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OAKLAND

13 JUN -6 PM 4:24

AGENDA REPORT

TO: HONORABLE MAYOR & CITY COUNCIL

FROM: DEANNA J. SANTANA
CITY ADMINISTRATOR

SUBJECT: Compliance Director Contract

DATE: June 18, 2013

City Administrator
Approval

Deanna Santana

Date

6/5/13

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

That the City Council accept this report and approve the proposed resolution authorizing the City Administrator to award a contract to Thomas Frazier, Compliance Director, for the period of March 11, 2013 through March 10, 2014, in an amount not to exceed \$722,600.00 pursuant to the following Court orders in *Delphine Allen v. City of Oakland*, USDC Case No. C00-4599 TEH: December 12, 2012 Order, ECF No. 885; March 4, 2013 Order, ECF No. 911; and April 17, 2013 Order, ECF No. 926.

EXECUTIVE SUMMARY

The proposed resolution authorizes the City Administrator to execute an Agreement with the Court-appointed Compliance Director, Thomas Frazier, for one year, from March 11, 2013 through March 10, 2014, for an amount not to exceed seven hundred twenty two thousand six hundred dollars (\$722,600).

The *Allen* Court found that the City needed more time to complete its police reform program. By order dated December 12, 2012 the Court established a Court-appointed Compliance Director to assist the City in achieving compliance with the Negotiated Settlement Agreement under the current Amended Memorandum of Understanding.

The December 12, 2012 Court Order outlined the Compliance Director's duties and responsibilities. On March 4, 2013 the Court appointed Thomas Frazier as the Compliance Director, setting his base compensation at \$270,000.00 per year and providing for the City and Mr. Frazier to agree upon additional compensations for the first year of his appointment. Following negotiations, the final contract provides a compensation package for Mr. Frazier in the total amount of \$337,000.

The Court also authorized the Compliance Director to hire staff upon Court approval. On April 17, 2013 the Court approved the Compliance Director's staff in an amount not to exceed

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\$385,600.00. All invoices from Mr. Frazier and his staff are submitted to the court. Upon Court approval and order, payment is made from the Court Registry.

OUTCOME

The City will approve the agreement to cover the Compliance Director's compensation package and funds for the Compliance Director's staff pursuant to the Court's orders.

BACKGROUND/LEGISLATIVE HISTORY

On January 22, 2003, the City of Oakland entered into a five-year contract entitled Negotiated Settlement Agreement ("NSA") to resolve the allegations of police misconduct raised in the civil case of *Delphine Allen, et. al, v. City of Oakland*. 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 two years, and on November 24, 2009, the Court terminated the NSA and adopted a narrower MOU for two additional years under which the City was credited for the compliance work achieved. This MOU was amended and the Parties are currently operating pursuant to an AMOU, which runs from January 23, 2012 to January 22, 2014.

In December 12, 2012 the Court established the Compliance Director position to assist the City with compliance. The Compliance Director is an agent of the Court. The Court outlined the Compliance Director's role and duties in its December 12, 2012 Order and appointed Thomas Frazier to fill this role on March 4, 2013. The Oakland Police Department continues to work to achieve substantial compliance with the NSA requirements under the AMOU and the City anticipates achieving full compliance in the near future.

ANALYSIS

On March 4, 2013, the Court issued an order appointing Thomas Frazier as the Compliance Director. The Court ordered the Compliance Director's base compensation at \$270,000.00 annually, with additional compensation "commensurate" with benefits given to the City Administrator and the Chief of Police. award a contract to Mr. Frazier for a total annual compensation package not to exceed \$337,000.00 for the period of March 11, 2013 through March 10, 2014.¹ The Court's March 4, 2013 Order also provides that "staff for the Compliance Director shall, upon the court's approval, . . . be paid through the Court's registry." March 4, 2013 Order, ECF No. 911. The Court approved the Compliance Director's request for an amount not to exceed \$385,600.00 to fund staff for the period of March 11, 2013 through March 10, 2014. The Compliance Director's and staff's total annual compensation is \$722,600.00.

¹ In addition, the City and Mr. Frazier agreed on a one-time payment of \$10,000.00 for Mr. Frazier's moving expenses.

amount not to exceed \$385,600.00 to fund staff for the period of March 11, 2013 through March 10, 2014. The Compliance Director's and staff's total annual compensation is \$722,600.00.

PUBLIC OUTREACH/INTEREST

This item did not require any additional public outreach other than the required posting on the City's website.

COORDINATION

The Court has ordered the Compliance Director and his staff to assist the City with the final implementation of the NSA through the AMOU. The City Attorney's Office worked with the City Administrator, the Mayor and the Oakland Police Department and Mr. Frazier to determine the terms of his contract.

COST SUMMARY/IMPLICATIONS

Approval of this resolution will authorize the City Administrator to contract with the Compliance Director for the period of March 11, 2013 through March 20, 2014. Funding appropriation actions are scheduled separately on the Finance and Management Committee Agenda on June 11, 2013.

SUSTAINABLE OPPORTUNITIES

Economic: The NSA provides for the implementation of reforms within the police department. These reforms reflect the best practices and procedures for police management in the areas of supervision, use of force, professionalism, and accountability mechanisms. A highly professional police organization that closely supervises and monitors police activities increases public confidence, improves public relations with the community, and reduces liability and risk for the City.

Environmental: No environmental opportunities are identified in this report.

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.

For questions regarding this report, please contact Deanna J. Santana, City Administrator, at (510) 238-3302.

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AGREEMENT
BETWEEN THE CITY OF OAKLAND AND THOMAS C. FRAZIER

WHEREAS: The United States District Court for the Northern District of California in the case of Delphine Allen v. City of Oakland, et al., USDC Case No. C00-4599 TEH ("Allen") issued an Order authorizing the appointment of a Compliance Director whose mission is to bring the City into sustainable compliance with the NSA and AMOU. Order Re Compliance Director, December 12, 2012, ECF No. 885.

WHEREAS: The Compliance Director is an Agent of the Court, reports directly to the Court and does not act as the agent of any party to the action. Order Re Compliance Director, December 12, 2012, ECF No. 885.

WHEREAS: The Court appointed Thomas C. Frazier as the Compliance Director whose status is as an Agent of the Court and not an employee of or contractor to the City. Order Appointing compliance Director, March 4, 2013, ECF No. 911.

WHEREAS: The Court ordered the City to reach a compensation agreement with the Compliance Director upon appointment, and further ordered that City pay the Compliance Director staff and other costs related to the Compliance Director's work, as approved by the Court. The Court further ordered that the Compliance Director and the City Administrator reach an agreement no later than March 25, 2013.

Now therefore the parties to this Agreement covenant as follows:

1. Contract Term

This Agreement is entered into and becomes effective on March 11, 2013 between the City of Oakland, a municipal corporation, ("City"), One Frank H. Ogawa Plaza, Oakland, California 94612, and **THOMAS C. FRAZIER** as the court-appointed Compliance Director ("Compliance Director").

Time of performance is of the essence and commences immediately on March 11, 2013, as ordered by the Court. This Agreement is for a full time position based in Oakland, CA., for a minimum of one year except as otherwise ordered by the Court. This Agreement expires on March 10, 2014 unless the parties stipulate otherwise or the Court orders an extension or earlier termination.

2. Duties and Responsibilities

Compliance Director agrees to perform the duties and services specified in the Order Re Amended Memorandum of Understanding Re: Post Negotiated Settlement Agreement Terms and Conditions, the December 12, 2012 and March 4, 2013 and any other court orders, all of which hereby are incorporated herein by reference in

Attachment A. (See Attachment A, ECF 885 and ECF 911; and see AMOU, ECF 620.) The duties and services of Compliance Director specified in the Orders are his ultimate responsibility to carry out and shall not be assigned or otherwise transferred.

The Compliance Director will not perform services for any other jurisdiction or entity during the term of this Agreement. The Compliance Director will comply with the Court order prohibiting any work, contract, or advice involving current or future litigant or claimant in a claim or suit against the City and its employees.

3. Compensation and Method of Payment

Compliance Director will be paid for performance of the services a compensation package not to exceed \$337,000 for one year from March 11, 2013 to March 10, 2014, as ordered by the Court in its December 12, 2012 and March 4, 2013 orders. The \$337,000 compensation package will be paid in accordance with the procedure set forth in the Court's March 4, 2013 Order. The Compliance Director's compensation package shall be paid out of the Court's registry. City has already deposited \$270,000 in the Court's registry and shall deposit the balance of the \$337,000 in the registry within __ days after the parties execute this agreement. The City shall deposit in the Court's registry an additional amount not to exceed \$385,600 pursuant to the Court's April 17, 2013 order to pay costs of the Compliance Director's staff for the period of March 11, 2013 to March 10, 2014. The parties expressly acknowledge that the Compliance Director's staff, consultants, employees and/or sub-contractors are not City employees and that there is no privity of contract between the City and the Compliance Director or his staff, consultants, employees and/or sub-contractors. Compliance Director's staff will send copies of all Court-approved invoices/bills to the City. At the end of the year, City will be credited or refunded any amount that has not been billed for that year.

4. Independent Agent of the Court

a. Rights and Responsibilities

It is expressly agreed that in the performance of the services necessary to carry out this Agreement, the Compliance Director shall be, and is, an independent Agent of the Court, is not an agent of any party to this action, and is not an employee of City.

b. Payment of Income Taxes

Compliance Director is responsible for paying income taxes, including estimated taxes, incurred as a result of compensation paid by City to Compliance Director, either through the Court or directly under this Agreement. City has no obligation to issue any tax-related documents.

5. Proprietary or Confidential Information of City

Compliance Director shall not disclose any confidential information obtained incident to his duties undertaken pursuant to this Agreement and warrants that all information disclosed by City to Compliance Director shall be held in confidence and used only in performance of duties undertaken pursuant to this Agreement, consistent with court requirements regarding use of information and confidentiality provisions. Compliance Director shall exercise the standard of care to protect such information as a reasonably prudent fiduciary would use to protect proprietary data to which he is entrusted.

6. Title of Property

Title to property, real and personal, provided by City to Compliance Director acquired with City funds shall vest in City's name and shall be accounted for by means of a formal set of property records and shall be subject to return to City upon completion of Agreement. Compliance Director will take reasonable steps for the protection, maintenance and preservation of all such property held in custody for City during the term of the Agreement. Compliance Director shall, upon expiration or termination of this Agreement, deliver to City all of said property and documents evidencing title to same. In the case of lost or stolen items or equipment, Compliance Director shall immediately notify the Police Department, obtain a written police report and notify the City in accordance with "Notice" section of this Agreement. There is no authority for the disposition or sale of any real or personal property acquired with City funds by Compliance Director.

7. Insurance

Compliance Director shall submit proof of insurance listed in Schedule Q Insurance Requirements, as modified, included in Attachment B.

8. Indemnification and Mutual Waiver

It is the intent of both City and Compliance Director that neither party will be responsible for the negligent, reckless and/or willful or intentional acts or omissions of the other.

9. Conflict of Interest

Compliance Director agrees to abide by all applicable federal, state and local law.

10. Compliance Federal, State and Local Regulations

Compliance Director shall comply with federal, state and local regulations regarding non-discrimination and equal employment practices, living wage and equal benefits.

Compliance Director shall comply with City's Campaign Reform Act, Chapter 3.12 of the Oakland Municipal Code regarding campaign contribution limits and political prohibitions. Subject to applicable state and federal laws, moneys paid pursuant to this Agreement shall not be used for political purposes, sponsoring or conducting candidate's meetings,

engaging in voter registration activity, nor for publicity or propaganda purposes designed to support or defeat legislation pending before federal, state or local government.

There shall be no religious worship, instruction, or proselytization as part of, or in connection with the performance of the Agreement.

11. Entire Agreement

This Agreement supersedes any other agreements, either oral or written, and contains all representations, covenants and agreements between the parties with respect to the duties and services of the Compliance Director. Each party acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not contained in this Agreement, and that no other agreement, statement or promise not contained in this Agreement will be valid or binding.

Any modification of this Agreement will be effective only if it is in writing and signed by both parties. If there is any inconsistency between the main agreement and the attachments/exhibits, the text of the main agreement shall prevail.

This Agreement is valid, governed by the laws of the State of California, and subject to the orders issued by the court in Allen.

12. Severability/Partial Invalidity

If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, shall be finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then such term or provision shall remain in force and effect to the extent allowed by such ruling and all other terms and provisions of this Agreement shall remain in full force and effect.

Notwithstanding the foregoing, if any material term or provision of this Agreement or the application of such material term or condition to a particular situation is finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then the Parties hereto agree to work in good faith and fully cooperate with each other to amend this Agreement to carry out its intent.

13. Communications

Compliance Director is responsible for communications with City as required by Court orders and Section 14 of this Agreement.

14. Notice

If either party shall desire or be required to give written notice to the other, such notice shall be given in writing, via facsimile and concurrently by prepaid U.S. certified or registered postage, addressed to recipient as follows:

Deanna J. Santana
Office of the City Administrator
1 Frank Ogawa Plaza, 3rd Floor
Oakland, CA 94612

Thomas C. Frazier
Compliance Director
1970 Broadway Street, Ste. 930
Oakland, CA 94612

Any party to this Agreement may change the name or address of representatives for purpose of this Notice paragraph by providing written notice to all other parties ten (10) business days before the change is effective.

City of Oakland, a Municipal Corporation

Thomas C. Frazier

(City Administrator's Office) (Date)

(Signature) (Date)

(Agency Director's Signature) (Date)

Business Tax Certificate No.

Approved as to form and legality:

Date of Expiration

(City Attorney's Office Signature) (Date)

Resolution Number

Accounting Number

END

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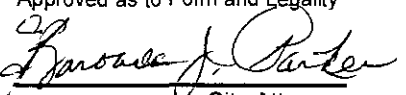
Thomas Frazier, Compliance Director -March, 2013

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OAKLAND

OAKLAND CITY COUNCIL

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RESOLUTION NO. _____ C.M.S.

Approved as to Form and Legality

City Attorney

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO AWARD A CONTRACT TO THOMAS FRAZIER, THE COMPLIANCE DIRECTOR APPOINTED BY THE UNITED STATES FEDERAL DISTRICT COURT IN DELPHINE ALLEN, ET AL. V. CITY OF OAKLAND, FOR THE PERIOD OF MARCH 11, 2013 TO MARCH 10, 2014 IN THE AMOUNT OF \$722,600.00 (SEVEN HUNDRED TWENTY-TWO THOUSAND SIX HUNDRED DOLLARS) TO ASSIST THE CITY IN ACHIEVING FULL COMPLIANCE WITH THE NEGOTIATED SETTLEMENT AGREEMENT IN THE CASE OF DELPHINE ALLEN, ET AL. V. CITY OF OAKLAND, ET AL., UNITED STATES DISTRICT COURT CASE NO. C00-4599 TEH

WHEREAS, in January, 2003, the City Council approved the settlement of *Delphine Allen, et al. vs. City of Oakland, et al*, which settled allegations that several individual Oakland police officers violated Plaintiffs' constitutional rights, and that the City was permissive or sanctioned said conduct; and

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

WHEREAS, the Oakland Police Department completed most of the policy and training requirements and many of the practice compliance obligations within the initial seven year term of the **NSA**, but required more time to show practice compliance, resulting in the Parties extending the **NSA** for two years from 2010 to 2012 under a more narrow Memorandum of Understanding ("**MOU**"), which was subsequently extended under the current Amended Memorandum of Understanding ("**AMOU**") for two years from 2012 to 2014; and

WHEREAS, on March 4, 2013, the Court has appointed Thomas Frazier as Compliance Director to assist the City in achieving full compliance under the **AMOU**; and

WHEREAS, the Court's March 4, 2013 order provides that Mr. Frazier's compensation shall be \$270,000.00 plus additional compensation and further provides that Mr. Frazier may hire staff upon Court approval; and

WHEREAS, the Court further directed the City and Mr. Frazier to agree on further compensation; and

WHEREAS, on April 17, 2013, the Court approved the Compliance Director's staff and budget amount not to exceed \$385,600.00, and the City and Mr. Frazier agreed upon further compensation for Mr. Frazier in an amount not to exceed \$67,000.00; and

WHEREAS, sufficient funds have been budgeted in the proposed FY 2013-15 budget for this contract in the Miscellaneous Grant Fund (2999), Project Number to be Determined to pay for this contract; and

WHEREAS, since the Court has ordered Thomas Frazier to serve full time as the Compliance Director, 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 Council finds that it is the best interests of the City to waive the aforesaid requirements in light of the Court's orders appointing the Compliance Director and authorizing staff for the Compliance Director; and

WHEREAS, the City Council finds and determines that the service 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 City Administrator is authorized to award the contract with the Compliance Director, for one year, from March 11, 2013 to March 10, 2014, to perform the services ordered by the Court in its December 12, 2012 and March 4, 2013 Orders, and as provided in the Amended Memorandum of Understanding Re: Post Negotiated Settlement Agreement Terms and Conditions entered into by the Parties in this case; and be it

FURTHER RESOLVED: that the Council finds and determines, for the reasons stated above and in the City Administrator's report accompanying this Resolution, and pursuant to Oakland Municipal Code, Section 2.04.051(B), that it is in the best interests of the City to dispense with the City's customary RFP/RFQ process for the Compliance Director contract, and hereby waives these requirements; and be it

FURTHER RESOLVED: that the City Administrator is authorized to appropriate a total of \$722,600.00 from the General Fund (1010), Office of Inspector General Organization (101130), Miscellaneous Contracts Account (54919), and Program (PS01) to pay for the services under this contract, subject to deduction of the \$270,000 previously deposited in the Court registry and any other sums that have already been deposited in the Court registry; and be it

FURTHER RESOLVED: that the City Administrator or her designee is authorized to carry out any financial actions necessary to fulfill the intent of this Resolution and accompanying Report, including completing 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, _____

BY THE FOLLOWING VOTE:

AYES- BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF, AND
PRESIDENT KERNIGHAN

NOES-

ABSENT-

ABSTENTION-

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