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OF COUNSEL:  
CHERYL D. FAIRBANKS

REPLY TO ALBUQUERQUE OFFICE

December 12, 2014

**VIA ELECTRONIC MAIL ONLY**

**Paul.Killebrew@usdoj.gov**

Paul Killebrew  
Trial Attorney  
U.S. Department of Justice  
Civil Rights Division - SPL

**law@scottgreenwood.com**

Scott Greenwood  
Special Counsel for the City of Albuquerque

**Re: Request for Information – Independent Monitor  
Settlement Agreement Regarding the Albuquerque Police Department**

Dear Mr. Killebrew and Mr. Greenwood:

My name is Andrew M. Sanchez and I am a partner in the local law firm of Cuddy & McCarthy, LLP ([www.cuddymccarthy.com](http://www.cuddymccarthy.com)). I am responding to the Request for Information issued by the United States Department of Justice and the City of Albuquerque for an independent monitor to oversee compliance of the court-enforceable Settlement Agreement between the United States and the City of Albuquerque. One of our firm's practice areas is representation of governmental entities, including municipalities and local public school districts. As such, over the years we have developed a level of expertise on the multitude of issues inherent in the operation of governmental entities and its interactions with its employees and the local community. In addition, I possess a skill set based on my prior work experience with law enforcement, including training, combined with my current representation of governmental entities that would bode well for me in being the independent monitor in this matter.

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I am a former Naval Officer with the U.S. Navy serving in naval aviation and naval intelligence. Following my service in the U.S. Navy, I attended and graduated from George Washington University Law School in 1996. Before and upon graduation, I worked for the Office of General Counsel for the Central Intelligence Agency.

At the CIA, as part of my assignments, I was legal advisor to the protective detail for the Director of Central Intelligence and its parent police force, the Security Protective Service ("SPS"). During my time as legal advisor, I assisted in the development of federal legislation to expand the law enforcement jurisdiction of the SPS to better protect Agency facilities in the United States and continued to develop the policies and procedures for the use of deadly force on Agency property arising directly from the Ruby Ridge Incident involving the Federal Bureau of Investigation in 1992.

Contained within my duties as SPS's legal advisor, was to support the legal training for its officers and prospective officers by providing education services in teaching Constitutional Law and practical exercises such as Terry Stops and courtroom testimony at the Federal Law Enforcement Training Center in Gynco, Georgia when our officers/prospective officers were in attendance. My provision of training for the Agency's law enforcement officers extended to active and continued legal training internal to the Agency's Service, and I also provided real-time legal support for all protective operations at the Agency.

The Agency was ever conscious of its perception with the local and national community as well as with the media. As such, the Agency undertook a program of training the officers to be well versed in all potential tactical operations and techniques, including thwarting an active terrorist attack on a facility while setting forth an appearance of possessing a non-threatening, non-military and professional police force. For example, while some vehicles were armored or possessed other tactical capabilities, they appeared to be standard police units or VIP transportation. SPS officers seldom wore tactical apparel or displayed tactical firearms outside of specific training or during clearly established tactical operations. However, I cannot speak to post-911 changes that may have occurred since I had moved on to return to the State of my birth, New Mexico, by the time of the attacks on September 11<sup>th</sup>.

When I returned to New Mexico, the then-law firm of Miller, Stratvert & Torgerson, P.A employed me. During my time at Miller, I along with another attorney, represented the City of Belen in *United States of America v. City of Belen*, U.S.D.C. (New Mexico) No. CIV-99-404 PJK/KBM, when the U.S. Department of Justice filed suit against the City alleging systemic sexual harassment at the City's Police Department, including allegations of rape. In other similar cases, I also represented the City of Belen in a police pursuit and shooting case in *Nora Marquez v. City of Belen*, U.S.D.C. (New Mexico) No. CIV-00-01055 PK/LFG. In addition, I represented

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the City of Belen in *Jyl Baca v. City of Belen*, U.S.D.C. (New Mexico) No. CIV-99-301 BB/WWD, in a case where an officer was alleged to have raped a citizen during a traffic stop, and I represented the City in *Debra Roach v. City of Belen*, U.S.D.C. (New Mexico) No. CIV-99-4604, in a case of alleged gender discrimination at the police department filed by one of its female officers. I further represented the City in the case of *Mark Esparsen v. City of Belen*, U.S.D.C. (New Mexico) No. CIV-00-0589, in a case where a former police officer asserted RICO claims against other officers alleging they were protecting drug dealers, and I, again, represented the City in the case of *Michael Rivera v. City of Belen*, Thirteenth Judicial District Court No. D-1314-CV-00-713, in a wrongful arrest case filed in state court. These are just examples, and I have also represented joint law enforcement task forces and other police departments in the State of New Mexico on similar issues. As a result of these cases and my ongoing representation of local public school districts, I have an extensive federal court practice addressing all issues of constitutional and federal statutory civil rights law vis-à-vis local governmental entities and law enforcement.

As you can gather, I have never been a law enforcement officer, and propose to you that the best qualified candidate for independent monitor should not have been a law enforcement officer or a member of the plaintiff's bar suing police departments or their officers. The fraternity and prior training of police officers is hard to overcome ("thin blue line") in taking a monitoring and critical analysis role and influences the perception of the "outsider looking in" mentality. Members of the plaintiff's bar tend to minimize or disregard the fact that perfect police work is absolutely impossible and mistakes and misjudgments occur by individual officers as part of human interaction with others that should not reflect or condemn the rest of the police force or the police department itself, and more importantly do not necessarily create liability for the municipality. An attorney versed in risk management is, in my opinion, a better candidate for an independent monitor and critical examiner of policy and procedure with a clear understanding of institutionalized processes and also of human nature and the reality of its practical application in the community in light of potential liability.

This brings me to the underlying philosophy and methodology, which I propose to utilize as the independent monitor. In short, being a police officer is a dangerous profession and involves a calling that may cost the police officer his or her life in the protection of his or her local community or of his or her fellow citizen. The balance of protecting the civil rights of citizens who encounter police officers makes this job dangerous, and if you do not want to be placed in danger—don't be a police officer. It takes a courageous and committed individual to be a police officer, but in a free society, these brave men and women are the ones we all expect to step into the breach and protect us.

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I am reminded of a poster from the Norwich Police Department in Connecticut depicting a dark, long and ominous inner city alley. The poster read: "You would not go down there, but he will." Below the caption is a picture of a Norwich police officer standing by his police car. We should proclaim this vocation and revere it within the local community. However, the militarized training of police officers whether actual or unmitigated in some situations from the officer's prior military service has created a reality and a perception that police officers will make their job safe for the individual officer and their fellow officers regardless of the costs or actions necessary to accomplish it. This will include the deployment of deadly force ("rather be judged by 12 than carried by 6" rhetoric), and it could happen to you or to anyone of us, and more often it happens to the mentally ill or to a member of a minority group as demonstrated by the national and local statistics.

The military-type internal unit design within departments has a social fraternity, as revealed in the most recent APD police shootings, which openly dehumanizes the stereo-typical person most commonly encountered and viewing all others as simply perpetrators. This kind of attitude has also created a general mission-oriented approach to policing which has tipped the delicate balance of officer safety to where more often than not the civil rights of those encountered by police are being violated on a routine basis. This unbalance as to competing rights is now to the detriment of the City of Albuquerque and the lives of its citizens, who are now in potential jeopardy from the very entity created to protect them.

The City, as all other police departments do or attempt to, train its officers to perform their duties while also ensuring the officer's survival in the encounter with a potential criminal. As such, police departments create a disparate level of capability where the police officer is better equipped and better trained than a vast majority of the potential criminals they will encounter. In being better equipped, the officer should possess both lethal and nonlethal options for deployment of force, and in being better trained, demonstrate a certain level of flexibility in assessing the need for force along the force spectrum and using force as only a last resort as contemplated by the law. Moreover, the officer is also able to physically overcome or avoid a potential criminal without resorting to the use of a weapon.

Understanding that being a police officer is dangerous should allow the officer to better use the disparate level of capability that should be in most situations, in his or her favor. This should minimize the occurrence to only the most unique of situations in which an unarmed person is killed by a police officer and reduce those situations in which a lesser-armed person (knife) is killed by a police officer with a firearm. As such, I flatly reject the general rules of potential threat currently given to officers in training, such as, a person possessing a knife within a certain distance of the officer is a "threat" justifying the use of deadly force. I propose to you that every situation is different and that there are times when distance will not be the determining

factor for the use of force, and also that in the split-second an officer may be required to deploy force he or she may be in error costing either the person's or the officer's his or her life or cause bodily injury. This occurrence may not necessarily demonstrate a systemic flaw so long as the officer was in justifiable fear for his life knowing that he or she was always in danger in the first instance. Again, being a police officer is dangerous, and it is clear that simply stating the person had a knife when an officer discharges his weapon as justification does not comport with the law and the expectations of this community.

A cultural change is necessary in which short-term and temporary stand-offs are acceptable to deescalate situations and individuals encountered by police. The deployment of officers to surround a mentally ill transient for even multiple hours in a neutralized situation must become acceptable until a non-lethal opportunity eventually arises to resolve the incident. The reason of "we got tired of waiting for the suspect to comply or he or she continued to refuse to comply with commands" should not be immediately accepted as a justification for the use of force, especially deadly force. This must include the use of force to execute arrests, such as "take down" techniques. If the suspect is going nowhere, then time is not of the essence. While lacking the action of police TV shows, the simple fact that a criminal cannot out run a police radio or the police helicopter and that the police can out-wait you in a stand-off must be acceptable alternatives in the police culture as to the use of force.

It is with a heavy heart that I propose to you that the police officers of my City now accept a level of danger in the performance of their duties that may or regrettably will cost a police officer his or her life in its practical application. It is, however, the costs of a free society, in which freedom is not free. Moreover, the current use of force and the current policing by APD is unacceptable to DOJ and the local community. Officer safety must be maximized through ever better training to deescalate encounters to neutralize situations and avoid force-on-force confrontations. However, when the use of force is justified it should be deployed with effective and overwhelming superiority for the protection of the officers and others.

On the broader front, there must be a recommitment to community policing to establish APD as our protectors and not an entity to fear and/or distrust. Officers should be trained and encouraged to demonstrate to the population APD's commitment to them in protecting them from criminals and in being a trusted governmental entity deserving of the respect police officers should receive for taking on the dangerous duties involved.

Along with community policing, APD must accept and help derive a means for civilian oversight. This oversight must have authority to institute change within APD while being above the political currents evident in every local government. It is the hope that the established civilian oversight can be similar to this monitoring provided in the Settlement Agreement. I

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would propose that the City explore an examination of civilian oversight from other cities both larger and smaller than Albuquerque to adopt or hybrid an acceptable means of civilian oversight.

The Request for Information requested information on a possible team to be involved in the monitoring of APD. I purposely did not seek to establish one, and here is why: I clearly believe that consultation with use of force experts, community policing experts, police technology experts, firearms experts, training experts and psychology experts will most likely be needed in establishing a well rounded team to provide technical and policy resources to APD and to the City on compliance with the Settlement Agreement. I do not, however, want to make their selection before monitoring begins to be a source of discord. The selection of these types of consultants or any others that may be identified later as being needed must be done in conjunction with the City and in concurrence with APD to achieve the necessary buy-in on the resources provided.

The temptation to detail a plan of action for addressing crisis intervention, misconduct complaints, internal investigations, recruitment, selection and promotion, etc. is inviting in order to utilize all ten pages afforded me. However, my approach to monitoring must, in my view, require collaboration and consensus with APD and City officials, otherwise, the police department will simply revert to prior "better days" when the Court's monitoring ends. A true cultural change must be generated within APD officials who are as equally committed to the change. In addition, I would like to review the investigative documents leading to the Settlement Agreement to ensure any subsequent plan of action would have or could have altered the outcomes of the incidents which have already occurred giving rise to the Settlement Agreement.

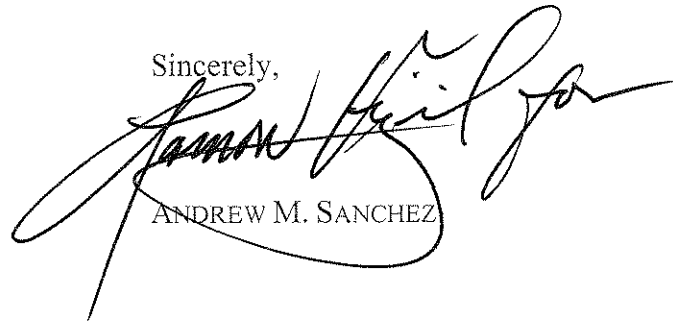
I propose to you the example of the U.S. Navy's experience at "Tailhook" in the early 1990's following Operation Desert Storm. The culture of naval aviation was exposed to the nation through the sexist and demeaning actions taken against female naval officers by a few naval aviators who followed a culture long established by their predecessors. There was a time that naval aviators fought hard and played harder and the idea of fellow female colleagues in the ranks was neither contemplated nor accepted. It was not the Navy's imposition of discipline that shaped today's acceptance and embrace of female naval aviators, it was the concentration in training and changing the culture expecting and rewarding honorable, equal and professional behavior that was also expected of all naval officers. Thus, the Settlement Agreement merely presents an opportunity for APD to embrace a new police culture, new training, new expectations and a perception change. My work as the independent monitor must be to facilitate these changes and not merely impose it with a DOJ-accepted general plan of action that does address the interests of all concerned.

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Should I be unable to facilitate the changes or find that APD is unwilling to make the necessary changes in culture, training and in other aspects of the Settlement Agreement, I would propose that the Court and the Parties revisit the commitment to settle this matter. However, I am confident that I will be able to work together with APD to bring about the change necessary under the Settlement Agreement and necessary for this community to re-embrace its police department.

At this time, I do not see that I have a conflict of interest in being the independent monitor. My rate for services will be \$225/hour. Thank you for your attention and the opportunity to be part of the solution.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew M. Sanchez", written in a cursive style. The signature is positioned above the printed name.

ANDREW M. SANCHEZ