BARBARA J. PARKER, City Attorney, SBN 069722
OTIS MCGEE, JR., Chief Assistant City Attorney, SBN 071885
ROCIO V. FIERRO, Supervising Deputy City Attorney, SBN 139565
RYAN G. RICHARDSON, Supervising Deputy City Attorney, SBN 223548
JAMILAH A. JEFFERSON, Senior Deputy City Attorney, SBN 219027
One Frank H. Ogawa Plaza, 6th Floor
Oakland, California 94612
Telephone: (510) 238-7686 Facsimile: (510) 238-6500
Email: jjefferson@oaklandcityattorney.org
R20752/1708460v2

Attorneys for Defendant
CITY OF OAKLAND

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DELPHINE ALLEN, et al.,

Plaintiffs,

v.

CITY OF OAKLAND, et al.,

Defendants.

Case No. C 00-4599 TEH

DEFENDANT CITY OF OAKLAND'S SEPTEMBER 1, 2015 PROGRESS REPORT RE: INVESTIGATOR'S REPORT ON ARBITRATIONS

Defendant City of Oakland ("City") files the attached progress report pursuant to the Court's April 20, 2015 Order Re: Investigator's Report on Arbitrations which provides: "On or before September 1, 2015, Defendants shall file a progress report discussing specific actions they have taken in response to this order and a timeline for any planned actions that have not been fully implemented." April 20, 2015 Order at 4:27–5:2 (ECF No. 1055).

The City also files Attachments A through E and will be seeking leave of Court to file an addendum under seal to protect the confidentiality of disciplinary and personnel information related

to certain police disciplinary actions. The addendum will be filed under a separate Administrative Motion in accordance with Civil Local Rule 79-5.

Dated: September 1, 2015

BARBARA J. PARKER, City Attorney
OTIS MCGEE, JR., Chief Assistant City Attorney
ROCIO V. FIERRO, Supervising Deputy City Attorney
RYAN G. RICHARDSON, Supervising Deputy City Attorney
JAMILAH A. JEFFERSON, Senior Deputy City Attorney

By: /s/ Barbara J. Parker
Attorneys for Defendants
CITY OF OAKLAND, et al.

CITY OF OAKLAND

ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney
Barbara J. Parker
City Attorney

(510) 238-3601
FAX: (510) 238-6500
TTY/TDD: (510) 238-3254

***DELPHINE ALLEN v. CITY OF OAKLAND*, et al.**

PROGRESS REPORT

The City of Oakland has made substantial and constructive improvements in handling police discipline. The City has completed most of the recommendations in the Court Investigator's April 20, 2015 report and implementation of any outstanding recommendations is well underway. We are confident that changes and improvements the City made both prior to and following the Investigator's report have had real and positive results. Seven arbitration decisions have been issued since September 2014, the end of the five-year period covered by the Court's investigation. All seven decisions involved suspensions, and all seven related to uses of force. Arbitrators upheld the City's decision to suspend officers in six of the seven cases[1].

This is a promising result. However, our goal is to implement structural and sustainable changes that will ensure fair, consistent and effective discipline for police officers on an ongoing, long-term basis.

Mayor Libby Schaaf and the City Council, through the City's budget process, have created new, permanent positions to help implement the recommendations made by the Court and institutionalize a better system of accountability for police. The City now has hired an additional Deputy City Attorney as of July 2015 to provide additional Labor & Employment support for police discipline and the City Attorney's Office has been able to reestablish the Labor & Employment Unit with a supervising attorney and four staff attorneys. The Oakland Police Department has hired an additional Deputy Chief to handle the majority of Skelly hearings, and the City is in the process of hiring a civilian to help oversee the Internal Affairs Division.

For ease of reference this report states each recommendation in the Court's investigator's April 20, 2015 report and provides the status of the City's implementation of each recommendation and, if applicable, the projected timeframe for completion. This report also provides information regarding the seven arbitration decisions that were issued after September 2014, the end of the five year period covered by the investigation.

[1] See chart in Section I, entitled Investigations, which shows outcomes.

I. Arbitration Decisions Issued After Five-Year Period Covered by Court Investigation

Seven arbitration decisions have been issued since September 2014, the end of the five-year period covered by the Court's investigation.[2] All seven decisions involved suspensions, and all seven related to uses of force. In six of the seven decisions the arbitrators upheld the City's decision to impose a suspension.

- In four cases, the arbitrators upheld the level of discipline the City imposed.
- In two cases, the arbitrators upheld the City's decision to suspend the grievant, but reduced the length of the suspension. Neither arbitrator reduced the discipline to a written reprimand.
- In one case, the arbitrator reversed the City's decision to impose discipline.

[2] Three of the decisions (Nos. 1, 2 and 7) pertain to one incident / arrest involving multiple uses of force.

ARBITRATION DECISIONS SINCE SEPTEMBER 2014

	GRIEVANT & VIOLATION	CITY'S DISCIPLINE	ARBITRATOR'S DECISION	OUTCOME	DECISION DATE
1	Officer A Use of Force (Baton strikes)	15 Days	Upheld City's disciplinary decision.	15 Days	12-30-2014
2	Officer B Use of Force (Baton strikes)	15 Days	Upheld City's decision to suspend; reduced level of discipline.	1 Day [3]	12-30-2014
3	Officer C Use of Force (TASER deployment)	1 Day	Upheld City's disciplinary decision.	1 Day	4-6-2015
4	Officer D Use of Force (Baton strikes)	5 Days	Upheld City's disciplinary decision.	5 Days	5-15-2015
5	Officer D Use of Force (TASER deployment)	15 Days	Upheld City's decision to suspend; reduced level of discipline.	5 Days [4]	6-21-2015
6	Officer E Use of Force (Pushing a protestor)	1 Day	Upheld City's disciplinary decision.	1 Day	6-30-2015
7	Sergeant F Use of Force (Baton strikes)	30 Days	Reversed City's disciplinary decision.	0 Days [5]	8-14-2015

[3] Officers A and B were disciplined for the same incident, involving an arrestee, and their cases were arbitrated together. The arbitrator reasoned that Officer A struck the arrestee immediately and without justification, while Officer B struck the arrestee only after it reasonably appeared the individual was resisting arrest. According to the arbitrator, Officer B nevertheless engaged in misconduct because he failed to follow through on the arrest.

[4] Officer D was involved in two separate incidents (Nos. 4 and 5). The use of force in number 5 occurred less than three months after the use of force in number 4. In other words, incident number 5 took place after incident number 4 took place but *before* the City had fully investigated number 4. The City ultimately found both incidents to be violations, and treated incident number 5 as a second offense. The arbitrator, however, did not view number 5 as a second offense.

[5] Sergeant F struck the same arrestee as Officers A and B, immediately after those officers left the scene. Sergeant F struck the arrestee while two other officers were handcuffing and arresting the individual. The arbitrator held that the arrestee may or may not have been resisting arrest or posing a threat to officer safety and that the evidence was inconclusive.

II. Technical Assistance

The Court's May 21, 2015 Order provides that the Monitor will afford increased technical assistance to help the City to achieve sustainable compliance with NSA tasks and address in a sustainable manner the strategies and benchmarks in the Court's December 12, 2012 order and the issues identified in the Court investigator's April 16, 2015 report.

Status: The City Attorney has discussed the Court's May 21, 2015 Order with the Monitor/Compliance Director. He advised that he welcomes consultation if the City Attorney has questions or desires input, but that he will not otherwise be involved in providing technical assistance. On August 13, 2015 the City Attorney and Police Chief met with the Monitoring Team to discuss the City's progress regarding compliance with the Court's May 21, 2015 Order and requested input regarding the substance and detail of the progress report the City is drafting. The City Attorney and Police Chief also met with Plaintiffs' counsel to discuss the City's progress regarding compliance with the Court's May 21, 2015 Order and requested their input. On August 27th the City provided the Monitoring Team an updated draft of the progress report for review and input.

Projected Time Frame for Completion: Not applicable

III. Investigation

1) *Recommendation*: *Oakland Police Department ("OPD") should involve Oakland City Attorney's Office ("OCA") more deeply in the investigation process with sufficient time for OCA to provide a helpful response. We recommend that the City station a Deputy City Attorney in IAD at least on a part time basis.*

Status: OCA started biweekly meetings with IAD in September, 2014, which were converted into weekly meetings starting in April, 2015. The attorney office-hours meetings with IAD have continued to date.

A new Deputy City Attorney joined the City Attorney's Labor & Employment Unit on August 3, 2015, enabling the OCA to station an attorney at IAD on a part time basis. Based on discussions with IAD as to which days and hours will work best, OCA has stationed an attorney in IAD on Tuesday, Wednesday and Thursday afternoons. IAD has provided the attorney with a dedicated workspace and computer. Prior to the Court's investigation, OCA had office hours at IAD.

Projected Time Frame for Completion: Done

2) *Recommendation: With every serious complaint, the OCA should assign one attorney to assist OPD from the outset of investigation of complaint through the resolution of the case, including arbitration.*

   Status: OCA has reestablished its Labor & Employment unit with a supervising attorney and four staff attorneys. Staff attorneys are handling some arbitration hearings and working alongside outside counsel for other hearings.

   OCA is assigning an attorney to advise on every serious case and is carefully monitoring cases to make sure they are being handled in a coordinated manner from the outset. Typically, the assigned attorney will work on serious cases from beginning to end. We note, however, that the number of investigations, the number of sustained cases, and the number of resulting arbitrations are unpredictable.[6] Depending on caseloads, staffing changes to cases may become necessary from time to time, but we will continue to make every effort to maximize continuity. This is one of the recommendations in the January 19, 2015 joint report from the Police Chief, City Attorney and City Administrator.

   Projected Time Frame for Completion: Done

3) *Recommendation: Department should revise the investigation process to consider supervisory accountability more thoroughly and to ensure that potential mitigating or exculpatory evidence or witnesses are considered.*

   Status: Supervisor accountability assessments have been a required component of OPD investigations for several years. All evidence is listed and considered within the same investigation. The pre-discipline report specifically asks commanders to reflect on the presence of aggravating or mitigating factors when determining discipline. At our August 13 meeting, the Monitor/Compliance Director agreed that this recommendation should be considered done.

   Projected Time Frame for Completion: Done

[6] For example, the Occupy events prompted a very large number of complaints and investigations, necessitating hiring of outside firms to assist with the investigations and resulting in a significant number of disciplinary actions in a short period of time. Similarly, as we advised in the January 2015 joint report, OCA received 19 new police arbitration cases during the 2014 calendar year.

4) Recommendation: *Department should consider in all cases whether it needs to interview civilian witnesses as part of its investigation, and it must be diligent in its efforts to locate and contact these witnesses. OPD should work with OCA to develop a policy to determine when outside experts should be hired and who will pay for them.*

   Status: OPD and OCA are working together to develop a policy to help OPD determine when an investigation would benefit from highly specialized expertise, such as expertise in force science, audio and video enhancement, computer forensics, weapons, or ballistics, as well as how best to asses a potential expert's skill and knowledge.

   OCA and IAD currently review cases together, which includes evaluating the availability of civilian witnesses and whether those witnesses should be interviewed, and the questions that should be asked. In addition, OCA has developed a written policy to ensure that IAD is notified when civilian witnesses are identified in a civil lawsuit that corresponds to an ongoing IAD investigation (*Attachment A*).

   Projected Time Frame for Completion: December 1, 2015

5) Recommendation: *Department should reduce turnover in IA by including at least one civilian at a high level of authority within the division. The civilian should be someone who understands both community expectations and police procedure, who has investigative experience, and who has a commitment to collaborate with the OCA on the most serious cases.*

   Status: City Council's Fiscal Year 2015-2017 budget authorizes funding for a civilian commander of the IAD as of July 1, 2015. The hiring process is underway. Note: the City Attorney, Police Chief and former City Administrator recommended hiring a civilian commander for IAD in the January 2015 joint report.

   Projected Time Frame for Completion: City anticipates hiring a senior, civilian manager by October 2015 to assume a high level of authority within IAD. In addition, OPD and City Administration are in the process of meeting and conferring with the OPOA regarding the City's proposal to transition from the current IAD structure to having the civilian manager assume primary oversight of IAD.

IV. Discipline

1) *Recommendation: Department should coordinate with the OCA to address outdated rules and policies so they do not undermine the disciplinary process.*

   Status: OCA and OPD are reviewing the rules and policies that were at issue in the arbitrations covered by the investigation, as well as arbitration decisions that have been issued subsequently. OPD is prioritizing use of force and related policies.

   Projected Time Frame for Completion: OPD estimates a time frame of 16 to 18 months for updating entire policy manual.

2) *Recommendation: Pre-Discipline Report should be changed to avoid creating unnecessary obstacles in the arbitration process. We recommend that in the more serious (or Class I) cases, the Chief meeting in person with the supervisors of the subject officer to consult about the appropriate level of discipline, but that the Department continue to use the existing written Pre-discipline report in less serious cases.*

   Status: The policy has been changed to avoid creating unnecessary obstacles in the process, and the Monitor/Compliance Director has approved the updated draft policy. Specifically, the policy was rewritten to remove the requirement that the form be utilized at each level of the subject officer's chain of command, and instead requires the form from the subject officer's Division Commander or manager following that commander's or manager's consultation with lower levels of the chain. Since this policy revision affected workplace rules and conditions, it required meet and confer with affected unions and associations. Employee Relations is currently handling meet and confers with unions. The process was delayed since all unions were heavily engaged in negotiations at the time the Department was attempting to expedite the policy.

   Projected Time Frame for Completion:
   1. Change written policy: Done
   2. Implementation of the policy: Awaiting completion of meet and confer process, estimated to be completed by January 2016.

3) *Recommendation: Department should revamp its Skelly hearing process. Skelly officers should receive training on conducting thorough IA investigations to ensure that their decisions cannot be effectively challenged at the arbitration stage for having been based on insufficient investigation. Skelly offers should be trained and given guidelines on writing detailed Skelly reports. OCA should be made part of the process, particularly in the drafting*

of letters of intent to discipline. Department should assign all serious cases (those involving at least one Class I allegation) to a Deputy Chief, to the Assistant Chief or to the Chief him or herself.

Status: City's Fiscal Year 2015-2017 budget funds an additional Deputy Chief to handle majority of *Skelly* hearings, i.e., all discipline of more than five days. This position was filled by a promotion that became effective on August 15, 2015. OCA has historically provided training to OPD's *Skelly* officers and will continue to do so. Two of OCA's Labor & Employment attorneys are currently working on an updated *Skelly* officer training, which will be conducted on or before December 1, 2015. Also, a new Administrative Instruction drafted by the City Attorney and signed by the City Administrator specifies how information on police investigations and discipline is to flow to OCA from OPD and Employee Relations (*Attachment B*). The AI is designed to make OCA a part of the entire disciplinary process.

Projected Timeframe for Completion:

1. OPD should assign all serious cases to Deputy Chief or above: Done
2. OCA should be made part of the process: Done
3. *Skelly* officers should be trained and given guidelines: Ongoing, done by December 2015.

4) *Recommendation: Department and Compliance Director should meet to discuss adopting a formal procedure for handling the reintegration of officers who have been off duty for an extended period of time due to pending disciplinary matters*

Status: OPD has met with Compliance Director to discuss adopting a formal procedure. When officers are off duty for an extended period of time and return to work OPD assigns them to the Training Section for at least one week to catch up on new policies and qualify with their weapons. They then are assigned to work with a partner in the field until such time as they are adequately prepared to return to solo operation.

Projected Time Frame for Completion: Done

V. Preparation

1) *Recommendation: The OCA should put in place a formal process for selecting outside counsel sufficiently in advance of the arbitration to allow for full and thorough preparation. The selection process should focus primarily on the qualifications of the individual attorney who will handle the arbitration rather than on the qualities of the attorney's firm. The top priority should be ensuring that the attorneys the City is paying to represent it in police*

arbitrations are experienced and accomplished in police discipline arbitrations. OCA should select outside counsel before setting the arbitration date.

Status: The OCA has an outside counsel selection process that requires submission of a response to our standing Request for Qualifications. The process involves a review and evaluation of respondents by the subject matter expert in our Office and contacting references. Qualified firms are placed on our certified list of firms and selected to perform work as cases arise. That formal process has been in place since 2011. We have added to the process a specific category for police arbitrations to focus more closely on this practice area (*Attachment C*). In addition, cases are assigned to specific attorneys within these qualified firms, based on the attorneys' individual expertise and experience.[7]

The most important criteria for hiring outside counsel have been and continue to be qualifications and expertise of the individual attorneys/firms. Beginning in spring of 2014 OCA established a process (*Attachment D*) to ensure that counsel are selected well in advance of arbitration hearing dates.

Projected Time Frame for Completion: Done

2) *Recommendation: OCA should seek OPD's input on the selection and use of outside counsel. Following arbitration proceedings, the OCA should seek OPD's feedback on counsel's performance, level of preparation and knowledge of police disciplinary matters.*

Status: OCA is seeking OPD's input and has a formal process in place to seek and give feedback on outside counsel performance and any other issues following arbitration proceedings. Beginning in summer of 2014 the Police Chief and City Attorney established a monthly standing meeting to discuss the performance of outside counsel and OCA services and any issues the Chief may have regarding counsel. Every hearing since September 2014 has been attended by a representative from IAD and at least one Deputy City Attorney, which has allowed the City to closely monitor and evaluate the performance of outside counsel. OCA's Labor and Employment attorneys receive feedback directly from IAD's representatives. And after the hearings, by e-mail, OCA's Labor and Employment supervisor asks the representatives to rate outside counsel's effectiveness, responsiveness, efficiency and attitude, and to provide any additional comments they may have.

[7] For example, OCA has identified attorney Morin Jacob of the law firm of Liebert Cassidy Whitmore as a highly-qualified litigator in matters of police discipline and has selected her to work on an upcoming arbitration and she is advising on an IAD investigation.

Projected Time Frame for Completion: Done

3) *Recommendation: OPD and OCA should work together to create a shared database for tracking the status of disciplinary cases, perhaps by modifying the database IAD already has in place for this purpose, to ensure that both offices are keeping track of the cases from beginning to end. OPD and OCA should work together to have an effective system for comparing levels of discipline across similar cases.*

Status: IAD has shared its internal database with OCA by granting access to the attorney who is stationed at IAD. This database tracks the investigation process and notice of intent to discipline, as well as any changes that occur after the *Skelly* hearing, grievance process or arbitration. Sharing this database will not only allow OCA to track cases from beginning to end, but will allow OCA and IAD to jointly evaluate and compare levels of discipline across cases.

Projected Time Frame for Completion: Done

VI. Arbitration

1) *Recommendation: The OCA should maintain a database to track the performance of arbitrators and to inform the City's decision in the selection of arbitrators. OCA ideally could coordinate with other offices in the state to share information about arbitrators assigned to police discipline cases.*

Status: The OCA has been tracking performance of arbitrators, and now maintains the information in a formal database. In addition, The City is negotiating with the police officers' union and has proposed that the new MOU reinstate the former practice of listing arbitrators in the MOU instead of using the state mediation and conciliation service.

Projected Time Frame for Completion: Done

2) *Recommendation: OCA or outside counsel should request pre-hearing discovery in all significant arbitrations. OCA should seek to amend the MOU to require pre-hearing disclosure of evidence and expert witnesses.*

Status: The City is not entitled to the union's list of witnesses, experts or documentary evidence under the MOU. OCA has nevertheless begun to request pre-hearing discovery in most cases, and has memorialized this practice in the Arbitration Protocol (*See* Attachment B). The union has agreed to exchange witness lists and exhibits in several cases and has declined to do so in others. OCA likewise has decided in several cases

that it was strategically disadvantageous to exchange witness lists and exhibits with the union. When OCA decides not to offer such an exchange, the Arbitration Protocol requires that OCA document the rationale. This is intended to create consistency and to ensure that information exchanges take place as often as possible.

The City is negotiating with the police officers' union and has proposed that the new MOU include a requirement that both sides exchange witness lists and exhibits in every case.

Projected Time Frame for Completion: Done

3) *Recommendation: When OCA has outside counsel on a case, it should have a Deputy City Attorney attend the arbitration to supervise the proceedings and monitor counsel's performance.*

Status: Every hearing since September 2014 has been attended by at least one Deputy City Attorney, and in some cases two. OCA requested additional attorneys to be able to make this practicable; the City's budget added one attorney to the Office for labor/employment work, primarily to allow greater assistance and training to IAD. (See discussion under "Investigation" section of this report – Recommendation No. 2) As stated above, the number of investigations, the number of sustained cases, and the number of resulting arbitrations are unpredictable. Depending on caseloads, staffing changes to cases may become necessary from time to time, but we will continue to make every effort to maximize continuity.

Projected Time Frame for Completion: Done

4) *Recommendation: OCA or outside counsel should litigate cases aggressively, including by using civilian and expert witnesses when appropriate, preparing witnesses thoroughly, concentrating additional resources on post-hearing briefing, and requesting to file reply briefs in serious cases.*

Status: The OCA continues to litigate cases aggressively. OCA is routinely using expert witnesses as necessary, including in three recent use-of-force cases. OCA is also routinely using civilian witnesses. In a recent termination case, OCA secured testimony by video from a crucial civilian complainant who had relocated from California to Iowa.[8] In an even more recent case, OCA called two civilian witnesses.

[8] In fact, an attorney for the City flew to Iowa to prepare the witness, and again to facilitate the actual testimony.

OCA also has focused additional resources on post hearing briefing. Because all recent hearings have been attended by one or more Deputy City Attorneys, OCA has been able to substantively review and edit all recent post-hearing briefs, including review by the Labor and Employment supervisor.[9] OCA will continue this practice as it has proved to be quite effective.

Projected Time Frame for Completion: Done

5) *Recommendation: OCA should require the attorney who handled the case, whether Deputy City Attorney or outside counsel, to draft a post-hearing memo describing the proceedings and identifying potential areas of improvement for both the City Attorney and the Police Chief. OCA should require the IA or OPD representative at the arbitration to do the same. Finally, the two offices should establish a procedure to review arbitration proceedings and results together and jointly identify corrective actions to improve performance.*

Status: OCA provides written feed back to OPD at the conclusion of each hearing and additional feedback following the issuance of the arbitrator's decision. This practice is intended to identify "lessons learned" and future strategies. OCA and OPD meet to discuss these issues, and the Police Chief and City Attorney discuss these matters at a standing, monthly meeting. OCA and OPD have also begun debriefing in person at OPD's weekly IAD meetings. Following each arbitration hearing, a Labor and Employment attorney meets with the Chief and his commanders to facilitate discussion and mutual feedback.

OPD representatives have attended every hearing since September, 2014, and have consistently provided OCA with oral feedback, both during and after the hearings. At this time OPD's representatives do not prepare written memos in light of the practices described above. We have advised the Monitor and asked whether he believes written memos from OPD representatives at arbitrations are necessary.

Projected Time Frame for Completion: Done

[9] Regarding requesting to file reply briefs in serious cases, OCA requested the opportunity to provide a reply brief in a recent termination case. The arbitrator was inclined to grant *both* parties opportunity to file reply briefs. OCA will continue to consider requesting reply briefs on a case-by-case basis.

VII. Accountability

1) *Recommendation: The City Administrator, the City Council and the Mayor must take a more active role in the process, requiring regular reports from OPD and OCA into any potential shortcomings or obstacles in imposing meaningful discipline.*

   Status: As stated above, the Fiscal Year 2015-17 budget proposed by the Mayor and approved by the City Council created new positions to help implement the recommendations and institutionalize a better system of accountability for police (*Attachment E*). The permanent City Administrator joined the City on July 1. Since the beginning of their terms, the Mayor and City Administrator have attended every all parties meeting on the *Delphine Allen* case. The City Attorney also has biweekly meetings with the Mayor, monthly meetings with members of the Council and weekly meetings with the Council president. The *Delphine Allen* case is a standing item on the Council's closed session agenda and OPD and OCA regularly report regarding compliance issues pertaining to the Court's orders.

   Projected Time Frame for Completion: Done

VIII. Sustainability

1) *Recommendation: For the Court and the public to have confidence that OPD's discipline process has been changed in a sustainable and lasting fashion, OPD, OCA and City Administration should implement reforms that are incorporated into the policies that govern their actions.*

   Status: As discussed above, OCA has (1) revised its law firm qualification process (RFQ) to separately list police discipline arbitrations as practice area, (*Attachment C*) (2) adopted a formal arbitration protocol (*Attachment D*), and (3) adopted a formal policy for identifying civilian witnesses (*Attachment A*). And the City Administrator issued an Administrative Instruction directing OPD and Employee Relations to consult with OCA at each stage of the disciplinary process. (*Attachment B*).

   Projected Time Frame for Completion: Done

IX. Conclusion

We note that the City took a number of steps to address issues with the police disciplinary process before the Court ordered its investigation. We discussed those measures in the January 20, 2015 Report on the Police Disciplinary Process that the City Attorney, City Administrator and Police Chief submitted to the Court's investigator and which the investigator attached as Exhibit A to his own report. Those measures included, but were not limited to: (1) re-establishing the Labor/Employment Unit in February 2014, which had been disbanded due to budget cuts; (2) removing from the arbitration process all attorneys who were handling or supervising police arbitrations during the period when cases were not timely assigned to outside counsel; and (3) establishing a practice of assigning arbitration cases to outside counsel at least two months before the arbitration hearing.

As we advised in our January 20, 2015 report, the City continues to strive to provide the citizens of Oakland the most effective, professional and accountable police force in the nation. We fully embrace and remain committed to the goal of implementing fair and effective discipline, and recognize that consistency and sustainability are paramount. The City has taken serious steps – including before the Court issued its August 14, 2014 order – to improve the disciplinary process for police officers, and many sound procedures are in place. We will continue to diligently and expeditiously implement outstanding measures.

Dated: September 1, 2015

Barbara J. Parker	Libby Schaaf	Sabrina Landreth	Sean Whent
City Attorney	Mayor	City Administrator	Police Chief

Attachments:

A. OCA Policy to Identify Civilian Witnesses
B. Administrative Instruction
C. Updated RFQ with List of Practice Areas (Including Police Arbitrations)
D. OCA Arbitration Protocol
E. Mayor's Budget Transmittal Letter

Addendum: Sealed Addendum re Arbitration Decisions

ATTACHMENT A

CITY OF OAKLAND

OFFICE OF THE CITY ATTORNEY

MEMORANDUM

TO: Chief Assistant City Attorneys McGee and Moreno
Litigation Supervisors
Labor and Employment Unit Supervisor and Staff

FROM: City Attorney Barbara J. Parker

DATE: August 21, 2015

RE: **POLICY AND PROCEDURE TO IDENTIFY CIVILIAN WITNESSES IN POLICE DISCIPLINE MATTERS**

On a monthly basis, the Labor & Employment supervisor shall cause a report to be generated that identifies: (1) all pending IAD investigations about which Labor and Employment staff have been notified; and (2) all pending police-discipline arbitrations. The report shall identify the nature of the alleged misconduct (e.g. use of force, illegal search, wrongful arrest, etc.), the subject officer(s), and the complainant(s). The report shall be e-mailed to the Litigation supervisors, with a copy to the Chief Assistant City Attorney in charge of Litigation

The Chief Assistant City Attorney of the Litigation Division and the Litigation supervisors shall determine whether any claims or lawsuits have been filed against the City based on the same alleged misconduct. When such claims or law suits are identified, the Labor & Employment supervisor and the appropriate Litigation supervisor shall work jointly to ensure that civilian witnesses identified in the claim or lawsuit are known to Labor and Employment staff. Furthermore, if an IAD investigation is ongoing, Labor and Employment staff shall ensure that said witnesses are known to IAD.

Very truly yours,

Barbara J. Parker

BARBARA J. PARKER
City Attorney

cc: Otis McGee, Chief Assistant City Attorney
Doryanna Moreno, Chief Assistant City Attorney

ATTACHMENT B

CITY OF OAKLAND

ADMINISTRATIVE INSTRUCTION

SUBJECT	**Oakland Police Department Internal Investigations and Discipline Process**	**NUMBER**	TBD
REFERENCE	AI 523	**EFFECTIVE**	8/28/15
SUPERSEDES			

I. PURPOSE

The purpose of this Administrative Instruction is to establish procedures for the Internal Affairs Division ("IAD") of the Oakland Police Department ("OPD") and the City's Employee Relations Department ("ER") to notify the City Attorney's Office ("OCA") regarding important steps in the OPD discipline process.

II. POLICY

As set forth below, this Administrative Instruction provides for the notification of the OCA of the following steps in the OPD discipline process: (1) the commencement of investigations within the IAD Investigative Section; (2) *Skelly* hearings related to internal investigations resulting in sustained findings; and (3) grievances submitted to ER related to the same.

All written communications under this policy should reference the corresponding IAD internal investigation number(s) in the subject line of the communication.

III. DEFINITIONS

Term	Definition
Step 3	In accordance with the operative memoranda of understanding between the City and various bargaining units, members/employees or their representatives may submit unresolved grievances in writing to ER within a prescribed timeframe to attempt to resolve the dispute.

IV. PROCEDURES

A. IAD Investigations

Responsible Party	Action
IAD Investigative Section Commander	1. The IAD Investigative Section Commander shall, upon assigning an internal investigation to an investigator within the IAD Investigative Section, notify the OCA of the investigation by e-mail. The e-mail shall be sent to the Supervisor of the Labor and Employment Unit of the OCA, with copies to the Chief Assistant City Attorneys and the City Attorney, and shall reference the IAD internal investigation number in the subject line.
	2. Upon request and within a reasonable period of time, the Investigative Section Commander shall have transcripts of any audio or video recordings, including subject and/or witness interviews, contained in a case file, the IAD will have such transcripts prepared by a certified court reporter. The foregoing shall be delivered to the OCA in a timely fashion, i.e., a time frame will allow the OCA reasonable time to review the foregoing and provide advice.

B. Skelly Hearings

Responsible Party	Action
IAD Commander (or equivalent)	1. Upon provisional approval of discipline resulting from a sustained finding in any internal investigation, the IAD Commander shall ensure that the OCA is notified promptly of the date and time of all scheduled *Skelly* hearings and the identity of the *Skelly* officer.
	2. In addition, if a *Skelly* hearing is scheduled related to a sustained finding for which the proposed discipline is termination, demotion, or a suspension of greater than ten (10) days, the date of the hearing shall be coordinated with the OCA so that the OCA can send a representative if the OCA deems it appropriate to do so.

C. Step 3

Responsible Party	Action
Employee Relations	In the event that an employee or union representative elects to submit to ER officer a written grievance related to the discipline of a sworn or non-sworn employee of the OPD, ER officer shall promptly consult with the OCA prior to issuing the Step 3 response. ER shall provide the OCA sufficient notice so that the OCA has a reasonable time to provide advice and consultation.

V. ADDITIONAL INFORMATION

Please direct any questions regarding this A.I. to IAD at extension 3161.

Sabrina Landreth
City Administrator

ATTACHMENT C

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List of Firms & Responses to RFQ (as of June 12, 2015)

AREAS OF LAW

Name of Firm	Location	Hourly Rates	1 Admin. Law	2 App. Proceedings	3 Affordable Housing	4 Banking Law	5 Bankruptcy	6 CPRB Advise and Conflict Counsel	7 Civil Rights, Section 1983	8 Conflict Counsel - Ethics, Conflict of Interest, Ballot Measures, Elections, Police	9 Constitutional Law	10 Criminal Law and Civil Subpoenas (State & Fed), including Pitchess Motions, Traffic Enf. And Vehicle Tows	11 Eminent Domain	12 Employment/Labor Issues and Litigation	13 Engineering, Design, Professio... Construction Con...
Ad Astra Law Group, LLP	S.F.	440												X	
Amira Jackmon, Attorney at Law	Berkeley	350													
Andrada & Associates	Oakland	175-225									X			X	
Bassi Edlin Huie & Blum	S.F.	225-275													
Bautista, Reve	Plea. Hill	125-150										X			
Bennett Samuelsen, Reynolds & Allard	Alameda	160-175											X		X
Bertrand, Fox & Elliott	S.F.	160-185	X	X					X					X	
Best Best & Krieger	Sacramento	220-380				X		X		X			X	X	X
Bialosky, Deborah	El Cerrito	150-170	X											X	
Bingham McCutchen		323-792		X		X								X	
Bishop, Berry Drath	Emeryville	225-235		X					X						
Bostwick Law	Los Angeles	750							X						
Bryant Brown	Oakland	250-350	X						X					X	X
Burke, Williams & Sorensen LLP	Oakland	225-325	X	X	X			X	X		X	X	X	X	X
Burnham & Brown	Oakland	205-235								X					
California Appellate Law Group	San Francisco	525		X								X			
Chan, Billy	S.F.	300													
Chiu, Alexis, Law Office of	S.F.	350-360													
Cohen & Jacobson	Redwood City	?					X								
Colantuono & Levin PC	Penn Valley	185-350	X	X						X	X			X	
Cox, Castle & Nicholson LLP	S.F.	?		X	X		X						X	X	X

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List of Firms & Responses to RFQ (as of June 12, 2015)

AREAS OF LAW

Name of Firm	Location	Hourly	1 Admin. Law	2 App. Proceedings	3 Affordable Housing	4 Banking Law	5 Bankruptcy	6 CPRB Advise and Conflict Counsel	7 Civil Rights, Section 1983	8 Conflict Counsel - Ethics, Conflict of Interest, Ballot Measures, Elections, Police	9 Constitutional Law	10 Criminal Law and Civil Subpoenas (State & Fed), including Pitchess Motions, Traffic Enf. And Vehicle Tows	11 Eminent Domain	12 Employment/Labor Issues and Litigation	13 Engineering, Design, Professio... Construction Con...
Downey Brand	Sacramento	345-390											X	X	X
Elena Condes	Berkeley	250						x							
Fitzgerald, Abbott & Beardsley	Oakland	235-500	X	X					X			X	X	X	
Foster Employment Law	Oakland	290												X	
Fox Rothschild LLP	San Francisco	495	X				X							X	
Freid, Joel, Law Office of	Oakland	?	X	X		X	X		X	X	X	X	X	X	X
GCR LLP	Emeryville	250-300												X	X
Gibson Dunn	S.F.	408-731													
Goins & Associates	Oakland	250-295	X	X									X	X	
Goldfarb Lipman LLP	Oakland	165-260	X	X	X				X		X	X	X	X	X
Gordon & Polland	S.F.	350													
Gross, Julian	S.F.	350												X	X
Hanson Bridgett	S.F.	275-395	X	X		X		X	X	X	X	X	X	X	X
Haapala, Thompson & Abern, LLP	Oakland	150-250							X					X	
Holland & Knight	S.F.	320-640													
Jarvis, Fay, Doporto & Gibson, LLP	Oakland	225-265		X					X						X
Jones Hall, A Professional Law Corp	S.F.	?													
Kee, Chris		175	X	X					X		X		X	X	
Kilpatrick, Townsend & Stockton LL	Oakland	276-548	X	X	X						X		X	X	X
Kornfield Nyberg Bendes & Kuhner PC	Oakland	335					X								
Lafayette & Kumagai	S.F	300-375		X					X	X	X			X	
Liebert Cassedy Whitmore	S.F.	325												X	
Lombardi, Loper & Conant LLP	Oakland	185-350		X					X					X	

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Name of Firm	Location	Hourly	1 Admin. Law	2 App. Proceedings	3 Affordable Housing	4 Banking Law	5 Bankruptcy	6 CPRB Advise and Conflict Counsel	7 Civil Rights, Section 1983	8 Conflict Counsel - Ethics, Conflict of Interest, Ballot Measures, Elections, Police	9 Constitutional Law	10 Criminal Law and Civil Subpoenas (State & Fed), including Pitchess Motions, Traffic Enf. And Vehicle Tows	11 Eminent Domain	12 Employment/Labor Issues and Litigation	13 Engineering, Design, Professio... Construction Con...
Lozano Smith	Walnut Creek	210-235	X	X				X	X		X	X	X	X	X
McClain, Ronald R.	Oakland														
Meyers Nave	Oakland	206-375	X	X	X	X	X	X	X	X	X	X	X	X	X
Michelman & Robinson, LLP	S.F.	275-395		X						X				X	X
Moroz, Linda Law Office of	Lafayette	125										X			
Moskovitz, Myron	S.F.	400	X	X											
Narayan Law Firm	Hayward	165-225		X		X			X		X			X	X
Nielsen Merksamer Parrinello Gross & Leo	San Rafael	250-585													
Nixon Peabody LLP	S.F.	230-615													
Nossaman LLP	S.F.	295-400		X						X	X		X	X	
Orebic, Matthew J.	Berkeley	210							X		X	X			
Phillips, Spalla, Angstadt	S.F.	175-195							X					X	X
Pogo Legal	S.F.	175-275												X	
Rankin, Sproat, Mires, Beaty & Reynolds	Oakland	200-250		X					X					X	X
Remcho, Johansen & Purcell	San Leandro	?		X						X	X				
Renne, Sloan, Holtzman & Sakai, LLP	S.F.	215-400	X	X						X	X			X	
Roper Majeski	San Jose	325												X	
Robinson, Bari , Law Office of	Oakland	300			X										X
Rosales Law Partners LLP	S.F.	240-340			X						X			X	
Rosenthal, Alix A., Law Office of	S.F.	200	X							X	X				
Ruiz & Sperow	Emeryville	200-325												X	
Schiff Hardin LLP	S.F.	315-550												X	
Serverson & Werson	S.F.	350-485								x				x	

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List of Firms & Responses to RFQ (as of June 12, 2015)

AREAS OF LAW

Name of Firm	Location	Hourly	1 Admin. Law	2 App. Proceedings	3 Affordable Housing	4 Banking Law	5 Bankruptcy	6 CPRB Advise and Conflict Counsel	7 Civil Rights, Section 1983	8 Conflict Counsel - Ethics, Conflict of Interest, Ballot Measures, Elections, Police	9 Constitutional Law	10 Criminal Law and Civil Subpoenas (State & Fed), including Pitchess Motions, Traffic Enf. And Vehicle Tows	11 Eminent Domain	12 Employment/Labor Issues and Litigation	13 Engineering, Design, Professio... Construction Con...
Sheppard Mullin	S.F.	275-860		X		X			X					X	X
Shute Mihaly & Weinberger LLP															
Snell, Karen L.															
Stein Law Group	S.F	285-350		X						X				X	X
Stradling Yocca Carson & Rauth	Sacramento	250-450													
Tang, J. Patrick															
Villarreal Hutner PC	S.F.	$325												X	
Wagner, Rachel	Oakland	185		X					X		X			X	
Wiley Price & Radulovich	Alameda	205-270							X					X	
Wong, Jannie	San Francisco	180		X					X		X	X	X	X	X
Wulfsberg, Reese, Colvig & Firstman	Oakland	225-385		X		X									X

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List of Firms & Responses to RFQ (as of June 12, 2015)

AREAS OF LAW

Name of Firm	14	15	16	17	18	19	20	21	22	23	24	25	26	27	
	...ntracting Issues and Litigation	Environmental Issues and Litigation, Federal & State Regulatory Issues, Endangered Species, Clear Air and Clean Water Acts	Ethics, Conflict of Interest, Ballot Measures & Elections	Finance Services, Bond and Debt Management, Bond Counsel, Bond Disclosure Counsel, Infrastructure Financing (Community Facility Districts, Assessment Districts, Etc.	Gang Injunction	General Civil Litigation, Dangerous Condition	Insurance Coverage Issues in Litigation	Intellectual Property	Land Use Issues, CEQA	Maritime Law, Tideland, Wetlands	Medical Cannabis	Municipal Fire Litigation, Firefighters Procedural Bill of Rights	Municipal Police Litigation and Federal Consent Decrees; Public Safety Officers' Procedural Bill of Rights; 4th Amendment Search and Seizure Issues; Animal Control Admin. Appeal Hrgs.	Municipal Procurement and Contracting	Planning related Enforcement/revocation proceedings,	Police Arbitrations
Ad Astra Law Group, LLP															X
Amira Jackmon, Attorney at Law			X												
Andrada & Associates					X							X			
Bassi Edlin Huie & Blum	X				X										
Bautista, Reve				X											
Bennett Samuelsen, Reynolds & Allard					X	X									
Bertrand, Fox & Elliott					X							X			
Best Best & Krieger	X		X		X		X	X		X			X		
Bialosky, Deborah														X	X
Bingham McCutchen	X						X	X						X	
Bishop, Berry Drath					X	X									
Bostwick Law															
Bryant Brown	X				X	X		X					X		
Burke, Williams & Sorensen LLP			X	X	X	X		X		X	X	X	X	X	X
Burnham & Brown					X										
California Appellate Law Group															
Chan, Billy							X								
Chiu, Alexis, Law Office of			X												
Cohen & Jacobson															
Colantuono & Levin PC			X		X		X	X		X	X		X	X	
Cox, Castle & Nicholson LLP	X		X		X	X		X					X		

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List of Firms & Responses to RFQ (as of June 12, 2015)

AREAS OF LAW

Name of Firm	14	15	16	17	18	19	20	21	22	23	24	25	26	27	
	...tracting Issues and Litigation	Environmental Issues and Litigation, Federal & State Regulatory Issues, Endangered Species, Clear Air and Clean Water Acts	Ethics, Conflict of Interest, Ballot Measures & Elections	Finance Services, Bond and Debt Management, Bond Counsel, Bond Disclosure Counsel, Infrastructure Financing (Community Facility Districts, Assessment Districts, Etc.	Gang Injunction	General Civil Litigation, Dangerous Condition	Insurance Coverage Issues in Litigation	Intellectual Property	Land Use Issues, CEQA	Maritime Law, Tideland, Wetlands	Medical Cannabis	Municipal Fire Litigation, Firefighters Procedural Bill of Rights	Municipal Police Litigation and Federal Consent Decrees; Public Safety Officers' Procedural Bill of Rights; 4th Amendment Search and Seizure Issues; Animal Control Admin. Appeal Hrgs.	Municipal Procurement and Contracting	Planning related Enforcement/revocation proceedings,	Police Arbitrations
Downey Brand	X							X	X						
Elena Condes															
Fitzgerald, Abbott & Beardsley	X				X		X	X	X			X			
Foster Employment Law															X
Fox Rothschild LLP					X		X								
Freid, Joel, Law Office of	X		X		X	X	X	X		X			X	X	
GCR LLP			X												
Gibson Dunn	X							X							
Goins & Associates					X								X		
Goldfarb Lipman LLP			X		X			X					X		
Gordon & Polland					X										
Gross, Julian								X					X	X	
Hanson Bridgett	X				X	X	X	X				X	X	X	X
Haapala, Thompson & Abern, LLP					X										
Holland & Knight	X		X					X	X						
Jarvis, Fay, Doporto & Gibson, LLP					X	X		X							
Jones Hall, A Professional Law Corp			X												
Kee, Chris				X	X							X			
Kilpatrick, Townsend & Stockton LL	X				X	X	X	X							
Kornfield Nyberg Bendes & Kuhner PC															
Lafayette & Kumagai						X									X
Liebert Cassedy Whitmore															X
Lombardi, Loper & Conant LLP					X	X									

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List of Firms & Responses to RFQ (as of June 12, 2015)

AREAS OF LAW

Name of Firm	14	15	16	17	18	19	20	21	22	23	24	25	26	27	
	...ntracting Issues and Litigation	Environmental Issues and Litigation, Federal & State Regulatory Issues, Endangered Species, Clear Air and Clean Water Acts	Ethics, Conflict of Interest, Ballot Measures & Elections	Finance Services, Bond and Debt Management, Bond Counsel, Bond Disclosure Counsel, Infrastructure Financing (Community Facility Districts, Assessment Districts, Etc.	Gang Injunction	General Civil Litigation, Dangerous Condition	Insurance Coverage Issues in Litigation	Intellectual Property	Land Use Issues, CEQA	Maritime Law, Tideland, Wetlands	Medical Cannabis	Municipal Fire Litigation, Firefighters Procedural Bill of Rights	Municipal Police Litigation and Federal Consent Decrees; Public Safety Officers' Procedural Bill of Rights; 4th Amendment Search and Seizure Issues; Animal Control Admin. Appeal Hrgs.	Municipal Procurement and Contracting	Planning related Enforcement/revocation proceedings,	Police Arbitrations
Lozano Smith	X		X		X			X			X	X	X	X	
McClain, Ronald R.															
Meyers Nave	X		X	X	X	X	X	X	X	X	X	X	X	X	
Michelman & Robinson, LLP	X				X	X	X								
Moroz, Linda Law Office of												X			
Moskovitz, Myron															
Narayan Law Firm					X	X					X	X			
Nielsen Merksamer Parrinello Gross & Leo		X													
Nixon Peabody LLP	X		X		X			X							
Nossaman LLP	X				X			X							X
Orebic, Matthew J.					X					X		X			
Phillips, Spalla, Angstadt	X				X	X									
Pogo Legal					X		X								
Rankin, Sproat, Mires, Beaty & Reynolds					X										
Remcho, Johansen & Purcell															
Renne, Sloan, Holtzman & Sakai, LLP										X	X				X
Roper Majeski															
Robinson, Bari , Law Office of					X									X	
Rosales Law Partners LLP			X		X								X		
Rosenthal, Alix A., Law Office of								X					X		
Ruiz & Sperow															
Schiff Hardin LLP			X												
Serverson & Werson															

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List of Firms & Responses to RFQ (as of June 12, 2015)

AREAS OF LAW

Name of Firm	...ual and Contracting Issues and Litigation 14	Environmental Issues and Litigation, Federal & State Regulatory Issues, Endangered Species, Clear Air and Clean Water Acts 15	Ethics, Conflict of Interest, Ballot Measures & Elections 16	Finance Services, Bond and Debt Management, Bond Counsel, Bond Disclosure Counsel, Infrastructure Financing (Community Facility Districts, Assessment Districts, Etc. 17	Gang Injunction 18	General Civil Litigation, Dangerous Condition 19	Insurance Coverage Issues in Litigation 20	Intellectual Property 21	Land Use Issues, CEQA 22	Maritime Law, Tideland, Wetlands 23	Medical Cannabis 24	Municipal Fire Litigation, Firefighters Procedural Bill of Rights 25	Municipal Police Litigation and Federal Consent Decrees; Public Safety Officers' Procedural Bill of Rights; 4th Amendment Search and Seizure Issues; Animal Control Admin. Appeal Hrgs. 26	Municipal Procurement and Contracting 27	Planning related Enforcement/revocation proceedings,	Police Arbitrations
Sheppard Mullin					X			X	X		X	X			
Shute Mihaly & Weinberger LLP															
Snell, Karen L.															
Stein Law Group					X	X	X						X		
Stradling Yocca Carson & Rauth			X												
Tang, J. Patrick															
Villarreal Hutner PC															
Wagner, Rachel					X							X			
Wiley Price & Radulovich					X										
Wong, Jannie	X				X		X	X			X	X			
Wulfsberg, Reese, Colvig & Firstman						X		X	X			X			

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List of Firms & Responses to RFQ (as of June 12, 2015)

AREAS OF LAW

Name of Firm	Professional Sports Stadium 28	Public Nuisance & Propety/Buliding/Housing/Fire Code/Enforcement 29	Real Property 30	Redevelopment 31	Rent Control and Eviction 32	Redistricting & Voting Rights 33	Taxation 34	OTHER 35	
Ad Astra Law Group, LLP									
Amira Jackmon, Attorney at Law									
Andrada & Associates		X							
Bassi Edlin Huie & Blum									
Bautista, Reve									
Bennett Samuelsen, Reynolds & Allard									
Bertrand, Fox & Elliott								ADA	
Best Best & Krieger	X	X		X			X	Fee	
Bialosky, Deborah									
Bingham McCutchen			X	X					
Bishop, Berry Drath									
Bostwick Law								Crowd Control special	
Bryant Brown		X							
Burke, Williams & Sorensen LLP		X	X		X		X		
Burnham & Brown									
California Appellate Law Group									
Chan, Billy									
Chiu, Alexis, Law Office of			X	X					
Cohen & Jacobson									
Colantuono & Levin PC							X		
Cox, Castle & Nicholson LLP									

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List of Firms & Responses to RFQ (as of June 12, 2015)

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Name of Firm	Professional Sports Stadium 28	Public Nuisance & Propety/Building/Housing/Fire Code/Enforcement 29	Real Property 30	Redevelopment 31	Rent Control and Eviction 32	Redistricting & Voting Rights 33	Taxation 34	OTHER 35	
Downey Brand									
Elena Condes									
Fitzgerald, Abbott & Beardsley			X						
Foster Employment Law									
Fox Rothschild LLP			X				X		
Freid, Joel, Law Office of	X	X	X	X	X		X		
GCR LLP		X							
Gibson Dunn	X		X						
Goins & Associates		X	X						
Goldfarb Lipman LLP	X		X	X					
Gordon & Polland									
Gross, Julian			X	X					
Hanson Bridgett	X	X	X				X		
Haapala, Thompson & Abern, LLP									
Holland & Knight			X	X					
Jarvis, Fay, Doporto & Gibson, LLP							X		
Jones Hall, A Professional Law Corp									
Kee, Chris		X							
Kilpatrick, Townsend & Stockton LL									
Kornfield Nyberg Bendes & Kuhner PC									
Lafayette & Kumagai									
Liebert Cassedy Whitmore									
Lombardi, Loper & Conant LLP									

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AREAS OF LAW

Name of Firm	Professional Sports Stadium 28	Public Nuisance & Propety/Building/Housing/Fire Code/Enforcement 29	Real Property 30	Redevelopment 31	Rent Control and Eviction 32	Redistricting & Voting Rights 33	Taxation 34	OTHER 35
Lozano Smith		X	X	X	X			Tort & Personal Injury
McClain, Ronald R.								
Meyers Nave	X	X	X	X	X		X	
Michelman & Robinson, LLP								
Moroz, Linda Law Office of					X			Collections
Moskovitz, Myron					X			
Narayan Law Firm			X		X			
Nielsen Merksamer Parrinello Gross & Leo						X		
Nixon Peabody LLP	X							
Nossaman LLP			X					
Orebic, Matthew J.								Tort & Personal Injury
Phillips, Spalla, Angstadt			X		X			
Pogo Legal								e-disc & doc review
Rankin, Sproat, Mires, Beaty & Reynolds								
Remcho, Johansen & Purcell								
Renne, Sloan, Holtzman & Sakai, LLP								
Roper Majeski								
Robinson, Bari , Law Office of	X	X	X	X				
Rosales Law Partners LLP	X		X	X				
Rosenthal, Alix A., Law Office of	X		X	X				
Ruiz & Sperow								
Schiff Hardin LLP	X							
Serverson & Werson								Pension & Benefits

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AREAS OF LAW

Name of Firm	Professional Sports Stadium 28	Public Nuisance & Propety/Buliding/Housing/Fire Code/Enforcement 29	Real Property 30	Redevelopment 31	Rent Control and Eviction 32	Redistricting & Voting Rights 33	Taxation 34	OTHER 35
Sheppard Mullin	X							
Shute Mihaly & Weinberger LLP								
Snell, Karen L.								
Stein Law Group	X		X		X			
Stradling Yocca Carson & Rauth							X	
Tang, J. Patrick								
Villarreal Hutner PC								Pension & Benefits
Wagner, Rachel								
Wiley Price & Radulovich								
Wong, Jannie		X					X	
Wulfsberg, Reese, Colvig & Firstman								

ATTACHMENT D

CITY OF OAKLAND
OFFICE OF THE CITY ATTORNEY
Memorandum

TO: Labor and Employment Unit Supervisor and Staff

FROM: City Attorney Barbara J. Parker

DATE: July 10, 2015

RE: **ARBITRATION PROTOCOL**

This protocol shall be followed for all arbitrations. With the exception of section C, these procedures are not new, but instead memorialize practices already in place.

A. Staffing

The supervisor shall assess each case and current staff workload to determine whether the case will be handled by a staff attorney or assigned to outside counsel. The supervisor shall assign cases to staff attorneys or outside counsel as early as possible to maximize the attorney's preparation time and shall make every effort to assign each case prior to the scheduling of the arbitration hearing. If a hearing date has been scheduled or in the judgment of the supervisor needs to be scheduled before an attorney has been assigned to handle an arbitration, the supervisor will immediately advise the Chief Assistant City Attorneys and the City Attorney.

In selecting outside counsel, the expertise of the individual attorney who would be assigned to the case is the most important factor in selecting outside counsel. After confirming that the individual attorneys who are being considered for the assignment have the expertise to handle the assignment, the OCA will consider other factors such as cost, strategy, diversity, and whether the firm is local. Regardless of whether the case is assigned to a staff attorney or outside counsel, a staff attorney will be assigned as co-counsel to each case. Co-counsel will provide support during case preparation, attend the hearing, and assist in the preparation of the closing arbitration brief.

B. Initial Case Assignment

Within two weeks after assignment, the attorney will be expected to conduct a preliminary review of the case. Outside counsel will promptly report the assessment to staff co-counsel, who will provide any needed support or assistance in obtaining further information and/or contacting witnesses. For OPOA discipline cases, the initial assessment will include a review of the IAD Report of Investigation, any findings by the EFRB/FRB, *Skelly* recommendation, the imposition of discipline, Step 3 letter, and audio and video evidence. The initial case review must be sufficient to make an initial identification of necessary information and witnesses. In addition, the attorney shall

evaluate whether the case potentially requires consultation with and/or the testimony of an outside expert witness as part of the initial assessment

Upon completing an initial review, the attorney will determine whether settlement should be recommended. If the attorney believes settlement may be prudent, he or she shall inform the supervisor of the recommended settlement offer and the basis for it. If the supervisor agrees that settlement is advisable, the staff attorney will pursue that avenue with input and guidance from the supervisor.

Within two weeks after completing the initial case review, the attorney will be expected to begin requesting information from the client and contacting potential witnesses to advise them of the engagement, the case and the hearing date and plan of action. The attorney should follow up if he or she does not receive prompt responses. Outside counsel shall regularly update staff co-counsel of progress on the case, including scheduled witness interviews and receipt of any additional information or documents.

Even when a hearing is several or more months away, and even when the attorney has more immediate deadlines, he or she will be expected to perform the initial case review and begin requesting information and advising client and witnesses of the engagement and hearing date. These steps are necessary in every case. Taking these steps promptly will allow attorneys to work efficiently, maintain the office's client relations, and limit the overall stress associated with arbitration hearings.

C. Request for Witness and Exhibit Lists from OPOA for OPD Discipline Arbitrations

The assigned attorney shall confer with the staff attorney or supervisor, as the case may be, regarding the potential witnesses and exhibits that the attorney anticipates OPOA will utilize. Promptly after the initial case review, the attorney shall contact OPOA's attorney to request a list of the witnesses, including experts, and a list of the documents that OPOA will present at the hearing. The request must be documented in writing. If OPOA agrees to provide the list, the attorney will confirm that in writing including the date such list will be provided. If OPOA declines to provide the list, the attorney will memorialize this in writing.

The attorney is not required to request an exchange of witness or exhibit lists if, upon consultation with the staff attorney or supervisor, an exchange likely would not be to the City's strategic advantage. If such a determination is made, the attorney will memorialize it in writing and include the rationale for the decision.

D. Pre-Hearing Preparation

Well in advance of the hearing, the attorney will contact potential witnesses to discuss the case. When prudent, the attorney will contact potential witnesses who are not City employees, including percipient witnesses and expert witnesses. The attorney

will assess their role in the case and determine whether they should be prepared to testify. For all witnesses who will be asked to testify, the attorney shall schedule preparation time with the witness well in advance of the hearing.

The attorney will be expected to prepare examination outlines for both direct and cross examinations. The attorney further will be expected to identify the order of witnesses, prepare the witness list, and identify and prepare the City's exhibits. If it is determined that it is strategically advantageous to do so, the attorney may contact opposing counsel and offer to exchange witness lists (including the identities of any expert witnesses) and exhibit lists.

E. Post-Hearing De-brief and Feedback

The attorneys are expected to meet with the supervisor and the Department representative shortly after the hearing to discuss the effectiveness of the case, including any mistakes or "lessons learned." The staff attorney shall then prepare a written summary for the City Attorney and the client(s) regarding the arbitration proceedings, and providing analysis and feedback as needed. After the City receives a decision from the arbitrator, the assigned attorney will prepare an updated assessment of the case, including performance of witnesses, the arbitrator, the attorneys and an assessment of the IAD report, *Skelly* and other aspects of the case. This writing will be circulated to the City Attorney, Chief Assistant City Attorneys and the Department and a "post mortem" meeting or conference call will be scheduled to discuss the assessment and lessons learned and future strategies.

Staff attorneys are expected to solicit feedback from clients regarding perceived competence and effectiveness of outside counsel. The supervisor is expected to solicit feedback from clients regarding competence and effectiveness of in house counsel.

Very truly yours,

BARBARA J. PARKER
City Attorney

cc: Otis McGee, Chief Assistant City Attorney
Doryanna Moreno, Chief Assistant City Attorney

1643138v2

ATTACHMENT E

CITY OF OAKLAND

ONE FRANK H. OGAWA PLAZA • 3RD FLOOR • OAKLAND, CALIFORNIA 94612

Office of the Mayor
Honorable Libby Schaaf
Mayor

(510) 238-3141
FAX (510) 238-4731

Office of the City Administrator
John A. Flores
Interim City Administrator

(510) 238-3301
FAX (510) 238-2223

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HONORABLE CITY COUNCIL & OAKLAND RESIDENTS:

We are pleased to present the FY 2015-17 Proposed Policy Budget for the City of Oakland for your consideration and action. Our goal is that this two-year balanced budget will build a solid financial foundation for a vibrant, equitable Oakland that grows responsibly.

In the short-term, this budget proposal will close an estimated $18 million annual funding gap. It will begin the hard work of addressing unfunded liabilities and restoring compensation to our workers. The budget will preserve and start to enhance the delivery of services that Oaklanders deserve, with a focus on investments that will help responsibly grow the economy so we will be able to afford all the service enhancements we want in the future, as well as giving city staff the tools and training to do their jobs in a way that reflects their true professionalism.

This balanced approach is the discipline we need. This is how we will keep our eyes on the prize so we can afford to do more of the things we so urgently want to do in the future.

Goals and Priorities

The City's most recent Five Year Financial Forecast showed an $18 million annual funding gap for the next two years, showing that costs are continuing to increase faster than revenues. Thus, our first priority in this budget was to adjust costs and revenues to balance the budget and close that gap. We are proud that we have accomplished this without any substantive cuts to services or disruptions to our workforce. Our second priority was to satisfy our obligations to implement the Council's 2012 action requiring a $20 million contribution towards reducing unfunded liabilities, as well as beginning to restore compensation to workers who made great sacrifices to increase this city through the recession. It also supports the Mayor's promise to get sworn police staffing to 800 officers by 2018. Our third priority was to invest any remaining funds in ways that will responsibly grow the economy, so that soon we will have a revenue base capable of supporting all the service needs of Oakland. Our priorities for responsibly growing the economy are:

- Improve public safety using a holistic approach, including more police officers, better community policing, violence intervention and prevention programs, as well as addressing the root causes of crime, starting with better jobs and education.

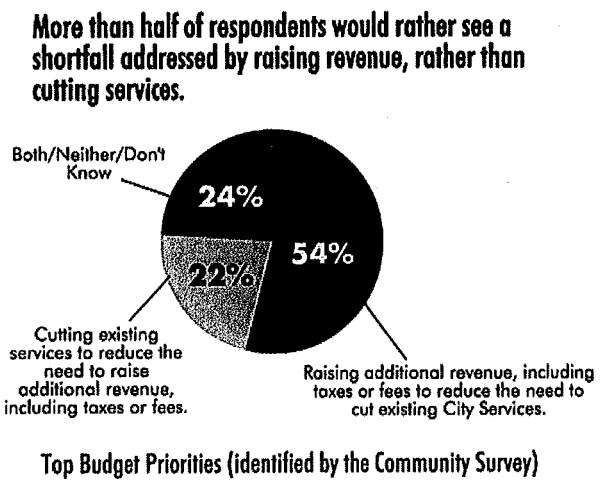
- Improve the city's physical infrastructure, starting with roads, so they look and work better, cost less to maintain and create more vibrant, attractive and healthy neighborhoods – making Oakland a great place to come live, play and bring your business.

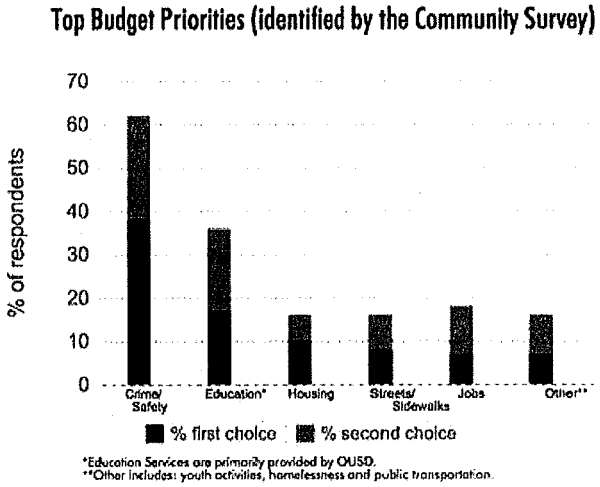
- Create more housing and jobs, but do so in an equitable way that keeps Oakland affordable for residents at every income level and provides employment opportunities for Oaklanders with a variety of skills and education.

- Be more responsive to requests for city services so problems in *every* neighborhood are cleaned and fixed immediately and police and firefighters are there when we need them. This will show that government is trustworthy and transparent and make the city look attractive, so people feel good about living and working in Oakland.

Public Participation

Prior to developing the Proposed Budget, City staff collaborated with the Budget Advisory Committee to conduct a professional, scientific poll measuring a representative sampling of more than 700 Oaklanders' budget priorities. The poll found crime reduction and safety was overwhelmingly the highest priority in Oakland, and that most Oaklanders would rather increase City revenues than cut services.





During budget development, we produced two short, simple videos about the budget process. We distributed a more specific (albeit unscientific) poll to assess public support for specific budget actions, which will remain open until the middle of June. During these final weeks, we held four public input sessions at community venues – plus a twitter town hall – stretching from the Actual Café in North Oakland to the East Bay Dragons Motorcycle Clubhouse in East Oakland. We hope residents will learn more about how to stay involved in the budget process by visiting oaklandnet.com.

Budget Summary

The FY 2015-17 Proposed Budget contains two-year appropriations of approximately $2.4 billion – roughly $1.2 billion in each fiscal year – from all funding sources. The unrestricted General Purpose Fund ("GPF") accounts for a little over 40 percent of the City's total budget. The GPF appropriation includes $32.4 million in one-time funds earmarked for one-time expenditures over the two years. Unlike past years, we are not recommending using one-time sources of revenue to meet ongoing operational costs in the GPF. The appropriation in FY 2015-16 is higher than in the next year because we use one-time funds to immediately pay off some negative fund balances. This will allow us to enjoy on-going savings from no longer having to make required payments on these historic debts. Funds comprising the remainder of the City's budget are restricted for special purposes, such as grant programs, sewer services, bond-funded projects, capital projects, and debt payments.

Category	**FY 2015-16**	**FY 2016-17**
Unrestricted General Purpose Fund	$524,703,631	$519,873,909
Restricted Special Funds	$694,189,482	$660,934,342
TOTAL - All Funds	**$1,218,893,113**	**$1,180,808,251**
Full-Time Equivalent Positions (FTEs) – GPF	2,263 FTEs	2,263 FTEs
Full-Time Equivalents Positions (FTEs) – All Funds	4,084 FTEs	4,070 FTEs

Budget Highlights

Closing the Gap

We were able to close the funding gap, meet our obligations, and make some new strategic investments by finding both savings and revenue enhancements.

Projected Shortfall	**FY 2015-16 ($ millions)**	**FY 2016-17 ($ millions)**
March (based on FY 2014-15 Q2)	($17.93)	($18.64)

			One-Time	
Changes and Solutions	**FY 2015-16 ($ millions)**	**FY 2016-17 ($ millions)**	**FY 2015-16 ($ millions)**	**FY 2016-17 ($ millions)**
Saving Measures	$29.73	$25.27	$6.68	
Revenue Enhancements	$40.48	$9.10	$33.32	$0.05
Addition of Services	($46.45)	($21.57)	($37.31)	($2.74)
Total	$5.83	($5.83)	$2.69	($2.69)
Net FY 2015-17 surplus/(deficit)	**$0.00**		**$0.00**	

Some significant contributors that allowed us to close the gap included:

- Using one-time rather than ongoing funds for IT license renewal and paying down Other Post-Employment Benefits (OPEB) unfunded liability with contribution to the trust fund ($14.9 million);
- Revised fees and improved revenue collections including landlord audits, fire code inspections, special enforcement and various other fees ($14.81 million);
- Projected surplus from FY 2014-15 ($10.4 million);
- Use of Deferred Pension Credits ($9.7 million);
- Transferring previous GPF costs to eligible non-GPF funds ($8.4 million);
- Freezing or eliminating vacant positions ($8.2 million);
- Sale of property ($4.4 million);
- Paying down three negative fund balances (approximately $7 million);
- Decreased workers compensation rate for sworn ($3 million);
- Using reduced interest rates to refinance debt ($3 million);
- Reduced unemployment premiums ($2.5 million);

Significant New General Fund Expenditures

These adjustments allowed us to not only preserve existing services levels and staff, it also allowed us fund two important obligations:

- First, to keep the Council's 2012 promise of putting $20 million towards our unfunded liabilities during this two-year budget cycle, this budget places $17.4 million into our OPEB Trust (namely medical coverage for retirees) and $2.63 million towards our CalPERS unfunded pension obligation. $4 million of this is from Recognized Obligations Payment Schedule (ROPS), $8 million is one-time GPF and $8 million is from on-going GPF.

- Second, to begin restoring compensation to City workers who made tremendous sacrifices to preserve services and minimize layoffs during the recession, this budget includes $7 million in FY2015-16 and $9 million in FY 2016-17 of GPF for increases in employee compensation. The exact use of these funds will be subject to collective bargaining. We also include an additional $500,000 for employee training and recognition.

This also allowed us to make some small but strategic GPF investments in **expanded services**.

First, we **funded five police training academies**, which will increase OPD's authorized sworn staffing from 722 to 762. This increase of 40 officers keeps Oakland on-track to meet the Mayor's goal of 800 officers by 2018.

Second, we **created new positions to ensure our police reforms will be successful and sustained**, including two additional auditors in the Office of the Inspector General, a permanent civilian director of Internal Affairs, an attorney who'll be placed within the Police Department to support the development and defense of any discipline actions, and an upgrade to Deputy Chief of Criminal Investigations to increase the quality and consistency of Skelly discipline hearings.

Third, we also responded to requests from Councilmembers Gallo, Guillen, Reid and President Gibson McElhaney to **increase code compliance inspectors to enforce against blight, abandoned buildings and illegal vending**. By unfreezing 3 inspectors and 2 support positions, the City will be more responsive to complaints going forward.

Finally, we **established a cost-covering pilot expanding our R1 Fire Inspection program**, in partnership with Code Compliance and Housing Services, to proactively inspect rental apartments for health and safety compliance to ensure our most vulnerable tenants are living in safe conditions, particularly as market pressures make it difficult for tenants to use our existing complaint-based system.

Significant New Restricted Fund Expenditures

We were also able to make additional strategic investments, making better use of restricted special funds.

Using expanded Measure Z (Safety & Services Act of 2014) funding, we will be asking the Oversight Board to support expanding our Ceasefire Violence Prevention Strategy, including increasing our case managers from 4 to 10.

We will add 5 more staff to our Housing Assistance Center and Rent Adjustment Program to keep renters protected, as well as add $150,000 to help enforce Oakland's new minimum wage and sick leave laws. We will put 25% of former Redevelopment Agency tax increment as well as land sale proceeds (approximately $9.8 million) into our affordable housing development fund.

We will add 12 staff in Planning and Building and 1 in OFD to respond to the expected influx of building proposals and projects.

We'll reorganize existing staff and resources from several departments to create a new full-service, vertically integrated Department of Transportation to expand our ability to deliver repaving and other Measure BB funded capital projects, as well as leverage new and existing transportation funds to develop a project pipeline to build the transportation infrastructure needed to support community safety, housing and economic development. We'll use $150,000 to develop and prepare an infrastructure bond initiative as well as a Wildfire Prevention District initiative for the voters to consider in 2016.

Finally, critical services for Oakland residents such as libraries, Head Start, youth and senior services and recreation programs will be preserved at or above their current service levels.

Councilmember Proposals Using One-time Funds

Five Councilmembers submitted budget priorities. All asked for increased police staffing and most asked for increase code compliance inspectors, which are both funded in this budget. We also tried to fund as many one-time requests as possible, including:

- Council President Gibson McElhaney requested that we increase GPF investment in workforce development to free up more Workforce Innovation & Opportunity Act (WIOA) funds for providers. By replacing a WIOA-funded position with a GPF position as well as charging more WIOA accounting services to GPF, we will free up approximately $200,000 for providers.
- Councilmembers Guillen and Kalb requested that we invest in recruiting our own young residents to become police officers. We have funded $450,000 (and are seeking more from private sources) to create a class of up to 40 Oakland Public School graduates who will spend three years working as Oakland Police Cadets until they are eligible to apply to the officer training academy. This suggestion also came from Oakland youth participating in the Mayor's Restorative Justice Circles, and was inspired by San Francisco Mayor Lee's Project Pipeline.
- Council President Gibson McElhaney and Councilmember Kalb requested $250,000 to augment violence prevention strategies identified by Oakland's community safety needs assessment and comprehensive public safety plan, which is in progress.
- Councilmember Gallo, Campbell Washington and President Gibson McElhaney requested the funds to purchase and renovate the Dream Catcher facility to provide safe shelter for homeless and sexually exploited youth. The proposal includes a one-time allocation of $0.50 million from Community Development Block Grant funds.
- Councilmembers Campbell Washington and Kalb requested funds to develop and prepare a wildfire prevention district initiative for the voters to consider in 2016.
- Councilmember Campbell Washington requested $150,000, which has already been matched by Oakland Unified School District, to pilot a K to College initiative. In FY 2016-17, Oakland will establish a $50 college savings account for every kindergartener.
- Councilmember Brooks requested establishing a Department of Race and Equity, while Councilmember Guillen requested adding Race and Equity along with Equal Access to the City Administrator's Office instead of creating a new department. We are recommending $150,000 to fund a robust Race and Equity Initiative, including joining the Government Alliance on Race and Equity, establishing a Racial Equity Interdepartmental Team, conducting a Racial Equity Assessment, creating a train the trainer program, and developing a blueprint for establishing a permanent, sustainable structure for the work.
- Council members Reid and Guillen stated that treating employees equitably and providing competitive wages is a priority for them. The proposal includes ongoing funds for increases in employee compensation, as stated in the Significant New General Fund Expenditures section above.

- Vice Mayor Kaplan verbally requested better water conservation. We are recommending $100,000 for water-saving improvements to reduce to the City of Oakland's water use.

Unfortunately, we could not fund all the Councilmember requests. However, they are all included as potential policy buy-backs or tradeoffs.

Challenges and Improvements

While the City is making progress to meet its financial obligations, there continue to be major challenges that squeeze City finances and create structural imbalance. In preparing this budget, it has become clear that the City needs to consider strategies to start addressing these long-term challenges before they become unmanageable in the future.

- **Growing medical and pension costs,** As of July 1, 2014, total unfunded liability is close to $1.8 billion for CalPERS, OPEB and PFRS for both active employees and retirees which reduces funding for other GPF priorities. This budget proposes to appropriate approximately $17.4 million to fund OPEB in addition to the pay-as-you-go amount over the next two years; however, it still falls short by $19 million of our Actuarially Required Contribution ("ARC"). We must find an ongoing funding solution to meet our ARC payments so future required contributions do not paralyze the City's operations. We are committed to developing this plan before Oakland's next budget cycle.

- The City has numerous **unfunded capital needs** along with **deferred maintenance** of infrastructure, buildings and technology exceeding $2 billion. The budget includes funding for conducting a professional poll for a potential bond measure to secure a funding stream in the next general election.

- **Saving for a Rainy Day** would better position us to weather potential economic downturns. While the City's new Rainy Day Policy takes effect this budget cycle, it is not requiring us to add any funds to the newly established Vital Services Stabilization Fund, because we are not projecting any excess Real Estate Transfer Tax (RETT), which is the only source of funding it in our current policy. We need to contribute actively to build a robust reserve to mitigate the impact on services and layoffs should the need arise.

- **Subsidy for key programs** should be viewed as an on-going commitment. The proposed budget includes a two-year subsidy for Head Start and other grant programs using one-time funds, which will require seeking ongoing funding at the next biennial budget cycle development.

Given the budget constraints, we propose a host of **Policy trade-offs and Service Buybacks** that may be considered as an alternative funding option if additional funds become available in the future. These include funding requests for restoring or adding new community services; infrastructure & maintenance; and public safety.

Conclusion

With operating efficiencies and an improved economic landscape, the City of Oakland plans through this budget to provide more effective, courteous and responsive services. We are confident that the City has the resiliency to use its strengths to work through its challenges. Making strategic key investments now will result in long-term growth that will benefit all residents of Oakland.

We are very proud of what we have accomplished in the FY 2015-17 budget proposal. Your valuable input is vital to inform this biennial budget adoption that focuses on key City services. Through our ongoing collaboration and commitment, we can make Oakland a healthier, safer and more prosperous community.

We look forward to formally presenting the FY 2015-17 Proposed Policy Budget to the City Council on May 5, 2015.

Respectfully submitted,

Libby Schaaf
Mayor

FOR
John A. Flores
Interim City Administrator

ADDENDUM

DOCUMENT FILED UNDER SEAL ON SEPTEMBER 1, 2015 (ECF NO. 1067)