



CITY OF OAKLAND

FILED
OFFICE OF THE CITY CLERK
OAKLAND

AGENDA REPORT

2018 JAN -5 PM 3:30

TO: Sabrina B. Landreth
City Administrator

FROM: David Downing
Assistant Chief of Police

SUBJECT: Contracts with Independent Monitor
and Compliance Director

DATE: December 13, 2016

City Administrator Approval

Date:

1/5/17

RECOMMENDATION

Staff Recommends That City Council Adopt: 1) A Resolution Authorizing The City Administer Or Designee To Increase The 2016-2017 Professional Services Agreement Between The City Of Oakland And Police Performance Solutions, LLC For Monitoring And Technical Assistance Services In *Delphine Allen v. City Of Oakland* In An Amount Not To Exceed Seventy Five Thousand Dollars (\$75,000), Waive The City's Advertising And Bidding And Request For Proposals / Qualifications Requirements, And Authorize A One-Year Extension (Through January 20, 2018) Of The Professional Services Agreement Between The City Of Oakland And Police Performance Solutions, LLC For Monitoring And Technical Assistance Services In *Delphine Allen v. City Of Oakland*, In The Amount Of Seven Hundred Twenty Two Thousand Seventy Six Dollars (\$722,076) For A Total Contract Amount Not To Exceed Six Million Six Hundred Ninety One Thousand Three Hundred Ninety Six Dollars (\$6,691,396); And

2) A Resolution Authorizing the City Administrator or Designee to Waive The City's Advertising And Bidding Requirements And Request For Proposals / Qualifications Requirements And Enter Into A One-Year Contract Extension (Through January 20, 2018) With Warsaw & Associates Inc., To Provide Compliance Director Services To The City In *Delphine Allen V. City Of Oakland*, In An Amount Not To Exceed One Hundred Sixty Five Thousand Dollars (\$165,000), For A Total Contract Amount Not To Exceed Six Hundred Sixty Thousand Dollars (\$660,000).

EXECUTIVE SUMMARY

In March 2016, the Court issued an order (*Order RE: Internal Affairs Case No. 15-0771, Mar. 23, 2016*) citing irregularities and potential violations of the Negotiated Settlement Agreement related to Internal Affairs Case No. 15-0771. As a result of this case there was an identified need for increased involvement by the Monitor, Police Performance Solutions, LLC, to dedicate more resources to oversight and technical assistance than initially planned. Therefore, the Monitor's contract for \$650,000 for the period of January 21, 2016 through January 20, 2017 will be exceeded by an amount up to \$75,000, for a total contract amount of \$725,000.

Additionally, while the City has achieved compliance with nearly all reforms contained in the Negotiated Settlement Agreement (NSA), there remain three tasks that are not yet in full compliance. The City must be able to show sustained compliance for a one-year period in order

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to reach "substantial compliance"¹ and be released from court oversight. Waiving the Request for Proposals/ Qualifications (RFP/Q) and renewal of the contracts with the current Compliance Director and the Independent Monitor for up to one year provides additional time necessary to satisfy these requirements.

The current Independent Monitor, was appointed in January 2010 and has had multiple contract extensions. To date, the City has contracted with Police Performance Solutions, LLC for a total of \$5,894,320 for the period covering January 2010 through January 2017. An increase in the 2016-2017 contract in the amount of \$75,000, as well as an extension for the period of January 21, 2017 to January 20, 2018 in the amount of \$722,076 are necessary, bringing the total contract amount to \$6,691,396.

The current Compliance Director (Robert Warshaw) was appointed in 2014 and his group, Warshaw & Associates Inc., has had two contract extensions, for a total contract amount of \$495,000. An additional extension is necessary for the period of January 21, 2017 to January 20, 2018 in the amount of \$165,000, bringing the total to \$660,000.

BACKGROUND/LEGISLATIVE HISTORY

The Riders Case

In 2000, over 100 plaintiffs filed *Delphine Allen et al. v. City of Oakland*, USDC Case no. C00-4599 TEH (the "Riders case"), alleging that four Oakland Police Department (OPD) officers violated their civil rights by planting evidence, committing perjury, and using excessive force. The City terminated the four officers and an arbitrator upheld the terminations of the three officers who challenged their terminations. The Alameda County District Attorney dismissed numerous criminal cases because the four officers' testimony was deemed unreliable, and released a number of the plaintiffs who were in custody. The District Attorney prosecuted three of the defendant officers. The fourth officer fled the United States and has not been located.

In 2003, City Council approved the Negotiated Settlement Agreement ("NSA") to resolve the Riders case. The US District Court for Northern California issued an order approving the NSA. The court retains jurisdiction to oversee completion of the reforms. Under the NSA, the City agreed to implement institutional reforms needed to meet constitutional standards and to work with an independent monitor to help the Court oversee compliance. The parties subsequently executed a Memorandum of Understanding ("MOU") and an Amended Memorandum of Understanding ("AMOU") that superseded the NSA. The City continues to implement the remaining tasks needed for compliance under the AMOU.

¹ "Substantial compliance means that OPD has complied with the material provisions of the NSA and AMOU. "Materiality" is determined by reference to the overall objectives of the NSA. Non-compliance with technicalities or, otherwise, minor failures to comply while generally complying with the Agreement, shall not be deemed failure to substantially comply. See, NSA 55:26-56:5.

Independent Monitor Contracts

In 2009, OPD selected Alexandria Group of Military Professional Resources Inc. (MPRI) to serve as independent monitor under the MOU. Council approved the professional services agreement for two years in the amount of \$1,500,000 (Resolution No. 82448 C.M.S.). In January 2010, Council approved a resolution to reflect the name change from Alexandria Group of MPRI to Police Performance Solutions, LLC. (Resolution No. 82491 C.M.S.). In June 2010, Council approved a resolution increasing the budget amount of the contract with Police Performance Solutions, LLC., in the amount of \$100,320 for technical assistance services (Resolution No. 82856 C.M.S.). In June 2011, the Council approved a two-year extension of the contract with Police Performance Solutions, LLC for \$1,684,000, which expired on January 20, 2014 (Resolution No. 83380 C.M.S.). In February 2012, the Council approved a resolution increasing the budget amount of the contract with Police Performance Solutions, LLC. by \$100,000 for technical assistance services (Resolution No. 83728 C.M.S.). In December 2013, the Council waived advertising and competitive processes and approved a one-year extension of the contract with Police Performance Solutions LLC for \$910,000 with an expiration date of January 20, 2015 (Resolution No. 84759 C.M.S.). In January 2015, the Council waived advertising and competitive processes and approved a one-year extension of the contract with Police Performance Solutions LLC for \$950,000 and an expiration date of January 20, 2016 (Resolution No. 85369 C.M.S.). In January 2016, the Council waived advertising and competitive processes and approved a one-year extension of the contract with Police Performance Solutions LLC for \$650,000 and an expiration date of January 20, 2017 (Resolution No. 85968 C.M.S.).

Compliance Director Contracts

On December 12, 2012, the Court issued an Order providing for the appointment of a Compliance Director "to bring Defendants (City) into sustainable compliance with the NSA and AMOU" and further providing that the Compliance Director would report directly to the Court and serve as the Court's agent; and on March 4, 2013, the Court appointed Thomas Frazier as the Compliance Director (*Order Appointing Compliance Director, March 4, 2013; Order Re Compliance Director, December 12, 2012*). On February 12, 2014, the Court issued an Order that stated that Thomas Frazier was terminated as Compliance Director, and that all authority previously vested in Mr. Frazier was transferred immediately to the court appointed Monitor, Robert Warshaw of Police Performance Solutions, LLC (*Order Modifying Compliance Oversight Model, February 12, 2014*). The Court's February 12, 2014 order further stated that the Monitor shall discuss with the City "necessary modifications to his contract as a result of the expansion of his powers and duties, including whether he needs to have a greater on-site presence and the amount of additional compensation that would be appropriate," and that the "Court expects the additional compensation, including travel expenses and costs associated with any assistants, not to exceed \$150,000 annually." The order also stated that any disputes regarding contract modifications will be resolved by the Court (*Order Modifying Compliance Oversight Model, Feb. 12, 2014*).

Robert Warshaw advised the City that he desired a separate contract for Compliance Director Services, and identified Warshaw & Associates Inc. as the new business entity to enter into the separate contract. Robert Warshaw further advised the City that the \$150,000 for the one-year

term was an acceptable amount to perform the compliance director services, provided that the City agreed to cover the costs of insurance (liability and errors and omissions) and business license taxes. City Administration determined that an additional amount up to a maximum of \$15,000 was sufficient to cover the costs of insurance and business license taxes. In April 2014, Council waived advertising and competitive processes and passed a resolution authorizing a one-year contract with Warshaw & Associates Inc. for Compliance Director services in an amount not to exceed \$165,000 and an expiration date of January 20, 2015 (Resolution No. 84911 C.M.S.). In January 2015, Council waived advertising and competitive processes and approved a one-year extension of the contract with Warshaw & Associates Inc. for \$165,000 and an expiration date of January 20, 2016 (Resolution No. 85370 C.M.S.). In January 2016, Council waived advertising and competitive processes and approved a one-year extension of the contract with Warshaw & Associates Inc. for \$165,000 and an expiration date of January 20, 2017 (Resolution No. 85969 C.M.S.).

ANALYSIS AND POLICY ALTERNATIVES

An increase in the 2016-2017 contract with the Independent Monitor is necessary to cover the additional work resulting from the March 23, 2016 Court Order regarding Internal Affairs Case No. 15-0771. Furthermore, renewal of the contracts with the Independent Monitor and the Compliance Director for up to one year provides the City additional time needed to satisfy the Court's requirements. Under the oversight of the Independent Monitor and Compliance Director, the City will work with the Court, the Parties, and the Oakland community to establish the required compliance and sustainability record. It is advisable that the aforementioned contracts be approved so that the City and OPD may continue to work with the current Independent Monitor and Compliance Director who are already familiar with the police reforms and compliance achieved to date by the OPD.

Oakland Municipal Code sections 2.04.050 and 2.04.051 authorize the City Council to waive advertising and competitive processes required for contract awards upon a finding by the Council that it is in the City's best interests to do so. The City in the past conducted the required competitive processes for the Independent Monitor's contract, and extending these contracts will save the City time. The contract with Robert S. Warshaw for Compliance Director Services was ordered by the court in 2014. It serves the City's interests to continue the Independent Monitor and Compliance Director services under the existing contracts to avoid the delays caused by the selection of new contractors. New contractors would require time to become familiar with the City's compliance record and the Court's requirements.

FISCAL IMPACT

The cost of the 2016-2017 Police Performance Solutions contract increase is \$75,000. The contract extension for 2017-2018 is \$722,076, for a total contract cost of \$6,691,396. Funding in the amount of \$797,026 is included in General Purpose Fund (1010), Office of Inspector General Org (101130), Compliance Director Project (A468570), Miscellaneous Contract Account (54919), Agency Wide Administration Program (PS01).

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The cost of the Warsaw & Associates contract extension is \$165,000, for a total contract cost of \$660,000. The budget is included in General Purpose Fund (1010), Office of Inspector General Org (101130), Compliance Director Project (A468570), Miscellaneous Contract Account (54919), Agency Wide Administration Program (PS01).

Police Performance Solutions, LLC – Summary of Costs and Funding

Cost Category	Description	Amount
Professional Services	Monitoring Services	\$797,026

Fund Source	Organization	Account	Project	Program	Amount
1010	101130	54919	A468570	PS01	\$797,026
Total Amendment:					\$797,026

Warsaw & Associates Inc. – Summary of Costs and Funding

Cost Category	Description	Amount
Professional Services	Compliance Director Services	\$165,000

Fund Source	Organization	Account	Project	Program	Amount
1010	101130	54919	A468570	PS01	\$165,000
Total Amendment:					\$165,000

PUBLIC OUTREACH/INTEREST

The City and OPD continue to work with City leaders, community representatives and other stakeholders on ways to establish better communication/ understanding between Oakland police officers and the community; improve police-community relations; and enhance the integrity and professionalism of the Oakland Police Department.

COORDINATION

The Office of Contracts and Compliance, the Office of the City Attorney, the Budget Office, and the Controller's Bureau were consulted in preparation of this report.

SUSTAINABLE OPPORTUNITIES

Economic: Adopting the police reforms and best practices in policing will continue to result in a professional police organization, increasing public confidence in OPD and improving community relations. It will also reduce the liability costs resulting from police claims, lawsuits, and litigation payouts, and the impact that these cases have on the morale and well-being of city employees.

Environmental: There are no environmental opportunities.

Social Equity: A highly professional and well trained police organization is better able to provide police services, protect the community from crime, and ensure public confidence.

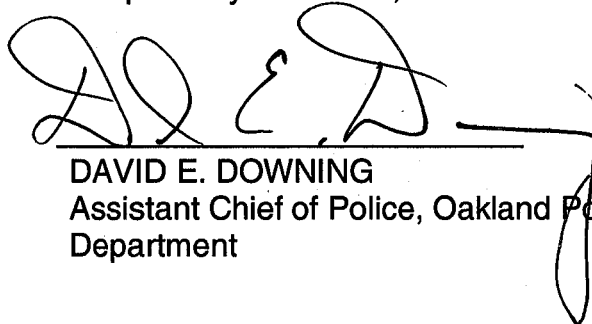
ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That City Council Adopt: 1) A Resolution Authorizing The City Administer Or Designee To Increase The 2016-2017 Professional Services Agreement Between The City Of Oakland And Police Performance Solutions, LLC For Monitoring And Technical Assistance Services In *Delphine Allen v. City Of Oakland* In An Amount Not To Exceed Seventy Five Thousand Dollars (\$75,000), Waive The City's Advertising And Bidding And Request For Proposals / Qualifications Requirements, And Authorize A One-Year Extension (Through January 20, 2018) Of The Professional Services Agreement Between The City Of Oakland And Police Performance Solutions, LLC For Monitoring And Technical Assistance Services In *Delphine Allen v. City Of Oakland*, In The Amount Of Seven Hundred Twenty Two Thousand Seventy Six Dollars (\$722,076) For A Total Contract Amount Not To Exceed Six Million Six Hundred Ninety One Thousand Three Hundred Ninety Six Dollars (\$6,691,396); And

2) A Resolution Authorizing the City Administrator or Designee to Waive The City's Advertising And Bidding Requirements And Request For Proposals/ Qualifications Requirements And Enter Into A One-Year Contract Extension (Through January 20, 2018) With Warshaw & Associates Inc.; To Provide Compliance Director Services To The City In *Delphine Allen V. City Of Oakland*, In An Amount Not To Exceed One Hundred Sixty Five Thousand Dollars (\$165,000) For A Total Contract Amount Not To Exceed Six Hundred Sixty Thousand Dollars (\$660,000).

For questions regarding this report, please contact Kristin Burgess-Medeiros, Police Auditor, at (510) 238-7097.

Respectfully submitted,



DAVID E. DOWNING
Assistant Chief of Police, Oakland Police
Department

Prepared by:
Kristin Burgess-Medeiros, Police Auditor
Office of Inspector General

Item: _____
City Council
January 17, 2016

2017

FILED
OFFICE OF THE CITY CLERK
OAKLAND

Priscia Holmes
City Attorney

2016 JAN -5 PM 3:48
OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTER OR DESIGNEE TO INCREASE THE 2016-2017 PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF OAKLAND AND POLICE PERFORMANCE SOLUTIONS, LLC FOR MONITORING AND TECHNICAL ASSISTANCE SERVICES IN DELPHINE ALLEN V. CITY OF OAKLAND IN AN AMOUNT NOT TO EXCEED SEVENTY FIVE THOUSAND DOLLARS (\$75,000), WAIVE THE CITY'S ADVERTISING AND BIDDING AND REQUEST FOR PROPOSALS / QUALIFICATIONS REQUIREMENTS, AND AUTHORIZE A ONE-YEAR EXTENSION (THROUGH JANUARY 20, 2018) OF THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF OAKLAND AND POLICE PERFORMANCE SOLUTIONS, LLC FOR MONITORING AND TECHNICAL ASSISTANCE SERVICES IN DELPHINE ALLEN V. CITY OF OAKLAND, IN THE AMOUNT OF SEVEN HUNDRED TWENTY TWO THOUSAND SEVENTY SIX DOLLARS (\$722,076) FOR A TOTAL CONTRACT AMOUNT NOT TO EXCEED SIX MILLION SIX HUNDRED NINETY ONE THOUSAND THREE HUNDRED NINETY SIX DOLLARS (\$6,691,396).

WHEREAS, in 2000 a number of plaintiffs filed *Delphine Allen et al. v. City of Oakland* (United States District Court Case no. C00-4599 TEH), which commonly is referred to as the *Riders* case, alleging that four Oakland police officers violated their civil rights by planting evidence, committing perjury and using excessive force; and

WHEREAS, the City terminated the four officers; an arbitrator upheld the terminations of the three officers who challenged their terminations; and

WHEREAS, the Alameda County District Attorney dismissed numerous cases because the officers' testimony was unreliable; released a number of the plaintiffs who were in custody and criminally prosecuted three of the officers; and a fourth officer fled and has not been located; and

WHEREAS, in 2003 the City Council approved the Negotiated Settlement Agreement ("NSA") to resolve the *Riders* case and the Court issued an order approving the NSA and retained jurisdiction to oversee compliance; and

WHEREAS, the NSA requires that the City institute police reforms to ensure that Oakland police officers exercise their powers and perform their duties in compliance with constitutional standards and that the parties to the NSA work with an Independent Monitor who would help the Court oversee compliance; and the parties subsequently executed a

Memorandum of Understanding (“MOU”) and an Amended Memorandum of Understanding (“AMOU”) that superseded the NSA and the City continues to implement the remaining compliance tasks; and

WHEREAS, in 2009 the Oakland Police Department selected Police Performance Solutions, LLC (formerly Alexandria Group of MPRI) to serve as Independent Monitor under the NSA/MOU in accordance with the City’s contract procedures and laws, and in December 2009 the City Council approved the two-year contract which expired on January 20, 2012 in the amount of \$1,500,000 through Resolutions 82448 C.M.S. and 82491 C.M.S.; and

WHEREAS, in June 2010 the City Council passed Resolution 82856 C.M.S. which increased the budget amount of the contract with Police Performance Solutions, LLC by the amount of \$100,320 to cover technical assistance services; and

WHEREAS, in June 2011 the City Council waived advertising and competitive processes and approved a two-year extension of the contract with Police Performance Solutions, LLC for \$1,684,000, which expired on January 20, 2014 in Resolution 83380; and

WHEREAS, in February 2012 the City Council passed Resolution 83728 C.M.S., which increased the budget amount of the contract with Police Performance Solutions, LLC by the amount of \$100,000 to cover technical assistance services; and

WHEREAS, in December 2013 the City Council waived the advertising and competitive bidding processes and approved a one-year extension of the contract with Police Performance Solutions, LLC for \$910,000 which expired on January 20, 2015 through Resolution 84759 C.M.S.; and

WHEREAS, in January 2015, through Resolution 85369 C.M.S., the City Council waived advertising and competitive bidding processes and approved a one-year extension of the contract with Police Performance Solutions, LLC for \$950,000 which expired on January 20, 2016; and

WHEREAS, in January 2016, the City Council waived advertising and competitive processes and approved a one-year extension of the contract with Police Performance Solutions, LLC for \$650,000 which will expire January 20, 2017 through Resolution 85968 C.M.S.; and

WHEREAS, in March 2016, the Court issued an order (*Order RE: Internal Affairs Case No. 15-0771, Mar. 23, 2016*) citing irregularities and potential violations of the Negotiated Settlement Agreement, leading to a need for increased technical assistance and oversight by the Monitor; and

WHEREAS, the City Administrator has recommended that the City Council authorize an increase in the 2016-2017 contract with Police Performance Solutions, LLC for monitoring services; and

WHEREAS, the City Administrator has recommended that the City Council authorize extension of the contract with Police Performance Solutions, LLC for monitoring services for up to one year, and that the Council waive advertising and competitive processes; and

WHEREAS, sufficient funds have been budgeted in General Purpose Fund (1010), Office of the Inspector General (OIG) Org (101130), Compliance Director Project (A468570), Miscellaneous Contract Account (54919), Agency Wide Administration Program (PS01) to pay for this contract; and

WHEREAS, Oakland Municipal Code sections 2.04.050 and 2.04.051 authorize the City Council to waive advertising and competitive processes for awarding contracts upon a finding that it is in the City's best interests and, here, continuing the contract with Police Performance Solutions LLC. serves the City's interests by retaining monitors who are familiar with compliance standards and OPD operations and dispensing with the lengthy process of advertising, competitively bidding and selecting a new monitoring team; and

WHEREAS, the City lacks personnel to perform the work, and the City Council finds and determines that the services contract authorized hereunder is of a professional, scientific or technical and temporary nature, and shall not result in the loss of employment or salary by any person having permanent status in the competitive services; now therefore be it

RESOLVED: That the Council authorizes the City Administrator to increase the 2016-2017 contract with Police Performance Solutions, LLC for monitoring services in the amount of \$75,000, for a total contract amount of \$725,000; and be it

RESOLVED: That the Council authorizes the City Administrator to execute an agreement extending the contract with Police Performance Solutions, LLC for monitoring services for an amount not to exceed \$722,076 for one year, i.e., no longer than January 20, 2018, provided that the City Administrator may amend the scope of services and/or provide for earlier termination of the contract if appropriate so long as the contract amount for the extended term does not exceed \$722,076; and be it

FURTHER RESOLVED: That pursuant to Oakland Municipal Code, Chapter 2.04, sections 2.04.050 and 2.04.051 and for the reasons stated above and in the City Administrator's report accompanying this resolution, the City Council finds and determines that it is in the best interests of the City to waive the advertising and RFP/RFQ competitive process, and hereby waives these requirements; and be it

FURTHER RESOLVED: That funds have been budgeted in General Purpose Fund (1010), Office of the Inspector General (OIG) Org (101130), Compliance Director Project (A468570), Miscellaneous Contract Account (54919), Agency Wide Administration Program (PS01); and be it

FURTHER RESOLVED: That the City Administrator or designee is authorized to carry out all administrative and financial actions, including negotiations, certifications, assurances, and related actions as necessary to execute, amend, or extend the contract, except for increasing the contract amount, without returning to the City Council; and be it

FURTHER RESOLVED: That in accordance with Article IV, section 401(6) of the City Charter, agreements authorized by this resolution shall be approved by the City Attorney for form and legality before execution and a copy of fully executed agreements shall be placed on file with the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID and PRESIDENT GIBSON MCELHANEY

NOES-
ABSENT-
ABSTENTION-

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

Aricia Hayes
City Attorney

FILED
OFFICE OF THE CITY CLERK
OAKLAND

OAKLAND CITY COUNCIL

2018 JAN -5 PM 3:49 RESOLUTION No. _____ C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR OR DESIGNEE TO WAIVE THE CITY'S ADVERTISING AND BIDDING REQUIREMENTS AND REQUEST FOR PROPOSALS / QUALIFICATIONS REQUIREMENTS AND TO ENTER INTO A ONE-YEAR CONTRACT EXTENSION (THROUGH JANUARY 20, 2018) WITH WARSHAW & ASSOCIATES INC., TO PROVIDE COMPLIANCE DIRECTOR SERVICES TO THE CITY IN DELPHINE ALLEN V. CITY OF OAKLAND, IN AN AMOUNT NOT TO EXCEED ONE HUNDRED SIXTY FIVE THOUSAND DOLLARS (\$165,000), FOR A TOTAL CONTRACT AMOUNT NOT TO EXCEED SIX HUNDRED SIXTY THOUSAND DOLLARS (\$660,000).

WHEREAS, in 2000 a number of plaintiffs filed *Delphine Allen et al. v. City of Oakland* (United States District Court Case no. C00-4599 TEH), which commonly is referred to as the *Riders* case, alleging that four Oakland police officers violated their civil rights by planting evidence, committing perjury and using excessive force; and

WHEREAS, the City terminated the four officers; an arbitrator upheld the terminations of the three officers who challenged their terminations; and

WHEREAS, the Alameda County District Attorney dismissed numerous cases because the officers' testimony was unreliable; released a number of the plaintiffs who were in custody and criminally prosecuted three of the officers; and the fourth officer fled and has not been located; and

WHEREAS, in 2003 the City Council approved the Negotiated Settlement Agreement ("NSA") to resolve the *Riders* case and the Court issued an order approving the NSA and retained jurisdiction to oversee compliance with the NSA; and

WHEREAS, the NSA requires that the City institute police reforms to ensure that Oakland police officers exercise their powers and perform their duties in compliance with constitutional standards and that the parties to the NSA work with an Independent Monitor who would help the Court oversee compliance; and the parties subsequently executed a Memorandum of Understanding ("MOU") and an Amended Memorandum of Understanding ("AMOU") that superseded the NSA and the City continues to implement the remaining compliance tasks; and

WHEREAS, in 2009 the Oakland Police Department selected Police Performance Solutions, LLC (formerly Alexandria Group of MPRI) to serve as Independent Monitor for a two-year period under the NSA/MOU in accord with the City's contract procedures and laws and the Council approved the professional services agreement for two years in the amount of \$1,500,000; and

WHEREAS, in June 2010 the Council approved a resolution presented by the City Administrator increasing the budget amount of the contract with Police Performance Solutions, LLC by the amount of \$100,320 to cover technical assistance services; and

WHEREAS, in June 2011 the City Council waived advertising and competitive processes and approved a two-year extension of the contract with Police Performance Solutions, LLC for \$1,684,000, which expired on January 20, 2014; and

WHEREAS, in February 2012 the City Council approved a resolution presented by the City Administrator increasing the budget amount of the contract with Police Performance Solutions, LLC. by the amount of \$100,000 to cover technical assistance services; and

WHEREAS, in December 2013 the City Council waived advertising and competitive processes and approved a one-year extension of the contract with Police Performance Solutions, LLC for \$910,000 which will expire on January 20, 2015; and

WHEREAS, on December 12, 2012 the Court issued an Order providing for the appointment of a Compliance Director "to bring Defendants [City] into sustainable compliance with the NSA and AMOU" and further providing that the Compliance Director would report directly to the Court and serve as the Court's agent; and on March 4, 2013 the Court appointed Thomas C. Frazier as the Compliance Director (*Order Appointing compliance Director, March 4, 2013, ECF No. 911; see also Order Re Compliance Director, December 12, 2012, ECF No. 885*); and

WHEREAS, on February 12, 2014 the Court issued an Order immediately terminating Thomas C. Frazier as Compliance Director, and ordering that all authority previously vested in Mr. Frazier was transferred immediately to the court appointed Monitor, Robert S. Warsaw of Police Performance Solutions, LLC (*Order Modifying Compliance Oversight Model, Feb. 12, 2014, ECF No. 973*); and

WHEREAS, the Court's February 12, 2014 Order further stated that the Monitor shall discuss with the City "necessary modifications to his contract as a result of the expansion of his powers and duties, including whether he needs to have a greater on-site presence and the amount of additional compensation that would be appropriate", and that the "Court expects the additional compensation, including travel expenses and costs associated with any assistants, not to exceed \$150,000 annually and the order further stated that any disputes regarding the contact modifications will be resolved by the Court (*Order Modifying Compliance Oversight Model, Feb. 12, 2014, ECF No. 973*); and

WHEREAS, Robert S. Warshaw of Police Performance Solutions, LLC advised the City that he desired a separate contract for Compliance Director services, and identified Warshaw & Associates Inc., as the new business entity to enter into the separate contract; and

WHEREAS, Robert S. Warshaw further advised the City that the \$150,000 for the one year term was an acceptable amount to perform the compliance director services, provided that the City agreed to cover the costs of insurance (liability and errors and omissions) and business license taxes; and

WHEREAS, the City Administration determined that an additional amount up to a maximum of \$15,000 was sufficient to cover the aforesaid costs of insurance and business license taxes and therefore sought approval for the City Administrator to execute a separate contract with Robert S. Warshaw for an amount not to exceed \$165,000 for the one-year term of the compliance director services agreement; and

WHEREAS, in April 2014 the City Council waived the advertising and competitive processes and passed Resolution 84911 C.M.S. authorizing a one-year contract with Warshaw & Associates Inc. for compliance director professional services in an amount not to exceed \$165,000, with an expiration date of January 20, 2015; and

WHEREAS, in January 2015 the City Council waived advertising and competitive processes and passed Resolution 85370 C.M.S. authorizing a one-year contract extension with Warshaw & Associates Inc. for compliance director professional services in an amount not to exceed \$165,000, with an expiration date of January 20, 2016; and

WHEREAS, in January 2016 the City Council waived advertising and competitive processes and passed Resolution 85969 C.M.S. authorizing a one-year contract extension with Warshaw & Associates Inc. for compliance director professional services in an amount not to exceed \$165,000, with an expiration date of January 20, 2017; and

WHEREAS, the City Administrator has recommended that the City Council Authorize extension of the contract with Warshaw & Associates Inc. for compliance director professional services for up to one year in an amount not to exceed \$165,000, with an expiration date of January 20, 2018, and

WHEREAS, sufficient funds have been budgeted in General Purpose Fund (1010), Office of the Inspector General (OIG) Org (101130), Compliance Director Project (A468570), Miscellaneous Contract Account (54919), Agency Wide Administration Program (PS01); and

WHEREAS, Oakland Municipal Code sections 2.04.050 and 2.04.051 authorize the City Council to waive advertising and competitive processes required for contract awards upon a finding by the Council that it is in the City's best interests to do so; and

WHEREAS, the compliance director services must be performed by an independent and neutral court appointee and therefore cannot be performed by City personnel; and the contract authorized hereunder is of a professional, scientific or technical and temporary nature, and shall not result in the loss of employment or salary by any person having permanent status in the competitive services; now, therefore, be

it

RESOLVED: That the Council authorizes the City Administrator to execute an agreement extending the contract with Warshaw & Associates Inc. for compliance director services for up to one year for an amount not to exceed \$165,000, i.e., no later than January 20, 2018, provided that the City Administrator may amend the scope of services and/or provide for earlier termination of the contract if appropriate; and be it

FURTHER RESOLVED: That pursuant to Oakland Municipal Code, Chapter 2.04, sections 2.04.050 and 2.04.051 and for the reasons stated above and in the City Administrator's report accompanying this resolution, the Council finds and determines that it is in the best interests of the City to waive the advertising and RFP/RFQ competitive process, and hereby waives these requirements; and be it

FURTHER RESOLVED: That funds have been budgeted in General Purpose Fund (1010), Office of the Inspector General (OIG) Org (101130), Compliance Director Project (A468570), Miscellaneous Contract Account (54919), Agency Wide Administration Program (PS01); and be it

FURTHER RESOLVED: That the City Administrator or designee is authorized to carry out all administrative and financial actions, including negotiations, certifications, assurances, and related actions as necessary to execute, amend, or extend the contract, except for increases in the contract amount, without returning to the City Council; and be it

FURTHER RESOLVED: That in accordance with Article IV, section 401(6) of the City Charter, agreements authorized by this resolution shall be approved by the City Attorney for form and legality before execution and a copy of fully executed agreements shall be placed on file with the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

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

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____

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