

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
LUBBOCK DIVISION

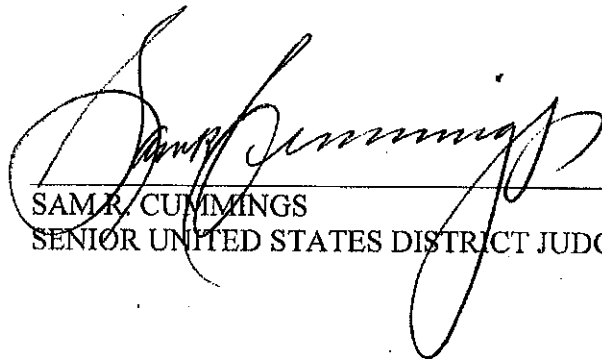
UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 CITY OF LUBBOCK, TEXAS, ) Civil Action No: 5:15-CV-234-C  
 Defendant. )  
 )  
 )  
 )  
 \_\_\_\_\_ )

**ORDER GRANTING JOINT MOTION FOR  
FINAL ENTRY OF THE CONSENT DECREE**

Upon consideration of Plaintiff United States of America and Defendant City of Lubbock's Joint Motion for Final Entry of the Consent Decree, and after having conducted a Fairness Hearing on the Terms of the Consent Decree on November 14, 2016, the Court concludes that the Consent Decree, Dkt. 19-1, is fair, lawful, and reasonable.

It is hereby **ORDERED** that the Joint Motion for Final Entry of the Consent Decree is **GRANTED**, and that the Consent Decree is **APPROVED AND ENTERED**.

Date: November 14, 2016.

  
\_\_\_\_\_  
SAM R. CUMMINGS  
SENIOR UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
LUBBOCK DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
CITY OF LUBBOCK, TEXAS,	)	
	)	
Defendant.	)	Civil Action No. 5:15-CV-234-C

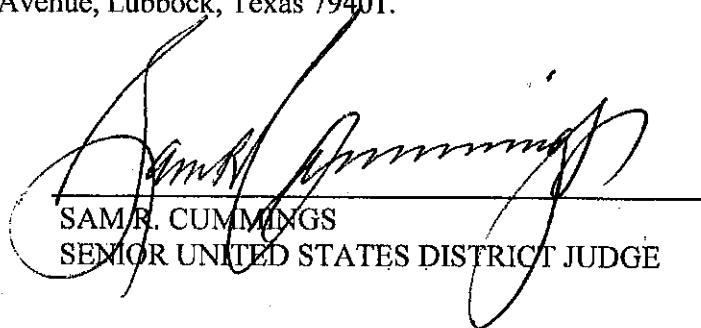
**ORDER GRANTING JOINT MOTION FOR PROVISIONAL ENTRY  
OF THE CONSENT DECREE AND SCHEDULING OF FAIRNESS HEARING  
ON THE TERMS OF THE CONSENT DECREE**

Upon consideration of Plaintiff United States of America and Defendant City of Lubbock’s Joint Motion for Provisional Entry of the Consent Decree and Scheduling of Fairness Hearing on the Terms of the Consent Decree (“Joint Motion”) and the materials submitted to the Court in connection with the Joint Motion,

It is hereby **ORDERED** that the Joint Motion is **GRANTED** and that the Consent Decree is **PROVISIONALLY APPROVED AND ENTERED**.

It is **FURTHER ORDERED** that a Fairness Hearing on the Terms of the Consent Decree is set for 9:00 a.m. on November 14, 2016, at the United States District Court for the Northern District of Texas, 1205 Texas Avenue, Lubbock, Texas 79401.

Dated June 16, 2016.



SAM R. CUMMINGS  
SENIOR UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
LUBBOCK DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
CITY OF LUBBOCK, TEXAS,	)	Civil Action No: 5:15-CV-234-C
	)	
Defendant.	)	
	)	
	)	
	)	

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**JOINT MOTION FOR PROVISIONAL ENTRY OF THE CONSENT DECREE AND  
SCHEDULING OF FAIRNESS HEARING ON THE TERMS OF THE CONSENT  
DECREE**

Plaintiff United States of America (“United States”) and Defendant City of Lubbock, Texas (“City”) jointly move the Court: (1) to provisionally enter the Consent Decree filed contemporaneously with the Memorandum of Law in Support of this Joint Motion; and (2) to schedule a Fairness Hearing on the Terms of the Consent Decree no less than 100 days from the date of the Court’s order on this Joint Motion, as provided in Paragraph 14 of the Consent Decree.

The Consent Decree would resolve the United States’ allegations that the City engaged in a pattern or practice of discrimination against Hispanic and female applicants on the basis of national origin and sex in its selection process for the position of probationary police officer from January 2010 to June 2015 in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* (“Title VII”). The Fairness Hearing on the Terms of the Consent Decree would allow the Court to hear any objections to the terms of the Consent Decree and to decide whether to enter the Consent Decree as a final order.

As set forth in the attached Memorandum of Law, the Court should provisionally enter the Consent Decree because its terms are fair, lawful, and reasonable. The Consent Decree ensures that the selection process used by the City to hire probationary police officers does not violate Title VII on the basis of national origin and/or sex. The Consent Decree requires the development of new, Title VII-compliant selection devices that do not unnecessarily exclude qualified candidates because of their national origin and/or sex, and it provides appropriate relief in the form of back pay and/or hiring relief to qualified applicants who were denied the opportunity to become probationary police officers with the City because of the employment practices challenged by the United States in this case.

Accordingly, the Parties respectfully request that the Court provisionally enter the Consent Decree and schedule a Fairness Hearing on the Terms of the Consent Decree.

Respectfully submitted,

**FOR PLAINTIFF UNITED STATES OF AMERICA:**

*/S Alisa C. Philo*

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*/S Brian Begle (by consent)*

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Date: May 26, 2016

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of May 2016, I filed the foregoing JOINT MOTION FOR PROVISIONAL ENTRY OF THE CONSENT DECREE AND SCHEDULING OF FAIRNESS HEARING ON THE TERMS OF THE CONSENT DECREE with the Clerk of the Court by using the CM/ECF system which will automatically send a notice to all counsel of record.

*/S Alisa C. Philo*

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Alisa C. Philo (CA Bar No. 295892)

Attorney for Plaintiff United States

**UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF TEXAS  
LUBBOCK DIVISION**

**UNITED STATES OF AMERICA,**     )  
  )  
                                  **Plaintiff,**     )  
  )  
**v.**                                     )  
  )  
**CITY OF LUBBOCK, TEXAS,**     )  
  )  
                                  **Defendant.**     )

**Civil Action No.: 5:15-cv-234**

**CONSENT DECREE**

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## **APPENDICES**

- APPENDIX A** Notice of Settlement and Fairness Hearing, Instructions for Filing an Objection Prior to the Fairness Hearing, and Objection to the Entry of Consent Decree Form
- APPENDIX B** Notice of Entry of Consent Decree, Instructions for Filing a Claim to be Considered for a Cash Back Pay Award or Priority Hiring Consideration, and Interest-in-Relief Form
- APPENDIX C** Cover Letter Regarding Individual Relief Determination and Providing Notice of Fairness Hearing on Individual Relief, Instructions for Filing an Objection to Individual Relief, and Objection to Determination of Individual Relief Form
- APPENDIX D** Notice of Individual Relief Award
- APPENDIX E** Acceptance of Individual Relief Award and Release of Claims Form

## **I. BACKGROUND AND STIPULATIONS**

This action was brought by Plaintiff United States of America (“United States”) against Defendant City of Lubbock, Texas (“City”) to enforce the provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* (“Title VII”). This Court has jurisdiction of this action under 42 U.S.C. §§ 2000e-5(f) & 2000e-6(b) and 28 U.S.C. §§ 1343(a)(3) & 1345.

The United States first notified the City of its investigation into the hiring practices of the Lubbock Police Department in January 2014. Based on the information gathered during its investigation, the United States determined that the City was engaged in a pattern or practice of discrimination against Hispanics and women in its hiring of probationary police officers, in violation of Title VII, and notified the City in June 2015 that a lawsuit had been authorized.

In its Complaint, filed in December 2015, the United States alleges that the City has engaged in unlawful employment practices by using selection procedures that deprive or tend to deprive Hispanics and women of employment opportunities because of their national origin and/or sex, in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e-2(a). Specifically, the United States alleges that the City’s use of a written exam had an adverse impact upon Hispanic applicants for the probationary police officer position, and that the City’s use of a physical fitness test had an adverse impact upon female applicants for the probationary police officer position. The United States further alleges that these practices have not been shown to be sufficiently job related for the position of probationary police officer or consistent with business necessity. The United States does not allege that the City has intentionally discriminated against any person or group of persons under Title VII.

The City denies that it has violated Title VII. Nevertheless, the United States and the City, desiring that this action be settled by an appropriate consent decree (“Decree”) and without

the burdens of protracted litigation, agree to the jurisdiction of this Court over the Parties and the subject matter of this action. The United States and the City further agree to the entry of this Decree as final and binding between themselves as to the issues raised in the United States' Complaint in this action. Subject to the Court's approval of this Decree, the Parties waive findings of fact and conclusions of law on all issues, except as to the following, which the Parties stipulate and which the Court finds:<sup>1</sup>

**A. Probationary Police Officer Selection Process**

From January 2010 until June 2015, when the City was notified that the United States intended to file a lawsuit, the City used the same multi-step selection process to hire probationary police officers. That selection process is governed in part by Chapter 143 of the Texas Local Government Code, which establishes requirements for entry-level hiring within police departments for cities of a certain size that have adopted its provisions, including the City of Lubbock. The City's selection process is not governed in any way by the terms of a collective bargaining agreement.

The City's selection process began with the City accepting applications for a defined period of time. The day after the application period closed, the City administered a written exam (the "Police Written Entrance Exam") to all interested applicants. Those who passed the Police Written Entrance Exam were placed on an eligibility list in rank order based on their score and were sent to take a physical fitness test (the "PFT") the same day. Those who failed the Police Written Entrance Exam were removed from further consideration. Those who passed the PFT were required to submit a personal-history questionnaire, undergo a background investigation, a

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<sup>1</sup> The facts are based on the United States' Complaint, (Dkt. 1), the City's Answer (Dkt. 5), the City's responses to the United States' discovery requests, and the declarations of the United States' experts, which are attached to the memorandum in support of the Parties' joint motion for provisional entry of this Decree.

panel interview, and an interview with the Chief of Police before receiving a conditional offer of employment. Those who failed the PFT were removed from further consideration. Applicants who received a conditional offer of employment were required to also take and pass a polygraph test, a psychiatric exam, a medical exam, and a substance abuse screen before starting police academy training.

Only the Police Written Entrance Exam and the PFT are at issue in this litigation.

**B. The Police Written Entrance Exam**

The Police Written Entrance Exam consisted of 65 multiple-choice questions, including 20 mathematics questions, 25 reading comprehension questions, and 20 grammar questions. Under the City's scoring methodology, each question was equally weighted and applicants must have earned a total score of at least 70% to pass. An applicant who scored less than 70% was considered to have failed the Police Written Entrance Exam and was disqualified from proceeding to the PFT.

There were fourteen administrations of the Police Written Entrance Exam between January 16, 2010, and June 6, 2015. Over the combined fourteen administrations, 861 unique applicants who identified as Hispanic and 1,605 unique applicants who identified as white took the exam. Of these unique applicants, 581 (67.5%) Hispanic applicants and 1,412 (88.0%) white applicants passed on their first attempt. The disparity in pass rates among unique Hispanic and unique white applicants across the fourteen exam administrations combined is statistically significant at -12.04 units of standard deviation and sufficient to establish a *prima facie* case of disparate impact discrimination under Title VII.

Absent the disparate impact resulting from the City's pass/fail use of the Police Written Entrance Exam, the United States estimates that an additional 165 Hispanic applicants would have been eligible to continue in the City's selection process for probationary police officers

from the test administrations at issue in this case. Ultimately, the United States estimates that an additional 12 Hispanic applicants would have been hired by the City as probationary police officers from the test administrations at issue, absent the disparate impact. The City does not dispute the United States' estimate of expected Hispanic hires.

The United States contends that the City's use of the Police Written Entrance Exam from January 2010 to June 2015 has not been shown to be job related and consistent with business necessity.

**C. The Physical Fitness Test**

The PFT consisted of five events, which could be administered in any sequence. To pass the PFT, each applicant was required to complete:

1. 19 push-ups in one minute with straight form;
2. 25 sit-ups in one minute;
3. a vertical jump of at least 14 inches;
4. a 300-meter sprint in less than 75.3 seconds; and
5. a 1.5-mile run in less than 16 minutes, 55 seconds.

An applicant who failed to achieve the set standard on any one event was not allowed to continue on to any other event, was treated by the City as having failed the PFT, and was disqualified from proceeding in the selection process.

There were fourteen administrations of the PFT between January 16, 2010, and June 6, 2015. Over the combined fourteen PFT administrations, 196 unique female applicants and 2,055 unique male applicants took the PFT. Of these unique applicants, 73 (37.2%) female applicants and 1,658 (80.7%) male applicants passed the PFT the first time that they took the PFT. This disparity in pass rates among unique female and male applicants is statistically significant at -12.52 units of standard deviation and sufficient to establish a *prima facie* case of disparate impact discrimination under Title VII.

Absent the disparate impact resulting from the City's pass/fail use of the PFT, the United States estimates that an additional 83 female applicants would have been eligible to continue in the City's selection process for probationary police officers from the test administrations at issue in this case. Ultimately, the United States estimates that an additional 15 female applicants would have been hired by the City as probationary police officers from the test administrations at issue, absent the disparate impact. The City does not dispute the United States' estimate of expected female hires.

The United States contends that the City's use of the PFT from January 2010 to June 2015 has not been shown to be job related and consistent with business necessity.

**In resolution of this action, with the consent of the Parties, IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:**

**II. DEFINITIONS**

1. "Back pay" means a monetary award that represents the value of some of the wages that a Claimant would have received if he or she had not been disqualified by the Police Written Entrance Exam or the PFT and had been hired into the position of probationary police officer.
2. "Claimant" means a person who submits an Interest-in-Relief Form.
3. "Days" means calendar days unless business days are clearly specified. If any deadline referenced in this Decree should fall on a weekend or federal holiday, the deadline shall be moved to the next business day.
4. "Entry of the Decree" means the date on which the Court enters the Decree as final in an order at or after the Fairness Hearing on the Terms of the Consent Decree as set forth in Paragraph 26 of this Decree.
5. "Individual relief" under this Decree means:

- a. Monetary relief in the form of back pay; and/or
  - b. Priority hiring relief in the form of a probationary police officer position with retroactive seniority.
6. The “Parties” to this Decree are the United States, by the Department of Justice, and the City of Lubbock, Texas.
7. “PFT” means the 5-component physical fitness test used by the City to screen applicants for the probationary police officer position from January 2010 to June 2015.
8. “Police Written Entrance Exam” means the 65-question written exam used by the City to screen applicants for the probationary police officer position from January 2010 to June 2015.
9. “Priority hire” means a Claimant who is eligible for priority hiring relief and is either:
  - a. Hired by the City as a probationary police officer and is credited by the City with retroactive seniority corresponding with the Claimant’s retroactive seniority date upon beginning police academy training, as set forth in Paragraph 97(a); or
  - b. A current City police officer who is credited by the City with retroactive seniority corresponding with the Claimant’s retroactive seniority date, as set forth in Paragraph 97(b).
10. “Probationary police officer” means a person hired to a probationary police officer position by the City, regardless of whether the person may also be called by another title while undergoing police academy training or until the person has completed the probationary period applicable to all Lubbock Police Department police officers.

11. “Retroactive seniority” refers to seniority credit in the probationary police officer position that a Claimant who receives priority hiring relief is entitled to receive.
  - a. Retroactive seniority is comprised of retroactive benefits seniority and retroactive competitive seniority:
    1. Retroactive benefits seniority includes seniority for purposes of calculating an individual’s salary or other pay, pension benefits, and future accrual of leave, including vacation, personal, and sick leave, as well as any other purposes for which seniority is used to determine the amount of or eligibility for employee benefits.
    2. Retroactive competitive seniority is seniority used for any purpose in which an incumbent competes with other incumbents for, among other things, transfers/filling of internal vacancies, promotional examination seniority points, scheduling of leave, layoffs/reductions in work force, and recall from layoffs/reduction in work force, except that retroactive seniority awards may not be used for shift-bidding or to satisfy any applicable probationary periods or any time-in-grade requirements associated with promotion eligibility.
  - b. An award of retroactive seniority shall correspond to the start date of the first Lubbock Police Academy class that the Claimant would have entered if he or she had not been disqualified by the Police Written Entrance Exam or the PFT (“retroactive seniority date”).



12. "Selection device" means any examination, test, requirement, or other criterion used to evaluate an applicant's qualifications for hire as a probationary police officer (*e.g.*, written entrance examination, physical ability test or physical fitness test, personal history statement, polygraph examination, background examination, oral board interview, psychological examination, physical examination, and drug test).

**III. PURPOSES OF THE CONSENT DECREE**

13. The purposes of this Decree are to ensure that:
- a. The City does not violate Title VII by using policies or practices that have an adverse impact upon either Hispanic or female applicants for the position of probationary police officer and are not sufficiently job related for the position of probationary police officer and consistent with business necessity, or that otherwise violate the Title VII rights of Hispanic or female applicants to become probationary police officers;
  - b. The City utilizes lawful selection procedures that will ensure that probationary police officer hiring is based on merit and that the City's selection procedure does not unnecessarily exclude qualified Hispanic and female applicants; and
  - c. The City provides, as appropriate, monetary relief (*i.e.*, in the form of back pay) and/or priority hiring relief with retroactive seniority to qualified persons who were denied a job as a probationary police officer due to the employment practices challenged by the United States in this case.

**IV. FAIRNESS HEARING ON THE TERMS OF THE CONSENT DECREE**

**A. Provisional Entry of this Decree**

14. Upon execution of this Decree, the Parties shall promptly file a joint motion for the provisional approval and entry of the Decree by the Court and request a Fairness Hearing on the Terms of the Consent Decree to allow the Court to determine whether the terms of the Decree are fair, lawful, and reasonable. The Parties will request that the Court provide at least one hundred (100) days notice of the date and time set for this Fairness Hearing on the Terms of the Consent Decree.
15. The purpose of the Fairness Hearing on the Terms of the Consent Decree and the related notification provisions of this Decree is to provide all persons who may be affected by the terms of the Decree with notice and an opportunity to present objections prior to final entry of the Decree, in accordance with Section 703(n) of Title VII, 42 U.S.C. § 2000e-2(n).

**B. Claims Administrator**

16. Prior to the Parties tendering the Decree to the Court for provisional approval and entry, the City, with the approval of the United States, entered into a contract with a Claims Administrator to assist the Parties with the notice and claims procedure for individual relief. By agreement of the Parties, the City shall bear all costs and expenses of the Claims Administrator, which shall be in addition to, and not deducted from, amounts designated as back pay under this Decree.
17. The Claims Administrator's contract with the City requires the Claims Administrator to work under the control and supervision of the United States and the City in the conduct of its activities, including reporting regularly to and providing all reasonably requested information to the United States and the City. In the event that the United

States or the City has reason to believe that the Claims Administrator is not materially complying with the terms of its contract with the City, the United States and the City will meet and confer to find a mutually agreeable course of action to effect the Claims Administrator's material compliance with its contract with the City. In the event that the United States and the City are unable to agree upon a course of action to effect the Claims Administrator's material compliance with its contract with the City, the Parties may present the matter to the Court pursuant to the dispute resolution provisions set forth in Paragraph 115 of this Decree.

**C. Notice of Settlement to Applicants**

18. No later than ninety (90) days prior to the Fairness Hearing on the Terms of the Consent Decree, the City shall provide to the Claims Administrator and the United States the last-known mailing address and e-mail address of:
  - a. Each applicant who identified as Hispanic when applying for any of the City's selection processes for probationary police officer from January 16, 2010, to June 6, 2015, and who failed the Police Written Entrance Exam after having sat for the entire exam and recording answers as directed; and
  - b. Each applicant who identified as female when applying for any of the City's selection processes for probationary police officer from January 16, 2010, to June 6, 2015, and who failed the City's PFT.
19. No later than eighty (80) days prior to the Fairness Hearing on the Terms of the Consent Decree, the Claims Administrator shall provide a copy of a Notice of Settlement and Fairness Hearing, Instructions for Filing an Objection Prior to the Fairness Hearing, and a blank Objection to the Entry of the Consent Decree Form (collectively, "Notice Documents") in the formats set forth in Appendix A via e-mail

to the last-known e-mail address and via first-class U.S. mail to the last-known mailing address of the applicants identified in Paragraph 18, above.

20. The Claims Administrator shall keep records of all Notice Documents that are returned to the Claims Administrator as undeliverable. If any applicant's Notice Documents are returned to the Claims Administrator as undeliverable, the Claims Administrator shall promptly notify the Parties and attempt to identify an updated mailing address as soon as practicable. If the Claims Administrator or one of the Parties identifies an alternate mailing address, the Claims Administrator shall re-mail the Notice Documents within two (2) business days to the applicant.

**D. Notice of Settlement to Other Interested Parties**

21. No later than eighty (80) days prior to the Fairness Hearing on the Terms of the Consent Decree, the City shall provide a copy of the Notice Documents described in Paragraph 19, above, in the formats set forth in Appendix A to:
  - a. Each police officer currently employed at the Lubbock Police Department, via hand delivery, at the place of the person's employment, by U.S. mail to his or her home address, or as an attachment to or an enclosure with each such person's regularly distributed paycheck; and
  - b. The Lubbock Professional Police Association via U.S. mail, and to any other union or association recognized as being authorized to represent police officers in the Lubbock Police Department via U.S. mail.
22. The City shall publish a notice of the settlement and the fairness hearing, in a form substantially the same as contained in Appendix A, on the City's website, the Lubbock Police Department's website, the City's Municipal Television (local access)

channel, and via social media (*i.e.*, Facebook and/or Twitter) regularly used by the City and/or the LPD.

- a. The published notice on the City's website and the Lubbock Police Department's website shall include a publicly-accessible link from which the Notice Documents and the Decree can be accessed. This publicly-accessible link and notice shall be published and remain on the websites for no less than eighty (80) days prior to the Fairness Hearing on the Terms of the Consent Decree.
- b. The published notice on the City's Municipal Television channel shall run for three (3) consecutive weeks, concluding no later than fifty (50) days prior to the date set for the Fairness Hearing on the Terms of the Consent Decree appearing at least four times per day, for thirty seconds for each appearance. In addition to including notice of the settlement and the fairness hearing, in a form substantially the same as contained in Appendix A, the published notice shall provide the website address from which Notice Documents and the Decree can be accessed, and the phone number of the Claims Administrator.
- c. Eighty (80) days prior to the Fairness Hearing on the Terms of the Consent Decree and again sixty (60) days prior to the Fairness Hearing on the Terms of the Consent Decree, the City shall publish notice via social media as follows:
  - i. The City shall post and not delete a post on the City's Facebook page (<https://www.facebook.com/CityofLubbock>) and on the Lubbock Police Department's Facebook page

(<https://www.facebook.com/LubbockPD>) with the following text and a publicly-accessible link from which the Notice Documents and the Decree can be accessed: “The City has entered into a Consent Decree with the U.S. Department of Justice to resolve allegations of hiring discrimination at the LPD. To learn more, visit: [link].”

- ii. The City shall post and leave up a tweet on the City’s Twitter page (@CityofLubbock) and on the Lubbock Police Department’s Twitter page (@LubbockPolice) with the following text and a publicly-accessible link from which the Notice Documents and the Decree can be accessed: “The City settled a hiring discrimination lawsuit by the Dept of Justice @CivilRights involving the LPD. Read more: [link].”

**E. Objections to Entry of the Consent Decree**

23. A person who wishes to object to the terms of the Consent Decree may file a written objection in accordance with the requirements set forth in Appendix A.
  - a. Objections shall be submitted to the Claims Administrator and shall state the objector’s name, mailing address, telephone number, and e-mail address, if any; set forth a specific description of the objector’s basis for objecting; include copies of any documentation supporting the objection; state the name and contact information of the objector’s counsel, if any; and state whether the objector wishes the opportunity to be heard in Court at the Fairness Hearing on the Terms of the Consent Decree.

- b. Objections submitted via mail must be postmarked no later than fifty (50) days before the Fairness Hearing on the Terms of the Consent Decree, and objections submitted via e-mail must be transmitted electronically no later than fifty (50) days before the Fairness Hearing on the Terms of the Consent Decree.
- 24. By no later than forty-five (45) days prior to the date set for the Fairness Hearing on the Terms of the Consent Decree, and on a rolling weekly basis thereafter (if necessary), the Claims Administrator shall serve upon the Parties copies of the objections it has received.
- 25. No later than ten (10) days prior to the Fairness Hearing on the Terms of the Consent Decree:
  - a. The United States shall file with the Court copies of all objections received by the Claims Administrator, and
  - b. The United States and the City shall file their responses, if any, to objections timely received by the Claims Administrator in accordance with the deadlines set forth in Appendix A.

**F. Final Entry of the Consent Decree**

- 26. If the Court determines that the terms of this Decree are fair, lawful, and reasonable, the Court shall enter the Decree at or after the Fairness Hearing on the Terms of the Consent Decree.

**V. GENERAL INJUNCTIVE RELIEF**

**A. Injunctions**

- 27. Except as provided in this Decree, the City, its officials, agents, employees, and successors, and all persons acting on behalf of or in active concert or participation

with it, are enjoined from using any selection device for the position of probationary police officer that has an adverse impact upon Hispanic or female applicants on the basis of national origin and/or sex, and is not sufficiently job related for the position of probationary police officer or consistent with business necessity, or otherwise does not meet the requirements of Title VII.

28. The City is enjoined from retaliating against or otherwise adversely affecting any person because he or she opposed the alleged discrimination at issue here, in any way participated in or cooperated with the investigation or litigation of the alleged discrimination at issue here, has been involved with the development or administration of this Decree, or received relief under or otherwise benefited from this Decree.
29. During the term of this Decree, the City shall not administer any written exam or physical fitness test (or physical ability test) for use in selecting probationary police officers without the approval of the United States or, if the Parties cannot reach agreement, by the Court.
30. The City is specifically enjoined from using any written exam as part of its selection process for probationary police officers in any manner that results in disparate impact upon Hispanic applicants and is not shown to be sufficiently job related or consistent with business necessity under Title VII or, if job related and consistent with business necessity under Title VII, from refusing to adopt an alternative employment practice that exists within the meaning of 42 U.S.C. § 2000e-2(k)(1)(A)(ii).
31. The City is specifically enjoined from using any physical fitness test (or physical ability test) as part of its selection process for probationary police officers in any



manner that results in disparate impact upon female applicants and is not shown to be sufficiently job related or consistent with business necessity under Title VII or, if job related and consistent with business necessity under Title VII, from refusing to adopt an alternative employment practice that exists within the meaning of 42 U.S.C. § 2000e-2(k)(1)(A)(ii).

**B. Interim Selection Process**

32. As a result of the United States' investigation, the City suspended its use of the Police Written Entrance Exam and the PFT for the selection of probationary police officers after its June 6, 2015, selection process.
33. The Parties recognize that the proper development of new, lawful hiring procedures will take time, and that the City may have immediate operational needs that require the hiring of probationary police officers prior to the implementation of new hiring procedures in accord with Paragraphs 37 and 38 of this Decree.
34. If so, in order to address the City's immediate operational need to staff its police department while mitigating the potential adverse impact that would result from the use of the Police Written Entrance Exam and the PFT that gave rise to this action, the Parties agree that the City may use, on an interim basis not to exceed one hundred eighty (180) days after entry of the Decree at or after the Fairness Hearing on the Terms of the Consent Decree, the written exam (including scoring methodology) and the task-based physical abilities test (and passing standards) that it has used as part of its selection process for probationary police officers after the June 6, 2015, selection process.

**C. Decree Compliance Officer**

35. Within seven (7) days after entry of this Decree, the City shall designate a person who shall be primarily responsible for enforcing the provisions of this Decree. This person's responsibilities shall include, but not be limited to, ensuring that the City fully implements and complies with all paragraphs of this Decree, and reporting to the United States any complaints of discrimination on the basis of national origin and/or sex in the screening, selection, and appointment of probationary police officers.

**D. Development and Use of Lawful Selection Devices**

36. The City will adopt and use new, lawful selection devices to hire probationary police officers in place of the Police Written Entrance Exam and the PFT.
37. No later than ninety (90) days after entry of this Decree, the City shall submit to the United States a proposal to use a new written selection device and a new physical fitness or physical ability selection device for hiring entry-level police officers in place of the Police Written Entrance Exam and the PFT. The new written selection device and the new physical fitness or physical ability selection device shall either have no statistically significant disparate impact on the basis of national origin or sex, or shall have been demonstrated to be job related for the probationary police officer position and consistent with business necessity in accordance with Title VII. In selecting or developing the new written selection device and the new physical fitness or physical ability selection device, the City shall make reasonable efforts to explore the availability of written selection devices that have been shown to reduce or eliminate disparate impact upon Hispanics in processes for selecting police officers, as well as the availability of physical fitness or physical ability selection devices that have been shown to reduce or eliminate disparate impact upon women in processes for selecting police officers.

38. The proposal that the City submits pursuant to Paragraph 37 shall include all information available to the City about the development and/or validation of the proposed new written selection device and the new physical fitness or physical ability selection device, which, for each selection device, may include: a description of the selection device and the manner in which the City intends to use it; the known or likely disparate impact upon Hispanics (for written selection devices) and women (for physical fitness or physical ability selection devices), if any, of the intended use of the selection device; all evidence of job relatedness or validity of the selection device, including all job analyses, test plans, expert reports, and validation studies, as well as data underlying such analyses, plans, reports, or studies; and any basis for a conclusion that the proposed use of the selection device is job related for the position and consistent with business necessity. The City's submission shall also identify any other selection devices that the City considered, as well as any other manner of using the selection devices the City proposes.
39. Within ninety (90) days of receiving the proposal and information described in Paragraphs 37 and 38, above, from the City, the United States shall notify the City in writing whether it objects to the City's proposed use of the new written selection device and the new physical fitness or physical ability selection device; otherwise, the City may administer the selection devices.
40. If, after the administration of the City's new written selection device and the new physical fitness or physical ability selection device, the United States determines that the City's use of one or both of the newly adopted selection devices does not comply with Title VII and/or this Decree, the United States shall notify the City in writing

that the United States objects to the City's continued use of the new written selection device and/or the new physical fitness or physical ability selection device.

41. If the United States objects pursuant to Paragraphs 39 or 40, above, to the City's use of the new written selection device and/or the new physical fitness or physical ability selection device, the parties shall within thirty (30) days discuss the United States' objection and whether resolution is possible. If the Parties fail to reach an agreement resolving the issues raised by the United States' objection within thirty (30) days, the Parties may submit the dispute to the Court in accordance with the dispute resolution provisions set forth in Paragraph 115 of this Decree.
42. If the United States objects pursuant to Paragraphs 39 or 40, above, to the City's use of the new written selection device and/or the new physical fitness or physical ability selection device, no person shall be hired as a probationary police officer from any affected eligibility list except by written agreement of the Parties or order of the Court.

## **VI. INDIVIDUAL RELIEF**

### **A. Two Forms of Individual Relief**

43. The City will provide individual relief to eligible Claimants in the form of monetary relief (*i.e.*, back pay) and/or priority hiring relief, including retroactive seniority.

### **B. Deposit into Settlement Funds**

44. No later than seven (7) days after entry of this Decree, the City shall propose in writing to the United States a federally insured financial institution for deposit of the back pay into two settlement funds that will be distributed to eligible Claimants pursuant to this Decree. The United States shall provide a written response to the City's proposal within seven (7) days of its receipt, either consenting to the City's

proposed financial institution or objecting and proposing an alternative financial institution. If the Parties cannot agree on a federally insured financial institution, either party may submit the dispute to the Court for resolution upon providing the other party with seven (7) days written notice of its intent.

45. Within thirty (30) days after entry of this Decree, the City shall deposit into two interest-bearing accounts in the federally insured financial institution that has been approved by the Parties the monies that will be distributed to eligible Claimants pursuant to this Decree. In one account (“Settlement Fund I”), the City will deposit \$326,250. In the second account (“Settlement Fund II”), the City will deposit \$398,750.
46. Settlement Fund I, including any interest accrued on the amount deposited by the City into Settlement Fund I, shall be used to make back pay awards to eligible Hispanic Claimants. Settlement Fund II, including any interest accrued on the amount deposited by the City into Settlement Fund II, shall be used to make back pay awards to eligible female Claimants.
47. No Claimant may receive back pay awards from both Settlement Funds.

**C. Notice of Entry of Consent Decree to Applicants**

48. Within thirty (30) days after entry of this Decree, the Claims Administrator shall send a copy of the Notice of Entry of Consent Decree, Instructions for Filing a Claim to be Considered for a Cash Back Bay Award or Priority Hiring Consideration, and Interest-in-Relief Form (collectively, “Interest-in-Relief Form Documents”), in the formats set forth in Appendix B to:
  - a. Each applicant who identified as Hispanic when applying for any of the City’s selection processes for probationary police officer from January 16,

2010, to June 6, 2015, and who failed the Police Written Entrance Exam after having sat for the entire exam and recording answers as directed; and

- b. Each applicant who identified as female when applying for any of the City's selection processes for probationary police officer from January 16, 2010, to June 6, 2015, and who failed the City's PFT.

- 49. Such notice shall be sent by e-mail to the last-known e-mail address and via first-class U.S. mail to the last-known mailing address.
- 50. The Claims Administrator shall keep records of all Interest-in-Relief Form Documents that are returned to the Claims Administrator as undeliverable. If any applicant's Interest-in-Relief Form Documents are returned to the Claims Administrator as undeliverable, the Claims Administrator shall promptly notify the Parties and attempt to identify an updated mailing address as soon as practicable. If the Claims Administrator or one of the Parties identifies an alternate mailing address, the Claims Administrator shall re-mail the Interest-in-Relief Form Documents within two (2) business days to the applicant.

**D. Submission of Interest-in-Relief Forms by Potentially Eligible Applicants**

- 51. Any applicant who wishes to be considered for an award of individual relief under this Decree must return a completed Interest-in-Relief Form (Appendix B) to the Claims Administrator no later than seventy-five (75) days after entry of this Decree. Any applicant who fails to return an Interest-in-Relief Form by the deadline shall be deemed to have waived any right to be considered for an award of individual relief

under this Decree, except for good cause as determined by the United States and approved by the Court if the City objects to the United States' determination.

52. The submission date of each Interest-in-Relief Form shall be the date on which the form was e-mailed to the Claims Administrator, as determined by the e-mail date stamp, or the date on which the form was mailed to the Claims Administrator, as determined by the postmark. In the event the postmark is missing or illegible, the submission date of the Interest-in-Relief Form shall be deemed to be five (5) days prior to the date the form was received by the Claims Administrator.
53. No later than ten (10) days after the deadline for submission of Interest-in-Relief Forms to the Claims Administrator (eighty-five (85) days after entry of this Decree), the Claims Administrator shall provide to the Parties copies of all Interest-in-Relief Forms received by the Claims Administrator. Interest-in-Relief Forms received by the Claims Administrator more than ten (10) days after the deadline for submission of claim forms will be provided to the Parties on a weekly rolling basis.

**E. Determination of Claimants' Eligibility for Individual Relief**

54. The United States will determine whether a Claimant is eligible for individual relief under this Decree.
55. A Claimant is eligible for monetary relief (*i.e.*, back pay) under this Decree if the Claimant:
  - a. Identified as Hispanic when applying for any of the City's selection processes for the probationary police officer position from January 16, 2010, to June 6, 2015, failed the Police Written Entrance Exam (after having sat for the entire exam and marking answers as directed), and met the minimum

qualifications set forth in Paragraph 57, below, at the time the Claimant was disqualified by the Police Written Entrance Exam; or

- b. Identified as female when applying for any of the City's selection processes for the probationary police officer position from January 16, 2010, to June 6, 2015, failed the PFT, and met the minimum qualifications set forth in Paragraph 57, below, at the time the Claimant was disqualified by the PFT.

56. A Claimant is eligible for priority hiring relief under this Decree if the Claimant satisfies the criteria in Paragraph 55, above, and currently meets the minimum qualifications set forth in Paragraph 57, below, with the exception of the maximum age requirement.

57. The minimum qualifications for hire as a probationary police officer with the Lubbock Police Department are:

- a. Applicants must possess a high school diploma (or equivalent) at the time of application to take the written exam.
- b. Applicants must be between 20 1/2 and 45 years of age on the day of the written exam.
- c. Applicants must not have been convicted of a felony or class-A misdemeanor ever, or a class-B misdemeanor in the ten years preceding the application to take the written exam.
- d. Applicants must be a U.S. Citizen.

**F. Monetary Relief**

58. The United States shall determine the Claimants eligible for a back pay award under Paragraph 55. In order to be eligible for monetary relief, a Claimant need not express



an interest in, or be eligible for, priority hiring relief or accept an offer of employment in the probationary police officer position in the Lubbock Police Department.

59. The United States shall determine each eligible Claimant's back pay award from the appropriate Settlement Fund, such that awards from a Settlement Fund are distributed among all eligible Claimants who sought monetary relief, taking into account when each Claimant was disqualified by either the Police Written Entrance Exam or the PFT. Back pay awards to Hispanic Claimants who were disqualified by the City's use of the Police Written Entrance Exam test shall be paid from Settlement Fund I. Back pay awards to female Claimants who were disqualified by the City's use of the PFT shall be paid from Settlement Fund II.

**G. Priority Hiring Relief**

60. The United States shall determine the Claimants eligible to participate in the priority hiring selection process subject to Paragraph 56, above. Eligibility to participate in the priority hiring selection process does not ensure a Claimant will receive from the City an offer of priority hire.

**H. Proposed Individual Relief Awards Lists**

61. No later than one hundred twenty (120) days after entry of this Decree, the United States shall provide the City with:
- a. A Proposed Back Pay Awards List that identifies all Claimants it finds eligible for back pay relief based on the Interest-in-Relief Forms received by the Claims Administrator, as well as the amount of back pay that the United States has determined should be awarded to the Claimant and the specific Settlement Fund from which the award will be paid; and

- b. A Proposed Priority Hire Claimant List that identifies all Claimants it finds eligible to participate in the priority hiring selection process based on the Interest-in-Relief Forms received by the Claims Administrator.
  - c. The United States shall also provide the City with a list of Claimants who it finds ineligible for individual relief, which shall include the reason for the United States' determination that a Claimant who sought back pay and/or priority hiring relief is not eligible for such relief.
62. No later than one hundred fifty (150) days after entry of this Decree, the City shall notify the United States in writing if it objects to any of the United States' determinations regarding eligibility for back pay and/or priority hiring relief. The parties shall attempt to resolve any objections submitted by the City to the United States' determinations.

**VII. FAIRNESS HEARING ON INDIVIDUAL RELIEF**

**A. Filing of Proposed Individual Relief Awards Lists with the Court**

63. No later than one hundred eighty (180) days after entry of the Decree, the United States shall file with the Court and serve upon the City the following Proposed Individual Relief Awards Lists:
- a. A Proposed Back Pay Awards List stating, for each Claimant who timely returned an Interest-in-Relief Form and who the United States has determined is eligible for monetary relief, the amount of back pay that the United States has determined should be awarded to the Claimant and the specific Settlement Fund from which the award will be paid; and
  - b. A Proposed Priority Hire Claimant List with Claimants who the United States has determined are eligible to pursue priority hiring relief.

64. The Proposed Individual Relief Awards Lists shall identify each Claimant only by Claimant ID number.

**B. Fairness Hearing on Individual Relief**

65. Upon filing the Proposed Individual Relief Awards Lists, the United States shall simultaneously move the Court to hold a Fairness Hearing on Individual Relief to allow the Court to determine whether the Proposed Back Pay Relief Awards List and Proposed Priority Hire Claimant List should be approved or amended. The Court will provide the Parties with at least ninety (90) days notice of the date and time set for the Fairness Hearing on Individual Relief.

**C. Notice of Preliminary Eligibility Determinations to Claimants**

66. No later than eighty (80) days before the date set for the Fairness Hearing on Individual Relief, the Claims Administrator shall send to each Claimant who submitted an Interest-in-Relief Form via e-mail to the last-known e-mail address and via first-class U.S. mail to the last-known mailing address the following Notice of Individual Relief Fairness Hearing Documents:
- a. A cover letter, in the format attached in Appendix C, notifying the Claimant of the United States' determinations regarding the Claimant's eligibility for individual relief under the Consent Decree, the reason(s) for any determination that the Claimant is ineligible for any particular form of requested relief, and the Claimant's proposed back pay award as stated on the Proposed Back Pay Awards List, if any; and
  - b. A Cover Letter Regarding Individual Relief Determinations and Providing Notice of Fairness Hearing on Individual Relief, Instructions for Filing an

Objection to Individual Relief, and an Objection Form, in the formats attached as Appendix C.

67. The Claims Administrator shall keep records of the Notice of Individual Relief Fairness Hearing Documents that are returned to the Claims Administrator as undeliverable. If any of the Claimant's Notice of Individual Relief Fairness Hearing Documents are returned to the Claims Administrator as undeliverable, the Claims Administrator shall promptly notify the Parties and attempt to identify an updated mailing address as soon as practicable. If the Claims Administrator or one of the Parties identifies an alternate address, the Claims Administrator shall re-mail the Notice of Individual Relief Fairness Hearing Documents within two (2) business days to the Claimant.

**D. Objecting to Individual Relief Determinations**

68. A Claimant who wishes to object to any determination regarding individual relief as set out in his or her cover letter (Appendix C) must file a written objection in accordance with the requirements set forth in Appendix C.
- a. Objections shall be submitted to the Claims Administrator and shall state the Claimant's name, Claimant ID number, mailing address, telephone number, and e-mail address, if any; set forth a specific description of the Claimant's basis for disputing the relief determinations in the Proposed Individual Relief Awards Lists; include copies of all documentation supporting the objections; state the name, mailing and e-mail addresses, and telephone number of the Claimant's counsel, if any; and state whether the Claimant wishes the opportunity to be heard in Court at the Fairness Hearing on Individual Relief.

b. Objections submitted via mail must be postmarked no later than fifty (50) days prior to the date set for the Fairness Hearing on Individual Relief, and objections submitted via e-mail must be transmitted electronically no later than fifty (50) days prior to the date set for the Fairness Hearing on Individual Relief.

69. By no later than forty-five (45) days prior the Fairness Hearing on Individual Relief, and on a rolling weekly basis thereafter (if necessary), the Claims Administrator shall serve upon the Parties copies of the objections it has received.

**E. Filing Objections to Individual Relief**

70. No later than ten (10) days prior to the Fairness Hearing on Individual Relief, the United States shall file with the Court copies of all objections received by the Claims Administrator.

71. No later than ten (10) days prior to the Fairness Hearing on Individual Relief, the Parties shall file their responses, if any, to all objections. In the City's filing, the City may also address its unresolved objections made pursuant to Paragraph 62, above, in response to the United States' eligibility determinations made pursuant to Paragraph 61, above.

72. No later than the day of the Fairness Hearing on Individual Relief, the City shall provide the Claims Administrator with any and all withholding tax forms that the City will require Claimants to complete, as well as a protocol outlining what information must be included on the withholding tax forms for them to be considered fully executed for purposes of processing payment to the Claimants.

**F. Amendment to Preliminary Individual Relief Awards Lists**

73. At or after the Fairness Hearing on Individual Relief, the Court shall determine which, if any, objections to the Proposed Back Pay Awards List or to the Proposed Priority Hire Claimant List are well-founded. The Court shall then approve the lists as submitted or, if the Court finds that any objections are well-founded, shall request that the Parties make any necessary adjustments to the lists consistent with such findings.
74. The Court will find that an objection to either the Proposed Back Pay Awards List or the Proposed Priority Hire Candidate List, including an objection to the amount of monetary relief to be awarded to a Claimant, is well-founded only if the Court finds that the determination reflected in such list was not reasonable, equitable, or consistent with the provisions of this Decree or Title VII.

**G. Approval of Final Individual Relief Awards Lists**

75. If the Court determines that the individual relief awards are fair, reasonable, equitable, and otherwise consistent with federal law, the Court shall approve the Back Pay Awards List and the Priority Hire Claimant List as final (collectively, the “Final Individual Relief Awards Lists”) at or after the Fairness Hearing on Individual Relief.

**VIII. EXECUTION OF INDIVIDUAL RELIEF**

**A. Notice of Individual Relief Awards and Acceptance and Release**

76. No later than ten (10) days after the Court approves the Final Individual Relief Awards Lists, either at or after the Fairness Hearing on Individual Relief, the Claims

Administrator shall provide notice to each Claimant determined by the Court to be entitled to such relief.

77. The Claims Administrator shall send notice to each Claimant via e-mail to the last-known e-mail address and via first-class U.S. mail to the last-known mailing address.

The notice shall include:

- a. The Notice of Individual Relief Award in the form set forth in Appendix D.
- b. An Acceptance of Individual Relief Award and Release of Claims Form in the form set forth in Appendix E. If the Claimant is eligible for priority hiring relief, this form will include a statement of the Claimant's eligibility for such relief and a description of the retroactive seniority the Claimant will receive upon receipt of priority hiring relief; and
- c. Any withholding tax forms necessary for the City to comply with its withholding obligations under law and Paragraph 72 of this Decree.

78. The Claims Administrator shall keep records of all notice documents set forth in Paragraph 77 that are returned to the Claims Administrator as undeliverable. If any Claimant's notice documents are returned to the Claims Administrator as undeliverable, the Claims Administrator shall promptly notify the Parties and attempt to identify an updated mailing address as soon as practicable. If the Claims Administrator or one of the Parties identifies an alternate address, the Claims Administrator shall re-mail the notice documents set forth in Paragraph 77, above, within two (2) business days to the Claimant.

**B. Acceptance of Individual Relief**

79. To receive an award of individual relief, a Claimant must return to the Claims Administrator an Acceptance of Individual Relief Award and Release of Claims Form

as set forth in Appendix E of this Decree, along with any applicable withholding tax forms, no later than forty (40) days after the Court approves the Final Individual Relief Awards List.

80. The submission date of each Acceptance of Individual Relief Award and Release of Claims Form shall be the date on which the form was e-mailed to the Claims Administrator, as determined by the e-mail date stamp, or the date on which the form was mailed to the Claims Administrator, as determined by the postmark. In the event the postmark is missing or illegible, the submission date of the Acceptance of Relief and Release of Claims Form shall be deemed to be five (5) days prior to the date the form was received by the Claims Administrator.
81. Within three (3) business days, or as soon as practicable, of the Claims Administrator's receipt of an Acceptance of Individual Relief Award and Release of Claims Form and any applicable withholding tax forms, the Claims Administrator shall review the form(s) to determine whether it is fully executed with the information that is necessary to effectuate the Claimant's individual relief award.
  - a. An Acceptance of Individual Relief Award and Release of Claims Form is fully executed if the Claimant completes all blanks that require a response as indicated by an asterisk on the form. A withholding tax form is fully executed based on whether it complies with the protocol provided to the Claims Administrator by the City pursuant to Paragraph 72.
  - b. If the form is not fully executed, within three (3) business days, or as soon as practicable, the Claims Administrator shall notify the Claimant via mail, e-mail, and telephone that his/her form(s) was not fully executed.



- c. The Claims Administrator shall continue to conduct such review of all returned forms and to notify Claimants who submitted forms that were not fully executed until the deadline set forth in Paragraph 84.
82. No later than forty-five (45) days after the Court approves the Final Individual Relief Awards Lists, the Claims Administrator shall forward to the Parties copies of all Acceptance of Individual Relief Award and Release of Claims Forms and withholding tax forms it received from Claimants named in the Final Individual Relief Awards Lists.
83. No later than fifty-five (55) days after the Court approves the Final Individual Relief Awards Lists, the Claims Administrator shall provide the Parties with a list of all Claimants who submitted Acceptance of Individual Relief Award and Release of Claims Forms and withholding tax forms, identifying which Claimants submitted fully-executed forms, as described in Paragraph 81, and which Claimants submitted forms that were not fully executed.
84. No later than seventy (70) days after the Court approves the Final Individual Relief Awards Lists, Claimants whose Acceptance of Individual Relief Award and Release of Claims Form and/or any applicable withholding tax forms were not fully executed must provide any missing information, and Claimants must show good cause, to be determined by the United States, for failing to meet the prior deadline, and must return fully-executed forms. A Claimant's failure to return fully-executed forms or failure to show good cause by this deadline shall constitute a rejection of the offer of individual relief and shall release the Parties from any further obligation under the Decree to make an award of individual relief to the Claimant. No later than three (3)

business days after this deadline, the Claims Administrator shall provide the Parties with all of the returned Acceptance of Individual Relief Award and Release of Claims Forms and any applicable withholding tax forms.

85. No later than eighty (80) days after the Court approves the Final Individual Relief Awards Lists, the Claims Administrator shall provide the Parties with an updated list of all of the Claimants who submitted Acceptance of Individual Relief Award and Release of Claims Forms and any applicable withholding tax forms, identifying which Claimants submitted fully-executed forms and which Claimants submitted forms that were not fully executed.
86. No later than ninety-five (95) days after the Court approves the Final Individual Relief Awards Lists, the United States shall provide the City and the Claims Administrator with an Amended Final Back Pay Awards List and an Amended Final Priority Hire Claimant List (collectively, "Amended Final Individual Relief Awards Lists"). The Amended Final Back Pay Awards List will identify for each Claimant who timely returned fully-executed Acceptance of Individual Relief Award and Release of Claims Forms along with any applicable withholding tax forms, the amount of back pay award to be paid, as well as the specific Settlement Fund from which the award will be paid, taking into account when each Claimant was disqualified by either the Police Written Entrance Exam or the PFT. The Amended Final Priority Hire Claimant List shall identify each Claimant who is eligible to pursue priority hiring relief and who timely returned fully-executed Acceptance of Individual Relief Award and Release of Claims Forms.

**C. Issuance of Back Pay Award Checks by City**

87. No later than one hundred twenty-five (125) days after entry of the Final Individual Relief Awards Lists, the Claims Administrator shall mail via certified U.S. mail (return receipt requested) a back pay award check to each Claimant listed on the Amended Final Back Pay Awards List. The amount of the back pay award check shall be the amount shown for the Claimant on the Amended Final Back Pay Awards List, less all appropriate taxes and other amounts withheld in accordance with Paragraph 88, below.
88. As directed by the City, the Claims Administrator shall withhold from each Claimant's back pay award the employee portions of all appropriate federal, state, and local income taxes; the employee's Medicare and FICA tax; and any other amounts that are required to be withheld by law. The Claims Administrator shall be responsible for remitting and reporting such employee-side withholdings to the appropriate taxing authorities.
89. The City shall be responsible for and remit to the appropriate taxing authorities the employer portion of all federal and state payroll taxes applicable on any monetary relief award paid to a Claimant, including employer contributions to Medicare and the Social Security fund. The employer portion of such taxes shall not be deducted from any Claimant's monetary relief award, and such amounts shall not be payable from either Settlement Fund I or II.
90. The Claims Administrator shall keep records of all back pay award checks that are returned to the Claims Administrator as undeliverable. If any Claimant's back pay award check is returned as undeliverable, the Claims Administrator shall promptly notify the Parties and attempt to identify an updated mailing address as soon as

practicable. If the Claims Administrator or one of the Parties identifies an alternate address, the Claims Administrator shall re-mail the back pay award check within two (2) business days to the Claimant.

91. No later than one hundred forty (140) days after entry of the Final Individual Relief Awards Lists, the Claims Administrator shall provide to the Parties a statement indicating the amount of the payment made to each Claimant, the amounts withheld from each such back pay award check for taxes and other amounts required to be withheld by law, and the purpose of each such withholding.
92. No later than one hundred fifty-five (155) days after entry of the Final Individual Relief Awards Lists, the Claims Administrator shall provide to the Parties a list of all Claimants whose award payments are still outstanding. The list shall identify which Claimant's checks appear to have been delivered (no returned check) but have not been cashed, and which Claimant's checks have been returned to the Claims Administrator as undeliverable. The Claims Administrator shall also provide a statement of the amount of funds remaining in each of the two Settlement Funds.
93. No later than one hundred sixty-five (165) days after entry of the Final Individual Relief Awards Lists, the Claims Administrator shall e-mail and mail a letter to all Claimants whose award payments are still outstanding to inform such Claimants that their awards may be redistributed or otherwise reallocated if they do not accept payment by a specified date that is one hundred eighty (180) days after issuance of the check. The letter shall state that no further warnings regarding such distribution will be given.

94. No later than three hundred fifteen (315) days after entry of the Final Individual Relief Awards Lists, the Claims Administrator shall provide the Parties with a list of all Claimants whose back pay award checks were returned as undeliverable and/or uncashed, as well as a statement of the amount of funds remaining in each of the two Settlement Funds.
95. No later than three hundred twenty-five (325) days after entry of the Final Individual Relief Awards Lists, the United States shall inform the City and the Claims Administrator either that the remaining funds should be reallocated among the other Claimants who are listed on the Amended Final Back Pay Awards Relief List in a manner designed to preserve the relative proportions of the Claimants' shares of the Settlement Funds, or, if the remaining funds are *de minimis*, that the remaining funds should not be reallocated among the Claimants but rather the United States shall determine a manner of redistribution that is consistent with the purposes of the Decree.

**D. Priority Hiring Relief**

96. The City shall make thirteen (13) priority hires of female Claimants and eleven (11) priority hires of Hispanic Claimants eligible for priority hiring relief from the Claimants on the Amended Final Priority Hire Claimant List. Priority hiring relief includes an award of retroactive seniority, including retroactive pension benefits, corresponding with the Claimant's retroactive seniority date.
97. To count as a priority hire under this Decree, the person must be a Claimant who is eligible for priority hiring relief as indicated by the Amended Final Priority Hire Claimant List and either:

- a. Begins police academy training after the Court entered the Final Individual Relief Awards Lists; or
  - b. Is a current City police officer who is credited by the City with retroactive seniority corresponding with the Claimant's retroactive seniority date.
98. Nothing in this Decree shall preclude any Claimant from applying for hire or being hired into the probationary police officer position under any of the City's regular selection processes. However, hire of a Claimant under one of the City's regular selection processes, whether or not the hiring predated entry of the Decree, shall not be counted toward fulfillment of the City's priority hiring obligations under this Decree, except pursuant to the provisions set forth in Paragraph 97(b), above and Paragraphs 107-108, below. Hire of a Claimant under one of the City's regular selection processes shall not affect the Claimant's eligibility for monetary relief under this Decree. The City also may not refuse to select or hire a Claimant under one of its regular selection processes because the Claimant is eligible for individual relief under this Decree.
- i. **Priority Hiring Relief Awarded to Eligible Claimants Identified in Paragraph 97(a)**
    - a. **Selection Process**
99. The City may require any eligible Claimant seeking priority hiring relief to successfully complete the City's probationary police officer screening and selection procedures that are then in effect and required of all other probationary police officer applicants, except for any maximum age requirements. The City shall make

reasonable efforts to accommodate Claimants in scheduling the screening and selection procedures described in this Paragraph.

100. The City shall extend to any eligible Claimant seeking priority hiring all rights, privileges, and processes, including disqualification appeals processes, that the City regularly extends to applicants for probationary police officer positions.
101. If the City disqualifies any Claimant listed on the Amended Final Priority Hire Claimant List from an offer of priority hire based on any part of its screening and selection process before fulfilling its priority hiring obligations under the Decree, the City shall, within ten (10) days of making such determination, send the United States: written notice of its determination, the basis of its determination, and any supporting documentation. If the United States disagrees with the City's determination to disqualify any Claimant, it shall notify the City in writing, and the Parties shall make a good faith effort to resolve the disagreement. If the Parties are unsuccessful in that regard, the United States may seek judicial resolution pursuant to the dispute resolution procedures set forth at Paragraph 115.

**b. Offer of Priority Hire**

102. Upon successful completion by a Claimant of the City's probationary police officer screening and selection procedures that are then in effect and required of all other probationary police officer applicants, the City will send, by e-mail to the Claimant's last-known e-mail address and by U.S. mail to the Claimant's last-known mailing address, a written offer of priority hire, prominently indicating: (i) that the offer is an offer of priority hire being made pursuant to the Decree; (ii) that, upon entry into the Lubbock Police Academy, the Claimant will be entitled to retroactive seniority corresponding with the Claimant's retroactive seniority date as provided by this

Decree; (iii) the salary and retroactive seniority benefits based on his/her retroactive seniority date that the City will provide upon entry into the Lubbock Police Department; (iv) the date on which the Claimant will begin police academy training if the offer is accepted; (v) the telephone number at which the Claimant may contact the Claims Administrator with any questions regarding the offer of priority hire; and (vi) that the Claimant has at least thirty (30) days from the date on which the Claimant receives the written offer of priority hire to notify the City that the Claimant accepts the offer. On the date that such an offer of priority hire is sent to a Claimant, the City shall send a copy of the offer of priority hire to the United States.

103. If a Claimant fails to timely accept the City's offer of priority hire, or if the Claimant fails to report for work on the start date identified in the City's offer of priority hire, except for good cause as determined by the United States, the City's obligation to provide the offer to or make a priority hire of that Claimant ceases. However, such instances shall not constitute priority hiring under Paragraph 97(a) and shall not decrease the number of priority hires that the City must make under Paragraph 96.

**c. Retroactive Seniority to Claimants Hired**

104. On the date on which a Claimant who was hired as a priority hire pursuant to Paragraph 97(a) enters the Lubbock Police Academy, the City shall credit the Claimant with retroactive seniority corresponding with the Claimant's retroactive seniority date. The City will notify the United States in writing within thirty (30) days of crediting any Claimants with such seniority, pursuant to Paragraph 105, below.



**d. City's Reports to the United States on Claimants Hired**

105. No later than thirty (30) days after the beginning of any police academy class for which offers of priority hire have been made, the City shall provide to the United States a written report identifying (i) the name of each Claimant who was offered a priority hire position; (ii) whether each such Claimant accepted the offer of a priority hire position; (iii) whether each such Claimant was ultimately employed by the City and credited with retroactive seniority; and (iv) for any Claimant not ultimately employed by the City, a statement of the reason(s) that any Claimant to whom an offer of priority hire was made was not hired, along with all available documentation relating to such reason(s).
106. No later than thirty (30) days after the completion of any police academy class for which offers of priority hire have been made, the City shall provide to the United States a written report identifying those Claimants who successfully completed police academy training academy and those who did not successfully complete police academy training. For Claimants who did not successfully complete police academy training, the report shall include a statement of the reason(s) that the Claimant did not complete police academy training, along with all available documentation relating to such reason(s).

**ii. Priority Hiring Relief Awarded to Incumbent Police Officers Pursuant to Paragraph 97(b)**

107. An incumbent City police officer will count toward the City's priority hiring obligation pursuant to Paragraph 96 if he/she is an eligible Claimant listed on the Amended Final Priority Hire Claimant List and if the City credits him/her with retroactive seniority corresponding with his/her retroactive seniority date.

108. The City will notify the United States in writing of any Claimants who are awarded priority hiring relief who currently serve as incumbent City police officers within thirty (30) days of any such award of priority hiring relief, including providing the United States with the names of the Claimants and details on the retroactive seniority credited to the Claimants, including salary adjustments.

iii. **Retroactive Pension Benefits**

109. At the time the City credits a priority hire with retroactive seniority corresponding with the Claimant's retroactive seniority date, the City shall offer to each priority hire, in writing, a 457(b) retirement account. A copy of the written offer will be provided by the City to the United States.

110. The 457(b) retirement account offered by the City will be separate from (and in addition to) the pension plan each City employee has with Texas Municipal Retirement System ("TMRS"). Each priority hire who elects to participate in the 457(b) plan offered by the City will be allowed to contribute an amount not to exceed what would have been the priority hire's contribution to his/her TMRS account if he/she had not been initially disqualified by the challenged selection device. The priority hire will have two (2) years to make the allowed contributions. Once the priority hire is vested in TMRS (*i.e.*, works as a Lubbock Police Officer for five (5) years), the City will provide a 2-to-1 match to the priority hire's contribution. The City's matching funds will initially be deposited into a separate interest-bearing account. The matching funds and interest from the separate interest-bearing account will be deposited into the priority hire's 457(b) retirement account when the priority hire is eligible for retirement with TMRS or reaches age sixty (60), whichever occurs first. If the priority hire withdraws the funds deposited in the priority hire's 457(b)

retirement account before the priority hire is eligible for retirement with TMRS or reaches age sixty (60), whichever occurs first, the matching funds will revert the City.

**IX. RECORD KEEPING AND COMPLIANCE MONITORING**

111. While this Decree remains in effect, the City shall maintain all of the following records:
- a. All applications for the probationary police officer position;
  - b. All non-privileged documents relating to the screening, evaluation, or selection of applicants for the position of probationary police officer, other than documents the City is contractually obligated to return to a test developer after use thereof;
  - c. All non-privileged documents known to the City relating to written or verbal complaints made by any person or organization regarding discrimination on the basis of Hispanic national origin or female sex in the appointment of applicants to the probationary police officer position;
  - d. All non-privileged documents relating to the evaluation, selection, designation, and/or employment of priority hires under this Decree; and
  - e. All other non-privileged documents relating to the City's compliance with the requirements of this Decree, including but not limited to documents relating to the payment or award of individual relief to any Claimant under this Decree.
112. Except as otherwise provided in this Decree, the City will make available to the United States, no later than thirty (30) days after the United States so requests in writing, any non-privileged records maintained in accordance with the preceding Paragraph of this Decree and any additional non-privileged documents reasonably

relating to any dispute arising under the Decree. If such requests become unduly burdensome on the City, relief may be sought from the Court.

113. When possible, all records furnished to the United States shall be provided in a computer-readable format to be agreed upon by the Parties prior to production.
114. Within thirty (30) days after the United States so requests in writing, the City shall make available in Lubbock for interview or deposition (at the United States' option) any agent, employee, or official of the City who the United States reasonably believes has non-privileged knowledge of information necessary to verify the City's compliance with the terms of this Decree or to resolve a dispute arising under this Decree. If, after completing discovery, the United States maintains that the City has not complied with the Decree or the dispute still exists, within ten (10) days after the United States communicates that fact to the City, the City may interview or depose any witness with knowledge regarding the matter in dispute. Under no circumstances may the City interview or depose any officials, agents, or employees of the U.S. Department of Justice in this process in the absence of further Court order for good cause shown.

**X. DISPUTE RESOLUTION**

115. The Parties shall attempt in good faith to resolve informally any disputes that arise under this Decree. If the Parties are unable to resolve the dispute expeditiously, either party may submit the disputed issue to the Court for resolution upon fifteen (15) days written notice to the other party, unless a different time period has been specified elsewhere in the Decree.

**XI. DURATION OF THE CONSENT DECREE**

116. Provided there are no outstanding disputes being resolved pursuant to Paragraph 115, this Decree shall be dissolved without further order of the Court upon the completion of the following:

- a. Fulfillment of the Parties' obligations regarding General Injunctive Relief set forth in Section V of this Decree;
- b. Completion of the process regarding issuance of back pay award checks set forth in Paragraphs 87 through 95 of this Decree; and
- c. The passage of forty (45) days after the date the City provides the last of the reports and statements regarding priority hiring relief required by Paragraphs 105, 106, and 108 of the Decree,.

117. The Parties will promptly notify the Court of the fulfillment of all obligations set forth under Paragraph 116 and request that this action be dismissed.

**XII. COSTS AND FEES**

118. The City shall bear all of the costs incurred by the Claims Administrator in the implementation of the Decree, including the cost of all notification and publication procedures described above.

119. Other than the payment of costs pursuant to Paragraph 118, each party shall bear its own costs, and other expenses incurred as a result of obligations imposed by this Decree.

120. Each party shall bear its own costs, attorneys' fees, and other expenses incurred in this litigation.

**XIII. MISCELLANEOUS**

121. The Court shall retain jurisdiction over this Decree for the purpose of resolving any disputes or entering any orders that may be appropriate to implement the Decree until the obligations set forth in Paragraph 116 have been met.
122. The Parties shall, at a minimum, meet quarterly (in person or by telephone, at the option of the Parties) during the duration of the Decree to discuss any issues relevant to implementation of the Decree.
123. To the extent of any conflict between this Decree and the requirements of any state or local law or regulation, the terms of this Decree shall control.
124. This Decree constitutes the entire agreement of the Parties, and supersedes all prior agreements, representations, negotiations, and undertakings not set forth or incorporated herein.
125. Unless the United States has given express prior authorization for communication by other means, all written information and documents required to be delivered under this Decree to the United States by the City shall be sent via overnight delivery to:

Lubbock Police Department Settlement Team  
Employment Litigation Section  
U.S. Department of Justice  
Civil Rights Division  
PHB, Room 4500  
601 D Street NW  
Washington, DC 20579

126. Unless the City has given express prior authorization for communication by other means, all written information and documents required to be delivered under this Decree to the City by the United States shall be sent via overnight delivery to:

City of Lubbock Law Department  
Attention: City Attorney  
Post Office Box 2000

Lubbock, Texas 79457

127. If any provision of this Decree is found to be unlawful, only the specific provision in question shall be affected, and the other provisions will remain in full force and effect.
128. Final entry of this Decree constitutes the entry of final judgment within the meaning of Rule 54 of the Federal Rules of Civil Procedure as to all claims asserted in this action.

It is so ORDERED, this \_\_\_\_ day of \_\_\_\_\_, 2016.

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JUDGE SAM R. CUMMINGS  
UNITED STATES DISTRICT JUDGE

**AGREED AND CONSENTED TO BY:**

**FOR PLAINTIFF UNITED STATES OF AMERICA:**

VANITA GUPTA  
Principal Deputy Assistant Attorney General

DELORA L. KENNEBREW  
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JOHN P. BUCHKO  
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Date: \_\_\_\_\_, 2016