MINUTE ENTRY
MORGAN, J.
May 30, 2013

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA, **Plaintiff**	**CIVIL ACTION**
VERSUS	**No. 12-1924**
CITY OF NEW ORLEANS, **Defendant**	**SECTION "E"**

On May 29, 2013, the City of New Orleans ("City") petitioned[1] the U.S. Court of Appeals for the Fifth Circuit ("Fifth Circuit") for an emergency stay of the above-captioned matter pending the City's appeal of the Court's January 11, 2013 order approving the Consent Decree. The United States of America opposes the City's petition.

The Fifth Circuit temporarily stayed all proceedings in this matter until further notice.[2] Accordingly, the Consent Decree Court Monitor Selection Committee's ("Committee") May 31, 2013 meeting is **CANCELED** and the attendant briefing schedule regarding the Monitor is **VACATED**. The Court will issue a separate notice to the public that the Committee meeting has been canceled.[3]

The Parties shall post a copy of (1) this minute entry (without attachments) and (2) the Court's notice on the doors of the Bienville Club Lounge at the Mercedez-Benz

[1] *See* Exhibit A, attached hereto.

[2] *See* Exhibit B, attached hereto.

[3] *See* Exhibit C, attached hereto.

Superdome, 1500 Poydras Street, New Orleans, Louisiana 70112, no later than **Friday, May 31, 2013, at 9:00 a.m.**

In addition, the Parties shall publish a copy of (1) this minute entry (without attachments) and (2) the Court's notice on their respective websites no later than **Friday, May 31, 2013, at 9:00 a.m.**

The Court will issue further orders, as appropriate, upon receipt of the Fifth Circuit's forthcoming ruling on the City's petition for an emergency stay.

IT IS SO ORDERED.

New Orleans, Louisiana, this 30th day of May, 2013.

SUSIE MORGAN
UNITED STATES DISTRICT JUDGE

Exhibit A

Case No. 13-30161

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA
Plaintiff - Appellee
v.

CITY OF NEW ORLEANS
Defendants - Appellant

Appeal from the United States District Court for the Eastern District of Louisiana
Case No. 12-1924
The Honorable Susie Morgan, United States District Judge

APPELLANT'S EMERGENCY MOTION TO STAY PENDING APPEAL

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal. The interested parties and their attorneys are as follows:

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EMERGENCY MOTION TO STAY PENDING APPEAL

MAY IT PLEASE THE COURT:

The Appellant, the City of New Orleans ("City"), moves this Honorable Court for an order staying the implementation and enforcement of the New Orleans Police Department ("NOPD") Consent Decree entered by the district court on January 11, 2013. The City is requesting an emergency stay pursuant to Fifth Circuit Rule 8.4 to prevent irreparable injury to the City and its residents. The district court denied the City's Motion to Stay on May 24, 2013. *See* Rec. Doc. 258. In light of the upcoming May 31, 2013 final public meeting of the Consent Decree Monitor selection committee, the City may be forced to execute a contract with an NOPD Consent Decree Monitor for a minimum of $7.1 million prior to this Court's full appellate review. Forcing the City to execute such a costly contract while its appeal is pending deprives the City of any meaningful appellate opportunities, and will irreparably harm the City and its residents. Opposing counsel and the clerk's office have been notified regarding the filing of this motion. Opposing counsel indicated that they will oppose this motion.

I. Procedural Background

Pursuant to Rule 62(b)(4) of the Federal Rules of Civil Procedure, the City filed a motion to stay the implementation and enforcement of the proposed Consent Decree with the district court on February 4, 2013 while the City's motion

to vacate the January 11, 2013 order was pending. *See* Rec. Doc. 172. The district court denied the motion on February 8, 2013. *See* Rec. Doc. 179, attached hereto as Exhibit D. In its reasons for denying the City's motion to stay, the district court noted that it "anticipated ruling on the City's Motion to Vacate in a timely manner so that, in the event the motion is denied, the Parties will not be prevented from moving forward with selecting the Court Monitor and executing the professional services agreement with same." *See* Rec. Doc. 179 at footnote 25. Such a statement proves that the district court intends that the City execute a contract with a Consent Decree Monitor, even though the City's appeal is pending.

On May 23, 2013, the district court denied the City's motion to vacate. *See* Rec. Doc. 256, attached hereto as Exhibit E. The City urged the district court to vacate the Consent Decree entered by the court on January 11, 2013 for the following reasons:

- The DOJ failed to disclose costs of implementing the Orleans Parish Prison ("OPP") Consent Decree until after the NOPD consent decree was executed, even though the DOJ negotiated both consent decrees and the City had made repeated requests for cost information related to the OPP Consent Decree;
- DOJ designated Sal Perricone as the U.S. Attorney's "point person" for negotiating the NOPD Consent Decree, even though Perricone had applied to be Mayor Mitch Landrieu's Superintendent of Police and had been

secretly blogging about Mayor Landrieu, Superintendent Ronal Serpas, and the NOPD paid detail system, which was a focus of the DOJ's investigation of the NOPD; and

- the Consent Decree's secondary employment provisions raised concerns under the Fair Labor Standards Act. *See* Rec. Doc. 167 and 175.

These issues will be more fully briefed in the City's appeal brief. Notably, the district court recognized that "the ultimate cost of the OPP Consent Decree is relevant to this case in a general sense because the City has finite resources." *See* Rec. Doc. 256. Nonetheless, the district court denied the City's motion to vacate on May 23, 2013.

On that same date, the City filed a second motion to stay pending appeal with the district court pursuant to Federal Rule of Appellate Procedure 8(a)(1)(A). *See* Rec. Doc. 257. The district court denied that motion on May 24, 2013. *See* Rec. Doc. 258, attached hereto as Exhibit F. In its Order and Reasons, the district court held that the City failed to demonstrate the balance of the equities favors a stay pending appeal, incorrectly finding that the City's argument that denying a stay will preclude appellate review is without merit. *Id.* The district court also rejected the City's argument that its dire financial position could be exacerbated by its potential funding obligation with respect to the OPP litigation, holding that "'inadequate resources can never be an adequate justification for depriving any

person of his constitutional rights.'" *Id.* The district court overlooked the reforms that already have been implemented by the NOPD. The City does not seek to deprive any citizen of his constitutional rights. The City is implementing meaningful reforms and can continue to do so without expending the exorbitant fees required by the NOPD Consent Decree, such as a costly Consent Decree monitor. The City seeks this Honorable Court's emergency review of this Motion to Stay Pending Appeal in light of the City's limited resources so that critical City services can be preserved.

II. Law

Federal Rule of Appellate Procedure 8(a)(1)(A) requires a party to move in the district court for a stay of the judgment pending appeal prior to seeking such relief in the appellate court. The City filed its motion to stay with the district court, which was denied. Federal Rule of Appellate Procedure 8(a)(2)(A) allows a party to move for such relief in the court of appeals. Accordingly, this Court has authority to stay enforcement of the district court's January 11, 2013 Order. Fifth Circuit Rule 8.4 allows for the filing of an emergency motion to stay. The circumstances, particularly the scheduled May 31, 2013 final public meeting for selection of the Consent Decree monitor, warrant emergency consideration of the City's Motion.

III. Argument

The DOJ is aware of the ongoing OPP litigation and the City's concern for meeting all its potential financial obligations.[1] The City's finances and budget are limited, and any funds required for both NOPD and OPP reforms under the proposed Consent Decrees would lead to cuts in other City departments. The City could be required to furlough City employees for 30 days (including all NOPD officers), which would result in a 17.7% pay cut for all City employees; layoff almost 800 City employees (including 308 NOPD officers); cut 45% of the City's operating budget, leaving most departments unable to function. *See* attached Exhibit "B," Presentation at Emergency Budget Meeting. If the district court requires the City to enter into a multi-million dollar monitoring contract before this Honorable Court rules upon the City's appeal, the City, and indeed New Orleans residents, will be irreparably injured and effectively denied its appellate remedy.

Time and again, the City requested assistance with funding from the DOJ to implement the reforms. These requests fell on deaf ears. Although fully cognizant of the City's financial limitations, the DOJ did not provide its initial estimate of the OPP Consent Decree costs until after the purported NOPD Consent Decree was

[1] Recently, $17.5 million judgment was rendered against the City in litigation related to the firefighters' pension fund. *See* NOLA.com article dated 4/10/13 attached hereto as Exhibit "A".

presented to the Court.[2] One month after the proposed NOPD Consent Decree was signed, the DOJ, for the first time, stated that it believed the City would be required to pay $34.5 million dollars to fund the OPP consent decree.

In accordance with the district court's order, the City and the DOJ have engaged in a process to select a Consent Decree Monitor. In spite of the City's limited financial resources, the City has engaged in the Consent Decree Monitor selection process, and the parties have narrowed the list of potential candidates to two. Consistent with its pattern of indifference to the City's financial plight, the DOJ recently filed a motion in the district court arguing that the City should not be allowed to unilaterally negotiate the Monitor contract price. *See* Rec. Doc. 212. Such a position is incomprehensible in light of the price proposals submitted by the two remaining candidates--$7.1 million and $8.9 million. *See* attached Exhibit "C". With full knowledge of the ongoing OPP litigation and its potential costs to the City, the DOJ expects the City to "pay the full freight" and not seek the best available price for the Monitor in this matter. Such a position is proof of the DOJ's cavalier attitude toward the City's financial dilemma. Staying this matter would, at

[2] The district court stated in its Reasons for denying the City's Motion to Vacate that the City was aware that Sheriff Marlin Gusman requested $22.5 million prior to the signing of the proposed NOPD Consent Decree. It is important to note, however, that the DOJ—the party that has signed other consent decrees related to jail conditions and that was involved in the negotiation of both the NOPD and OPP consent decrees—did not provide its own estimate of the cost of the proposed OPP Consent Decree until after it signed the proposed NOPD Consent Decree. Further, the Sheriff's $22.5 million request was unsupported by any data, and in fact, the Sheriff still maintains that he is not certain of the cost of the proposed OPP Consent Decree.

least, allow the City to manage potential funding obligations of multiple consent decrees and to prevent drastic consequences to City services.

Further, denial of the City's Motion to Stay would arbitrarily deprive the City of any opportunity for meaningful appellate review. The City will be forced to enter into a multi-million dollar monitoring contract without the opportunity to obtain full appellate review of the entry of the Consent Decree requiring those very contracts.

In *Felton v. Dillard Univ*., 122 Fed. Appx. 726 (5th Cir. 2004) the Fifth Circuit considered attorney sanctions imposed by an Eastern District of Louisiana judge. The sanctions motion was taken under advisement, with no formal ruling issued, but the attorney was simultaneously directed by the Court to perform 100 hours of community service within 60 days. A motion to stay the order to perform the community service was denied by the trial court. After the community service was performed, the court dismissed the motion for sanctions. *Id*. at 727. The trial court's action, ordering that the community service be performed within 60 days while taking the actual sanctions motion under advisement, was vacated by the Fifth Circuit. The Fifth Circuit found two significant errors:

> The judge erred in two significant ways. First, he effectively barred meaningful appellate review by withholding the formal disposition of the motion for sanctions until the community service (which is functionally irreversible) had been completed. Second, he made the question of whether sanctions should be

> imposed contingent upon whether those very sanctions had been completed.

Id. at 728.

Other courts have similarly held that a lower court erred when it refused to issue a ruling necessary to allow appellate review. For example, the Texas Court of Criminal Appeals considered a situation in which the trial court substantively ruled on the motions to suppress before it, but refused to issue findings of fact and conclusions of law, thereby precluding review. That court found that such action precluded effective appellate review and ordered the trial court to issue the necessary findings of fact and conclusions of law. *State v. Cullen*, 195 S.W.3d 696 (Crim. App. Tex. 2006).

Similarly, in *EMC Mortgage Corp. v. Davis*, 26 P.3d 185 (2001), the plaintiff obtained a judgment for forcible entry and detainer of the premises at issue, which judgment was valid for 60 days subject to extension. The defendant appealed, and the trial court refused to exercise its discretion to extend the order so that the property would remain seized while the appeal could be heard. The Oregon Court of Appeals found that the trial court's action was an abuse of discretion. *Id*. at 188. The *EMC* court looked to one of its earlier decisions in which definitive trial court action acted to preclude appellate review. In *State v. Hewitt*, 985 P.2d 884 (Or. App. 1999), the state sought a postponement to seek appellate review of a significant issue of law, and rather than allow the postponement, the trial court

simply dismissed the charges with prejudice. The appellate court held that the dismissal was an abuse of discretion. *Id.* at 888-89.

Further, there are numerous cases in which an incomplete record has prevented appellate review. These cases, with reversals for an incomplete record, serve to emphasize the importance of a trial court acting in a manner that allows for appellate review and comports with the notion that appellate review is a critical component of our judicial system. *See, e.g., Cockrham v. South Central Bell Telephone Co.,* 695 F.2d 143 (5th Cir. 1983) (missing trial transcript for last half of trial before magistrate judge required retrial of Title VII case as it precluded review); *Liptak v. United States*, 748 F.2d 154 (8th Cir. 1984) (absence of transcript of special master proceeding which precluded review in taxpayer challenge to delinquent taxes precluded appellate review); *State v. Pinion*, 968 So.2d 131 (La. 2007) (reversal of murder conviction when bench conferences containing jury selection were largely inaudible); *State v. Ladson*, 644 S.E.2d 271 (S.C. App. 2007) (burglary conviction reversed due to missing transcript); *State v. Barber,* 391 S.W.3d 2 (Mo. App. 2012) (significant transcript omissions required reversal of witness tampering).

The Supreme Court has considered the requirements of Due Process and civil appeals. Due Process does not require that a civil litigant get an appeal in all procedural contexts; "[w]hen an appeal is afforded, however, it cannot be granted

to some litigants and capriciously or arbitrarily denied to others without violating the Equal Protection clause." *Lindsey v. Normet*, 405 U.S. 56, 77, 92 S.Ct. 862, 876 (1972). Denial of the City's Motion to Stay will effectively preclude appellate review for the City. Absent a stay, the City will be required to enter into a multi-million dollar contract for a Monitor. Significant financial burdens should not be imposed on the City before the City is allowed the opportunity to obtain its full appellate remedies.

IV. <u>Conclusion</u>

The uncertainty of the City's potential financial obligations warrants a stay of this matter. All residents would be affected by the cuts to basic City services should the City be required to fund this Consent Decree and provide additional funds to Sheriff Marlin Gusman in the OPP litigation. *See* attached Exhibit "B." The City may be forced to execute a contract with an NOPD Consent Decree Monitor for a minimum of $7.1 million prior to seeking an appeal. Finally, without a stay of the district court's January 11, 2013 Order, the City would be deprived of any meaningful appellate opportunities.

WHEREFORE, for the reasons set forth herein, the City requests that this Court grant its Emergency Motion for Stay Pending Appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon all counsel of record via electronic filing on this 29th day of May, 2013.

/s/ Sharonda R. Williams
SHARONDA R. WILLIAMS

Everything New Orleans

New Orleans ordered to pay firefighters $17.5 million to cover pension obligations

Bruce Eggler, NOLA.com | The Times-Picayune By Bruce Eggler, NOLA.com | The Times-Picayune
on April 08, 2013 at 6:36 PM, updated April 09, 2013 at 4:19 PM

A Civil District Court judge has ordered the financially hard-pressed city to immediately pay New Orleans firefighters $17.5 million to cover the city's 2012 obligations to the firefighters' pension fund. Judge Robin Giarrusso issued the order March 28, but it only became public Monday.

The city and firefighters have been battling in the courts for decades over how much the city owes in pension obligations and pay, with the firefighters generally emerging victorious.

Giarrusso's order comes as Mayor Mitch Landrieu already has said the city cannot afford to pay millions of dollars to carry out pending consent decrees mandating improvements to the New Orleans Police Department and the city jail.

Firefighters union head Nick Felton said he hopes the city will meet with his group and "work something out."

Landrieu spokesman Ryan Berni said Monday night that the city "is filing a motion for a new trial on the grounds that the ruling is contrary to the law and evidence." He said the firefighters pension fund "is threatening the city's budget and is costing the taxpayers too much" in part because it "is not properly managed and has made poor investment decisions."

Berni noted that the administration is proposing several bills this legislative session that would "make benefits more sustainable and match authority for decision-making with the responsibility for payment" by giving the city more authority over the fund.

Meanwhile, though, Giarrusso issued a "peremptory writ of mandamus" ordering the city to "immediately budget, appropriate and pay" $17.5 million, plus interest, as the city's "actuarially required contribution" to the firefighters pension plan for 2012.

Louisiana state courts, unlike federal courts, normally cannot compel political jurisdictions to pay legal judgments, but Louis Robein, attorney for the firefighters pension fund, said Giarrusso's ruling makes clear that she believes the city can be compelled to comply with a clear legislative mandate to pay whatever sum is required to fund the system. Robein said, however, that any attempt to force the city to pay the money would probably have to wait while the city pursues its motion for a new trial.

Ex. A

The city offered a variety of arguments, both legal and financial, why it should not have to pay, but Giarrusso rejected them all. She said that under the law, the city has no choice but to pay the amount of money that the retirement plan's actuary determines each year is necessary to maintain the plan on a sound basis.

According to the judge's ruling, after the city failed to appropriate the required contribution in 2010, the retirement fund's secretary-treasurer, Richard Hampton, alerted Landrieu and Chief Administrative Officer Andy Kopplin to the "funding crisis" in October 2010. The city asked for "forbearance" in 2011 but "proceeded to knowingly continue deliberate underfunding" the firefighters fund while fully funding the retirement systems for other employees, the ruling says.

The city has long contended that the firefighters receive overly generous longevity raises and retirement benefits because of laws passed by the state Legislature. More recently, Landrieu has complained that unwise investment decisions by Hampton and the board of the firefighters plan have jeopardized the system's financial health.

However, Giarrusso ruled in effect that regardless of what the city thinks about the state laws or the system's investment policies, and despite the jarring effect on the city's overall budget, it cannot escape its legal obligations. Any further delay in paying what the city owes will "threaten the future viability of the fund," which at present is only 33 percent funded, she said.

The city's argument that the fund has $175 million in assets and can therefore pay all the benefits currently due "ignores reality," the judge said, because the assets are being "cannibalized."

Giarrusso noted that in presenting the administration's proposed 2012 budget in November 2011, Kopplin told the New Orleans City Council that the city has no control over the firefighters' pension system "other than to write the check. The rules are set under state law."

Giarrusso agreed and ordered the city to pay up unless the Legislature changes the law.

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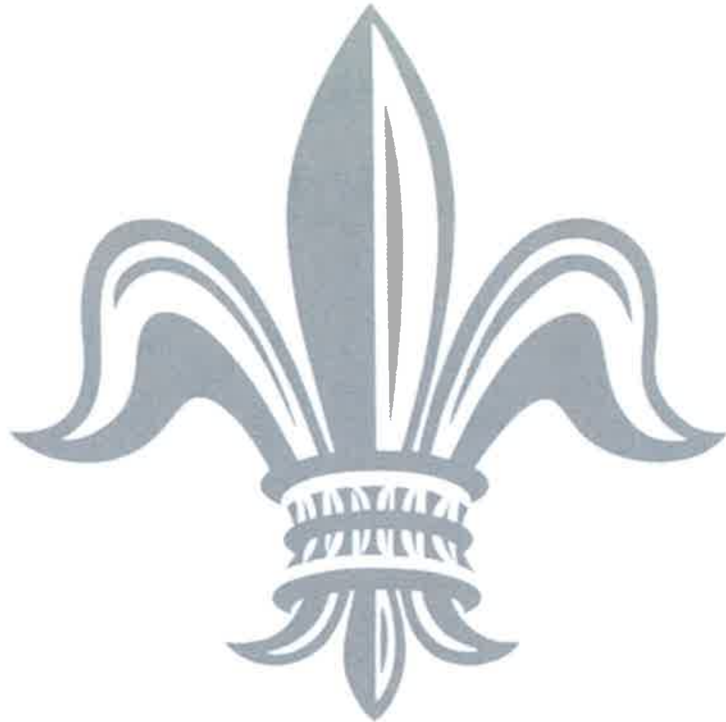


CITY OF NEW ORLEANS

Emergency Budget Meeting

March 28, 2013

Ex. B

Agenda

- **Cut Smart, Reorganize, & Invest**
- **Doing More With Less**
- **City is Investing More per City Inmate**
- **Impact of Sheriff Consent Decree**

Landrieu administration budgeting practice is to cut smart, reorganize, and invest

Cut Smart

- Eliminate services that are duplicative or better delivered through other agencies or private entities
- Reduce service level or eliminate service all together if citizen demand is low or nonexistent

Reorganize

- Combine, consolidate, and or streamline departments with similar or redundant services
- Develop or increase partnerships with public and or private entities to improve service delivery

Invest

- Increase funding in services that have effective service delivery but still don't meet citizen demands
- Fund projects that improve departmental effectiveness and efficiency
  - E.g., technology or business process improvement projects

We've Cut Smart…

- Citywide we continue to reduce the reliance on contractors for daily operations
  - Ended MWH contract saving $11M
  - Saved a combined $8.5M in 2011 and 2012 by renegotiating all sanitation hauling contracts and our landfill contract;
  - Saved $2M on contracted staff augmentation IT services
  - Closed Xerox copy center saving $100k in 2010 ($400k annually)
- Replaced 75% of general fund for Capitol Projects with federal funding
- Transitioned delivery of primary and Dental Care to private sector, reducing health department by 48 employees
- Reduced fuel expenditures by eliminating take home cars
- Reduced debt service by refinancing
- Eliminated 16 boards or commissions
- Canceled over $6M in housing contracts
- Shifted retirees from city health care to Medicare, saving $5M per year
- Cut overtime expenditures from $29.2M in 2009 to $12.2M in 2011
- Eliminated Human Service Department management positions

We've Reorganized…

- Created deputy mayor system
- Reorganized NOPD districts; doubled homicide unit; created COCO Sergeants
- Merged Environmental Health with Code Enforcement
- Revised policies to improve sanitation fee collections
- Created OPA and STAT programs
- Addressed retirement costs by increasing city and employee contributions and making cost-saving plan changes (NOMERS and Police)
- Consolidated management of Canal Street Development Corp, Rivergate, and Piazza D'talia
- Transformed Customer Service by implementing NOLA 311 and One-Stop-Shop Permitting
- Reformed the Public Belt Railroad
- Created a public private partnership for NORD
- Created a public private partnership for NOLA Business Alliance

…and we've Invested in priority areas

- Increased appropriations for Police, Fire, and EMS by 18%
  - NOPD – 16.1% increase from 2010 to 2013 ($109.2M to $126.8M)
  - NOFD – 16.8% increase from 2010 to 2013 ($72.7M to $84.9M)
  - NOEMS – 49.4% increase from 2010 to 2013 ($7.9M to $11.8M)

- Investment in NOPD Consent Decree ($7M in 2013)
- Invest in new Police Cars ($5M) with FEMA funds
- Continued investments in the Innovation Team has resulted in at least $6M in captured value
  - I.e., reduced costs or improved revenue
- Fully funded Supplier Diversity initiative

- Increased staffing of real estate office to collect leases and sell assets
- Ramped up collections initiative by increasing staff
- Invested in field agents for revenue department which led to increased revenue collections
- Increased investments in ABO prosecution
- Hired more parking control officers and tow truck drivers

Agenda

- Cut Smart, Reorganize, & Invest
- **Doing More With Less**
- City is Investing More per City Inmate
- Impact of Sheriff Consent Decree

The Landrieu Administration addressed an inherited $97M spending gap

Budget Comparison

Note: One-time revenue sources not included in chart

First step to eliminating gap was to reverse the spending trend

Annual Expenses

	2009	2010	2011	2012 Projected	2013 Adopted
Annual Expenses	$528.0M	$496.0M	$483.0M	$479.9M	$477.8M*
Delta to previous year	+$28M	-$32M	-$13M	-$3M	-$2M

$550M, 500, 450, 400, 350, 300

$50.2M Difference

***= $477.8M expenditure does not include $13.4M appropriation to fund balance. Including fund balance contribution, the Council adopted the proposed City budget of $491.4M in 2013.**

Second step was to reduce the reliance on one-time monies to balance the budget

Annual Revenue

Year	Recurring Revenue	One-time	Total
2009	418	56	$474.4M
2010	431	35	$466.0M
2011	479	5	$484.1M
2012* Projected	484		$483.6M
2013 Adopted	491		$491.4M

Axis: 300, 400, $500M

Legend: Recurring Revenue; One-time

We are now living within our means

Historical Expense vs. Revenue

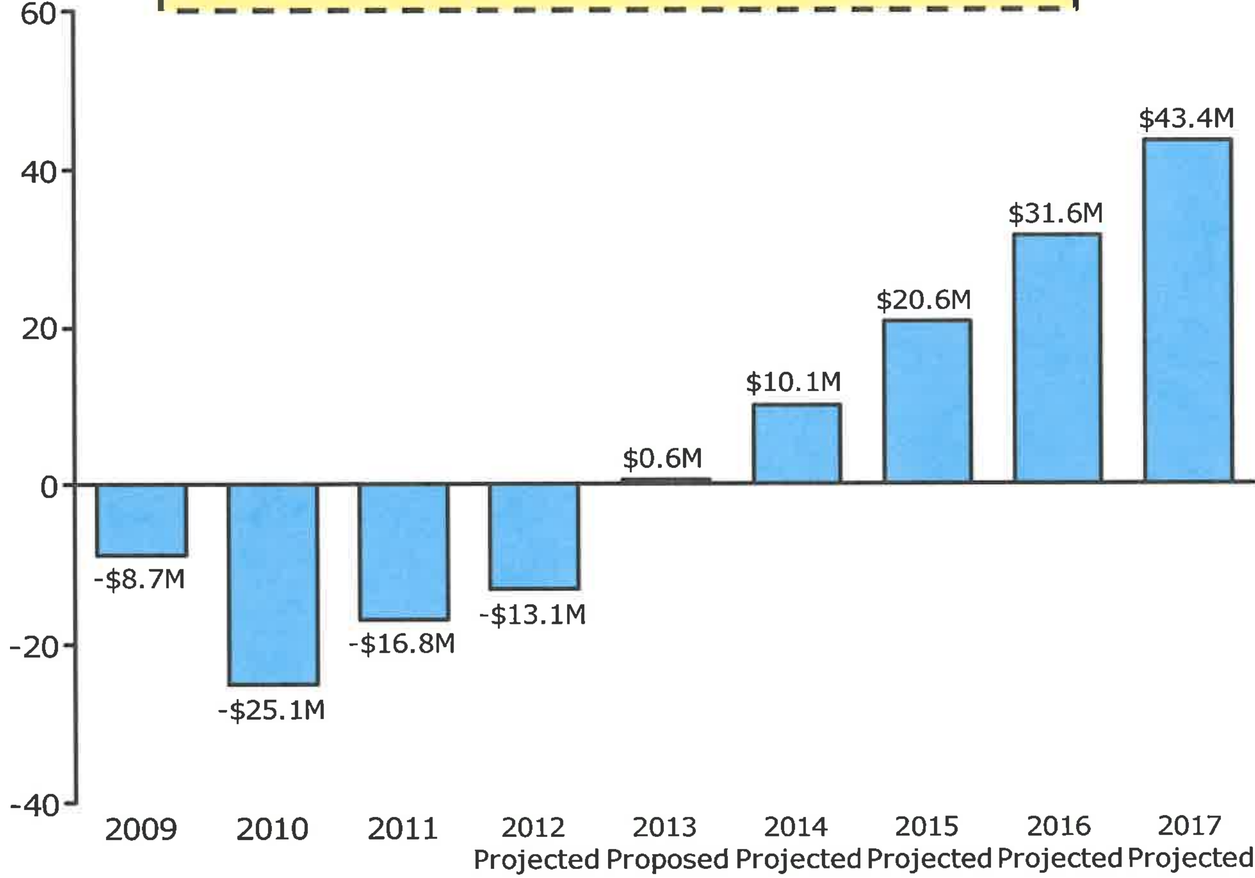
	2009	2010	2011	2012*	2013 Adopted
Total	$528M	$496M	$484M	$484M	$491M
Fund Balance/Other Financing Sources	54	29			
One-time	56	35	5		
Recurring	418	431	479	484	491

Axis: $550M, 500, 450, 400, 350, 300

Legend: Actual Expenditures; Fund Balance/Other Financing Sources; One-time; Recurring

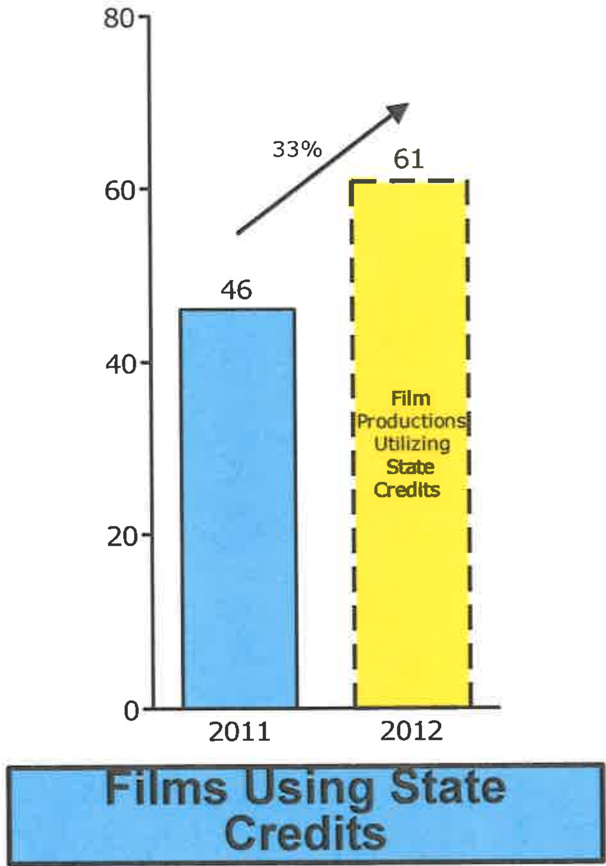
2013 Actual Expenditure line does not include $13.4M appropriation to fund balance as that is not an expenditure on operations. Including fund balance contribution, Council adopted a budget of $491.4M in 2013.

We have eliminated excess spending and have a plan to build reserves

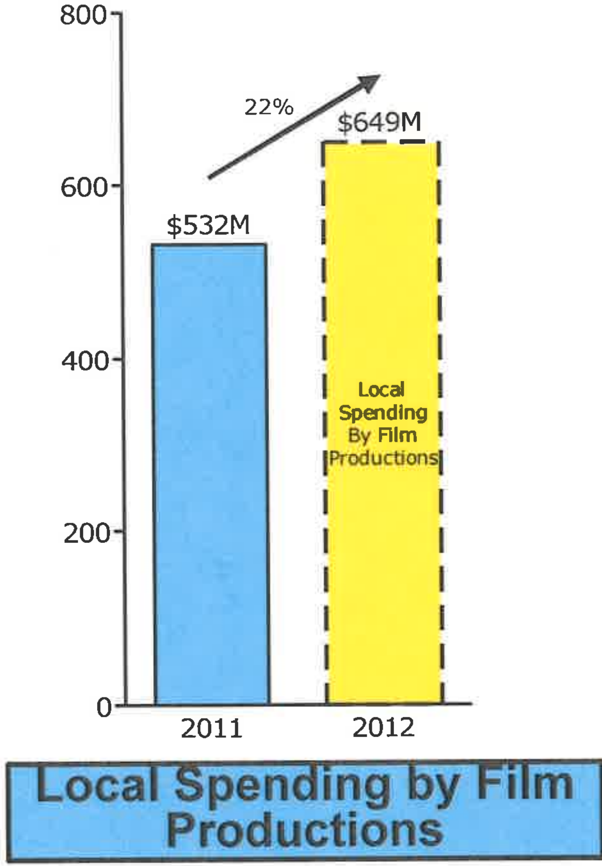


NOPD performance is improving

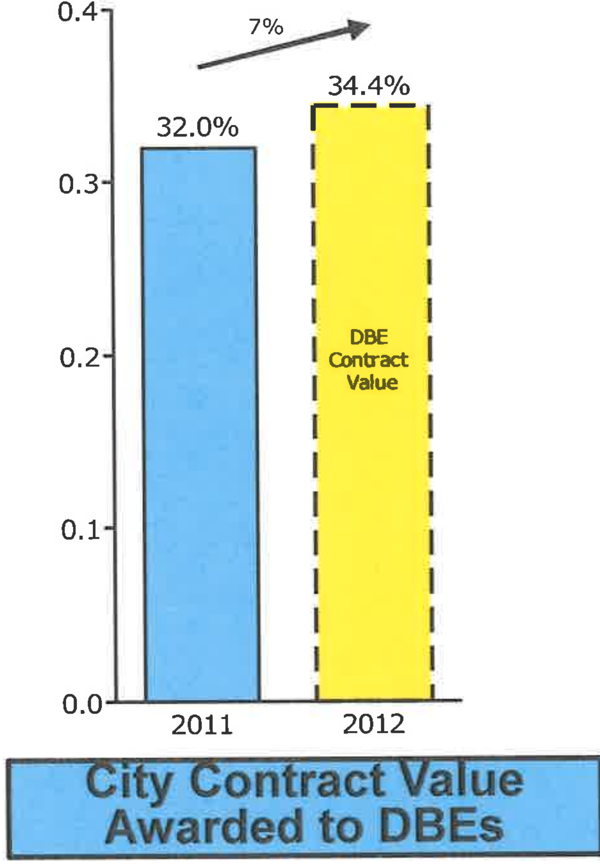
Economic Development activities have resulted in more local spending and more contracts going to DBEs



Films Using State Credits



Local Spending by Film Productions



City Contract Value Awarded to DBEs

Blighted properties have been reduced by ~8k in less than 2 years

Blighted residential addresses or vacant lots

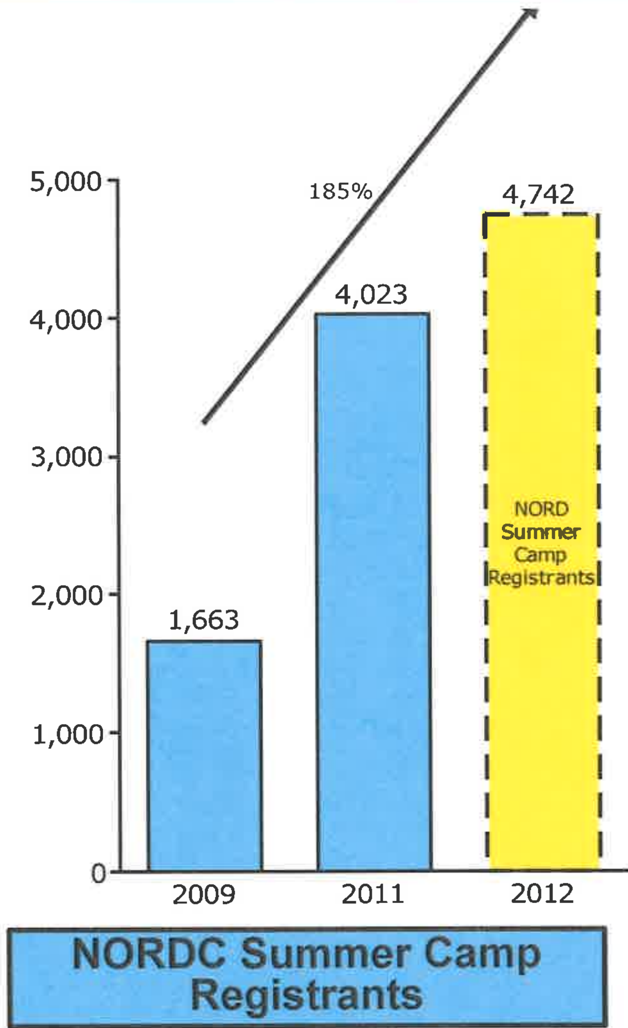
Source: HUD Aggregated USPS Administrative Data on Address Vacancies, GNOCDC 2012

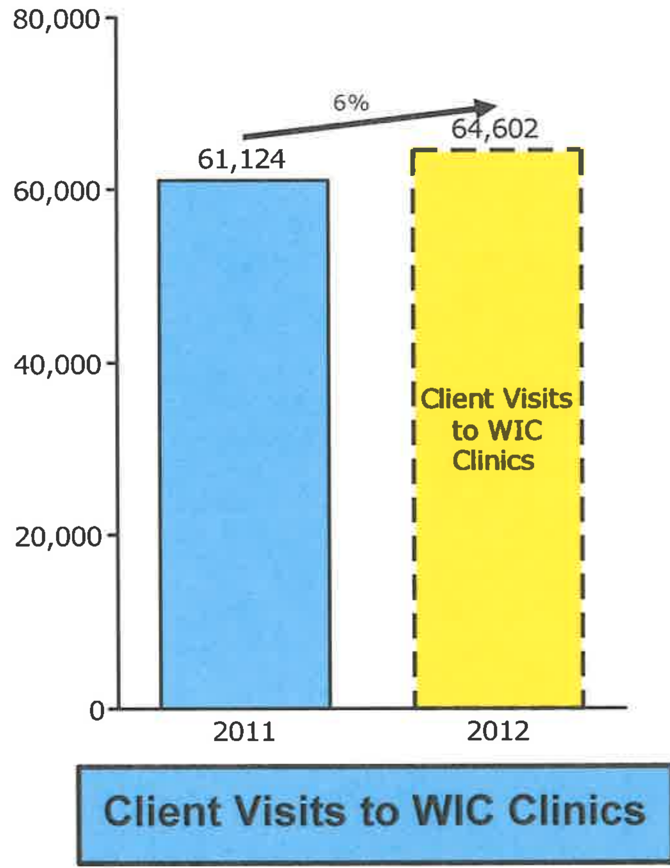
The City has demolished nearly 4,000 properties

Cumulative Demolitions since Oct. 2010

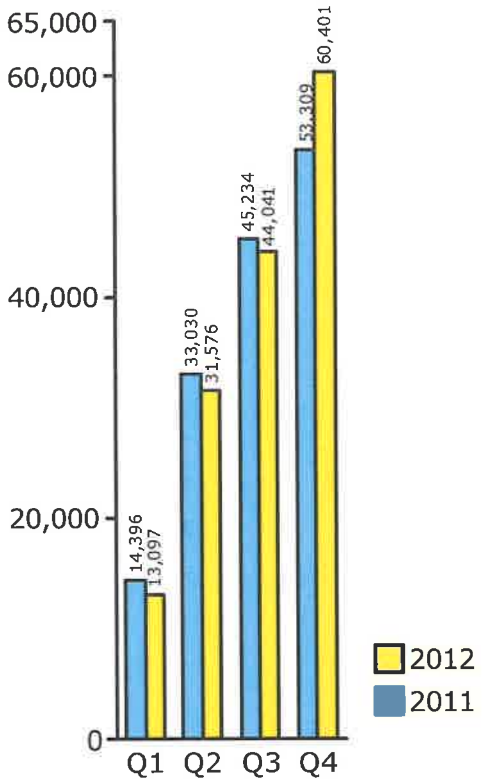
Source: Demolitions reported by Program (Contractor):
FEMA (SAIC), SDER (DRC), NORA (BBEC/CDM), IDC (Durr),

Participation in Recreation & Health opportunities is increasing

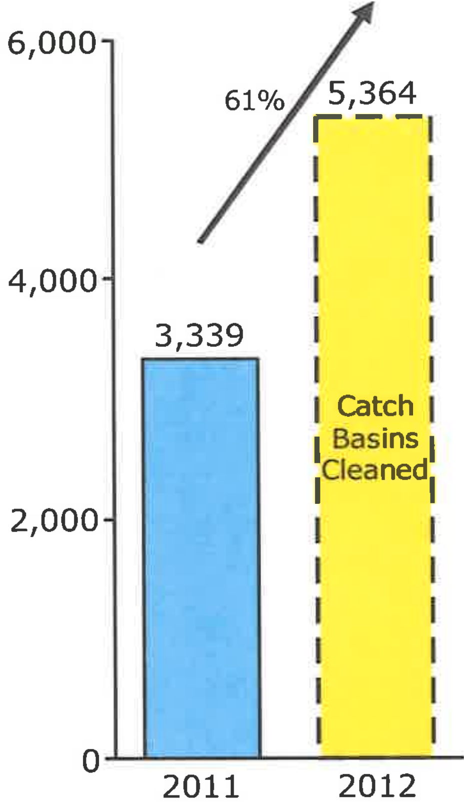




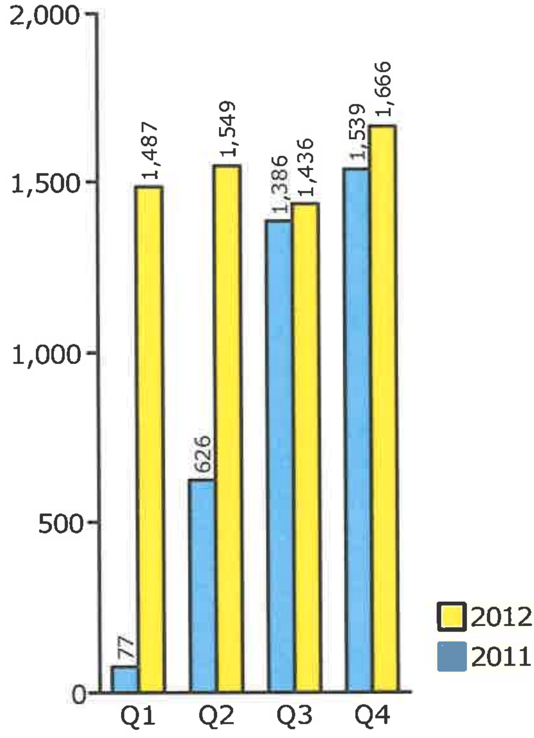
Quality of Life indicators are also improving



Potholes Filled (Cumulative)



Catch Basins Cleaned



Illegal Dumping Sites Cleared (Cumulative)

Audit activities have increased over the past two years

Audits have exceeded target by 30% (2012 vs. 2011)

Sales Tax collections have increased

Sales tax has increased 3.8%
(2012 vs. 2011)

Millions (axis 0–160)

Month	Monthly 2011	Monthly 2012	YTD 2011	YTD 2012
Jan	$11.5	$12.1		
Feb	$10.1	$11.0	$21.57	$23.15
Mar	$10.7	$11.4	$32.23	$34.53
Apr	$12.5	$12.8	$44.72	$47.29
May	$11.6	$12.1	$56.30	$59.43
Jun	$11.4	$12.1	$67.67	$71.52
Jul	$11.3	$11.3	$78.98	$82.83
Aug	$9.9	$10.5	$88.90	$93.36
Sep	$10.3	$9.8	$99.21	$103.20
Oct	$10.7	$10.9	$109.91	$114.06
Nov	$11.5	$11.9	$121.41	$126.00
Dec	$11.0	$11.5	$132.36	$137.48

Hotel/Motel sales tax collections have increased

Hotel/Motel sales tax has increased 29% (2012 vs. 2011)

Parking Enforcement and Collections have increased

Parking collections have increased 24% (2012 vs. 2011)

Towing and collections have also increased

Towing and parking collections have increased 11% (2012 vs. 2011)

Millions
$2.5
$2.0
$1.5
$1.0
$0.5
$0.0

Monthly 2011
Monthly 2012
YTD 2012
YTD 2011

Jan $0.1 $0.2
Feb $0.1 $0.2 $0.24 $0.43
Mar $0.2 $0.2 $0.42 $0.57
Apr $0.2 $0.3 $0.65 $0.87
May $0.2 $0.2 $0.87 $1.10
Jun $0.2 $0.1 $1.05 $1.18
Jul $0.2 $0.2 $1.20 $1.37
Aug $0.1 $0.2 $1.31 $1.60
Sep $0.2 $0.1 $1.47 $1.71
Oct $0.2 $0.1 $1.63 $1.85
Nov $0.2 $0.1 $1.78 $1.99
Dec $0.1 $0.1 $1.92 $2.13

Sanitation Collections have increased over the last year

Sanitation Collections have increased 7% (2012 vs. 2011)

Millions

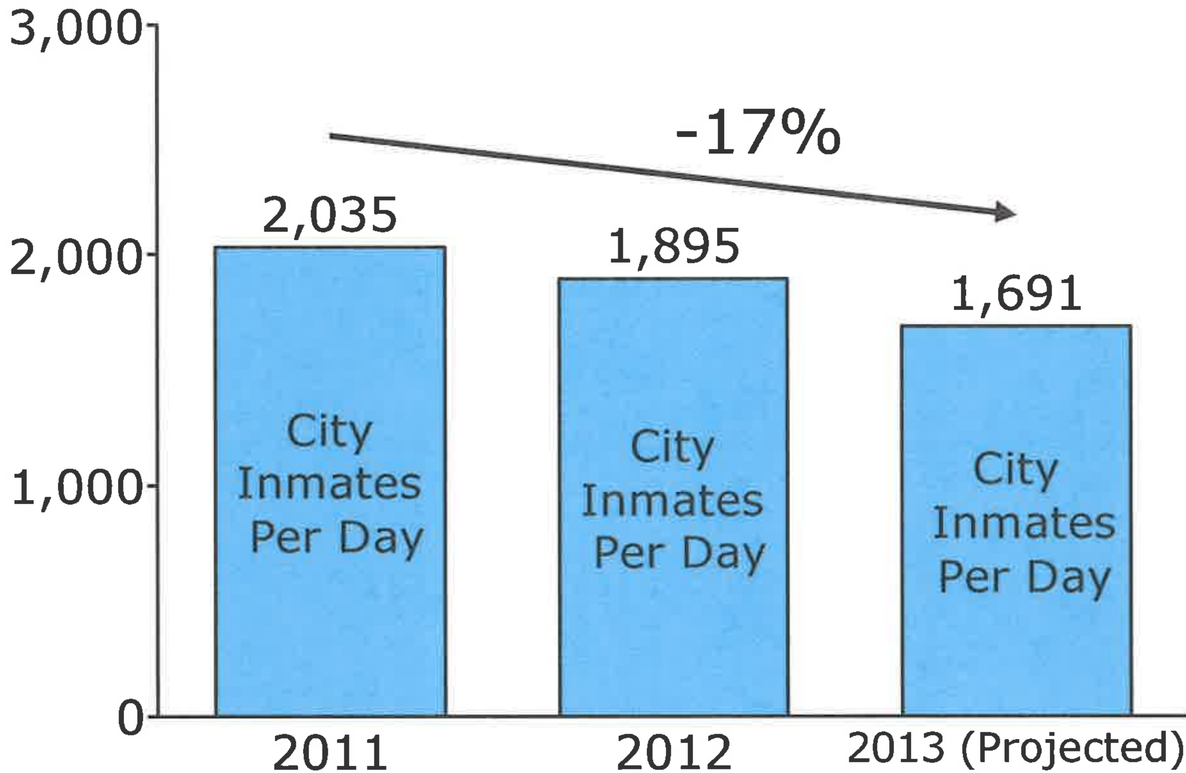
Month	Monthly 2011	Monthly 2012	2011 (cumulative)	2012 (cumulative)
Jan	$1.5	$2.8		
Feb	$2.4	$2.9	$3.92	$5.76
Mar	$3.0	$3.0	$6.88	$8.77
Apr	$2.6	$2.8	$9.48	$11.52
May	$2.7	$3.0	$12.20	$14.50
Jun	$2.8	$2.7	$15.04	$17.17
Jul	$2.5	$2.8	$17.55	$19.94
Aug	$3.0	$2.4	$20.53	$22.36
Sep	$2.7	$2.7	$23.20	$25.02
Oct	$2.8	$3.2	$25.96	$28.19
Nov	$2.7	$2.6	$28.69	$30.83
Dec	$2.7	$2.6	$31.41	$33.47

Elimination of 484 take home vehicles resulted in a 22% decrease in *Fuel Consumption*

Agenda

- Cut Smart, Reorganize, & Invest
- Doing More With Less
- **City is Investing More per City Inmate**
- Impact of Sheriff Consent Decree

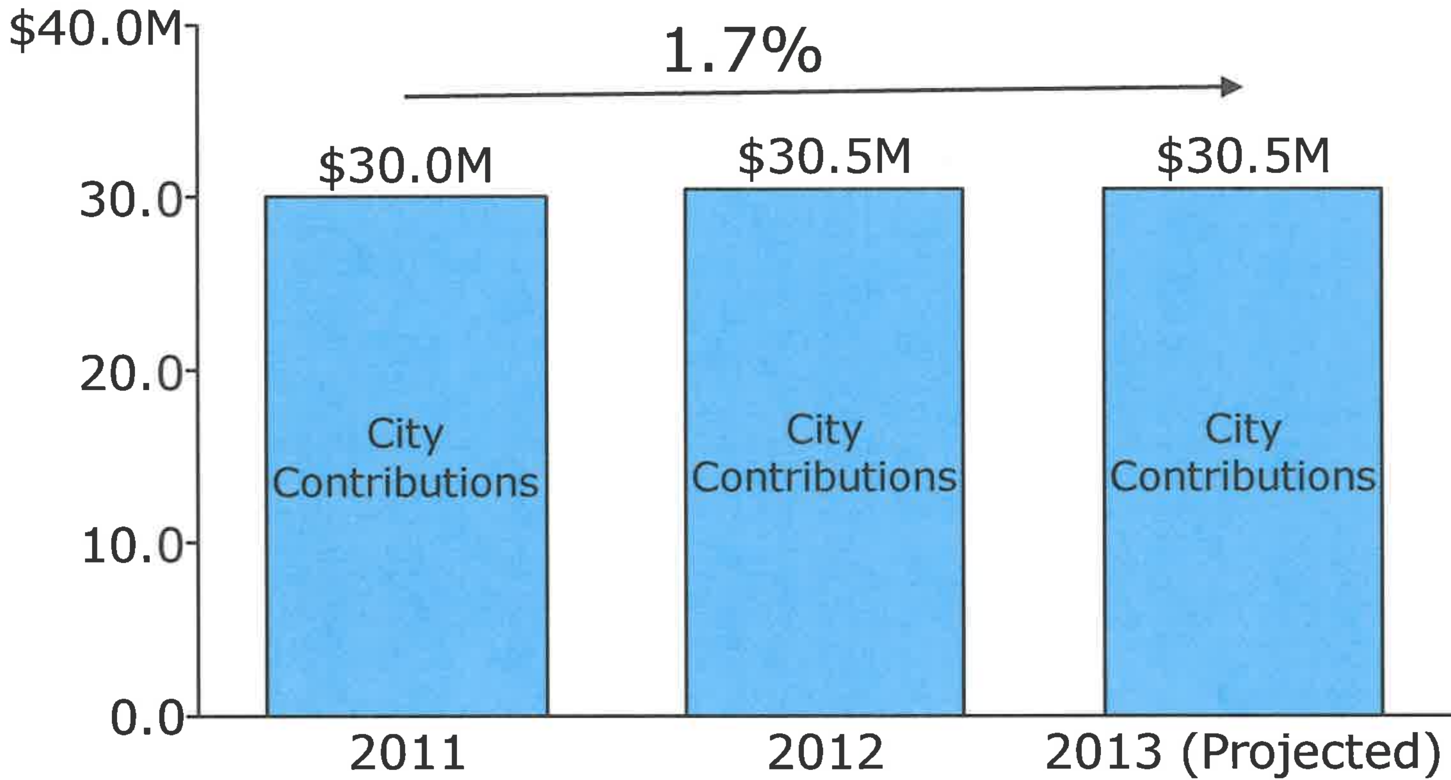
The number of city inmates housed by the Sheriff has decreased by 17% since 2011



- Improved policing practices
- Increased use of summonses instead of arrests
- Implementation of pre-trial services have also led to the decrease number of prisoners housed

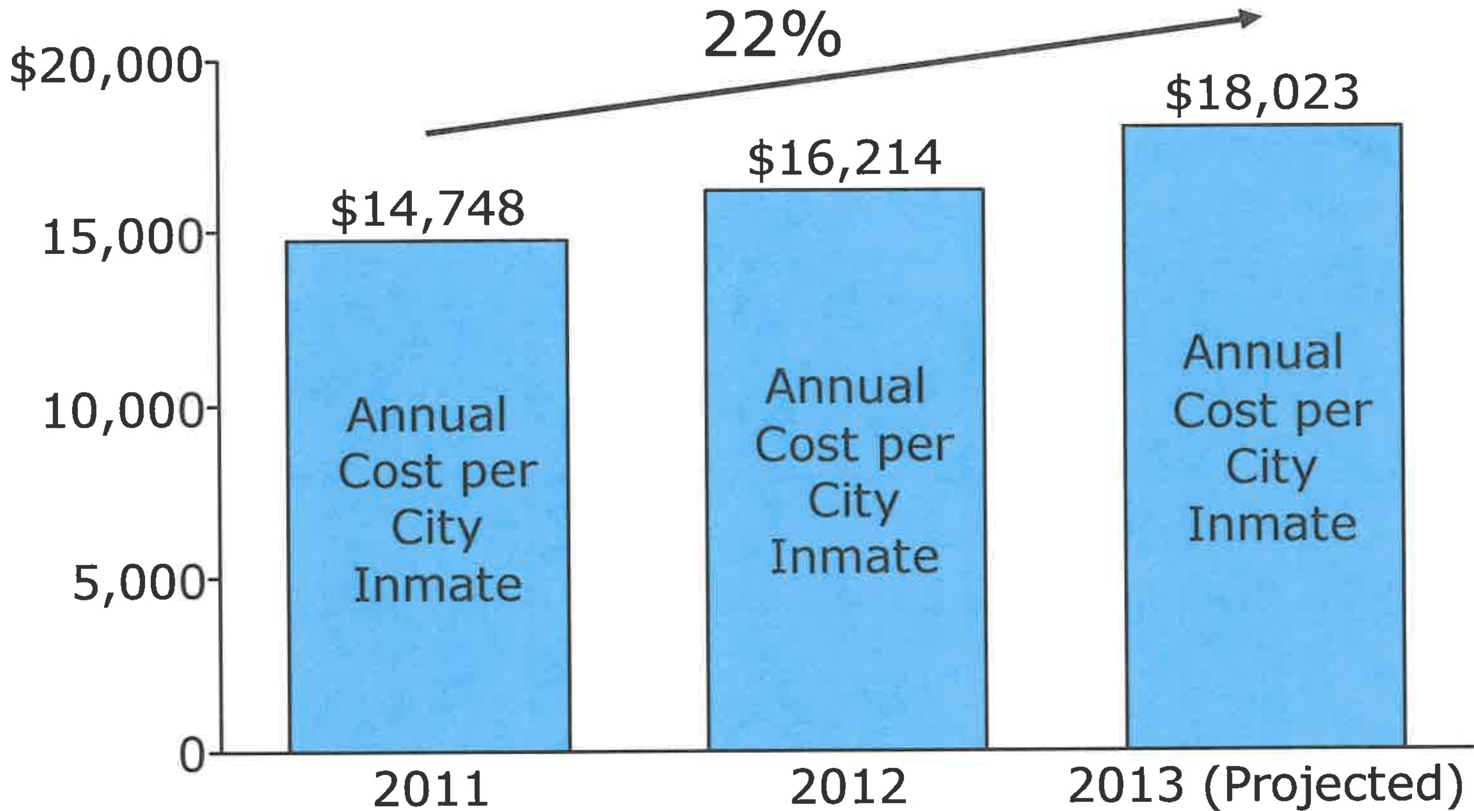
Note: Chart is based on actual daily average inmates

While the funding to the Sheriff has increased 1.7% over the same period



Note: Includes City appropriation, Court Security, and other contributions made through Fuel, Utilities, Employer Health Care, and Workers Compensation

Therefore, the funding provided by the City has risen 22% per city inmate

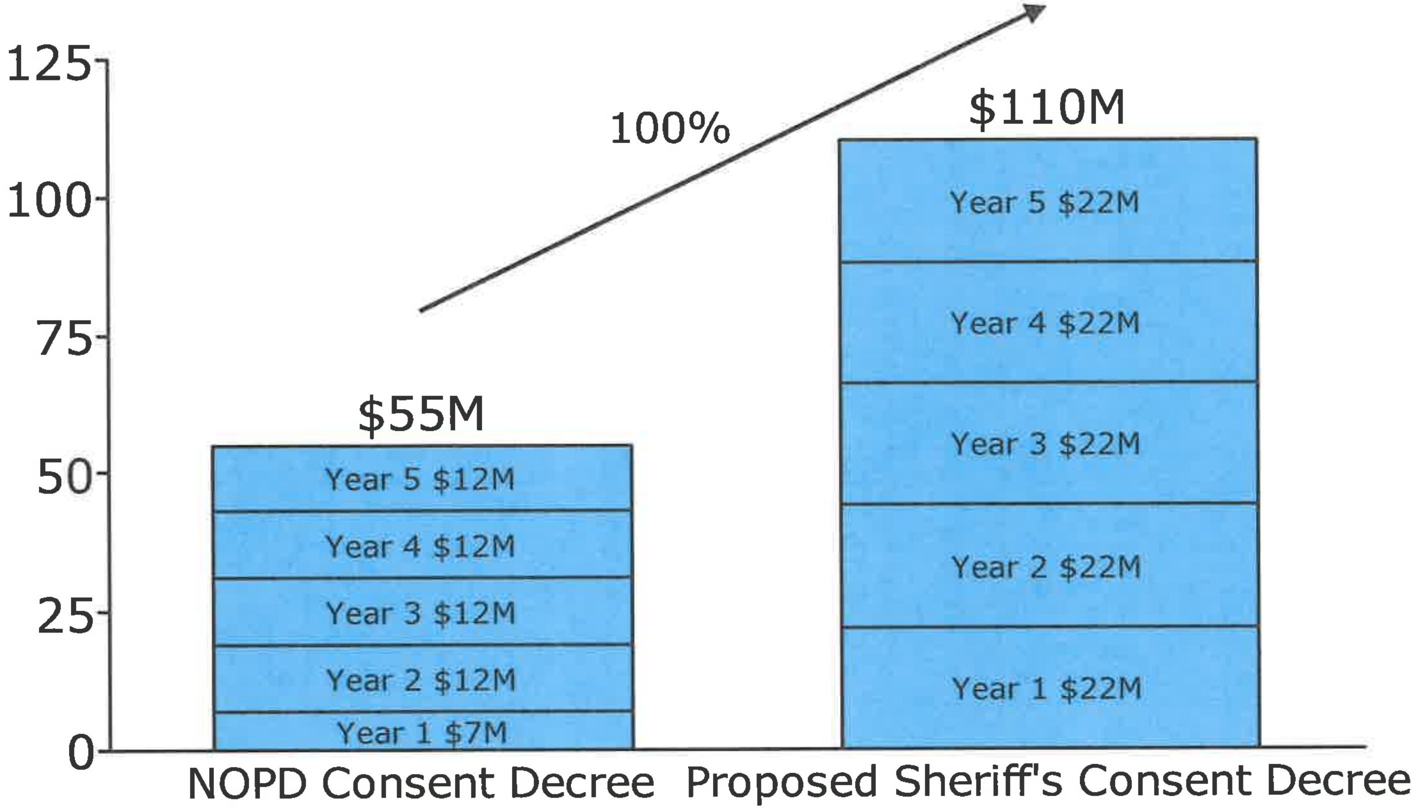


Note: Chart depicts local prisoners only

Agenda

- Cut Smart, Reorganize, & Invest
- Doing More With Less
- City is Funding More per City Inmate
- **Impact of Sheriff Consent Decree**

A $22M annual judgment for the Sheriff's Consent Decree will cost twice as much as the Police Consent Decree over a 5 year period



The impact of a $22M judgment for the Jail Consent Decree will cause a significant decrease in services

Option #1 : Furloughs Only

- 30 Furlough days would be required for every City employee in 2013 to cover Consent Decree costs (Total of 106,375 furlough days across the City)

Total Furlough Days

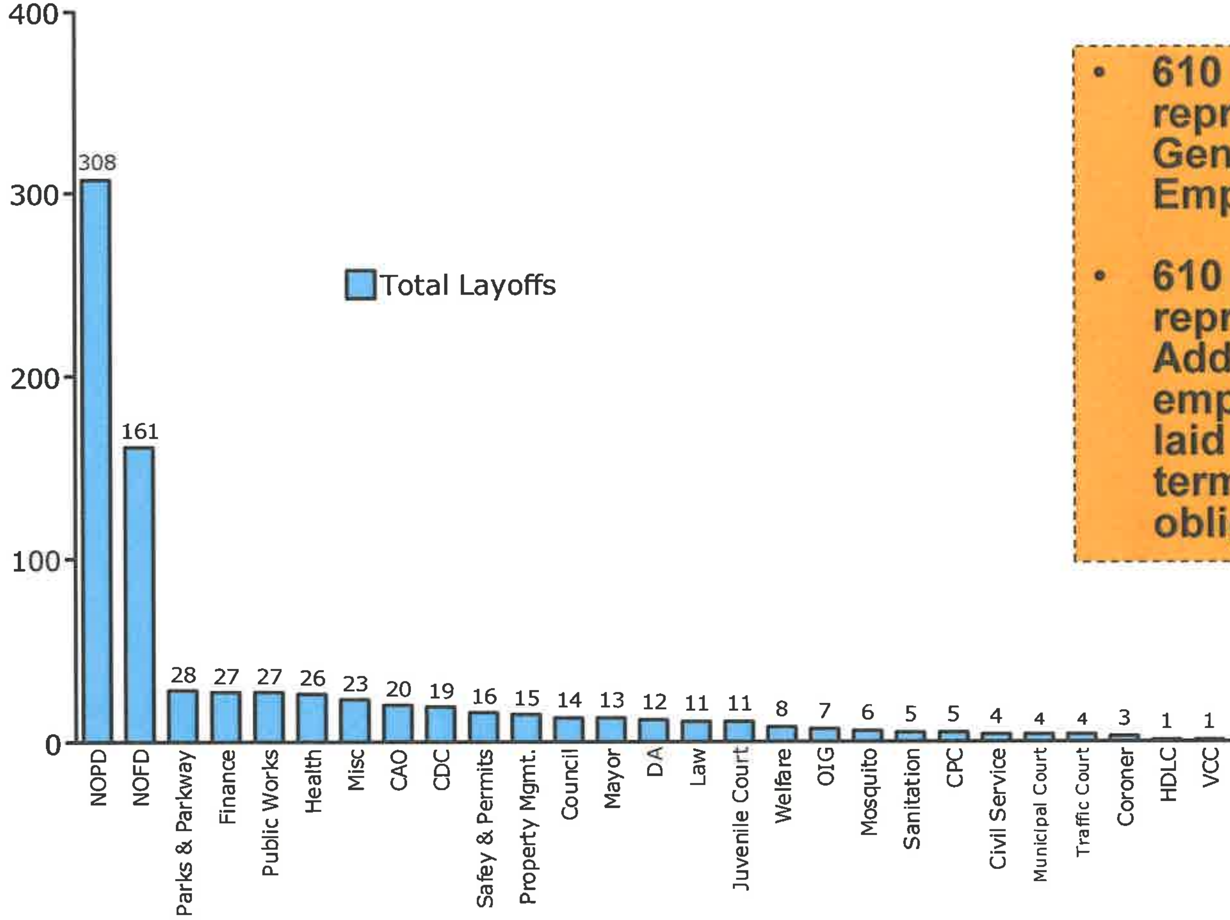
Department	Total Furlough Days
NOPD	44,062
NOFD	21,541
Parks & Parkway	3,700
Public Works	3,654
Finance	3,564
Health	3,443
Misc	3,050
CAO	2,718
CDC	2,537
Safey & Permits	2,205
Property Mgmt.	2,053
Council	1,812
DA	1,800
Mayor	1,721
Law	1,480
Juvenile Court	1,450
Welfare	1,117
OIG	936
Mosquito	755
Sanitation	725
CPC	634
Civil Service	513
Coroner	423
HDLC	181
VCC	151
Municipal Court	60
Crim. Dist. Ct.	60
Traffic Court	30

- **Furlough days would cause a 17.7% pay cut for every City employee**

The impact of a $22M judgment for the Jail Consent Decree will cause a significant decrease in services

Option #2: Layoffs Only

- 779 City employees would need to be laid off to provide budget for $22M Jail Consent Decree



- **610 employees represent 17% of all General Fund Employees**
- **610 employees represents $22M. Additional 169 employees must be laid off to cover terminal leave obligations**

The impact of a $22M judgment for the Jail Consent Decree will cause a significant decrease in services

Option #3: Other Operating Cuts

- 45% of discretionary other operating budget would need to be cut, leaving most departments without the ability to function

Total Other Operating Cuts

Department	Total Other Operating Cuts
Misc	$4,005,261
DA	$2,832,926
CAO	$2,010,604
Council	$2,001,463
Mayor	$1,650,309
NOPD	$1,439,335
Public Works	$1,136,278
Finance	$1,074,778
NORD	$820,355
Law	$700,350
Crim. Dist. Ct.	$689,567
Munc. Court	$671,823
Parks & Parkway	$505,945
Juvenile Court	$501,383
Health	$471,554
Property Mgmt.	$395,133
Coroner	$271,021
NOFD	$233,133
Registrar	$173,190
Safey & Permits	$100,898
Mosquito	$94,160
NOMA	$68,515
CPC	$53,262
Civil Service	$50,776
CDC	$29,971
HDLC	$12,658
VCC	$5,351

Axis: 0, 1,000,000, 2,000,000, 3,000,000, 4,000,000, 5,000,000

The impact of a $22M judgment for the Jail Consent Decree will cause a significant decrease in services

Option #4: Balanced Approach

- 305 layoffs, 15 Furlough days per employee, and a 6.3% cut in Other Operating would provide the necessary $22M for jail consent decree and $3.05M to cover terminal leave payments

- 305 layoffs in 2013
- 15 furlough days for each employee
- May require additional layoffs in 2014 to balance budget
- Budgeting for terminal leave drives the additional costs

The impact of a $22M judgment for the Jail Consent Decree will cause a significant decrease in services

Option #4: Balanced Approach

- 305 layoffs, 15 Furlough days per employee, and a 6.3% cut in Other Operating would provide the necessary $22M for jail consent decree and $3.05M to cover terminal leave payments

Department	Layoffs	Furlough Days	Other Operating Cut
Council	5	900	$277,476
Mayor	5	855	$228,793
CAO	8	1350	$278,743
Law	4	735	$97,094
NOFD	63	10699	$32,321
Safety & Permits	6	1095	$13,988
NOPD	117	21885	$199,544
Sanitation	2	360	$0
Health	1	180	$18,906
EMS	9	1530	$46,468
Human Services	3	555	$0
Finance	10	1770	$149,003
Property Management	6	1020	$54,780
Civil Service	1	255	$7,039
Public Works	11	1815	$157,529
Parks & Parkway	11	1838	$70,142

Department	Layoffs	Furlough Days	Other Operating Cut
HDLC	1	90	$1,755
VCC	0	75	$742
City Planning Commission	2	315	$7,384
Mosquito Control	2	375	$13,054
Museum of Art	0	0	$9,499
Misc.	2	195	$557,174
NORD	7	1320	$111,832
Inspector General	3	465	$0
District Attorney	6	900	$392,747
Coroner	1	210	$37,573
Juvenile Court	4	720	$69,510
Municipal Court	2	30	$93,139
Traffic Court	2	30	$0
Criminal District Court	2	30	$95,599
Criminal Sheriff	0	0	$0
Clerk of Criminal District Court	7	1260	$4,155
Registrar of Voters	0	0	$24,010

Potential Departmental Impacts (1/6)

- NOPD would cancel the 2013 recruit classes and reduce staffing in each district by 8 officers to reduce staffing by 117. The furloughs would result in ten percent fewer officers on duty at all times for the last 7 months of 2013, thereby increasing response times significantly.

- NOFD would close five fire stations and place nine fire companies out of service to reduce staffing by 63.

- EMS response times would increase significantly with 9 fewer employees and the loss of 1530 work days due to furloughs.

Potential Departmental Impacts (2/6)

- City Hall would be closed to the public on 15 Fridays due to the layoff days required.
- NORD would eliminate 7 teen camps and little league tackle football, while not opening four neighborhood pools this summer and keeping recreation centers closed on Saturdays.
- Finance would reduce staff by ten and the effects would be felt on our tax enforcement efforts, which we recently stepped up and have been producing revenue gains.

Potential Departmental Impacts (3/6)

- DPW would reduce streetlight repairs by 50%, catch basin cleanings by 33%, would eliminate all street striping work, would delay bond funded street improvements until 2014, would close the autopound at 10 p.m. instead of 1 a.m., and issue permits and operate the traffic ticket hearing center only three days per week.

- Parks and Parkways would decrease mowing efforts by 23%, the time required to address non emergency tree work would grow by five weeks and emergency tree work would go from "same day" to "next day."

Potential Departmental Impacts (4/6)

- Property Management would dramatically reduce the number of work orders for repairs in city buildings it completes, eliminate 2nd shift staffing by engineers in city courts, and have significantly longer wait times for the public in the real estate and records division.

- Safety and Permits would lose 4 building inspectors and develop a backlog of approximately 2500 delayed inspections by year-end; permit processing time at the One Stop Shop would increase 45%; the Taxi Cab Bureau would no longer have enforcement staff on duty 24 hours a day.

Potential Departmental Impacts (5/6)

- HDLC and VCC backlogs would increase significantly as would processing time in the One Stop Shop.
- The City Attorney's Office would decrease ABO prosecutions, contract processing time, blighted property research and prosecutions, and support of departments on personnel matters.
- The Health Department would eliminate the position supporting FITNOLA, would serve 200 fewer homeless patients at the homeless health clinic, would serve 100 fewer Healthy Start clients, make 600 fewer WIC visits, and register 100 fewer medical special needs patients.

Potential Departmental Impacts (6/6)

- **Sanitation** would decrease its enforcement capability by laying off a Ranger; litter and debris removal would decrease on major thoroughfares and in the French Quarter residential neighborhood due to the furlough days and layoff of a laborer.

- **Mosquito and Termite Control** response to rodent and mosquito service requests will grow from 2 days to more than 10 days.

HILLARD HEINTZE PROPOSED BUDGET FOR CONSENT DECREE COURT MONITOR OF THE NOPD

YEAR ONE		Monitoring plan, Compliance Review & Outcome Assessments		Reporting and Meetings		Review, Analyze & Comment Policies		Use of Force		Community Engagement		External Communications		Liaison with Govt. Integrity Agencies or Appointments		Technical Assistance & Administrative Duties	Total Labor Cost by Team Category	Total Labor Cost by Company
Hillard Heintze Labor (65%)	Rate	Hours On-Site	Hours Off-Site	Hours On-Site	Hours Off-Site	Hours On-Site	Hours Off-Site	Hours On-Site	Hours Off-Site	Hours On-Site	Hours Off-Site	Hours On-Site	Hours Off-Site	Hours On-Site	Hours Off-Site	Hours On-Site		
Monitor	$295	200	0	180	0	100	0	200	0	120	0	30	10	120	0	40	$295,000	
Strategic Leadership Council	$290	740	0	200	0	150	0	240	0	155	0	50	10	150	0	40	$503,150	
Research Staff	$150	0	200	0	150	0	275	0	80	0	20	0	150	0	0	0	$153,750	
Administrative Staff	$45	0	100	0	200	0	0	0	0	0	0	0	400	0	0	0	$49,500	$1,001,400
DBE Labor (35%) Metro Source and MP & Associates																		
Principles & Strategic Advisors	$172	230	0	220	0	640	0	670	0	570	0	40	0	100	0	100	$442,040	
Outreach Coordinator - Metro Source	$70	20	0	160	0	150	0	80	0	40	0	20	0	0	0	20	$34,300	
Community Liaison	$95	80	0	40	0	0	0	48	0	120	0	16	0	16	0	16	$31,920	
Administrative Staff	$45	80	0	210	0	20	0	260	0	60	0	60	0	0	0	45	$33,075	$541,335
Total Hours		1650		1360		1335		1578		1085		786		386		811		

Total Labor Hours	8,991
Total Labor Cost	$1,542,735.00
Expenses and Travel	$277,692
Total Price	$1,820,427

Summary

Average Project Hourly Rate	$171.00		
DBE Requirement of 35% Cost	$350,490		
Projected DBE Labor Hours Cost	$541,335	35.089%	Percent of Labor Cost

YEAR TWO		Monitoring plan, Compliance Review & Outcome Assessments		Reporting and Meetings		Review, Analyze & Comment Policies		Use of Force		Community Engagement		External Communications		Liaison with Govt. Integrity Agencies or Appointments		Technical Assistance & Administrative Duties	Total Labor Cost by Team Category	Total Labor Cost by Company
Hillard Heintze Labor (65%)	Rate	Hours On-Site	Hours Off-Site	Hours On-Site	Hours Off-Site	Hours On-Site	Hours Off-Site	Hours On-Site	Hours Off-Site	Hours On-Site	Hours Off-Site	Hours On-Site	Hours Off-Site	Hours On-Site	Hours Off-Site	Hours On-Site		
Monitor	$295	175	0	180	0	100	0	200	0	120	0	30	10	120	0	40	$287,625	
Strategic Leadership Council	$290	640	0	200	0	140	0	275	0	155	0	50	10	150	0	40	$481,400	
Research Staff	$150	0	200	0	150	0	275	0	84	0	20	0	150	0	0	0	$154,350	
Administrative Staff	$45	0	100	0	200	0	0	0	0	0	0	0	400	0	0	0	$49,500	$972,875
DBE Labor (35%) Metro Source and MP & Associates																		
Principles & Strategic Advisors	$172	190	0	220	0	575	0	680	0	570	0	40	0	100	0	100	$425,700	
Outreach Coordinator - Metro Source	$70	20	0	160	0	150	0	80	0	40	0	20	0	0	0	20	$34,300	
Community Liaison	$95	80	0	40	0	0	0	48	0	120	0	16	0	16	0	16	$31,920	
Administrative Staff	$45	80	0	210	0	20	0	260	0	60	0	60	0	0	0	45	$33,075	$524,995
Total Hours		1485		1360		1260		1627		1085		786		386		811		

Total Labor Hours	8,800
Total Labor Cost	$1,497,870.00
Expenses and Travel	$269,617
Total Price	$1,767,487

Summary

Average Project Hourly Rate	$170.00		
DBE Requirement of 35% Cost	$340,506		
Projected DBE Labor Hours Cost	$524,995	35.049%	Percent of Labor Cost

Ex. C

HILLARD HEINTZE PROPOSED BUDGET FOR CONSENT DECREE COURT MONITOR OF THE NOPD

YEAR THREE		Monitoring plan, Compliance Review & Outcome Assessments		Reporting and Meetings		Review, Analyze & Comment Policies		Use of Force		Community Engagement		External Communications		Liaison with Govt. Integrity Agencies or Appointments		Technical Assistance & Administrative Duties	Total Labor Cost by Team Category	Total Labor Cost by Company
Hillard Heintze Labor (65%)	Rate	Hours On-Site	Hours Off-Site	Hours On-Site	Hours Off-Site	Hours On-Site	Hours Off-Site	Hours On-Site	Hours Off-Site	Hours On-Site	Hours Off-Site	Hours On-Site	Hours Off-Site	Hours On-Site	Hours Off-Site	Hours On-Site		
Monitor	$295	175	0	180	0	100	0	200	0	120	0	30	10	120	0	40	$287,625	
Strategic Leadership Council	$290	640	0	250	0	140	0	150	0	110	0	50	10	50	0	190	$461,100	
Research Staff	$150	0	200	0	150	0	275	0	90	0	0	0	150	0	0	0	$152,250	
Administrative Staff	$45	0	100	0	200	0	0	0	0	0	0	0	400	0	0	0	$49,500	$950,475
DBE Labor (35%) **Metro** **Source and MP & Associates**																		
Principles & Strategic Advisors	$172	190	0	220	0	575	0	680	0	500	0	40	0	100	0	100	$413,660	
Outreach Coordinator - Metro Source	$70	20	0	160	0	150	0	80	0	40	0	20	0	0	0	20	$34,300	
Community Liaison	$95	80	0	40	0	0	0	48	0	120	0	16	0	16	0	16	$31,920	
Administrative Staff	$45	80	0	210	0	20	0	260	0	60	0	60	0	0	0	45	$33,075	$512,955
Total Hours		1485		1410		1260		1508		950		786		286		961		

Total Labor Hours	**8,646**
Total Labor Cost	**$1,463,430.00**
Expenses and Travel	**$263,417**
Total Price	**$1,726,847**

Summary

Average Project Hourly Rate	$169.00		
DBE Requirement of 35% Cost	$332,666		
Projected DBE Labor Hours Cost	$512,955	35.052%	Percent of Labor Cost

YEAR FOUR		Monitoring plan, Compliance Review & Outcome Assessments		Reporting and Meetings		Review, Analyze & Comment Policies		Use of Force		Community Engagement		External Communications		Liaison with Govt. Integrity Agencies or Appointments		Technical Assistance & Administrative Duties	Total Labor Cost by Team Category	Total Labor Cost by Company
Hillard Heintze Labor (65%)	Rate	Hours On-Site	Hours Off-Site	Hours On-Site	Hours Off-Site	Hours On-Site	Hours Off-Site	Hours On-Site	Hours Off-Site	Hours On-Site	Hours Off-Site	Hours On-Site	Hours Off-Site	Hours On-Site	Hours Off-Site	Hours On-Site		
Monitor	$295	175	0	180	0	100	0	200	0	120	0	30	10	120	0	100	$305,325	
Strategic Leadership Council	$290	390	0	250	0	140	0	125	0	100	0	50	10	50	0	350	$424,850	
Research Staff	$150	0	200	0	150	0	275	0	90	0	0	0	150	0	0	0	$152,250	
Administrative Staff	$45	0	100	0	200	0	0	0	0	0	0	0	400	0	0	0	$49,500	$931,925
DBE Labor (35%) **Metro** **Source and MP & Associates**																		
Principles & Strategic Advisors	$172	130	0	220	0	575	0	660	0	500	0	40	0	100	0	120	$403,340	
Outreach Coordinator - Metro Source	$70	20	0	160	0	150	0	80	0	40	0	20	0	0	0	20	$34,300	
Community Liaison	$95	80	0	40	0	0	0	48	0	120	0	16	0	16	0	16	$31,920	
Administrative Staff	$45	80	0	210	0	20	0	260	0	60	0	60	0	0	0	45	$33,075	$502,635
Total Hours		1175		1410		1260		1463		940		786		286		1,201		

Total Labor Hours	**8,521**
Total Labor Cost	**$1,434,560.00**
Expenses and Travel	**$258,221**
Total Price	**$1,692,781**

Summary

Average Project Hourly Rate	$168.00		
DBE Requirement of 35% Cost	$326,174		
Projected DBE Labor Hours Cost	$502,635	35.038%	Percent of Labor Cost

OUR APPROACH TO COST

Excellence Within Reach

In order to provide New Orleans the experience and expertise of our monitoring team at a fair and reasonable price, Sheppard Mullin and its affiliated experts will offer their services at significantly discounted hourly rates. The firm will charge the time spent by its professional personnel at a blended rate of $425 per hour for senior attorneys and $350 per hour for junior attorneys – regardless of the individual's normal billable rate.[1] These rates are significantly below our standard commercial rates, which range from $495 to $895 for senior attorneys and from $285 to $655 for junior attorneys. Mr. Aronie's standard 2013 hourly rate, for example, is $640. Similarly, Ms. Kennedy's 2013 hourly rate is $610. Paralegals taking part in this project will be billed at $100 per hour, which is below most of their normal billing rates as well.

We intend to utilize a billing rate structure for the other members of our team that is equally advantageous to New Orleans. To this end, we intend to partner with a local university for statistics and database experts, and we anticipate that these experts will be billed at a rate of $250 per hour. This is significantly below the rates typically charged by individuals in the private sector with similar skills. We will bill our police experts at $200 per hour in the first year, except for Chief Dennis Nowicki who, as our team's Deputy Monitor and lead police practices expert, will receive $250 per hour.

The majority of the work being performed by the monitoring team will occur off-site, *i.e.* outside the city of New Orleans. The monitoring team, however, fully intends to meet all contractual requirements to have an ongoing physical presence within the city. The exact number of hours that will be spent in specific locations cannot be determined until a detailed work plan has been prepared with the city. As such, and because the rates for all personnel are not dependent upon the location where the services are being performed, the cost estimate includes only the number of hours per labor category without an on-site/off-site breakdown.

Ancillary expenses, such as photocopying, telephone calls, legal research, translation services, web site design/maintenance, and travel expenses, will be billed at actual cost (or our best estimate of actual cost, where the actual cost is unknown). Team members will be traveling to New Orleans from various locations across the country, and, as the exact number of trips is dependent upon the needs of the city, estimate trip numbers and average travel costs have been used in compiling the estimated price for this project. Additionally, we do not expect to incur any expenses for the leasing of local office space or the rental of local meeting facilities.

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[1] All of the rates in our proposal, including attorney rates, are subject to an anticipated 5% escalation each year. The rates included in the detailed estimate include this escalation.

The ultimate cost of our team's activities will be driven, in part, by the actions of the City and the Police Department. The monitoring team will be required to provide certain services, such as technical assistance, to the extent required. Thus, the preparation of a detailed, definitive budget at this early stage is not possible. Nonetheless, the attached projected Budget Templates set forth our best estimate of the total cost of this project for years one through four.

In summary, we estimate the cost of this project to the City of New Orleans to be as follows:

	Labor Subtotals	Travel & ODC	Totals
Year 1 Estimate	$ 1,626,375.00	$ 412,590.00	$ 2,038,965.00
Year 2 Estimate	$ 1,870,268.75	$ 160,520.00	$ 2,030,788.75
Year 3 Estimate	$ 1,821,023.75	$ 126,005.00	$ 1,947,028.75
Year 4 Estimate	$ 1,772,513.75	$ 91,490.00	$ 1,864,003.75
Total Year 1-4 Estimate	$ 7,090,181.25	$ 790,605.00	$ 7,880,786.25

Since our team will not have any one-time fixed costs that "will be incurred regardless of the duration of the contract" (as referenced in Attachment A of the Request for Proposals), the total estimated cost of this project can be derived simply by adding the estimated costs of years one through four.

Under this proposal, regardless of the estimates detailed above and hereafter, and assuming neither the City nor the Department of Justice do not expand the requirements beyond the scope of the Consent Decree and this proposal, or beyond the four year term of the contract, we are prepared to cap the total cost of the contract at $8.9 million.

Proprietary and Confidential

BUDGET TEMPLATE
YEAR 1 OF 4

	Policy Review			Technical Assistance			Training Assessment			Incident Review			Report Writing			Base Year Total
Direct Labor* **	R	H	D	R	H	D	R	H	D	R	H	D	R	H	D	
Senior Staff	$425.00	175.00	$ 74,375.00	$425.00	175.00	$ 74,375.00	$ 425.00	125.00	$ 53,125.00	$ 425.00	125.00	$ 53,125.00	$ 425.00	175.00	$ 74,375.00	
Junior Staff	$350.00	175.00	$ 61,250.00	$350.00	175.00	$ 61,250.00	$ 350.00	100.00	$ 35,000.00	$ 350.00	100.00	$ 35,000.00	$ 350.00	175.00	$ 61,250.00	
Local Counsel	$350.00		$ -	$350.00	50.00	$ 17,500.00	$ 350.00			$ 350.00			$ 350.00	20.00	$ 7,000.00	
Paralegal Staff	$100.00		$ -	$100.00	75.00	$ 7,500.00	$ 100.00	-	$ -	$ 100.00	100.00	$ 10,000.00	$ 100.00	75.00	$ 7,500.00	
Deputy Monitor	$250.00	200.00	$ 50,000.00	$250.00	150.00	$ 37,500.00	$ 250.00	100.00	$ 25,000.00	$ 250.00	350.00	$ 87,500.00	$ 250.00	50.00	$ 12,500.00	
Police Experts	$200.00	600.00	$ 120,000.00	$200.00	550.00	$ 110,000.00	$ 200.00	300.00	$ 60,000.00	$ 200.00	800.00	$ 160,000.00	$ 200.00	100.00	$ 20,000.00	
Academic Experts	$250.00	325.00	$ 81,250.00	$250.00	275.00	$ 68,750.00	$ 250.00	200.00	$ 50,000.00	$ 250.00	100.00	$ 25,000.00	$ 250.00	50.00	$ 12,500.00	
Statistics Experts	$250.00	80.00	$ 20,000.00	$250.00	10.00	$ 2,500.00	$ 250.00	80.00	$ 20,000.00	$ 250.00	100.00	$ 25,000.00	$ 250.00	25.00	$ 6,250.00	
Total Labor Hours****		1555			1460			905			1675			670		6,265.00
Total Labor Dollars	$		406,875.00	$		379,375.00	$		243,125.00	$		395,625.00	$		201,375.00	$ 1,626,375.00
Fringe Benefit		n/a*			n/a*			n/a*			n/a*			n/a*		$ -
Total Labor	$		406,875.00	$		379,375.00	$		243,125.00	$		395,625.00	$		201,375.00	**$ 1,626,375.00**
Office Space		n/a*			n/a*			n/a*			n/a*			n/a*		$ -
ODCs	$		-	$		-	$		-	$		12,480.00	$		12,480.00	**$ 24,960.00**
Travel	$		-	$		-	$		-				$		-	**$ 387,630.00**
Subcontractors		*see direct labor above*			*see direct labor above*			*see direct labor above*			*see direct labor above*			*see direct labor above*		$ -
Overhead		n/a*			n/a*			n/a*			n/a*			n/a*		$ -
Fee/Profit		n/a*			n/a*			n/a*			n/a*			n/a*		$ -
Total Price* *	**$**		**406,875.00**	**$**		**379,375.00**	**$**		**243,125.00**	**$**		**408,105.00**	**$**		**213,855.00**	**$ 2,038,965.00**

R = Rate
H = Hours
D = Dollars (Rate x Hours = Dollars)

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Proprietary and Confidential

BUDGET TEMPLATE
YEAR 2 OF 4

	Policy Review			Technical Assistance			Training Assessment			Incident Review			Report Writing			Base Year Total
Direct Labor* **	R	H	D	R	H	D	R	H	D	R	H	D	R	H	D	
Senior Staff	$446.25	175.00	$ 78,093.75	$446.25	125.00	$ 55,781.25	$ 446.25	100.00	$ 44,625.00	$ 446.25	300.00	$ 133,875.00	$ 446.25	215.00	$ 95,943.75	
Junior Staff	$367.50	175.00	$ 64,312.50	$367.50	75.00	$ 27,562.50	$ 367.50	100.00	$ 36,750.00	$ 367.50	300.00	$ 110,250.00	$ 367.50	215.00	$ 79,012.50	
Local Counsel	$350.00		$ -	$350.00	50.00	$ 17,500.00	$ 350.00			$ 350.00			$ 350.00	20.00	$ 7,000.00	
Paralegal Staff	$105.00		$ -	$105.00	75.00	$ 7,875.00	$ 105.00	-	$ -	$ 105.00	100.00	$ 10,500.00	$ 105.00	75.00	$ 7,875.00	
Deputy Monitor	$262.50	200.00	$ 52,500.00	$262.50	100.00	$ 26,250.00	$ 262.50	100.00	$ 26,250.00	$ 262.50	450.00	$ 118,125.00	$ 262.50	100.00	$ 26,250.00	
Police Experts	$210.00	500.00	$ 105,000.00	$210.00	300.00	$ 63,000.00	$ 210.00	200.00	$ 42,000.00	$ 210.00	1,300.00	$ 273,000.00	$ 210.00	150.00	$ 31,500.00	
Academic Experts	$262.50	200.00	$ 52,500.00	$262.50	200.00	$ 52,500.00	$ 262.50	150.00	$ 39,375.00	$ 262.50	100.00	$ 26,250.00	$ 262.50	75.00	$ 19,687.50	
Statistics Experts	$262.50	80.00	$ 21,000.00	$262.50	50.00	$ 13,125.00	$ 262.50	150.00	$ 39,375.00	$ 262.50	150.00	$ 39,375.00	$ 262.50	100.00	$ 26,250.00	
Total Labor Hours****		1330			975			800			2700			950		6,755.00
Total Labor Dollars	$		373,406.25	$		263,593.75	$		228,375.00	$		711,375.00	$		293,518.75	**$ 1,870,268.75**
Fringe Benefit		n/a*			n/a*			n/a*			n/a*			n/a*		$ -
Total Labor	$		373,406.25	$		263,593.75	$		228,375.00	$		711,375.00	$		293,518.75	**$ 1,870,268.75**
Office Space		n/a*			n/a*			n/a*			n/a*			n/a*		$ -
ODCs	$		-	$		-	$		-	$		11,230.00	$		11,230.00	**$ 22,460.00**
Travel				$		-	$		-				$		-	**$ 138,060.00**
Subcontractors		*see direct labor above*			*see direct labor above*			*see direct labor above*			*see direct labor above*			*see direct labor above*		$ -
Overhead		n/a*			n/a*			n/a*			n/a*			n/a*		$ -
Fee/Profit		n/a*			n/a*			n/a*			n/a*			n/a*		$ -
Total Price**	$		**373,406.25**	$		**263,593.75**	$		**228,375.00**	$		**722,605.00**	$		**304,748.75**	**$ 2,030,788.75**

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Proprietary and Confidential

BUDGET TEMPLATE
YEAR 3 OF 4

	Policy Review			Technical Assistance			Training Assessment			Incident Review			Report Writing			Base Year Total
Direct Labor***	R	H	D	R	H	D	R	H	D	R	H	D	R	H	D	
Senior Staff	$468.56	175.00	$ 81,998.44	$468.56	75.00	$ 35,142.19	$ 468.56	100.00	$ 46,856.25	$ 468.56	300.00	$ 140,568.75	$ 468.56	230.00	$ 107,769.38	
Junior Staff	$385.88	175.00	$ 67,528.13	$385.88	75.00	$ 28,940.63	$ 385.88	100.00	$ 38,587.50	$ 385.88	300.00	$ 115,762.50	$ 385.88	230.00	$ 88,751.25	
Local Counsel	$350.00			$350.00	50.00	$ 17,500.00	$ 350.00			$ 350.00			$ 350.00	20.00	$ 7,000.00	
Paralegal Staff	$110.25		$ -	$110.25	75.00	$ 8,268.75	$ 110.25	-	$ -	$ 110.25	100.00	$ 11,025.00	$ 110.25	100.00	$ 11,025.00	
Deputy Monitor	$275.63	200.00	$ 55,125.00	$275.63	150.00	$ 41,343.75	$ 275.63	100.00	$ 27,562.50	$ 275.63	400.00	$ 110,250.00	$ 275.63	100.00	$ 27,562.50	
Police Experts	$220.50	350.00	$ 77,175.00	$220.50	325.00	$ 71,662.50	$ 220.50	200.00	$ 44,100.00	$ 220.50	1,200.00	$ 264,600.00	$ 220.50	200.00	$ 44,100.00	
Academic Experts	$275.63	100.00	$ 27,562.50	$275.63	75.00	$ 20,671.88	$ 275.63	150.00	$ 41,343.75	$ 275.63	100.00	$ 27,562.50	$ 275.63	75.00	$ 20,671.88	
Statistics Experts	$275.63	80.00	$ 22,050.00	$275.63	50.00	$ 13,781.25	$ 275.63	80.00	$ 22,050.00	$ 275.63	150.00	$ 41,343.75	$ 275.63	50.00	$ 13,781.25	
Total Labor Hours****	1080			875			730			2550			1005			6,240.00
Total Labor Dollars	$ 331,439.06			$ 237,310.94			$ 220,500.00			$ 711,112.50			$ 320,661.25			$ 1,821,023.75
Fringe Benefit	n/a*			n/a*			n/a*			n/a*			n/a*			$ -
Total Labor	$ 331,439.06			$ 237,310.94			$ 220,500.00			$ 711,112.50			$ 320,661.25			$ 1,821,023.75
Office Space	n/a*			n/a*			n/a*			n/a*			n/a*			$ -
ODCs	$ -			$ -			$ -			$ 11,230.00			$ 11,230.00			$ 22,460.00
Travel	$ -			$ -			$ -						$ -			$ 103,545.00
Subcontractors	*see direct labor above*			*see direct labor above*			*see direct labor above*			*see direct labor above*			*see direct labor above*			$ -
Overhead	n/a*			n/a*			n/a*			n/a*			n/a*			$ -
Fee/Profit	n/a*			n/a*			n/a*			n/a*			n/a*			$ -
Total Price**	**$ 331,439.06**			**$ 237,310.94**			**$ 220,500.00**			**$ 722,342.50**			**$ 331,891.25**			**$ 1,947,028.75**

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Proprietary and Confidential

BUDGET TEMPLATE
YEAR 4 OF 4

	Policy Review			Technical Assistance			Training Assessment			Incident Review			Report Writing			Base Year Total
Direct Labor* **	R	H	D	R	H	D	R	H	D	R	H	D	R	H	D	
Senior Staff	$491.99	175.00	$ 86,098.36	$491.99	75.00	$ 36,899.30	$ 491.99	50.00	$ 24,599.53	$ 491.99	300.00	$ 147,597.19	$ 491.99	200.00	$ 98,398.13	
Junior Staff	$405.17	175.00	$ 70,904.53	$405.17	75.00	$ 30,387.66	$ 405.17	50.00	$ 20,258.44	$ 405.17	300.00	$ 121,550.63	$ 405.17	200.00	$ 81,033.75	
Local Counsel	$350.00			$350.00	50.00	$ 17,500.00	$ 350.00			$ 350.00			$ 350.00	20.00	$ 7,000.00	
Paralegal Staff	$115.76		$ -	$115.76	75.00	$ 8,682.19	$ 115.76	-	$ -	$ 115.76	100.00	$ 11,576.25	$ 115.76	50.00	$ 5,788.13	
Deputy Monitor	$289.41	200.00	$ 57,881.25	$289.41	150.00	$ 43,410.94	$ 289.41	100.00	$ 28,940.63	$ 289.41	400.00	$ 115,762.50	$ 289.41	100.00	$ 28,940.63	
Police Experts	$231.53	250.00	$ 57,881.25	$231.53	325.00	$ 75,245.63	$ 231.53	200.00	$ 46,305.00	$ 231.53	1,150.00	$ 266,253.75	$ 231.53	150.00	$ 34,728.75	
Academic Experts	$289.41	100.00	$ 28,940.63	$289.41	75.00	$ 21,705.47	$ 289.41	150.00	$ 43,410.94	$ 289.41	100.00	$ 28,940.63	$ 289.41	50.00	$ 14,470.31	
Statistics Experts	$289.41	80.00	$ 23,152.50	$289.41	50.00	$ 14,470.31	$ 289.41	80.00	$ 23,152.50	$ 289.41	150.00	$ 43,410.94	$ 289.41	25.00	$ 7,235.16	
Total Labor Hours****	980			875			630			2500			795			5,780.00
Total Labor Dollars	$ 324,858.52			$ 248,301.48			$ 186,667.03			$ 735,091.88			$ 277,594.84			$ 1,772,513.75
Fringe Benefit	n/a*			n/a*			n/a*			n/a*			n/a*			$ -
Total Labor	$ 324,858.52			$ 248,301.48			$ 186,667.03			$ 735,091.88			$ 277,594.84			$ 1,772,513.75
Office Space	n/a*			n/a*			n/a*			n/a*			n/a*			$ -
ODCs	$ -			$ -			$ -			$ 11,230.00			$ 11,230.00			$ 22,460.00
Travel	$ -			$ -			$ -						$ -			$ 69,030.00
Subcontractors	*see direct labor above*			*see direct labor above*			*see direct labor above*			*see direct labor above*			*see direct labor above*			$ -
Overhead	n/a*			n/a*			n/a*			n/a*			n/a*			$ -
Fee/Profit	n/a*			n/a*			n/a*			n/a*			n/a*			$ -
Total Price**	$ 324,858.52			$ 248,301.48			$ 186,667.03			$ 746,321.88			$ 288,824.84			$ 1,864,003.75

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***Direct Labor Rates reflect discounts from commercial rates.
****The allocation of hours are estimates, and may be adjusted based on the detailed work plan to be prepared with the City.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA, **Plaintiff**	**CIVIL ACTION**
VERSUS	**No. 12-1924**
CITY OF NEW ORLEANS, **Defendant**	**SECTION "E"**

ORDER AND REASONS

Before the Court is the Motion to Stay filed by the Defendant, the City of New Orleans, Louisiana (the "City").[1] The City seeks to stay the implementation and enforcement of the Consent Decree this Court entered as a final judgment[2] on January 11, 2013, pending the Court's consideration of the City's Motion to Vacate such judgment.[3] Plaintiff, the United States of America ("United States"), opposes the City's Motion to Stay.[4] The Court previously informed the Parties that the "motion shall be submitted to the Court for consideration as soon as the Court is in receipt of the United States' response."[5] As the Court has received the United States' opposition memorandum, the Motion to Stay is ripe for decision. For the following reasons, the Motion to Stay is **DENIED**.

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[1] R. Doc. 172.

[2] R. Docs. 159 and 160.

[3] R. Doc. 175.

[4] R. Doc. 177.

[5] R. Doc. 170.

Ex. D

Background

On July 24, 2012, the United States filed its complaint in this matter against the City after an extensive investigation of the New Orleans Police Department ("NOPD"),[6] pursuant to the Violent Crime Control and Law Enforcement Act (42 U.S.C. § 14141), the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3789d, the "Safe Streets Act"), and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d to 2000d-7) and its implementing regulations (28 C.F.R. §§ 42.101-.112) ("Title VI"), in order to remedy NOPD's alleged pattern or practice of conduct which subjects individuals to excessive force in violation of the Fourth Amendment, unlawful searches and seizures in violation of the Fourth Amendment, and discriminatory policing practices in violation of the Fourteenth Amendment, the Safe Streets Act, and Title VI.

Less than one hour after the United States filed its complaint, the United States and the City (together, the "Parties") filed a Joint Motion for Entry of Decree. Attached to such motion was a proposed Consent Decree containing detailed provisions concerning changes in NOPD policies and practices related to: (1) the use of force; (2) investigatory stops and detentions, searches, and arrests; (3) custodial interrogations; (4) photographic lineups; (5) bias-free policing; (6) community engagement; (7) recruitment; (8) training; (9) officer assistance and support; (10) performance evaluations and promotions; (11) supervision; (12) the secondary employment system, also known as the paid detail system; (13) misconduct complaint intake, investigation, and adjudication; and (14) transparency and oversight. In addition, the proposed Consent Decree also included detailed provisions regarding the implementation and enforcement of the Consent Decree. The Parties' motion

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[6] R. Doc. 1 at ¶¶ 14-16.

stated that they sought "to resolve [the] litigation with entry of the attached negotiated Consent Decree" because the document was "intended to ensure that police services are delivered to the people of New Orleans in a manner that complies with the Constitution and laws of the United States."[7] After careful deliberation to ensure that the proposed Consent Decree was "fair, adequate and reasonable," the Court entered it as a final judgment on January 11, 2013.[8] Because the City has moved to vacate the Court's entry of the Consent Decree, the City argues that the implementation and enforcement of the Consent Decree should be stayed while the Court considers the City's Motion to Vacate.

The City originally filed the instant Motion to Stay as an *ex parte* motion.[9] Because the City did not obtain the United States' consent to such motion, the Court instructed the City to refile it as an opposed motion in accordance with the Local Rules of the U.S. District Court for the Eastern District of Louisiana.[10] The Court further instructed the City to support its motion with a "memorandum of legal authority."[11] The City did so, arguing that a stay is warranted because "[t]he DOJ has suggested a timeline to begin implementing provisions of the Consent Decree, and the City should not be forced to begin implementing any costly measures while this Court is considering the City's position with regard to the Motion to Vacate. To allow otherwise would prejudice the City."[12] In support of its motion,

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[7] R. Doc. 2 at pp. 1-2.

[8] R. Docs. 159 and 160.

[9] R. Doc. 168.

[10] R. Doc. 170.

[11] R. Doc. 170.

[12] R. Doc. 172.

the City's "memorandum of legal authority" states:

> [T]he City has filed a Motion to Vacate the Court's Order approving the Consent Decree. The Court has granted the United States of America, Department of Justice ("DOJ") until February 15, 2013 to file a response memorandum to the City's Motion to Vacate. In the absence of a stay, the City, however, may be required to begin implementing costly measures under the Consent Decree, which will prejudice the City and perhaps hamper its ability to meet other financial obligations.
>
> The DOJ has suggested a timeline to begin implementing provisions of the Consent Decree. In particular, the DOJ has suggested a timeline for forming an Evaluation Committee to select a Consent Decree Monitor, which is one of the most costly measures required by the Consent Decree. In fact, this Court has issued an order that the parties must provide the names of five individuals to serve on the Evaluation Committee by February 15, 2013—the same day the DOJ is to file its response to the City's Motion to Vacate. *See* Rec. Doc. No. 162. The City should not be required to begin the Monitor selection process before this Court has even received full briefing on the City's Motion to Vacate.
>
> Notably, the Consent Decree includes a provision stating that the City's procurement process would be utilized in selecting the Monitor. *See* ¶477 of Consent Decree. The Court, however, has modified the procurement process utilized to select the Monitor, redlining and editing the Request for Proposal used to solicit the Monitor and altering the disadvantaged business enterprise ("DBE") requirements for the Monitor. The City should not be required to engage in the Monitor selection process, which differs from what was contained in the Consent Decree, before this Court receives all briefing and makes a ruling on the City's Motion to Vacate.[13]

The United States has responded to the City's motion, arguing that the "City's three-paragraph motion has failed to set forth any legally-sufficient basis for staying implementation of the Decree."[14] The Court agrees with the United States.

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[13] R. Doc. 172-1 at pp. 1-2.

[14] R. Doc. 177.

Law and Analysis

Rule 62(b) of the Federal Rules of Civil Procedure provides that a court may stay the execution of a judgment pending disposition of a motion brought pursuant to Rule 60. Fed. R. Civ. P. 62(b)(4) ("On appropriate terms for the opposing party's security, the court may stay the execution of a judgment – or any proceedings to enforce it – pending disposition of [a motion] . . . under Rule 60, for relief from a judgment or order."). Whether to grant such a stay is discretionary. *See* Wright & Miller, 11 Fed. Prac. & Proc. Civ. § 2903 (3d ed.); *see also Boyd v. Occidental Fire & Cas. Co. of N.C.*, 2011 WL 4062383, at *1 (M.D. La. Sept. 13, 2011) (stating that district courts "enjoy the discretionary authority to stay proceedings 'in the interest of justice and in control of their dockets.' ") (quoting *Wedgeworth v. Fibreboard Corp.*, 706 F.2d 541, 545 (5th Cir. 1983)).

The Fifth Circuit has set forth four factors a court may consider in determining if it should stay relief pending appeal: " '(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.' " *Moore v. Tangipahoa Parish Sch. Bd.*, 2013 WL 141791, at *2 (5th Cir. Jan. 14, 2013) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)); *Nat'l Treasury Emp. Union v. Von Raab*, 808 F.2d 1057, 1059 (5th Cir. 1987). Other U.S. District Courts have found these factors instructive when considering whether to grant a motion to stay pursuant to Rule 62(b). *See AIA Eng'g Ltd. v. Magotteaux Int'l S/A*, 2012 WL 3745625, at *1 (M.D. Tenn., Aug. 28, 2012) (applying these factors to a Rule 62(b) motion requesting a stay pending the outcome of the court's orders regarding movant's Rule 50 motion for judgment as a matter

of law and Rule 59 motion for a new trial); *SEC v. Retail Pro, Inc.*, 2011 WL 3515910, at *2 (S.D. Cal. Aug. 11, 2011) (same). This Court likewise finds these factors instructive given the relief requested in the instant motion to stay.

First, the Court addresses the City's assertion that the "Consent Decree includes a provision stating that the City's procurement process would be utilized in selecting the Monitor," citing paragraph 477 of the July 24, 2012 version of the proposed Consent Decree.[15] The Court did not approve the Consent Decree as filed July 24, 2012. Rather, the Court's January 11, 2013 order stated that the "proposed Consent Decree filed by the Parties on July 24, 2012, is **APPROVED AS AMENDED** by changes shown on the Parties' Errata Sheet filed on September 14, 2012."[16] The September 14, 2012 Errata Sheet – which the Parties presented to the Court for approval by joint motion[17] – removed the sentence the City relies on for this argument.[18] As a result, contrary to the City's argument, the Consent Decree entered as a final judgment of this Court does not state that the Parties will use the City's procurement process in selecting the Court Monitor.

Turning to the crux of the City's argument why the Court should grant its Motion to Stay, the City contends that, in the absence of a stay, it "may be required to begin implementing costly measures under the Consent Decree, which will prejudice the City and perhaps hamper its ability to meet other financial obligations."[19] The City fails to

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[15] *See* R. Doc. 172-1 at p. 2; R. Doc. 2-1 at ¶ 477 ("The Parties have agreed to use New Orleans's procurement process in selecting the Monitor.").

[16] R. Doc. 159 at p. 1 (bold in original).

[17] R. Doc. 114.

[18] R. Doc. 114-2 at p. 7.

[19] R. Doc. 177 at p. 1.

demonstrate that it is at risk of suffering irreparable harm if implementation of the Consent Decree is not stayed. The City and NOPD must comply with the U.S. Constitution and laws of the United States. To that end, the City has represented to the Court that it intends to move forward with reforming the NOPD so that it will be in compliance with all applicable laws.[20] Regardless of how such reform may be achieved, whether via collaboration between the United States and the City, or via another process, it will never be without cost. As the Fifth Circuit has consistently underscored, "inadequate resources can never be an adequate justification for depriving any person of his constitutional rights." *Udey v. Kastner*, 805 F.2d 1218, 1220 (5th Cir. 1986); *see also Smith v. Sullivan*, 553 F.2d 373, 378 (5th Cir. 1977) (rejecting argument that "lack of funds to implement the trial court's order" justified failure to remedy ongoing constitutional violations); *Gates v. Collier*, 501 F.2d 1291, 1319 (5th Cir. 1972) ("Where state institutions have been operating under unconstitutional conditions and practices, the defense of fund shortage(s) . . . [has] been rejected by the federal courts.").

By contrast, the United States and residents of New Orleans will suffer substantial harm to their interests in having a constitutional police force if the Court grants the City's motion. The United States conducted an extensive pattern or practice investigation, beginning in May 2010, that resulted in a comprehensive report issued March 16, 2011, detailing how NOPD allegedly engages in a pattern or practice of excessive force; unlawful stops, searches and arrests; and discriminatory policing based on race, ethnicity, gender and sexual orientation, all in violation of the Constitution and federal law.[21] The United

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[20] R. Doc. 175-1 at p. 1 ("Mayor Mitchell J. Landrieu began reforming the New Orleans Police Department ('NOPD') when he took office in May 2010 and remains committed to implementing reforms to ensure that the NOPD is the best police department in the nation.").

[21] *See* R. Doc. 1-1 at pp. 28-77.

States' investigation attributed these ongoing constitutional violations to entrenched deficiencies within "a wide swath of City and NOPD systems and operations," including failures to:

> adopt and enforce appropriate policies; properly recruit, train, and supervise officers; adequately review and investigate officer uses of force; fully investigate allegations of misconduct; identify and respond to patterns of at-risk officer behavior; implement community policing; oversee and control the system of Paid Details; provide officer assistance and support; or enact appropriate performance review and promotional systems.[22]

According to the United States, these systemic failures "have created an environment that permits and promotes constitutional harm."[23] Violations of constitutional rights constitute irreparable harm, an even stronger showing than what is required.[24] *See Elrod v. Burns*, 427 U.S. 347, 373-374 (1976); Wright & Miller, 11 Fed. Prac. & Proc. Civ. § 2948.1 (2d ed. 1995) (finding that, in the context of preliminary injunctions, "[w]hen an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary"). In addition, implementing the reforms set forth in the Consent Decree clearly is in the public interest. Nothing before the Court indicates that the City has remedied the serious deficiencies identified in the United States' investigation, much less that the City has devised an alternative plan, with which it is prepared to move forward on its own volition, in order to address these deficiencies.

Finally, the remaining factor examines "whether the stay applicant has made a

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[22] R. Doc. 1-1 at pp. 13-14.

[23] R. Doc. 1-1 at p. 13.

[24] Again, a party requesting a stay must show that it "will be *irreparably* injured absent a stay," whereas, with respect to other parties, the Court must determine whether such parties will be "*substantially* injure[d]" if a stay is granted. *See Moore*, 2013 WL 141791, at *2 (emphasis added).

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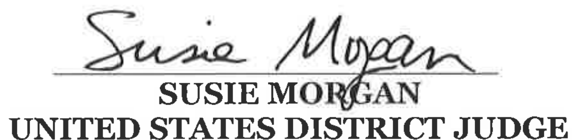
strong showing that [it] is likely to succeed on the merits." *Moore*, 2013 WL 141791, at *2 (emphasis added). The City has not made any showing whatsoever that it is likely to succeed on the merits of its Motion to Vacate. Because the City has not met its burden as to this factor, the Court does not consider it. *See also Retail Pro, Inc.*, 2011 WL 3515910, at *3 (declining, where movant failed to show possibility of irreparable harm, to consider movant's likelihood of success on the merits of the underlying motion in denying Rule 62(b) stay request).[25]

As the Court has found that (1) the United States and residents of New Orleans will suffer substantial harm if a stay is granted, (2) declining to grant a stay is in the public interest, (3) the City will not suffer irreparable harm if the Court denies its Motion to Stay, and (4) the City has made no argument regarding the likelihood of its success on the merits regarding its Motion to Vacate, the Court concludes that the balance of the equities weighs heavily against granting the City's Motion for Stay.

Accordingly, **IT IS ORDERED** that the motion be and hereby is **DENIED.**

New Orleans, Louisiana, this 8th day of February, 2013.



SUSIE MORGAN
UNITED STATES DISTRICT JUDGE

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[25] The Court anticipates ruling on the City's Motion to Vacate in a timely manner so that, in the event the motion is denied, the Parties will not be prevented from moving forward with selecting the Court Monitor and executing the professional services agreement with same. In declining to grant the City's request for a stay, the Court expresses no opinion as to the likelihood of the City's ultimate success on the merits of its Motion to Vacate.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA,
Plaintiff

CIVIL ACTION

VERSUS

No. 12-1924

CITY OF NEW ORLEANS,
Defendant

SECTION "E"

ORDER AND REASONS

Before the Court is the motion to vacate filed by the City of New Orleans ("City").[1] The City seeks to vacate the Consent Decree regarding the New Orleans Police Department ("NOPD") entered as a judgment of this Court on January 11, 2013, pursuant to Rule 60(b) of the Federal Rules of Civil Procedure.[2] The United States of America ("United States")

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[1] R. Doc. 175. The City has also filed a reply memorandum. *See* R. Doc. 202. In addition, Crescent City Lodge No. 2, Fraternal Order of Police, Inc. ("FOP"), sought leave to file an amicus curiae memorandum in support of the City's motion. *See* R. Doc. 186. The Court granted FOP leave to file its memorandum and has considered FOP's arguments in conjunction with the instant motion. *See* R. Doc. 191.

[2] R. Docs. 159 and 160. The Court recognizes that the City has also filed an appeal with the U.S. Court of Appeals for the Fifth Circuit ("Fifth Circuit") regarding the Court's approval of the Consent Decree. *See* R. Doc. 180. Nevertheless, because the Court is denying the City's requested relief, the Court has jurisdiction to rule on the motion to vacate. *See* Fed. R. Civ. P. 62.1(a); Fed. R. App. P. 4(a)(4)(B)(I); *Thermacor Process, L.P. v. BASF Corp.*, 567 F.3d 736, 744 (5th Cir. 2009). As the Eleventh Circuit has explained,

> following the filing of a notice of appeal district courts do not possess jurisdiction to grant a Rule 60(b) motion. Accordingly, a district court presented with a Rule 60(b) motion after a notice of appeal has been filed should consider the motion and assess its merits. It may then deny the motion or indicate its belief that the arguments raised are meritorious. If the district court selects the latter course, the movant may then petition the court of appeals to remand the matter so as to confer jurisdiction on the district court to grant the motion.
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> . . .
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> *Bovee v. Coopers & Lybrand*, C.P.A., 272 F.3d 356, 359 n.1 (6th Cir. 2001) (internal citations omitted); *see also Boyko v. Anderson*, 185 F.3d 672, 675 (7th Cir. 1999) (same); *Fobian v. Storage Tech. Corp.*, 164 F.3d 887, 890-91 (4th Cir. 1999) (same); *Hoai v. Vo*, 935 F.2d 308, 312 (D.C. Cir. 1991) (same); Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, 11 Federal Practice and Procedure § 2873 (2d ed. 1997) (discussing the holding of several

Ex. E

opposes the City's motion.[3] For the following reasons, the motion is **DENIED**.

Background

Mitchell J. Landrieu ("Mayor Landrieu" or "the Mayor") assumed office as Mayor of the City of New Orleans, Louisiana, on May 3, 2010. On May 5, 2010, Mayor Landrieu wrote to U.S. Attorney General Eric H. Holder, Jr. "to ask for [his] support and partnership in transforming the New Orleans Police Department into one of the best police forces in the United States."[4] According to the Mayor, he "inherited a police force that has been described by many as one of the worst police departments in the country."[5] In his opinion, "nothing short of a complete transformation is necessary and essential to ensure safety for the citizens of New Orleans. The police force, the community, [and] . . . citizens are desperate for positive change."[6] Mayor Landrieu's letter requested the U.S. Department of Justice ("DOJ") to conduct an "independent investigation" of the NOPD in order "to determine how to prevent, detect, and discipline misconduct as well as introduce best

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> circuits that "during the pendency of an appeal the district court may consider a Rule 60(b) motion and if it indicates that it is inclined to grant it, application then can be made to the appellate court for a remand," and concluding that "[t]his procedure is sound in theory and preferable in practice").

Mahone v. Ray, 326 F.3d 1176, 1180 (11th Cir. 2003).

[3] R. Doc. 184. Community United for Change ("CUC") also sought leave to leave to file an amicus curiae memorandum in opposition to the City's motion. *See* R. Doc. 195. The Court granted CUC leave to file its memorandum and has considered CUC's arguments in conjunction with the instant motion. *See* R. Doc. 197.

[4] R. Doc. 184-1.

[5] R. Doc. 184-1.

[6] R. Doc. 184-1.

practices for public safety."[7]

Shortly thereafter, the DOJ opened an investigation of the NOPD pursuant to the Violent Crime Control and Law Enforcement Act of 1994 ("Section 14141," 42 U.S.C. § 14141); the Omnibus Crime Control and Safe Streets Act of 1968 ("Safe Streets Act," 42 U.S.C. § 3789d); and Title VI of the Civil Rights Act of 1964 ("Title VI," 42 U.S.C. § 2000d to 2000d-7 and its implementing regulations, 28 C.F.R. §§ 42.101-.112).[8] Seven lawyers and other staff from the DOJ's Civil Rights Division in Washington, D.C., conducted the investigation.[9] Approximately eleven law enforcement professionals – which included current and former police chiefs; supervisors; and experts in officer assistance, investigation of sexual assaults, custodial interrogations, and law enforcement response to persons in mental heath crisis[10] – assisted the DOJ attorneys (collectively, "the investigative team" or "the team").[11] Furthermore, the U.S. Attorney's Office for the Eastern District of Louisiana and then-U.S. Attorney James B. Letten ("Letten") also assisted the investigation. Letten assigned then-assistant U.S. Attorney Salvador Perricone ("Perricone") to act as a liaison between the investigative team and the U.S. Attorney's Office for the Eastern District of Louisiana. Other federal services, including the DOJ's Community Relations Service; the Federal Bureau of Investigation; the U.S. Marshal Service; the Bureau of Alcohol, Tobacco,

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[7] R. Doc. 184-1 ("I ask that you assign a team from the [DOJ's] Civil Rights Division to begin working with me and within the NOPD. I am confident that this partnership will bring about significant change that will lead to a better police force in New Orleans.").

[8] R. Doc. 1-1.

[9] R. Doc. 184-12 at p. 1.

[10] These experts "provided in-depth knowledge about how to detect and respond to law enforcement challenges." R. Doc. 1-1 at p. 26.

[11] R. Doc. 184-12 at p. 1.

Firearms and Explosives; the Office of Justice Programs; the Office of Community Oriented Policing Services; the Office on Violence Against Women; the Office on Juvenile Justice and Delinquency Prevention; and the Access to Justice Initiative likewise provided assistance.[12]

The investigative team conducted "interviews and meetings with NOPD officers, supervisors and command staff, as well as members of the public, City and State officials, and other community stakeholders."[13] In addition, the team gathered information from NOPD documents, including "policies and procedures, training materials, incident reports, use of force reports, crime investigation files, data collected by the Department, complaints of misconduct, and misconduct investigations;" participated in ride-alongs with officers and supervisors, attended COMSTAT meetings,[14] observed police activity, and met with representatives of police fraternal organizations; and solicited the views of officers, community members, judges from state and municipal courts, members of the Orleans Parish District Attorney's Office, the Orleans Public Defender, the Civil Service Commission, the Office of the Independent Police Monitor, the City Council, Louisiana State Legislators, the Business Council of New Orleans & the River Region, the New Orleans Police and Justice Foundation, and the New Orleans Crime Coalition.[15] Finally, the investigative team participated in more than forty community meetings.[16]

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[12] R. Doc. 1-1 at p. 25.

[13] R. Doc. 1-1 at p. 26.

[14] COMSTAT meetings are the NOPD's weekly crime-statistic reporting meetings that are open to the public. R. Doc. 1-1 at p. 131.

[15] R. Doc. 1-1 at p. 26.

[16] R. Doc. 1-1 at p. 26. Some community meetings were initiated at the investigative team's request, while others were regularly-scheduled community meetings, such as those held by the New Orleans Neighborhood Police Anti-Crime Council and the Rape Crisis Network. R. Doc. 1-1 at p. 26.

Approximately ten months after its investigation commenced, the DOJ memorialized its findings in a comprehensive report dated March 16, 2011.[17] The investigation identified an alleged pattern or practice of unconstitutional conduct with respect to the use of force; stops, searches, and arrests; and discriminatory policing based on race, ethnicity, gender, and sexual orientation, all in violation of the U.S. Constitution and federal law.[18] Generally, the DOJ concluded that

> the Department has been largely indifferent to widespread violations of law and policy by its officers. NOPD does not have in place the basic systems known to improve public safety, ensure constitutional practices, and promote public confidence. . . . [D]eficiencies that lead to constitutional violations span the operation of the entire Department, from how officers are recruited, trained, supervised, and held accountable, to the operation of Paid Details.[19] In the absence of mechanisms to protect and promote civil rights, officers too frequently use excessive force and conduct illegal stops, searches and arrests with impunity. In addition, the Department's culture tolerates and encourages under-enforcement and under-investigation of violence against women. The Department has failed to take meaningful steps to counteract and eradicate bias based on race, ethnicity, and LGBT status in its policing practices, and has failed to provide critical policing services to language minority communities.[20]

Specifically, with respect to officers' use of force, the DOJ found that the NOPD "routinely use[s] unnecessary and unreasonable force in violation of the Constitution," including

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[17] U.S. Department of Justice Civil Rights Division, Investigation of the New Orleans Police Department (Mar. 16, 2011). *See* R. Doc. 1-1.

[18] R. Doc. 1-1 at pp. 28-78.

[19] "Paid details" are referred to as "secondary employment" in the Consent Decree. As summarized in the DOJ's report, the "Detail system is essentially a form of overtime work for officers. Officers may work *ad hoc* Details providing, for example, extra security for special events or individuals visiting New Orleans. Or an officer may have a regularly-scheduled Detail, such as being hired by a business to provide security in a retail establishment or by a neighborhood association to patrol the neighborhood. When on Detail, however, officers are paid and largely controlled by entities other than NOPD." R. Doc. 1-1 at p. 17. Many NOPD officers seek secondary employment assignments in order to supplement their NOPD salaries.

[20] R. Doc. 1-1 at p. 6.

particular deficiencies with respect to the "use of deadly force, force against restrained individuals, . . . and the use of canines."[21] Furthermore, with respect to Fourth Amendment violations, the DOJ opined that "detentions without reasonable suspicion are routine, and lead to unwarranted searches and arrests without probable cause;" that a large proportion of surveyed arrest reports "reflected constitutional deficiencies;" and that the NOPD leaves its officers "without the basic foundation to perform their duties within constitutional boundaries."[22]

The DOJ attributed these ongoing constitutional violations to entrenched deficiencies within "a wide swath of City and NOPD systems and operations," including failures to

> adopt and enforce appropriate policies; properly recruit, train, and supervise officers; adequately review and investigate officer uses of force; fully investigate allegations of misconduct; identify and respond to patterns of at-risk officer behavior; implement community policing; oversee and control the system of Paid Details; provide officer assistance and support; or enact appropriate performance review and promotional systems.[23]

Specifically with respect to paid details, the DOJ's investigation revealed that there "are few aspects of NOPD more broadly troubling than its Paid Detail system" and that this system "was a significant contributing factor to both the perception and the reality of NOPD as a dysfunctional organization."[24]

On March 17, 2011, Mayor Landrieu announced the results of the DOJ's investigation

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[21] R. Doc. 1-1 at pp. 28-30.

[22] R. Doc. 1-1 at pp. 8, 57-58.

[23] R. Doc. 1-1 at p. 13-14.

[24] R. Doc. 1-1 at p. 96.

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at a press conference with Deputy Attorney General James Cole, Assistant Attorney General Thomas Perez ("Perez"), Letten, and NOPD Superintendent Ronal Serpas ("Chief Serpas") in attendance. In a press release memorializing the conference, the Mayor called the report "the result of an invitation" to the DOJ to "partner with the [City's] administration in the wholesale transformation" of the NOPD and further remarked that it was "an honest assessment" which would help the City undertake "a data-driven approach to making [the City's] streets safer and reforming the NOPD."[25] The report's "findings are sobering and the challenges ahead are daunting," Mayor Landrieu continued, "but [the City] will do what ever [sic] it takes to make this right."[26]

Thereafter, the Mayor gave Chief Serpas "a strong directive to completely and totally overhaul the [NOPD] paid detail system."[27] In his May 15, 2011 letter to Mayor Landrieu regarding paid details, Chief Serpas recognized that "[b]oth you and I know that the flawed paid detail system has failed both the NOPD, and more importantly, our citizens."[28] According to Chief Serpas, the City would be incapable of achieving a "wholesale reform of the NOPD without steadfast diligence in implementing a complete and total overhaul of the paid detail system."[29] To remedy these problems, Chief Serpas recommended "**taking the**

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[25] R. Doc. 184-15.

[26] R. Doc. 184-15.

[27] R. Doc. 184-14 at p. 2.

[28] R. Doc. 184-14 at p. 4. As the Mayor explained at a July 24, 2012 press conference, "[i]n the old NOPD, many officers' first duty was to their paid details which were not managed in any centralized system. The result was conflict of interest, officers with divided loyalty spending most of their time on details, unequal access to earn extra money, cash exchanges, and the perversion of the command structure." July 24, 2012 press conference video (*see infra* n.37).

[29] R. Doc. 184-14 at p. 16.

management of the paid detail system out of the NOPD."[30] "Given the apparent size and scope of paid details," Serpas wrote, "it is preferable to have an independent entity manage this process to free NOPD leadership to focus exclusively on the mission of the NOPD. In its place, we are recommending creating a central office to be responsible for coordinating all elements and services relating to paid details."[31] Under Chief Serpas' proposal, this central office would be administered by "a civilian director out of NOPD control and controlled facilities."[32]

Furthermore, in the months following the release of the March 16, 2011 report, DOJ attorneys began drafting language for a cooperative agreement between the United States and the City to remedy the NOPD's alleged pattern or practice of unconstitutional conduct.[33] DOJ attorneys provided their initial draft of this document, which was labeled a "Consent Decree," to attorneys for the City on October 25, 2011,[34] and counsel for the City and the United States (together, "the Parties") commenced negotiations regarding the proposed Consent Decree's terms in November 2011.[35] After nine months of "protracted negotiations conducted by experienced and sophisticated litigants, aided on both sides by subject matter experts, and with an eye towards their shared goals of reform,"[36] the Parties

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[30] R. Doc. 184-14 at p. 2 (bold and underlining in original).

[31] R. Doc. 184-14 at p. 2.

[32] R. Doc. 184-14 at pp. 2-3.

[33] R. Doc. 184-16.

[34] R. Doc. 184-16.

[35] R. Doc. 184-16.

[36] R. Doc. 2 at p. 9.

announced at a press conference on July 24, 2012, that they had reached a compromise and were submitting a proposed Consent Decree to the U.S. District Court for the Eastern District of Louisiana for approval.[37] In the company of U.S. Attorney General Holder, Perez, Letten, Chief Serpas, and then-City Attorney Richard Cortizas ("Cortizas"), Mayor Landrieu lauded the City's "voluntary partnership" with the DOJ[38] and discussed the details of the proposed Consent Decree that were intended to "fundamentally change the culture of the NOPD once and for all."[39] "We can and we must change," the Mayor vowed.[40] Referencing the proposed Consent Decree, Mayor Landrieu concluded that the City "now ha[d] a clear roadmap forward."[41]

On the same day as the July 24, 2012 press conference, the United States filed its complaint in this case against the City pursuant to Section 14141; the Safe Streets Act; and Title VI.[42] The complaint alleged that the NOPD engages in a pattern or practice of conduct that subjects individuals to excessive force in violation of the Fourth Amendment of the U.S. Constitution, unlawful searches and seizures in violation of the Fourth Amendment of the

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[37] The City video-recorded the July 24, 2012 press conference and uploaded a copy of such video on the Mayor's official YouTube Channel. *See* "Mayor Landrieu, Justice Department announce details of consent decree," available at https://www.youtube.com/watch?v=Fkhrv4xgl-4 ("July 24, 2012 press conference video"). The Court has reviewed the video and all quotations taken therefrom were transcribed by the Court after its review.

[38] July 24, 2012 press conference video ("On my third day in office, I invited the Department of Justice to partner with us to reform the NOPD. That voluntary partnership, I believe, will be the thing that allows true change to take hold. On May 17, 2010, the DOJ began a formal and independent investigation into the patterns and practices of this Department. We asked for it and we got it. In March 2011, the Civil Rights Division described a Department that in many ways had lost its way.").

[39] July 24, 2012 press conference video.

[40] July 24, 2012 press conference video.

[41] July 24, 2012 press conference video.

[42] R. Doc. 1.

U.S. Constitution, and discriminatory policing practices in violation of the Fourteenth Amendment of the U.S. Constitution, the Safe Streets Act, and Title VI.[43] Contemporaneously therewith, the Parties filed a joint motion[44] seeking the Court's approval of the proposed Consent Decree attached thereto[45] that would remedy the NOPD's alleged pattern or practice of unconstitutional conduct.[46] The proposed Consent Decree contained detailed provisions concerning changes in NOPD policies and practices related to (1) the use of force; (2) investigatory stops and detentions, searches, and arrests; (3) custodial interrogations; (4) photographic lineups; (5) bias-free policing; (6) community engagement; (7) recruitment; (8) training; (9) officer assistance and support; (10) performance evaluations and promotions; (11) supervision; (12) the secondary employment system, also known as the paid detail system; (13) misconduct complaint intake, investigation, and adjudication; and (14) transparency and oversight. In addition, the proposed Consent Decree included detailed provisions regarding its implementation and enforcement.

According to the Parties' joint motion, the DOJ's March 16, 2011 report of its NOPD investigation, which was attached to the United States' complaint and incorporated therein by reference, "establishe[d] a more than adequate factual record supporting the legitimacy" of the proposed Consent Decree.[47] The Parties represented in the joint motion that they

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[43] R. Doc. 1.

[44] R. Docs. 2 and 114. The Parties filed a supplemental joint motion on September 14, 2012. *See* R. Doc. 114.

[45] R. Doc. 2-1.

[46] The City denied the allegations contained in the complaint. R. Doc. 2 at p. 2.

[47] R. Docs. 2 at p. 5 and 2-1 at pp. 6-7.

were "intimately familiar with the practices of the NOPD and spent long hours negotiating the [proposed] Consent Decree."[48] "This adversarial posture, combined with the respective duties of these government agencies towards those they represent," the Parties argued, provided "assurance" that the proposed Consent Decree was "fair, adequate, and reasonable"[49] and was "fully consistent with the statutes being enforced and the public objectives of those statutes."[50] The Parties urged the Court to expeditiously approve the proposed Consent Decree in order "to dramatically and fundamentally reform NOPD to achieve protection of the constitutional rights of all members of the community, improve the safety and security of the people of New Orleans, and increase public confidence in NOPD."[51]

The Court immediately scheduled a status conference with the Parties for July 26, 2012, to discuss the procedure for approving the proposed Consent Decree.[52] At the status conference, the Parties exhorted the Court to move quickly, as the Parties sought to begin reforming the NOPD as soon as possible.[53] To ensure the Court satisfied its duty to determine whether the proposed Consent Decree was in fact "fair, adequate, and

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[48] R. Doc. 2 at p. 8.

[49] R. Doc. 2 at p. 8.

[50] R. Doc. 2 at p. 3.

[51] R. Doc. 2 at p. 9.

[52] R. Doc. 3.

[53] The Court conducted further status conferences with the Parties on August 3, 2012, August 8, 2012, and August 14, 2012. *See* R. Docs. 8, 19, and 25. At these conferences the Parties again emphasized the proposed Consent Decree's importance and that they sought to expeditiously initiate the reform process.

reasonable" before approving it,[54] the Court afforded an opportunity for any interested party to move to intervene in the case pursuant to Rule 24 of the Federal Rules of Civil Procedure. The Court entered an order on July 31, 2013, instructing any such party to file a motion to intervene no later than August 7, 2012, and any party opposing any such motion(s) to intervene to file an opposition to the motion(s) no later than August 14, 2012.[55] The Court's July 31, 2012 Order also set the Parties' joint motion for approval of the proposed Consent Decree for hearing on August 29, 2012, at 10:00 a.m. (the "Fairness Hearing"), in order to assist the Court in determining whether the proposed Consent Decree was "fair, adequate and reasonable."[56] Neither party objected to the Court's proposed

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[54] As the Court stated in its order finding that the proposed Consent Decree was fair, adequate, and reasonable,

> Settlement is to be encouraged. *United States v. Cotton*, 559 F.2d 1326, 1331 (5th 1977). "Because of the consensual nature of [a consent decree], voluntary compliance is rendered more likely . . . . At the same time, the parties . . . minimize costly litigation and adverse publicity and avoid the collateral effects of adjudicated guilt." *United States v. City of Jackson, Miss.*, 519 F.2d 1147, 1152 n.9 (5th Cir. 1975). Indeed, "the value of voluntary compliance is doubly important when it is a public employer that acts, both because of the example its voluntary assumption of responsibility sets and because the remediation of governmental discrimination is of unique importance." *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 290, 106 S.Ct. 1842 (1986) (O'Connor, J., concurring). Nonetheless, "[a] consent decree, although founded on the agreement of the parties, is a judgment." *United States v. City of Miami*, 664 F.2d 435, 439 (5th Cir. 1981) (citing *United States v. Kellum*, 523 F.2d 1284, 1287 (5th Cir. 1975)). Thus, a court "must not merely sign on the line provided by the parties. Even though the decree is predicated on consent of the parties, the judge must not give it perfunctory approval." *Miami*, 664 F.2d at 440-441.
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> When presented with a proposed consent decree, a court must ascertain that the settlement is "fair, adequate and reasonable" and is not the product of "fraud, collusion, or the like." *Id.* at 441; *Cotton*, 559 F.2d at 1330. "The court must also consider the nature of the litigation and the purposes to be served by the decree. If the suit seeks to enforce a statute, the decree must be consistent with the public objectives sought to be attained by Congress." *Miami*, 664 F.2d at 441.

See R. Doc. 159 at pp. 6-7.

[55] R. Doc. 7.

[56] R. Doc. 7.

procedures for conducting the Fairness Hearing. In addition, the Court advised that any person wishing to comment upon the proposed Consent Decree could be permitted to do so by filing a written submission with the Court no later than August 24, 2012, at 4:30 p.m.[57] Public notice of the Court's order and the Fairness Hearing was published in *The Times-Picayune*.[58] The Court also published a copy of the proposed Consent Decree on the website for the U.S. District Court for the Eastern District of Louisiana.

Crescent City Lodge No. 2, Fraternal Order of Police, Inc., and Walter Powers, Jr. in his official capacity as Acting President of FOP ("FOP"); Walter Powers, Jr. in his individual capacity ("Powers"); Community United for Change ("CUC"); the Police Association of New Orleans and Michael Glasser in his official capacity as President of PANO ("PANO"); Michael Glasser in his individual capacity ("Glasser"); the Office of the Independent Police Monitor ("OIPM") and Susan Hutson in her official capacity as Independent Police Monitor for the City of New Orleans ("IPM"); and Susan Hutson in her individual capacity ("Hutson") (collectively, the "Proposed Intervenors"), filed motions to intervene.[59] The City and the United States opposed the motions to intervene.[60] The Court heard oral argument on all four motions on August 20, 2012.[61]

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[57] The Court later continued the Fairness Hearing until September 21, 2012, at 10:00 a.m., because Hurricane Isaac made landfall in Louisiana on August 28, 2012. *See* R. Docs. 54 and 109. The Court published notice that the Fairness Hearing had been rescheduled on the website for the U.S. District Court for the Eastern District of Louisiana.

[58] R. Doc. 42.

[59] FOP and Powers filed their motion to intervene on August 6, 2012. *See* R. Doc. 9. CUC, PANO and Glasser, and OIPM, IPM and Hutson filed their motions to intervene on August 7, 2012. *See* R. Docs. 11, 13 and 15.

[60] R. Docs. 26 and 27.

[61] R. Doc. 37.

Thereafter, the Court denied the Proposed Intervenors' intervention as of right, and declined to allow them to permissively intervene.[62] Specifically, the Court found that CUC, FOP and PANO did not have any legally protectable interests that would be impaired by the proposed Consent Decree, and thus that they were not entitled to intervene as of right.[63] The Court, in its discretion, did not allow them to permissively intervene because the Court determined that it had otherwise provided ample opportunity for them to assist the Court in its consideration of the proposed Consent Decree without prejudicing the Parties or delaying the proceedings. As for Powers and Glasser in their individual capacities, the Court found that they did not demonstrate any legally protectable interest separate from that of FOP and PANO and, for the same reasons, they could not intervene as of right or permissively. With respect to OIPM, the Court determined that the office lacked juridical capacity under Louisiana law and thus was legally incapable of intervening. Finally, because Hutson failed to provide the Court with any argument regarding her individual interest and how any such interest would be impaired as a result of the proposed Consent Decree, the Court determined that she could not intervene as of right or permissively. Accordingly, the Court denied the motions to intervene on August 31, 2012.[64] By the same order, the Court further provided that it would allow the Proposed Intervenors to present

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[62] R. Doc. 102.

[63] With respect to FOP and PANO, organizations seeking to protect and represent the interests of NOPD officers, the Court underscored that "as it is currently written, the proposed Consent Decree in no way modifies the Civil Service system for NOPD officers." R. Doc. 102 at p. 18. Nevertheless, the Court provided that "[i]f changes are proposed to any NOPD policies that may conflict with the Civil Service rules and procedures, FOP and/or PANO may move to intervene for the limited purpose of asserting their Civil Service property rights." *See* R. Doc. 102 at pp. 21-22. The Court recognizes that PANO has reurged its argument that the Court should permit it to intervene in this case. *See* R. Doc. 165. The Court will address PANO's arguments by separate order. FOP and CUC have appealed the Court's order denying their motions to intervene. *See* R. Docs. 118 and 144.

[64] R. Doc. 102.

live testimony and documentary evidence at the Fairness Hearing and would permit the Proposed Intervenors to submit questions for the Court to ask the United States and the City.[65] In addition, the Court created a publicly-accessible website where pleadings, motions, orders, public comments, the City's Request for Proposals to serve as Consent Decree Court Monitor, and copies of the proposed Consent Decree could be downloaded without charge and without the need to access the Eastern District of Louisiana's CM/ECF system.[66]

Prior to the Fairness Hearing, on September 14, 2012, the Parties filed a joint motion to supplement their previously filed motion for approval of the proposed Consent Decree.[67] The Parties attached to the motion a revised copy of the proposed Consent Decree containing a small number of changes to the version of the proposed Consent Decree submitted to the Court on July 24, 2012.[68] The Parties informed the Court that they agreed to the changes reflected in the revised proposed Consent Decree.[69]

On September 21, 2012, the Court conducted the Fairness Hearing.[70] The United States, the City, and the Proposed Intervenors presented six hours of live testimony and

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[65] R. Doc. 102 at p. 25.

[66] *See* http://www.laed.uscourts.gov/Consent/consent.htm. The Court continues to regularly update the website to provide notice of case activity to the public.

[67] R. Doc. 114.

[68] R. Docs. 114-1 and 114-2.

[69] R. Doc. 114.

[70] R. Doc. 132.

documentary evidence to the Court.[71] OIPM presented the live testimony of Hutson and Jasmine Groves, and OIPM's Exhibit 1 was admitted into evidence.[72] FOP presented the live testimony of Sergeant Christopher Landry and Dr. Bart Leger, and FOP's Exhibits 1 through 11 were admitted into evidence.[73] CUC presented the live testimony of W.C. Johnson, Malcolm Suber, Randolph J. Scott, Cynthia Parker and Terry Simpson, and CUC's Exhibits 1 through 8 were admitted into evidence.[74] Counsel for PANO made a presentation to the Court on the organization's behalf. The United States presented the live testimony of Santos Alvarado, Delmy Palencia, Alfred Marshall, Tania Tetlow, and Ira Thomas, and the United States' Exhibits 1 through 7 were admitted into evidence.[75] In addition, 158 public comments from individuals and organizations were submitted for the Court's consideration.[76]

Following the United States' presentation, counsel for the City addressed the Court to underscore that the proposed Consent Decree was "the most extensive and far reaching in this nation's history" and that it would "have a lasting effect in transforming the New

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[71] *See* R. Doc. 132 and its attachments. Roy Austin, Jr., Emily Gunston, Letten, Christy Lopez, Stephen Parker, Corey Sanders, and Jude Volek appeared on behalf of the United States; Erica Beck, Cortizas, Brian Capitelli, Ralph Capitelli, Churita Hansell, and Sharonda Williams ("Williams") appeared on behalf of the City; C. Theodore Alpaugh, III, and Claude A. Schlesinger appeared on behalf of FOP and Powers; Eric J. Hessler appeared on behalf of PANO and Glasser; William P. Quigley appeared on behalf of CUC; and John S. Williams appeared on behalf of OIPM and Hutson.

[72] R. Docs. 132-1 to 132-2.

[73] R. Docs. 132-3 to 132-16.

[74] R. Docs. 132-17 to 132-24, and 132-37. Exhibits 3 and 6 were admitted into evidence with redactions agreed to by counsel for the City and CUC. Exhibit 8 was admitted as a proffer and ordered placed under seal. R. Doc. 132 at p. 2.

[75] R. Docs. 132-25 to 132-32.

[76] *See* R. Docs. 58 to 100, 105-106, 111-112, 141 and 145. The comments provided by CUC, PANO, FOP and OIPM are filed in the record at R. Docs. 66, 85, 86 and 141, and 92, respectively.

Orleans Police Department and make [the] city a safer place to live, work, and visit."[77] The City then introduced Exhibits A, B, and C and the exhibits were admitted into evidence.[78] The City also presented the testimony of Chief Serpas, who stated he felt "very comfortable that [the proposed Consent Decree was] fair, reasonable, and adequate."[79] "Negotiating is difficult and not everybody gets their way," Chief Serpas observed.[80] "But in my impression having been a police chief . . . for 12 years," he continued, the proposed Consent Decree "is a document that holds [the NOPD] to the standards [the NOPD] should [observe] and it holds [the NOPD] to the [standards] the community" expects.[81] Chief Serpas urged the Court to approve the proposed Consent Decree because, in his opinion, what the NOPD "needs more than anything and what this community needs more than anything is the independence of [the] [C]ourt and the independence of [the Court's] monitor who says to the people of New Orleans this department has improved."[82] Following Chief Serpas' testimony, the Court held the hearing open in the event the Court concluded it needed additional evidence or testimony to determine whether the proposed Consent Decree was fair, adequate, and reasonable.[83]

In the months following the Fairness Hearing, the Court reviewed hundreds of pages

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[77] R. Doc. 208 at p. 181.

[78] R. Docs. 132-33 to 132-36.

[79] R. Doc. 208 at p. 193.

[80] R. Doc. 208 at p. 193.

[81] R. Doc. 208 at p. 193.

[82] R. Doc. 208 at p. 198.

[83] R. Doc. 208 at p. 201.

of public comments regarding the proposed Consent Decree.[84] The Court conducted status conferences with the Parties to discuss concerns raised in the public comments.[85] The Parties assured the Court that the concerns expressed would be given due consideration as policies and procedures were developed and implemented.

After carefully considering the proposed Consent Decree,[86] the comments received from the public and the Proposed Intervenors, the testimony and evidence presented at the September 21, 2012 Fairness Hearing, the Parties' representations, and the fact that the City committed adequate funding to implement the proposed Consent Decree, the Court found that the proposed Consent Decree, as amended, was fair, adequate and reasonable, and was not the product of fraud, collusion, or the like.[87]

At a January 11, 2013 status conference, the Court informed[88] the Parties that it would approve the proposed Consent Decree filed by the Parties on July 24, 2012,[89] as amended by changes shown on the Parties' Errata Sheet filed on September 14, 2012 ("Consent Decree),[90] and would enter the Consent Decree as a judgment of the Court.[91] At that status conference, the City orally informed the Court that it wished to withdraw from

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[84] *See* R. Docs. 58 to 100, 105-106, 111-112, 141 and 145.

[85] *See* R. Docs. 139, 152, 153, and 161.

[86] The Court reviewed and considered both the July 24, 2012 and September 14, 2012 versions of the proposed Consent Decree.

[87] R. Doc. 159.

[88] R. Doc. 161.

[89] R. Doc. 2-1.

[90] R. Doc. 159.

[91] R. Doc. 160.

the Consent Decree and that it intended to file a motion seeking relief from judgment under the Federal Rules of Civil Procedure.[92] Following the status conference, the Court formally approved the Consent Decree and entered it as a judgment of the Court.[93] In its order explaining the Court's reasons for approving the Consent Decree and its minute entry memorializing the status conference, the Court noted the City's objection and established a procedure allowing the City to file a written motion no later than Friday, January 31, 2013.[94] The City timely filed its motion to vacate[95] and the motion is now before the Court for decision.

Law and Analysis

The City moves to vacate the Consent Decree pursuant to Rule 60(b) on five grounds. First, the City complains that the DOJ waited to disclose the costs to fix the Orleans Parish Prison ("OPP")[96] until after the Parties signed the Consent Decree at issue in this case. Second, former assistant U.S. Attorney Perricone served as the DOJ's local "point person" in New Orleans and participated in negotiations for the Consent Decree. According to the City, Perricone's surreptitious commenting on nola.com[97] articles regarding the Mayor, Chief Serpas, the proposed Consent Decree, the need for a Court-appointed Monitor,

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[92] R. Doc. 161.

[93] R. Doc. 160.

[94] R. Doc. 159 at p. 9.

[95] R. Doc. 175.

[96] Litigation regarding whether the conditions at OPP are constitutionally sufficient is also pending in the Eastern District of Louisiana. *See Lashawn Jones, et al. v. Marlin Gusman, et al.*, Civ. Action No. 12-859 (E.D. La.) ("*Jones*"). *Jones* is allotted to another section of this Court.

[97] This news website, accessible at www.nola.com, is affiliated with *The Times-Picayune* newspaper of New Orleans.

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secondary employment, and the need for the DOJ to participate in the reform process poisoned public opinion against the NOPD and the Consent Decree. Third, the City contends that the Consent Decree's terms regarding secondary employment may run afoul of the Fair Labor Standards Act of 1938 ("FLSA," 29 U.S.C. § 201 *et seq.*) and expose the City to legal liability for FLSA violations. Fourth, the City maintains that, under Louisiana law, the Consent Decree is not a valid contract because the City withdrew its consent to the agreement and any prior consent is vitiated by error, duress and/or fraud. Fifth, the City complains that the Court "failed to follow the rules of civil procedure and evidence in entering its order approving the proposed Consent Decree."[98] The Court examines each argument in turn.

Rule 60(b) provides that a court, "[o]n motion and just terms," may "relieve a party or its legal representative from a final judgment, order, or proceeding" due to

> (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b)(1)-(6). The purpose of Rule 60(b) "is to balance the principle of finality of a judgment with the interest of the court in seeing that justice is done in light of all the facts." *Hesling v. CSX Transp., Inc.*, 396 F.3d 632, 638 (5th Cir. 2005). As the moving party, the City has the burden to show why the Court should vacate the Consent Decree. *League of United Latin Am. Citizens, Dist. 19 v. City of Boerne*, 659 F.3d 421, 438

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[98] R. Doc. 175-1 at p. 27.

(5th Cir. 2011). The determination of whether the City has satisfied its burden lies within this Court's sound discretion. *Rocha v. Thaler*, 619 F.3d 387, 400 (5th Cir. 2010).

Granting relief under Rule 60 is "an extraordinary remedy which should be used sparingly." *Templet v. HydroChem Inc.*, 367 F.3d 473, 479 (5th Cir. 2004); *see also Pease v. Pakhoed*, 980 F.2d 995, 998 (5th Cir. 1993) ("Courts are disinclined to disturb judgments under the aegis of Rule 60(b)."). Consequently, the "scope of relief that may be obtained under Rule 60(b) is strictly limited." 12 Moore's Federal Practice § 60.02 (3d ed. 2010). A motion to vacate a judgment is "not the proper vehicle for rehashing evidence, legal theories, or arguments that could have been offered or raised before the entry of judgment." *Templet*, 367 F.3d at 478.

A consent decree is a final judgment, even though it is a consensual judgment resulting from an agreement between the parties, rather than one rendered on the merits following trial. *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 391 (1992). As a result, a consent decree is still "subject to the rules generally applicable to other judgments and decrees," including Rule 60. *Rufo*, 502 U.S. at 378. Thus, as with judgments obtained after adversarial proceedings that proceeded through trial, policy considerations do not favor setting aside a consensual judgment on a Rule 60(b) motion.[99] 12 Moore's Federal Practice § 60.22 (3d ed. 2013).

In order to obtain relief from a judgment under Rule 60(b), the movant must show

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[99] By contrast, many circuits, including the Fifth Circuit, are more liberal in setting aside default judgments pursuant to Rule 60 because a judgment on the merits is preferred to a judgment obtained due to a default. *See, e.g.*, *Harrell v. DCS Equip. Leasing Corp.*, 951 F.2d 1453, 1459 (5th Cir. 1992) ("This court applies Rule 60(b) 'most liberally to judgments in default . . . [because] . . . [t]runcated proceedings of this sort are not favored.' ") (quoting *Seven Elves, Inc. v. Eskenazi*, 635 F.2d 396, 403 (5th Cir. 1981)) (brackets and ellipses in original).

he has a meritorious claim or defense such that the presiding court is convinced that vacating the judgment, and retrying the matter, is not an empty exercise. *Pease*, 980 F.2d at 998 ("It is well established that Rule 60(b) requires the movant to demonstrate that he possesses a meritorious cause of action."). However, "[t]he requirement that a [moving] party . . . must show a 'meritorious' claim or defense . . . does not mean that the moving party must show that he or she is likely to prevail." 12 Moore's Federal Practice § 60.24 (3d ed. 2010). Rather, "the movant must make allegations that, *if established at trial*, would constitute a valid claim or defense." 12 Moore's Federal Practice § 60.24 (emphasis in original). Consequently, conclusory statements that a claim or defense is meritorious are insufficient. *Pease*, 980 F.2d at 998; 12 Moore's Federal Practice § 60.24.

I. Unrelated Litigation Regarding OPP: Relief Requested Under Rules 60(b)(2), (5), and (6)

First, the City argues the Court should vacate the Consent Decree due to developments in unrelated litigation regarding OPP, the jail facility serving Orleans Parish.[100] Marlin N. Gusman, Sheriff of Orleans Parish ("Sheriff Gusman" or "the Sheriff"), is tasked with overseeing OPP.[101] On April 2, 2012, a putative class of men, women and adolescents incarcerated at OPP filed a complaint[102] in the U.S. District Court for the

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[100] New Orleans is located in Orleans Parish. Pursuant to Louisiana law, the City has certain obligations to fund OPP. The exact scope and nature of the City's legal duties regarding OPP is at issue in *Jones*. *See infra* pp. 23-25

[101] Pursuant to Louisiana law, the Sheriff is the "keeper of the public jail of [Orleans] [P]arish, and shall by all lawful means preserve the peace and apprehend all disturbers thereof, and other public offenders." La. Rev. Stat. § 15:704.

[102] The *Jones* plaintiffs allege that

> [i]ndividuals housed at the jail are at imminent risk of serious harm. Rapes, sexual assaults, and beatings are common place throughout the facility. Violence regularly occurs at the hands of sheriffs' deputies, as well as other prisoners. The facility is full of homemade knives, or "shanks." People living with serious mental illnesses languish without treatment, left

Eastern District of Louisiana alleging that they are subjected to abusive and unconstitutional conditions of confinement at OPP ("*Jones*").[103] Neither the United States nor the City was named as a party in the *Jones* plaintiffs' original complaint.[104] The *Jones* Court permitted the United States to intervene as a party on September 25, 2012, and granted Sheriff Gusman's motion for leave to file a third-party complaint against the City on October 1, 2012.[105] The Sheriff's third-party complaint alleges that the City "is responsible for funding jail facilities of the Orleans Parish Sheriff's Office pursuant to various provisions of Louisiana law."[106] To "the extent that the Court should conclude that the Sheriff must provide prospective relief in the form of additional staffing, training, care, treatment or other services to Orleans Parish inmates which will necessitate funding over and above that currently provided by the City of New Orleans," the Sheriff's third-party complaint argues, "judgment should also be entered in favor of the Sheriff ordering the City

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> vulnerable to physical and sexual abuse. These conditions have created a public safety crisis that affects the entire City of New Orleans. The jail is oversized, understaffed, and Sheriff Gusman's classification and security policies and practices are dangerously deficient. The men and women housed there are at constant risk of physical harm due to the presence of contraband and weapons in the facility, which, coupled with the absence of meaningful mental health services, places the lives of people incarcerated there in immediate jeopardy.

Jones, R. Doc. 1 at p. 2.

[103] With respect to facts the Court has not personally observed while presiding over this case, Rule 201 of the Federal Rules of Evidence permits a court, on its own volition, to take judicial notice of "a fact that is not subject to reasonable dispute." Fed. R. Evid. 201(b), (c)(1). According to Fifth Circuit precedent, "a court may take judicial notice of a 'document filed in another court . . . to establish the fact of such litigation and related filings.' " *Taylor v. Charter Med. Corp.*, 162 F.3d 827, 830 (5th Cir. 1998) (quoting *Liberty Mut. Ins. Co. v. Rotches Pork Packers, Inc.*, 969 F.2d 1384, 1388 (2d Cir. 1992)) (ellipses in original). Given the City's repeated references to the OPP Consent Decree, the Court must take judicial notice of the pleadings filed in *Jones* for the limited purpose of tracing the procedural history of the OPP litigation *vis-à-vis* the procedural history of this litigation.

[104] *Jones*, R. Doc. 1.

[105] *Jones*, R. Docs. 69, 70, 74, 75, and 76.

[106] *Jones*, R. Docs. 75 at p. 3 and 76 at p. 3.

of New Orleans to pay the Sheriff the full cost . . . of providing such prospective relief."[107]

Sheriff Gusman, the United States, and the *Jones* plaintiffs reached a settlement in December 2012, which they memorialized in a proposed consent decree (the "OPP Consent Decree")[108] and presented to the court for approval via joint motion on December 11, 2012.[109] The City[110] contends it "was not provided with the [United States'] estimate of the cost of implementing the OPP Consent Decree until one month after the City signed" the NOPD Consent Decree, even though the United States allegedly had this information prior to July 24, 2012.[111] Specifically, the City alleges that the United States committed a "glaring misrepresentation" by withholding its "assessment" that "the City would be required to pay $34.5 million dollars[112] to fund the OPP consent decree."[113] Had it "known in July 2012 that

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[107] *Jones*, R. Docs. 75 at p. 3 and 76 at p. 3.

[108] For the sake of clarity, throughout the remainder of this order where it is necessary to distinguish between the OPP Consent Decree at issue in *Jones* and the NOPD Consent Decree at issue in this case, the Court uses the terms "OPP Consent Decree" and "NOPD Consent Decree," respectively. Unless the Court indicates otherwise, any generic reference to the "Consent Decree" means the NOPD Consent Decree.

[109] *Jones*, R. Docs. 101 and 183. In accordance with a court order directing the City to respond to this motion, the City argued that, although "it would not be appropriate for the City to comment in detail on the pending motion[]" because plaintiffs had not alleged that any action by the City had caused the supposed unconstitutional conditions at OPP, "applicable Louisiana statutes are clear that it is the Sheriff's responsibility (and not the City['s]) to ensure that Orleans Parish Prison is operated and maintained in a constitutional manner." *Jones*, R. Doc. 109 at pp. 6 and 14.

[110] The Court recognizes that the City is not a party to the OPP Consent Decree in *Jones*. *See Jones*, R. Docs. 101 and 183.

[111] R. Doc. 175-1 at p. 19.

[112] The City has not drawn the Court's attention to any evidence indicating when and by what medium the United States provided this estimate to the City. The United States maintains that this $34.5 million figure is derived from an August 22, 2012 e-mail sent by Laura Coon ("Coon"), a DOJ attorney, to Cortizas and Williams, attorneys for the City. The e-mail states in pertinent part:

> Good morning Richard [Cortizas] and Sharonda [Williams]:
>
> To start the conversation regarding a reasonable compromise dollar amount for FY13 City funding of OPP pending staffing analyses by the monitor called for by the [proposed OPP

a few months later the DOJ would be seeking at least an additional $12.5 million dollars" more than the 2012 OPP budget, the City maintains, "it would not have signed the NOPD consent decree."[114] As a result, the City asserts that the Court should vacate the NOPD Consent Decree due to "newly discovered evidence, changed circumstances, [or] any other reason that justifies relief,"[115] because it is "totally unworkable" for the City to pay the cost of implementing the NOPD and OPP consent decrees at the same time.[116]

A. Unrelated Litigation Regarding OPP: Rule 60(b)(2)

Rule 60(b)(2) permits a Court to grant relief due to " newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)." The new evidence actually must be relevant to the matter the Court is being asked to reconsider. Indeed, the movant must demonstrate he "exercised due

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> Consent Decree], what about $34.5 million? That is in between what the City paid this year pre-consent decree ($22.5 M) and what the Sheriff is requesting post-consent decree ($45 M)."

See R. Docs. 184 at p. 30 and 184-34 at p. 2. The United States maintains that it "mentioned $34.5 million not as a cost estimate, but rather as a useful starting point for negotiations over funding for OPP given that the figure was the midpoint between OPP's $22 million operating budget in 2012 and the OPP Sheriff's request for $45 million for fiscal year 2013." R. Doc. 184 at p. 30. Consequently, according to the United States "[t]here is no justification for the City's inexplicable claim that the United States withheld any cost information from the City." R. Doc. 184 at p. 30. The Court observes that even assuming *arguendo* the United States withheld its cost estimate from the City, the City represents that it was in possession of this information "one month" after it signed the Consent Decree on July 24, 2012. R. Doc. 175-1 at p. 19. Thus, the City had this knowledge at the time it continued to urge the Court, via joint motion with the United States, to enter the Consent Decree. *See* R. Doc. 114. The City only reversed course *several months after* it allegedly learned of the OPP Consent Decree's purported $34.5 million price tag.

[113] R. Doc. 175-1 at p. 29.

[114] R. Doc. 175-1 at p. 5.

[115] The United States has interpreted the City's arguments regarding OPP as invoking Rule 60(b)(1), (2), and (5). R. Doc. 184 at p. 32. However, as the Court reads the City's motion, the City appears to be seeking relief pursuant to Rule 60(b)(2), (5), and (6). As a result, the Court has analyzed the City's arguments regarding OPP under Rule 60(b)(2), (5), and (6). The Court notes that the result would not change if the Court also analyzed the City's arguments regarding OPP under Rule 60(b)(1).

[116] R. Doc. 175-1 at pp. 18 (capitalization removed) and 20.

diligence in obtaining the information; and (2) that the evidence is material and controlling and clearly would have produced a different result if present before the original judgment." *Hesling*, 396 F.3d at 639 (internal quotation marks and citation omitted). These requirements must be strictly met for relief to be granted. *See Ag Pro, Inc. v. Sakraida*, 512 F.2d 141, 143 (5th Cir. 1975), *judgment rev'd on other grounds*, 425 U.S. 273 (1976).

The City's argument that it had no knowledge of the potential cost ramifications for the OPP Consent Decree at the time it signed the NOPD Consent Decree is patently false. At least as early as July 19, 2012, several days before the City signed the NOPD Consent Decree on July 24, 2012, the City was on notice that the Sheriff intended to request "$22.5 million of 'new' estimated costs" that would "bring[] the total budget [for OPP] to $45 million" for 2013.[117] Thus, this evidence regarding the NOPD Consent Decree is not "newly discovered" within the meaning of Rule 60(b)(2). In addition, even if these additional costs were "newly discovered," the City has not provided the Court with any evidence that, despite acting with due diligence, it was unable to obtain such information prior to signing the NOPD Consent Decree. *Hesling*, 396 F.3d at 639. Furthermore, while the Court understands the City's argument that the ultimate cost of the OPP Consent Decree is relevant to this case in a general sense because the City has finite resources, *Jones* is an entirely separate proceeding from this case. Finally, as the Court has previously noted, "inadequate resources can never be an adequate justification for depriving any person of his constitutional rights." *Udey v. Kastner*, 805 F.2d 1218, 1220 (5th Cir. 1986). Thus, in

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[117] *See* R. Doc. 184-10. This document is an e-mail from the Sheriff's counsel to Coon and Williams. The United States attached the e-mail as an exhibit to its memorandum in opposition to the City's motion. The Court observes that the City's reply memorandum does not address this exhibit whatsoever.

the context of this case, the outcome of the *Jones* litigation is not "material and controlling" such that this Court should grant relief under Rule 60(b)(2). *Hesling*, 396 F.3d at 639.

B. Unrelated Litigation Regarding OPP: Rule 60(b)(5)

The City further relies on the U.S. Supreme Court's decision in *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367 (1992), to argue that the Court should vacate the NOPD Consent Decree pursuant to Rule 60(b)(5) due to changed circumstances because the City was not previously aware of the OPP Consent Decree's price tag.[118] Rule 60(b)(5) permits a court to grant relief where "the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable." Litigation in *Rufo* began in 1971 "when inmates sued the Suffolk County sheriff, the Commissioner of Correction for the State of Massachusetts, the mayor of Boston, and nine city councilors, claiming that inmates not yet convicted of the crimes charged against them were being held under unconstitutional conditions at what was then the Suffolk County Jail." *Rufo*, 502 U.S. at 371. The jail facility, originally erected in 1848, confined inmates in large tiers of barred cells and was a "relic of the past" that had to replaced. *Inmates of Suffolk Cnty. Jail v. Eisenstadt*, 360 F. Supp. 676, 687 (D. Mass. 1973). In 1979, the parties entered into a consent decree mandating the construction of a new jail facility containing 309 "[s]ingle occupancy rooms," a design which "was based on a projected decline in inmate population." *Rufo*, 502 U.S. at 375-76. Construction of the new facility finally began in 1987, and by that time the county's growing inmate population necessitated more cells to accommodate the additional prisoners. *Rufo*, 502 U.S. at 376. In 1989, while the jail was still under construction, the Suffolk County sheriff moved to

[118] R. Doc. 175-1 at pp. 18-19.

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modify the consent decree due to changed circumstances to permit double-bunking to increase the jail's capacity; the district court refused to grant the request. *Rufo*, 502 U.S. at 376. The U.S. Supreme Court reversed, holding that modification of consent decrees in prison reform litigation may be appropriate pursuant to Rule 60(b)(5) when the moving party can "establish that a significant change in facts or law warrants revision of the decree and that the proposed modification is suitably tailored to the changed circumstance." *Rufo*, 502 U.S. at 392.

Consequently, following *Rufo*, the moving party seeking to modify a consent decree pursuant to Rule 60(b)(5) must "show that the change in circumstance is significant, and not merely that it is no longer convenient to live with the decree's terms." *City of Boerne*, 659 F.3d at 437 (citation omitted). If the City meets this standard by showing significantly changed factual or legal circumstances, it must then demonstrate that "the proposed modification is suitably tailored to the changed circumstance." *Rufo*, 502 U.S. at 383.

The Court, given the facts of this case, does not find the City is entitled to any relief based on the standard set forth in *Rufo*. Just six months, not several years, have passed between the date the City signed and presented the NOPD Consent Decree to the Court and the date the City filed its motion to vacate. The City has not demonstrated that any factual or legal circumstances have "significantly changed" such that enforcing the Consent Decree is no longer equitable. No evidence is before the Court showing the NOPD Consent Decree at issue here is *itself* more expensive to implement now compared to when it was signed. Moreover, even if the costs of the unrelated OPP Consent Decree were a factor the Court should consider, the City has failed to come forward with any evidence contradicting the United States' proof that the City was on notice of the OPP Consent Decree's cost on July

19, 2012. As a result, at most, the City's argument regarding the cost of the OPP Consent Decree amounts to a claim that enforcing the Consent Decree as written is no longer convenient because the City anticipates that, at some undetermined point in the future, the City will incur additional financial liability. Finally, the Court observes that *Rufo* permitted *modification* of a consent decree. By contrast, the City urges the Court to vacate the NOPD Consent Decree. *Rufo* and its progeny do not mandate the relief requested.

C. Unrelated Litigation Regarding OPP: Rule 60(b)(6)

Next, the City submits that the Court should vacate the NOPD Consent Decree due to the United States' allegedly belated disclosures regarding the OPP Consent Decree pursuant to Rule 60(b)(6). This subsection, which permits a court to grant a motion to vacate for "any other reason that justifies relief," is a "catchall" that has been referred to as a court's "grand reservoir of equitable power to do justice." *Rocha*, 619 F.3d at 400 (quoting *Williams v. Thaler*, 602 F.3d 291, 311 (5th Cir. 2010)). Nevertheless, a court may invoke Rule 60(b)(6) only for "any other reason than those contained in the preceding five enumerated grounds" and only in "extraordinary circumstances." *Rocha*, 619 F.3d at 400. As the Court has described above, the City was aware of the Sheriff's demands with respect to the OPP Consent Decree when it entered into, and repeatedly urged this Court to approve, the NOPD Consent Decree. The City's current displeasure regarding the OPP Consent Decree does not constitute extraordinary circumstances sufficient for relief pursuant to Rule 60(b)(6).

II. Perricone: Relief Requested Under Rule 60(b)(3)

Second, the City argues that the Court should vacate the Consent Decree because Perricone was a member of the DOJ team that negotiated the agreement. Perricone's

involvement, according to the City, "undermined the integrity and confidentiality of the entire negotiation process leading to the Consent Decree" and ultimately constitutes misconduct within the meaning of Rule 60(b)(3).[119] The City concludes that "[s]uch conduct cannot be overlooked and warrants a grant of the City's Motion."[120]

In March 2012, Perricone, a former high-ranking assistant U.S. Attorney for the Eastern District of Louisiana, was unmasked as the author of comments posted on nola.com under the handle "Henry L. Mencken1951."[121] Perricone's prolific nola.com comments are now a matter of general public knowledge in the Eastern District of Louisiana and have affected many criminal investigations and proceedings, including, most notably, the "Danziger Bridge" case.[122] Perricone publically admitted he was Henry L. Mencken1951 and resigned on March 20, 2012.[123] Other nola.com identities eventually linked to Perricone after March 2012 include "legacyusa," "dramatis personae" and "campstblue."[124] The United States does not dispute that Perricone authored the statements the City has submitted for the Court's review.

The City asserts that Perricone, who applied for the position of NOPD Superintendent in 2010 but was not selected, had a "hidden agenda" to "poison the well"

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[119] R. Doc. 175-1 at p. 17.

[120] R. Doc. 175-1 at p. 18.

[121] R. Doc. 175-3 at pp. 1-10.

[122] R. Doc. 175-3 at pp. 1-10; *see also United States of America v. Kenneth Bowen, et al.*, Criminal Action No. 10-204 (E.D. La.) ("*Bowen*"), R. Doc. 1070.

[123] R. Doc. 175-3 at pp. 1-10; *see also Bowen*, R. Doc. 1070 at p. 3.

[124] R. Doc. 175-3 at pp. 1-10; *see also Bowen*, R. Doc. 1070.

of public opinion against the NOPD.[125] The City notes that Perricone posted about his desire to become NOPD Superintendent,[126] Chief Serpas' credentials,[127] his dislike of paid details,[128] and his belief that federal supervision of the NOPD was necessary.[129] Perricone also participated in the DOJ's 2010 investigation of the NOPD and, according to the City, insisted on including provisions in the Consent Decree causing a wholesale overhaul of the paid detail system.[130] The City argues that Perricone's "relentless [posting on nola.com] against Superintendent Serpas and the NOPD, which ran from the transitional period of the Landrieu administration in February 2010 until he was unmasked in March 2012, was clearly aimed at prejudicing the initial DOJ investigation of the NOPD as well as the entire Consent Decree process."[131] The United States responds that the City has not demonstrated how Perricone's involvement in fact prejudiced the City during negotiations. The United States also underscores that Perricone's characterization of the paid detail system was

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[125] R. Doc. 175-1 at pp. 6-7.

[126] *See, e.g.*, R. Doc. 175-1 at p. 6 ("MITCH: GET LETTEN OR ONE OF HIS BOYS OR GIRLS TO BE THE NEXT CHIEF!!!!!!" – legacyusa, March 9, 2010. at 4:13 p.m.).

[127] *See, e.g.*, R. Doc. 175-1 at p. 7 ("Ronal Serpas and Mitch Landrieu are the Les Miles of city executives. Alll [sic] they can do is TALK, TALK, TALK TALK. Whenever it gets bad, they run to the camera and microphones. TALK, TALK, TALK. This the political solution to a massive social problem they are incapable of solving. NO MORE NEWS CONFERENCES. Get the job done!!! ACT!!!" – Henry L. Mencken1951, January 14, 2012, 8:22 a.m.).

[128] *See, e.g.*, R. Doc. 175-1 at p. 8 ("MORE DETAILS!!!!!! You want nice cops—you have to pay." – legacyusa, March 9, 2010, at 7:14 a.m.).

[129] *See, e.g.*, R. Doc. 175-1 at p. 9 ("While these heros [sic] are making promises, where is the consent decree they promised? You can't have reform without the Justice Department in this city. I financially support Mitch, but I beginning to have second thoughts. SHUT UP AND PRODUCE!!!!" – November 22, 2011.).

[130] R. Doc. 175-1 at pp. 17-18. Perricone, the City insists, is the source for the line in the DOJ's report labeling paid details as the "aorta of corruption" within the NOPD. R. Doc. 175-1 at p. 18. The DOJ does not dispute this assertion. R. Doc. 184 at p. 12.

[131] R. Doc. 175-1 at p. 18.

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included in the DOJ's report "because it was entirely consistent with the facts regarding paid details that were confirmed by numerous members of the public, NOPD officers, local judges and federal law enforcement officials during the Civil Rights Division's extensive investigation of NOPD."[132]

Pursuant to Rule 60(b)(3), a court may relieve a party from a final judgment due to fraud, misrepresentation, or other misconduct of an adverse party. A party making a Rule 60(b)(3) motion must establish, by clear and convincing evidence, "(1) that the adverse party engaged in fraud or other misconduct, and (2) that this misconduct prevented the moving party from fully and fairly presenting his case."[133] *Hesling*, 396 F.3d at 641 (citation omitted). "Rule 60(b)(3) is aimed at judgments which were unfairly obtained, not at those which are factually incorrect. The rule is remedial and should be liberally construed." *Hesling*, 396 F.3d at 641 (internal citations and quotation marks omitted).

To satisfy its burden under Rule 60(b)(3), the City argues that Perricone's nola.com comments prevented the City from fully and fairly presenting its case. That is, because the City did not know of Perricone's clandestine behavior,[134] the United States unfairly obtained the City's agreement to enter into the Consent Decree and that, as a result, the City was unable to negotiate terms favorable to the City, especially with respect to paid details. Perricone's identity as Henry L. Mencken1951 was publically revealed before the end of

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[132] R. Doc. 184 at p. 12.

[133] Because the Court finds, as explained *infra* at pp.33-34, the City has failed to demonstrate how Perricone's alleged misconduct prevented the City from fully and fairly presenting its case, there is no need for the Court to determine whether Perricone's behavior is misconduct imputed to the United States.

[134] Failing to disclose information may be a basis for a Rule 60(b)(3) motion. *See Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1339 (1978) (holding that a plaintiff could obtain relief under Rule 60(b)(3) when a defendant failed to respond to an interrogatory even though the defendant had knowledge it had possession of a document arguably responsive to the interrogatory).

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March 2012, Perricone immediately resigned from the U.S. Attorney's Office and, at the same time, he was removed from the DOJ team negotiating the Consent Decree. The City, fully aware that Perricone was Henry L. Mencken1951, nevertheless moved forward with the proposed Consent Decree rather than abandoning its collaboration with the DOJ. After three additional months of negotiation following Perricone's resignation, the Parties presented a proposed Consent Decree to the Court. Despite having actual notice of the nature of Perricone's online activities, at least to the extent he used the moniker Henry L. Mencken1951 through March 2012, the City knowingly continued to negotiate the terms of the Consent Decree and ultimately pressed the Court for its approval. The City's behavior belies its assertion that Perricone's comments enabled the United States to unfairly obtain the City's agreement to enter into the Consent Decree.

Furthermore, the City has not identified any language Perricone or any other DOJ attorney allegedly inserted into the Consent Decree – either before or after March 2012 – that would have been omitted but for Perricone's involvement in the negotiation process. Indeed, with respect to terms regarding paid details specifically, both the Mayor and Chief Serpas have acknowledged that the paid detail system contributes to the NOPD's longstanding problems and is in great need of reform.[135] Likewise, the DOJ's March 16, 2011 report includes a substantial discussion of the problems associated with paid details. The City itself represented to the Court, well after Perricone's identity as Henry L. Mencken1951 was revealed,[136] that the report contains a "more than adequate factual record

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[135] *See supra* pp. 7-8

[136] The City repeatedly points to Perricone's "aorta of corruption" phrase in the DOJ's report, *see* R. Doc. 1-1 at p. 17, as evidence that Perricone helped author, and thereby biased, the report. Perricone, as Henry L. Mencken1951, did in fact use this phrase. *See, e.g.*, nola.com comment at R. Doc. 175-3 at p. 167

supporting the legitimacy" of the Consent Decree's terms.[137]

Finally, the City's assertion that it did not learn Perricone was posting under the name legacyusa until some time in December 2012 or January 2013 is also not dispositive.[138] While the City claims it did not know the full extent of legacyusa's vitriol toward the City, the NOPD, the Mayor, and Chief Serpas prior to the end of 2012,[139] the City still cannot demonstrate how Perricone's legacyusa comments allowed the United States to unfairly obtain the City's assent or identify what, if any, terms of would have been omitted or substantially changed but for Perricone's involvement. In sum, the City has failed to satisfy its burden under Rule 60(b)(3) to prove by clear and convincing evidence that Perricone's antics[140] prevented it from fully and fairly presenting its case.

III. Secondary Employment and the FLSA: Relief Requested Under Rule 60(b)(1)

Third, the City argues that the Consent Decree provisions regarding paid details –

("When the DOJ reported in March that the detail system inside the NOPD was the aorta of corruption, I thought it was hyperbole. But not anymore. Since then, we have learned how endemic the outside detail system worked and operated inside our police department. . . . The DOJ can't get here soon enough." – Henry L. Mencken1951, August 27, 2011, at 10:16 a.m.). Nevertheless, the Court observes that Perricone had been unmasked as Henry L. Mencken1951 well before the City relied on the DOJ's report to urge the Court to approve the NOPD Consent Decree.

[137] R. Docs. 2 at p. 5 and 2-1 at pp. 6-7.

[138] The Court observes it became a matter of general public knowledge in the Eastern District of Louisiana in August 2012 that Perricone was posting under the name "legacyusa" due to an extensive confessional interview Perricone gave to *New Orleans Magazine*. That interview was memorialized in the article "Sal Perricone's Next Chapter," which was published in the magazine's August 1, 2012 edition. During the interview, Perricone confirmed that he commented on nola.com under several monikers in addition to Henry L. Mencken1951 – including legacyusa. *See* R. Doc. 175-3 at pp. 3-10; *see also Bowen*, R. Doc. 1070 at pp. 10-11.

[139] R. Doc. 202 at pp. 8-9. The City argues it did not know about Perricone's writings as legacyusa because legacyusa's comments were not retrievable via nola.com until the end of 2012.

[140] Again, the Court declines to determine whether Perricone's misconduct may be imputed to the United States because such determination is unnecessary. The Court underscores it in no way condones Perricone's behavior.

referred to as "secondary employment" in the Consent Decree – violate the FLSA and any belief to the contrary is "mistaken" within the meaning of Rule 60(b)(1). The City's reasoning as to why the Consent Decree violates the FLSA is as follows: the Consent Decree requires the City to establish an independent Secondary Employment Coordinating Office ("Coordinating Office") to manage and supervise officers' secondary employment; the Coordinating Office's vast control over officers' off-duty hours will cause the City to be the officers' employer for such off-duty hours; the FLSA obligates an employer to pay overtime for hours worked above a certain threshold; the City refuses to pay officers FLSA-mandated overtime for hours worked for secondary employment; thus, the Consent Decree orders the City to violate the FLSA. In essence, the City argues that it was incorrect, at the time it signed the NOPD Consent Decree, in believing the secondary employment provisions complied with the FLSA. As a result, the City further argues that the Court, relying on the Parties' assertions that their agreement was legally sound, thus erroneously entered the Consent Decree as its own judgment.

In the Fifth Circuit, Rule 60(b)(1) "may be invoked for the correction of judicial error, but only to rectify an obvious error of law, apparent on the record. Thus, it may be employed when the judgment obviously conflicts with a clear statutory mandate or when the judicial error involves a fundamental misconception of the law." *Hill v. McDermott, Inc.*, 827 F.2d 1040, 1043 (5th Cir. 1987) (footnotes and internal quotation marks omitted). Nevertheless, the error to be addressed must be one that is so obvious that the trial judge can easily recognize and correct it, thereby making an appeal an otherwise waste of appellate resources. *Hill*, 827 F.2d at 1043 ("[A] Rule 60(b)(1) motion filed within the time for appeal saves the parties and the court the time and expense of a needless appeal.");

Alvestad v. Monsanto Co., 671 F.2d 908, 912-13 (5th Cir. 1982). The Fifth Circuit is "insistent that Rule 60(b) is not a substitute for the ordinary method of redressing judicial error – appeal." *Alvestad*, 671 F.2d at 912.

The City relies on *Ibarra v. Texas Employment Commission*, 823 F.2d 873 (5th Cir. 1987) as authority for the Court to vacate the Consent Decree under Rule 60(b)(1) due to mistake. In *Ibarra*, the Texas Employment Commission ("TEC") entered into a consent decree with a plaintiff class of aliens defining which categories of aliens were "permanently residing in the United States under color of law" and thus were eligible to receive unemployment compensation from the TEC pursuant to the Federal Unemployment Tax Act ("FUTA"). *Ibarra*, 823 F.2d at 874. During negotiations of such consent decree, the TEC sought to ensure the agreement complied with the U.S. Department of Labor's (the "DOL") interpretation of the FUTA so that Texas' employment security program would be consistent with federal law. The TEC, relying on the DOL's interpretation of the FUTA, agreed to the consent decree's terms. However, the DOL later changed its position, informed the TEC that it considered the consent decree inconsistent with federal law, and warned that it might institute compliance proceedings. As a result, the TEC moved to withdraw its consent to the agreement. The district court refused the request and gave final approval of the consent decree. *Ibarra*, 823 F.2d at 874. The Fifth Circuit reversed, finding that the TEC's mistake was a valid reason for vacating the TEC's agreement to the consent decree. *Ibarra*, 823 F.2d at 879.

Ibarra's facts are inapposite to the case before the Court. In *Ibarra*, the DOL reversed its position and advised the TEC that it considered the decree inconsistent with federal law. The TEC notified the district court of this fact. *Ibarra*, 823 F.2d at 876. Thus,

the party seeking to withdraw from the consent decree in *Ibarra* offered unassailable evidence that it had materially erred in its interpretation of applicable law relating to an issue central to the agreement. *Ibarra*, 823 F.2d at 879.

In this case, the issue is whether the Consent Decree's secondary employment provisions satisfy the FLSA's law enforcement exception. The law enforcement exception allows officers to voluntarily work paid details for separate and independent employers without the officer's main employer – the law enforcement agency – running the risk that the secondary employment counts towards the calculation of hours for overtime pay purposes. *See* 29 U.S.C. § 207(p)(1);[141] *see also* 29 C.F.R. § 553.227(d) (providing that law enforcement agencies can "select the officers for special details from a list of those wishing to participate, negotiate their pay, and retain a fee for administrative expenses" as well as require the detail employer to "pay the fee for such services directly to the department"). Unlike in *Ibarra* where the relevant federal agency reversed its position that the agreement was lawful, in this case the United States has steadfastly maintained that the NOPD Consent Decree's secondary employment provisions squarely fall within the FLSA's law enforcement exception. In fact, the United States has obtained an opinion letter from the DOL bolstering the United States' position that the Consent Decree does not violate the FLSA because it satisfies the law enforcement exception.[142] Thus, this case is not analogous to *Ibarra*. *Ibarra* provides no basis for vacating the NOPD Consent Decree.

[141] The United States provided the Court with a letter, dated January 9, 2013, setting forth in greater detail its reasoning why the Consent Decree meets the law enforcement exception. *See* R. Doc. 184-28.

[142] R. Doc. 184-11 (opining that the § 207(p)(1) law enforcement exception "would apply to the particular special details described in the Consent Decree and permit [the NOPD] to exclude its police officers' hours worked on those special details when calculating the officers' hours worked for [FLSA purposes].").

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Furthermore, the City's assertion that *Specht v. City of Sioux Falls*, 639 F.3d 814 (8th Cir. 2011) supports its argument that the Consent Decree violates the FLSA is not persuasive. A main employer's liability for overtime due to the hours an officer spends at his secondary employment depends on whether the main employer merely "facilitates" the officer's ability to work secondary employment, or whether the main employer's actions go "beyond" what is permitted in the guiding regulation. *Specht*, 639 F.3d at 822. In *Specht*, the City of Sioux Falls ("Sioux Falls" or "the city") had an agreement with the State of South Dakota whereby Sioux Falls would provide firefighters at the state's request to fight wildfires. *Specht*, 639 F.3d at 815. Sioux Falls did not count any hours the firefighters spent fighting wildfires for the state when calculating overtime because, according to the city, (1) such hours were voluntary special details subject to the FLSA's law enforcement exception set forth in 29 U.S.C. § 207(p)(1); and (2) the firefighters were state employees at the time they performed their duties on behalf of the state. *Specht*, 639 F.3d at 815.

Aggrieved firefighters seeking overtime pay sued Sioux Falls, and the district court granted summary judgment in the city's favor, agreeing that the state details were voluntary and that the firefighters were state employees at the time they were fighting wildfires for the state. *Specht*, 639 F.3d at 819. The Eighth Circuit reversed,[143] holding that genuine issues of material fact existed regarding whether the firefighters actually were state employees given (1) that the firefighters fought the wildfires for the state during their regular shifts and not their off-duty hours, (2) that the city agreed to pay the firefighters their full salary even if they did not meet the city's monthly hour quota when working for

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[143] The Eighth Circuit did not reverse the district court's determination that firefighters' work on behalf of the state was in fact voluntary. *Specht*, 639 F.3d at 821.

the state, and (3) the language of the agreement between the city and the state.[144] *Specht*, 639 F.3d at 820-22.

The Consent Decree in this case presents no factually analogous issues. All secondary employment must be performed for a third-party employer – i.e., *not* the City – and must occur during NOPD officers' off-duty hours. In addition, if the City deems it necessary to enter into any contracts regarding officers' secondary employment, the City may draft carefully circumscribed agreements that avoid the pitfalls such as those at issue in *Specht*. Consequently, *Specht*, like *Ibarra*, is inapposite and provides no basis for vacating the Consent Decree.

In sum, the City has not demonstrated that this Court made any "obvious" legal error, within the meaning of Rule 60(b)(1), when it approved the Consent Decree containing the secondary employment provisions at issue. The United States has never deviated from its position that the Consent Decree's secondary employment provisions satisfy the FLSA's law enforcement exception set forth in 29 U.S.C. § 207(p)(1). Likewise, the City has not provided any caselaw or authority contradicting the DOL's opinion letter stating that the Consent Decree satisfies the law enforcement exception. Thus, the City has

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[144] As the Eighth Circuit observed,

> Throughout the agreement [between the City and the State], the City is referred to as "CONTRACTOR." A "contractor" is "one who contracts to do work or provide supplies for another." Black's Law Dictionary 327 (7th ed. 1999). The Agreement provides that the State will reimburse the City for "all wage expenses it incurs," which includes "all overtime and backfill wages." The Agreement also explicitly, and tellingly, provides that the State "is not a party to any union contract or other employment arrangements between city *and its employees*" and that the State will reimburse the City "for all wage expenses it actually incurs as a result of its personnel assisting the Wildland Fire Coordinator including all overtime and backfill wages. . . . Thus, the Agreement specifically acknowledges that the firefighters are, in fact, the employees of the City, not the State.

Specht, 639 F.3d at 822 (emphasis in original).

failed to demonstrate that the Court made an error so plainly obvious in approving the Consent Decree that it should vacate the judgment and thereby disregard the normal process for correcting legal error – i.e., appellate review. Rule 60(b)(1) does not afford the City relief absent any indication the judgment "obviously conflicts with a clear statutory mandate" or that the Court made a "judicial error involv[ing] a fundamental misconception of the law."[145] *Hill*, 827 F.2d at 1043.

IV. Whether the Contract is Valid Under Louisiana Law: Relief Requested Under Rule 60(b)(1)

Fourth, the City argues that, under Louisiana law, the Consent Decree is not a valid contract and should not have been entered by the Court. The City maintains that it withdrew its consent to the agreement and, as a result, there was no meeting of the minds necessary to form an enforceable contract. In addition, according to the City, any consent it did give[146] was vitiated by error because (1) the Consent Decree contains terms that violate the FLSA, and (2) despite the City's good faith attempts to ascertain the NOPD Consent Decree's costs, the United States withheld relevant cost information regarding the OPP Consent Decree. The City further maintains that any consent was vitiated by duress due to Perricone's negative nola.com comments – that is, Perricone poisoned the public's opinion about the NOPD, thereby forcing the City to agree to the Consent Decree under

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[145] The Court notes that vacating the Consent Decree because certain portions regarding secondary employment *may* conflict with the FLSA, rather than reforming the offending language if necessary, is not a proper request for relief at this time. The Consent Decree requires the City to implement the Coordinating Office within 365 days of the January 11, 2013 effective date, not immediately. Any concerns raised can be addressed without vacating the Consent Decree in its entirety. *See* R. Doc. 159-1 at ¶ 338.

[146] The Court observes that the City signed the original proposed Consent Decree on July 24, 2012, filed its joint supplemental motion regarding the revised proposed Consent Decree on September 14, 2012, and continued to press for the Court to approve the Consent Decree until attempting to withdraw from the Consent Decree on January 11, 2013.

duress. Finally, the City also asserts that any consent was vitiated by fraud because of Perricone's presence at the negotiating table. In essence, the City argues that the Court erred by approving an invalid contract and, because the Consent Decree is now a judgment of the Court, the City is subject to the Court's contempt power if it is not in compliance such invalid contract. The City, in effect, is again asking the Court to vacate the Consent Decree due to legal error within the meaning of Rule 60(b)(1).[147]

The United States responds that federal common law governs contracts, including consent decrees, when the federal government is a party. *See Boyle v. United Techs. Corp.*, 487 U.S. 500, 504 (1988) ("[O]bligations to and rights of the United States under its contracts are governed exclusively by federal law."); *Smith v. United States*, 497 F.2d 500, 507 (5th Cir. 1974); *Ctr. for Marine Conservation v. Brown*, 905 F. Supp. 383, 385 (S.D. Tex. 1995) ("As a general rule, federal law governs contracts to which the federal government is a party.") The United States submits that every federal court of appeals that has directly addressed the issue has held that, even prior to a court's required approval of a settlement agreement, a party may not withdraw from an agreement once that agreement has been reached and submitted for approval. *See, e.g., White Farm Equip. Co. v. Kupcho*, 792 F.2d 526, 530 (5th Cir. 1986) (rejecting pre-judgment attempt to withdraw from settlement agreement); *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1100 (9th Cir. 2008) (finding that, where parties "reached an enforceable settlement agreement subject to court approval," defendant could not withdraw from agreement even before court approval); *Stovall v. City of Cocoa, Fla.*, 117 F.3d 1238, 1242 (11th Cir. 1997) (finding "the district court here was not free to reject the consent decree solely because the City no longer wished to

[147] R. Doc. 175-1 at pp. 20-27 (citing the Louisiana Civil Code and caselaw).

honor its agreement"); *Moore v. Beaufort Cnty., N.C.*, 936 F.2d 159 (4th Cir. 1991) (holding the defendant county was bound by its settlement agreement and could not withdraw from it even before court approval); *Reed By and Through Reed v. United States*, 891 F.2d 878, 881 n.3 (11th Cir. 1990) ("Once an agreement to settle is reached, one party may not unilaterally repudiate it."). The City, the United States concludes, cannot retreat from its commitments under the Consent Decree simply because it no longer wishes to honor the agreement.

In the alternative, the United States argues that, even if Louisiana law applies to the question of whether the City may withdraw from the Consent Decree, the result would be the same. Under Louisiana law, a consent judgment becomes binding at the moment of agreement between the parties. *See Ritchey v. Azar*, 383 So.2d 360, 363 (La. 1980) ("[A] judgment obtained by consent of the parties gets its binding force and effect from the parties' consent."); *see also Gulledge v. Gulledge*, 738 So.2d 1229, 1230 (La. App. 2d Cir. 1999) ("A consent judgment is essentially a bilateral contract which is voluntarily signed by the parties and accepted by the court. It has binding force from the voluntary acquiescence of the parties, not from the court's adjudication.").

The Court agrees with the United States that, regardless of whether federal common law or Louisiana applies, the result is the same. The City's argument that it withdrew its consent after signing the Consent Decree but before the Court gave its final approval to the agreement is unavailing. The Consent Decree became binding on the Parties at the moment of agreement – that is, on July 24, 2012, when the Parties signed and submitted the proposed Consent Decree to the Court, and again on September 14, 2012, when the Parties filed their Errata Sheet and supplemental joint motion to approve the revised proposed

Consent Decree. The Parties' written agreement is enforceable and the City is not free to unilaterally withdraw its consent. *White Farm Equip. Co.*, 792 F.2d at 530; *Ritchey*, 383 So.2d at 363. Furthermore, as the Court has discussed in depth above, the City is unable to demonstrate how Perricone's involvement, the monetary obligations the City might incur in the unrelated OPP litigation, or the NOPD Consent Decree's secondary employment provisions, have vitiated the Parties' agreement. Thus, the City has not made a colorable showing that the contract is invalid due to error, duress or fraud. Again, the City has failed to demonstrate that the Court made an error so plainly obvious in approving the Consent Decree that it should vacate the judgment and preclude appellate review.

V. Court's Procedure in Approving the Consent Decree: Relief Requested Under Rule 60(b)(1)

The City's final argument assigns fault to the Court's process in considering and approving the Consent Decree. The City complains that the Court (1) relaxed the Federal Rules of Evidence at the Fairness Hearing, (2) questioned the Parties about the meaning of certain terms in the Consent Decree and proposed changes for the Parties' consideration, and (3) did not permit the City to withdraw from the Consent Decree before the Court entered it as a final judgment.[148] The United States responds that the Court approved the Consent Decree in a procedurally proper manner. In essence, the City, again, requests the Court to vacate the Consent Decree pursuant to Rule 60(b)(1) due to legal error.

A. The Fairness Hearing

The City challenges the manner in which the Court conducted the September 21, 2012 Fairness Hearing. On July 24, 2012, the date the Parties submitted the Consent

[148] R. Doc. 175-1 at pp. 27-29.

Decree to the Court, the Parties strongly urged the Court to approve the agreement immediately. While the Court appreciated the Parties' request to move quickly, the Court nevertheless observed it had a duty to ensure the Consent Decree was "fair, adequate, and reasonable" before bestowing any approval.[149] *See United States v. City of Miami*, 664 F.2d 435, 440-41 (5th Cir. 1981) (A court "must not merely sign on the line provided by the parties. Even though the decree is predicated on consent of the parties, the judge must not give it perfunctory approval."). As the public comments the Court has received since this case began have so aptly shown, the citizens of New Orleans, as well as Chief Serpas and NOPD officers, are greatly concerned with having a constitutional police force that serves and the protects the community. To determine the process by which the Court would evaluate whether the Consent Decree in fact will remake the NOPD into a world class police force for both the public and officers, the Court held status conferences with the Parties in July, August, and September 2012.

As a result of these status conferences, the Court concluded that, although one was not required by law, a fairness hearing, held in open court and on the record, would greatly increase public confidence in the process and provide the public with an opportunity to communicate any concerns to the Court and the Parties. At the same time, the Court was mindful of the Parties' exhortations that reform needed to begin forthwith, and sought to balance the Parties' desires with those of the public. Recognizing that a "trial court may limit its proceeding to whatever is necessary to aid it in reaching an informed, just and reasoned decision," *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977), the Court concluded that the Fairness Hearing need not adhere to the strict rules regarding the

[149] R. Doc. 7.

receipt of evidence for a trial. *See also UAW v. General Motors Corp.*, 235 F.R.D. 383, 387 (E.D. Mich. 2006) (rejecting objections to admission of evidence during fairness hearing that would be inadmissible under Federal Rules of Evidence because "a fairness hearing is not a trial, but instead has a very singular and narrow purpose – to determine whether the settlement at issue is fair, reasonable, and adequate"). The Court intended the day-long Fairness Hearing to serve as an information-gathering session allowing the Court to evaluate the need for the Consent Decree and permitting the public to participate, without the time and expense that a proceeding conducted like a trial on the merits would entail. Indeed, the Parties' repeated admonitions regarding the City's tight finances and the need to put the Consent Decree in place as soon as possible spurred the Court to move quickly, while respecting the judicial process, in order to expedite the Consent Decree's consideration. The Court communicated its plan to relax the Rules of Evidence at the Fairness Hearing to the Parties.[150] The City did not object[151] to the Court's proposed process and fully participated in the Fairness Hearing.

Contrary to the City's assertions otherwise, the Court was not required to conduct the Fairness Hearing in the nature of a trial on the merits strictly adhering to the Federal Rules of Evidence. *Cotton*, 559 at 1331;*UAW*, 235 F.R.D. at 387. The Court is entitled to elicit whatever information is necessary to determine whether a consent decree is fair, adequate, and reasonable. Over a period of more than five months prior to approving the agreement, the Court became intimately familiar with the Consent Decree and the

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[150] R. Docs. 5 and 8.

[151] The Court recognizes that the City objected to the admission of certain evidence at the Fairness Hearing, *see* R. Doc. 208 *passim*, but the City did not object to the Court's proposed process or the relaxation of the Federal Rules of Evidence.

deficiencies it is designed to remedy. The evidence the City claims was inadmissable was a small part of the Court's education about the NOPD's needed reforms and was not, by itself, dispositive with respect to the Court's determination that the Consent Decree presented a fair, adequate, and reasonable method of reforming the NOPD. Thus, the City's argument that the manner in which the Court conducted the Fairness Hearing somehow invalidates its approval of the Consent Decree is without merit.

B. The Court's Questions and Proposed Changes

Next, the City complains that the Court, via e-mail and at status conferences with the Parties, questioned the Parties about the Consent Decree's terms and the Court proposed changes to the Consent Decree. Again, as set forth above, the Court did not have the institutional knowledge that the Parties gained during the DOJ's investigation of the NOPD and the Parties' extended negotiation of the Consent Decree's terms. When presented with the Consent Decree, the Court had to familiarize itself with the NOPD's deficiencies in need of remediation and the processes by which such remediation would be achieved. Given that the Consent Decree seeks to entirely remake the NOPD, an institution that affects every citizen of and visitor to New Orleans, the Court was tasked with approving an agreement of far greater impact than entering a consent judgment on behalf of private litigants.[152] To ensure that the Consent Decree as approved would protect the public interest, the Court had to understand how the Consent Decree would be interpreted and implemented.

To that end, and still mindful of cost and the Parties' desire to move as quickly as possible, the Court met informally with counsel in order to query the Parties on the Consent

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[152] Indeed, the City repeatedly reminded the Court throughout this process that the NOPD Consent Decree "is the most extensive and far reaching [police consent decree] in this nation's history." R. Doc. 208 at p. 181.

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Decree's scope and how its aims would come to fruition. During this time as Court was considering the Consent Decree, members of the public submitted written comments outlining their concerns regarding the agreement's terms. After exchanges with counsel, the Court was assured that the public's concerns would be given due consideration as policies and procedures were developed and implemented. In time, the Court became confident the agreement was fair, adequate, and reasonable, and served the public interest.

Ultimately, the Court approved[153] the Consent Decree submitted via joint motion on July 24, 2012,[154] as later supplemented by the Parties' subsequent joint motion on September 14, 2012.[155] The Court's actions were proper, given its duty to confirm that the Consent Decree was fair, adequate, and reasonable prior to approval.

C. The City's Motion to Withdraw

Finally, the City asserts that the Court erroneously refused to permit it to withdraw from the Consent Decree at the January 11, 2013 status conference. At that time, the executed Consent Decree was a binding contract and the Parties were bound by its terms. *See White Farm Equip. Co.*, 792 F.2d at 530; *Ritchey*, 383 So.2d at 363. The Court provided a procedure for the City to present its arguments in writing to the Court, which the City has now done, and the Court has carefully considered them. The Court has not deprived the City of any opportunity to be heard and the City's assertions to the contrary are unavailing.

In sum, the City has not identified how the Court made any obvious legal error in

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[153] R. Docs. 159-1 and 159-2.

[154] R. Doc. 2-1.

[155] R. Docs. 114-1 and 114-2.

conducting the Fairness Hearing, conversing with the Parties regarding the Consent Decree's terms and meaning, or not allowing the City to unilaterally withdraw from the Consent Decree after it had been signed. The Court finds the City has not satisfied its burden pursuant to Rule 60(b)(1) and the City is not entitled to the extraordinary relief of having the Consent Decree vacated.

Conclusion

The Court found the Consent Decree to be fair, adequate, and reasonable, and entered the Consent Decree as a final judgment on January 11, 2013. Having now reviewed the City's arguments for vacating the Consent Decree, the Court finds that the City has not presented any legally cognizable basis for relief pursuant to Rule 60 of the Federal Rules of Civil Procedure, or otherwise. The Court remains convinced that the Consent Decree is a fair, adequate, and reasonable solution for transforming the NOPD into a world class police force.

Accordingly, for the reasons assigned,

IT IS ORDERED that the City's motion to vacate is **DENIED**.

New Orleans, Louisiana, this 23rd day of May, 2013.

SUSIE MORGAN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA, **Plaintiff**	**CIVIL ACTION**
VERSUS	**No. 12-1924**
CITY OF NEW ORLEANS, **Defendant**	**SECTION "E"**

ORDER AND REASONS

Before the Court is the second motion to stay filed by the Defendant, the City of New Orleans (the "City").[1] The City seeks to stay the implementation and enforcement of the Consent Decree this Court entered as a final judgment[2] on January 11, 2013, pending appeal of that judgment to the U.S. Court of Appeals for the Fifth Circuit ("Fifth Circuit").[3] For the following reasons, the City's second motion to stay is **DENIED**.

Background

On July 24, 2012, the United States of America ("United States") filed its complaint in this matter against the City after an extensive investigation of the New Orleans Police Department ("NOPD"),[4] pursuant to the Violent Crime Control and Law Enforcement Act (42 U.S.C. § 14141), the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3789d, the "Safe Streets Act"), and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d to 2000d-7) and its implementing regulations (28 C.F.R. §§ 42.101-.112) ("Title VI"),

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[1] R. Doc. 257.

[2] R. Docs. 159 and 160.

[3] R. Doc. 180.

[4] R. Doc. 1 at ¶¶ 14-16.

Ex. F

in order to remedy NOPD's alleged pattern or practice of conduct which subjects individuals to excessive force in violation of the Fourth Amendment, unlawful searches and seizures in violation of the Fourth Amendment, and discriminatory policing practices in violation of the Fourteenth Amendment, the Safe Streets Act, and Title VI.

Less than one hour after the United States filed its complaint, the United States and the City (together, the "Parties") filed a Joint Motion for Entry of Decree. Attached to such motion was a proposed Consent Decree containing detailed provisions concerning changes in NOPD policies and practices related to (1) the use of force; (2) investigatory stops and detentions, searches, and arrests; (3) custodial interrogations; (4) photographic lineups; (5) bias-free policing; (6) community engagement; (7) recruitment; (8) training; (9) officer assistance and support; (10) performance evaluations and promotions; (11) supervision; (12) the secondary employment system, also known as the paid detail system; (13) misconduct complaint intake, investigation, and adjudication; and (14) transparency and oversight. In addition, the proposed Consent Decree also included detailed provisions regarding the implementation and enforcement of the Consent Decree. The Parties' motion stated that they sought "to resolve [the] litigation with entry of the attached negotiated Consent Decree" because the document was "intended to ensure that police services are delivered to the people of New Orleans in a manner that complies with the Constitution and laws of the United States."[5] After careful deliberation to ensure that the proposed Consent Decree was "fair, adequate and reasonable," the Court entered it as a final judgment on January 11, 2013 ("Consent Decree").[6]

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[5] R. Doc. 2 at pp. 1-2.

[6] R. Docs. 159 and 160. For a more detailed procedural history of this case, *see* R. Doc. 256.

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The City sought to withdraw from the Consent Decree and filed a motion to vacate the Court's judgment pursuant to Rule 60(b) of the Federal Rules of Civil Procedure January 31, 2013.[7] Pursuant to Rule 62(b), the City also filed a motion to stay the implementation and enforcement of the Consent Decree while the Court considered the City's motion to vacate.[8] The Court denied the motion to stay, finding that the balance of the equities weighed heavily against granting the City's motion for a stay because (1) the United States and residents of New Orleans would suffer substantial harm if a stay was granted, (2) declining to grant a stay was in the public interest, (3) the City would not suffer irreparable harm if the Court denied the motion to stay, and (4) the City failed to make any argument as to the likelihood of its success on the merits regarding its motion to vacate.[9]

After giving substantial consideration to the City's motion to vacate, the Court denied the motion on May 23, 2013, finding that the City had not presented any legally cognizable basis for relief pursuant to Rule 60, or otherwise.[10] Thereafter, the City filed the instant motion to stay this case pursuant to Rule 8(a)(1)(A) of the Federal Rules of Appellate Procedure pending appeal of the Court's final judgment to the Fifth Circuit.[11] This motion to stay is before the Court for decision.

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[7] R. Doc. 175.

[8] R. Doc. 172.

[9] R. Doc. 179.

[10] R. Doc. 256 at p. 48.

[11] R. Doc. 257.

Law and Analysis

After a federal district court enters a final judgment, Rule 8(a)(1)(A) of the Federal Rules of Appellate Procedure requires a party to move first in the district court for a stay of the district court's judgment pending appeal. The Fifth Circuit has set forth four factors a court may consider in determining if it should stay relief pending appeal: " '(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.' " *Moore v. Tangipahoa Parish Sch. Bd.*, 2013 WL 141791, at *2 (5th Cir. Jan. 14, 2013) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)); *Nat'l Treasury Emp. Union v. Von Raab*, 808 F.2d 1057, 1059 (5th Cir. 1987).

The City advances two arguments to support its request for the Court to stay this matter pending appeal. First, the City asserts that it will suffer irreparable injury if it is required to enter into a professional services agreement ("PSA") with the Consent Decree Court Monitor ("Monitor") following the Consent Decree Court Monitor Selection Committee's ("Committee") fifth public meeting, scheduled for May 31, 2013, at 12:00 p.m. noon. The City contends it has extremely limited funds, and that its dire financial position could be exacerbated by its obligation with respect to the Orleans Parish Prison ("OPP").[12] Entering into a PSA with the Monitor when the OPP price tag is undetermined, according to the City, will prevent the City from being able to "meet all [NOPD and OPP] obligations while ensuring that critical City services continue to be provided to citizens."[13] Second, the

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[12] For additional information regarding the unrelated OPP litigation, *see* R. Doc. 256 at pp. 22-29.

[13] R. Doc. 257-1 at p. 4.

City argues that denying a stay will preclude meaningful appellate review because the selection of the Monitor, either by the Committee or by the Court, is quickly approaching.

With respect to the unrelated OPP litigation, as this Court previously observed in denying the City's first motion to stay, "inadequate resources can never be an adequate justification for depriving any person of his constitutional rights." *Udey v. Kastner*, 805 F.2d 1218, 1220 (5th Cir. 1986); *see also Smith v. Sullivan*, 553 F.2d 373, 378 (5th Cir. 1977) (rejecting argument that "lack of funds to implement the trial court's order" justified failure to remedy ongoing constitutional violations); *Gates v. Collier*, 501 F.2d 1291, 1319 (5th Cir. 1972) ("Where state institutions have been operating under unconstitutional conditions and practices, the defense of fund shortage(s) . . . [has] been rejected by the federal courts."). Likewise, the City's argument that denying a stay will preclude appellate review is without merit. The Court entered the Consent Decree as a final judgment, which is, in fact, on appeal to the Fifth Circuit. In addition to the judgment, the Court entered written reasons regarding why it determined the Consent Decree was "fair, adequate, and reasonable." Consequently, nothing prevents the City from obtaining meaningful appellate review.

Furthermore, the City has failed to make any showing whatsoever that (1) its appeal to the Fifth Circuit is likely to succeed on the merits, (2) the United States and residents of New Orleans will not be substantially harmed if the Court grants a stay, or (3) granting a stay is in the public interest. Thus, the City has failed to demonstrate the balance of the equities favors a stay pending appeal. *Moore*, 2013 WL 141791, at *2.

Accordingly, for the reasons the Court previously assigned[14] in denying the City's first motion to stay and for the reasons set forth above,

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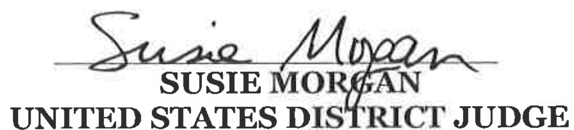
[14] R. Doc. 179.

IT IS ORDERED that the City's second motion to stay is **DENIED.**

New Orleans, Louisiana, this 24th day of May, 2013.



SUSIE MORGAN
UNITED STATES DISTRICT JUDGE

Exhibit B

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

May 30, 2013

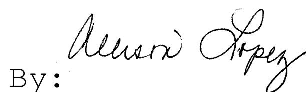
MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 13-30161, USA v. City of New Orleans
USDC No. 2:12-CV-1924

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk



By:_______________________
Allison G. Lopez, Deputy Clerk
504-310-7702

Mr. Brian Joseph Capitelli
Ms. Emily Anna Gunston
Ms. Angela Macdonald Miller
Ms. Jessica Dunsay Silver
Ms. Sharonda R. Williams
Mr. William W. Blevins

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 13-30161

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

CITY OF NEW ORLEANS,

Defendant - Appellant

Appeal from the United States District Court for the
Eastern District of Louisiana, New Orleans

Before JONES, DENNIS, and HAYNES, Circuit Judges.

PER CURIAM:

IT IS ORDERED that appellant's motion for stay pending appeal is temporarily granted pending submission and consideration of appellee's response no later than noon, Monday, June 3, 2013, and further order of this Court.

Exhibit C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA, **Plaintiff**	**CIVIL ACTION**
VERSUS	**No. 12-1924**
CITY OF NEW ORLEANS, **Defendant**	**SECTION "E"**

NOTICE

NOTICE IS HEREBY GIVEN that the City of New Orleans has appealed the Court's order approving the Consent Decree to the U.S. Court of Appeals for the Fifth Circuit ("Fifth Circuit") and requested an emergency stay of all proceedings in the above-captioned matter. The Fifth Circuit has temporarily stayed all proceedings until further notice. As a result, the Consent Decree Court Monitor Selection Committee's May 31, 2013 meeting to select the Monitor has been **CANCELED**.

The Court will issue further orders, as appropriate, upon receipt of the Fifth Circuit's forthcoming ruling.

New Orleans, Louisiana, this 30th day of May, 2013.

SUSIE MORGAN
UNITED STATES DISTRICT JUDGE