


CITY OF OAKLAND

Office of the City Attorney

Legal Opinion

To: Deborah Edgerly, City Administrator

From: John Russo, City Attorney 

Cc: Mayor
City Council
City Auditor

Date: June 25, 2007

Re: City Auditor's Proposed Amendments to the Purchasing Ordinance

QUESTION

Does the City Charter permit the City Council to grant the City Auditor to execute professional services contracts that are needed to perform her duties under the Charter?

BRIEF ANSWER

Yes, the Council may authorize the City Auditor to execute professional services contracts for services that are needed to perform her Charter duties.

BACKGROUND

The City Auditor has asked that the City Council amend Chapter 2.04 of the Oakland Municipal Code ("OMC"), commonly referred to as the Purchasing Ordinance, to grant her contracting authority to purchase professional, technical and scientific services that are needed to independently exercise her Charter powers. (A copy of the proposed ordinance is attached.) The proposed ordinance amendments are scheduled for the Finance and Management Committee's consideration on June 26, 2007. You requested a legal opinion regarding the City Auditor's authority to execute such professional services contracts.

ANALYSIS

To answer the question, we must analyze the relative powers of the City Administrator and the City Council under the City Charter.

I. The City Charter Grants the City Council the Authority to Establish the City's Contracting Procedures and the Conditions for Contract Approvals

Section 808(a) of the City Charter authorizes the City Council to adopt purchasing *procedures* and *conditions* for ALL contracts by ordinance:

The Council shall establish by ordinance the conditions and procedures for any purchase or contract, including advertising and bidding requirements, and may provide that all bids may be rejected. The ordinance may provide that under specified conditions, which the Council must find and determine exist in each applicable instance, advertising and bidding may be dispensed with.

We determine the Council's scope of authority under this Charter section in the same manner that courts have directed that we ascertain the meaning of any other statute. "Our sole objective is to ascertain and effectuate legislative intent. [Citation.] We look first to the language of the charter, giving effect to its plain meaning. [Citation.] Where the words of the charter are clear, we may not add to or alter them to accomplish a purpose that does not appear on the face of the charter or from its legislative history." (*Domar Electric, Inc. v. City of Los Angeles*, 9 Cal.4th 161, 171-172 (1994); *First Street Plaza Partners v. City of Los Angeles*, 65 Cal.App.4th 650, 663 (1998).)

A. The Meaning of City Charter Section 808

First, turning to the language of the Charter, we focus on what the City intended when it stated in the Charter that the Council shall establish the "conditions" and "procedures" for any contract by ordinance. (Charter Section 808(a).) To ascertain the plain meaning of the words "condition" and "procedures", we examine the definitions in Webster's Dictionary. Condition is defined as "terms of agreement", "a premise upon which the fulfillment of an agreement depends: stipulation", "a restricting or modifying factor: qualification", "something essential to the appearance of something else: prerequisite". (Webster's Ninth New Collegiate Dictionary (9th ed. 1990, p. 273).) Hence, the Council's right to establish the "conditions" for any purchase or contract gives it the power to decide under what terms, qualifications, stipulations the City may enter into contracts and what prerequisites must be met before the City may execute contracts.

Webster's Dictionary defines "procedures" as: "a particular way of accomplishing something or of acting", a series of steps followed in a regular definite order", "a traditional or established way of doing things", "protocol". (Webster's Ninth New Collegiate Dictionary (9th ed. 1990, p. 757).) The Council therefore has the power to

set the protocol or the steps that must be followed in the contracting process, such as bidding, program and other contract compliance procedures.

B. The Scope of the Council's Powers under Section 808(a)

Second, we focus on the breadth of the Council's power in establishing contracting procedures and conditions. Legal authorities consistently say that City officers may use any "lawful and reasonable means" to carry out their express powers and any doubt as to the propriety of the means should be resolved in favor of the City officers.

In general, powers given to municipal corporations include the further power to employ such modes of procedure as are appropriate and necessary for their effective exercise. The delegation of power to municipal corporations, without providing the mode for carrying such power into effect, impliedly gives them the right to select lawful and reasonable means whereby that power is to be carried out. All doubts as to the propriety of means used in the exercise of an undoubted municipal power should be resolved in favor of the municipality, where there is no abuse of power or discretion. A municipal corporation may act through such agencies as the legislature directs. (*Ravettino v. City of San Diego*, 70 Cal.App.2d 37, 47 (1945) (City Charter's express power to operate a port included the implied authority to operate a power crane, and the Charter did not need to expressly specify the operation of power cranes for the municipality to have the authority to operate power cranes at the port.)

When the Charter confers express powers on the Council, it has the "discretion" and "wide latitude" to choose the legal means to exercise the powers.

"If power is statutorily conferred on a municipal corporation and the law is silent as to the mode of exercising such power, the corporate authorities are necessarily clothed with a reasonable discretion to determine the manner in which such powers shall be exercised; all the reasonable methods of executing such power are inferred." (McQuillin Mun. Corp. § 10.32.)

"When the authority to exercise the power appears, wide latitude is allowed in its exercise and, unless some abuse of power or a violation of organic or fundamental right results, it will be upheld." (Id.) "If the method for exercising a municipal power is not specifically prescribed, the mode or means by which a municipality may exercise powers granted by the legislature will not be strictly construed." (Id.)

Charter Section 808(a) places no limitations on the Council's authority to prescribe contracting procedures and conditions. Based on the plain meaning of the language and the principles articulated above, Section 808(a) conveys broad latitude

and discretion to the Council to establish contracting procedures and conditions, including granting authority to execute contracts of specific types and amounts.

Of course, the Council's authority is not unlimited. The Council's contracting procedures and conditions must comply with the Charter, other ordinances and applicable laws. For example, the Council could not establish conditions or procedures that violate state or federal law or the Charter.¹

C. City Administrator's Authority under Current Procedures and Conditions for Professional Services Contracts

The Council has established the procedures and conditions for professional services contracts and for equipment, materials, supplies, and public works contracts in the Purchasing Ordinance (OMC, Chapter 2.04). The Council has chosen to authorize the City Administrator to approve and execute professional services contracts under a number of conditions, including but not limited to the following: (1) the contract amount does not exceed \$150,000², (2) the City completes a Request for Proposals/Qualifications process for contracts in excess of \$25,000, (3) funding has been appropriated for the services, and (4) the contract complies with the contracting procedures detailed in the Purchasing Ordinance. (OMC Sections 2.04.020(A)(2), 2.04.040 and 2.04.051.)

2.04.020 Authority of the City Administrator

A. City Administrator's Purchase Authority. Except as provided in Section 2.04.020.B³, the City Administrator shall have authority to bind the city by written contract or purchase order without previous specific action of the Council as follows:

2. Professional Services. Purchases up to one hundred fifty thousand dollars (\$150,000.00) in any single transaction or term agreement.

¹ The City Charter is the City's constitution; it is the supreme law of the City with respect to municipal affairs. Ordinances must be consistent with the City Charter; otherwise they are void. *Skaggs v. City of Los Angeles*, 43 Cal.2d 497, 501 (1954); *De Aryan v. Butler*, 119 Cal.App.2d 674, 683 (1953); *Howard Jarvis Taxpayer's Assn. v. City of Roseville*, 106 Cal.App.4th 1178, 1186 (2003); McQuillin Mun Corp. §15:17. A City Council ordinance or resolution "can no more change or limit the effect of a charter than a statute can modify or supersede a provision of the State Constitution." *Hubbard v. City of San Diego*, 55 Cal.App.3d 380, 392 (1976) Amendment of a charter by ordinance, resolution or agreement is "prohibited". *San Francisco Fire Fighters v. Board of Supervisors*, 96 Cal.App.3d 538, 549 (1979).

² Council has granted the City Administrator less authority for certain types of contracts (see fn 3) and City Administrator may execute/approve pay-go contracts in any amount so long as the funding is available in the pay-go account of the individual Councilmember who has authorized the contract and the contract complies with the conditions and procedures set forth in the Purchasing Ordinance, City Charter and other applicable laws. (OMC Section 2.04.018.)

³ This section of the Purchasing Ordinance provides lower limits for contracts that are (1) not budgeted, (2) for affordable housing, (3) funded by voter-approved measures or (4) for technological, computer-related contracts.

The City Council has reserved to itself the power to approve professional services contracts in excess of \$150,000.00. (OMC Section 2.04.030.)

D. Council's Authority to Change Contracting Procedures and Conditions

The Council's power to establish the City's contracting conditions and procedures clearly encompasses the power to modify them to authorize the City Auditor to purchase professional services related to her Charter duties, unless another section of the Charter expressly grants the City Administrator power to purchase or contract for professional services. It is well-established that a Charter provision that specifically grants the City Administrator authority to purchase or contract for professional services would prevail over the Council's general authority under Charter Section 808(a) to establish conditions and procedures for contracting. (*City of San Jose v. Lynch*, 4 Cal.2d 760, 766 (1935); *Creighton v. City of Santa Monica*, 160 Cal.App.3d 1011, 1017 (1984).)

II. The City Charter Does Not Grant the City Administrator Authority to Purchase or Contract for Professional Services

The City Charter provides express contracting authority to the City Administrator only to purchase (1) equipment, (2) materials, (3) supplies and (4) public works.

“Section 807. Goods and Services.

The City Administrator or an officer authorized by him/her shall purchase or contract for equipment, materials, supplies and public works required by the City in the manner prescribed by ordinance, except as otherwise provided herein.”

Because the City Charter specifically grants the City Administrator the power to purchase equipment, materials, supplies and public works, the Council can not grant that power to the City Auditor or anyone else. (fn. 1.) Moreover, as we discussed earlier, Charter Section 807's specific grant of authority to the City Administrator prevails over the Council's general authority under Charter Section 808(a) to set the conditions and procedures for contracting. However, the Charter contains no provisions that grant the City Administrator authority to purchase or contract for professional services.

Because the Charter is silent regarding authority to contract for professional services and Charter Section 808(a) expressly empowers the Council to establish conditions and procedures for all contracts, the Council may amend the purchasing ordinance to grant the City Auditor authority to purchase professional services that are needed to perform her Charter duties.

Our conclusion is supported by the settled rules of statutory construction that apply to the interpretation of city charters.⁴ When a charter expresses a requirement in one section regarding a matter and does not express the same requirement regarding another matter, it should be presumed that the drafters intentionally meant to exclude the authority that was not mentioned. One can not “insert words that have been omitted or omit words that have been inserted.” (*United Assn. Of Journeymen v. City and County of San Francisco*, 32 Cal.App.4th 751, 768 (1995); *Squire v. City and County of San Francisco*, 12 Cal.App.3d 974, 981 (1970).) Accordingly, we must presume that the drafters intentionally excluded authority to purchase professional services when they expressly granted the City Administrator power only to purchase or contract for materials, equipment, supplies and public works.

The City Administrator’s purchasing authority is explicitly limited to “equipment, materials, supplies and public works” and does not mention professional services or any other type of purchase. The drafters of the Charter obviously contemplated that the City would enter into professional services contracts as evidenced by Charter Section 902(e) which sets forth several requirements that the Council must comply with in authorizing such contracts.⁵ Charter Sections 504, 807, 808 and 902(e) together establish that the drafters intended that the City Council retain authority to determine the contracting procedures and conditions for professional services contracts, including the right to delegate Council’s authority to approve such contracts and decide who will execute them.

III. The Proposed Ordinance Does Not Interfere with the City Administrator’s Charter-based Powers

We have established that the Council may amend the purchasing ordinance to designate the City Auditor to execute professional services contracts related to her Charter-based duties and powers. The next question is whether the procedures and standards contained in the amendment would interfere with the City Administrator’s Charter-based powers and duties related to contracting. If the proposed ordinance conflicts with the City Administrator’s Charter powers or duties, it would be void. (fn. 1)

To answer the question, we first review the City Administrator’s powers and duties related to contracting. Then applying the statutory interpretation principles, we

⁴ *Squire v. City and County of San Francisco*, 12 Cal.App.3d 974, 980-81 (1970); *United Assn. of Journeymen v. City and County of San Francisco*, 32 Cal.App.4th 751, 760 (1995). (The same principles of construction applicable to statutes apply to the interpretation of municipal charters).

⁵ Charter Section 902 (e) allows the Council to authorize professional services contracts if (1) the contract does not result in loss of employment or salary by any permanent Civil Service employee, (2) Council makes a finding that the service is of a professional, scientific or technical nature and is temporary in nature, or (3) Council finds by vote of two-thirds of the members of the Council that the performance of the service by contract, regardless of nature or term, is in the public interest because of economy or better performance.

determine whether the two statutes can be interpreted in a way that allows both to remain in effect.

When courts are faced with potentially conflicting statutes; they can invalidate one provision over another only if there is no way to harmonize them. In ascertaining the meaning of any part of the Charter, the entire Charter must be considered to place the provision in proper context. All provisions relating to the same subject must be construed together so that they can be harmonized with each other. (*Hanley v. Murphy*, 40 Cal.2d 572, 576 (1953).)

“It is axiomatic that every provision of the charter should be construed in the light of the whole instrument and of each and every other provision thereof, keeping in view at all times the intent underlying the same. . . . In the consideration of conflicting provisions in a statute, the great object to be kept in view is to ascertain the legislative intent, and a construction which best secures the rights of all the parties affected has been held a proper construction. . . . General and special provisions in a statute should stand together, if possible, but where general terms or expressions in one part of a statute are inconsistent with more specific or particular provisions in another part the particular provisions must govern, unless the statute as a whole clearly shows the contrary intention. . . .” (*City of San Jose v. Lynch*, 4 Cal.2d 760, 766 (1935).)

A. The City Administrator’s Powers and Duties Related to Contracting

The City Charter grants the City Administrator the authority and provides that it shall be her duty to:

- execute and enforce all laws and ordinances and policies of the Council and to administer the affairs of the City (Section 504(a));
- control and administer the financial affairs of the City (Section 504(e));
- prepare or cause to be prepared the plans, specifications, and contracts for work which the Council may order (Section 504(g));
- supervise the purchasing of materials and supplies and make recommendations to the Council in connection with the awarding of public contracts and see that all City contracts under her direction or the Council’s are faithfully performed (Section 504(h));
- keep the Council at all times fully advised as to the financial condition and needs of the City (Section 504(j));
- maintain a system of financial procedures, accounts and controls for City government and each of its departments, offices and agencies, which shall conform to generally accepted principles of accounting which shall be adequate to account for all monies on hand and for all income and expenditures in such detail as will provide complete and informative data concerning the financial affairs of the City and in such manner as the Council

- may prescribe and as will be readily susceptible to audit and review (Section 805);
- assure that “no monies shall be disbursed from the treasury without the approval of the City Administrator or of another officer duly authorized by him/her, that “no expenditure of City funds shall be made except for the purposes and in the manner specified by an appropriation of the Council; nor shall any disbursement be made unless obligations are properly supported by accounting evidence, sufficient money is available in the City Treasury and there is an adequate unencumbered appropriation balance in the proper account classification (Section 806);
 - purchase or contract for equipment, materials, supplies and public works required by the City in the manner prescribed by ordinance, except as otherwise provided in the Charter (Section 807).

B. Impact of the Proposed Ordinance on City Administrator’s Powers and Duties

As we discussed earlier, the City Administrator’s powers and duties under Section 504 and the Council’s authority to establish purchasing procedures under Section 808 must be interpreted in the context of the Charter as a whole to preserve each entity’s Charter powers. Applying the principles of statutory interpretation that we articulated above, we conclude that the proposed ordinance would not interfere with the City Administrator’s ability to carry out any of her Charter responsibilities.

The proposed ordinance would require that the City Auditor meet all requirements of the Purchasing Ordinance such as: 1) obtaining prior or concurrent appropriation of funds by the Council to cover the work, 2) conducting competitive Request for Proposal/Qualifications processes, and 3) meeting local and small local business participation requirements, equal benefits and all other purchasing program requirements. The proposed ordinance also would require that the Auditor provide an annual report to the City Council listing all contracts she authorized during the prior fiscal year. And the City Attorney would continue to approve the contracts as to form and legality before they are executed as required by City Charter section 401(6).

The City Administrator would continue to have the power and duty to enforce all laws, policies and ordinances, and to administer the City’s affairs, by requiring that the City Auditor comply with them. (City Charter Section 504(a).) If she determined that the City Auditor failed to comply with an applicable law, policy or ordinance, she would have the duty to alert the Auditor and, if necessary, the Council and the City Attorney, as well as the power and the duty to refrain from disbursing funds until the City Auditor complied.

The City Administrator’s power under Section 504(e) to control and administer the financial affairs of the City includes the duty to oversee funds appropriated for professional services contracts and moneys expended for such purposes. The proposed ordinance would not have any impact on the City Administrator’s ability to

perform these functions. The City Administrator would continue to be responsible for managing the City Auditor's budget and accounts for the purposes of assuring that expenditures are within budget, and would continue to approve invoices for payment, upon the Auditor's requisition, for the purposes of issuing contractor payments.

Section 504(g) which requires that the City Administrator "prepare" the plans, specifications and contracts for work that the Council authorizes, charges the City Administrator with seeing that qualified staff is assigned to draft or have drafted plans and specifications for public works of improvement⁶, establishing purchasing contract formats⁷ and attachments with terms, conditions, insurance and other policy and liability provisions, and having contract documents printed, copied and otherwise prepared for execution. The proposed ordinance would not impede the City Administrator's ability to carry out any of these functions. The City Auditor would be required to use the professional services contract format, attachments and standard terms and conditions prepared by the City Administrator.

Nor would the proposed ordinance impede the City Administrator's to perform her duties under Section 504(h) which requires that the City Administrator "supervise" the purchase of "materials and supplies," "make recommendations to the Council in connection with the awarding of public contracts" and see that all "City contracts under his direction or that of the Council are faithfully performed." This purchase supervision requirement applies specifically to material and supply purchases, not to purchase of professional services. The proposed ordinance would not authorize the City Auditor to purchase materials and supplies. The City Administrator would continue to submit recommendations to the City Council regarding any Auditor contract under its consideration. Regarding contractor performance, the City Administrator could continue to require the City Auditor to carry out any checks or procedures needed to assure complete performance or program compliance by the City Auditor, as is regularly done with any contracts under City Administrator jurisdiction.

⁶ The terms "plans" and "specifications" generally refer to work scopes for contracts involving public works of improvement, equipment, products or systems involving tangible components such as computerized systems comprised of software and computers. Black's Law Dictionary defines "plans" as "[a] delineation; a design; a draft, form or representation. The representation of anything drawn on a plane, as a map or chart; a scheme; a sketch. Also, a method of design or action, procedure, or arrangement for accomplishment of a particular act or object . . . Method of putting into effect an intention or proposal, and defines "specifications" "[a]s used in the law relating to patents, manufacturing, and construction contracts, a particular or detailed statement, account, or listing of the various elements, materials, dimensions, etc. involved. Black's Law Dictionary (5th ed. 1979), pp. 1036 and 1254, respectively. The California Public Contracts Code and the State of California Regulations for public works of improvement use these terms in reference to the documentation prepared by architects and engineers to be used by a licensed contractor for construction of a public improvement. See Pub. Contr. Code Section 1104 and State of California "Greenbook" Standard Specifications for Public Works of Improvement (2003 ed.).

⁷ Charter Section 401(6) provides that the City Attorney shall "draft . . . contracts and other legal documents as directed by the Council or requested by the Mayor or City Administrator or any official board or commission of the City."

The City Auditor must comply with the City Administrator's systems of financial procedures, accounts and controls, established under Charter Section 805. Hypothetically, if the Auditor presented an invoice for services that were outside the scope of services for a particular contract, the City Administrator would have the power and the duty under Charter section 806 to refuse to pay the invoice and to alert the City Attorney, request legal advice and, if appropriate, inform the Council.

Likewise, If the City Administrator determined that a particular invoice was not supported by accounting evidence or that funds were not appropriated for the expenditure, she would have the authority, and indeed the duty, to refuse to disburse funds to the Auditor and to alert the City Attorney and, if appropriate, the City Council regarding the issue. Additionally, the City Administrator would have the authority and the duty to alert the City Attorney, the City Auditor and if appropriate the City Council if the Auditor does not comply with the City's contracting procedures and conditions or the City Administrator's accounting and other fiscal standards.

In sum, the proposed amendments would not and, frankly, could not remove the City Administrator's power and duty to review and assure compliance with the foregoing Charter requirements. The differences between the current procedures and conditions and the proposed amendment are: (1) the City Administrator would not execute the City Auditor's professional services agreements and (2) she would not make the decision as to whether the particular audit, survey, or review described in a scope of services should be performed. We have demonstrated that the Council has the power to authorize the City Auditor to perform both of these duties.

CONCLUSION

The provisions of the Charter that confer powers and duties upon the City Administrator regarding contracting do not conflict with the City Council's power under Section 808 to amend the Purchasing Ordinance to authorize the City Auditor to execute professional services contracts related to her Charter duties. The amendments proposed by the City Auditor would not interfere with any of the City Administrator's Charter-based powers or duties related to contracting. Checks and balances are provided by the Charter to assure compliance with applicable contracting requirements and laws.

Action Pending: The City Attorney's Office will create a check list for each approval that the Auditor must obtain before she executes contracts and provide it to the City Administrator and City Auditor by July 27, 2007 (e.g., insurance, contract compliance approvals, Finance's certification that funds have been appropriated and encumbered for the work, etc.). The check list will enable the City Auditor to assure that she has complied with all applicable requirements before she executes professional services contracts and facilitate the City Administrator's performance of her Charter duties to control and administer the City's fiscal affairs and enforce the City's policies, laws and ordinances.

PURCHASING ORDINANCE AMENDMENT

INTRODUCED BY COUNCILMEMBER _____

OFFICE OF THE CITY CLERK

2007 MAY 31 PM 6:49

APPROVED AS TO FORM AND LEGALITY

[Signature]
CITY ATTORNEY

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE TITLE 2.04
("PURCHASING ORDINANCE") TO ADD SECTION 2.04.
AUTHORIZING THE CITY AUDITOR TO PURCHASE PROFESSIONAL
SERVICES NECESSARY TO CARRY OUT THE DUTIES OF THE OFFICE

Whereas, Oakland City Charter Article IV, Section 403 empowers and requires the City Auditor to "audit the books, accounts, money and securities of all departments and agencies of the City and such other matters as the Council may request; to report to the Council periodically the results of such audits and to advise and make recommendations to the City Administrator regarding accounting forms design, fiscal and statistical reports and the methods or procedures for maintaining the accounts and accounting system throughout all departments, offices and agencies of the City;" and

Whereas, Section 403 requires the City Auditor to "report to the Council instances of noncompliance with accepted accounting principles where recommendations for compliance have not been implemented by the City Administrator after reasonable time and opportunity;" and

Whereas, Section 403 requires the City Auditor to conduct surveys, reviews, and audits as the Auditor deems to be in the best public interest or as required by the Council or Mayor, and for those purposes "the public interest shall include, but not be limited to:

- (1) Reviewing and appraising the soundness, adequacy and application of accounting, functional, and operating controls and reliability and timeliness of accounting and other data generated within the organization.
- (2) Evaluating the city's internal controls to ensure that the City's assets and resources are reasonably safeguarded from fraud, waste, and mismanagement.
- (3) Ascertaining compliance with Council's resolutions and policies and the Mayor's Administrative Instructions and Directives, as well as applicable State and Federal laws and regulations.
- (4) Providing assistance to City Departments to enhance the effectiveness, efficiency and economy of their operations.
- (5) Preparing an impartial financial analysis of all ballot measures, pursuant to the provisions of the Municipal Code.
- (6) Preparing impartial financial analyses of proposed major expenditures prior to the approval of such expenditures. These analyses will be for informational purposes only and will include, but not be limited to, proposals, contracts, ventures, programs and construction projects. The proposed major expenditures selected for these financial analyses will be based on requests from Mayor/Council and/or deemed to be prudently advisable in the objective and professional judgment of the City Auditor.
- (7) Responding to requests for audit and reviews.
- (8) Submitting, at a public meeting of the full City Council, a quarterly report to the Council and

public on the extent of implementation of recommendations for corrective actions made in the City Auditor's report.

(9) The City Auditor shall conduct performance audits of each department as specified in the City budget.

The City Auditor shall be represented in all legal matters by the City Attorney except as provided otherwise in Section 401;" and

Whereas, the City Auditor must periodically enter into professional, technical or scientific service agreements to retain auditors, accountants and other qualified consultants to exercise the powers mandated by Oakland City Charter Article IV, Section 403; and

Whereas, the City Auditor should be empowered to perform independent audits, retain consultant services independent of City Administrator oversight and expedite consultant contracts needed to exercise the powers and meet the mandates of Oakland City Charter Article IV, Section 403;

Now, Therefore, The Council of the City of Oakland does ordain as follows:

Section 1. Section 2.04. _____, authorizing the City Auditor to purchase professional, technical and scientific services to exercise the powers mandated by Oakland City Charter Article IV, Section 403 is added to Title 2, Chapter 2.04. Purchasing System, as follows:

2.04. City Auditor Authority.

A. City Auditor Purchase Authority. The City Auditor shall have the authority to bind the city by written contract in any amount without previous specific action of the Council or City Administrator to obtain professional, technical or scientific services needed to audit the books, accounts, money and securities of all departments and agencies of the City and such other matters as the Council may request; to report to the Council periodically the results of such audits and to advise and make recommendations to the City Administrator regarding accounting forms design, fiscal and statistical reports and the methods or procedures for maintaining the accounts and accounting system throughout all departments, offices and agencies of the City; to report to the Council instances of noncompliance with accepted accounting principles where recommendations for compliance have not been implemented by the City Administrator after reasonable time and opportunity; and to conduct surveys, reviews, and audits as the Auditor deems to be in the best public interest or as required by the Council or Mayor as specified in Oakland Charter Article IV, Section 403.

B. City Auditor Contracts Subject to Council Appropriation of Contract Funds. All contracts authorized by the City Auditor pursuant to this section shall be subject to the prior or concurrent appropriation and allocation of funds by the City Council in 1) the current two-year or mid-cycle adjusted budget for the City Auditor, including any budget adjustments allowed, or 2) an Appropriation Resolution as defined in section 2.04.010 above, or 3) a funding resolution specific to a particular contract(s).

C. Reports. The City Auditor shall present to the City Council, on an annual basis, a report listing all professional services contracts authorized by the City Auditor during the prior year.

D. Compliance With Competitive Process, Personnel Findings, Purchasing Programs and Other Purchasing Requirements. With the exception of the contract authority granted under this section 2.04. , all contracts entered into by the City Auditor pursuant to this section are subject to the competitive processes required under sections 2.04.050 and 2.04.051, below, and the personnel findings, purchasing programs and other purchasing requirements set forth or referenced in the remainder of this chapter.

SECTION 2. Remaining Provisions Unchanged. Except as amended, all provisions, articles, sections, subsections, sentences, clauses or phrases of Oakland Municipal Code Chapter 2.04, shall remain unchanged and in full force and effect.

SECTION 3. Severability. If any article, section, subsection sentence, clause or phrase of this ordinance or exhibit is held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of remaining portions which shall remain in full force and effect.

SECTION 4. Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

405728

IN COUNCIL, OAKLAND, CALIFORNIA, (DATE), 20(YEAR)

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID AND
PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

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FINANCE & MANAGEMENT

JUN 26 2007

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FINANCE & MANAGEMENT