

 Rocio V. Sierra
 City Attorney

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 OFFICE OF THE CITY CLERK
 OAKLAND

2014 MAR 20 PM 3:05

OAKLAND CITY COUNCIL

 RESOLUTION No. 84911 C.M.S.

Resolution Authorizing The City Administrator To Execute A Professional Services Contract With Warshaw & Associates Inc. To Provide Compliance Director Services Regarding The Negotiated Settlement Agreement In Delphine Allen v. City Of Oakland For One Year, In An Amount Not To Exceed One Hundred Sixty Five Thousand Dollars (\$165,000), And Waiving The Competitive Advertising And Request For Proposals/Qualifications Process

WHEREAS, in 2000 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 Oakland police officer violated their civil rights by planting evidence, committing perjury and using excessive force; and

WHEREAS, the City terminated the officers, an arbitrator upheld the termination of the three officers who filed grievances, 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 officers; and

WHEREAS, in 2003 the City Council approved the Negotiated Settlement Agreement 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 required that the City institute a number of reforms to assure compliance with constitutional standards and that the parties 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subsequently executed a Memorandum of Understanding ("MOU") and an Amended Memorandum of Understanding ("AMOU") that superseded the NSA and the City continues to implement the remaining compliance tasks; and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 known as Alexandria Group of MPRI) to serve as independent monitor for a two year period under the NSA 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, at the request of the Oakland Police Department the City Administrator presented a Resolution which was approved by Council in June 2010 increasing the budget amount of the contract with Robert S. Warshaw/Police Performance Solutions, Inc., in the amount of \$100,320 for the provision of additional technical assistance to OPD; and

WHEREAS, in June 2011 the City Council waived advertising and competitive processes and approved a two-year extension of the monitor's contract for \$1,684,000, and the Council subsequently approved a one-year extension of the monitor's contract, for the period of January 21, 2014 to January 20, 2015 for \$910,000, for monitoring services related to compliance with the NSA/AMOU; 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 terminated the appointment of Thomas C. Frazier as Compliance Director, transferred all authority previously vested in Mr. Frazier to the court appointed Monitor, Robert S. Warsaw, until otherwise ordered (*Order Modifying Compliance Oversight Model, Feb 12, 2014, ECF No. 973*); and

WHEREAS, the Court's February 12, 2014 order further ordered the Monitor to 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 declared that the "Court expects the additional compensation, including travel expenses and costs associated with any assistants, not to exceed \$150,000 annually and provided 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 has advised the City that he desires a separate contract for the compliance director services, and has identified Warshaw & Associates Inc., as the new business entity to enter into the separate contract; and

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

WHEREAS, the City Administration has determined that an additional amount up to a maximum of \$15,000 will be sufficient to cover the aforesaid costs of insurance and business license taxes and therefore seeks approval for the City Administrator to execute a separate contract with Robert S. Warshaw for an amount not to exceed \$165,000; and

WHEREAS, sufficient funds have been budgeted in FY 2013-2015: 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 Section 2.04.051.B authorizes the City Council to dispense with city competitive process for awarding professional services contracts upon a finding that it is in the City's best interests to do so and, here, the Court has ordered the City to modify the contract with Robert S. Warshaw for the additional compliance director services; and

WHEREAS, by their very nature compliance director services cannot be performed by City personnel because those services must be performed by an entity/Individual who is independent and therefore the City does not have any personnel who can perform the court-ordered work of an independent Compliance Director, and these services are temporary and are professional, scientific or technical in nature, and will 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 City Administrator or designee is authorized to execute a contract with Warshaw & Associates Inc., for compliance director services to expedite compliance with the NSA/AMOU in an amount not to exceed \$165,000.00 for a one year period commencing on February 12, 2014 and ending on January 20, 2015; 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 the proposed FY 2013-2015 budget: 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 this 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, APR 01 2014

PASSED BY THE FOLLOWING VOTE:

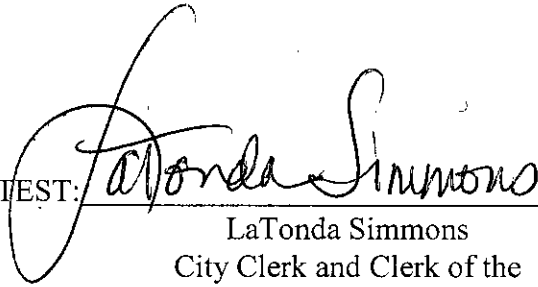
AYES – BROOKS, ~~WILLIAMS~~, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF
and PRESIDENT KERNIGHAN - 7

NOES – Gallo - 1

ABSENT – Ø

ABSTENTION – Ø

ATTEST:



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