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OAKLAND  
2012 JAN 10 PM 6:12

# AGENDA REPORT

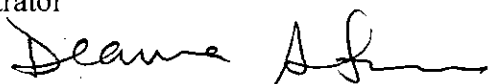
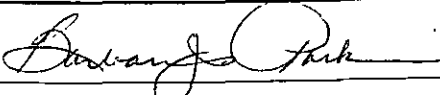
**TO:** Honorable City Council

**FROM:** Deanna J. Santana  
City Administrator

Barbara J. Parker  
City Attorney

**DATE:** January 10, 2013

**SUBJECT:** Court Ordered Expenditure Authority  
of the Court Appointed Compliance Director

City Administrator Approval		Date	1/10/2013
City Attorney Approval		Date	1/10/2013

## RECOMMENDATION

Report and Resolution Authorizing Expedited Purchasing of Goods and Services Directed by Court Appointed Compliance Director in Accordance with the United States Federal District Court's December 12, 2012 Order, to Assist the City in Achieving Compliance with the Negotiated Settlement Agreement ("NSA") and the Amended Memorandum of Understanding ("AMOU") in DELPHINE ALLEN, et al., v. CITY OF OAKLAND, et al.

Specifically, staff recommends that City Council approve a resolution:

- 1) waiving competitive advertising, bidding and request for proposals/qualifications purchasing processes set forth in Oakland Municipal Code Chapter 2.04;
- 2) waiving the Arizona Boycott Policy (Resolution No. 82727 C.M.S.);
- 3) authorizing the City Administrator to execute on behalf of the City contracts for the purchase of goods and services directed by the Compliance Director in an amount up to \$250,000.00 per contract, in order for the City to comply with the AMOU and the Court's December 12, 2012 order;
- 4) authorizing direct scheduling to Council of any NSA/AMOU compliance-related purchases that require Council approval;
- 5) establishing unlimited summer recess purchasing authority for the City Administrator for such purchases; and
- 6) directing the City Administrator to provide periodic reports to the City Council regarding the amounts, nature and purposes of purchases of goods and services made pursuant to the court's order.

Item: \_\_\_\_\_  
City Council  
January 22, 2013

## OUTCOME

Expedited purchasing, solicitation, approval and processing are required to carry out the mandatory requirements of the December Court Order. Approval of the above recommendations will expedite such procedures.

## BACKGROUND/ANALYSIS

In 2001, plaintiffs filed *Delphine Allen, et al. v. City of Oakland, et al.*, Case No. C 00-4599 TEH ("Riders case") in the United States Federal District Court ("Court") alleging that several Oakland police officers planted and fabricated evidence and engaged in other unconstitutional behavior. In 2003, to resolve the issues in the Riders case, the City Council approved a negotiated settlement agreement ("NSA") between the City and the plaintiffs requiring the City to implement reforms to address the Riders case. The City and plaintiffs subsequently entered into a 2009 Memorandum of Understanding ("MOU") and a 2011 amendment ("AMOU") that superseded the NSA.

In 2003, 2009, and 2011, the Court issued orders approving the NSA, the MOU and the AMOU, respectively, and retained jurisdiction to oversee compliance. In February, 2012 the Court set a hearing for December, 2012 on a motion to place the Oakland Police Department ("OPD") under receivership in order to complete the reforms in case. Plaintiffs filed a motion in October, 2012 asking the Court to order receivership and the City filed opposition papers in November, 2012. The Court assigned the matter to United States Magistrate Judge Nathanael M. Cousins for purposes of resolving the issues the plaintiffs' motion and the City's opposition raised. On December 12, 2012 the Court issued an order removing the hearing on the receivership motion from the Court's calendar and providing for a Court-appointed Compliance Director to assist the City in achieving compliance with the AMOU ("Order").

The Order mandates that the Compliance Director develop a compliance plan ("Compliance Plan") that includes a proposed budget for necessary expenditures for task compliance and further provides that such budget must be "included as part of the [Oakland Police Department] budget" and "mutually agreed to" by the Compliance Director and City. The order grants the Compliance Director authority to purchase goods and services necessary for the City to achieve compliance with the AMOU, including expenditure authority up to and including \$250,000.00 for each contract to purchase goods and services included in the Compliance Plan and the "not to exceed" budget mutually agreed to by the City and the Compliance Director or ordered by the Court ("Budget"). The Order further provides that proposed individual expenditures by the Compliance Director that exceed \$250,000.00 must comply with the City's applicable rules and regulations, including those set forth in Oakland's Purchasing Ordinance (Oakland Municipal Code, Chapter 2.04).

To timely and expeditiously comply with the Order, staff recommends that (1) the Council authorize the City Administrator to execute contracts for AMOU compliance-related purchases on behalf of the City in the amount of up to \$250,000 per contract directed by the Compliance Director and included in the Compliance Plan and Budget, (2) Council find that it is in the City's best interests to waive advertising, bidding and/or request for proposals/qualifications requirements for such purchases. In addition, staff recommends that the Council waive the City's Arizona Boycott Policy, set forth in Resolution 82728 C.M.S., which urges "City Departments . . . to the extent practicable, and in instances where there is no significant additional cost to the City or conflict with the law, to refrain from entering into any new or amended contracts to purchase goods or services from any company that is headquartered in Arizona," as the City may require services from firms based in Arizona. Finally, staff recommends that the Council establish a standing item on the City Council Agenda to expedite updates, reports and legislation pertaining to the Compliance Director's expenditures and actions pursuant to the Order and AMOU.

### COORDINATION

The City Administrator prepared this report in collaboration with Oakland City Attorney, City Controller and Purchasing Services, Oakland Police Department, and Contracts and Compliance.

### COST SUMMARY/IMPLICATIONS

The Court's December 12, 2012 Order grants the Compliance Director authority to expend funds to purchase goods and services necessary for the City to achieve compliance with the AMOU, including expenditure authority up to and including \$250,000 for each contract to purchase such goods and services included in the Compliance Plan and the "not to exceed" budget mutually agreed to by the City and the Compliance director or ordered by the Court and provides that such budget shall be within the approved budget for the Oakland Police Department. The City recognizes that the OPD budget is limited and that additional resources may need to be assigned from the General Fund Reserve. In such case, staff is prepared to work with the Compliance Director to advance recommendations, as needed, from this Fund for the City Council to consider.

In a previous Information Memorandum and in court declarations, staff stated that it anticipated that it would recommend that \$5 million be set aside for NSA compliance and crime fighting strategies. Specifically, the City Administrator stated the following in her declaration:

"As the Mayor and I issue the City's 5-Year Financial Plan (a plan that has not been issued since about 2003), we are recommending funding allocations to continue to rebuild and strengthen the OPD: two police academies per fiscal year for five years, which will result in attaining a sworn force of just over 800 (subject to Council approval); up to \$5,000,000 earmarked for strategic initiatives that

continue to address gaps that require focused work-plans and remedies (e.g. training, equipment, contracted services, limited-duration staffing, change management, etc.) to advance crime suppression and improved policing service; and, we will recommend to the City Council a contract amendment for the development of a Citywide Crime Reduction Plan to strategically tie together the many crime fighting efforts underway in Oakland.”

As noted in the above excerpt, this reflects the assumption that staff’s recommendation will be put forward for review by the City Council, aligning to City Charter obligations.

Below is the preliminary breakdown of AMOU related expenditures that are anticipated to result from previous Court Orders and/or additional expenditures (some of which are already recommended to the City Council). As noted in a December 4, 2012 Information Memorandum to the Mayor and City Council, this earmark serves two primary categories: 1) the partial projected cost of an existing litigation claim that the City is appealing for which a reserve does not exist and the potential payment is subject to further determination; and 2) the projected cost for potential additional AMOU compliance measures and improvements in police services to address crime fighting. Below are costs that the City can anticipate relative to Category (2), which are preliminary and subject to City Council consideration:

Potential NSA Compliance Measures/Improvements	Costs
Early Warning System (aka iPAS) Procurement	\$1,500,000 (estimated)
Early Warning System—Sierra System Contract	\$900,000
Court Order—Command Staff Training Needs Assessment	\$300,000
Estimated Department Wide Training Needs	\$1,000,000 (estimated)
CeaseFire—Project Implementation Costs	\$150,000 (estimated)
Alameda County Sheriff—Law Enforcement Service Contract	\$500,000 (estimated)
Crime Reduction Strategic Plan (Wasserman Contract Amendment)	\$TBD
December 13 <sup>th</sup> Federal Court Outcome	\$TBD
<b>TOTAL</b>	<b>\$4,350,000</b>

The recommended earmark of funds for these purposes allows the City to set aside funds to address either of the above categories even though the final costs cannot be determined at this time. As mentioned in the Information Memorandum, the amount is estimated low because there are other needs that exist with respect to the AMOU and/or crime fighting measures and it does not include the cost for Category 1. With respect to Category 2, the goal is to plan for these expenses without having to impact the existing OPD operating budget or rebalance the entire City budget. This also preserves the City Council required 7.5% reserve level. With respect to Category 2, given that the OPD has sustained a 25% reduction in sworn staff and 34% reduction in civilian staff over the past years, it is likely that additional investment in the OPD will be required to sustain compliance, as determined by the Federal Court.

Item: \_\_\_\_\_  
 City Council  
 January 22, 2013

**SUSTAINABLE OPPORTUNITIES**

*Economic:* There are no economic opportunities related to this action.

*Environmental:* There are no environmental opportunities related to this action.

*Social Equity:* This action speaks to the mandates of the December 12<sup>th</sup> court order in the Rider's case.

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

APPROVED FOR FORM AND LEGALITY

  
CITY ATTORNEY

2013 JAN 10 PM 6:12

## OAKLAND CITY COUNCIL

RESOLUTION NO: \_\_\_\_\_ C.M.S.

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**RESOLUTION AUTHORIZING EXPEDITED PURCHASING OF GOODS AND SERVICES DIRECTED BY COURT APPOINTED COMPLIANCE DIRECTOR IN ACCORDANCE WITH THE UNITED STATES FEDERAL DISTRICT COURT'S DECEMBER 12, 2012 ORDER, TO ASSIST THE CITY IN ACHIEVING COMPLIANCE WITH THE NEGOTIATED SETTLEMENT AGREEMENT("NSA") AND THE AMENDED MEMORANDUM OF UNDERSTANDING ("AMOU") IN DELPHINE ALLEN V. CITY OF OAKLAND BY:**

- 1) **WAIVING COMPETITIVE ADVERTISING, BIDDING AND REQUEST FOR PROPOSALS/QUALIFICATIONS PURCHASING PROCESSES SET FORTH IN OAKLAND MUNICIPAL CODE CHAPTER 2.04;**
- 2) **WAIVING THE ARIZONA BOYCOTT POLICY, RESOLUTION NO. 82727;**
- 3) **AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE ON BEHALF OF THE CITY CONTRACTS FOR THE PURCHASE OF GOODS AND SERVICES DIRECTED BY THE COMPLIANCE DIRECTOR IN AN AMOUNT UP TO \$250,000.00 PER CONTRACT IN ORDER FOR THE CITY TO COMPLY WITH THE AMOU AND THE COURT'S DECEMBER 12, 2012 ORDER;**
- 4) **AUTHORIZING DIRECT SCHEDULING TO COUNCIL OF ANY NSA/AMOU COMPLIANCE-RELATED PURCHASES THAT REQUIRE COUNCIL APPROVAL;**
- 5) **ESTABLISHING UNLIMITED SUMMER RECESS PURCHASING AUTHORITY FOR CITY ADMINISTRATOR FOR SUCH PURCHASES; AND**
- 6) **DIRECTING THE CITY ADMINISTRATOR TO PROVIDE PERIODIC REPORTS TO THE CITY COUNCIL REGARDING THE AMOUNTS, NATURE AND PURPOSES OF PURCHASES OF GOODS AND SERVICES MADE PURSUANT TO THE COURT'S ORDER**

**WHEREAS**, in 2001, plaintiffs filed *Delphine Allen, et al. v. City of Oakland, et al.*, Case No. C 00-4599 TEH ("Riders case") in the United States Federal District Court ("Court") alleging that several Oakland police officers planted and fabricated evidence and engaged in other unconstitutional behavior; and

**WHEREAS**, in 2003, to resolve the issues in the Riders case, the City Council approved the NSA between the City and the plaintiffs which required the City to implement reforms to address the Riders case; and

**WHEREAS**, the City and plaintiffs subsequently entered into a 2009 Memorandum of Understanding ("MOU") and a 2011 AMOU that superseded the NSA; and

**WHEREAS**, in 2003, 2009, and 2011, the Court issued orders approving the NSA, the MOU and the AMOU, respectively, and retained jurisdiction to oversee compliance; and

**WHEREAS**, on February 24, 2012 the Court set a hearing for December 13, 2012 on a motion to place the Oakland Police Department ("OPD") under receivership in order to complete the reforms to address the Riders case; and

**WHEREAS**, the plaintiffs filed a motion on October 4, 2012 asking the Court to order receivership and the City filed opposition papers on November 8, 2012; and

**WHEREAS**, the Court assigned the matter to United States Magistrate Judge Nathanael M. Cousins for purposes of resolving the issues the plaintiffs' motion and the City's opposition raised;

**WHEREAS**, on December 12, 2012 the Court issued an order removing the hearing on the receivership motion from the Court's calendar and providing for a Court-appointed Compliance Director to assist the City in achieving compliance with the AMOU; and

**WHEREAS**, the City of Oakland is fully committed to completing the reforms to achieve sustainable compliance and to faithfully facilitating compliance with the AMOU and the Court's December 12, 2012 order; and

**WHEREAS**, the Court's December 12, 2012 order mandates that the Compliance Director develop a compliance plan ("Compliance Plan") that includes a proposed budget for necessary expenditures for task compliance and the Court's order further provides that such budget must be "included as part of the [Oakland Police Department] budget" and "mutually agreed to" by the Compliance Director and City; and

**WHEREAS**, the Court's December 12, 2012 order grants the Compliance Director authority to purchase goods and services necessary for the City to achieve compliance with the NSA and AMOU, including expenditure authority up to and including \$250,000.00 for each contract to purchase goods and services included in the Compliance Plan and the "not to exceed" budget mutually agreed to by the City and the Compliance Director or ordered by the Court ("Budget"); and

**WHEREAS**, in order for the City to timely and expeditiously comply with the AMOU and the Court's December 12, 2012 order granting the Compliance Director the authority to expend up to \$250,000.00 for each contract to purchase goods and services included in the Compliance Plan and Budget, the City Administrator and the City Attorney recommend that the Council authorize the City Administrator to execute such contracts on behalf of the City; and

**WHEREAS**, the Court's December 12, 2012 order further provides that proposed individual expenditures by the Compliance Director that exceed \$250,000.00 must comply with the City's applicable rules and regulations, including those set forth in Oakland's Purchasing Ordinance (Oakland Municipal Code, Chapter 2.04); and

**WHEREAS**, in order to comply with the Court's December 12, 2012 order the City must establish expedited purchasing (i.e., public procurement) processes for goods and services that are necessary to facilitate compliance with the NSA and the AMOU; and

**WHEREAS**, Oakland Municipal Code, Chapter 2.04, sections 2.04.050 and 2.04.051 permit the Council to waive advertising, bidding and request for proposals/qualifications requirements for purchases of goods and services upon a finding that it is in the best interests of the City to do so; and

**WHEREAS**, the City Administrator has determined and recommends that the Council find that it is in the best interests of the City to waive advertising, bidding and request for proposals/qualifications requirements for all AMOU compliance-related purchases to expedite compliance with the AMOU and to reduce or eliminate undue delays in acquiring goods and services necessary for the City to fully comply with mandates of the NSA and AMOU; and

**WHEREAS**, the City's Arizona Boycott Policy, set forth in **Resolution 82728 C.M.S.**, urges "City Departments . . . to the extent practicable, and in instances where there is no significant additional cost to the City or conflict with the law, to refrain from entering into any new or amended contracts to purchase goods or services from any company that is headquartered in Arizona;" and

**WHEREAS**, the City Administrator recommends that the Council waive the Arizona Boycott Policy for all AMOU compliance-related goods and services purchases in order to expedite compliance with the NSA, AMOU and to comply with the Court's December 12, 2012 order; and

**WHEREAS**, the City Administrator, requests that the Council establish a standing item on the City Council Agenda that will allow updates, reports and legislation pertaining to the Compliance Director's expenditures and actions pursuant to the Court's December 12, 2012 order for the purpose of reducing time and to facilitate achieving the mandates of the AMOU expeditiously; now therefore be it

**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 advertising, bidding and request for proposals/qualifications requirements for all AMOU compliance-related purchases directed by the Compliance Director in accordance with the Court's December 12, 2012 order, and hereby waives the requirements; and be it

**FURTHER RESOLVED:** That for the reasons stated above and in the City Administrator's report, accompanying this resolution, the Council hereby waives the Arizona Boycott Policy, **Resolution No. 82727, C.M.S.**, for all AMOU compliance related purchases directed by the Compliance Director in accordance with the Court's December 12, 2012 order; and be it



**FURTHER RESOLVED:** That the City Administrator is authorized to execute on behalf of the City contracts for the purchase of goods and services directed by the Compliance Director in an amount up to \$250,000.00 per contract in order for the City to timely and expeditiously comply with the AMOU and the Court's December 12, 2012 order granting the Compliance Director the authority to direct such expenditures included in the Compliance Plan and "not to exceed" budget mutually agreed to by the City and the Compliance Director or ordered by the Court; and be it

**FURTHER RESOLVED:** That the Council hereby authorizes direct scheduling to Council of purchases of goods and services made pursuant to the Court's December 12, 2012 order that require Council approval in order to facilitate compliance with said court order and the AMOU; and be it

**FURTHER RESOLVED:** That a standing item will be established on the regular Council Agenda allowing direct reporting to the Council of expenditures and other issues related to the AMOU and the Court's December 12, 2012, provided that reports must be submitted in compliance with the Brown Act and Sunshine Ordinance and that the City Administrator's Office and the City Attorney's Office will determine the title of the standing item; and be it

**FURTHER RESOLVED:** That the City Council authorizes the City Administrator to conduct all negotiations, applications, agreements, and related actions which may be necessary to ensure compliance with the Court's December 12, 2012 order and the Compliance Director's expenditure authority; and be it

**FURTHER RESOLVED:** That in accordance with Article IV, section 401(6) of the City Charter, agreements entered into under the authority of this Resolution and as required by the Court's December 12, 2012 order, shall be approved as to form and legality before they are executed by the City Administrator 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:

BROOKS, GALLO, KALB, KAPLAN, GIBSON McELHANEY, REID, SCHAAF and PRESIDENT KERNIGHAN

AYES -

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council of  
the City of Oakland, California