

CITY OF OAKLAND

AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

To: Office of the City Administrator
Attn: Deborah Edgerly
From: Police Department
Date: December 18, 2007

2007 DEC -6 PM 5:42

Re: **A Report and Proposed Resolution Authorizing the City Administrator or Her Designee, on Behalf of the City of Oakland, to 1) Extend the Five-Year Contract with the Independent Assessment & Monitoring, LLP, to Continue Monitoring the Police Department's Reforms Required By The Negotiated Settlement Agreement (NSA) for two additional years from January 21, 2008 to January 20, 2010 for an Additional Cost of One Million Eight Hundred Thousand Dollars (\$1,800,000.00) for a Total Contract Amount Not to Exceed (\$5,019,208.92); 2) Waive the Competitive Bid Process; And 3) Appropriate \$ 54,000 to Cover the City-mandated 3% Contract Assessment Fee For This Agreement**

SUMMARY

On March 19, 2007, the United States District Court issued an Order extending the Negotiated Settlement Agreement (NSA) for two additional years, from January 21, 2008 until January 20, 2010. The same Court Order requires the City to retain the services of an independent team to monitor the City's progress in achieving the goals and objectives of the NSA and also requires the City to enter into negotiations with the existing independent monitoring team [Independent Assessment & Monitoring, LLP (IMT)]. On October 24, 2007 (following a series of negotiations with the IMT) the City reached an agreement to extend the IMT contract subject to the Council's approval.

Staff has prepared a resolution authorizing the City Administrator to 1) extend the five-year contract with the Independent Assessment & Monitoring, LLP, to continue monitoring the Police Department's reforms required by the Negotiated Settlement Agreement for two additional years, from January 21, 2008 to January 20, 2010, for an additional cost of \$1,800,000, for a total contract amount not to exceed \$5,019,208.92; 2) waive the competitive bid process; and 3) appropriate \$ 54,000 to cover the City-mandated 3% contract assessment fee for this agreement.

FISCAL IMPACT

Approval of this resolution will authorize the City to extend its professional services agreement with the IMT for two additional years, from January 21, 2008 to January 20, 2010; in an amount not to exceed \$1.8 million. The total contract amount will not to exceed \$5,019,208.92. During this two-year period, the IMT will continue to monitor the Police Department's efforts to comply with the NSA, audit the Department's work, and provide the technical assistance needed by the Department to reach compliance with the NSA. The Police Department has funds in its FY 07-09

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General Fund Baseline Budget that, with Council’s approval, can be allocated for this expenditure. Pursuant to the Council’s approval of this resolution, the funds will be drawn from General Fund (1010), Office of Inspector General’s Organization Code (101130), Miscellaneous Contract Services Account (54919), Independent Monitoring Team Project (P254210), and Agency-wide Administration Program (PS01).

Approval of this resolution will also authorize an additional appropriation of \$54,000 to the Police Department for the City-mandated 3% Contract Assessment Fee. The Department requests these funds be made available in the Police Department’s General Purpose Fund Budget General Fund (1010), Office of Inspector General’s Organization Code (101130), Miscellaneous Contract Services Account (54919), Independent Monitoring Team Project (P254210) and Agency-wide Administration Program (PS01).

BACKGROUND

On January 22, 2003, the City of Oakland and the Oakland Police entered into a five-year Negotiated Settlement Agreement to resolve the allegations of police misconduct raised in the civil case of *Delphine Allen, et. al., v. City of Oakland, et al.* The City entered into the NSA with the intent of promoting sound police practices, police integrity and utmost professionalism within the Department. Specifically, the NSA requires the Police Department to develop better policies and practices in four general areas: Use of Force, Internal Affairs Investigations, Field Training and Supervision, and Employee Intervention systems.

The NSA was scheduled to expire on January 22, 2008; however, on March 19, 2007 the Court extended the NSA for two additional years and required that the City to continue its work with an independent monitoring team during the period of the extension. In its Order, the Court expressly stated that it expected the City to “... *enter into new compensation negotiations with the IMT in good faith.*”

On July 15, 2003, the City selected the IMT as the outside monitoring team following a competitive process in which members of the then City Manager’s Office, the Oakland Police Department and the City Attorney’s Office participated (Resolution No. 77961 C.M.S).

KEY ISSUES AND IMPACTS

Through the allocation of significant resources, budget and staffing, the Oakland Police Department is now succeeding with the police reforms; however, significant work remains to be completed.

In March 2007, the Court recognized the recent successes of the City in furthering the reforms the Department committed to in 2003. In its March 2007 Order, the Court stated that the City was “*now succeeding and not failing in its attempts to comply with the NSA and improve the quality of policing in the City of Oakland.*” Nevertheless, citing to the City’s delays for the first two years in furthering the reforms, the Court extended the NSA for two additional years

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and required the City to continue its work with an independent monitoring team. The Court's March 2007 Order stated, "*Under the leadership of Chief Wayne Tucker and City Administrator Deborah Edgerly, Defendants have made significant progress during the past two years and continue to work in good faith to achieve full compliance with the NSA. Based on reports the Court has received from the IMT, it also appears that the administration of Mayor Ronald Dellums is fully committed to the NSA and its reforms. However, despite Defendants' solid efforts, they have not been able to achieve in two years what they were expected to achieve in four, nor would it have been realistic to expect them to have been able to do so. It is primarily because of Defendants' late start to the reform process that the Court has concluded that a full two-year extension of the NSA is necessary.*"

The City and the Department are dedicated to achieving actual practice compliance with all of the provisions of the NSA. To date, the Department has fully completed the first two stages in the process. The IMT has deemed the Department to be in policy compliance with all tasks of the NSA for the development of required policies of directives. The IMT has also found the Department to be in training compliance for providing training to all relevant personnel as required by the NSA. Moreover, the Department has been found in actual practice compliance with 14 of 51 provisions, and in partial compliance with another 17.

The Court and the IMT recognize the progress of the Department, however instituting procedural changes on such a large scale within the Department is going to take more time. Each procedure requires a period of assessment for evaluation, and (if needed) modification, to ensure that the reforms are not only operationally realistic and achievable, but also sustainable. Technology refinement is needed not only to meet the requirements of the NSA, but also the needs of the Department. The Department also needs to continue to develop its ability to self-assess, not only in the Office of Inspector General, but throughout the organization. The IMT is an essential part of this process.

Upon the Council's approval of this proposed resolution, the IMT will continue to monitor the Police Department's compliance with the NSA for the next two years.

PROJECT DESCRIPTION

In its March 2007 Order the Court stated, "*[d]uring the full length of the extension, the Monitor ... shall retain the same duties and scope of authority provided for in the NSA.*" The scope of services to be provided by the IMT under this contract includes:

- a. Review and assessment of modifications to policies or procedures related to the NSA;
- b. Review and assessment of OPD training of relevant personnel on any new or revised policy or procedure related to the NSA;
- c. Assessment of the implementation of required policies and procedures in accordance with the NSA by conducting original audits, reviews, and evaluations;

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- d. Conducting entrance and exit interviews; considering all relevant and appropriate information consistent with its audit protocols;
- e. Notification to OPD promptly if significant risks or serious liabilities are discovered during the course of an assessment;
- f. Providing sufficient details in audit reports to identify deficiencies and areas needing improvement in sufficient detail to enable the Department to initiate corrective action;
- g. Monitoring tasks previously found in compliance to confirm continuing compliance;
- h. Providing technical assistance within the scope of the NSA;
- i. Review of Use of Force and Misconduct Investigations;
- j. Recommend additional measures that should be taken with respect to future investigations in order to comply with the NSA;
- k. Review and evaluation of disciplinary actions or other interventions taken as a result of misconduct investigations;
- l. Maintenance of regular office hours on-site in Oakland in space provided by the City and Department;
- m. Accessibility to stakeholders, including the City, the Department, the Oakland Police Officers' Association, other relevant bargaining units, the community, and the Plaintiffs' Counsel by telephone and e-mail;
- n. Conducting monthly meetings that shall include representatives of the Department, City Attorney's Office, City Administrator's Office, Oakland Police Officers' Association, other relevant bargaining units, and Plaintiffs' Counsel;
- o. Conducting regular meetings with other stakeholders to the NSA, including Officers and Commanders, the Plaintiffs' Attorneys, elected officials, representatives from the offices of the District Attorney and Public Defender, and other members of the Oakland community;
- p. Communicating on a regular basis with the Court retaining jurisdiction over the NSA;
- q. Preparing for and attendance at any hearings or meetings as required by the Court;
- r. Making on-site observations related to auditing compliance, providing technical assistance or monitor compliance;

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- s. Issuance of semi-annual reports directed to the Parties and the Court reporting OPD's compliance with each task and addressing any areas of concern or commendation;
- t. Providing to the Parties a draft of the semi-annual report for review ten business days before issuing the report to determine if any factual errors have been made, and shall consider the Parties' responses;
- u. Making reports available to the general public, unless the Court orders that the reports or portions of any of the reports should remain confidential;

SUSTAINABLE OPPORTUNITIES

Economic: The City entered into the NSA with the intent of implementing reforms within the Department that would reflect the best practices and procedures for police management in the areas of supervision, use of force, professionalism, and accountability mechanisms. These reform measures should reduce liability costs and judgment payouts due to litigation. The Oakland City Attorney has confirmed a decline in the number of claims brought against the Police Department and the amount of pay outs in these claims. This decline in claims and the savings to the City have been reported to the Council in the City Attorney's Annual Reports.

Environmental: There are no environmental opportunities contained in this report.

Social Equity: Full implementation of the NSA, with the assistance and oversight of an independent monitoring team, will enhance the ability of the Police Department to continue its work to ensure public safety and to provide citizens with professional police services.

DISABILITY AND SENIOR CITIZEN ACCESS

There are no disability or senior citizen access issues related to this contract.

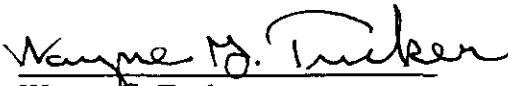
DISABILITY AND SENIOR CITIZEN ACCESS

There are no disability or senior citizen access issues related to this contract.

RECOMMENDATION / ACTION REQUESTED OF COUNCIL

Staff recommends acceptance of this report and approval of the proposed resolution authorizing the City Administrator to (1) extend the five-year contract with the Independent Assessment & Monitoring, LLP, to continue monitoring the police department's reforms required by the Negotiated Settlement Agreement, from January 21, 2008 to January 21, 2010, for an additional cost of one million eight hundred thousand dollars (\$1,800,000.00) for a total contract amount not to exceed five million nineteen thousand two hundred and eight dollars and ninety-two cents (\$5,019,208.92); (2) waive the competitive bid process; and (3) appropriate \$54,000 to cover the city-mandated 3% contract assessment fee for this agreement.

Respectfully submitted,


Wayne G. Tucker
Chief of Police

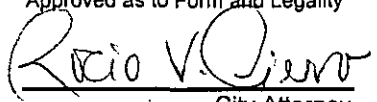
Prepared by:
Lt. Demetrio Lozares, II
Office of Inspector General

APPROVED AND FORWARDED TO
THE CITY COUNCIL:


Office of the City Administrator

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OAKLAND CITY COUNCIL


 City Attorney

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RESOLUTION NO. _____ C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR OR HER DESIGNEE ON BEHALF OF THE CITY OF OAKLAND TO 1) EXTEND THE FIVE-YEAR CONTRACT WITH THE INDEPENDENT ASSESSMENT & MONITORING, LLP, TO CONTINUE MONITORING THE POLICE DEPARTMENT'S REFORM EFFORTS REQUIRED BY THE NEGOTIATED SETTLEMENT AGREEMENT, FROM JANUARY 21, 2008 TO JANUARY 20, 2010 FOR AN ADDITIONAL COST OF ONE MILLION EIGHT HUNDRED THOUSAND DOLLARS (\$1,800,000) FOR A TOTAL CONTRACT AMOUNT NOT TO EXCEED \$ 5,019,208.92), 2) WAIVE THE COMPETITIVE BID PROCESS, AND 3) APPROPRIATE \$ 54,000 TO COVER THE CITY MANDATED 3% CONTRACT ASSESSMENT FEE FOR THIS AGREEMENT

WHEREAS, on or about January 21, 2003, the City Council approved the settlement reached in the case of *Delphine Allen, et al. vs. City of Oakland, et al* and the ensuing five-year Negotiated Settlement Agreement (hereinafter "NSA"); and

WHEREAS, the Oakland Police Department (hereinafter "OPD") has been subject to the reform requirements established in the NSA, and the Court has recently confirmed that the OPD is now complying with its obligations under the NSA and not failing; and

WHEREAS, on July 15, 2003, the City Council authorized a five-year contract with the current Independent Assessment & Monitoring Team (hereinafter "IMT") for monitoring, technical assistance and auditing services as required by the terms of the NSA; and

WHEREAS, notwithstanding the City's strong efforts to comply with the NSA over the past several years, the Court extended the NSA for two additional years, from January 21, 2008 to January 20, 2010, holding that the City needed more time to show compliance with the NSA due to the City's delays in 2003 and 2004, to make measurable progress in its compliance efforts; and

WHEREAS, in extending the NSA, the Court also required the City to enter into negotiations with the IMT to extend the contract and arrive at a new compensation package for its services during the period of the NSA extension; and

WHEREAS, the IMT has been providing monitoring services to OPD for the past five years, is intimately familiar with OPD's operations and personnel, and is fully informed about the achievements of the OPD in its reform efforts and the work that remains to be completed in order for OPD to become compliant with the NSA; and

WHEREAS, the IMT is committed to fulfilling its obligations under the NSA and to work cooperatively with OPD so as to help OPD become successful with its reform efforts; and

WHEREAS, conducting a competitive bid process would be detrimental to the City and potentially delay the City's efforts in reaching compliance with the NSA and, therefore, is in the best interests of the City to waive the competitive bid process; and

WHEREAS, the three percent (3%) City-mandated Contract Assessment Fee associated with the \$1.8 million contract totals \$54,000, and payment of said fee will result in a decrease to direct service provisions, and the Department hereby requests an appropriation of said fees; now, therefore be it

RESOLVED: That pursuant to the Oakland Municipal Code Title 2, Chapter 2.04, Articles 2.04.050.I.5 and 2.04.051.B, the City council finds and determines that it is in the best interests of the City to waive the competitive bid process and enter into a two-year extension of the City's contract with the IMT for monitoring, auditing and support services in an amount not to exceed \$1.8 million; and be it

FURTHER RESOLVED: That funds to execute the two-year extension of the IMT contract are included in the Department's FY 2007-09 baseline budget and shall be drawn from General Fund (1010), Office of Inspector General's Organization Code (101130), Miscellaneous Contract Services Account (54919), Independent Monitoring Team Project (P254210) and Agency-wide Administration Program (PS01); and be it

FURTHER RESOLVED: That the City Council hereby appropriates funds in the amount of \$54,000 to cover the cost of the City-mandated three percent (3%) Contract Assessment Fee associated with this contract in the Department's FY 2007-2009 baseline budget and shall be drawn from General Fund (1010), Office of Inspector General's Organization Code (101130), Miscellaneous Contract Services Account (54919), Independent Monitoring Team Project (P254210) and Agency-wide Administration Program (PS01); and be it

FURTHER RESOLVED: That the City Administrator or her designee is authorized to complete all required negotiations, certifications, assurances, and documentation required to accept, modify, extend and/or amend this agreement for services, except for any increase in the contract amount, without returning to the City Council; and be it

FURTHER RESOLVED: That the City Attorney shall review and approve said agreement with Independent Assessment & Monitoring, LLP as to form and legality and a copy of the fully executed agreement shall be placed on file with the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

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