THE HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, Plaintiff, v. CITY OF SEATTLE, Defendant.	)	CASE NO. 2:12-cv-01282-JLR STIPULATION AND [~~PROPOSED~~] ORDER FOR MODIFICATION AND FOR ENTRY OF PRELIMINARY APPROVAL OF THE PARTIES' SETTLEMENT AGREEMENT AND STIPULATED ORDER OF RESOLUTION Please note on motion calendar for: September 19, 2012

JLR

Pursuant to this Court's Order of August 30, 2012 Provisionally Approving the Settlement Agreement (Dkt. No. 8), Plaintiff United States of America and Defendant City of Seattle (collectively, the "Parties") hereby STIPULATE, AGREE and JOINTLY AND RESPECTFULLY MOVE the Court (a) to modify the Parties' Settlement Agreement and Stipulated [Proposed] Order of Resolution (Dkt. No. 3-1, "Settlement Agreement and Order of Resolution") and (b) to enter preliminary approval of the Settlement Agreement and Order of Resolution, as follows:

171. No later than 60 days from the Effective Date, *i.e.* by October 26, 2012, the Parties will select a Monitor. Given this Agreement's emphasis on use of force, one

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, WA 98101-1271
(206) 553-7970

qualification the Parties should consider is the Monitor's experience in law enforcement or criminal justice. The Parties will advise the Court on the progress of the selection of the Monitor through regular joint status reports submitted to the Court and additional status conferences as directed by the Court. If the Parties are able to agree on a Monitor, on or before October 26, 2012, the Parties will file a Stipulated Motion and [Proposed] Order for Approval of the Monitor with the Court. If the Parties are unable to agree on a Monitor, each Party will submit the names of three candidates, or three groups of candidates, along with resumes and cost proposals, to the Court, and the Court will select and appoint the Monitor from among the qualified candidates/candidate groups.

172. The Monitor will be an agent of the Court for purposes of assessing the City's compliance with the Settlement Agreement. The Monitor will only have the duties, responsibilities, and authority conferred by the Agreements. The Monitor will not, and is not intended to, replace or assume the role and duties of any City or SPD staff or officials, including the Chief.

173(b). The Monitor will issue public reports every six months detailing the Parties' compliance with the Settlement Agreement. The Monitor will also file these reports with the Court. In addition, the Monitor will provide status updates directly to the Court following the bi-monthly status meetings with the parties referenced in paragraph 191.

177. SPD will submit the policies, procedures, training curricula, and training manuals required to be written, revised, or maintained by the Settlement Agreement to the Monitor and DOJ for review and comment prior to publication and implementation. The Parties will meet and confer regarding any comments on the policies, procedures, training curricula, and training manuals within 45 days of submission if necessary. The Monitor will approve the materials

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, WA 98101-1271
(206) 553-7970

unless the Monitor determines that they conflict with the terms of the Settlement Agreement. If the Monitor disapproves, he or she will state the reasons for the decision in writing.

178. If either Party objects to the determination of the Monitor the Parties will meet and confer on the objections within 14 days. If necessary, and consistent with the other deadlines herein, any Party may petition the Court thereafter to resolve the objections. The Parties will also submit to the Court the policies and procedures approved by the Monitor. The Court may, at its discretion, hold a status conference with the Monitor and the Parties to discuss the approved policies and procedures, and any petition to resolve objections.

219. The Settlement Agreement is binding upon all Parties hereto, by and through their officials, agents, employees, and successors. If the City establishes or reorganizes a government agency or entity whose function includes overseeing, regulating, accrediting, investigating, or otherwise reviewing the operations of SPD or any aspect thereof, the City agrees to ensure these functions and entities are consistent with the terms of the Settlement Agreement and will incorporate the terms of the Settlement Agreement into the oversight, regulatory, accreditation, investigation, or review functions of the government agency or entity as necessary to ensure consistency. The Settlement Agreement is enforceable only by the Parties. No person or entity is intended to be a third-party beneficiary of the provisions of the Settlement Agreement for purposes of any civil, criminal, or administrative action, and accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under the Settlement Agreement. Although the foregoing is a statement of the Parties' intent with respect to the applicability of the Settlement Agreement, this provision does not prejudge standing or the right to intervene in any federal court action.

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, WA 98101-1271
(206) 553-7970

223. To ensure that the requirements of the Settlement Agreement are properly and timely implemented, the Court will retain jurisdiction of this action for all purposes, including but not limited to any disputed changes to policies, procedures, training, and practices, until such time as the Court determines that the City has achieved full and effective compliance with the Settlement Agreement and has maintain such compliance for no less than two years. At all times, the City and SPD will bear the burden of demonstrating substantial compliance with the Settlement Agreement. When the United States, the Monitor, and the Court agree that the City has maintained substantial compliance, the City will be relieved of that portion of the Settlement Agreement.

224. The United States acknowledges the good faith of the City of Seattle in trying to address the remedial measures that are needed to ensure constitutional policing in Seattle. The United States, however, reserves its right to seek enforcement of the provisions of the Settlement Agreement if it determines that the City and SPD have failed to fully comply with any provision of this Agreement. The United States agrees to consult with officials from the City of Seattle before commencing enforcement proceedings, and to provide opportunity to cure consistent with the informal dispute resolution procedure set forth in Paragraph 222. After notice to the Parties and the Monitor, and an opportunity to be heard, the Court also has the power, *sua sponte*, to issue orders or directions to the Parties and/or the Monitor regarding the Settlement Agreement and Stipulated Order of Final Resolution including, but not limited to, the construction, performance, and enforcement of its terms and provisions, as well as punishment for any violations or lack of compliance.

229. The Parties anticipate that the City and SPD will have reached full and effective compliance with this Agreement within five years of its Effective Date. The Parties may agree

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, WA 98101-1271
(206) 553-7970

to jointly ask the Court to terminate the Agreement prior to this date, provided the City and SPD have been in full and effective compliance with the Agreement for two years. In any event, the Parties' Settlement Agreement and Stipulated Order of Resolution may only be terminated with the consent of the Court.

So stipulated, agreed, and respectfully and jointly submitted on September 19, 2012.

For the UNITED STATES OF AMERICA:

ERIC H. HOLDER, JR.
Attorney General of the United States of America

JENNY A. DURKAN
United States Attorney for the
Western District of Washington

/s/ J. Michael Diaz
Kerry J. Keefe, Civil Chief
J. Michael Diaz, Assistant United States Attorney
Rebecca S. Cohen, Assistant United States Attorney
United States Attorney's Office
Western District of Washington
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
Phone: (206) 553-7970
Fax: (206) 553-4073
E-mail: Michael.Diaz@usdoj.gov

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

/s/ Timothy D. Mygatt
Jonathan M. Smith, Chief
Timothy D. Mygatt, Special Counsel
Michelle L. Leung, Trial Attorney
Michael J. Songer, Trial Attorney
United States Department of Justice
Civil Rights Division- Special Lit. Section
950 Pennsylvania Avenue, NW
Washington, DC 20530
Phone: (202) 514-6255
E-mail: Michelle.Leung@usdoj.gov

For the CITY OF SEATTLE:

PETER S. HOLMES
Seattle City Attorney

By: s/ Jean Boler
By: s/ Sarah K. Morehead

Peter S. Holmes, Seattle City Attorney
Jean Boler, Civil Chief
Sarah K. Morehead, Assistant City Attorney
Seattle City Attorney's Office

PO Box 94769
Seattle, WA 98124-4769
Phone: (206) 684-8200
Fax: (206) 684-8284
E-mail: jean.boler@seattle.gov
sarah.morehead@seattle.gov

JLR

~~[PROPOSED]~~ ORDER ENTERING PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT AND ORDER OF RESOLUTION

The Parties having so stipulated, the Court MODIFIES in the above-agreed form, and ENTERS preliminary approval of, the Parties' Settlement Agreement and Stipulated Order of Resolution as an order of this Court, this 21st day of September, 2012. The Court will enter final approval of the parties' Settlement Agreement and Stipulated Order of Resolution after it determines that the City has achieved full and effective compliance and maintained such compliance for no less than two years.[1]

JAMES L. ROBART
United States District Judge

[1] "Full and effective compliance" is defined in paragraph 177 of the Parties' Settlement Agreement.

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, WA 98101-1271
(206) 553-7970