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6 Attorneys for Defendant Town of Colorado City

7  
8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF ARIZONA**

10 United States of America,

11 Plaintiff,

12 v.

13 Town of Colorado City, Arizona; City of  
14 Hildale, Utah; and Twin City Water Authority,  
Inc.,

15 Defendants.  
16

Case No. CV-12-8123-PCT-HRH

**DEFENDANT TOWN OF  
COLORADO CITY'S MOTION TO  
MODIFY JUDGMENT AND  
DECREE GRANTING INJUNCTIVE  
RELIEF**

17 Pursuant to Federal Civil Procedure Rule 60(b)(5) and (6), and also pursuant to  
18 Section VII(4)(b) of the Court's Judgment and Decree Granting Injunctive Relief [Doc.  
19 1053] ("Injunctive Order"), Defendant Colorado City requests that the Court modify the  
20 Injunctive Order to remove the requirement to maintain the services of a Consultant. This  
21 modification is appropriate because the Consultant has completed all tasks identified in  
22 the Injunctive Order.

23 This motion is supported by the Court's file and the following memorandum of  
24 points and authorities.

25 **MEMORANDUM OF POINTS AND AUTHORITIES**

26 The Court is familiar with this dispute. Relevant to the current motion are the  
27 following facts.  
28

**I. FACTUAL BACKGROUND.**

On April 18, 2017 and following a lengthy jury trial and a separate remedy hearing, the Court issued its Injunctive Order. *See* Injunctive Order [Doc. 1053]. Among other items, the Injunctive Order directed the parties to confer on the selection of a Consultant. *Id.*, at Section V(B)(2). The parties selected Jim Keith. *See* Joint Notice of Agreed-Upon Policing Consultant and Mentor [Doc. 1057]. On June 22, 2017, the Court approved the hiring of Jim Keith as the Consultant. *See* Order [Doc. 1066].

The Injunctive Order sets forth the tasks for the Consultant to complete. *See* Injunctive Order, at Section V(B)(3)(a)-(h). The following chart identifies these tasks and the date upon which each task was completed:

Task	Date Completed
“(a) Within 60 days of the date of engaging the services of a Consultant, the Defendant Cities shall develop – and upon receipt of approval from the United States shall implement and adhere to – new policies and procedures for hiring new officers. These new policies and procedures shall restructure the hiring committee to remove the Colorado City Town Manager, the Hildale City Manager, and any representative from the Colorado City Town Council and the Hildale City Council from that committee. Once approved, the policies and procedures for hiring new officers shall not be modified, except with the concurrence of the Consultant and the United States, during the term of this injunction.”	Colorado City and Hildale, with the assistance of the Consultant, implemented new policies and procedures for hiring officers. <i>See</i> Police Consultant Report, dated April 30, 2019 [Doc. 1173-2].
“(b) Within 90 days of engaging the service of a Consultant, the Defendant Cities shall advertise and conduct a wide-ranging search for candidates to fill two additional police officer positions. The position shall be filled within 6 months of engaging the services of a Consultant.”	Colorado City and Hildale, with the assistance of the Consultant, filled two additional police officer positions. <i>See</i> Police Consultant Report, dated July 31, 2019 [Doc. 1176-2].

1 2 3 4 5 6 7 8 9	“(c) Within 60 days of the date of engaging the services of a Consultant, the Defendant Cities shall develop – and upon receipt and approval from the United States – implement and adhere to new policies and procedure for the conduct of internal affairs investigations. The new policies and procedures shall remove the Colorado City Town Manager, the Hildale City Town Manager, and any representative from the Colorado City Town Counsel and the Hildale City Town Council from being involved in CCMO internal affairs investigations.”	Colorado City and Hildale, with the assistance of the Consultant, implemented new policies and procedures for internal affair investigations. <i>See</i> Police Consultant Report, dated April 30, 2019 [Doc. 1173-2].
10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	“(d) Within 120 days of engaging the services of a Consultant, the Defendant Cities shall conduct a comprehensive review of all CCMO’s policies and procedures; all CCMO policies and procedures shall be updated and/or revised after consultation with the Consultant and compiled in a single policies and procedures manual. The policies and procedures manual shall, upon receipt of consent from the United States, be adopted within 45 days by the councils of the Defendants Cities. The policies and procedures should, subject to guidance from the Consultant, include guidelines for the search and seizure of property, the seizure of a person, lawful arrest(s), conduct of investigations, report writing, and record preservation. Once approved, any future modifications to the policies and procedures manual shall not take effect without the concurrence of the Consultant and the United States during the term of this injunction.”	Colorado City and Hildale, with the assistance of the Consultant, completed the review of, and updated and/or revised, all CCMO policies and procedures. <i>See</i> Police Consultant Report, dated April 30, 2019 [Doc. 1173-2].
26 27 28	“(e) Within 1 year of the date of this injunction, the Defendant Cities shall purchase body cameras for the CCMO officers and implement a pilot program for	Colorado City and Hildale, with the assistance of the Consultant, purchased body cameras for the CCMO officers, and implemented new policies and procedures

1	their use. The Defendant Cities shall also	regarding the use of body cameras and the
2	ensure that the new policies and procedures	storage of their data, in early 2019. <i>See</i>
3	for the CCMO (as discussed in subsection	Police Consultant Report, dated October 31,
4	(d) above), include a policy regarding the	2019 [Doc. 1182-1].
5	use of body cameras and the storage of their	
6	data.”	
7	“(f) The Defendant Cities shall provide	Colorado City and Hildale, with the
8	yearly training to all CCMO officers	assistance of the Consultant, have
9	regarding the First, Fourth, and Fourteenth	completed the required training each year
10	Amendments, the state and federal Fair	since the issuance of the Injunctive Order.
11	Housing Act, landlord/tenant law, trespass	
12	law, and any other topics that the	
13	Defendants Cities deem appropriate. The	
14	training shall be conducted by a qualified	
15	third person or organization other than the	
16	Defendant Cities’ attorneys, and the	
17	qualified person or organization must be	
18	approved in advance by the United States.	
19	The training will be of at least three hours’	
20	duration and, at the discretion of the trainer,	
21	up to six hours. The Defendant Cities shall	
22	bear all costs associated with the training.	
23	The Defendant Cities shall seek and obtain	
24	approval from the United States for the	
25	training syllabus and/or materials before the	
26	training is delivered. The Defendant Cities	
27	shall also provide a copy of the sign-in	
28	sheet from each training session to the	
	United States within 14 days after each	
	training session is complete. The	
	Defendant Cities shall vide-record each	
	training session and require each new	
	officer hired since the last training session	
	to watch the recording and receive any	
	materials provided at the training.”	
	“(g) The Chief Marshal for the CCMO	The Chief Marshal for the CCMO, with the
	shall seek to meet with the Washington	assistance of the Consultant, has met with
	County Sheriff and the Mohave County	the Washington County Sheriff and the
	Sheriff to build a better working	Mohave County Sheriff to establish a better
	relationship and to obtain their input on key	working relationship. <i>See</i> Police Consultant
	law enforcement issues facing the CCMO.”	Report, dated October 31, 2019 [Doc. 1182-
		1].

1 “(h) Within 15 days of the date upon which  
2 court approval of the selection of a Mentor  
3 is granted, the Defendant Cities shall hire a  
4 Mentor for the Chief Marshal. The parties  
5 shall confer regarding the selection of the  
6 Mentor and provide the court with an  
7 agreed-upon selection within 45 days of the  
8 entry of this injunction. If the parties are  
9 unable to reach agreement on a Mentor  
10 within 45 days of the entry of this  
11 injunction, the parties shall, within 60 days  
12 of the entry of this injunction, each submit  
13 the name(s) of potential mentor(s) to the  
14 court, and the court shall select one or more  
15 persons or entities to serve as the Mentor  
16 from among the candidates proposed by the  
17 parties. The Mentor shall come from a  
18 nationally-recognized police organization,  
19 such as the Police Executive Research  
20 Forum or the International Association of  
21 Chiefs of Police. This Mentor shall meet  
with the Chief Marshal at least once a  
month during the first year from the hiring  
of the Mentor and advise the Chief Marshal  
in the performance of his job and the  
conduct of the CCMO. The Defendant  
Cities shall pay all costs associated with  
this Mentor. The length of the contract  
between the Defendant Cities and the  
Mentor shall be for at least 1 year, with the  
option to renew the contract. The  
Defendant Cities shall provide a copy of  
this contract to the United States.”

Colorado City and Hildale, with the  
assistance of the Consultant and in  
coordination with the United States,  
selected Robert Flowers as the Mentor. The  
Court approved this selection on June 22,  
2017. *See* Order [Doc. 1066].

22 In addition to the above chart, the periodic reports from the Consultant also confirm that  
23 all tasks identified in the Injunctive Order for the Consultant are complete. *See* Police  
24 Consultant Reports, at Docs. 1162, 1165, 1167, 1173, 1176, 1182, 1190, at 1192.

25 Because the Consultant has completed all tasks identified in the Injunctive Order,  
26 the Court should modify the Injunctive Order to remove the requirement to maintain the  
27 Consultant.  
28

1     **II.     MODIFICATION OF THE INJUNCTIVE ORDER IS APPROPRIATE.**

2             Federal Civil Procedure Rule 60(b) governs a party's request for relief from a final  
3 judgment or order. Relevant to this motion are Rules 60(b)(5) and (6), which state:

4                     On motion and just terms, the court may relieve a party or its legal  
5 representative from a final judgment, order, or proceeding for the  
6 following reasons:

7                     . . . . .

8                     (5) the judgment has been satisfied, released, or discharged; it is  
9 based on an earlier judgment that has been reversed or vacated;  
or applying it prospectively is no longer equitable; or

10                    (6) any other reason that justifies relief.

11             Fed. R. Civ. P. 60(b)(5) and (6). Section VII(4)(b) of the Injunctive Order also permits  
12 the Court to modify the Injunctive Order. It states:

13                     Modification of this injunction, Sections V(B) and V(C), may be  
14 sought as follows:

15                     . . . . .

16                     (b) Provisions of this injunction other than time limits may be  
modified by motion to and order of the Court.

17             *See* Injunctive Order, at Section VII(4)(b). Both Rules 60(b)(5) and (6) and Section  
18 VII(4)(b) of the Injunctive Order support the Court modifying the Injunctive Order to  
19 remove the requirement to maintain the Consultant.

20             As shown in the above chart, the Consultant has completed all the tasks the Court  
21 directed him to complete. Nothing else remains. And because all the tasks are now  
22 complete, the Consultant has moved into a monitoring role, in which he periodically  
23 meets with various individuals at the CCMO. While Colorado City appreciates the  
24 Consultant's monitoring efforts, that work is not cheap and costs Colorado City several  
25 thousands of dollars in fees payable to the Consultant each month. Colorado City is a  
26 public entity; therefore, it is the residents of Colorado City who ultimately bear the  
27 financial burden of the Consultant's continuing monitoring efforts. Furthermore, the  
28 Court-appointed Monitor (Roger Carter) is still in place and monitors all the activity

1 within Colorado City and Hildale. Duplicative monitoring by the Consultant is  
2 unnecessary, as are the duplicative fees paid. A modification of the Injunctive Order is  
3 therefore appropriate.

4 The following practical considerations are also relevant. First, there has been  
5 100% turnover of the officers at the CCMO since the Court issued the Injunctive Order,  
6 meaning that no officers who were present in 2017 still remain today. Second, the current  
7 Chief Marshal has more than 30 years of law enforcement experience with contacts  
8 throughout the policing industry, which mitigates the need for a Consultant to advise on  
9 how to run a department. Third, the CCMO now has two fulltime Sergeants, one of which  
10 has 27 years of law enforcement experience and one of which has 30 years of law  
11 enforcement experience and is a former Utah county sheriff. Finally, the new Chief  
12 Marshal and the two new Sergeants do not have any historical ties to the area, the FLDS  
13 Church, or the CCMO. They therefore bring new and experienced leadership. These  
14 practical considerations – coupled with the fact that the Consultant has completed all of  
15 his required work – support Colorado City’s request to modify the Injunctive Order.

### 16 **III. CONCLUSION.**

17 The Court’s Injunctive Order clearly identified the tasks for the Consultant to  
18 complete. Each of these tasks is now complete, and the Consultant is no longer necessary.  
19 Further, continued monitoring by the Consultant is not one of the required tasks set forth  
20 in the Injunctive Order or a task the Consultant needs to undertake, especially because the  
21 Court-appointed Monitor remains and monitors all of the operations of Colorado City.

22 For these reasons, Colorado City requests that the Court modify the Injunctive  
23 Order to remove the requirement to maintain the Consultant. All other provisions of the  
24 Injunctive Order would remain.

1 Dated on July 30, 2021

2 BARRETT & MATURA, P.C.

3  
4 By: /s/ Jeffrey C. Matura

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11 **CERTIFICATE OF SERVICE**

12 I hereby certify that on July 30, 2021, I electronically transmitted the foregoing  
13 document to the Clerk's Office using the CM/ECF system for filing and transmittal of  
14 Notice of Electronic filing to the following CM/ECF registrants:

15 Steven H. Rosenbaum

16 Sameena Shina Majeed

17 R. Tamar Hagler

18 Paul Killebrew

19 Matthew J. Donnelly

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