously vested in Mr. Frazier was transferred immediately to the court appointed Monitor, Robert S. Warsaw (Order Modifying Compliance Oversight Model, February 12, 2014). The Court's February 12, 2014 Order further stated that the Monitor shall discuss with the City "necessary modifications to his contract as a result of the expansion of his powers and duties, including whether he needs to have a greater on-site presence and the amount of additional compensation that would be appropriate," and that the "Court expects the additional compensation, including travel expenses and costs associated with any assistants, not to exceed \$150,000 annually" and the order further stated that any disputes regarding the contract modifications will be resolved by the Court (Order Modifying Compliance Oversight Model, Feb. 12, 2014).

Robert S. Warshaw advised the City that he desired a separate contract for the compliance director services, and identified Warshaw & Associates Inc. as the new business entity to enter into the separate contract. Robert S. Warshaw further advised the City that the \$150,000 for the one-year term was an acceptable amount to perform the compliance director services, provided that the City agreed to cover the costs of insurance (liability and errors and omissions) and business license taxes. City Administration determined that an additional amount up to a maximum of \$15,000 was sufficient to cover the aforesaid costs of insurance and business license taxes and therefore sought approval for the City Administrator to execute a separate contract with Warshaw & Associates Inc. for an amount not to exceed \$165,000 for the one-year term of the compliance director services agreement. In April 2014, the Council waived advertising and competitive processes and passed a resolution authorizing a one-year contract with Warshaw & Associates Inc. for compliance director professional services in an amount not to exceed \$165,000, with an expiration date of January 20, 2015.

ANALYSIS

Renewal of the contracts with the Compliance Director and the Independent Monitor for up to one year provides the City the time needed to satisfy the Court's requirements. Under the oversight of the Compliance Director and the Independent Monitor, the City will work with the Court, the Parties, and the Oakland community to establish the required compliance and sustainability record. Therefore, it is advisable that the aforementioned contracts be approved so that the City and OPD may continue to work with the current Monitor and Compliance Director who are already familiar with the police reforms and compliance achieved to date by the OPD.

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Oakland Municipal Code Section 2.04.051.B authorizes the City Council to dispense with competitive advertising and RFQ/RFP requirements upon a finding it is in the City's best interests to do so. The City in the past conducted the required competitive processes for the Independent Monitor's contract, and extending these contracts will save the City time. It serves the City's interests to continue the Compliance Director and Independent Monitor's services under the existing contracts to avoid the delays that would be caused by the selection of new contractors who would require time to become familiar with the City's compliance record and the Court's requirements.

### **PUBLIC OUTREACH/INTEREST**

The City and the Oakland Police Department continue to work with City leaders, community representatives and other stakeholders on ways to establish better communication/understanding between Oakland police officers and the community; improve police-community relations; and enhance the integrity and professionalism of the Oakland Police Department.

### **COORDINATION**

The Office of Contracts and Compliance, the City Attorney's Office, and the Budget Office were consulted in preparation of this report.

### **COST SUMMARY/IMPLICATIONS**

The budgets for the two contracts that are being recommended are as follows:

- \$950,000 for the extension of the contract for monitoring services, to be drawn from the Miscellaneous Grants (2999), Office of the Chief of Police Org (101110), NSA Project (P398510), Agency Wide Administration Program (PS01).
- \$165,000 for the extension of the contract for compliance director services; funds to be drawn from the General Purpose Fund (1010), Office of the Inspector General (OIG) Org (101130), Compliance Director Remedial Action Plan Project (A468570), Agency Wide Administration Program (PS01).

### **SUSTAINABLE OPPORTUNITIES**

**Economic:** Adopting the police reforms and best practices in police management and enforcement will result in a highly professional police organization. Over time these goals will increase public confidence in the OPD and improve community relations. It will also reduce the liability costs resulting from police claims, lawsuits, and litigation payouts, and the impact that these cases have on the morale and wellbeing of city employees.

**Environmental:** There are no environmental opportunities.

Henry L. Gardner, Interim City Administrator

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**Social Equity:** A highly professional and well trained police organization is better able to provide police services, protect the community from crime, and ensure public confidence.

For questions regarding this report, please contact Kristin Burgess-Medeiros, Police Auditor, at (510) 238-7097.

Respectfully submitted,



SEAN C. WHENT  
Chief of Police  
Oakland Police Department

Prepared by:  
Kristin Burgess-Medeiros  
Police Auditor  
Office of Inspector General

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*Robert V. Sileo*  
City Attorney

# OAKLAND CITY COUNCIL

RESOLUTION No. \_\_\_\_\_ C.M.S.

**Resolution Authorizing up to a One-Year (Through January 20, 2016) Extension of the Professional Services Agreement Between the City of Oakland and Police Performance Solutions, LLC. for Monitoring and Technical Assistance Services in *Delphine Allen v. City Of Oakland*, in an Amount Not To Exceed Nine Hundred Fifty Thousand Dollars (\$950,000) and for a Total Contract Price Not to Exceed Four Million Two Hundred Ninety Four Thousand Three Hundred Twenty Dollars (\$4,294,320) and Waiving the Competitive Advertising and Request for Proposals/Qualifications Requirements**

**WHEREAS**, in 2000 a number of plaintiffs filed *Delphine Allen et al. v. City of Oakland* (United States District Court Case no. C00-4599 TEH), which commonly is referred to as the *Riders* case, alleging that four Oakland police officers violated their civil rights by planting evidence, committing perjury and using excessive force; and

**WHEREAS**, the City terminated the four officers; an arbitrator upheld the terminations of the three officers who challenged their terminations; and

**WHEREAS**, the Alameda County District Attorney dismissed numerous cases because the officers' testimony was unreliable; released a number of the plaintiffs who were in custody and criminally prosecuted three of the officers; and a fourth officer fled and has not been located; and

**WHEREAS**, in 2003 the City Council approved the Negotiated Settlement Agreement ("NSA") to resolve the *Riders* case and the Court issued an order approving the NSA and retained jurisdiction to oversee compliance; and

**WHEREAS**, the NSA requires that the City institute police reforms to ensure that Oakland police officers exercise their powers and perform their duties in compliance with constitutional standards and that the parties to the NSA work with an independent monitor who would help the Court oversee compliance; and the parties subsequently executed a Memorandum of Understanding ("MOU") and an Amended Memorandum of Understanding ("AMOU") that superseded the NSA and the City continues to implement the remaining compliance tasks; and

**WHEREAS**, in 2009 the Oakland Police Department selected Robert S. Warsaw/Police Performance Solutions, LLC (formerly Alexandria Group of MPRI) to serve as independent monitor under the NSA/MOU in accord with the City's contract procedures and laws, and in December 2009 the City Council approved the two-year

contract which expired on January 20, 2012 in the amount of \$1,500,000; and

**WHEREAS**, in June 2010 the City Council approved a resolution presented by the City Administrator increasing the budget amount of the contract with Robert S. Warshaw/Police Performance Solutions, LLC. by the amount of \$100,320 to cover technical assistance services; and

**WHEREAS**, in June 2011 the City Council waived advertising and competitive processes and approved a 2-year extension of the contract with Robert S. Warshaw/Police Performance Solutions LLC for \$1,684,000, which expired on January 20, 2014; and

**WHEREAS**, in February 2012 the City Council approved a resolution presented by the City Administrator increasing the budget amount of the contract with Robert S. Warshaw/Police Performance Solutions, LLC. by the amount of \$100,000 to cover technical assistance services; and

**WHEREAS**, in December 2013 the City Council waived advertising and competitive processes and approved a one-year extension of the contract with Robert S. Warshaw/Police Performance Solutions LLC. for \$910,000 which will expire on January 20, 2015; and

**WHEREAS**, the City Administrator has recommended that the City Council authorize extension of the contract with Robert S. Warshaw/Police Performance Solutions LLC. for monitoring and technical assistance services for up to one year, and that the Council waive advertising and competitive processes; and

**WHEREAS**, sufficient funds have been budgeted in Miscellaneous Grants (2999), Office of the Chief of Police Org (101110), NSA Project (P398510), Agency Wide Administration Program (PS01) to pay for this contract; and

**WHEREAS**, Oakland Municipal Code sections 2.04.050 and 2.04.051 authorize the City Council to waive advertising and competitive processes for awarding contracts upon a finding that it is in the City's best interests and, here, continuing the contract with Robert S. Warshaw/Police Performance Solutions LLC. serves the City's interests by retaining monitors who are familiar with compliance standards and OPD operations and dispensing with the lengthy process of advertising, competitively bidding and selecting a new monitoring team; and

**WHEREAS**, the City lacks personnel to perform the work, and the City Council finds and determines that the services contract authorized hereunder is of a professional, scientific or technical and temporary nature, and shall not result in the loss of employment or salary by any person having permanent status in the competitive services; now therefore be it

**RESOLVED:** That the Council authorizes the City Administrator to execute an agreement extending the contract with Robert S. Warshaw/Police Performance Solutions LLC. for monitoring services for up to one year for an amount not to exceed \$950,000 for one year, i.e., no longer than January 20, 2016, provided that the City Administrator may amend the scope of services and/or provide for earlier termination of the contract if appropriate so long as the contract amount for the extended term does not exceed \$950,000; and be it

**FURTHER RESOLVED:** That pursuant to Oakland Municipal Code, Chapter 2.04, sections 2.04.050 and 2.04.051 and for the reasons stated above and in the City Administrator's report accompanying this resolution, the City Council finds and determines that it is in the best interests of the City to waive the advertising and RFP/RFQ competitive process, and hereby waives these requirements; and be it

**FURTHER RESOLVED:** That funds have been budgeted in Miscellaneous Grants (2999), Office of the Chief of Police Org (101110), NSA Project (P398510), Agency Wide Administration Program (PS01); and be it

**FURTHER RESOLVED:** That the City Administrator or designee is authorized to carry out all administrative and financial actions, including negotiations, certifications, assurances, and related actions as necessary to execute, amend, or extend the contract, except for increasing the contract amount, without returning to the City Council; and be it

**FURTHER RESOLVED:** That in accordance with Article IV, section 401(6) of the City Charter, agreements authorized by this resolution shall be approved by the City Attorney for form and legality before execution and a copy of fully executed agreements shall be placed on file with the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID  
and PRESIDENT GIBSON MCELHANEY

NOES-  
ABSENT-  
ABSTENTION-

ATTEST: \_\_\_\_\_  
LaTonda Simmons  
City Clerk and Clerk of the  
Council of the City of Oakland, California



FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

# OAKLAND CITY COUNCIL

2015 JAN -8 PM 4: RESOLUTION No. \_\_\_\_\_ C.M.S.

**Resolution Authorizing up to a One-Year (Through January 20, 2016) Extension of the Professional Services Agreement Between the City of Oakland and Warshaw & Associates Inc., to Provide Compliance Director Services to the City in *Delphine Allen v. City Of Oakland*, in an Amount Not To Exceed One Hundred Sixty Five Thousand Dollars (\$165,000) and for a Total Contract Amount Not to Exceed Three Hundred Thirty Thousand Dollars (\$330,000) and Waiving the Competitive Advertising and Request for Proposals/Qualifications Requirements**

**WHEREAS**, in 2000 a number of plaintiffs filed *Delphine Allen et al. v. City of Oakland* (United States District Court Case no. C00-4599 TEH), which commonly is referred to as the *Riders* case, alleging that four Oakland police officers violated their civil rights by planting evidence, committing perjury and using excessive force; and

**WHEREAS**, the City terminated the four officers; an arbitrator upheld the terminations of the three officers who challenged their terminations; and

**WHEREAS**, the Alameda County District Attorney dismissed numerous cases because the officers' testimony was unreliable; released a number of the plaintiffs who were in custody and criminally prosecuted three of the officers; and the fourth officer fled and has not been located; and

**WHEREAS**, in 2003 the City Council approved the Negotiated Settlement Agreement ("NSA") to resolve the *Riders* case and the Court issued an order approving the NSA and retained jurisdiction to oversee compliance with the NSA; and

**WHEREAS**, the NSA requires that the City institute police reforms to ensure that Oakland police officers exercise their powers and perform their duties in compliance with constitutional standards and that the parties to the NSA work with an independent monitor who would help the Court oversee compliance; and the parties subsequently executed a Memorandum of Understanding ("MOU") and an Amended Memorandum of Understanding ("AMOU") that superseded the NSA and the City continues to implement the remaining compliance tasks; and

**WHEREAS**, in 2009 the Oakland Police Department selected Robert S. Warshaw/Police Performance Solutions, Inc., (formerly Alexandria Group of MPRI) to serve as independent monitor for a two year period under the NSA/MOU in accord with the City's contract procedures and laws and the Council approved the

professional services agreement for two years in the amount of \$1,500,000; and

**WHEREAS**, in June 2010 the Council approved a resolution presented by the City Administrator increasing the budget amount of the contract with Robert S. Warsaw/Police Performance Solutions, Inc., by the amount of \$100,320 to cover technical assistance services; and

**WHEREAS**, in June 2011 the City Council waived advertising and competitive processes and approved a two-year extension of the contract with Robert S. Warsaw/Police Performance Solutions LLC for \$1,684,000, which expired on January 20, 2014; and

**WHEREAS**, in February 2012 the City Council approved a resolution presented by the City Administrator increasing the budget amount of the contract with Robert S. Warsaw/Police Performance Solutions, LLC. by the amount of \$100,000 to cover technical assistance services; and

**WHEREAS**, in December 2013 the City Council waived advertising and competitive processes and approved a one-year extension of the contract with Robert S. Warsaw/Police Performance Solutions LLC , for \$910,000 which will expire on January 20, 2015; and

**WHEREAS**, on December 12, 2012 the Court issued an Order providing for the appointment of a Compliance Director "to bring Defendants [City]) into sustainable compliance with the NSA and AMOU" and further providing that the Compliance Director would report directly to the Court and serve as the Court's agent; and on March 4, 2013 the Court appointed Thomas C. Frazier as the Compliance Director (*Order Appointing compliance Director, March 4, 2013, ECF No. 911; see also Order Re Compliance Director, December 12, 2012, ECF No. 885*); and

**WHEREAS**, on February 12, 2014 the Court issued an Order that stated that Thomas C. Frazier was terminated effective immediately as Compliance Director, and further stated that all authority previously vested in Mr. Frazier was transferred immediately to the court appointed Monitor, Robert S. Warsaw (*Order Modifying Compliance Oversight Model, Feb. 12, 2014, ECF No. 973*); and

**WHEREAS**, the Court's February 12, 2014 Order further stated that the Monitor shall discuss with the City "necessary modifications to his contract as a result of the expansion of his powers and duties, including whether he needs to have a greater on-site presence and the amount of additional compensation that would be appropriate", and that the "Court expects the additional compensation, including travel expenses and costs associated with any assistants, not to exceed \$150,000 annually and the order further stated that any disputes regarding the contact modifications will be resolved by the Court (*Order Modifying Compliance Oversight Model, Feb. 12, 2014, ECF No. 973*); and

**WHEREAS**, Robert S. Warshaw advised the City that he desired a separate contract for the compliance director services, and identified Warshaw & Associates Inc., as the new business entity to enter into the separate contract; and

**WHEREAS**, Robert S. Warshaw further advised the City that the \$150,000 for the one year term was an acceptable amount to perform the compliance director services, provided that the City agreed to cover the costs of insurance (liability and errors and omissions) and business license taxes; and

**WHEREAS**, the City Administration determined that an additional amount up to a maximum of \$15,000 was sufficient to cover the aforesaid costs of insurance and business license taxes and therefore sought approval for the City Administrator to execute a separate contract with Robert S. Warshaw for an amount not to exceed \$165,000 for the one-year term of the compliance director services agreement; and

**WHEREAS**, in April 2014 the City Council waived advertising and competitive processes and passed a resolution authorizing a one-year contract with Warshaw & Associates Inc. for compliance director professional services in an amount not to exceed \$165,000, with an expiration date of January 20, 2015; and

**WHEREAS**, sufficient funds have been budgeted in General Purpose Fund (1010), Office of the Inspector General (OIG) Org (101130), Compliance Director Remedial Action Plan Project (A468570), Agency Wide Administration Program (PS01); and

**WHEREAS**, Oakland Municipal Code sections 2.04.050 and 2.04.051 authorize the City Council to waive advertising and competitive processes required for contract awards upon a finding by the Council that it is in the City's best interests to do so; and

**WHEREAS**, the compliance director services must be performed by an independent and neutral court appointee and therefore cannot be performed by City personnel; and the contract authorized hereunder is of a professional, scientific or technical and temporary nature, and shall not result in the loss of employment or salary by any person having permanent status in the competitive services; now, therefore, be it

**RESOLVED:** That the Council authorizes the City Administrator to execute an agreement extending the contract with Warshaw & Associates Inc. for compliance director services for up to one year for an amount not to exceed \$165,000, i.e., no longer than January 20, 2016, provided that the City Administrator may amend the scope of services and/or provide for earlier termination of the contract if appropriate; and be it

**FURTHER RESOLVED:** That pursuant to Oakland Municipal Code, Chapter 2.04, sections 2.04.050 and 2.04.051 and for the reasons stated above and in the City Administrator's report accompanying this resolution, the Council finds and determines that it is in the best interests of the City to waive the advertising and RFP/RFQ competitive process, and hereby waives these requirements; and be it

**FURTHER RESOLVED:** That funds have been budgeted in General Purpose Fund (1010), Office of the Inspector General (OIG) Org (101130), Compliance Director Remedial Action Plan Project (A468570), Agency Wide Administration Program (PS01); and be it

**FURTHER RESOLVED:** That the City Administrator or designee is authorized to carry out all administrative and financial actions, including negotiations, certifications, assurances, and related actions as necessary to execute, amend, or extend the contract, except for increases in the contract amount, without returning to the City Council; and be it

**FURTHER RESOLVED:** That in accordance with Article IV, section 401(6) of the City Charter, agreements authorized by this resolution shall be approved by the City Attorney for form and legality before execution and a copy of fully executed agreements shall be placed on file with the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

AYES – BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID and PRESIDENT GIBSON MCELHANEY

NOES –  
ABSENT –  
ABSTENTION –

ATTEST: \_\_\_\_\_

LaTonda Simmons  
City Clerk and Clerk of the  
Council of the City of Oakland, California