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*As Amended and Approved by City Council January 20, 2015

OAKLAND CITY COUNCIL

RESOLUTION No. 85370 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subsequently executed a Memorandum of Understanding ("MOU") and an Amended Memorandum of Understanding ("AMOU") that superseded the NSA and the City continues to implement the remaining compliance tasks; and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. Warshaw/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. 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, 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 contract 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 the City of Oakland seeks to end the use of the police Internal Affairs Division process to investigate civilian employees in the police department and requests that the Compliance Director report back to the City as soon as possible regarding what steps, if any, must be taken in order to move oversight of civilian employees to the civilian Human Resources oversight system and directing the City Administrator or his designee to deliver a copy of this resolution to the Compliance Director; 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.

JAN 20 2015

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES – BROOKS, CAMPBELL WASHINGTON, ~~GALLO~~, GUILLEN, KALB, KAPLAN,
REID and PRESIDENT GIBSON MCELHANEY – 7

NOES – Gallo - 1

ABSENT – 0

ABSTENTION – 0

ATTEST:



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

85370