

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

F I L E D
AUG 25 2014
CLERK'S OFFICE
U.S. DISTRICT COURT
EASTERN MICHIGAN

UNITED STATES OF AMERICA,

Plaintiff

Case No. 03-cv-72258

v.

HON. AVERN L. COHN

CITY OF DETROIT,

Defendant.

STIPULATED TRANSITION AGREEMENT

On July 18, 2003, this Court ordered the outstanding Consent Judgment¹ in the above-captioned matter resolving the United States' complaint against the City of Detroit ("the City") alleging a pattern or practice of unconstitutional or otherwise unlawful policing by the Detroit Police Department ("DPD") in violation of 42 U.S.C. § 14141. While the City Defendants denied the allegations in the complaint, the United States and the City (hereafter the "Parties") entered into the Consent Judgment as a way to resolve the United States' lawsuit.

Over the last eleven years, the City and the DPD have successfully implemented the majority of the provisions of the Consent Judgment. As of the Independent Monitor's Nineteenth Quarterly Report, the DPD has achieved

¹ On January 27, 2014, the Court dismissed the counterpart to this judgment addressing conditions of confinement in DPD's holding cells upon a showing that the custodial responsibility for DPD's pre-arraignment detainees had been fully transferred to the Michigan Department of Corrections, Detroit Detention Center. DPD was in full compliance with that Judgment at the time of its dismissal.

compliance with 99 of 110 (90%) substantive paragraphs. In addition, the DPD has made significant progress toward implementing the remaining eleven paragraphs. Although short of the Monitor's 94% compliance standard, in practice the DPD's accomplishments under these remaining provisions reflect greater progress and a commitment to reform than can be adequately conveyed in a mere finding of compliance or non-compliance. The fact is that, after more than a decade of reform efforts under the Consent Judgment, the DPD's use of force practices have fundamentally improved and are now consistent with constitutional policing standards.

Therefore, the Parties agree that the Consent Judgment should be terminated and replaced with this Transition Agreement between the Parties to facilitate the transition of the DPD from an agency focused on satisfying the requirements of the Consent Judgment to an agency focused on sustaining effective and constitutional police practices outside the framework of strict third-party oversight. During the period of transition, the United States shall remain engaged with the DPD, to ensure that reform efforts continue and are sustained. Subject to this Court's continuing jurisdiction over the Transition Agreement, the DPD shall conduct regular audits of its Consent Judgment related activities.²

² The Parties agree that in the event a disagreement is not resolved by the Parties in accordance with Section III.C below, and Court resolution is necessary, the Court's standard for resolution shall be consistent with the purpose and intent of the relevant paragraphs or portions thereof as set forth in the Consent Decree.

I. General Provisions

A. The Parties agree that the Consent Judgment entered by this Court on July 18, 2003 and subsequently amended should terminate effective immediately. In consideration of the City's performance of its obligations under this Transition Agreement, the United States agrees to refrain from pursuing civil action against the City Defendants under Civil Case No. 03-CV-72258-AC. This Transition Agreement also constitutes a full and complete settlement of any and all claims the United States may have against the City, and their officers, employees or agents, regarding any alleged pattern or practice of conduct by Detroit police officers in carrying out their law enforcement responsibilities, in violation of 42 U.S.C. Sections 14141, 2000d, 3789d(c) or any other law under which such an action could have been brought by the United States and within the subject matter covered by the July 18, 2003, Consent Judgment, based on incidents that have occurred up to and including August 18, 2014.

B. The Parties agree that this Transition Agreement is neither an admission by the City of any violation of the mandates of the original Consent Judgment or any local, state or federal laws, nor an admission by the United States of the merits of any of the City's potential defenses.

C. This Transition Agreement constitutes the entire agreement between the Parties relating to Civil Case No. 03-CV-72258-AC, and no other statement, promise or agreement, either written or oral, made by either party or agents of either party, that is not contained in this Transition Agreement, shall be enforceable.

D. Nothing in this Transition Agreement shall limit the City of Detroit, the Board of Police Commissioners, the Office of the Chief Investigator, and DPD from exercising their powers and satisfying their duties set forth in the City Charter and other applicable law, including conducting additional audits, reviews or evaluations beyond those described herein or beyond the term for each of the subject areas contained in this Transition Agreement.

E. This Transition Agreement is enforceable only by the Parties to the original Consent Judgment, the City and the United States. No person or entity is intended to be a third-party beneficiary of the provisions of this Transition Agreement.

F. For purposes of this Agreement, “in consultation with” shall mean that prior to the commencement of each of the audits specified herein, the DPD will meet with representatives from the United States in person or by phone to discuss the DPD's proposed scope and methodology for each such audit. The DPD

shall make reasonable efforts to incorporate the United State's input concerning the audits. Should the Parties fail to agree on the scope and methodologies for an audit, the Parties shall follow the procedures set forth below in Section III.B, Administrative Provisions, to resolve any disagreements.

II. Framework for DPD Auditing and Oversight by the United States

A. In consultation with the United States, the DPD shall continue its practice of conducting department-wide audits of Consent Judgment issues pursuant to its Audit Protocol for 2013-14, and documenting their findings and conclusions in a Consolidated Quarterly Audit Report.

B. The audit process shall be overseen by a DPD officer of a rank no lower than Assistant Chief. The DPD shall designate that individual within thirty (30) days of the entry of this Agreement.

C. DPD shall publish and maintain copies of its Consolidated Quarterly Audit Reports on its website.

C. Prior to publication, the DPD shall make available for review by the United States a draft of the Consolidated Quarterly Audit Report, and the underlying audit materials and source documentation. The first Audit will be due on October 31, 2014.

D. The United States shall have 45 days to review the Report and provide comments, seek clarification, object in writing, or propose corrective actions based on the Report's contents.

E. Upon expiration of a 45-day period, or receipt of notice that the United States has no objection, the DPD shall finalize the Quarterly Audit Report. Audit Reports shall be published on the DPD's website for two (2) years. However, in the event of an objection, comment, request for clarification, or proposal for corrective action by the United States, the DPD will work with the United States to resolve the issue.

F. In addition to the continuing audit process, the United States shall have the right to site visits as necessary to conduct in-person inspections of the DPD related to any issue related to the subject of the Consent Judgment.

G. The parties share a commitment to improving community confidence in the DPD and to strengthening the police/community relationships necessary to promote public safety, and will engage in further discussions and actions to enhance community involvement and accountability in the City of Detroit.

III. Administrative Provisions

A. In the event of any written objection to a Report by the United States, or if the Parties are unable to cooperatively resolve any disagreements, either Party may seek appropriate relief from the Court.

B. Upon request, the United States shall have complete access to all documents and information relied upon by the DPD to conduct its audits under this Transition Agreement. The time periods for the United States' written objections shall be tolled pending the United States' receipt of all document and information requests.

C. In the event that a Court determines that any provision of this Agreement is unenforceable, such provision will be severed from this Agreement and all other provisions will remain valid and enforceable, provided, however, that if the severance of any such provision materially alters the rights or obligations of the Parties, they will, through reasonable, good faith negotiations, agree upon such other amendments hereto as may be necessary to restore the Parties as closely as possible to the relative rights and obligations initially intended by them hereunder.

D. The court shall retain jurisdiction of this matter for the duration of this Transition Agreement, which absent a showing of cause by the United States, shall

expire upon completion of six audit review cycles. The Parties contemplate termination to occur on or about March 2, 2016.

IT IS SO ORDERED.

Date entered: August 25, 2014



AVERN L. COHN
United States District Judge

For The United States:

MOLLY J. MORAN
Acting Assistant Attorney General

JEFFREY R. MURRAY
Trial Attorney
U.S. Department of Justice
Civil Rights Division
Special Litigation Section
950 Pennsylvania Ave. N.W.
Washington, DC 20530

BARBARA L. McQUADE
United States Attorney

SUSAN K. DeCLERCQ
Assistant U.S. Attorney
211 W. Fort Street, Ste. 2001
Detroit, MI 48226

For the City of Detroit:

MELVIN B. HOLLOWELL
CHARLES RAIMI
ALLAN CHARLTON
Attorneys for Defendant
City of Detroit Law Department
2 Woodward Ave., Ste. 500
Detroit, MI 48226

MICHAEL E. DUGGAN
Mayor
City of Detroit

KEVYN D. ORR
Emergency Manager
City of Detroit