

THE HONORABLE JAMES L. ROBART

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,)	
)	Case No. 2:12-cv-01282-JLR
Plaintiff,)	
)	CITY OF SEATTLE’S STIPULATED
v.)	MOTION TO APPROVE
)	ACCOUNTABILITY METHODOLOGY
CITY OF SEATTLE,)	
)	NOTE ON MOTION CALENDAR: August
Defendant.)	15, 2019
)	
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)	
)	

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1 **I. INTRODUCTION**

2 The City respectfully seeks the Court’s approval to move forward in accordance with the
3 attached proposed methodology—submitted as Exhibit A to the Declaration of Walter Katz—to
4 conduct an assessment of the present accountability regime.

5 In its May 21, 2019 Order, the Court directed:

6 [T]he City and the United States, with the assistance of the Monitor
7 and the CPC, to formulate a methodology (1) for assessing the
8 present accountability regime, and (2) for how the City proposes to
9 achieve compliance.

10 5/21/2019 Order at 13-14 (Dkt. 562).

11 Under part (1) of the Court’s Order, the Court directs the Parties (“the City and the United
12 States”) to formulate a methodology for assessing the present accountability system. Since the
13 inception of the Consent Decree, the Parties and the Monitor have formulated methodologies for
14 assessing compliance with Consent Decree requirements through a collaborative process designed
15 to produce an objective, rigorous, and transparent system of evaluation. Further, the Parties and
16 Monitor have routinely engaged nationally recognized subject matter experts to assist in these
17 assessments.

18 In keeping with this established approach, to respond to the Court’s May 21st Order, the City
19 engaged consultants from 21CP Solutions, Inc., (“21CP”) with subject matter expertise in labor law,
20 police discipline, and civilian accountability to develop a proposed methodology for assessing the
21 City’s current accountability system. In addition, the City, with the U.S. Department of Justice’s (DOJ)
22 participation, sought the assistance of the Monitor, the Community Police Commission (CPC), and
23 other City stakeholders, including the Office of Professional Accountability (OPA), the Office of
Inspector General for Public Safety (OIG), and community groups.

1 Through this process, these stakeholders have engaged in lengthy discussions and provided
2 input and feedback through multiple avenues including written comments, one-on-one meetings,
3 conference calls, a facilitated work session, and community outreach meetings. They also were
4 given the opportunity to respond to a draft methodology that was circulated on July 29, 2019.

5 Although this process did not lead to a unanimous consensus, the City's proposed
6 methodology, approved by DOJ, incorporates significant input from the Monitor, CPC, OIG, OPA,
7 and other stakeholders. The City submits the methodology as Exhibit A to the Declaration of Walter
8 Katz.

9 As proposed, the assessment would specifically focus on factors that led to the outcome in
10 the Adley Shepherd case (including the disciplinary appeal process). It will also analyze three areas
11 that have the potential to implicate the effectiveness and legitimacy of the accountability system.
12 These areas were identified as concerns by the Court and City Council and deemed by OPA and
13 OIG as having an impact on accountability. *See, e.g.*, 5/15/2019 Trans. at 17-18; 5/21/2019 Order
14 at 6, 13 (Dkt. 562); Council's Nov. 14, 2018 Resolution (Dkt. 512-4). CPC and the Monitor have
15 also identified these issues as important priorities. Katz Decl. ¶¶ 16-17; CPC's Response to Court's
16 Order to Show Cause at 10-11, 14 & n.45, 19-21 (Dkt. 531). The three focus areas of the assessment
17 are: (1) calculation of the 180-day timeline for disciplinary investigations; (2) lack of subpoena
18 authority for OPA and OIG; and (3) the standard of review and quantum of proof in disciplinary
19 appeals.

20 The experts will also conduct a survey of accountability systems in other comparable
21 jurisdictions. This survey will assess specific features of those systems based on input and concerns
22 raised by the Court, the Monitor, CPC, OIG, OPA, and other community stakeholders. The outcome
23 will be objective, evidence-based observations about the strengths and weaknesses of the City's

1 accountability system which will assist the City in collective bargaining. The City also believes that
2 the assessment will benefit the Seattle Police Department (SPD) and increase public confidence.
3 Unlike those subjects that are addressed in the Consent Decree, the City's accountability system
4 has not yet been the focus of this type of structured assessment.

5 With regard to part (2) of the Court's Order, "how the City proposes to achieve
6 compliance," the City will review the completed assessment, and with the input of the Monitor,
7 CPC, OIG, OPA and other key stakeholders submit a plan to the Court based on that assessment.
8 In the meantime, the City has initiated the process to open bargaining on the current collective
9 bargaining agreements (CBAs) with both police unions. Bargaining with the Seattle Police
10 Management Association (SPMA) and Seattle Police Officers Guild (SPOG) will commence in
11 December 2019 and March 2020, respectively. *See* Exhibits B & C to Cowart Declaration. The
12 timing of bargaining is critical, because any changes to the accountability system will implicate the
13 CBAs, and any revisions to the CBAs must be bargained.

14 While the City cannot unilaterally dictate that a CBA include any specific provision and
15 must negotiate in good faith, the Executive's priorities will include—at a minimum—the four issues
16 noted above that were emphasized by the Court, City Council, Monitor, CPC, OIG, and OPA: (1)
17 calculation of the 180-day timeline for disciplinary investigations; (2) lack of subpoena authority
18 for OPA and OIG; (3) the standard of review and quantum of proof in disciplinary appeals, and (4)
19 features of grievance arbitration that affect public confidence, such as degree of transparency and
20 the selection process for arbitrators. Reform in these areas will be top priorities for the Executive in
21 the next round of collective bargaining negotiations. In addition, the Executive is committed to
22 ensuring that this important engagement continues with CPC, OIG, OPA, and other critical
23 stakeholders throughout the bargaining process.

1 **II. BACKGROUND AND PROCEDURAL HISTORY**

2 The City provides a brief background and procedural history.

3 **A. The Consent Decree**

4 The City entered the Consent Decree in 2012 to resolve a DOJ investigation which found
5 that SPD had a pattern and practice of using force in an excessive, unconstitutional manner. The
6 Parties entered into the agreement “with the goal of ensuring that police services are delivered to
7 the people of Seattle in a manner that fully complies with the Constitution and laws of the United
8 States, effectively ensures public and officer safety, and promotes public confidence in the Seattle
9 Police Department (“SPD”) and its officers.” Consent Decree § I.

10 The Consent Decree imposes extensive policy, training, and operational requirements on
11 SPD. The Consent Decree sets forth the City’s obligations in enumerated paragraphs described as
12 “commitments” and provides that, “[t]he Parties intend the Agreements¹ to provide clear,
13 measurable obligations.” ¶ 1. The City’s commitments are contained in Section III. They are
14 grouped into the following, overlapping areas: using force (¶¶ 69-90); reporting, investigating, and
15 reviewing force (¶¶ 91-129), responding to people who are experiencing behavioral crisis (¶¶ 130-
16 37); conducting stops and detentions (¶¶ 138-44); bias-free policing (¶¶ 145-52); supervising
17 patrol officers (¶¶ 144, 150-63); the Office of Police Accountability (OPA) (¶¶ 164-68); and the
18 collection and tracking of data on policing (¶¶ 78, 81-83, 87, 90, 99, 136-37, 162-63).

19 With respect to OPA, the Consent Decree required revisions to SPD’s policies on reporting
20 misconduct and retaliation and required that the OPA Manual be updated. Consent Decree ¶¶ 165-
21 167. Further, the Parties agreed that SPD should strive to ensure that all complaints against officers
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23 ¹“Agreements” is defined to include the Consent Decree and contemporaneously entered Memorandum of Understanding.

1 are fully and fairly dealt with and, to that end, agreed to related terms in the Memorandum of
2 Understanding (“MOU”).² The DOJ investigation made no findings regarding the disciplinary
3 appeals process or any other aspect of the disciplinary process. For example, DOJ did not conclude
4 that the disciplinary process contributed to unconstitutional policing. To the contrary, DOJ’s only
5 finding related to the disciplinary system involved disciplinary investigations: “DOJ found that the
6 OPA system is sound and that investigations of police misconduct complaints are generally
7 thorough, well-organized, well-documented, and thoughtful.” Consent Decree ¶ 164. While the
8 Parties’ MOU called for CPC to conduct an assessment of the City’s police accountability
9 structures, changing or remedying accountability generally or the disciplinary appeals process
10 specifically was not included in the requirements of the Consent Decree.

11 The Consent Decree is structured in two phases. During Phase I, the Monitor conducted
12 ten systemic assessments which evaluated SPD’s compliance with all requirements of the Consent
13 Decree. *See* Monitor’s First Systemic Assessment, at 4 (“Collectively, these assessments will cover
14 every area of the Consent Decree.”) (Dkt. 231); *see also, e.g.*, Monitor’s Third Year Monitoring
15 Plan at 7-9 & Exhibit A at 13-35 (Dkt. 195) (describing the assessments and identifying which
16 Consent Decree paragraphs each assessment covers). Phase I ended on January 10, 2018, when the
17 Court found, based on those assessments, that the City had achieved full and effective compliance
18 with the Consent Decree. Dkt. 439. To complete Phase II and exit the Consent Decree, the City
19 must demonstrate that it can sustain compliance for two years. Consent Decree ¶ 223.

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² Available at https://www.justice.gov/sites/default/files/crt/legacy/2012/07/27/spd_mou_7-27-12.pdf

1 On March 13, 2018, the Court approved “the Sustainment Plan and the attached matrix of
 2 deadlines as the governing documents for the Parties’ and the Monitor’s conduct of Phase II of the
 3 Consent Decree.” 3/13/2018 Order (Dkt. 448). In Phase II, the Court required the City to work with
 4 the Monitor and DOJ to conduct a series of assessments designed to measure whether SPD has
 5 continued to sustain compliance. *Id.* The plan and “matrix” approved by the Court sets out a
 6 detailed schedule of assessments. Dkts. 444 & 444-1. In contrast to the Phase I assessments
 7 conducted by the Monitor, the Parties and the Monitor agreed that the Phase II assessments would
 8 be conducted primarily by SPD’s Audit Policy and Research Section in order to demonstrate the
 9 Department’s ability to engage in critical self-analysis and to identify and address any obstacles
 10 to further progress. Thus far in Phase II, the City, the Monitor, and DOJ all have concluded that
 11 each completed assessment demonstrates continued compliance.³

12 In its Order finding full and effective compliance, the Court cautioned that the City’s
 13 successful completion of Phase II would require the City to conclude collective bargaining with
 14 the police unions in a manner that is consistent with the Consent Decree. 1/10/2018 Order at 15
 15 (Dkt. 439) (“If collective bargaining results in changes to the accountability ordinance that the
 16 court deems to be inconsistent with the Consent Decree, then the City’s progress in Phase II will
 17 be imperiled.”).

18 **B. The Accountability Ordinance**

19 As the Court recognized at the May 15, 2019 hearing, local and national concerns around
 20 police accountability have had significant impacts on police reform since long before the Consent
 21

22 ³ The Phase II audits completed thus far addressed the following requirements: Supervision
 23 (Dkt. 497-2); Reporting, Investigation, and Review of Type I & II Force (Dkts. 497-1 & 570-1);
 Crisis Intervention and Use of Force (Dkt. 511); Stops and Detentions (Dkt. 547-1); Early
 Intervention System (Dkt. 550-1); and the Force Review Board (570-2).

1 Decree was entered or the Accountability Ordinance was enacted by City Council. In Seattle,
2 there have been several committees and panels that have evaluated the issues around police
3 accountability, which have produced important changes to the accountability system. For example,
4 in 1999 the first “Citizen Review Panel” made recommendations that led to the creation of the
5 Office of Professional Accountability—the first time civilian oversight was introduced into the
6 police disciplinary process. This evolution of the accountability system is notable, because police
7 reform by its nature reflects evolving community standards and continuous improvement. As such,
8 the City recognizes that there is no point at which changes to policing and police accountability
9 will be complete; rather, this work must always continue.

10 Recognizing that fact, when they negotiated the resolution of DOJ’s investigation of the
11 SPD, the Parties did not agree to any specific mandate for the City’s police accountability system.
12 Rather, the Parties negotiated (through a Memorandum of Understanding) the creation of a
13 community police commission, a body that would be “representative of the many and diverse
14 communities in Seattle, including members from each precinct of the city, police personnel, faith
15 communities, minority, ethnic, and other community organizations, and student or youth
16 organizations.” Among other roles, the MOU provided that CPC would “review Seattle’s current
17 three-prong civilian oversight structure to determine if there are changes it would recommend for
18 improving SPD accountability and transparency.” *Id.* at ¶ 15. Neither the Consent Decree nor the
19 MOU mandates specific action by the City in response to the CPC’s accountability system
20 recommendations. However, the City took the CPC’s recommendations seriously and began work
21 on legislating them into effect.

22 In mid-2015, in response to the City’s proposed legislative action on accountability, the
23 Court ordered the Parties “to file (jointly or separately) an approach for SPD accountability and

1 review systems.” 8/26/2015 Minute Order (Dkt 228). Throughout the next year, DOJ, the
2 Monitoring Team, and City stakeholders, including the Mayor’s Office, SPD, and CPC
3 participated in working sessions and meetings to answer questions posed by the Court regarding
4 SPD’s accountability system and to consider options for Seattle’s police accountability system.
5 *See generally* Dkt. 289 at 10-27.

6 The Parties proposed a plan for the Court to review and approve any elements of the
7 legislation that would implicate provisions of the Consent Decree. Parties’ 7/11/2016 Stipulated
8 Motion (Dkt. 297). The Parties stipulated that the following potential provisions of any proposed
9 accountability legislation would implicate the Consent Decree:

- 10 • Modifications to the OPA Manual and SPD Police Manual 5.002 and 5.003;
- 11 • Modification of the OPA Auditor role;⁴
- 12 • Modification of OPA Review Board’s role;
- 13 • Creation of a permanent body comparable to the CPC; and
- 14 • Modification of SPD components addressed by the Consent Decree, including Force Review
15 Board, Force Investigation Team, Early Intervention System, and the Collision Review
16 Board.

17 *Id.*

18 The Court approved the Parties’ plan. 8/09/2016 Order at 2 (Dkt. 305). The Parties, the
19 Monitor, CPC, OPA, and SPOG all submitted substantive briefings to the Court regarding the
20 City’s accountability system. Upon review of the draft legislation, the Court held that it was
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22 ⁴ This proposal evolved into the creation of independent Office of the Inspector General
23 for Public Safety.

1 consistent with the Consent Decree, with limited exceptions, and the City revised the draft legislation
2 accordingly. 1/06/2017 Order (Dkt. 357).

3 In subsequent months, the City's leaders sought input from the public, including public
4 hearings on the revised, draft legislation. Several meetings and discussions took place among City
5 stakeholders, including the City's police unions, which were reflected in a final Accountability
6 Ordinance. Although it was unanimously passed by the Council on May 22, 2017, and signed by
7 the then-Mayor on June 1, 2017, the City Attorney and then-Police Chief O'Toole raised concerns
8 about some features of the Ordinance.

9 The Accountability Ordinance explicitly recognized that its provisions could not be
10 unilaterally imposed on the police unions. The City had a legal obligation to bargain any provisions
11 that affected the working conditions of police officers. In the text of the Ordinance, the legislators
12 made explicit their commitment to collective bargaining, providing that all provisions "subject to
13 [mandatory bargaining] shall not be effective until the City completes its collective bargaining
14 obligations." § 3.29.510(A) & (C). In other words, those provisions of the Ordinance could not
15 legally take effect until they had been agreed to in bargaining.

16 The City submitted the final, adopted legislation to the Court on June 21, 2017. Dkt. 396.
17 Because provisions in the Ordinance were subject to collective bargaining (as described below),
18 the Court, while issuing rulings on limited aspects of the Ordinance, declined to undertake a
19 complete review of the Ordinance until the collective bargaining process was complete. 9/07/2017
20 Order at 3 (Dkt. 413).

21 C. Collective Bargaining

22 As noted above, the City had an obligation to bargain provisions of the Accountability
23 Ordinance with the police unions. This obligation arose from the Washington State Public

1 Employees' Collective Bargaining Act (PECBA), RCW 41.56, which required that the City reach
2 an agreement with the unions before implementing any provisions of the Accountability Ordinance
3 that affected officers' grievance procedures, wages, hours, or working conditions. *See generally*
4 *Int'l Ass'n of Fire Fighters, Local 1052 v. Pub. Employment Relations Comm'n*, 778 P.2d 32, 35
5 (Wash. 1989); *Spokane Police Guild v. City of Spokane*, Dec. 5054, 1995 WL 849648 (Wash. Pub.
6 Emp. Rel. Comm'n.). The duty to bargain encompasses any change to the disciplinary system. *City*
7 *of Pasco v. Public Employment Relations Comm'n*, 119 Wash. 2d 504, 512 (1992).

8 The drafters of the Accountability Ordinance acknowledged that the City had a legal
9 obligation to bargain and, accordingly, provided that the relevant provisions would not take effect
10 until the City's "collective bargaining obligations were satisfied." Ordinance § 3.29.510(A) & (C).

11 Bargaining over the Ordinance was complicated by the fact that, at the time it was enacted,
12 the City and SPOG had been negotiating for over two years on a CBA that was to succeed a
13 contract that had expired at the end of 2014. The City submitted its Opening Proposal to SPOG on
14 January 7, 2015. Negotiations through 2015 resulted in a Tentative Agreement in early 2016.
15 SPOG's Board of Directors rejected the Agreement, however, and the City and SPOG returned to
16 bargaining with the assistance of a mediator appointed by the Washington State Public
17 Employment Relations Commission (PERC).

18 In May 2016, the City and SPOG reached a second Tentative Agreement, which the SPOG
19 Board approved. The ratification vote among SPOG's membership in June 2016 failed. Once
20 again, the City and SPOG returned to the bargaining table.

21 Over the next two years, the City and SPOG sought to find common ground on a successor
22 contract. If they were ever to reach impasse, as certified by PERC, they would have proceeded to
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1 interest arbitration⁵ under RCW 41.56. Under that procedure, the City and SPOG would present
2 their positions on each matter at impasse, and a PERC arbitrator would determine which side's
3 proposal would ultimately be included in the CBA.

4 When the Accountability Ordinance passed in June 2017, the City asked SPOG to consider
5 broadening the scope of negotiations to include provisions in the Ordinance. The City had no
6 unilateral right to make the provisions of the Ordinance part of bargaining on the contract that had
7 expired at the end of 2014. While SPOG agreed to broaden the scope of negotiations, it did not
8 waive its right to pursue interest arbitration *only* on the original subjects identified at the start of
9 bargaining in 2015. In other words, if SPOG and the City reached an impasse on any Ordinance-
10 related topics, then these topics would not necessarily be eligible for interest arbitration until they
11 engaged in negotiations on a successor contract.

12 When negotiations resumed, they were conducted in good faith by the City and SPOG, as
13 required by RCW 41.56.030(4). In addition to negotiating four years of wages and benefits and a wide
14 range of employment matters that had accumulated over four years, the City also prioritized the
15 reforms in the Accountability Ordinance. Bargaining in good faith meant that the City could not insist
16 that the unions accept the Ordinance wholesale, or otherwise engage in "take-it-or-leave-it" or
17 "surface" bargaining. *See Local 763 v. City of Snohomish*, Dec. 1661, 1983 WL 471386 (Wash. Pub.
18 Emp. Rel. Comm'n).

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21 ⁵ In the employment context, there are two main types of arbitration: "interest arbitration"
22 and "grievance arbitration." Interest arbitration resolves disputes that arise between the employer
23 and the union during the negotiations over a new contract. An example of interest arbitration would
be if City and SPOG are unable to agree on whether the CBA should give officers the right to
arbitrate disciplinary appeals. Grievance arbitration resolves disputes over the interpretation of an
existing contract. A common example of grievance arbitration is when an employee is disciplined
and then argues that the fact or extent of the discipline was inconsistent with the contract.

1 The City reached an agreement with SPOG in November 2018, which is retroactive to 2014
2 and expires on December 31, 2020. The Council voted to approve each of the resulting CBAs by a
3 vote of 8-1 in support, they were signed by the Mayor, and they became local ordinances.

4 Although it voted to approve the SPOG CBA, the Council at the same time passed an
5 accompanying resolution stating that it “approves the SPOG CBA in order to make possible
6 judicial review” and that “the City Council seeks the guidance and direction of the Court with
7 regard to the CBA’s compliance with the terms or purposes of the Consent Decree and its
8 consistency with the stated goals of the Accountability Ordinance and the principles of
9 constitutional policing.” Dkt. 512-4. The resolution requested that the City Attorney’s Office
10 “request a judicial review of the labor contract” and “petition the Court to review” three specific
11 aspects of the CBA: the standard of review and quantum of proof in disciplinary appeals, the 180-
12 day timeline for disciplinary investigations, and the subpoena powers of OPA and OIG. *Id.*

13 As a result of the required bargaining, the CBA implemented some provisions of the
14 Accountability Ordinance and modified others. Some changes that the Ordinance made to the
15 police disciplinary process were modified or not implemented as a result of bargaining. These
16 changes appear to be the gravamen of CPC’s concerns and include, among others: changes to the
17 quantum of proof applicable in disciplinary appeals; provisions relating to the time limits on
18 disciplinary investigations; eliminating the Disciplinary Review Board and establishing the City’s
19 Public Safety Civil Service Commission as the exclusive forum for disciplinary appeals; and
20 altering the composition and procedures of the Public Safety Civil Service Commission.

21 For a limited number of subjects, the City and SPOG agreed to “reopeners,” meaning that
22 there would be a right to revisit and renegotiate the identified subject during the term of the
23 contract. The SPOG CBA identifies the following topics as subject to reopening:

- 1 • Promotional examinations (Art. 21.3);
- 2 • Patrol shift schedules (Art. 21.4);
- 3 • Secondary employment (Art. 21.5);
- 4 • Gender and race equity efforts (Art. 21.6);
- 5 • Subpoena authority for OPA and OIG, after City further reviews questions raised
6 concerning potential need for OPA and OIG to issue subpoenas (Appendix E(12));
- 7 • Opening arbitrations to the public (Appendix E(12)).

8 *See* SPOG CBA⁶ (Dkt. 512-2).

9 Below are some of the reforms that the SPOG CBA successfully bargained and
10 implemented:

- 11 • Clarifies and, in some circumstances extends the 180-day clock for OPA to investigate
12 allegations of police misconduct, including bias complaints and serious use-of-force
13 investigations;
- 14 • Provides that two sworn investigators in OPA and a sworn sergeant in SPD human
15 resources can be replaced by civilians;
- 16 • Guarantees OIG full and unfettered access to all SPD operations;
- 17 • Implements SPD's body-worn video policy and requires the Guild to withdraw its related
18 unfair labor practice complaint;
- 19 • Eliminates the Disciplinary Review Board and replaces it with the option for officers to
20 use either arbitration or the Public Safety Civil Service Commission process;
- 21 • Adopts a new process for selecting arbitrators for disciplinary appeals intended to enhance
22 the ability of the City to get an independent arbitrator appointed in a timely manner; and
- 23 • Expands the Chief of Police's ability to transfer employees for performance-based reasons.

When the City Council voted to enact the SPOG CBA as a City ordinance, it effectively
amended the Accountability Ordinance, providing that where there is a conflict between the

⁶ Available at
https://www.seattle.gov/Documents/Departments/humanresources/SPOG_CBA_2015-2020.pdf

1 Accountability Ordinance (or any City ordinance) then the CBA provision prevails. SPOG CBA
2 Art. 18.2 & App. E(3), at 71, 81 (Dkt. 512-2).

3 In addition to being a City ordinance, the ratified, approved CBA stands as a final,
4 enforceable agreement during its term (through December 31, 2020). Except for the specific,
5 limited reopeners described above, the City has no mechanism to force SPOG to renegotiate
6 matters that were, or could have been, discussed in bargaining.

7 **D. Court's Order to Show Cause**

8 On December 3, 2018, the Court issued an order requiring the Parties to show cause
9 whether the City had failed to maintain full and effective compliance with the Consent Decree.
10 The Order referred to the newly completed SPOG CBA and to a recent arbitration decision—under
11 the previous CBA—in which an arbitrator reversed the police chief's decision to terminate a patrol
12 officer, Adley Shepherd.

13 The Court stated that the “decision to reinstate an officer who had violated three provisions
14 of . . . SPD's use-of-force policies when he punched a handcuffed subject in the face while she
15 was sitting in a patrol car, and the new CBA's rejection of reforms in the Accountability Ordinance
16 that would have substantially changed the process and standard of review by which the decision
17 was made” caused the Court “to question whether the City and . . . SPD can remain in full and
18 effective compliance with the Consent Decree.” *Id.* at 8.

19 In their briefs, the City and DOJ took the position that the SPOG CBA and the
20 Accountability Ordinance—as modified by the SPOG CBA—were consistent with the Consent
21 Decree. The Parties argued that one force incident which occurred in 2014 does not undo the
22 Monitor's subsequent determination in 2017 that SPD uses force in a manner that complies with
23 the Consent Decree and meets constitutional requirements. *See* Monitor's Ninth Systemic

1 Assessment (Dkt. 383). Moreover, the City did and continues to do everything it can to hold the
 2 officer accountable: then-Chief O'Toole terminated him, the City vigorously litigated the ensuing
 3 disciplinary appeal, and the City is currently pursuing a writ to overturn the arbitrator's decision
 4 in King County Superior Court. *See, e.g.*, 512-7 (City's writ application in Shepherd matter). One
 5 wrongly decided arbitration decision does not constitute a pattern or practice of unconstitutional
 6 policing.

7 The CPC filed an amicus brief and argued to the contrary that the Court should "convey
 8 that the Consent Decree will not be resolved until the City establishes that the accountability
 9 system reforms [in the Ordinance] have in fact been secured." CPC's Br. at 28 (Dkt. 531).

10 **E. The Court's May 15th Oral Ruling**

11 The Court ruled at a hearing on May 15, 2019, and followed with a written order on May
 12 21, 2019. The Court held that the City had fallen partially out of full and effective compliance with
 13 the Consent Decree in the area of accountability. 5/15/2019 Trans. at 5-6. In all of the areas covered
 14 by the Sustainment Plan, however, the Court determined that the City remains in full and effective
 15 compliance. *Id.* at 6-10. The Court further commented:

16 [T]hese aspects of the Seattle Police Department, many of them are
 17 cited as national models. We should be proud of that. The *New York*
 18 *Times*, which used to report on the dire situation in Seattle, now runs
 19 stories about how good we are. I'm proud of that.

20 But most of all, I'm proud of the men and women who serve the
 21 public every day as members of the Seattle Police Department. I
 22 think that sometimes we forget that they put their lives at risk to
 23 protect us. That's not always been the case, but it is now the subject
 of great pride that we have as good a police department as we do.

Id. at 10.

22 The Court made extensive remarks on accountability. The Court clarified that it was not
 23 invalidating the SPOG CBA. *Id.* at 18. However, the Court raised four concerns about the CBA.

1 First, it questioned the right to arbitration for disciplinary appeals, asking whether “a labor
2 arbitrator whose livelihood is based on her continued selection, should have the ability to overturn
3 the decision of a respected, trained, experienced chief of police.” *Id.* at 17. The Court went on to
4 express concerns about three additional contract provisions:

5 [T]he Court does not reject the collective bargaining agreement. Most importantly,
6 the increased compensation of officers continues. The Inspector General and the
7 Office of Police Accountability are preserved. But it is issues like the standard of
8 proof in labor arbitrations; the 180-day timetable, which is alleged to basically be
9 there to help officers avoid discipline; and the narrowing of the subpoena power of
10 the OPA [which] are concerns of the Court.

11 *Id.* at 18.

12 **F. The Court’s May 21st Written Ruling and Order to Formulate a Methodology**

13 In its May 21, 2019 Order, the Court confirmed that the City remains in full and effective
14 compliance with the sustainment areas of the Consent Decree. 5/21/2019 Order at 2 (Dkt. 562).
15 The Court also expressed hope that the City will complete the remaining assessments in the
16 Sustainment Plan on schedule and discharge its obligations in those areas in January 2020. *Id.*

17 Accordingly, among other areas, the City remains in compliance with respect to how SPD
18 uses force, reports and investigates force, conducts stops and detentions, responds to people who
19 are experiencing behavioral crisis, and supervises its patrol officers.

20 The Court also addressed its May 15, 2019 oral ruling that the City has fallen out of
21 compliance with the Consent Decree requirements related to accountability. The Court held that,
22 because the CBA “eliminates reforms instituted by the Accountability Ordinance and leaves the
23 old arbitration regime ‘materially unchanged’ the Court finds that the City and SPD have fallen
out of ... compliance with the Consent Decree concerning SPD discipline and accountability.” *Id.*
at 6.

1 The Court’s written order, however, made clear that the Court was not invalidating the
2 CBA, nor was it ordering that the “City must return to the [original] provisions of the
3 Accountability Ordinance” as it was before being modified by the CBA. *Id.* at 13.

4 The Court directed “the City and the United States, with the assistance of the Monitor and
5 the CPC, ... to formulate a methodology (1) for assessing the present accountability regime, and
6 (2) for how the City proposes to achieve compliance.” *Id.* at 13-14. The Court explained that it “is
7 particularly concerned about provisions related to officer discipline and accompanying appeals
8 process, that are found in the original Accountability Ordinance that SPOG’s CBA altered.”
9 5/21/2019 Order at 6 (Dkt. 562).

10 **III. DEVELOPING THE PROPOSED METHODOLOGY**

11 The Parties met in late May to discuss responding to the Court’s Order by following the
12 established approach that the Parties and the Monitor have jointly developed and employed
13 consistently since the Consent Decree began. Chen Decl. ¶ 2. All of the Consent Decree assessments
14 conducted by the Monitor during Phase I were designed and conducted by national subject matter
15 experts. Some of these experts were and are Monitoring team members; others were retained by the
16 Monitor, DOJ, or the City for a limited engagement. Thus, the Parties and the Monitor have
17 repeatedly worked together—frequently with the assistance of outside experts—to identify
18 opportunities for reform in SPD’s policies, procedures, and practices. These assessments have made
19 SPD a stronger and better Department.

20 Consistent with this practice, the City believes that an assessment of the current
21 accountability system will benefit SPD and increase public confidence. Over the course of the
22 Consent Decree, the Parties and the Monitor have not had occasion to develop a methodology for
23 measuring compliance with accountability. In addition, the Consent Decree does not provide

1 standards for what would constitute compliance. Unlike those subjects that are addressed in the
2 Consent Decree and have been the focus of structured assessments by the Monitor, changes to the
3 City's accountability system are not set forth in the Consent Decree (beyond those related to the
4 OPA manual) and, therefore, have not yet been subject to a compliance-related assessment process.
5 For these reasons, the current record does not provide a sufficient basis to assess the performance
6 of SPD's disciplinary system or the potential benefits, from an accountability perspective, of other
7 models.

8 To carry out this important work and to respond to the Court's Order, the City engaged
9 consultants from 21CP with subject matter expertise in labor law, police discipline, and civilian
10 accountability to develop a proposed methodology for assessing the current accountability system.
11 Chen Decl. ¶¶ 2-3. Among other relevant experience, the experts have served as a public defender
12 and the director of a civilian accountability board, authored a publication on police discipline, led
13 President Obama's Task Force on 21st Century Policing, acted as monitors in civil rights consent
14 decrees in federal court, and provided legal counsel to police unions. *See* Dkt. 566 at 3-4.

15 As a result of input received from the Monitor and CPC representatives, the City added an
16 additional member to the 21CP team—Walter Katz, of Benchmark Analytics⁷—with a strong
17 background in civilian oversight and accountability to ensure a balanced perspective. Chen Decl.
18 ¶ 6.

19 The City asked 21CP to develop a methodology that is responsive to the Court's concerns
20 and which also incorporates the priorities and perspectives of the Parties, the Monitor, CPC, and
21 the City's other accountability partners. Katz Decl. ¶ 7. As part of this effort, 21CP led
22

23 _____
⁷ Available at <https://www.benchmarkanalytics.com/team/>

1 conversations, meetings, and work sessions in June, July, and August with the Monitor, CPC, OIG,
2 OPA, DOJ, and other stakeholders to learn about the diverse perspectives within the City, gather
3 input on the methodology, and take into account the specific needs and desires of the community.
4 Chen Decl. ¶¶ 3-15, Katz Decl. ¶¶ 8-19.

5 The stakeholders and Parties involved in the meetings and work session were unable to
6 reach consensus, in part due to differences regarding how they interpret the Court's Order. Katz
7 Decl. ¶¶ 9-14 The City believes that the Court's Order clearly requires that an assessment be
8 completed. The City interprets the word "assessment," against the backdrop of the Monitor's ten
9 assessments in Phase I and the assessments that the Parties and the Monitor have been
10 collaborating on throughout Phase II. Further, the City does not interpret the Court's order to
11 mandate the implementation of specific terms of the Accountability Ordinance, in light of the
12 Court's statements that it was not ordering that "the City must necessarily return to the
13 Accountability Ordinance," nor "ruling on the CBA, specific provisions of the CBA, or how the
14 City should conduct collective bargaining with any of its unions." 5/21/2019 Order at 13 (Dkt.
15 562). Rather, the City interprets the Court's focus to be on specific aspects of the disciplinary
16 process. *Id.* at 6; 5/15/2019 Trans. at 17-18.

17 CPC and members of some community groups, in contrast, have voiced the position that
18 the City should not respond to the Court's Order by conducting an accountability assessment and
19 should, instead, implement the Accountability Ordinance. Chen Decl. ¶ 8; Katz Decl. ¶¶ 8, 11-14.
20 They believe that the work of "assessing" accountability has already been done by the community
21 in drafting, debating, and enacting the Accountability Ordinance. Chen Decl. ¶ 11; Katz ¶ 11.
22 Further, there is a sentiment that to do any additional analysis—as contemplated in the proposed
23 methodology—is to dismiss that body of work. *See* Katz Decl. ¶ 11.

1 21CP was invited to speak to the CPC Commissioners at a public meeting on July 17, 2019.
2 Katz Decl. ¶ 8 They described their role to develop a methodology responsive to the Court’s Order
3 and asked for input and questions. *Id.* Commissioners expressed frustration with the process and
4 the delay in full implementation of the Accountability Ordinance. *Id.*

5 A half-day work session took place on July 18. Katz Decl. ¶ 9. In addition to representatives
6 of the Mayor’s Office, City Attorney’s Office, the Monitor, and DOJ, seven representatives from
7 the CPC—the three co-chairs, its interim executive director and communications director, its
8 attorney David Perez, and litigation consultant (ret.) Judge Anne Levinson—attended and
9 contributed to a robust and lively discussion. *Id.* Chief Best, Inspector General Judge, and OPA
10 Director Myerberg also participated and provided insights. *Id.*

11 Despite the disagreements described above, at the work session a detailed discussion
12 regarding which subjects should be covered in the methodology took place. Katz Decl. ¶¶ 15-18.
13 A follow-up telephone call was held on July 23 with the work session participants, during which
14 21CP received substantial, additional regarding the topics to include in the methodology. Katz
15 Decl. ¶ 19.

16 The City shared a draft methodology with the work session participants and City Council
17 on July 29, 2019, and solicited comments and feedback. Chen Decl. ¶ 12. Leading up to and
18 following the release of the draft methodology, the City conducted outreach around the
19 methodology. Chen Decl. ¶¶ 11-13. Additional conversations and exchanges included a third site
20 visit in early August from Ron Davis of 21CP, who met with Councilmember M. Lorena González,
21 attended community meetings, and held office hours for representatives of CPC and community
22 organizations. Chen Decl. ¶ 13. On August 7, CPC held a meeting of its full commission. *Id.* Ron
23 Davis of 21CP was invited and attended that meeting. *Id.*

1 The Mayor also spoke regularly with the Monitor and met with the Inspector General and
2 OPA Director to solicit input on the draft methodology during this period. Chen Decl. ¶ 14.

3 The City received substantive written or oral feedback from all of the work session
4 participants and stakeholders. *See* Chen Decl. ¶ 15. 21CP made substantial revisions to reflect this
5 input. Katz Decl. ¶ 22.

6 **IV. PROPOSED METHODOLOGY FOR ACCOUNTABILITY ASSESSMENT**

7 As described in the proposed methodology, the goal of the City in undertaking this assessment
8 is to determine whether and to what extent attributes of the current accountability system operate to
9 hold police officers accountable for serious misconduct in a manner that deters future misconduct
10 and is procedurally fair.

11 The first part of the assessment will analyze the features of the previous SPOG CBA that
12 contributed to the outcome in Officer Adley Shepherd's case as highlighted in the Court's
13 December 3, 2018 order to show cause and May 15 and 21, 2019 rulings. The analysis will examine
14 specific elements in the accountability system that have the potential to impact public confidence
15 and legitimacy. These elements are of concern to the Court and Council and also identified as
16 significant priorities by the Monitor, OIG, OPA, and CPC. These areas are: 1) the calculation of
17 the 180-day timeline for disciplinary investigations; 2) the subpoena authority of OPA and OIG;
18 and (3) the quantum of proof and standard of review in disciplinary appeals.

19 The second part of the Accountability Assessment will gather data on disciplinary appeals
20 systems from comparable police departments nationwide. In addition to providing information on best
21 practices and innovative approaches to accountability, this data is essential for future bargaining. In
22 the next round of contract negotiations, any dispute with the police union that cannot be resolved
23

1 through bargaining or mediation could be resolved at interest arbitration.⁸ In those circumstances,
2 results of the assessment would be important information given that an arbitrator usually will consider
3 comparative data from other police unions in Washington state and elsewhere. Arbitrators place
4 the greatest weight on comparative data from seven cities called the “West Coast Seven,”⁹ a group
5 of cities that is included in 21CP’s proposed methodology. *See* RCW 41.56.465(3).

6 The proposed methodology includes in-depth analysis of the concerns raised by the Court in
7 its December 3rd order to show cause, May 15th oral ruling, and May 21st written order. Similarly,
8 the methodology encompasses the three issues broached by the City Council in its November 2018
9 companion resolution to the SPOG CBA.

10 Of the nineteen specific disciplinary and accountability features that the methodology
11 identifies as areas for data collection and analysis at pages 4-5, fourteen were raised by the CPC in its
12 brief, accompanying exhibits, at the July 18th work session or on the July 23rd call. In addition, most
13 of the topics (all except 1a, 1j, 1m, 2f, and 2g) covered in the survey are areas in which the City’s
14 current system differs from the Accountability Ordinance (although the City and CPC disagree as to
15 whether all of those differences are meaningful).

16 As proposed, the assessment will examine many elements of the disciplinary appeals process,
17 summarized briefly as follows:

- 18 • Forum (i.e., arbitration, civil service commission, or judicial review);

19
20 _____
21 ⁸ As explained above, that was not the case in the City’s previous round of negotiations
22 with SPOG. Because the Accountability Ordinance was enacted years after the contract
negotiations had begun, the City was not entitled to take any of the accountability reforms to
interest arbitration even if bargaining reached an impasse.

23 ⁹ The West Coast Seven are: Long Beach, CA; Oakland, CA; Portland, OR; Sacramento,
CA; San Diego, CA; San Francisco, CA; and San Jose, CA.

- 1 • Qualifications, term limits, and selection process for adjudicator(s);
- 2 • Quantum of proof required to uphold police chief's or commissioner's decision;
- 3 • Standard of review (i.e., amount of deference afforded to police chief's or commissioner's
- 4 decision);
- 5 • Transparency, including whether hearings are open to the public and to what extent appeal
- 6 records are retained and made publicly available; and
- 7 • Outcomes of appeals (i.e., did the employer or union prevail and to what extent).

8 The survey will also gather data regarding additional disciplinary and accountability system
9 features, including: degree of civilianization of disciplinary investigations; time limits for disciplinary
10 investigations; subpoena authority of accountability agencies or internal affairs investigators; and
11 retention time for disciplinary files. To allow for apples-to-apples comparisons, the survey will also
12 include information about relevant state and local laws for each comparison city.

13 If the Court approves the proposed methodology, then the City proposes that the
14 accountability assessment be completed and submitted to the Court by November 29, 2019. The
15 assessment would inform the public process ahead of the upcoming negotiations, which the City
16 intends to commence in March 2020.

17 **V. "HOW THE CITY PROPOSES TO ACHIEVE COMPLIANCE"**

18 In addition to a methodology for the Accountability Assessment, the Court also ordered the
19 Parties to provide "a methodology . . . for how the City proposes to achieve compliance." 5/21/2019
20 Order at 13-14.

21 Once the Accountability Assessment is complete, the City will—with the input of the
22 Monitor, CPC, OIG, OPA, DOJ, and other key stakeholders—develop a plan setting forth the City's
23 proposed next steps for accountability. The City will submit the assessment and plan to the Court.

1 That plan will be based on the results of the Accountability Assessment and—critically—it
2 will be based on how its findings are evaluated by the City’s democratically elected leaders, their
3 constituents, and other key City stakeholders. Depending on those factors, the City’s proposed plan
4 to the Court could include revisions to the SPD Police Manual or a legislative proposal before the
5 City Council.

6 In addition, it is a near certainty that the findings of the assessment will implicate the current
7 CBAs between the City and the police officer unions. That is because, under state law, changes to
8 the disciplinary process will affect mandatory subjects of bargaining.

9 Accordingly, part of the City’s response to part (2) of the Court’s order—“how the City
10 proposes to achieve compliance”—is that the findings, observations, and policy alternatives contained
11 in the Accountability Assessment will influence and inform the City’s collective bargaining priorities.
12 The Executive has already identified at least four critical priorities for the next round of collective
13 bargaining, while acknowledging that each of these areas will be further informed by the Assessment.
14 The four priorities are:

15 (1) Calculation of the 180-Day Timeline. Improving the 180-day timeline has been and
16 continues to be a top priority for the Executive. During the last round of collective bargaining with
17 SPOG, the City negotiated extensive changes to how this time period is calculated.¹⁰ In addition, the
18 Court, City Council, CPC, OPA, and OIG have all flagged the 180-day limit as a critical issue for
19 public confidence and fairness.

20
21 ¹⁰ These changes are reflected in the SPOG CBA at Article 3.5(F) and 3.6(B)-(D). *See* Dkt.
22 512 City’s Brief in Response to Order to Show Cause at 18-19 (describing negotiated changes); *see*
23 *also* Dkt. 512-3 Exhibit C to City’s Brief (redline comparing previous SPOG CBA to current SPOG
CBA) (strikethroughs and underlined text reflect changes that were bargained by the City during the
last round of negotiations).

1 2) Subpoena Authority of OPA and OIG. This topic was a priority for the City in the previous
 2 round of bargaining and resulted in the City and SPOG agreeing to a reopener. The City has the right
 3 to reopen negotiations on this topic after the City completes additional research and review in order
 4 to respond to questions posed by SPOG on this topic. *See* Appendix E(12) to SPOG CBA, at 84
 5 (Dkt. 512-2 at 93). The assessment conducted by 21CP will contribute to that research. This issue
 6 is also a priority to the Court, the Monitor, City Council, CPC, OPA, and OIG.

7 3) Quantum of Proof and Standard of Review in Disciplinary Appeals. The CPC, OPA,
 8 OIG, City Council, the Monitor and the Court all have asserted the importance of examining these
 9 procedural rules as they are applied in disciplinary appeals.

10 4) Aspects of Grievance Arbitration that Affect Public Confidence. OPA and OIG have
 11 determined that the overall topic of how grievance arbitration affects public confidence is one of
 12 the most significant issues in terms of the potential negative impact on accountability. The Monitor
 13 and CPC have also highlighted issues that fall within this broad area. For example, they have raised
 14 the issue of whether hearings are open to the public. *See* Katz Decl. ¶¶ 16-17, CPC Brief in
 15 Response to Order to Show Cause at 10 (Dkt. 531). A second example is the process for selecting
 16 arbitrators.¹¹ Katz Decl. ¶¶ 16-17. Transparency and public confidence are also critical priorities
 17 to the Executive. To that end, the City negotiated a reopener in the current CBA on the issue of
 18 having arbitration hearings be open to the public. *See* Appendix E(12) to SPOG CBA, at 91(Dkt.
 19 512-2 at 100).

21 ¹¹ One proposal that came out of the conversations which took place after the Court's May
 22 21, 2019 Order is to convene a City working group with SPD, CPC, OPA, and OIG to develop a
 23 proposal for how to select arbitrators in a manner that promotes public trust and produces fair results.
 The City commits to convene such a working group; to meet regularly to exchange ideas; and to report
 out on its progress by November 29, 2019.

1 In the next round of collective bargaining negotiations, addressing these four issues that
2 have been identified by the Court, the Monitor, and City stakeholders will be top priorities for the
3 Executive.

4 **VI. COLLECTIVE BARGAINING PROCESS, TIMELINE, AND LEGAL 5 CONSTRAINTS**

6 The City does not have the right unilaterally to impose changes to the accountability system
7 or even to demand bargaining over such changes before the start of negotiations on a successor CBA.
8 Under Washington's Public Employment Collective Bargaining Act, disciplinary procedures are
9 mandatory subjects of bargaining, and the City must reach agreement with SPOG before
10 implementing changes. *See, e.g., Spokane Police Guild*, Dec. 5054, 1995 WL 849648 (Wash. Pub.
11 Emp. Rel. Comm'n). This duty to bargain extends to, among other things, the existence of arbitration
12 as an alternative to a civil service appeals system. *City of Pasco v. Public Employment Relations
13 Commission*, 119 Wash. 2d 504, 512 (1992). Even the rules of a civil service commission must be
14 bargained. *See IAFF Local 469 v. City of Yakima*, Dec. 3503, 1990 WL 656208 (Wash. Pub. Emp.
15 Rel. Comm'n). Because the accountability system implicates mandatory subjects of bargaining, the
16 City cannot compel the unions to discuss changes until the next bargaining cycle.

17 The City has already begun the process to initiate the next round of collective bargaining
18 negotiations with both of its police officer unions, SPMA and SPOG. *See Exhibits B & C to Cowart
19 Decl.*

20 State and local laws establish a timeframe and process for bargaining negotiations. State law
21 requires that negotiations commence at least five months prior to the submission of the City's budget
22 in the same year of the CBA's expiration. RCW 41.56.100. By local ordinance, the City's Labor
23

1 Relations Director must provide the City Council with at least 180 days of notice prior to the beginning
2 of negotiations. SMC 4.04.120(F).

3 In addition, at least 90 days before negotiation begins, the City Council must hold at least one
4 public hearing “on the effectiveness of the City's police accountability system.” SMC 4.04.120(F).
5 These public hearings are an important part of the process whereby the City identifies the interests
6 of the public under SMC 4.04.120(F) and (G).

7 In addition to the public hearings, the Executive commits that it will ensure that CPC has
8 an opportunity to provide input and guidance to the City’s negotiating team. It is also important for
9 the Executive to engage closely with OPA, OIG, and other key stakeholders to incorporate their
10 perspectives into the City’s bargaining goals and positions.

11 The City’s Labor Relations Policy Committee (LRPC) also has an important role in the
12 collective bargaining process. The LRPC includes a majority of councilmembers, and it must concur
13 with any changes to officer “grievance procedures and working conditions,” which would include
14 proposals for changes to the accountability system. *See* SMC 4.04.120(C). Finally, all labor
15 agreements must be approved by a majority of the City Council. SMC 4.04.120(D).

16 As a practical matter the LRPC’s concurrence is typically obtained through regular meetings
17 before and during negotiations.

18 The current SPMA contract expires on December 31, 2019, and the SPOG contract expires
19 on December 31, 2010. The Labor Relations Director has provided to City Council the required 180-
20 day notices setting December 2019 and March 2020 as the dates when negotiations over the SMPA
21 and SPOG contracts can commence, respectively. *See* Exhibits B & C to Cowart Decl. At the start of
22 negotiations, the City and the union must each set forth their respective proposals; that initial list
23 generally cannot be added to later in the course of negotiations unless the other party agrees.

1 Accordingly, it is critical that the Accountability Assessment ordered by the Court be completed before
 2 December 2019, so that there is ample time to incorporate its findings into the City's bargaining
 3 priorities with both unions.

4 An exception to the foregoing bargaining structure is for the topics specifically identified in
 5 the current CBA as subject to reopening. The City has received suggestions from stakeholders to
 6 move quickly to exercise reopeners in the current CBA. That can be a sound bargaining strategy.
 7 However, the City must also weigh countervailing considerations, including the length of time that
 8 accomplishing negotiations under reopeners would take and whether it would be more productive
 9 to bargain holistically or piecemeal. Notably, it is unlikely that the issues subject to a reopener could
 10 be resolved by the time the City enters negotiations on the full SPOG CBA in March 2020. From
 11 start to finish, the process of initiating bargaining on a reopener and proceeding to a final decision by
 12 an arbitrator would take at least nine to twelve months.¹²

13 In addition to the process and timing, state law also mandates rules for how bargaining
 14 negotiations must be conducted. As a result, beyond providing a general public statement of the
 15 Executive's priorities, there are legal constraints on what the City can commit to in this filing or any
 16 Court filing with respect to collective bargaining.

17 First, to fulfill its obligation to bargain in good faith, the City should avoid publicly announcing
 18 an inflexible position on any issue critical to a final settlement. *See Kennewick Public Hospital District*
 19 *#1*, Dec. 4815-A, 5052-A, 5594, 1996 WL 470889, at *11 (Wash. Pub. Emp. Rel. Comm'n). That

21 ¹² Generally, the steps in a reopener are: (1) Initiate reopener and engage in good faith
 22 bargaining with the union; (2) assuming no agreement is reached, request a mediator; (3) get a
 23 mediator assigned and scheduled; (4) mediate the issue until the parties reach impasse or
 agreement; (5) the Executive Director of PERC must certify that the parties have reached impasse;
 (6) select an arbitrator and schedule arbitration; (7) conduct the arbitration hearing; (8) post-
 hearing briefing by the parties; and (9) arbitrator writes and issues a written decision.

1 means, among other things, that the City should not commit in a filing to the Court or in a public
2 statement that it will achieve a certain outcome at the bargaining table. *See id.* (citing *NLRB v. Truitt*
3 *Mfg. Co.*, 351 U.S. 149 (1956) (“A predetermined resolve not to budge from an initial position is
4 inconsistent with good faith bargaining.”)). Once collective bargaining negotiations do begin, the
5 Seattle Municipal Code requires city officials to “maintain strict confidentiality during the period of
6 negotiations.” SMC 4.04.120(E). This confidentiality obligation helps City officials to engage in
7 robust discussions regarding bargaining positions, and it prevents negotiators for the union from
8 knowing and taking advantage of City negotiating strategies. It also helps prevent potential claims of
9 bad-faith bargaining, such as direct dealing (when the employer attempts to bypass the union leaders)
10 and surface bargaining (when a party bargains without an intent to actually reach agreement).

11 Second, the City’s ultimate position in bargaining is established jointly by the Council and
12 Executive—not just by the Executive. *See* SMC 4.04.120(F). As noted above, before negotiations can
13 begin, the City Council must hold a public hearing prior to bargaining to inform the negotiations. SMC
14 4.04.120(F) & (G). Both the LRPC and full Council must approve the final contract.

15 Third, throughout the negotiating process, the City and the unions must bargain in good faith
16 and the current CBA must be the starting point for negotiations. *See Snohomish Cnty.*, Dec. 9834-B,
17 2008 WL 936569, at *3 (Wash. Pub. Emp. Rel. Comm’n). As noted above, “good faith bargaining”
18 requires that both sides make compromises. It would be inconsistent with the City’s obligation to
19 negotiate in good faith if it were to demand “wholesale implementation of the Accountability
20 Ordinance,” insofar as the Ordinance impacts mandatory subjects of bargaining. *See, e.g., Mason*
21 *Cnty.*, Dec. 3706, 1991 WL 733717 at *7 (Pub. Emp. Rel. Comm’n).

1 **VII. CONCLUSION**

2 For the foregoing reasons the City requests that the Court grant the stipulated motion to
3 approve the proposed methodology.

4
5
6 DATED this 15th day of August, 2019.

7 For the CITY OF SEATTLE

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23

CERTIFICATE OF SERVICE

I hereby certify that on August 15th, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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DATED this 15th day of August, 2019, at Seattle, King County, Washington.

s/ Kerala T. Cowart
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Assistant City Attorney
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