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OFFICE OF THE CITY CLERK  
OAKLAND

**CITY OF OAKLAND**  
**AGENDA REPORT**

2009 NOV 20 10:34 AM  
Office of the City Administrator  
Attn: Dan Lindheim  
From: Police Department  
Date: December 8, 2009

**Re: A Report And Proposed Resolution 1) Authorizing The City Administrator , On Behalf Of The City Of Oakland, To Enter Into A Professional Services Agreement With The Alexandria Group Of MPRI In An Amount Not To Exceed One Million Five Hundred Thousand Dollars (\$1,500,000.00), For A Two Year Period Beginning January 21, 2010 Through January 20, 2012, To Perform The Services Of An Independent Monitor As Required By The Memorandum Of Understanding Re: Post Negotiated Settlement Agreement Terms And Conditions Allowing For The Resolution Of Plaintiff's Claims For Injunctive Relief And For Dismissal Of The Action, 2) Dispense With The Standard Request For Qualifications Process For Said Award And Authorize An Informal Solicitation Process, And 3) Appropriate Said Funds To Pay For The Work**

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**SUMMARY**

Staff has prepared a resolution 1) authorizing the City Administrator, on behalf of the City of Oakland, to enter into a professional services agreement with the Alexandria Group of MPRI in an amount not to exceed one million five hundred thousand dollars (\$1,500,000), for a two year period beginning January 21, 2010 through January 20, 2012, to perform the services of an independent monitor as required by the Memorandum of Understanding (MOU) which addresses post Negotiated Settlement Agreement (NSA) terms and conditions allowing for the resolution of Plaintiff's claims for injunctive relief and for dismissal of the action; 2) dispense with the standard Request for Qualifications (RFQ) process for said award and authorize an informal solicitation process; and 3) appropriate said funds to pay for the work.

On November 3, 2009, the City Council approved the MOU which addresses post NSA terms and conditions allowing for the resolution of Plaintiff's claims for injunctive relief and for dismissal of the action. The NSA is scheduled to expire (after a seven-year period) on January 22, 2010; however, during the current extension the City was unable to show substantial compliance with all NSA requirements, resulting in the City and Plaintiff's Council mutually agreeing upon a narrower MOU for an additional time period not to exceed two years. The MOU provides that the agreement could be terminated sooner than the two-year period upon the City's illustration of substantial compliance with its provisions.

In addition, the MOU requires the City to retain the services of an independent team to monitor its progress in achieving the goals and objectives of the MOU. Members of the current Independent Monitoring Team (IMT) have notified the City that their services will no longer be

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available after the expiration of the Teams current contract on January 20, 2010; therefore the City must hire a new independent monitor (per the MOU).

After a thorough search and evaluation process, the Department and the Plaintiff's Counsel mutually agreed to select the Alexandria Group of MPRI to serve as the Independent Monitor for the two-year period of January 2010 through January 2012.

### **FISCAL IMPACT**

Approval of this resolution will authorize the City to enter into a professional services agreement with the Alexandria Group of MPRI, beginning January 21, 2010 through January 20, 2012, in an amount not to exceed \$1.5 million. During this period, the Alexandria Group will provide oversight on the Police Department's efforts to comply with the MOU; audit the Department's implementation of the MOU reforms; and provide technical assistance as needed by the Department to reach substantial compliance with the MOU requirements.

There is no existing appropriation for this contract and the Department does not have funds available in its fiscal year 2009-2010 budget to cover the contract. The appropriation for the current Independent Monitoring Team has been spent and there will be no funds left over at the end of their contract. Therefore, the Department needs a new appropriation of \$1.5 million from the City's General Fund.

Approval of this resolution will authorize the City Administrator to appropriate \$1.5 million from the General Fund (1010), Office of Inspector General's Organization Org (101130), Miscellaneous Contract Services Account (54919), Project to be Determined, and Agency-wide Administration Program (PS01).

### **BACKGROUND**

On January 22, 2003, the City of Oakland and the Oakland Police Department 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 professionalism within the Department. On March 19, 2007, the Court extended the NSA for an additional two years.

The Oakland Police Department is still working to achieve substantial compliance with all NSA requirements and will not be in full substantial compliance by the end of the two-year extension. As a result, the City of Oakland and Plaintiff's Counsel mutually agreed to a Memorandum of Understanding addressing post Settlement Agreement terms and conditions. The MOU requires the selection of an independent monitor to provide oversight of the Department's continued efforts in achieving substantial compliance with all MOU requirements. To fulfill this requirement, the Police Department conducted a selection process to identify an independent

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monitor who best met the needs of the City in implementing and complying with the terms of the MOU.

## **KEY ISSUES AND IMPACTS**

Through the allocation of significant resources and the commitment by Oakland Police Department staff, the reforms outlined in the NSA are being implemented, and have already become part of the Department's policies and training. The new MOU provides for additional time to show the Department can sustain compliance with the most significant NSA reforms for the required period of one year. Over the last seven years, the implementation of the NSA reforms has made the Department far more accountable and professional. In addition, the Department has developed the ability to self-assess.

An independent monitor is an essential element to ensuring the Department's achievement of substantial compliance with the MOU requirements.

## **PROJECT DESCRIPTION**

The MOU provides for the City (in consultation with the Plaintiffs' Counsel) to hire an independent monitoring team to complete the work provided under the MOU. In anticipation of the expiration of the IMT's current contract on January 20, 2010, the Department began an RFQ process to identify professional police monitors who were available, interested, and qualified to provide monitoring services to the Department. Staff requested information on potential candidates from the current IMT, other industry professionals, and internal staff; this information was used to develop a short list of five candidates for consideration.

A working group consisting of members representing the Police Department and City Attorney's Office conducted introductory conference calls with each of the five candidates. Subsequent to the conference calls, all five candidates were asked to submit preliminary proposals, to include their approach to monitoring work, team member qualifications, and a preliminary cost proposal.

The preliminary proposals were shared with the Plaintiff's Counsel, and all five candidates went through a formal interviewing process that included Department staff, the Plaintiff's Counsel, and representatives from City Council staff. The Department's working group conducted meetings to rank candidates, and Department staff met with the Plaintiff's Counsel to discuss the candidates. The five candidates included the Alexandria Group of MPRI, Joseph Brann and Associates, (JBA), the Office of Independent Review (OIR) Group, Merrick Bobb of the Police Assessment Resource Center (PARC), and Charles A. Gruber Consulting.

### **1. The Alexandria Group of MPRI**

The Alexandria Group of MPRI monitoring team is composed of law enforcement practitioners who possess recognized subject matter expertise and experience in law enforcement monitoring. The members of the team are experts in law enforcement, police monitoring, auditing and evaluation, intergovernmental relations, civil rights compliance,

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constitutional considerations and best practices in contemporary policing. The team would be led by Chief Robert Warshaw, who has worked as a member of monitoring teams for Consent Decrees and Memoranda of Agreements (MOA) including those with the New Jersey State Police, Pittsburgh Police, and Prince George's County Police. He was also a principal evaluator for the Oversight Commission for Policing Reform in Northern Ireland. Chief Warshaw has served as the Chief of Police for the cities of Rochester, NY and Statesville, NC; and as the Associate Director of the Office of National Drug Control Policy under President Clinton.

The team members include Thomas C. Lusby (Deputy Monitor with Internal Affairs expertise), Chief Charles Reynolds (Use of Force expertise), Joseph R. Wolfinger (Training, Management and Supervision expertise), Chief Eduardo Gonzalez (Internal Affairs, Management and Supervision expertise), Dr. John M. Klofas, Ph.d. (Management and Supervision expertise), and Chief Melvin C. High (Management and Supervision expertise). Four team members have served as Chiefs of Police. Six team members have participated in monitoring Consent Decrees and MOAs, including New Jersey State Police, Pittsburgh Police, Prince George's County Police and Steubenville Police. Two team members have served as Commissioners for the Commission on Accreditation for Law Enforcement Agencies (CALEA). One team member is a noted academic who has experience and expertise in statistical analysis, automation techniques and risk management systems.

**2. Joseph Brann and Associates (JBA)**

Joseph Brann and Associates is a public safety consulting firm headquartered in LA County, headed by Joseph Brann. Their services include public safety strategy planning, technical assistance and policy development; organizational assessments; and oversight, monitoring and consulting expertise to ensure accomplishment of police reform efforts. Joseph Brann has served as the monitor for the Riverside California Stipulated Judgment and as the Special Master for the Federal District Court in monitoring the Cincinnati Police Department's Collaborative Agreement and Memorandum of Understanding. He is currently serving as the consultant responsible for monitoring the Stipulated Judgment in Maywood, CA. Mr. Brann has 40 years of law enforcement experience, including serving as Chief of Police in Hayward, CA and as the first Director of the COPS office in the US Department of Justice. Mr. Brann's team members have experience dealing with consent decrees, are recognized as subject matter experts in their respective disciplines, and are familiar with community perspectives and expectations that exist in diverse metropolitan communities. The team members include Chief Gerald Whitman (Denver Police Department Chief), Chief Russ Leach (Riverside Police Department Chief) and Judy McGarry (Retired auditor from Sacramento County).

**3. Office of Independent Review (OIR) Group**

The OIR Group is comprised of attorneys from the Los Angeles Office of Independent Review and the Orange County Office of Independent Review who work with government entities to provide a variety of monitoring, consulting and oversight services

for police agencies. They monitor the internal investigative processes of the LA Sheriff's Department and the Orange County Sheriff's Department, as well as use of force reporting, tracking of problematic officers, discipline, and training. The Chief Attorney is Michael Gennaco who (prior to working with the OIR) served as the Chief of the Civil Rights Section of the Office of the United States Attorney and as a trial attorney with the Civil Rights Division in Washington DC.

The OIG Group was appointed by Judge Thelton Henderson as a Court expert in federal litigation involving the California Department of Corrections and Rehabilitation. The Group has also conducted comprehensive reviews for the San Diego County Sheriff's Department, Inglewood Police, Oakland Police and Pasadena Police on officer-involved shootings, serious use of force cases, and internal affairs investigations. They currently monitor critical incidents and internal affairs investigations conducted by the Anaheim and Palo Alto Police Departments.

**4. Merrick Bobb (Police Assessment Resource Center)**

Merrick Bobb is a leading national authority on police best practices and the founding director of the Police Assessment Resource Center (PARC). PARC is a non-profit organization that aims to strengthen police oversight so as to advance effective, respectful, and publicly accountable policing. Mr. Bobb is a lawyer and has served as the Special Counsel to the LA County Board of Supervisors for purposes of monitoring the LA Sheriff's Department. He also served as a legal staff member and then as a Deputy General Counsel of the Christopher Commission investigation of the LAPD. He has consulted with multiple government agencies including the Department of Justice (DOJ), LA County, Detroit, Wallkill, NY, Albuquerque, Milwaukee, Portland, Denver and New Orleans.

Mr. Bobb's team members include Chief Richard Pennington, Chief of Police in Atlanta, GA and Chief Dean Esserman, Chief of Police in Providence, RI. Chief Esserman was the federal court-appointed monitor of the Wallkill Police Department and Mr. Bobb was a staff member.

**5. Charles A. Gruber Consulting**

Chief Gruber has over 40 years of increasing and varied responsibility in police administration and over 18 years in criminal justice consulting experience, including serving as the Chief of Police in South Barrington, IL, Elgin, IL, Shreveport, LA, and Quincy, IL. He is currently a consultant to the U.S. government and private parties on law enforcement issues, including use of force. He is also a nationally recognized practitioner of Community Oriented Policing and served as the International Association of Chiefs of Police (IACP) President in 1990. Chief Gruber has served on the Independent Monitoring Team for the Oakland Police Department since 1993. He has been a consultant and member of the DOJ investigation team studying, reporting and recommending remediation to alleged excessive use of force and other civil rights

violations by the Cincinnati Police, Miami Police, New York Police, Austin Police, Maricopa County Police, Arizona Sheriff and Puerto Rico Police.

After a thorough evaluation process, the Department and Plaintiff's Counsel agreed upon the Alexandria Group of MPRI.

Since none of the monitor candidates are located in Oakland, the Department requested an availability analysis by the Department of Contracting and Purchasing (DCP). The DCP checked their database of certified local firms that could perform the types of services indicated in the scope of work. The results found no certified firms that provide the types of services in the scope of work and therefore, the City's 20% Local and Small Business Enterprise requirements have been waived.

Per the MOU, the scope of services to be provided by the independent monitor under this contract includes:

- Reviewing policies related to the NSA and determining if the NSA requirements have been articulated in policy, and if the policies have been disseminated and adopted;
- Reviewing and evaluating OPD training;
- Reviewing OPD audits;
- Reviewing prior IMT audits;
- Reviewing established protocols for assessing compliance of NSA tasks and (in consultation with the parties) determining if adjustments are necessary;
- Evaluating compliance by conducting field observations and audits;
- Developing protocols for site visits, documenting retrieval, records review and field observations (in consultation with OPD);
- Establishing regular monthly meetings with representatives of the City of Oakland, OPD, the Oakland Police Officer's Association, other relevant bargaining units and the Plaintiff's Council;
- Providing technical assistance concerning best police practices and the implementation of the reform tasks;
- Reviewing use of force and misconduct investigations;
- Preparing for and attending hearings or meetings as required by the Court; and

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- Issuing regular public status reports directed to the Parties and the Court reporting OPD's compliance status.

## **SUSTAINABLE OPPORTUNITIES**

*Economic:* The NSA provides for the implementation of reforms within the Department. These reforms reflect the best practices and procedures for police management in the areas of supervision, use of force, professionalism, and accountability mechanisms. Over time, having a highly professional police organization that closely supervises and monitors its activities, and holds persons accountable for violations of the law and serious misconduct increases public confidence, improves public relations with the community, and reduces liability and risk for the City.

*Environmental:* There are no environmental opportunities.

*Social Equity:* The police reforms the City is instituting will enhance the Police Department's ability to provide highly professional services in ensuring the public safety of the residents of Oakland.

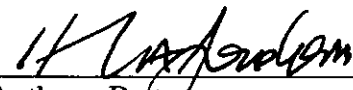
## **DISABILITY AND SENIOR CITIZEN ACCESS**

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

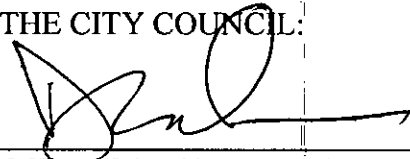
**RECOMMENDATION / ACTION REQUESTED OF COUNCIL**

Staff recommends acceptance of this report and authorization for the City Administrator to 1) enter into a professional services agreement with the Alexandria Group of MPRI in an amount not to exceed one million five hundred thousand dollars (\$1,500,000), for a two year period beginning January 21, 2010 through January 20, 2012, to perform the services of an independent monitor as required by the Memorandum of Understanding (MOU) which addresses post Negotiated Settlement Agreement (NSA) terms and conditions allowing for the resolution of Plaintiff's claims for injunctive relief and for dismissal of the action; 2) dispense with the standard Request for Qualifications (RFQ) process for said award and authorize an informal solicitation process; and 3) appropriate said funds to pay for the work.

Respectfully submitted,

  
Anthony Batts  
Chief of Police

APPROVED AND FORWARDED TO  
THE CITY COUNCIL:

  
Office of the City Administrator

Prepared by:  
Ms. Kristin Burgess  
Police Program and Performance Auditor  
Office of Inspector General

Reviewed by:  
Ms. Cynthia Perkins  
Legislative Analyst  
Oakland Police Department

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# OAKLAND CITY COUNCIL

*Rocio V. Garcia*  
City Attorney

2009 NOV 24 PM 3:49 RESOLUTION NO. \_\_\_\_\_ C.M.S.

**RESOLUTION: 1) AUTHORIZING THE CITY ADMINISTRATOR , ON BEHALF OF THE CITY OF OAKLAND, TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH THE ALEXANDRIA GROUP OF MPRI IN AN AMOUNT NOT TO EXCEED ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000.00), FOR A TWO YEAR PERIOD BEGINNING JANUARY 21, 2010 THROUGH JANUARY 20, 2012, TO PERFORM THE SERVICES OF AN INDEPENDENT MONITOR AS REQUIRED BY THE MEMORANDUM OF UNDERSTANDING RE: POST NEGOTIATED SETTLEMENT AGREEMENT TERMS AND CONDITIONS ALLOWING FOR THE RESOLUTION OF PLAINTIFF'S CLAIMS FOR INJUNCTIVE RELIEF AND FOR DISMISSAL OF THE ACTION, 2) DISPENSE WITH THE STANDARD REQUEST FOR QUALIFICATIONS PROCESS FOR SAID AWARD AND AUTHORIZE AN INFORMAL SOLICITATION PROCESS, AND 3) APPROPRIATE SAID FUNDS TO PAY FOR THE WORK**

**WHEREAS**, on or about January 21, 2003 the City Council approved the settlement reached in *Delphine Allen, et al. vs. City of Oakland, et al*, which settled the allegations of multiple plaintiffs that several Oakland police officers had violated their constitutional rights and that such conduct was pursuant to a pattern and practice of the City of allowing said constitutional violations to occur; and

**WHEREAS**, the settlement resulted in the Negotiated Settlement Agreement ("NSA"), in which the City agreed to institute police reforms and adopt contemporary police practices in the areas of use of force, field supervision, discipline and accountability measures, and training; and

**WHEREAS**, the Court issued an Order extending the five-year NSA for two additional years, from January 21, 2008 to January 21, 2010, finding that the City needed more time to complete its reform program due to the City's delays in 2003 and 2004 to make measurable progress; and

**WHEREAS**, the City's strong efforts to comply with the NSA over the past several years have led to significant progress and resulted in achieving high compliance levels and sustainability periods for many of the required reforms; and

**WHEREAS**, notwithstanding the City's progress, compliance levels have not been reached in several reform areas thus requiring the City to continue its work in these areas; and

**WHEREAS**, the Court informed the City that it would be required to continue the remaining reforms under Court supervision and under the oversight of an independent monitor; and

**WHEREAS**, the contract for the current Independent Monitoring Team ("IMT") ends in January 2010 and will not be renewed; and

**WHEREAS**, upon learning of these developments the City immediately began to negotiate a termination of the Negotiated Settlement Agreement while drafting a narrower Memorandum of Understanding (MOU) that would allow the City to focus its reform work in those areas where it has fallen short while providing that the City would no longer be required to actively monitor the reform tasks already achieved; and

**WHEREAS**, in addition to negotiating a new MOU the City promptly contacted experienced police monitors to determine their availability and interest in monitoring the Police Department, worked with several interested candidates in providing the relevant documents, obtained preliminary proposals, and established an interview process that was inclusive and thorough; and

**WHEREAS**, since none of the monitor candidates identified are located in Oakland, the City's Department of Contracting and Purchasing conducted an availability analysis and did not find a certified firm that could provide the contract services and therefore, the City's 20% Local and Small Business Enterprise requirements have been waived; and

**WHEREAS**, Oakland Municipal Code Section 2.04.051.B authorizes the City Council to dispense with the City's standard request for proposal process for award of professional services contracts upon a finding that it is in the City's best interests to do so; and

**WHEREAS**, the City's informal RFQ process was thorough and appropriate given the nature of the services required, and conducting a formal RFQ process would have resulted in delays and hamper the City's efforts to meet its compliance obligations with the Court; and

**WHEREAS**, Staff recommends that the City Council waive the City's customary request for proposal process and authorize the City Administrator to select a contractor by the informal process described in the agenda report accompanying this item; now therefore be it

**RESOLVED**: that the City Council hereby authorizes the City Administrator to award a contract to the Alexandria Group of MPRI, for a two-year period of January 21, 2010 to January 20, 2012, to perform the services of an independent monitor as provided for in the Memorandum of Understanding Re: Post Negotiated Settlement Agreement Terms and Conditions Allowing for the Resolution of Plaintiffs' Claims for Injunctive Relief and for Dismissal of the Action; and be it

**FURTHER RESOLVED**: that, pursuant to Oakland Municipal Code, Section 2.04.051(B), the City Council hereby finds, based on the pronouncements of this Resolution and the discussion and analysis contained in the accompanied Council report, that it is in the best interests of the City to dispense with the City's customary RFP/RFQ process for the Independent Monitor contract, and so

dispenses with the requirement and authorizes selection of a contractor and award based on solicitation process used by staff; and be it

**FURTHER RESOLVED:** that the City Administrator is authorized to appropriate \$1.5 million from the General Fund (1010), Office of Inspector General Organization (101130), Miscellaneous Contracts Account (54919), and Program (PS01); and be it

**FURTHER RESOLVED:** that the City Administrator or his designee is authorized to carry out any financial actions necessary to carry out the intent of the resolution, including to complete 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 Attorney shall review and approve this agreement 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, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT BRUNNER

NOES-

ABSENT-

ABSTENTION-

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