

SETTLEMENT AGREEMENT AND RELEASE

1.0 Parties and Controversy.

1.1 The Parties to this Settlement Agreement and Release (“this Agreement”) are as follows:

A. (i) American Friends Services Committee, a Pennsylvania not-for-profit corporation, (ii) Sister Antonia Anthony, (iii) End the Politics of Cruelty, an unincorporated association, (iv) Chiapas Coalition, an unincorporated association, (v) Stephen Nash, and (vi) Vicki Nash (collectively referred to as “Plaintiffs”); and

B. The City and County of Denver (the “City”).

1.2 The case or controversy giving rise to this Agreement are the claims asserted by Plaintiffs against the City in the lawsuit entitled *American Friends Service Committee, et al. v. City and County of Denver*, United States District Court, District of Colorado, Civil Action No. 02-N-0740 (CBS) (the “Lawsuit”).

2.0 Effective Date.

2.1 The effective date of this Agreement shall be the date on which the United States District Court for the District of Colorado gives approval to the settlement reflected in this Agreement in accordance with paragraph 9.1 below.

3.0 Policy.

3.1 On or before the effective date of this Agreement, the City shall adopt and implement revised Policy 118.03, a copy of which is annexed hereto as Exhibit 1, by adding it to the Denver Police Department Operations Manual.

3.2 If, at any time within two years of the effective date of this Agreement, the City determines to make any changes to, or to repeal, revised Policy 118.03, or any successor policy thereto, then the City shall so notify Plaintiffs, in writing, through their agents identified at paragraph 11.1, below, at least 21 days prior to the effective date of the proposed changes or repeal, and allow Plaintiffs to comment regarding those proposed changes or the proposed repeal. In order to be considered, Plaintiffs must notify the City of their comments in writing through its agent identified at paragraph 11.2 below, within 14 days of the date of the City’s notification of proposed changes or repeal. The City shall in good faith review and consider Plaintiffs’ comments. It is expressly understood between Plaintiffs and the City that Plaintiffs shall have the right to comment only and that such comments are not binding upon the City.

3.3 If the City determines to make any changes to, or to repeal, revised Policy 118.03, or any successor policy thereto, then the City shall so notify the Public Safety Review Commission, or any successor body thereto, of those proposed changes or proposed repeal, in

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writing, no less than 21 days prior to the effective date of the proposed changes or proposed repeal.

3.4 For five years following the effective date of this Agreement, the City will not change revised Policy 118.03, or any successor policy thereto, in any of the following respects, absent a change in law that abrogates or supersedes the provisions, as drafted:

- (a) The definition of “reasonable suspicion,” as set forth at paragraph 5(f) of revised Policy 118.03;
- (b) Paragraph 11 of revised Policy 118.03, entitled “Independent Oversight”;
- (c) Paragraph 6(a) of revised Policy 118.03, entitled “Supervision of Data Entry”;
- (d) Paragraph 6(b) of revised Policy 118.03, entitled “Information Submission Criteria”; and
- (e) The exclusions set forth at paragraph 6(c) of revised Policy 118.03.

4.0 Purge/Review/Disposition of Files.

4.1 Within 30 days of the effective date of this Agreement, the City shall purge all of its existing criminal intelligence files to comply with revised Policy 118.03. Upon completion of the further review period described in paragraph 4.2, below, all purged files, whether hard copy or computer data stored on disk or other electronic storage device, shall be transferred to the custody of the undersigned attorney for the City, pending final disposition as referenced at paragraph 4.3, below.

4.2 For 90 days following the effective date of this Agreement, the City shall permit any person or organization to request copies of criminal intelligence files relating to that person or organization that have been purged in accordance with paragraph 4.1, above, and the City shall have 30 days within which to respond to such requests by providing the requesting individuals or organizations with copies of the documents in the criminal intelligence files that refer to such individuals or organizations, if any, without charge to the requesting individual or organization, consistent with the City’s November 19, 2002 procedures for “Purged Intelligence File Review,” except as noted in this paragraph. In searching for files in response to such requests, the City shall use best efforts to locate and to produce all documents from purged files that pertain to the requesting person or organization. Upon completion of this request process, the City will have no obligation to undertake any further similar request process.

4.3 Upon dismissal of the Lawsuit, pursuant to paragraph 9.4, below, the City shall determine in its sole and exclusive discretion the ultimate disposition of the criminal intelligence files purged in accordance with paragraph 4.1 above. Neither this paragraph nor any other provision of this Agreement shall be construed to constitute Plaintiffs’ express or implied

agreement, consent, acknowledgement, or endorsement of the City's decision regarding the ultimate disposition of the criminal intelligence files.

4.4 For 180 days following the effective date of this Agreement, Plaintiffs may submit to the City documentary evidence (a "Release") that subjects of criminal intelligence files previously designated as confidential pursuant to the Stipulation and Protective Order entered in this action on July 10, 2002 (the "Protective Order"), a copy of which is attached hereto as Exhibit 2, desire that the documents in the criminal intelligence files that refer to them be released from the scope of the Protective Order. Upon the City's receipt of such signed Releases, the documents in the criminal intelligence files that refer to such subjects shall be released from the scope of the Protective Order. If any of the documents refers to more than one person or organization, then those documents shall be released from the scope of the Protective Order, in redacted form, when redactions are necessary to protect individual privacy or to prevent substantial harm to the public interest pursuant to Paragraph 11 of the Protective Order. Names of individuals shall not be redacted when Plaintiffs have furnished the City with an appropriate release, as described above. The terms and provisions of Paragraph 11 of the Protective Order shall govern any and all objections to confidentiality designations and the process for resolving any disagreements regarding any such objections. Upon expiration of such 180-day period, Plaintiffs shall make no further requests that "confidential" designations be withdrawn. Plaintiffs shall make no other requests pursuant to Paragraph 11 of the Protective Order to release documents from the scope of the Protective Order except as set forth above in this paragraph.

4.5 Upon dismissal of the Lawsuit, the parties shall comply with paragraph 15 of the Protective Order.

4.6 Within 120 days of the effective date of this Agreement, the City shall furnish (a) Plaintiffs, (b) any person or organization that made written request for their criminal intelligence files (including requests made pursuant to paragraph 4.2 above), and (c) any other person or organization referenced in any purged criminal intelligence files whose address can readily be obtained by the City, each separately and individually, with a letter signed by the City's Chief of Police indicating that the City has purged its criminal intelligence file(s) on the specific person or organization, that the City currently does not have information to cause it to maintain an intelligence file on the person or organization, and that the City maintains no criminal intelligence information concerning the specific person or organization.

5.0 Notification of Other Agencies.

5.1 Within 30 days of the effective date of this Agreement, the City shall notify other law enforcement agencies through The National Law Enforcement Teletype System and the Mexican Consulate by letter that the City has, within the last 30 days, completed a review of its criminal intelligence files, which has resulted in the purge of a substantial number of those files and, further, that the other law enforcement agencies may contact the Intelligence Bureau of the City's Police Department to inquire whether or not any intelligence information previously supplied to such other law enforcement agencies was included in the purge.

5.2 To the extent that the City can determine that any information from any criminal intelligence file purged in accordance with paragraph 4.1, above, was supplied to a specific law enforcement agency, then the City shall notify such other specific law enforcement agency through correspondence signed by the City's Chief of Police advising as to the purge of those specific file materials or information. The City shall provide Plaintiffs with copies of all letters sent pursuant to this paragraph.

6.0 Audits.

6.1 The City shall conduct audits of its criminal intelligence files in accordance with paragraph 11 of revised Policy 118.03. For any audit conducted within two years of the effective date of this agreement, Plaintiffs shall have the right to participate in the selection of the auditor in accordance with paragraph 6.2, below. Thereafter, Plaintiffs shall have no right to participate in the selection of the auditor.

6.2 For any audit for which Plaintiffs have the right to participate in the selection of the auditor, the selection shall occur as follows:

(A) Plaintiffs shall identify three (3) names of recommended auditors by notifying the City through its agent as specified at paragraph 11.2, below. Upon receipt of the names of those recommended auditors, the City shall have the right to peremptorily strike two of the three names.

(B) The City shall identify three (3) names of recommended auditors by notifying Plaintiffs through their agents as specified at paragraph 11.1, below. Upon receipt of the names of those recommended auditors, Plaintiffs shall have the right to peremptorily strike two of the three names.

(C) Upon completion of the identification and striking set forth at subparagraphs (A) and (B), above, the Mayor of the City shall then have the exclusive right to select the auditor from the two remaining names.

The City shall take all steps reasonable and appropriate to ensure that the auditor for the first audit has been selected no later than 30 days from the effective date of this Agreement.

7.0 Release and No Admission.

7.1 Plaintiffs hereby release, acquit, and forever discharge the City, as well as all related persons and entities, both past and present, including, but not limited to, the City's departments, divisions, principals, attorneys, agents, insurers, employees, successors, servants, elected officials, officers, and directors of and from any and all liabilities, claims, demands, rights, controversies, agreements, damages, actions, causes of action, expenses, attorneys' fees, interest, compensation, judgments, and all consequential and punitive damages, of whatsoever kind or nature, either in law or equity, which might exist with regard to any and all claims in any way related to or arising from the matters that are the subject matter of the Lawsuit, except as expressly set forth in this Agreement.

7.2 The City hereby releases, acquits, and forever discharges each of the Plaintiffs, as well as all related persons and entities, both past and present, including, but not limited to, the Plaintiffs' respective principals, attorneys, agents, insurers, employees, successors, servants, members, constituents, officers, and directors of and from any and all liabilities, claims, demands, rights, controversies, agreements, damages, actions, causes of action, expenses, attorneys' fees, interest, compensation, judgments, and all consequential and punitive damages, of whatsoever kind or nature, either in law or equity, which might exist with regard to any and all claims in any way related to or arising from the matters that are the subject matter of the Lawsuit except as expressly set forth in this Agreement.

7.3 By entering into this Agreement, the City neither admits any fault or liability to Plaintiffs, nor any violation of law.

8.0 Attorney Fees and Costs.

8.1 Plaintiffs shall be entitled to recover their reasonable attorneys' fees and costs incurred in connection with the Lawsuit. Within ten business days following the effective date of this Agreement, Plaintiffs and the City shall submit the reasonableness of attorney fees and costs claimed by Plaintiffs for a determination by the Court in the Lawsuit. Such determination shall be limited to the reasonableness of attorney fees and costs incurred as of the effective date of this Agreement, except for Plaintiffs' attorneys' fees and costs reasonably expended in litigating the motion for recovery of attorneys' fees and costs.

8.2 The determination of reasonableness of attorney fees and costs shall be submitted to the Court for determination via stipulation, which shall provide as follows:

(A) That Plaintiffs shall promptly submit their request for attorney fees and costs via motion with supporting documentation; within 30 days of the service of that motion, the City may serve a response with supporting documentation; and within 15 days of the service of the response, Plaintiffs may serve a reply; and

(B) That the City shall pay to Plaintiffs those attorney fees and costs that the Court determines to be reasonable in accordance with paragraph 8.1, above, within 60 days of

the entry of the Court's judgment on those attorney fees and costs, if there is no appeal of such determination. In the event of an appeal of the Court's determination regarding those attorney fees and costs, then the City shall pay the attorney fees and costs within 60 days of the date the decision on the attorney fees and costs becomes final and nonappealable.

8.3 The City does not agree to pay any attorney fees and costs incurred subsequent to the effective date of this Agreement, except for Plaintiffs' attorneys' fees and costs reasonably expended in litigating the motion for recovery of attorneys' fees and costs.

9.0 Administrative Closure and Dismissal.

9.1 No later than 30 days from the execution date of this Agreement, the parties shall jointly move the Court for an Order (a) approving this Agreement, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure and (b) for administrative closure of the Lawsuit. Said joint motion shall be in the form annexed hereto as Exhibit 3. This Agreement shall be null and void in its entirety if the Court does not grant such joint motion in its entirety.

9.2 The Lawsuit will remain administratively closed and shall not be reopened absent a showing of good cause upon motion from either Plaintiffs or the City. Such motion shall not be considered by the Court absent good faith compliance with D.C.COLO.LCivR 7.1.

9.3 After the Lawsuit has been administratively closed for 12 months, and absent a motion to reopen from either Plaintiffs or the City, then the Court shall proceed to dismiss the Lawsuit with prejudice *sua sponte* and without further action from either Plaintiffs or the City.

10.0 Changes to Police Department Operations Manual

10.1 No later than 30 days from the effective date of this Agreement, the Denver Police Department shall add to its Operations Manual language providing that, in the absence of exigent circumstances, the City shall not engage in any undercover operation unless a lieutenant, acting lieutenant, or other commanding officer has reviewed and approved the request for such undercover operation, in writing, prior to the initiation of the undercover operation.

10.2 No later than 30 days from the date of this Agreement, the Denver Police Department shall add the following language to its Operations Manual:

Photographs taken at the scene of riots, disorders, protest demonstrations, marches, or similar incidents shall be destroyed after the event if no illegal actions occurred. If illegal actions occurred, only those photographs will be retained and filed which will be useful in illustrating the incidents and identifying and bringing to trial the participants in the illegal activity, or in defending against a civil claim. Such photographs shall be destroyed in the event no criminal or civil proceedings are filed.

11.0 Notification.

11.1 Notification to Plaintiffs pursuant to this Agreement shall occur via certified mail and via telecopy directed to the following:

Lino S. Lipinsky de Orlov, Esq.
McKenna Long & Aldridge LLP
1875 Lawrence Street, Suite 200
Denver, Colorado 80202

Telecopier number (303) 634-4400

and to

Mark Silverstein, Esq.
Legal Director
American Civil Liberties Union
400 Corona Street
Denver, CO 80218-3915

Telecopier number (303) 777-1773

11.2 Notification to the City pursuant to this Agreement shall occur via certified mail and via telecopy directed to the following:

Thomas S. Rice
Senter Goldfarb & Rice, L.L.C.
P.O. Box 22833
Denver, Colorado 80222

Telecopier number (303) 320-0210

11.3 Either party may give notice of any change in its agent(s) for notification by notifying the other party through its agent as set forth at paragraphs 10.1 and 10.2, above.

12.0 Governing Law.

11.1 This Agreement shall be construed and interpreted in accordance with the laws of the State of Colorado.

13.0 Merger, Modification, and Miscellany.

13.1 This Agreement sets forth all agreements between Plaintiffs and the City with respect to the case and controversy and any prior agreement or understanding is deemed superceded and merged herein.

13.2 This Agreement may not be modified absent a writing signed by all Plaintiffs and the City.

13.3 This Agreement may be executed in one or more counterparts, no one of which need be signed by all parties, all of which shall be read together and construed as one and the same Agreement.

13.4 The receipt of the signature of any party by facsimile shall be deemed the equivalent of receipt of an original signature. Subsequent to the transmission of signed duplicates of this Agreement by telecopy, the parties, through counsel, shall exchange hand-executed duplicate originals of this Agreement.

AMERICAN FRIENDS SERVICE COMMITTEE

_____, authorized
representative

STATE OF PENNSYLVANIA)
COUNTY OF)ss

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2003.

My Commission expires: _____

Notary Public

(Initials)

ANTONIA ANTHONY

STATE OF COLORADO)
COUNTY OF)ss

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2003.

My Commission expires: _____

Notary Public

END THE POLITICS OF CRUELTY

By: _____
_____, authorized
representative

STATE OF COLORADO)
COUNTY OF)ss

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2003.

My Commission expires: _____

Notary Public

CHIAPAS COALITION

By: _____
_____, authorized
representative

STATE OF COLORADO)
COUNTY OF)ss

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2003.

My Commission expires: _____

Notary Public

(Initials)

STEPHEN NASH

STATE OF COLORADO)
COUNTY OF)ss

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2003.

My Commission expires: _____

Notary Public

VICKI NASH

STATE OF COLORADO)
COUNTY OF)ss

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2003.

My Commission expires: _____

Notary Public

CITY AND COUNTY OF DENVER

By: _____
_____, authorized
representative

STATE OF COLORADO)
COUNTY OF)ss

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2003.

My Commission expires: _____

Notary Public

ATTORNEY APPROVALS:

Lino S. Lipinsky de Orlov, Esq.
Attorney for Plaintiffs

Thomas S. Rice, Esq.
Attorney for the City