

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

Civil Action No. 99-404

(PJK/KBM)

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE CITY OF BELEN, NEW MEXICO,

Defendant.

SETTLEMENT AGREEMENT

This action was brought by the United States against the City of Belen, New Mexico ("City" or "Defendant") to enforce the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, *et seq.*, as amended ("Title VII"). In its complaint, which was amended by Order of this Court on April 6, 2000, the United States alleges that the City subjected Terry Piersol, formerly a Sergeant in the Belen Police Department ("BPD"), to sex discrimination and retaliation in violation of §§ 703(a)(1) and 704(a) of Title VII, 42 U.S.C. §§ 2000e-2(a) and 2000e-3(a). The United States also alleges that the City subjected Tanya Baldonado, formerly a secretary and evidence technician in the BPD, and similarly situated individuals, to sexual harassment and retaliation in violation of §§ 703(a)(1) and 704(a) of Title VII, 42 U.S.C. §§ 2000e-2(a) and 2000e-3(a). In addition, the United States alleges that the City has engaged in a pattern or practice of discrimination against females on the basis of their sex in violation of § 707 of Title VII, 42 U.S.C. § 2000e-6, by: (1) creating, maintaining, and condoning sexual harassment and a sexually hostile work environment in the BPD; and (2) failing or refusing promptly and effectively to investigate and to take prompt and effective steps to remedy and prevent conduct that constitutes sexual harassment and a sexually hostile work environment in the BPD. The City denies each of these claims.

The parties, desiring to appropriately settle this action, agree to the jurisdiction of this Court over them and the subject matter of this action, and hereby waive the entry of findings of fact and conclusions of law. The parties, desiring to avoid protracted and unnecessary litigation, also accept this Settlement Agreement ("Agreement") as final on the issues resolved in this Agreement. This Agreement, being entered with the consent of the parties, shall not constitute an admission, adjudication or finding on the merits of this action, and the City denies that any unlawful discrimination or retaliation has occurred.

In resolution of this action, the parties hereby AGREE and the Court expressly APPROVES, ENTERS and ORDERS the following:

I. DEFINITIONS

As used in this Agreement, the terms:

- a. "sex discrimination" includes, but is not limited to, failing to hire, disciplining, discharging, or otherwise adversely affecting an individual with respect to the terms, conditions, or privileges of an individual's employment because of the individual's sex.
- b. "sexual harassment" includes, but is not limited to, unwelcome sexual advances, requests for sexual favors, verbal, physical, or other conduct of a sexual nature, or acts of gender-based animosity experienced by employees and applicants for employment in the BPD, and by citizens, to the extent such harassment of citizens creates or tends to create a hostile work environment for employees in the BPD.
- c. "retaliation" refers to discrimination against an individual because that individual has engaged in activities protected by Title VII, including: (i) opposing employment practices that the individual reasonably believes are discriminatory or retaliatory; (ii) filing an employment discrimination charge or complaint, either formal or informal, with the BPD, the City, the Equal Employment Opportunity ("EEO") Monitor appointed pursuant to this Agreement, the Equal Employment Opportunity Commission ("EEOC"), or the New Mexico Human Rights Division ("NMHRD"); or (iii) participating in or cooperating with the investigation or litigation of any such employment discrimination charge or complaint.
- d. "citizen" refers to any person who is not an employee in the BPD.
- e. "supervisor" refers to any employee in the BPD who holds the position of Chief, Assistant Chief, Lieutenant, Sergeant, Corporal, Communications Equipment Operator Supervisor, or other person in the BPD having management authority over BPD employees.
- f. "parties" refers to the United States and the City.
- g. "day" or "days" refers to calendar and not business days.
- h. "date of entry of this Agreement" refers to the date that the Court gives final approval to this Agreement by signing and entering the Agreement as an Order of the Court.

II. PURPOSES OF THE AGREEMENT

1. The purposes of this Agreement are to ensure that:
 - a. employees and applicants for employment in the BPD are not subjected to sex discrimination or sexual harassment;
 - b. employees and applicants for employment in the BPD are not retaliated against or in any respect adversely affected for opposing employment practices that they reasonably believe are discriminatory, filing a complaint alleging discriminatory employment practices, or cooperating with the investigation of any such complaint.
 - c. all complaints of sex discrimination, sexual harassment, or retaliation filed by employees in the BPD, applicants for employment in the BPD, and citizens are investigated fairly and promptly by the City's

Human Resources Director and the Equal Employment Opportunity ("EEO") Monitor appointed pursuant to this Agreement;

d. the City takes appropriate disciplinary action, up to and including termination, against: (1) employees in the BPD who engage in acts of sex discrimination, sexual harassment or retaliation; and (2) supervisors in the BPD who engage in such conduct, or who fail promptly to report or to take action to prevent such conduct from occurring among employees under their supervision.

e. the City does not institute internal affairs investigations or take disciplinary action against employees in the BPD, in whole or in part, because of the sex of the employee or in retaliation against the employee for opposing employment practices that the employee reasonably believes are discriminatory, filing a complaint or charge alleging discriminatory employment practices, or cooperating with the investigation of any such complaint;

f. the City takes prompt and effective steps to remedy and prevent acts of sex discrimination, sexual harassment and retaliation.

III. GENERAL PROVISIONS

2. Unless otherwise stated, the provisions of this Agreement apply only to the City of Belen with respect to its Police Department ("BPD"), and not to other departments within the City.

3. In the event this Agreement or any action taken pursuant to this Agreement is challenged, the City and the United States shall defend fully its lawfulness. If any such collateral challenge arises in state court, the City shall immediately notify counsel for the United States and promptly seek to remove such action to this Court and specifically to the judge assigned to this case.

4. The provisions of this Agreement shall be effectuated, to the extent possible, in a manner consistent with the rights of City employees under New Mexico law, including the rights of peace officers pursuant to the Peace Officer's Employer-Employee Relations Act, NMSA sec. 29-14-1 et seq. (attached to this Agreement as Appendix A), and any amendments thereto passed during the duration of this Agreement. However, insofar as any City ordinance or regulation or New Mexico state law, including NMSA sec. 29-14-1 et seq., conflicts with the provisions of this Agreement, the provisions of this Agreement shall prevail in accordance with the Constitutional supremacy of federal law, except where federal law is to the contrary.

5. With respect to the obligation of the United States to enforce or to monitor compliance with this Agreement, the Federal Rules of Civil Procedure relating to discovery shall apply to the parties without further order of the Court. Before seeking discovery under the Federal Rules of Civil Procedure to enforce or monitor compliance with the Agreement, the United States shall confer with the City and attempt to informally resolve the discovery request. The City shall have the right to file a motion seeking a protective order pursuant to the Federal Rules of Civil Procedure to challenge the need for discovery or the specific discovery requested.

IV. RESOLUTION OF CLAIMS ON BEHALF OF INDIVIDUALS

6. The claims of the individuals on whose behalf the United States has sought individual relief have been resolved to the satisfaction of those individuals and the parties.

7. If any of the individuals on whose behalf the United States has sought individual relief should seek

employment with the City or any of its departments after the date of entry of this Agreement, the City will consider them on the same non-discriminatory and non-retaliatory basis as it is required by law to consider any other individual.

8. As additional relief to Terry Piersol, the City shall provide to her, through her counsel, Barbara Arbuckle, and include in each of the City's personnel and other files pertaining to her, a document stating that after Ms. Piersol was suspended and then terminated from her employment as a Sergeant in the City's Police Department in February 1996: (1) Ms. Piersol filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC"); (2) the EEOC found cause to believe that the City subjected Ms. Piersol to sex discrimination and retaliation when it suspended and then discharged her in February 1996; (3) the EEOC referred Ms. Piersol's charge of discrimination to the United States Department of Justice with a recommendation that it file suit based on Ms. Piersol's charge of discrimination; (4) the United States Department of Justice filed a lawsuit against the City which, among other things, sought relief for Ms. Piersol based on her suspension and termination from the BPD; (5) the City denied that any unlawful discrimination or retaliation occurred; and (6) the City settled this suit, including the claims relating to Ms. Piersol.

V. GENERAL INJUNCTIVE RELIEF

9. Defendant City, its employees, agents and all individuals in active concert or participation with it, are enjoined from:

- a. subjecting any employee or applicant for employment in the BPD to sex discrimination or sexual harassment;
- b. creating, facilitating, or tolerating sexual harassment or a sexually hostile work environment in the BPD;
- c. retaliating against or in any respect adversely affecting any employee or applicant for employment in the BPD because that individual has opposed employment practices that the individual reasonably believes are discriminatory, filed a complaint or charge alleging discriminatory employment practices, or cooperated with the investigation of any such complaint or charge;
- d. failing to take appropriate disciplinary action against: (1) employees in the BPD who engage in acts of sex discrimination, sexual harassment, or retaliation, and (2) supervisors in the BPD who engage in such conduct, or who fail promptly to report such conduct or to take action to prevent such conduct from occurring among employees under their supervision;
- e. instituting internal affairs investigations or taking disciplinary action against employees in the BPD, in whole or in part, because of the sex of the employee or in retaliation against the employee for opposing employment practices that the employee reasonably believes are discriminatory, filing a complaint or charge alleging discriminatory employment practices, or cooperating with the investigation of any such complaint or charge;
- f. failing to take prompt and effective steps to remedy and prevent conduct committed by employees in the BPD that constitutes sex discrimination, sexual harassment, or retaliation.

VI. ISSUANCE AND POSTING OF CITY'S "SEXUAL HARASSMENT, SEX DISCRIMINATION, & RETALIATION PREVENTION POLICY AND PROCEDURES MANUAL"

10. Within fifteen (15) days of the date of entry of this Agreement, the City and the United States shall agree upon modifications to the City's "Sexual Harassment, Sex Discrimination, & Retaliation Prevention Policy and Procedures Manual" (November 1999, Supplement # 1 to its Personnel Rules and Regulations Manual). If the United States and the City are unable to resolve any disagreement concerning the modifications, either party may submit the matter to the Court pursuant to the dispute resolution mechanism of paragraph 67 of this Agreement. Within thirty (30) days of the date of entry of this Agreement, the City shall make effective the revised policy and the "Zero-Tolerance" memorandum that was agreed upon with the United States prior to the entry of this Agreement. (The "Zero-Tolerance" memorandum is attached to this Agreement as Appendix B).

11. The City shall include the revised policy and the "Zero-Tolerance" memorandum in the City's Personnel Rules and Regulations Manual and BPD Standard Operating Procedure Manual. Within seven (7) days of the appointment of the EEO Monitor, the City shall issue to all current employees in the BPD the City's revised policy and the "Zero-Tolerance" memorandum. For all future employees in the BPD, the City shall issue its revised policy and "Zero-Tolerance" memorandum to them on or prior to their first day of work. The City shall require each current and future BPD employee to sign an acknowledgment of receipt of these documents, and shall retain those signed acknowledgments of receipt throughout the life of this Agreement. In addition, the City shall post the "Zero-Tolerance" memorandum in a prominent and conspicuous location at the BPD office and at any additional or subsequent locations that may be used by the BPD during the life of this Agreement.

VII. MODIFICATIONS TO CITY AND BPD POLICIES AND PROCEDURES

12. Within ninety (90) days of the entry of this Agreement, the City shall make all necessary modifications to the City Personnel Rules and Regulations Manual, the BPD Standard Operating Procedures Manual, and all other City and BPD documents to ensure that they are consistent with the provisions of this Agreement. Within ninety (90) days of the entry of this Agreement, the City shall provide to counsel for the United States for inspection a copy of all City and BPD documents that have been modified and a copy of all other City and BPD documents that are in any way relevant to the provisions of this Agreement. If the United States disagrees with any of the City's modifications, or believes that further modifications are necessary, the United States shall so inform the City within sixty (60) days of receipt of the documents. If the United States and the City are unable to resolve any disagreement concerning the modifications, either party may submit the matter to the Court pursuant to the dispute resolution mechanism of paragraph 67 of this Agreement. Within thirty (30) days after the modifications are agreed upon by the parties or approved by the Court, the City shall notify all employees in the BPD and all City employees having management responsibility over the BPD of any such modifications, and provide those employees with copies of the modified documents.

VIII. AMENDMENT OF PERFORMANCE EVALUATIONS

13. Within forty-five (45) days of the entry of this Agreement, the City shall revise the performance evaluation forms utilized to evaluate all BPD personnel to include an equal employment opportunity ("EEO") factor. This factor shall be stated as "Understands, supports and complies with the City's Equal Employment Opportunity Program, including the City's policies addressing sex discrimination, sexual harassment and retaliation." The City shall provide written notice to all employees in the BPD of this change and specifically that all personnel shall be evaluated in the area of EEO.

14. In considering whether to give any BPD employee a promotion, award, commendation or other benefit based on that employee's overall performance, the City shall consider strongly whether the employee has engaged in conduct that constitutes sex discrimination, sexual harassment, or retaliation, or has failed promptly to report such conduct or to take action to prevent such conduct from occurring

among employees under his or her supervision.

IX. EQUAL EMPLOYMENT OPPORTUNITY TRAINING PROGRAM

15. For at least the full term of this Agreement, the City shall retain an Equal Employment Opportunity ("EEO") Trainer who will conduct annual EEO training seminars.

16. The City shall require to attend the training seminars: (a) all non-supervisory employees in the BPD; (b) all supervisory employees in the BPD; and (c) all City employees having management responsibilities over the BPD, including the Mayor, Mayor Pro Tem, City Manager, and any other City official or employees who is responsible for making recommendations on or deciding upon the appropriateness of disciplinary action to be taken against employees in the BPD who engage in acts of sex discrimination, sexual harassment, and retaliation.

17. The first training seminar shall be conducted within six (6) months of the date of entry of this Agreement. After the first seminar, training seminars will be held every twelve (12) months.

18. The City shall select an EEO Trainer, subject to approval by the United States. If the City and the United States are unable to agree upon the individual to be the EEO Trainer, it shall be handled through the dispute resolution mechanism set forth in paragraph 67 of this Agreement. In the event that the EEO Trainer is unable or unwilling to serve as EEO Trainer for the full term of the Agreement, the City shall select another individual to serve as EEO Trainer, subject to approval by the United States. If the City and the United States are unable to agree upon the individual to be the new EEO Trainer, it shall be handled through the dispute resolution mechanism of paragraph 67 of this Agreement.

19. The City may have duplicative sessions at its cost to accommodate staffing needs. Any duplicative session shall be conducted within thirty (30) days after the first session. The City shall require all personnel required to attend the training seminar who did not attend the first training session to make a good faith effort to attend the duplicative session. A video tape of the first training session shall be prepared and shown to any person required to attend the seminar who was unable to attend either session. A registry of attendance for each training seminar shall be taken and retained by the City for the duration of this Agreement, and shall be provided to the United States together with a list of all personnel employed in the BPD and all City employees with management responsibilities for the BPD on the day of each training seminar.

20. The training seminars for non-supervisory employees in the BPD shall be no less than two (2) hours of instruction and shall include at least the following components:

- a. the provisions of this Agreement;
- b. what acts constitute sex discrimination, sexual harassment, and retaliation;
- c. federal and state laws and City and BPD rules and regulations concerning sex discrimination, sexual harassment, and retaliation;
- d. how and to whom individuals may file a complaint or charge concerning sex discrimination, sexual harassment, or retaliation;
- e. discipline that may be taken against employees who commit acts of sex discrimination, sexual harassment, and retaliation, or who allow such acts to occur in the workplace.

21. The training seminars for supervisory employees in the BPD and for City employees having management responsibilities over the BPD shall be no less than three (3) hours of instruction, and shall include at least the components described in the preceding paragraph and the following additional components:

- a. procedural and evidentiary issues relating to the handling of complaints of sex discrimination, sexual harassment, and retaliation;
- b. supervisors' responsibilities for reporting and preventing acts of sex discrimination, sexual harassment, and retaliation;
- c. the City and BPD's responsibilities for preventing and remedying acts of sex discrimination, sexual harassment, and retaliation;
- d. appropriate disciplinary action to be taken against employees who commit acts of sex discrimination, sexual harassment, and retaliation, or who allow such acts to occur in the workplace.

22. At each training session, the BPD Chief and either the Mayor, Mayor Pro Tem, or the City Manager, shall speak to the seminar attendees about the importance of maintaining an environment free of sex discrimination, sexual harassment, and retaliation; the City's policies regarding sex discrimination, sexual harassment, and retaliation; and the City's commitment to disciplining employees who commit acts of sex discrimination, sexual harassment, and retaliation, or who allow such acts to occur in the workplace.

23. The City shall give the United States at least fourteen (14) days notice of the time and location of each training session. The United States, in its discretion, may designate an attorney(s) or other representative(s) employed by the United States to attend the training seminars described above.

X. APPOINTMENT OF EQUAL EMPLOYMENT OPPORTUNITY MONITOR

24. Within thirty (30) days of the date of entry of this Agreement, the parties shall agree upon and submit to the Court for appointment an individual to serve as Equal Employment Opportunity ("EEO") Monitor, who will have broad powers to effectuate the purposes of this Agreement. For the duration of this Agreement, the EEO Monitor will:

- a. evaluate on a continuing basis, report on, and make recommendations for improving the City's effectiveness in preventing sex discrimination, sexual harassment, and retaliation from the BPD;
- b. Assist the City's Human Resources Director in investigating all complaints filed by employees and applicants for employment in the BPD that are filed with or referred to the EEO Monitor concerning sex discrimination, sexual harassment, or retaliation, and make recommendations for appropriate remedial relief and disciplinary action;
- c. Assist the City's Human Resources Director in investigating all complaints filed with or referred to the EEO Monitor alleging that an employee in the BPD has subjected a citizen to sexual harassment, including unwelcome sexual advances, requests for sexual favors, verbal, physical, or other conduct of a sexual nature, or acts of gender-based animosity, and make recommendations for appropriate remedial relief and disciplinary action;
- d. Assist the City's Human Resources Director in addressing complaints of possible sex discrimination

and retaliation in the internal affairs investigations of the BPD and disciplinary actions taken against employees in the BPD.

25. The individual appointed to the EEO Monitor position shall have no prior connection with the City or the BPD. The City shall compensate the EEO Monitor at his or her customary rate and pay all costs necessary to fulfill the work of the EEO Monitor. If any dispute arises between the City and the EEO Monitor regarding any work the EEO Monitor believes is necessary to fulfill the requirements or goals of this Agreement or regarding payment to the EEO Monitor by the City, the EEO Monitor or the City shall notify the United States of such disagreement. If the United States disagrees with the City and the parties are unable to resolve their disagreement, either party may submit the matter to the Court pursuant to the dispute resolution mechanism of paragraph 67 of this Agreement.

26. The work of the EEO Monitor shall continue for at least the full term of this Agreement. In the event that the person first appointed as the EEO Monitor is unable or unwilling to serve as EEO Monitor for the full term of the Agreement, the City and the United States shall agree upon another individual to serve as EEO Monitor, and shall move the Court to appoint this individual. If the City and the United States are unable to agree upon the individual to be the EEO Monitor, it shall be handled through the dispute resolution mechanism set forth in paragraph 67 of this Agreement.

27. Within seven (7) days of the appointment of the EEO Monitor, the City shall notify all BPD employees in writing and by posting in a prominent and conspicuous location at the BPD office and at any additional or subsequent location used by the BPD, of:

- a. a summary of the provisions of this Agreement, (attached to this Agreement as Appendix C);
- b. the availability of a full copy of this Agreement upon request to the City's Human Resources Director;
- c. the existence and appointment of the EEO Monitor;
- d. the office location and phone number of the EEO Monitor;
- e. the EEO Monitor's duties;
- f. employees and citizens' right to contact the EEO Monitor directly and in as confidential a manner as possible to discuss concerns or to file a complaint with the EEO Monitor relating to acts of alleged sex discrimination, sexual harassment, or retaliation in the BPD.

For all future employees in the BPD, the City shall provide them the written notice described in this paragraph on or prior to their first day of work. The City shall require each current and future employee in the BPD to sign an acknowledgment of receipt of the written notice described in this paragraph, and shall retain those signed acknowledgments of receipt throughout the life of this Agreement.

28. The City shall pay for the EEO Monitor to appear at each EEO training seminar held pursuant to this Agreement where the EEO Monitor will introduce himself or herself and describe his or her duties to the persons required to attend those training seminars.

29. Within seven (7) days of the appointment of the EEO Monitor, the City shall publish a newspaper notice which shall run for two (2) consecutive weeks in the Wednesday and Saturday editions of the Valencia County News-Bulletin. The notice shall be no smaller than one-quarter page and shall appear in the "A" Section. The notice, which is attached to this Agreement as Appendix D, shall inform readers

of:

- a. the provisions of this Agreement;
- b. the availability of a full copy of this Agreement upon request to the City's Human Resources Director;
- c. the existence and appointment of the EEO Monitor;
- d. the office location and phone number of the EEO Monitor;
- e. the EEO Monitor's duties;
- f. employees and citizens' right to contact the EEO Monitor directly and in as confidential a manner as possible to discuss concerns or to file a complaint with the EEO Monitor relating to acts of alleged sex discrimination, sexual harassment, or retaliation committed by employees in the BPD.

XI. EEO MONITOR'S CONTINUING EVALUATION OF CITY'S EFFECTIVENESS IN PREVENTING SEX DISCRIMINATION, SEXUAL HARASSMENT, AND RETALIATION IN THE BPD

30. For the duration of the Agreement, the EEO Monitor will be responsible for reviewing and evaluating on a continuing basis all City and BPD policies and practices relating to the City's effectiveness in preventing sex discrimination, sexual harassment, and retaliation in the BPD. The EEO Monitor will continue during this time to recommend any modifications that the Monitor believes necessary to City and BPD policies and practices. The City shall implement each recommendation of the EEO Monitor unless, within thirty (30) days after receiving the recommendation, the City files an objection with the United States that the EEO Monitor's recommendation, in whole or in part, involves the application of unsound business judgment or is otherwise not feasible. If the United States disagrees with the City's objection, and the parties are unable to resolve their disagreement, either party may submit the matter to the Court pursuant to the dispute resolution mechanism of paragraph 67 of this Agreement. If the United States disagrees in any respect with the EEO Monitor's evaluation or recommendations, the United States, the City, and the EEO Monitor shall meet to attempt to resolve the disagreement. If the United States and the City disagree with each other and are unable to resolve their disagreement, either party may submit the matter to the Court pursuant to the dispute resolution mechanism of paragraph 67 of this Agreement.

At the end of each successive one year period following the date that this Agreement is approved and entered by the Court, the EEO Monitor shall submit a report to the United States and the City setting forth the following information:

- a. an evaluation of the City's effectiveness in preventing sex discrimination, sexual harassment, and retaliation in the BPD;
- b. recommendations for any modifications to existing policies or practices to facilitate the prevention of sex discrimination, sexual harassment, and retaliation in the BPD;
- c. timetables for implementation of these modifications.

31. The City shall cooperate fully with the EEO Monitor in connection with his or her efforts to evaluate on a continuing basis the City's effectiveness in preventing sex discrimination, sexual harassment, and

retaliation in the BPD. The City shall provide the EEO Monitor reasonable access to all relevant documents and other sources of information. In connection with his or her evaluation efforts, the EEO Monitor also shall be allowed to interview and otherwise seek the cooperation of City employees, including employees in the BPD. Such cooperation shall be treated by the City as a work-related activity for purposes of employee compensation. If any dispute arises between the City and the EEO Monitor regarding any work or access to City documents or employees the EEO Monitor believes is necessary to fulfill the EEO Monitor's obligations under this Agreement, the EEO Monitor or the City shall notify the United States of such disagreement. If the United States disagrees with the City and the parties are unable to resolve their disagreement, either party may submit the matter to the Court pursuant to the dispute resolution mechanism of paragraph 67 of this Agreement.

XII. PROCEDURE FOR HANDLING COMPLAINTS OF SEX DISCRIMINATION, SEXUAL HARASSMENT AND RETALIATION FILED BY EMPLOYEES AND APPLICANTS FOR EMPLOYMENT IN THE BPD AND CITIZENS

A. Filing an EEO Complaint

32. The following complaints shall be considered EEO complaints and shall be investigated solely by the City's Human Resources Director and the EEO Monitor, working together, as provided for in this Agreement:

- a. Complaints filed by employees or applicants for employment in the BPD alleging that they have been subjected to acts of sex discrimination, sexual harassment, or retaliation;
- b. Complaints filed by citizens alleging that employees in the BPD have subjected them to sexual harassment, including unwelcome sexual advances, requests for sexual favors, verbal, physical, or other conduct of a sexual nature, or acts of gender-based animosity;
- c. Complaints that supervisors in the BPD have failed to report acts of sex discrimination, sexual harassment of employees or citizens, or retaliation of which they were aware, or have failed to prevent such conduct from occurring.

33. EEO complaints may be filed with the following persons: (1) the EEO Monitor appointed pursuant to this Agreement; (2) the City's Human Resources Director (3) the City Manager; (4) the Police Chief; or (5) any supervisor in the BPD. A complainant need not file such a complaint with his or her own supervisor, nor need a complainant go through the BPD's chain of command to file such a complaint. If, during the term of this Agreement, a BPD employee or a citizen attempts to notify the Employment Litigation Section of the Civil Rights Division of the Department of Justice of an EEO Complaint, that office shall refer that employee to the complaint mechanisms provided under this Agreement.

34. An EEO complaint may be made either orally or in writing. If an oral complaint is made, the complainant shall be asked to reduce his or her complaint to writing. The City may not require that a written complaint be notarized. A complainant's failure to file an EEO complaint or a complainant's failure to reduce such complaint to writing will not discharge the City of its duty to ensure that conduct that constitutes sex discrimination, sexual harassment, or retaliation is investigated by the EEO Monitor and the Human Resources Director and it will not discharge the City of its duty to remedy, take disciplinary action on, and prevent from occurring in the future acts of sex discrimination, sexual harassment, or retaliation.

35. All persons who file EEO complaints shall promptly be given by the City's Human Resources

Director a copy of the City's policy addressing sex discrimination, sexual harassment, and retaliation and a copy of this Agreement, and informed in writing: (a) that their complaint will be investigated solely by the City's Human Resources Director and the EEO Monitor, working together, as provided for in this Agreement; (b) of the address and telephone number at which the EEO Monitor may be contacted; and (c) of their right to contact the EEO Monitor directly.

36. If a supervisor in the BPD receives an EEO complaint or otherwise becomes aware of an allegation of sex discrimination, sexual harassment, or retaliation against an employee in the BPD, that supervisor shall forward the EEO complaint or allegation to the City Manager as soon as practicable and, in any event, no later than the close of business of the next business day after receiving such complaint or becoming aware of such allegation. The City Manager shall forward the EEO complaint or the allegation of employment discrimination or retaliation to the City's Human Resources Director and the EEO Monitor as soon as practicable and, in any event, no later than the close of business of the next business day after receiving such complaint or becoming aware of such allegation. If the City Manager or a BPD supervisor fails to comply with the procedures set forth in this paragraph, he or she shall be subject to appropriate disciplinary action.

37. The City, either directly or through the EEO Monitor, shall notify the United States of the filing of any EEO complaint or of the existence of any allegation of sex discrimination, sexual harassment, or retaliation against an employee in the BPD and provide the United States with any relevant documents within seven (7) days after receiving such complaint or becoming aware of such allegation.

B. Investigation of EEO Complaints

38. The EEO Monitor and the City's Human Resources Director shall investigate all EEO complaints that are made after the date of entry of this Agreement. In addition, within sixty (60) days from the date of entry of this Agreement, the United States shall identify to the City those employees in the BPD whom the United States believes should be investigated by the EEO Monitor and the City's Human Resources Director for allegations against them of sexual harassment, sex discrimination, or retaliation that became known during the investigation and litigation of this case or related EEOC charges. The United States shall identify those employees based on the employees' rank and the severity and frequency of the allegations against them. Within seven (7) days of its receipt of the United States' designations, the City shall notify each of the identified employees, in writing, that he or she will be investigated by the EEO Monitor and the City's Human Resources Director pursuant to the mechanisms established in this Agreement. The City also shall inform each of the identified employees, in writing, that if he or she objects to being investigated pursuant to the mechanisms established in this Agreement, he or she may, within thirty (30) days of the date of the notification of the pending investigation, file an objection with and seek a hearing before this Court and serve a copy of the objection on the City and the United States. If an identified employee does not file an objection with this Court or if the Court denies the objection, the investigation will proceed. If disciplinary action is recommended against an identified employee after the investigation, he or she will have all of the procedural and appeal rights associated with such disciplinary actions as are set forth in the City's Personnel Rules and Regulations Manual.

39. The EEO Monitor together with the City's Human Resources Director, shall be solely responsible for conducting all investigations of EEO complaints in the manner set forth in this Agreement. The City shall provide the EEO Monitor and Human Resources Director with whatever assistance and access they may request in conducting an investigation.

40. Any City or BPD employee who orders or conducts an EEO investigation in violation of this order will be subject to disciplinary action. However, a City or BPD supervisor may make a preliminary inquiry where circumstances require that immediate action, (e.g., separation of employees, suspension

with pay of the accused) is necessary, until such time as a full investigation by the EEO Monitor and Human Resources Director can be initiated.

41. All persons contacted in the course of the investigation of EEO complaints shall be informed that retaliation is illegal. If, during the course of the investigation of such a complaint, the complainant or any witness complains of retaliation, the EEO Monitor and the City's Human Resources Director, upon verification of the retaliation, shall recommend, and the City shall implement, as appropriate, interim relief to protect the complainant and the witness.

C. Determinations Regarding EEO Complaints

42. EEO complaints shall be investigated promptly and in as confidential a manner as possible. The EEO Monitor and the City's Human Resources Director shall work together to investigate EEO complaints. Their respective roles with regard to these investigations shall be as set forth in paragraphs 43 - 45, unless all of the following circumstances have occurred: (1) at least two (2) years have passed since the date of entry of this Agreement; (2) at least five (5) complaints have been received and investigated by the EEO Monitor and the particular Human Resources Director working together in accordance with the provisions of paragraphs 44 and 45; and (3) the EEO Monitor determines that the particular Human Resources Director is knowledgeable and capable with respect to investigating EEO complaints. In the event that these three conditions have occurred, the respective roles of the EEO Monitor and the City's Human Resources Director shall be as set forth in paragraph 46.

43. As soon as practicable after receiving notification of a complaint, but in no event later than three (3) business days after receiving notification, the EEO Monitor shall confer and consult with the City's Human Resources Director about the complaint. This consultation shall include discussion about the nature of the complaint and the steps to be taken in investigating that complaint.

44. The consultation discussed in paragraph 43 shall result in the writing of a "Complaint Investigation Plan" by the EEO Monitor, who shall transmit the Plan to the Human Resources Director no later than two (2) business days following the consultation. As soon as practicable after the writing and transmittal of the Complaint Investigation Plan, the EEO Monitor and the Human Resources Director shall jointly investigate the complaint according to the Plan. The EEO Monitor shall have primary responsibility for conducting the investigation. Both the EEO Monitor and the City's Human Resources Director shall be present at all interviews.

45. As soon as practicable after the completion of all steps that are part of the Complaint Investigation Plan, but in no event later than thirty (30) days from the date of receipt of the complaint by the EEO Monitor, the Human Resources Director shall complete a Draft Determination that shall include findings of fact based on the investigation and shall include, if appropriate, a recommendation for relief for the complainant and/or discipline for the accused. The Draft Determination shall be transmitted to the EEO Monitor for review. After the EEO Monitor has reviewed the Draft Determination, he or she shall determine if any changes to the findings of fact are necessary and whether further investigation is required. If no further investigation is required, the EEO Monitor shall determine whether the relief or discipline recommended by the Human Resources Director in the Draft Determination is appropriate. The EEO Monitor shall discuss and communicate any required changes to the Human Resources Director, and shall explain to the Human Resources Director the reasons for any changes to the relief or discipline recommended by the Human Resources Director. The Human Resources Director shall then write a final Determination incorporating any such changes required by the EEO Monitor, including any changes to the discipline or relief recommended by the Human Resources Director in the Draft Determination.

46. If the conditions set forth in paragraph 42 have occurred, the following steps shall occur after the consultation described in paragraph 43 is completed. The City's Human Resources Director shall write the Complaint Investigation Plan and shall transmit it to the EEO Monitor for review no later than two (2) business days following the consultation. Within three (3) business days following the receipt of the Complaint Investigation Plan by the EEO Monitor, the Monitor shall communicate any required changes to the Plan to the Human Resources Director and the Human Resources Director shall make any recommended changes. After the Plan has been finalized, the Human Resources Director shall have primary responsibility for conducting the investigation, under the supervision of the EEO Monitor. Both the Human Resources Director and the EEO Monitor shall be present during all interviews. The provisions for writing, reviewing and transmitting a Draft Determination and final Determination, set forth in paragraph 45, then shall apply.

47. The Human Resources Director shall provide copies of the final Determination to the United States, the City Manager, the complainant, and the accused, within forty-five (45) days of the filing of the EEO complaint. If, under exceptional circumstances, a final Determination cannot be issued in this time period, the United States shall be notified promptly in writing by the EEO Monitor and given an explanation of the reasons therefor.

48. If the United States or the City disagrees with the Determination, the United States, the City, and the EEO Monitor shall confer and attempt to resolve the disagreement. If the United States and the City disagree with each other and are unable to resolve their disagreement, either party may submit the matter to the Court pursuant to the dispute resolution mechanism of paragraph 67 of this Agreement.

49. If the Determination recommends a remedy that does not concern disciplining the accused, such as relief for the complainant or a change in policy, and the City accepts the recommendation, the City shall implement the remedy as soon as practicable and in no event later than forty-five (45) days of receipt of the Determination from the Human Resources Director. If the City declines to follow the recommendation in a Determination regarding a remedy that does not concern disciplining the accused, the City shall notify the United States within seven (7) days of receipt of the Determination from the Human Resources Director. If the United States disagrees with the City's decision and the parties are unable to resolve their disagreement, either party may submit the matter to the Court pursuant to the dispute resolution mechanism of paragraph 67 of this Agreement.

D. Disciplinary Action

50. Disciplinary action shall be taken against offending employees, as appropriate. Penalties for alleged misconduct shall be governed by the penalties set forth in the City and BPD policies that were in effect at the time the conduct allegedly occurred. The procedures concerning the proposed disciplinary action shall be governed by the City and BPD policies that are in effect at the time the disciplinary action is recommended.

51. If the Determination transmitted to the City Manager by the Human Resources Director recommends that the accused be subjected to disciplinary action, the City shall notify the accused within seven (7) days of receipt of the Determination from the Human Resources Director of the City's intent to impose that disciplinary action. The accused shall have all of the procedural and appeal rights associated with such disciplinary action as are set forth in the City's Personnel Rules and Regulations Manual. If at any time the City decides to deviate from the disciplinary action recommended in the Determination transmitted to the City Manager by the Human Resources Director, the City shall provide the United States with a written explanation for its decision within seven (7) days of its decision. If the United States disagrees with the City's decision, and the parties are unable to resolve their disagreement, either party may submit the matter to the Court pursuant to the dispute resolution mechanism of paragraph 67

of this Agreement.

52. In considering the appropriateness of the recommended disciplinary action against the accused, the City shall consider as evidence the written findings in the Determination regarding the complaint filed against the accused. The EEO Monitor may testify at any disciplinary or appeal hearing. Any disciplinary or appeal hearing shall be recorded by audio tape, provided that the taping equipment must be of sufficient quality to produce a clearly audible tape, and the tape shall be available to the United States for review, upon written request.

53. In considering the appropriateness of the recommended disciplinary action against the accused, the City shall ensure that the discipline is:

a. designed to discourage the offending employee and others from committing acts of sex discrimination, sexual harassment, or retaliation;

b. designed to encourage individuals to come forward with complaints of sex discrimination, sexual harassment, or retaliation.

54. A copy of the final decision concerning disciplinary action shall be forwarded immediately to the United States, the EEO Monitor, the complainant, and the accused.

55. Any dispute that arises between the parties relating to the EEO complaint process set forth in this Agreement may be handled pursuant to the dispute resolution mechanism set forth in paragraph 67 of this Agreement.

E. Performance of EEO Monitor

56. The performance of the EEO Monitor, and his or her work product, including investigatory notes and tape-recordings, shall be subject to review by the United States and the City. If the United States or the City so requests, the EEO Monitor shall meet with the United States or the City to discuss the status of particular complaints. If the United States or the City has reason to believe that there is a problem with the performance of the EEO Monitor, that party shall inform the other of its concerns. If the United States and the City disagree, and they are unable to resolve their disagreement, either party may submit the issue to the Court pursuant to the dispute resolution mechanism of paragraph 67 of this Agreement.

XIII. MONITORING FOR SEX DISCRIMINATION AND RETALIATION INTERNAL AFFAIRS INVESTIGATIONS AND DISCIPLINARY ACTIONS TAKEN AGAINST EMPLOYEES IN THE BPD

57. The City shall not institute internal affairs investigations or take disciplinary actions against employees in the BPD, in whole or in part, because of the sex of the employee or in retaliation against the employee for engaging in activities protected by Title VII. If an employee in the BPD believes that an internal affairs investigation has been instituted or disciplinary action has been taken against him or her in violation of this paragraph, the employee shall have the right to submit a complaint to the EEO Monitor established pursuant to this Agreement, to the City's Human Resources Director, to the City Manager, to the BPD Chief, or to any supervisor in the BPD, in addition to and independent of any rights he or she may have to challenge the internal affairs investigation or the disciplinary action under law. The City shall include in the BPD's Standard Operating Procedures Manual a statement informing employees that they have a right to challenge discipline or internal affairs investigations that they believe have been undertaken in violation of this paragraph by using any of the complaint mechanisms

described in this Agreement. Should an employee exercise a challenge to an internal affairs investigation as provided for in this Agreement, the City may choose to either continue with the internal affairs investigation or stop it pending the outcome of the complaint procedure provided for in paragraph 58.

58. If an employee files a complaint as set forth in paragraph 57 with any of the persons listed in paragraph 57, that person shall notify all of the other persons set forth therein. Within seven (7) days of learning of such complaint, the Police Chief, or his designee, shall advise the EEO Monitor and the Human Resources Director in writing of the rationale for opening an internal affairs investigation on or disciplining the employee. At the EEO Monitor's request, the City shall provide the EEO Monitor with a copy of all documents or tapes relating to its investigation and all documents or reports describing or summarizing the results of the investigation or the disciplinary action taken, if any. The EEO Monitor and Human Resources Director, acting together in the respective roles set forth in this Agreement, shall be allowed to interview personally all witnesses as soon as is practicable. The Human Resources Director shall, pursuant to the provisions of this Agreement and in consultation with the EEO Monitor, write a Draft and final Determination indicating whether the internal affairs investigation has been instituted or the disciplinary action taken, in whole or in part, because of the employee's sex or in retaliation for the employee having engaged in activities protected by Title VII. The final Determination shall be completed no later than thirty (30) days after the receipt of the City's explanation, and the Human Resources Director shall immediately send a copy of the Determination to the United States once it has been completed. If the Determination indicates that the internal affairs investigation has been instituted or the disciplinary action taken, in whole or in part, because of the employee's sex or in retaliation for the employee having engaged in activities protected by Title VII, and the United States agrees with the Determination, it shall inform the City of its concerns, if any, with the internal affairs investigation or the disciplinary action. If the City disagrees with the United States' concerns, and the parties are unable to resolve their disagreement, either party may submit the issue to the Court pursuant to the dispute resolution mechanism of paragraph 67 of this Agreement.

XIV. RECORD-KEEPING, REPORTING AND MONITORING

A. Semi-Annual Reports

59. For purposes of this Agreement, a reporting period shall run from January 1 through June 30 and from July 1 through December 31 for each year. Within thirty (30) days from the close of each reporting period, the City, through its Human Resources Director, shall provide to the United States the following information:

- a. the name, sex, position, shift, home address and phone number of all employees in the BPD as of the date of the close of the reporting period;
- b. the name, sex, position, shift, home address and phone number of all employees in the BPD who resigned or were terminated during the reporting period;
- c. the names, sex, home address and phone number of all persons applying for hire or promotion in the BPD during the reporting period.

B. Retention of Documents

60. The City shall retain during the life of this Agreement all records that come into its possession relating to charges or complaints of sex discrimination, sexual harassment and retaliation filed against the City, the BPD, or any employee in the BPD.

61. The City shall retain all records (including electronic records) that come into its possession relating to:

- a. documents relating to the training programs to be established under this Agreement;
- b. performance evaluations and records of any kind showing the performance of employees in the BPD;
- c. records relating to discipline, demotion and discharge of employees in the BPD.

62. The City shall retain during the life of this Agreement all documents relating to the implementation of the Agreement and all records pertaining to information and documents that are the subject of the reports required by this Agreement. The City shall make those records and all other documents relevant to its compliance with and implementation of this Agreement available for inspection and copying, within thirty (30) days of any written request sent by the United States to the City's attorney.

63. All documents required to be delivered under this Agreement to the United States shall be sent to the following address: Chief, Employment Litigation Section, Civil Rights Division, U. S. Department of Justice, P.O. Box 65968, Washington, D. C. 20035-5968.

XV. ATTORNEY'S FEES AND COSTS

64. The United States and the City shall bear their own costs, expenses, and attorneys' fees in this action, except that the parties shall retain the right to seek costs for any matter which, in the future, may arise from this Agreement and require resolution by the Court.

65. The City agrees to pay all costs associated with the implementation and administration of this Agreement, except as is specifically provided otherwise in this Agreement.

XVI. POSTING REQUIREMENTS

66. Within seven (7) days of the date of the appointment of the EEO Monitor, the City shall issue to every employee in the BPD and every City employee with management responsibility over the BPD the summary of this Agreement that is attached as Appendix C. Within seven (7) days of the date of entry of this Agreement, the City shall post copies of the summary of this Agreement on the public bulletin board in City Hall and at a prominent and conspicuous location at the BPD office and at all additional or subsequent locations that may be used by the BPD during the life of this Agreement. The City shall make complete copies of the Agreement available to employees upon their request through the City's Human Resources Director.

XVII. DISPUTE RESOLUTION

67. The parties shall attempt to resolve informally any dispute that arises under this Agreement. If the parties are unable to resolve the dispute expeditiously, either party may move the Court for resolution of the issue, provided that written notice has been provided to the other party.

XVIII. JURISDICTION OF THE COURT

68. This Court shall retain jurisdiction of the matters covered by this Agreement for the life of the Agreement for such action as may be necessary or appropriate to effectuate the purposes of this Agreement. After three (3) years have passed from the date of entry of this Agreement, the City may

move this Court to dissolve this Agreement if the City can bear the burden of showing that it has substantially complied with the objectives of this Agreement. If the City does not move the Court to dissolve the Agreement at that time, or if the Court denies the City's motion to dissolve the Agreement, the Agreement shall dissolve four (4) years from the date of entry of the Agreement, without further action by the parties. However, at least ninety (90) days before the dissolution of this Agreement, the United States may move to extend the term of this Agreement upon a showing of good cause. Should the United States file a motion to extend the Agreement, this Agreement shall remain in effect until final resolution of the motion.

69. This Agreement does not create any rights in third parties. Only the United States and the City may seek to enforce the provisions of this Agreement. This Agreement is not intended to constitute evidence that the City has violated any law dealing with sexual harassment, sex discrimination, or retaliation, or that the City has or ever had a custom or policy of violating any law dealing with sexual harassment, sex discrimination, or retaliation.

XIX. MODIFICATION OF AGREEMENT

70. At any time during the pendency of this Agreement, the parties may mutually agree to modify any provision of this Agreement, subject to approval by the Court. Should modification be desired by either party but opposed by the other, either party may submit the matter to the Court pursuant to the dispute resolution mechanism of paragraph 67 of this Agreement, and the Court shall determine whether there is good cause to modify the Agreement. If so, the Court shall enter an order modifying the Agreement accordingly.

XX. RESOLUTION OF CLAIMS

71. The parties agree that this Agreement resolves any and all claims that were brought in the complaint and amended complaint filed in this lawsuit. In addition, the parties agree that this Agreement resolves any and all claims of a pattern or practice of sex discrimination, sexual harassment, and retaliation in the BPD that the United States brought or could have brought in this lawsuit. Should the United States bring any future pattern or practice claim of sex discrimination, sexual harassment, or retaliation in the BPD, the United States agrees that it will not rely on conduct that occurred prior to the date of entry of this Agreement as evidence to support any such pattern or practice claim. Furthermore, this Agreement bars any and all claims for individual relief that the United States brought or could have brought in this lawsuit on behalf of individuals who were otherwise time-barred from filing a charge of discrimination with the EEOC. The parties agree that this Agreement does not resolve any individual charge of discrimination that is pending or may be filed in the future with the EEOC or with the Department of Justice. Should the Department of Justice decide, during the pendency of this Agreement, to file suit on a pattern or practice claim of sex discrimination, sexual harassment or retaliation in the BPD or an individual charge of discrimination referred to it by the EEOC or received by the Department of Justice regarding allegedly discriminatory conduct in the BPD, the Department of Justice, before filing a lawsuit, will attempt to resolve the matter with the City through conciliation, and if that fails, through non-binding mediation before a United States Magistrate Judge, or if the Department of Justice and City agree, before an alternative mediator. (The Department of Justice is not currently aware of any individual, other than Debora Roach, who has pending or intends to file a charge of discrimination with the EEOC or the Department of Justice regarding allegedly discriminatory conduct in the BPD.)

XXI. CONFIDENTIALITY OF DOCUMENTS

72. The Order Concerning the Designation and Use of Confidential Information entered by this Court on

December 13, 1999 ("Order Concerning Confidentiality") shall be extended to protect the confidentiality of certain information that comes into the possession of the EEO Monitor and the United States for the purpose of implementing the provisions of this Agreement. Those documents which are defined as confidential in that Order shall likewise be considered confidential and shall not be subject to disclosure to anyone outside the City of Belen except the EEO Monitor and representatives of the United States Department of Justice, Civil Rights Division, Employment Litigation Section, which disclosure shall be necessary to effectuate the purposes of this Agreement. Documents that are presumptively confidential are medical records, psychological evaluations, documents and/or files from internal affairs investigations or investigations conducted pursuant to this Agreement by the EEO Monitor and the City's Human Resources Director, and any documents previously identified as confidential by the City of Belen during the litigation of this action. Additional documents not specifically enumerated herein may be identified as confidential by the City. The United States may seek to challenge the designation of confidentiality of a document pursuant to the manner set forth in paragraph 7 of the Order Concerning Confidentiality. The parties shall abide by paragraph 6 of the Order Concerning Confidentiality with regard to filing confidential pleadings with the Court.

73. Should the United States Department of Justice receive a request pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for documents obtained directly or indirectly from the City of Belen in the course of the pre-litigation investigation, discovery, or settlement of this case, or for materials containing confidential information derived from those documents, the Department of Justice agrees to inform the City of the FOIA request in a timely fashion so as to permit the City an opportunity to seek judicial intervention to prevent the Department of Justice from disclosing the confidential documents or materials containing confidential information derived from those documents to a third party pursuant to a FOIA request. The Department of Justice agrees to honor the privacy interests of those individuals named in the documents and maintain the confidentiality of all the documents and the confidential information contained within the documents until such time as this Court has decided the merits of the City's motion.

74. Any questions regarding the scope or extent of the confidentiality provisions in this Agreement shall be construed in a manner consistent with the purposes and procedures of the Order Concerning Confidentiality.

Entered this ____ day of _____, 2000.

PAUL J. KELLY
UNITED STATES CIRCUIT JUDGE
SITTING BY DESIGNATION

Agreed and Consented To:

**ON BEHALF OF PLAINTIFF UNITED
STATES OF AMERICA:**
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Assistant Attorney General

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ON BEHALF OF DEFENDANT CITY OF BELEN, NEW MEXICO:

RONNIE TORRES
City Mayor

DAVID STRATMOEN
City Manager

REVIEWED AND APPROVED BY COUNSEL FOR THE CITY OF BELEN IN THIS ACTION

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