

## OFFICE OF THE CITY CLERK OAKLAND

## 2010 NOV 20 PM 1: 19

## AGENDA REPORT

TO: Sabrina B. Landreth

City Administrator

FROM:

Anne E. Kirkpatrick

Chief of Police

**SUBJECT: OPD ATF MOU** 

DATE:

November 5, 2018

City Administrator

Approval

Date

### RECOMMENDATION

Staff Recommends That The City Council Approve A Resolution Authorizing The City Administrator Or Designee To Enter Into A Memorandum Of Understanding (MOU) With The Bureau Of Alcohol, Tobacco, Firearms, And Explosives (ATF) And The Oakland Police Department (OPD) For The Purpose Of Reimbursement Of Overtime Salary And Other Costs Related To OPD Participation In The ATF Taskforce, For The Period Of July 27, 2016 Through September 30, 2021.

#### **EXECUTIVE SUMMARY**

ATF has staff and resources that help OPD investigate crimes involving illegal drug trafficking, firearms, and use of violence. The ATF has created task forces (TF) in high crime areas such as Oakland to help coordinate criminal investigations. OPD's Criminal Investigations Division (CID) can better investigate criminal networks engaged in these illegal and violent activities through TF participation. Additionally, the ATF can reimburse OPD for the payroll costs of one OPD officer officially attached to the TF with the signing of the TF MOU. OPD signed the ATF MOU in July 27, 2016. However, the City Charter requires that the City Council approve interagency agreements.

#### BACKGROUND AND LEGISLATIVE HISTORY

OPD first entered into an MOU with the ATF to form a local ATF TF in 2008. On July 27, 2016 OPD again entered into an MOU with ATF; this later MOU will expire on September 30, 2021. Article IV, Section 401(6) of the City Charter requires that the City Council authorize the City Administrator or designee to enter into an agreement between the City and other agency or organization. This MOU was signed by OPD without realizing the requirement of Council approval for all interagency agreements; OPD now recognizes that it cannot continue its partnership with the ATF TF without City Council approval.

Ordinance No. 13457 C.M.S., passed June 29, 2017, requires that OPD submit a "proposed MOU and any orders, policies, and procedures relevant to the subject matter of the MOU for discussion and public comment at an open meeting of the Privacy Advisory Commission" before execution of said agreement. Therefore, OPD plans to bring the ATF TF MOU for review at their

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special November 26, 2018 meeting; staff will provide a supplemental report to this report with a summary of the PAC's recommendation. OPD recommends that the City Council approve this resolution authorizing the ATF TF MOU to continue through September 30, 2021.

Oakland continues to suffer from the highest per-officer crime rate of any large U.S. city, with the following levels homicides, aggravated assaults and robberies in 2017:

- 72 homicides;
- 2,807 aggravated assaults (including 277 shootings with injuries and 192 shootings related to an occupied home or vehicle);
- 2,585 robberies (including 980 involving firearms); and
- 151 cases of arson.

ATF TF Officers (TFOs) conduct investigations related to firearms violations which include narcotics, social media threats to the residents of Oakland, organized crime related to the City and cases of arson. The ATF TF also provides law enforcement operating in Oakland with access to the San Francisco Crime Gun Intelligence Center (CGIC). The CGIC utilizes the National Integrated Ballistic Information Network (NIBIN), which provides crucial intelligence about firearm-related crimes committed in Oakland and the San Francisco Bay Area. The ATF Special Agents compile NBIN leads which have been linked to hundreds of violent crimes in our community. ATF Special Agents and TFOs frequently respond to assist law enforcement agencies and OPD to conduct investigations of individuals or groups who victimize Oakland residents.

The following examples highlight the types investigations enabled by OPD's involvement with the ATF TF:

- 85<sup>TH</sup> Ave Investigation In 2018 TFOs concluded a large-scale operation in the 8500 block of International Blvd. This area is well known for the sale of narcotics and related gang and group violence. Due to the large number of narcotics sold in this area, rival dealers have attempted to control area sales by any means to facilitate drug sale activity, including using firearms to shoot at rivals. In 2017, a homicide occurred in the 1400 block of 85<sup>th</sup> Ave. TFOs began an undercover operation to stem this violent activity. ATF and OPD TF members assisted in the long-term investigation. Narcotics and guns were purchased from local dealers and confidential informants on the streets of East Oakland. The investigation led to the identification of individuals who were dealing narcotics and suspected to be involved in multiple shootings. This operation led to the arrest of 16 defendants. The ATF Oakland Office recovered 6 firearms and large quantities of narcotics from the East Oakland neighborhood. Additionally, numerous people assisted OPD's Criminal Investigations Division (CID) in identifying witnesses and possible suspects in several shootings and Homicides from the area.
- <u>Lake Merritt</u> ATF Task Force Officer initiated an investigation into a well-known narcotics trafficker who was supplying the Lake Merit area with cocaine base (for resale). A Federal Search Warrant was conducted at the suspect's residence and approximately one pound of cocaine was recovered. The suspect was also in possession of a firearm at the time of his arrest.

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- Operation Jamo<sup>1</sup> This operation targeted a prolific cocaine dealer in East Oakland.
   ATF Task Force Officers purchased a quarter pound of crack cocaine in the area of 85<sup>th</sup> Avenue and International Boulevard. OPD suspected the target of this investigation was supplying large quantities of cocaine in East Oakland. The suspect's arrest deterred ongoing sales of narcotics in the area.
- Federal Firearm Licensing (FFL)² Crew During the summer of 2016, a string of burglaries occurred at gun stores throughout Northern California. OPD officers identified several vehicles stolen in the City of Oakland, which were used to crash into the stores. After ramming the stolen cars into the stores, the suspects would steal numerous firearms. The ATF Oakland Field Office later identified the suspects responsible for these burglaries. The suspects were also selling the stolen firearms. The suspects were members and associates of violent Oakland criminal gangs (the 69th Avenue Village (69 MOB)), Case Boys, and Acorn (Kane City Stain City)). The investigation resulted in several arrests and approximately 16 federal search warrants were executed. To date 107 firearms have been recovered, eight suspects have been found guilty in Federal court, and two suspects have been convicted in Placer County Juvenile Court. Information cultivated during this investigation is currently helping OPD's Ceasefire Unit with ongoing gang prosecutions.
- <u>Adopted Case<sup>3</sup></u> The ATF Oakland Field Office also adopted firearm related arrests by OPD. Due to these suspects' violent nature they are of concern to the City of Oakland. In one instance, the ATF Oakland Field Office has obtained a federal indictment for a suspect responsible for the injuring of two OPD officers during a high-speed pursuit.
- Norteño Gang Member Arrest An OPD TF officer reviewed an arrest report of a
  documented Norteño gang member, arrested in possession of a stolen vehicle,
  possession of a stolen firearm and narcotics. The officer knew the gang member from
  previous contacts. This gang member was a recruiter and enforcer for the Norteño gang;
  he was known to recruit young Hispanic males from the Fruitvale District into the gang.
  This individual plead guilty to Federal charges and received 84 months in prison.
- <u>Ghost Ship Fire</u> TF officers assisted Federal, State and local detectives assigned to "the Ghost Ship" Fire investigation. The ATF National Response Team and the ATF Oakland Field Office conducted witness interviews, recovered surveillance video, and reviewed the footage to provide leads and to identify victims. The legal prosecution related to the fire is ongoing.
- <u>89<sup>th</sup> Ave</u> The TF investigated the area in and around the 8900 block of B Street. This location is known for areas frequented by members of the "Dirty people" gang and the "Trill Youngin's" gang. Several transactions of firearms and narcotics were conducted in this area. As a result, the ATF Task Force has recovered 11 firearms. One AR 15 rifle and two machine guns were procured during this operation. Approximately 3000 pills of suspected ecstasy, 20 pounds of marijuana, and several ounces of both powder and crack cocaine. Three defendants have been arrested to date. This is an ongoing case. Three federal search warrants were granted during this investigation.

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<sup>&</sup>lt;sup>1</sup> Name provided by the ATF

<sup>&</sup>lt;sup>2</sup> Name provided by the ATF

<sup>&</sup>lt;sup>3</sup> An "adopted case" refers to when the ATF charges suspects for alleged crimes in Federal Court after reviewing evidence following arrests by OPD.

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#### ANALYSIS AND POLICY ALTERNATIVES

OPD relies upon collaboration with ATF for local investigations of crimes and criminal networks involving firearms. OPD officers assigned to the ATF TF are utilized in an undercover officer capacity to purchase firearms and or narcotics. Ninety-five percent of the Task Force's focus is in the City of Oakland. TFOs conduct undercover surveillance, informant management, and operational support during undercover narcotics purchase operations. TFOs are required to be on-scene during operations to ensure the safety of Oakland residents as well as outside partners. TFOs conduct and assist with interviews of the suspected criminals who have been recently arrested by OPD officers or Alameda County Sheriff's Office personnel. OPD officers assigned to the ATF TF assist Federal prosecutors with researching court documents, interviewing witnesses and collecting evidence needed prosecution. Assigned officers review firearms arrests made by OPD officers and evaluate if these cases meet the standards for a Federal prosecution.

The ATF Oakland Field Office targets violent Oakland street gang members who are actively involved in shootings throughout the city. By focusing on these gang members, the ATF seeks to indict those individuals driving the violence. If these gang members are convicted on Federal charges, they will receive longer sentences, effectively removing them from the streets of Oakland; OPD believes the imprisonment of gang members actively involved in illegal drug trafficking and related gun crimes will decrease the number of gang related shootings and homicides occurring in Oakland.

The ATF Oakland Field Office also investigates large scale trafficking of firearms, including machine guns, into the city of Oakland. Firearm traffickers supply hundreds of firearms from neighboring States such as Nevada and Arizona. These firearms make it into the hands of Oakland gang members, where they are used to commit robberies, shootings, and murders throughout the area.

ATF and OPD can best solve violent firearm-related crimes in Oakland through collaborations that combine resources and knowledge. Through this MOU, OPD can also request reimbursement for OPD payment of overtime expenses related to OPD personnel assigned to ATF Taskforce cases; OPD can similarly request reimbursement for other costs, such as travel, fuel, training, and equipment, with prior approval of ATF. OPD will not be able to request such reimbursement without a current MOU.

#### PUBLIC OUTREACH / INTEREST

No outreach was deemed necessary for this report beyond the standard City Council agenda noticing procedures. OPD continues to collaborate with the PAC for all federal MOUs.

#### **COORDINATION**

OPD consulted with the Budget Bureau and the Office of the City Attorney in the development of this report and accompanying resolution.

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#### FISCAL IMPACT

Any reimbursements for overtime expenses made by the ATF to OPD shall be deposited into Fund 2999, Org 102310, Account 46129, Project TBD, and Program PS03.

#### **SUSTAINABLE OPPORTUNITIES**

*Economic*: There are no economic opportunities associated with this report.

**Environmental**: There are no environmental opportunities associated with this report.

**Social Equity**: OPD's collaboration with ATF helps OPD to solve violent gun-related crimes in Oakland. All residents and visitors benefit from these efforts to investigate and prosecute violent criminals.

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#### ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Approve A Resolution Authorizing The City Administrator Or Designee To Enter Into A Memorandum Of Understanding (MOU) With The Bureau Of Alcohol, Tobacco, Firearms, And Explosives (ATF) And The Oakland Police Department (OPD) For The Purpose Of Reimbursement Of Overtime Salary And Other Costs Related To OPD Participation In The ATF Taskforce, For The Period Of July 27, 2016 Through September 30, 2021.

For questions regarding this report, please contact Lieutenant James Beere, Felony Assault Section, CID, Bureau of Investigations, at (510) 238-3728.

Respectfully submitted,

Anne E. Kirkpatrick Chief of Police

Oakland Police Department

Reviewed by: James Beere, Lieutenant OPD, CID, Bureau of Investigations

Timothy Birch, Police Services Manager I OPD, Training Division – Research and Planning

Prepared by: Bruce Stoffmacher, Legislation Manager OPD Training Division, Research and Planning Unit

Attachments (1):

A – Memorandum of Understanding between the Oakland Police Department and the Bureau of Alcohol, Tobacco, Firearms, and Explosives

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#### U.S. Department of Justice

Bureau of Alcohol, Tobacco, Firearms and Explosives

Washington, DC 20226
www.atf.gov

#### MEMORANDUM OF AGREEMENT

Between the
Bureau of Alcohol, Tobacco, Firearms and Explosives
and
City of Oakland Police Department
for
Reimbursement of Overtime Salary Costs
associated with
ATF TASK FORCE

\*\*\*\*

This Memorandum of Agreement (MOA) is entered into by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the City of Oakland Police Department for the purpose of reimbursement of overtime salary costs and other costs, with prior ATF approval, including but not limited to travel, fuel, training, and equipment, incurred by the City of Oakland Police Department in providing resources to assist ATF.

Payments may be made to the extent they are included in ATFs Fiscal Year Plan and the monies are available to satisfy the request(s) for reimbursable overtime expenses.

#### I. DURATION OF THIS MEMORANDUM OF AGREEMENT

This MOA is effective with the signatures of all parties and terminates at the close of business on September 30, 2021, subject to Section VII of the MOA.

#### II. <u>AUTHORITY</u>

This MOA is established pursuant to the following provisions:

 Title 28, U.S.C., Section 524(c), the Department of Justice, Asset Forfeiture Fund, which provides for the reimbursement of certain expenses of local, county, or State law enforcement agencies incurred as participants in joint operations/task forces with a Department of the Justice law enforcement agency.

- Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies
  Appropriations Bill, which provides for the reimbursement of overtime salary costs of
  local, county, or State law enforcement agencies incurred while assisting ATF in joint law
  enforcement operations.
- 3. Title 31, U.S.C., Section 9703, the Treasury Forfeiture Fund Act of 1992, which provides for the reimbursement of certain expenses of local, county, or State law enforcement agencies incurred as participants in joint operations/task forces with a Federal law enforcement agency.

If available, the funding for fiscal years 2017, 2018, 2019, 2020 and 2021 is contingent upon annual appropriation laws, Title 28, U.S.C., Section 524(c), annual appropriations, and Title 31, U.S.C., Section 332.

If available, funding allocations for reimbursement of expenses will be transmitted through a separate document.

This Memorandum of Agreement (MOA) is not a funding allocation document.

#### III. PURPOSE OF THIS MEMORANDUM OF AGREEMENT

This MOA establishes the procedures and responsibilities of both the City of Oakland Police Department and ATF for the reimbursement of certain overtime and other preapproved expenses incurred pursuant to the authority in Section II.

#### IV. NAME OF JOINT OPERATION/TASK FORCE (if applicable)

The name of this joint operation/task force: ATF TASK FORCE

#### V. CONDITIONS AND PROCEDURES

- A. The City of Oakland Police Department shall assign officer(s) to assist ATF in investigations of Federal, state, and local laws. To the maximum extent possible, the officer(s) will be assigned on a dedicated, rather than rotational basis. The City of Oakland Police Department shall provide ATF with the name(s), title(s), and employee identification number(s) of the officer(s) assigned to the investigation.
- B. The City of Oakland Police Department shall provide ATF, within ten (10) calendar days of the signing of this MOA, with a contact name, title, telephone number and address. The City of Oakland Police Department shall also provide the name of the official responsible for providing audit information under paragraph VI of this MOA, and the name of the official authorized to submit an invoice to ATF under paragraph V, subparagraph E.

C. The City of Oakland Police Department shall provide ATF, within ten (10) calendar days of the signing of this agreement, with the financial institution where the law enforcement agency wants the Electronic Funds Transfer (EFT) payment deposited for reimbursement. The mechanism for this is the Unified Financial Management System (UFMS) Vendor Request Form. Within the UFMS Vendor Request form, the DUNS Number should be provided (DUNS – Data Universal Numbering System, identifies business entities on a location-specific basis) under section 12. When completed, forward this form to the appropriate ATF field office address:

ATF, ATTN: Jill A Snyder, 5601 Arnold Rd., Suite 400, Dublin, CA 94568.

- D. The City of Oakland Police Department may request reimbursement for payment of overtime expenses and other costs with prior ATF approval, including but not limited to travel, fuel, training, and equipment, directly related to work performed by its officer(s) assigned as members of a joint operation/task force with ATF for the purpose of conducting an official investigation.
- E. Invoices submitted to ATF for the payment of expenses must be submitted on the appropriate forms as provided by ATF. The invoice shall be signed by an authorized representative of the City of Oakland Police Department and submitted to ATF field office for signature and verification of the invoice.
- F. The City of Oakland Police Department will submit all requests for reimbursable payments, together with the appropriate documentation to ATF by the 10th day of each subsequent month that the agency is seeking reimbursement.
  - (1) If the reimbursement request is not received by the ATF field office by the 10th of the subsequent month, the ATF field office will advise the agency, in writing, that the reimbursement request is late, and if the reimbursement request is not received within the next 10 working days, the overtime costs will not be reimbursed.
  - (2) No waivers or extensions will be granted or honored. The City of Oakland Police Department will submit the request for reimbursement via fax, email or mail to the following address:

ATF, ATTN: Jill A Snyder, 5601 Arnold Rd., Suite 400, Dublin, CA 94568.

G. The ATF Supervisor shall be responsible for certifying that the request is for overtime expenses incurred by the City of Oakland Police Department for participation with ATF during the joint operation/task force. The responsible State or local official shall also certify that requests for reimbursement of expenses have not been made to other Federal law enforcement agencies.

- H. The City of Oakland Police Department acknowledges that they remain fully responsible for their obligations as the employer of the officer(s) assigned to the joint operation/task force and are responsible for the payment of the overtime earnings, withholdings, insurance coverage, and all other requirements by law, regulations, ordinance or contract regardless of the reimbursable overtime charges incurred.
- I. All reimbursable hours of overtime work covered under this MOA must be approved in advance by the ATF supervisor.
- J. All sworn State, county and local law enforcement officers cannot exceed the fiscal year reimbursement cap, which is the equivalent of 25 percent of a GS-12, Step-1 salary. Sworn law enforcement officers in the State, county or local law enforcement agency assigned to cover when a TFO/Special Deputy or other sworn law enforcement officer, has been called away on an ATF matter, shall not be reimbursed with SLOT funds.
- K. Any Sworn State, county and local law enforcement officer receiving funding from multiple sources, such as Organized Crime Drug Enforcement Task Force (OCDETF) or High Intensity Drug Trafficking Area (HIDTA), cannot exceed the fiscal year salary cap when all funding is combined; it is the RAC/GS's responsibility to ensure that the officer does not receive double funding in excess of the fiscal year cap.
- L. The ATF supervisor will forward all approved reimbursement requests to the Division Chief, Asset Forfeiture & Seized Property Division for payment.
- M. This document (MOA) does not obligate funds. Funding authority, with maximum reimbursement costs to any one law enforcement officer during the fiscal year (October 1 September 30); will be provided through other documents. The agency will receive an allocation confirmation from the field division.

#### VI. PROGRAM AUDIT

This MOA and its procedures are subject to audit by ATF, the Department of Justice, Office of Inspector General, the Government Accountability Office, and other auditors authorized by the Federal government. The City of Oakland Police Department agrees to permit such audits and agrees to maintain all records relating to these transactions for a period of not less than three years; and in the event of an on-going audit, until such time as the audit is completed.

These audits include reviews of any and all records, documents, reports, accounts, invoices, receipts, or expenditures relating to this agreement; as well as, the interview of any and all personnel involved in these transactions.

#### VII. REVISIONS

The terms of this MOA may be amended upon written approval by the original parties, or their designated representatives. Any amendment to this MOA becomes effective upon the date of approval as stated in the amendment. Either party can cancel this MOA upon 60-calendar day's written notice to the other party. The ATF will only process request for overtime for overtime incurred before the date of cancellation, absent a specific written agreement to the contrary.

#### VIII. NO PRIVATE RIGHT CREATED

This is an internal Government agreement between ATF and the City of Oakland Police
Department and is not intended to confer any right or benefit to any private person or party.

Mumfais	
Dayid E. Downing	Jill Snyder
Assistant Chief of Police	Special Agent in Charge
City of Oakland Police Department	San Francisco Field Division ATF
Date: 27 Jul 16	Date:

Mellssa L. McCoy
Deputy Chief Financial Officer
Office of Management
ATF

Date: 7/25/16

William P. McMullan
Deputy Assistant Director (West)
Field Operations
ATF

Date: 1/25/16

# OFFICE OF THE CITY CLERK

## 2018 NOV 20 PM 1: 19AKLAND CITY COUNCIL

RESOLUTION No	C.M.S.	
Introduced by Councilmember		

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR OR DESIGNEE TO ENTER INTO A MEMORANDUM OF UNDERSTANDING (MOU) WITH THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES (ATF) AND THE OAKLAND POLICE DEPARTMENT (OPD) FOR THE PURPOSE OF REIMBURSEMENT OF OVERTIME SALARY AND OTHER COSTS RELATED TO OPD PARTICIPATION IN THE ATF TASKFORCE, FOR THE PERIOD OF JULY 27, 2016 THROUGH SEPTEMBER 30, 2021

WHEREAS, the mission of ATF is to protect communities from violent criminals, criminal organizations, the illegal use and trafficking of firearms, the illegal use and storage of explosives, acts of arson and bombings, acts of terrorism, and the illegal diversion of alcohol and tobacco products; and

**WHEREAS**, Oakland continues to suffer from some of the highest percapita crime rates of any large U.S. city, with the following levels of crime for the year 2017:

- 72 homicides;
- 2,807 aggravated assaults (including 277 shootings with injuries and 192 shooting related to an occupied home or vehicle); and
- 2,585 robberies (including 980 with firearms);
- 151 cases of arson; and

WHEREAS, ATF has resources that can help OPD investigate violent crimes involving firearms as well as suspected criminals who use stolen firearms and or traffic in firearms used for violent crime; and

WHEREAS, OPD has limited resources to investigate crimes in suspected criminals involving the use of firearms; and

**WHEREAS,** ATF is prepared to support OPD by investigating local firearm-involved violent crimes; and

**WHEREAS**, ATF and OPD can best solve violent firearm-related crimes in Oakland through collaborations that combine resources and knowledge; and

WHEREAS, ATF and OPD previously signed a MOU in July 27, 2016 executing the MOU through September 30, 2021; and

WHEREAS, Article IV, Section 401(6) of the City Charter requires that the City Council authorize the City Administrator or designee to enter into an agreement between the City and other agency or organization; therefore, be it

**RESOLVED:** That the City Administrator or designee is authorized to complete all required negotiations, certifications, assurances, and documentation required to execute, modify, extend and/or amend the MOA with the ATF without returning to the City Council; and be it

**FURTHER RESOLVED:** that the initial duration period of the MOU between OPD and the ATF shall be July 27, 2016 through September 30, 2021; and be it

**FURTHER RESOLVED:** either party may terminate this MOA with 60 days' written notice; and be it

**RESOVED:** that OPD shall assign one or more officers to coordinate with ATF personnel on the ATF Taskforce; and be it

**RESOVED:** that OPD may request reimbursement for payment of overtime expenses and other costs, such as travel, fuel, training, and equipment, with prior approval of ATF; and be it

**FURTHER RESOLVED:** that any reimbursements for overtime expenses made by the ATF to OPD shall be deposited into Fund 2999, Org 102310, Account 46129, Project TBD, and Program PS03; and be it

**RESOLVED**: that the MOA authorizing participation the MOA between the ATF and OPD shall have a duration period of July 1, 2016 through September 30, 2021, unless either party wishes to nullify this MOA with 60 days' written notice; and be it

**FURTHER RESOLVED:** That the City Administrator or designee is authorized to complete all required negotiations, certifications, assurances, and documentation required to execute, modify, extend and/or amend the MOA without returning to the City Council; and be it

**FURTHER RESOLVED:** That in accordance with Article IV, Section 401(6) of the City Charter, the MOA authorized by this resolution shall be approved by as to form and legality before execution, and a copy of the fully executed agreement 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, GIBSON MCELHANEY AND PRESIDENT REID
NOES -
ABSENT -
ABSTENTION -
ATTEST: