



AGENDA REPORT

TO: DEANNA J. SANTANA
CITY ADMINISTRATOR

FROM: Howard A. Jordan
Chief of Police

SUBJECT: Renne Sloan Holtzman Sakai, LLP
Second Contract Amendment

DATE: February 5, 2013

City Administrator Approval *Deanna J. Santana* Date *2/18/13*

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Staff recommends that the Council approve a resolution authorizing the City Administrator or her designee to amend the contract with Renne Sloan Holtzman Sakai, LLP for administrative investigations of police misconduct complaints resulting from Occupy Oakland events in the City of Oakland. The amendment will increase the contract from one hundred twenty thousand dollars (\$120,000) to one hundred forty five thousand dollars (\$145,000) for additional investigative work in a high profile Occupy Oakland administrative investigation resulting from issues raised during the Skelly Hearing, and to prepare for arbitration, should the case be appealed to arbitration.

EXECUTIVE SUMMARY

Since October 25, 2011, the Oakland Police Department Internal Affairs Division has received numerous misconduct complaints against members of the Oakland Police Department (OPD) as a result of Occupy Oakland protests and events. Due to the volume, sensitivity and complexity of these complaints the need existed to increase the Department's investigative capacity to ensure compliance with the California Government Code section 3304 deadline for imposing discipline.

On May 1, 2012, Judge Thelton Henderson in the case of Allen v. City of Oakland, et al., ordered the City to provide a specific plan on how it would address all outstanding internal investigations stemming from Occupy Oakland activities prior to December 31, 2011, including the completion of all investigations within the 3304 deadline. The City's plan, which was adopted by the Court on June 18, 2012 with certain modifications, included the hiring of outside investigators and law firms to complete the most high profile and complex investigations.

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Renne Sloan Holtzman Sakai, LLP was one of the law firms hired to conduct investigations of police misconduct and the firm was assigned one of the most complex and high profile cases. The original contract amount was \$100,000, which was increased to \$120,000 on August 28, 2012 (Resolution No. 84022 C.M.S.) during the Council/Mayor Summer Recess Agenda because of additional investigative work needed to complete a thorough investigation. The investigation required review of numerous hours of video, contact with multiple outside agencies whose officers were potential witnesses to the incident, and many interviews with OPD personnel and civilian witnesses.

As a result of the investigation by Renne Sloan Holtzman Sakai, LLP, an officer was sustained for misconduct and a Skelly Hearing was held. For the information of Council, a Skelly Hearing is required when an employer seeks to deprive a civil service employee of pay. The employee must be provided an opportunity to respond to the proposed discipline. During the Skelly Hearing, issues were raised requiring Renne Sloan Holtzman Sakai, LLP to conduct additional investigative work and clarification. Also, additional work by the firm will be necessary in the event the case is appealed to arbitration. Specifically, the investigator will need to review the case, prepare for the arbitration hearing with the City's attorney on the case, and serve as a key witness at the hearing. If the investigator finds that the issues raised during the Skelly Hearing do not alter her original conclusions, then there is little reason to doubt that the case will go to arbitration. Therefore, the City Administrator seeks Council's authority to increase the contract with Renne Sloan Holtzman Sakai, LLP in the amount of \$25,000, for a total contract amount not to exceed \$145,000.

OUTCOME

Increasing the contract amount will ensure that the investigator is able to review and evaluate arguments made by the subject officer and prepare for and testify at the hearing in the event the case proceeds to arbitration.

BACKGROUND / LEGISLATIVE HISTORY

On October 25, 2011, the City removed the initial Occupy Oakland encampment from Frank Ogawa Plaza which resulted in several protests, a general strike, and a port shut down. During the course of these Occupy events, numerous misconduct complaints were filed against members of the OPD. In order to impose discipline, state law requires internal investigations of misconduct complaints to be completed within 365 days. Per the Court Order dated May 1, 2012, Judge Thelton Henderson required the City to submit a plan for completing the investigations stemming from Occupy Oakland activities, to include provisions for completion of all investigations within the California Government Code section 3304 deadline. The City's plan included the use of outside private investigators and law firms to conduct the most high profile and complex investigations.

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The City conducted a competitive solicitation process (Request For Proposals) for investigative services to conduct administrative investigations of misconduct complaints stemming from Occupy Oakland activities. Five firms were selected:

- Renne Sloan Holtzman Sakai, LLP
- Burke Williams Sorenson, LLP
- DR Associates International
- Belcher Ehle Medina & Associates, Inc.
- Michael Glenn Investigations

Oakland Municipal Code Section 2.04.020 "Authority of the City Administrator" states that the City Administrator shall have authority to bind the City by written contract or purchase order without previous specific action of the Council for purchases of supplies and services or a combination up to one hundred thousand dollars in any single transaction or term agreement and/or for the purchase of Professional Services up to one hundred thousand dollars (\$100,000.00) in any single transaction or term agreement. The City Administrator exercised that authority in response to the Court Order and the critical time sensitive and complex needs generated by the actions and events related to Occupy Oakland. Each contractor was awarded a contract for a not to exceed amount of \$100,000.

The City executed five contracts to conduct administrative misconduct investigations; each contract was for a not to exceed amount of \$100,000. At contract execution in June 2012, Renne Sloan Holtzman Sakai, LLP was assigned two very complex cases requiring a significant number of interviews and fact gathering effort. On August 28, 2012, during the Council/Mayor Summer Recess Agenda, their contract was increased in the amount of \$20,000 for a not to exceed amount of \$120,000 due to additional work required to complete the assigned cases.

Additional work is required on one of the cases assigned to Renne Sloan Holtzman Sakai, LLP, resulting from issues raised during the Skelly Hearing. Further, additional work will be required in the event that the case is appealed to arbitration, including preparing for the arbitration, meeting with counsel for the City, and serving as a key witness. Therefore, the City Administrator seeks Council's authority to increase their contract in the amount of \$25,000, for a total contract amount not to exceed \$145,000.

ANALYSIS

An extraordinary number of misconduct complaints were generated from Occupy Oakland protests, marches, and general strikes. Although, the City did not have the capacity to investigate many of the complaints within the Negotiated Settlement Agreement (NSA) required timelines, additional investigative capacity was necessary to ensure the investigations were completed within the State mandated deadlines. Therefore, the City hired five contractors (three

private investigators and two law firms) to increase the capacity needed to complete investigations stemming from Occupy Oakland activities.

The City requires additional services from Renne Sloan Holtzman Sakai, LLP, one of the two law firms hired to perform misconduct investigations.

PUBLIC OUTREACH/INTEREST

It is in the City's best interest and that of the Oakland residents to ensure that all complaints are investigated thoroughly and objectively.

COORDINATION

Other City Agencies affiliated with this report include: The Office of Contracts and Compliance, the City Attorney's Office, the Budget Office, and the Office of the City Administrator.

COST SUMMARY/IMPLICATIONS

AMOUNT OF RECOMMENDATION/COST OF PROJECT: \$145,000.00

SOURCE OF FUNDING

Funds for this contract shall be drawn from General Fund 1010, Organization 101120, Account 54919, Project 0000000 and Program PS02.

SUSTAINABLE OPPORTUNITIES

Economic: Investigating citizen complaints and holding police personnel accountable for violations of the law and serious misconduct increases public confidence and improves public relations with the community, and reduces liability and risk for the City.

Environmental: There are no environmental opportunities.

Social Equity: Both citizens and our sworn personnel deserve to have a Police Department that provides highly professional services in ensuring the public safety of the residents of Oakland. Complaints filed against police personnel must be investigated thoroughly and timely to ensure public confidence and good relations with the community.

For questions concerning this report, please contact Deputy Chief Sean Whent at (510) 238-3568.

Respectfully submitted,



HWJ

Howard A. Jordan
Chief of Police

Prepared by:
Kristin Burgess
Policy Program and Performance Auditor
Office of Inspector General

FILED
OFFICE OF THE CITY CLERK
OAKLAND

OAKLAND CITY COUNCIL

Arnold S. Sakai
City Attorney

2012 FEB 27 PM 4:40 RESOLUTION No. _____ C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO AMEND THE CONTRACT WITH RENNE SLOAN HOLTZMAN SAKAI, LLP TO COMPLETE ADDITIONAL INVESTIGATION-RELATED WORK ON POLICE MISCONDUCT CLAIMS RESULTING FROM OCCUPY OAKLAND PROTEST INCIDENTS, INCREASING THE BUDGET BY TWENTY FIVE THOUSAND DOLLARS (\$25,000) FOR A TOTAL CONTRACT AMOUNT OF ONE HUNDRED FORTY-FIVE THOUSAND DOLLARS (\$145,000)

WHEREAS, the City has received numerous police misconduct complaints related to Occupy Oakland protest incidents which the City must complete within the timeline provided in California Government Code Section 3304 (Government Code 3304); and

WHEREAS, the Court in *Allen v. City of Oakland, et al.*, issued an order on June 18, 2012 which mandates that all outstanding internal investigations stemming from Occupy Oakland activities prior to December 31, 2011 be completed 60 days in advance of the Government Code 3304 deadline or within 120 days of the date of the order for cases in which the Government Code 3304 period is tolling; and

WHEREAS, the City lacks sufficient qualified personnel to perform the work and needs additional capacity to conduct the investigations and ensure they are completed thoroughly and within required timelines; and

WHEREAS, the City Council finds and determines that the services authorized hereunder are professional, scientific or technical in nature, are temporary, and shall not result in the loss of employment or salary by any person having permanent status in the competitive services; and

WHEREAS, under the contract authority of the City Administrator pursuant to Oakland Municipal Code Section 2.04.020, and following an RFP competitive process, the City entered into a contract with Renne Sloan Holtzman Sakai, LLP, for \$100,000 in June 2012 to complete administrative investigations related to Occupy Oakland police misconduct complaints in order to meet the legal and court order requirements related to these investigations; and

WHEREAS, on August 16, 2012, during the Council/Mayor Summer Recess Agenda, a contract amendment was approved to increase the original contract by \$20,000 for a not to exceed amount of \$120,000 (Resolution No. 84022 C.M.S., dated August 28, 2012) for additional investigative work necessary to complete a thorough investigation; and

WHEREAS, under the existing contract Renne Sloan Holtzman Sakai, LLP is required to conduct the administrative investigation of two complex and high profile cases, one of which resulted in an officer being sustained for misconduct leading to a Skelly Hearing, and additional work is needed resulting from issues raised during the Skelly Hearing, and preparation for arbitration, should the cases go to arbitration; and

WHEREAS, the cost of the additional work is \$25,000

WHEREAS, it is in the best interests of the City to amend this contract in order for City to achieve the most thorough and object investigation; and

WHEREAS, sufficient funds have been budgeted for this contract by the Oakland Police Department, Fund 1010, Organization 101120, Account 54919, Project 0000000, Program PS02; now therefore be it

RESOLVED: That the City Administrator is authorized to increase the budget for Renne Sloan Holtzman Sakai, LLP in the amount of \$25,000 for a total contract amount of \$145,000, to review, prepare and respond to the Skelly report, and prepare for arbitration, should the cases go to arbitration; and be it

FURTHER RESOLVED: That the City Administrator or her designee is authorized to take all actions and carry out any financial actions necessary to fulfill the intent of this Resolution and accompanying Report, including completing all required negotiations, certifications, assurances, and documentation required to accept, modify, extend and/or amend this contract for services, except for any increase in the contract amount, without returning to the City Council; and be it

FURTHER RESOLVED: That the City Administrator or her designee will provide regular updates to the City Council concerning changes or modifications to the contract with Reme Sloan Holtzman Sakai, LLP; and be it

FURTHER RESOLVED: That the City Administrator or her designee shall ensure that copies of fully executed contracts and amendments are placed on file with the Office of the City Clerk; and be it

FURTHER RESOLVED: That the City Attorney shall review and approve, for form and legality, any and all contract amendments and modifications.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF and PRESIDENT KERNIGHAN

NOES-

ABSENT-

ABSTENTION-

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