

# PORTLAND CITY COUNCIL

December 18, 2013






## Item 1191


\*Authorize agreements between the City, United States and Portland Police Association related to police interactions with persons experiencing mental illness



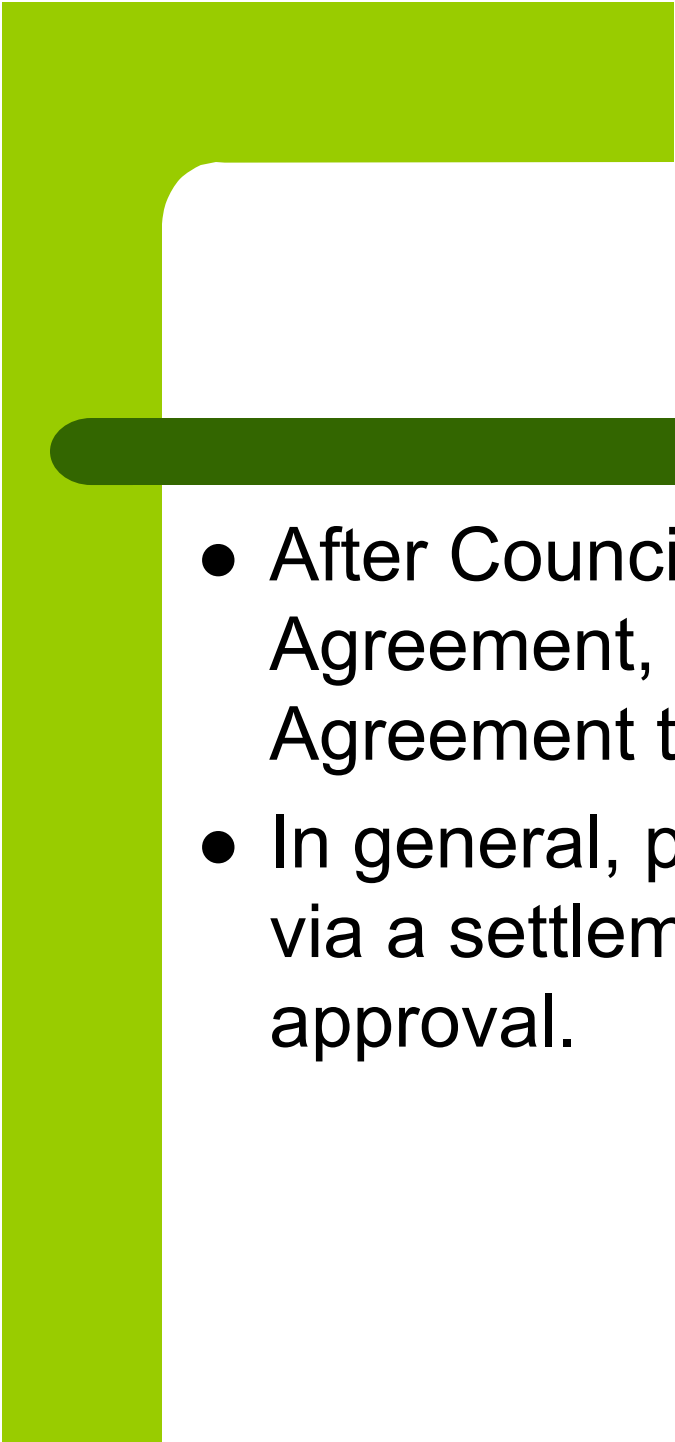

**Background**

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- A complex two-year process brought us to this moment.

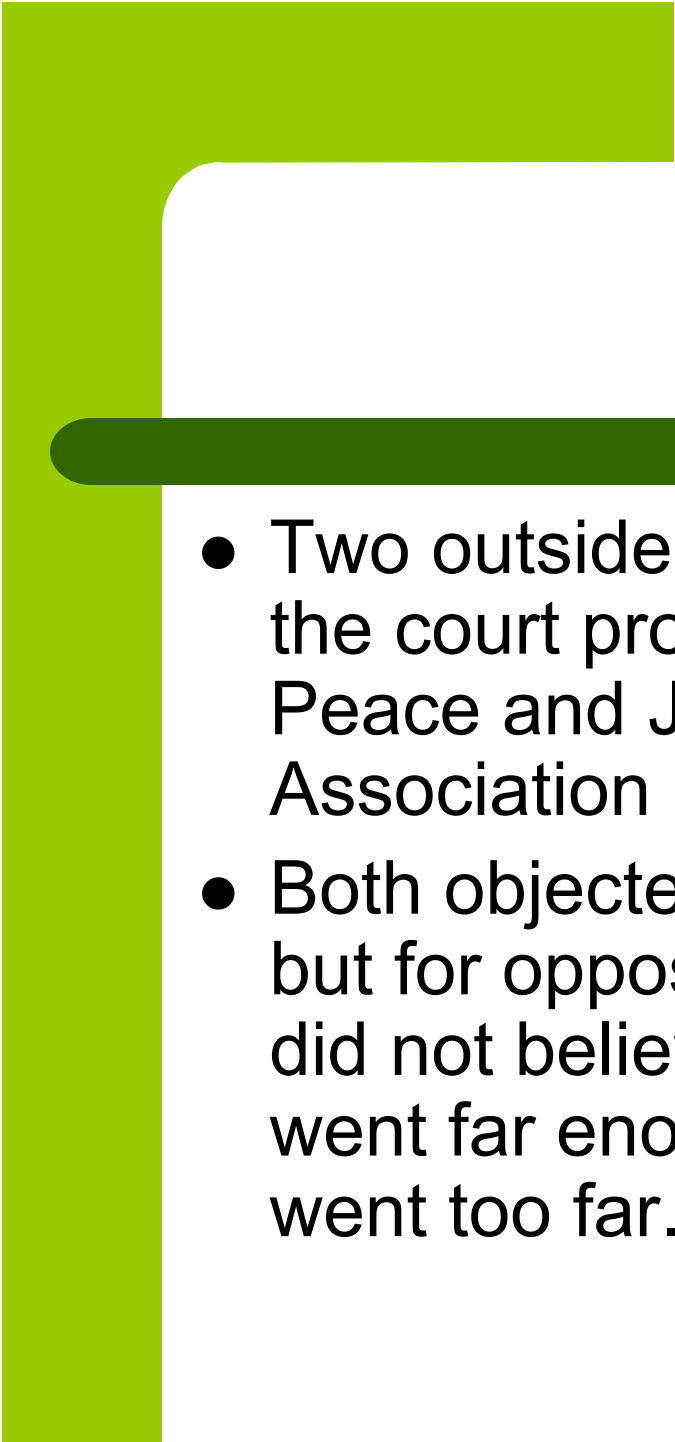

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- In July of 2011, the United States began a 14-month investigation of the City's policing practices.

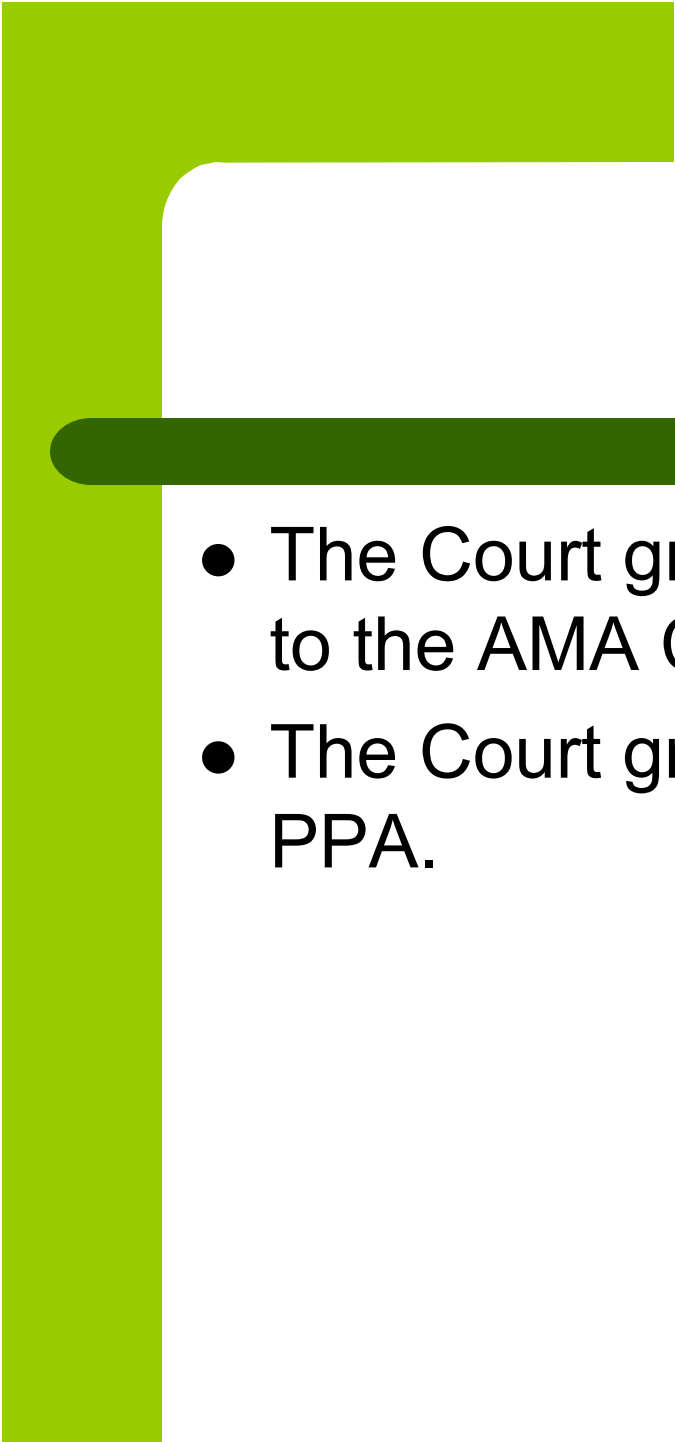

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- In September of 2012, the United States concluded that systemic deficiencies in the City's policy, training, and supervisory oversight mechanisms resulted in a pattern or practice of police officers using excessive force against persons who have or are perceived to have mental illness.
  - The United States told the City it intended to file a lawsuit against the City.

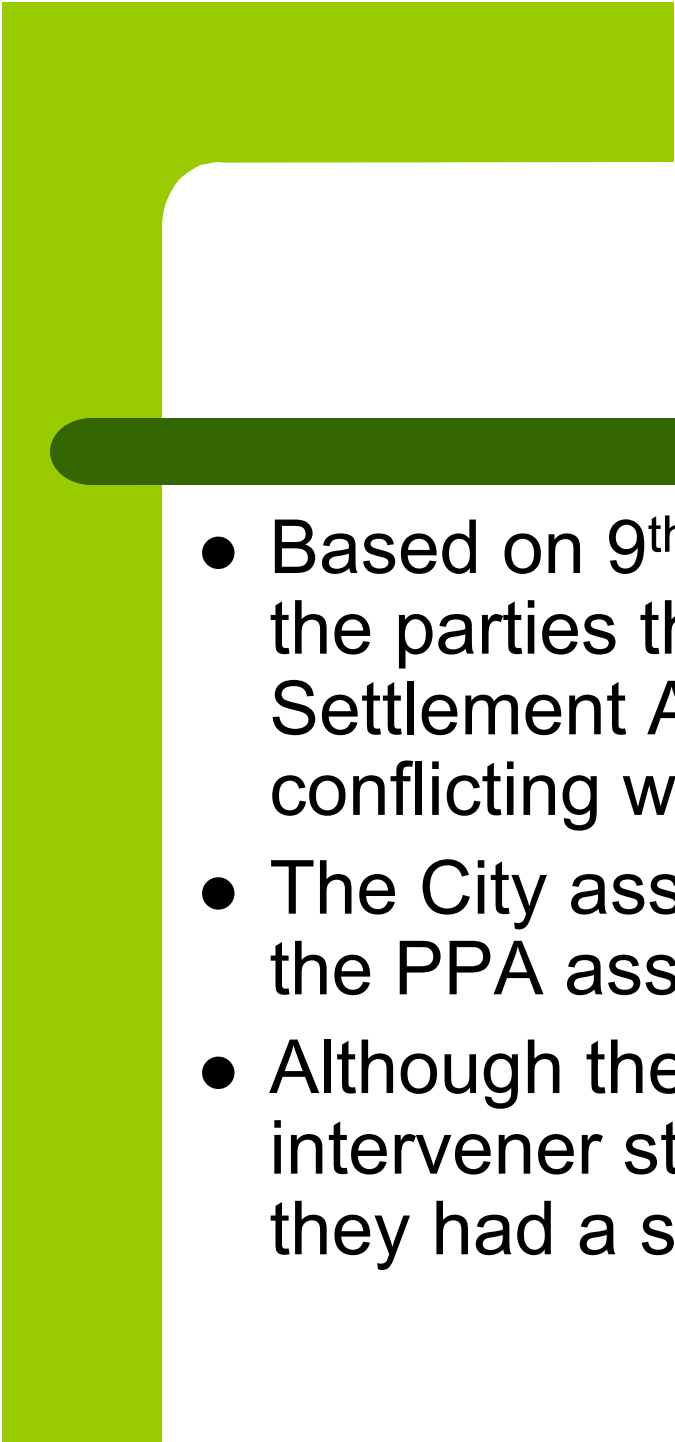

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- The United States and City immediately began intense negotiations and ultimately reached a Settlement Agreement addressing the allegations.
  - In November of 2012, the City Council unanimously approved the Settlement Agreement.

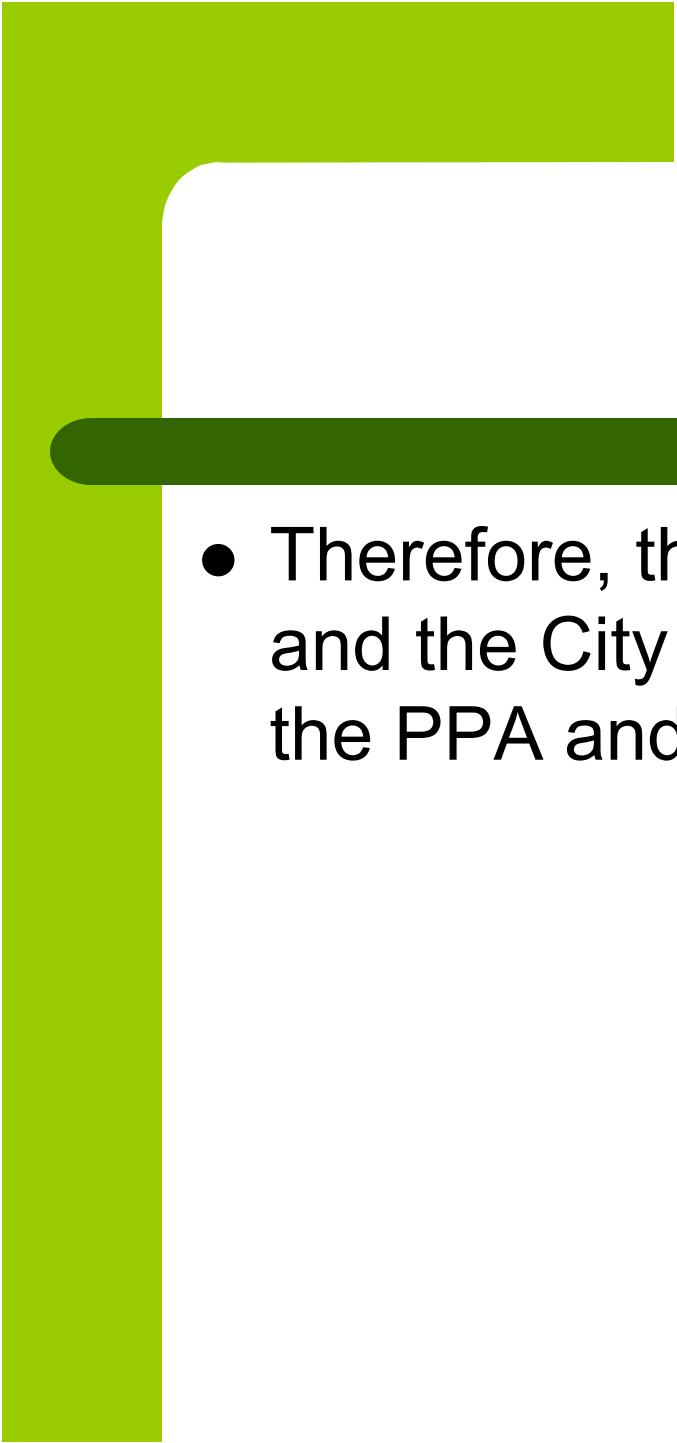

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- After Council approved the Settlement Agreement, the next step was to take the Agreement to federal court.
  - In general, parties cannot resolve a lawsuit via a settlement agreement without a Court's approval.

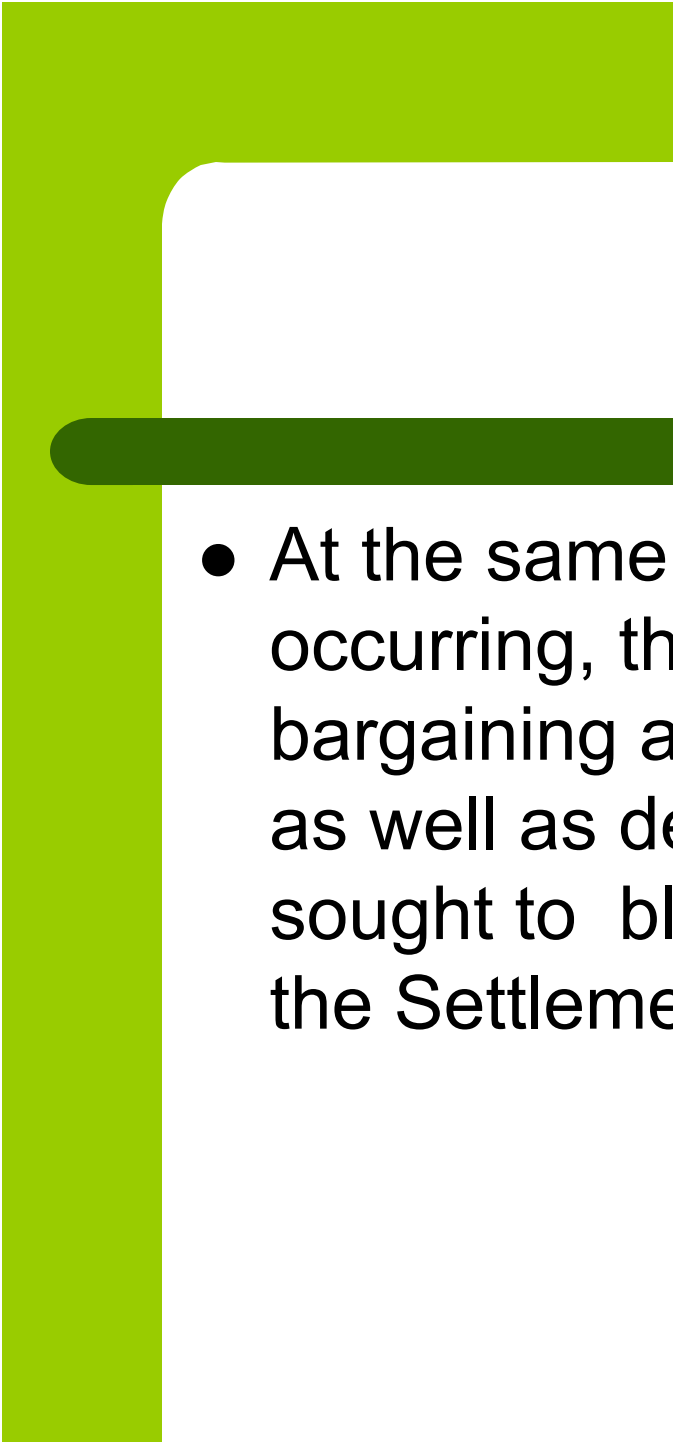



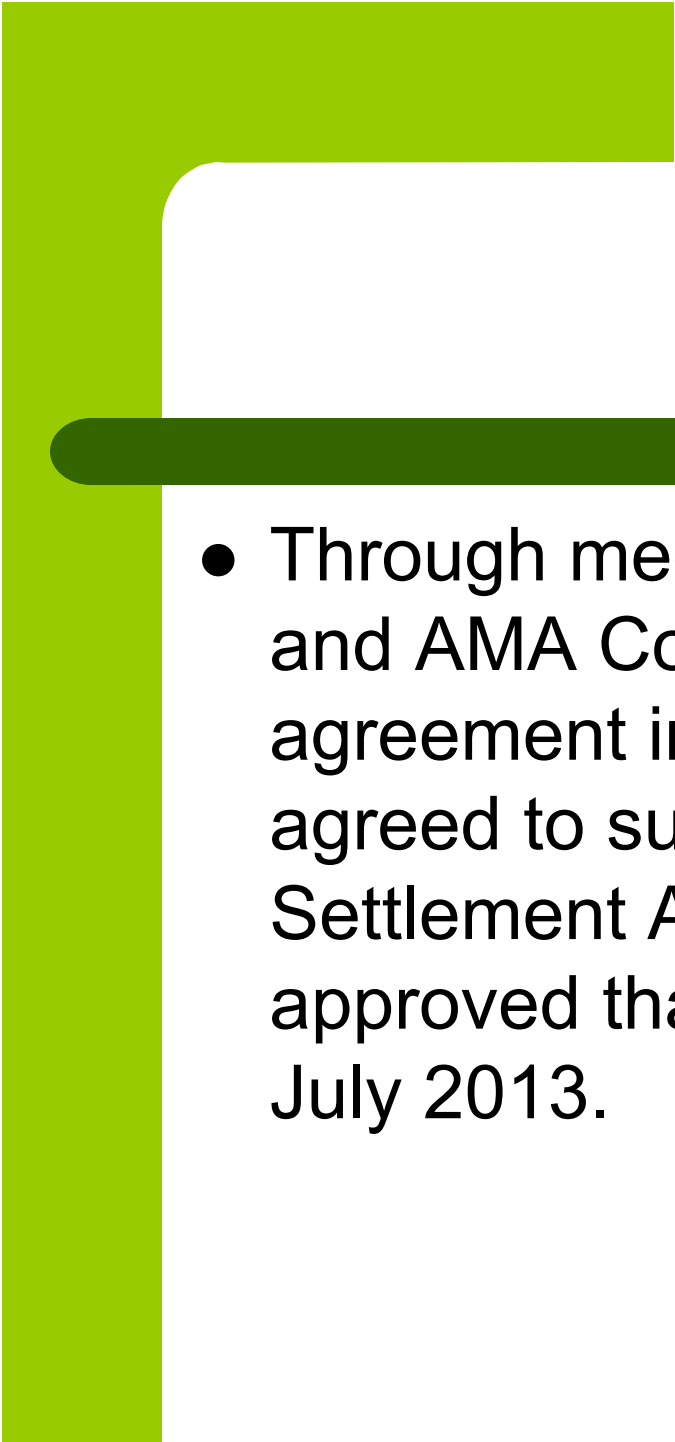

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- Two outside parties moved to intervene in the court proceedings: the AMA Coalition for Peace and Justice and the Portland Police Association (PPA).
  - Both objected to the Settlement Agreement but for opposite reasons; the AMA Coalition did not believe the Settlement Agreement went far enough, and the PPA believed it went too far.

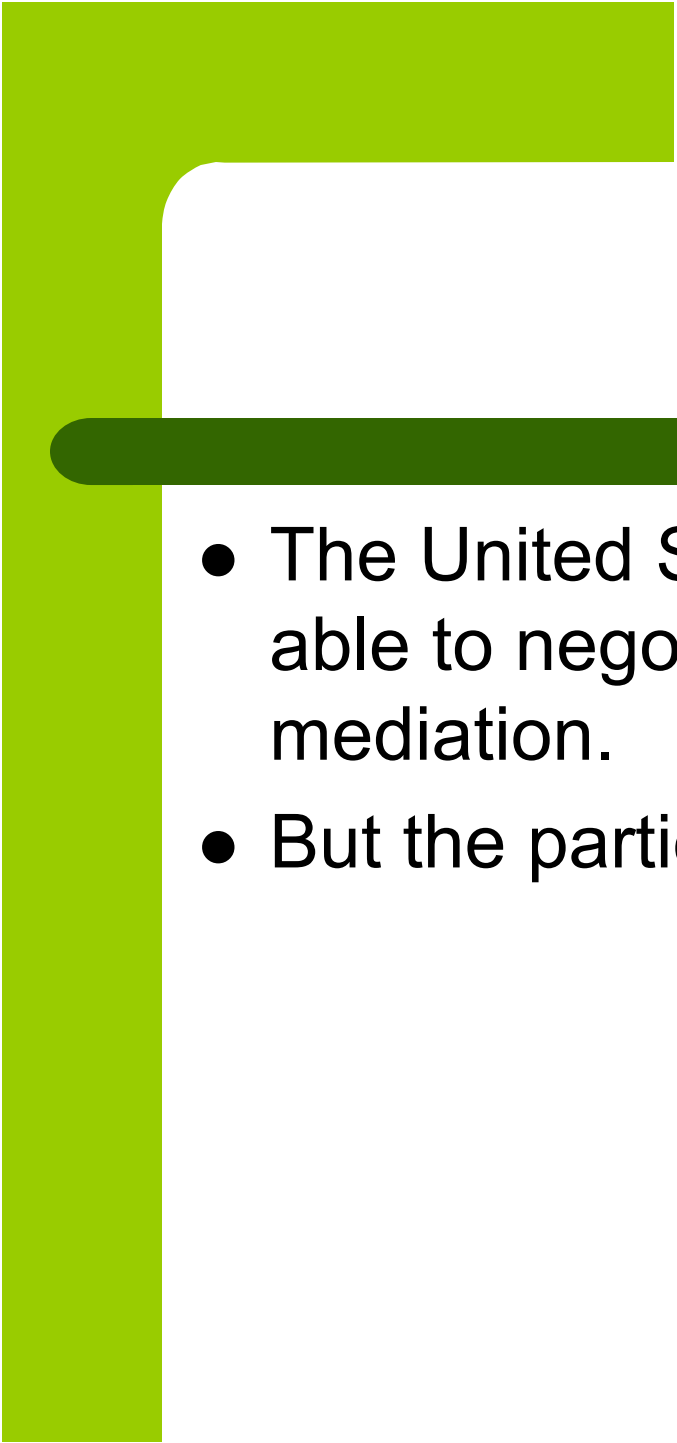

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- The Court granted “enhanced amicus” status to the AMA Coalition.
  - The Court granted intervenor status to the PPA.

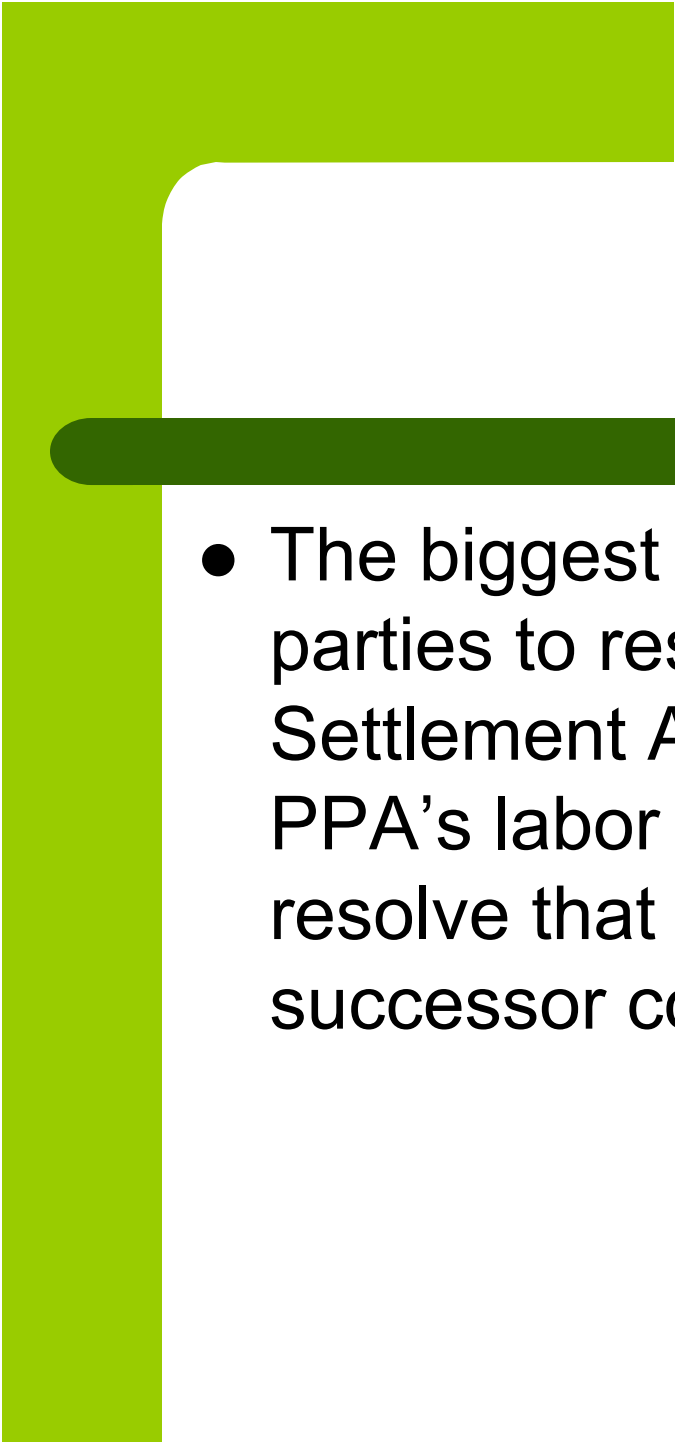

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- Based on 9<sup>th</sup> Circuit case law, the Court told the parties that it would not enter the Settlement Agreement if it contained terms conflicting with the PPA's labor contract.
  - The City asserted that no conflict existed and the PPA asserted the opposite.
  - Although the AMA Coalition was not granted intervener status, the Court recognized that they had a special stake in the litigation.

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- Therefore, the Court asked the United States and the City to participate in mediation with the PPA and the AMA Coalition.


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- At the same time that mediation was occurring, the City was collectively bargaining a successor contract with the PPA as well as defending a PPA grievance that sought to block the City's implementation of the Settlement Agreement.

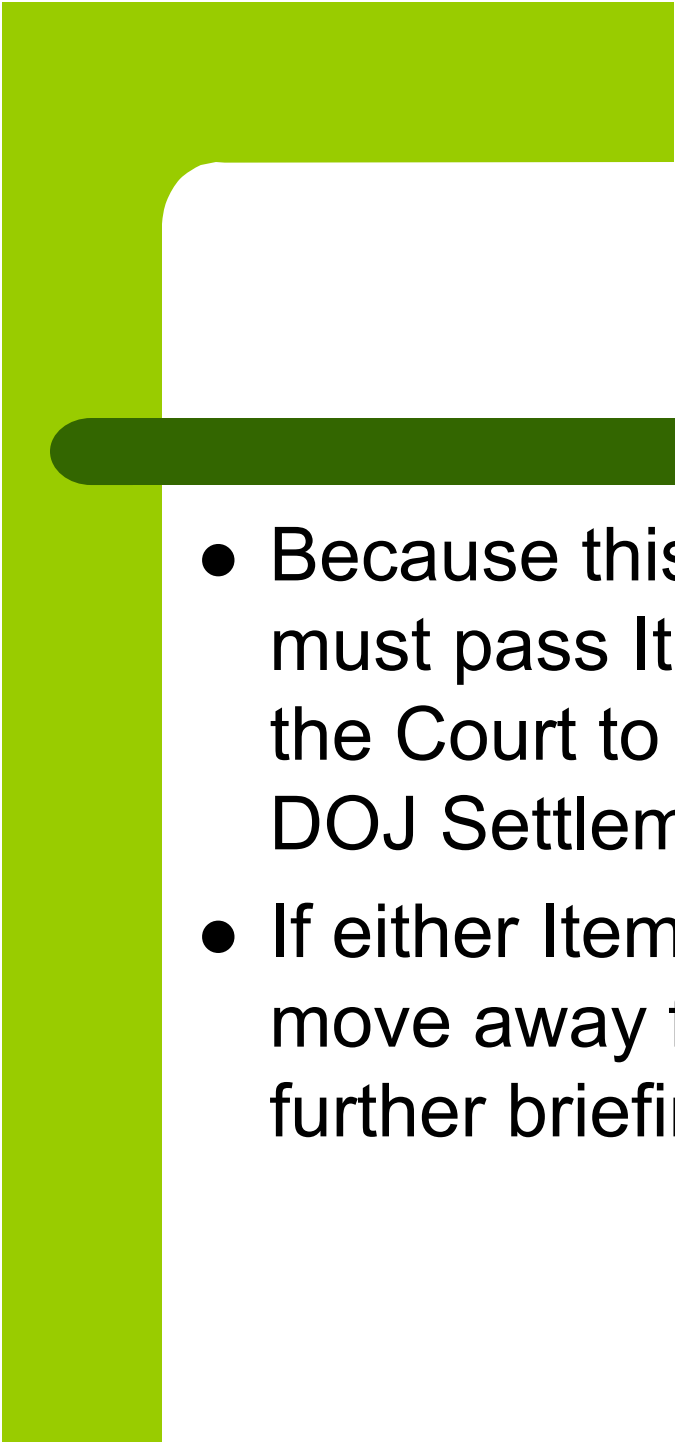

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- Through mediation the United States, City, and AMA Coalition negotiated a collaborative agreement in which the AMA Coalition agreed to support Court approval of the Settlement Agreement. City Council approved that collaborative agreement in July 2013.

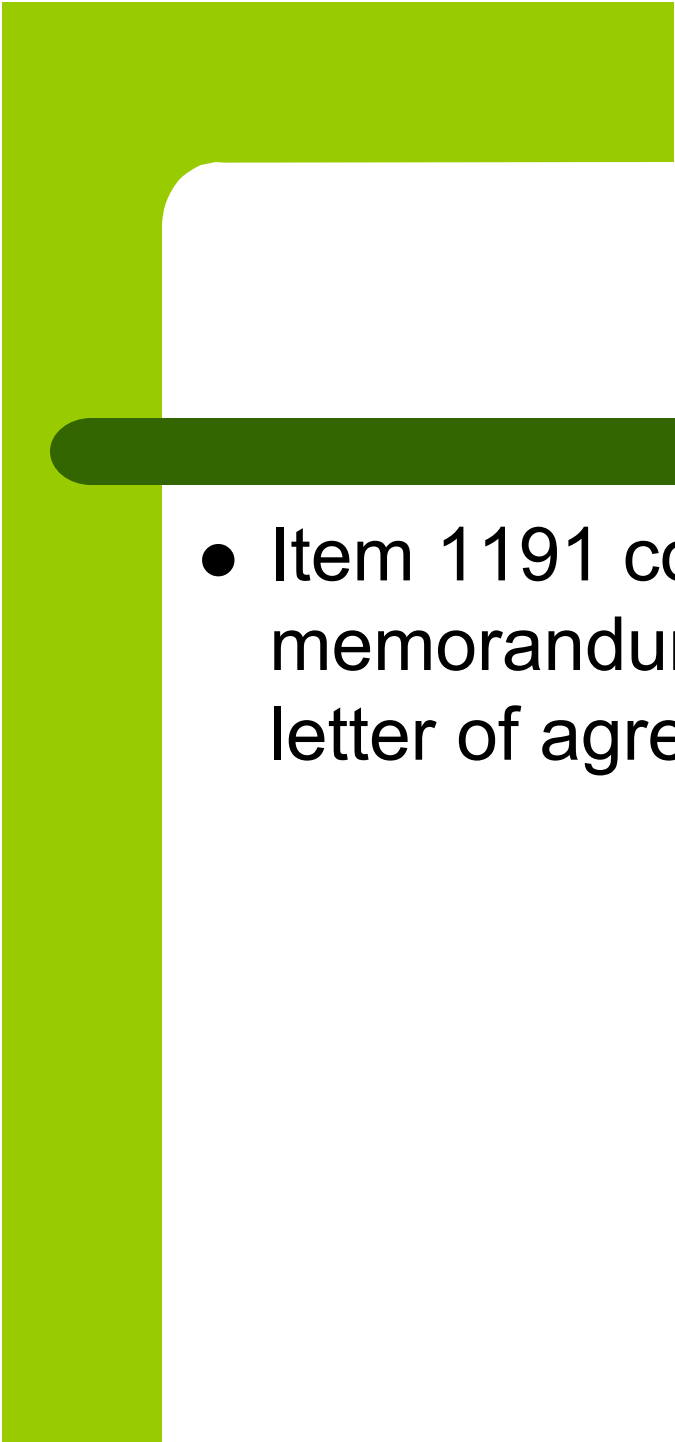

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- The United States, City, and PPA were not able to negotiate an agreement through mediation.
  - But the parties continued having discussions.

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- The biggest issue that the Court wanted the parties to resolve was whether the DOJ Settlement Agreement conflicted with the PPA's labor contract. It was not possible to resolve that dispute without having a successor contract in place.



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- As a result of bargaining that occurred between July and November 2013, the City and PPA were able to tentatively agree on a successor contract which is before you today in Item 1190.
  - Once the contours of the successor contract were in place, the City and PPA were able to finalize the agreements that resolve the PPA's objections to the DOJ Settlement Agreement that was approved by City Council in December 2012.

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- Because this is a global settlement, Council must pass Items 1190 and 1191 in order for the Court to move forward in approving the DOJ Settlement Agreement.
  - If either Item fails to pass, the lawsuit will move away from settlement and toward further briefing and possibly trial.

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- Item 1191 contains two agreements: a memorandum of agreement (MOA) and a letter of agreement (LOA)



# **Terms of the Memorandum of Agreement**

## Paragraph 6

- The PPA withdraws its objections to the entry of the Settlement Agreement and agrees to file any necessary Court paperwork to make that happen.

## Paragraph 7

- The PPA dismisses its grievance related to the Settlement Agreement.
- The PPA waives its bargaining rights to already-implemented reforms as well as future implementation of reforms that they reasonably anticipate will occur.

## Paragraph 8

- The PPA retains its bargaining rights for implementation of reforms that they could not have foreseen.

## Paragraph 9

- The PPA retains some bargaining rights in relation to three specific subjects in the Settlement Agreement:
  - a. Interview protocols for officers involved in force events
  - b. IPR interviews of officers\*
  - c. Unforeseeable Court enforcement of the Agreement.

\*The Amended MOA has an updated reference to this section. Council will hear a proposal this afternoon for new changes to the IPR code.



## Paragraph 9 (cont.)

- The City retains its right to enact any changes to the manner in which officers are interviewed when those changes are not mandatory for bargaining. If PPA and City disagree about whether a change is mandatory for bargaining, both sides retain their right to submit such disputes to the appropriate decision-maker.

## Paragraph 10

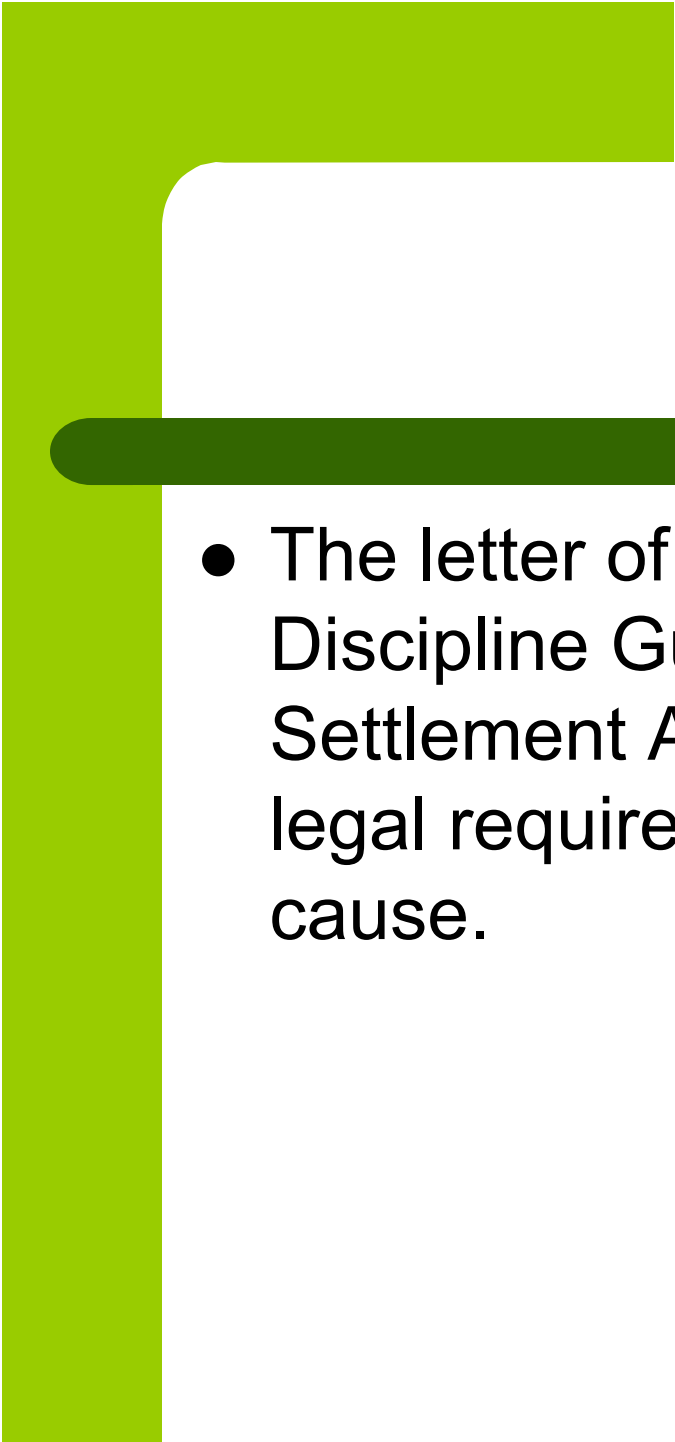

- PPA retains its collective bargaining rights for matters unrelated to the DOJ Settlement Agreement.

## Paragraphs 11-19

- Paragraphs 11-19 contain housekeeping matters such as an affirmation of the due process requirements for discipline, the procedure for enforcing the MOA, the term of the MOA, and other general legal provisions.

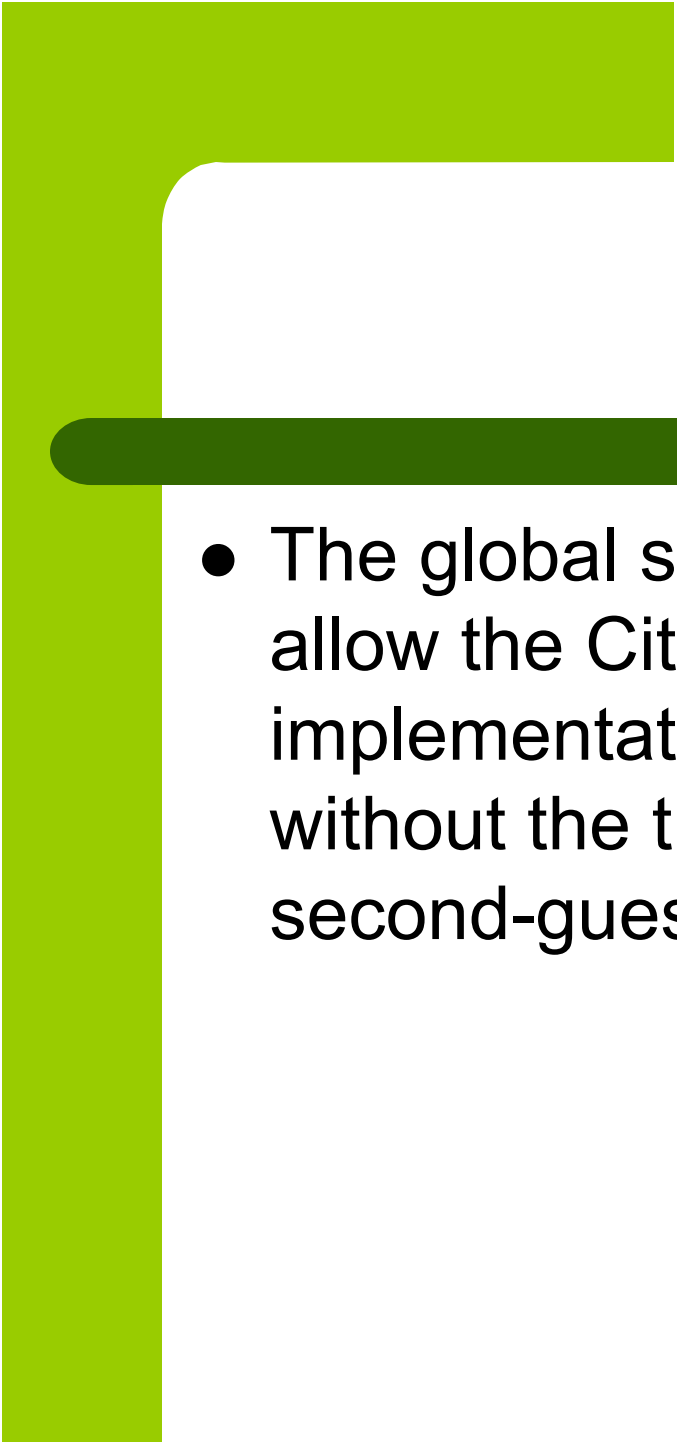



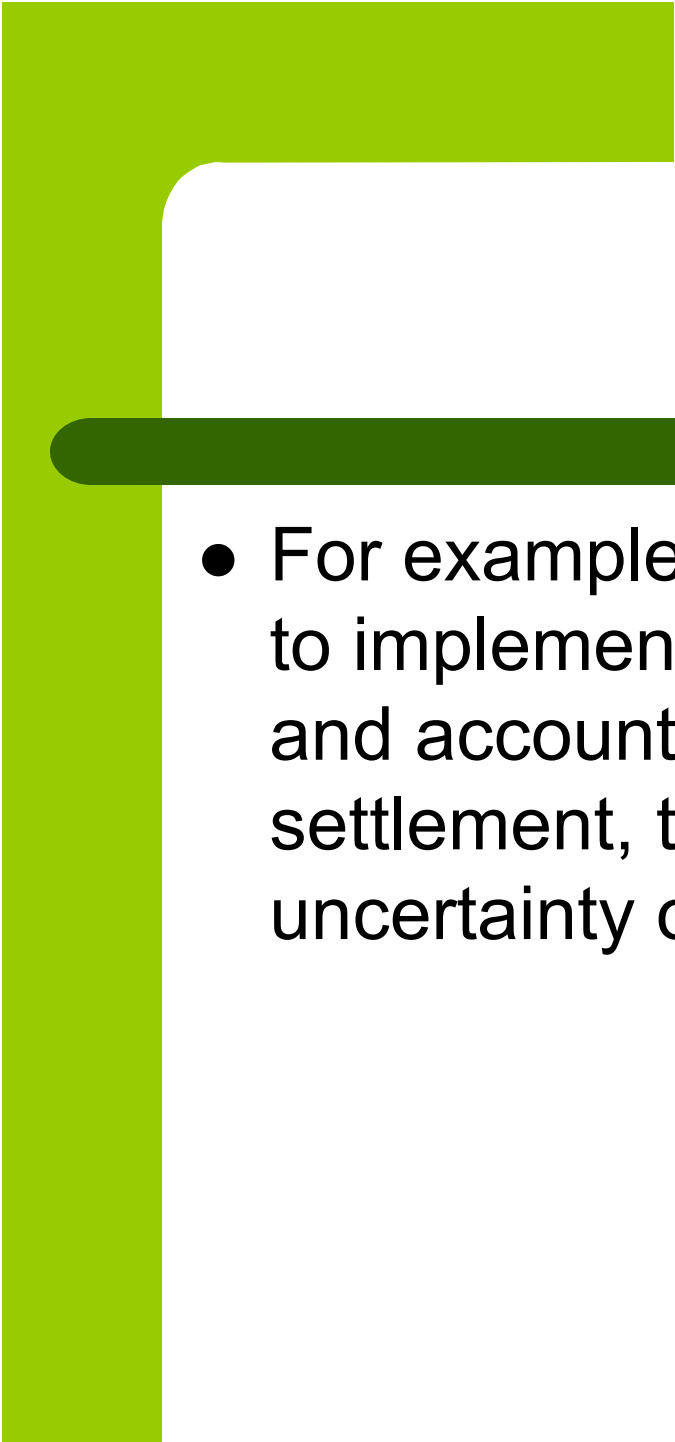

# **Terms of the Letter of Agreement**

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- The letter of agreement clarifies that the Discipline Guide required by the DOJ Settlement Agreement will not supplant the legal requirements of due process and just cause.



# **Clearing the Path to Reform**

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- The global settlement proposed today will allow the City to confidently continue implementation of the settlement agreement without the threat of those actions being second-guessed or overturned.

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- For example, the City has already or is about to implement reforms to its policies, training, and accountability systems. With the settlement, those changes will be freed from uncertainty of legal challenges.



# Use of Force Policies

- New use of force, performance, and taser policies will become effective January 1, 2014.
- These policies focus on de-escalation and appropriate responses to people who are experiencing a mental health crisis.

# Training


- The Bureau implemented a training plan that included scenario-based training incorporating de-escalation tactics such as disengaging, waiting, and calling for appropriate backup units.

# Specialized Responses to Mental Health Crises

- All officers will continue to be CIT trained.
- And the Addictions and Behavioral Health Unit (ABHU) will continue to advance cutting edge techniques for police interactions with persons experiencing a mental health crisis.

# Officer Accountability

- Supervisors will continue to go to the scene of all uses of force and conduct investigations.
- The City will have a discipline guide for the first time.
- There will be new thresholds in the employee information system (EIS) for triggering an overall evaluation of an officer's use of force

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- Although there are important milestones yet to come, this global settlement is a giant step forward towards accomplishing the goals of implementing further police reforms and improving police accountability.



**The End**