

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF DAYTON, OHIO,

Defendant.

Civil Action No. 3:08-cv-348 (TMR)
Hon. THOMAS M. ROSE

ORDER

Upon consideration of the Joint Motion of plaintiff United States and defendant City of Dayton, Ohio (collectively, "the parties"), it is hereby ORDERED this Tuesday, April 14, 2009, 2009, that the Consent Decree agreed to and executed by the parties is provisionally approved and entered by this Court.

The Court will set a date for a Fairness hearing.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
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CONSENT DECREE

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I. INTRODUCTION AND BACKGROUND

This action was brought by the United States against the City of Dayton ("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"). In its complaint, the United States alleges that the City is engaged in a pattern or practice of race discrimination against African Americans with respect to employment opportunities as police officers and firefighters in violation of Section 707 of Title VII, 42 U.S.C. § 2000e-6. In particular, the United States alleges that the City's use of its written police officer examination and heightened minimum requirements for professional firefighter result in disparate impact against African Americans, have not been demonstrated by the City to be job related and consistent with business necessity and, thus, violate Title VII.

The United States and the City of Dayton, desiring that this action be settled by an appropriate Consent Decree ("Decree"), and without the burden and expense of contested litigation, agree to the entry of this Decree which resolves all issues raised by the Complaint. This Decree, having been entered with the consent of the parties, shall not constitute an admission, adjudication or finding on the merits of the allegations made in the Complaint.

The United States and the City agree to the jurisdiction of the Court over the parties and the subject matter of this action. Subject to the Court's approval of this Decree, the parties waive hearings and findings of fact and conclusions of law on all issues. This Decree is final and binding on the parties and their officials, agents, employees and successors, all persons in active concert or participation with them and on all persons who accept relief under this Decree.

In resolution of this action, with the consent of the parties, IT IS HEREBY ORDERED,

ADJUDGED, AND DECREED as follows:

II. DEFINITIONS AND PARTIES

1. The parties to this Consent Decree are the United States, by the United States Department of Justice, and the City of Dayton, Ohio.

2. The term "firefighter" refers to any person hired by the City to fill an entry-level full-time fire service position in the City's fire department, and does not include promotional candidates.

3. The term "police officer" refers to any person hired to fill a full time sworn and uniformed entry-level law enforcement position in the City's police department, and does not include promotional candidates.

4. The term "claimant" refers to an individual who submits an Interest in Relief form pursuant to the terms of this Decree.

5. The term "delayed hire claimant" refers to the individuals identified in Paragraph 36 who were hired as police officers by the City on January 14, 2008.

6. The term "date of entry" of the Decree refers to the date on which the Court orders entry of the Decree pursuant to Section VI of this Decree at or following the Initial Fairness Hearing.

7. The term "constructive hire date" refers to the remedial seniority date that will be applied as set forth in this Decree to any claimant or delayed hire claimant who is offered and accepts remedial seniority relief.

III. PURPOSES OF THIS DECREE

8. The purposes of this Decree are to ensure that:

(a) the City does not violate Title VII by using policies and practices that have a

disparate impact against African American applicants for police officer and firefighter positions on the basis of race and are not job related for these positions and consistent with business necessity; and

- (b) the City provides remedial relief to qualified individual who were denied employment with the City due to the employment practices challenged in this case.

IV. GENERAL INJUNCTIVE RELIEF

A. Non-Discrimination

9. The City, its officials, agents, employees, and successors, and all persons acting on its behalf or in active concert or participation with it, are enjoined from using any policy or practice in its police officer and firefighter selection procedures that has the purpose or effect of discriminating on the basis of race against any African American, in violation of Title VII.

10. The City, its officials, agents, employees, and successors, and all persons acting on its behalf or in active concert or participation with it, shall not engage in any police officer or firefighter selection practice utilizing the practices alleged by the United States to be unlawful. Specifically, the City is enjoined from: (a) use of the written examination developed by the City and administered in 2006 for selection of candidates for police officer; (b) use of an eligibility list from the 2006 written examination to select candidates for police officer; and (c) use of the pre-hire certification requirements for the position of firefighter, which require applicants for that position to have Emergency Medical Technician-Basic ("EMT-Basic") and Firefighter I and II certifications at the time of application and as a pre-condition to taking the written firefighter

examination.

11. The City shall not require any police officer or firefighter applicant to have prior training, experience or certification as a law enforcement officer, emergency medical technician or firefighter in order to be hired or considered for hire as a police officer or firefighter. Nothing in this Decree shall prevent the City from adopting selection procedures for the promotion of employees in its police and fire departments to police officer and firefighter positions, provided that such procedures comply with Title VII, and are otherwise consistent with state and local law. The City may require these promotional candidates to meet different selection standards than non-promotional candidates, and may place promotional candidates on separate eligibility lists.

B. Development and Administration of Selection Procedures for Police Officers and Firefighters

12. The City shall develop new written examinations for the hiring of police officers and firefighters that have no disparate impact upon African Americans, or that are demonstrated to be job related and consistent with business necessity for the positions in accordance with Title VII. The City shall make a reasonable effort to explore the availability of alternative selection procedures for police officer and firefighter selection which have been shown to reduce or eliminate disparate impact on African Americans.

13. The City shall establish minimum qualifications for the position of firefighter that have no disparate impact on African Americans, or that are demonstrated to be job related and consistent with business necessity in accordance with Title VII.

14. The City shall begin its development of the revised selection procedures described in

Paragraphs 12 and 13 upon the execution of this Decree by the parties. The City shall submit its proposals for these revised selection procedures to the United States no later than ninety (90) days after the date of entry of the Decree by the Court. The City's submission shall include all information about the development and/or validation of the proposed selection procedures for police officer and firefighter, including but not limited to: a description of the proposed selection procedures and the manner in which the City intends to use them; the known or likely disparate impact, if any, of the proposed selection procedures; all evidence of job relatedness or validity of the selection procedures available to the City, 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 procedures is job related and consistent with business necessity. The City's submission shall also identify any alternative selection procedures considered by the City.

15. Should the United States, at any stage of the development or administration of the City's police officer or firefighter selection procedures, determine that the selection procedures do not comply with this Decree, the United States shall promptly notify the City in writing. Thereafter, the parties shall meet within thirty (30) days to discuss the United States' objection(s) and any alternative selection procedures. If the parties fail to reach agreement on how to resolve the United States' objection within sixty (60) days of the United States' written notice, either party to this Decree may move the Court for resolution. If an objection to the City's selection procedures for police officer or firefighter is made by the United States, no person shall be certified for appointment as a police officer or firefighter from any affected eligibility list pending resolution

of the objection by the Court or written agreement of the parties.

16. During the term of this Decree, in connection with each administration of the City's selection procedures for police officer and firefighter, the City shall:

- (a) At least sixty (60) days prior to the issuance of a testing announcement for the position of police officer or firefighter, produce to the United States all applicable job analysis reports, underlying data, and proposed test plans not already provided to the United States in accordance with the requirements of Paragraph 14 of this Decree;
- (b) At least sixty (60) days prior to the issuance of any testing announcement for a police officer or firefighter, provide the United States with a copy of the proposed test announcement. The proposed announcement shall include: the minimum qualifications required of all applicants, a description of the selection procedures to be administered, the closing date for submitting an application, the starting pay, and state how and when interested persons may apply. Any proposed announcement for firefighter shall also prominently state that the minimum qualifications necessary to apply for the position of firefighter have changed, and that certification as an Emergency Medical Technician-Basic ("EMT-Basic"), Firefighter I or Firefighter II are not required.
- (c) Advertise the selection procedure in accordance with the terms of Paragraph 20 of this Decree.
- (d) Upon the close of the application period and at least thirty (30) days prior to the

administration of the first component of the selection procedure for police officer or firefighter, the City shall provide the United States with: (i) a report on the applications received, in hard copy and electronic form, including the name and race of each applicant and whether or not each applicant met the minimum qualifications for the position in question, and if not, the reason the applicant was disqualified; (ii) a test plan for the selection procedure that will be used; (iii) any validation studies or validation information not previously provided to the United States; and (iv) any additional information that the City may have as to whether the selection procedure is likely to have disparate impact and as to whether the City's use of the selection procedure is job related and consistent with business necessity.

- (e) At least thirty (30) days prior to establishing any passing score for a written examination for police officer or firefighter, the City shall provide the United States with the name and race of each police officer or firefighter applicant who participated in the selection procedure, each applicant's total score and each sub-score if applicable, and the proposed passing score(s).

17. All material related to job analyses, test plans, and selection procedure development, validation studies and test administration, including copies of tests or proposed test, test keys and test results shall be marked "Confidential Test Material" by the City prior to being forwarded to the United States. Whether marked or not, Confidential Test Material shall not be disclosed to anyone other than counsel for the United States, United States Department of Justice employees

assigned to this matter, any experts or consultants and their staffs retained by the City or the United States in connection with this matter, the court, and representatives of the City designated to receive such information, without the written permission of the City or an order of this Court. Such Confidential Test Material shall not be filed with the Court unless it is filed, in hard copy, in a sealed envelope marked "Confidential Testing Material Protected From Disclosure by Court Order." Any material that is so marked shall not be accessible in electronic form on the Court's ECF site and shall not be disclosed by the clerk to the public without an order from this Court.

18. If the City wishes to propose a change in the minimum qualifications for police officer or firefighter or otherwise modify its selection procedures during the term of this Decree, the City shall provide a written notice of the proposed change to the United States at least sixty (60) days prior to the proposed effective date of the change. This Decree does not prohibit the City from making classification changes in its police or fire departments.

C. Recruitment of Firefighters

19. In order to encourage qualified African Americans to apply for firefighter positions, the City shall, within sixty (60) days of the entry of this Decree, develop and submit to the United States a written recruitment plan for firefighter. The recruitment plan shall include recruitment objectives, staffing, budget, media to be used, and a description of how the City intends to make the public aware of employment opportunities as a Dayton firefighter. The City shall appoint one or more fire department employees to coordinate and participate in recruitment activities as part of the employees' regular duties.

20. The City shall advertise the dates and times of its application period and the

administration of its selection procedures for firefighter by: (a) issuing testing announcements for at least sixty (60) days prior to the closing date for submitting an application; (b) advertising in the Dayton Daily News at least thirty (30) days prior to the closing date; (c) posting firefighter testing announcements on the City's website with a link to the applicable application for at least forty-five (45) days prior to the closing date; (d) posting firefighter testing announcements in each City Department where job announcements are posted at least forty-five (45) days prior to the closing date; (e) sending a copy of each such testing announcement at least forty-five (45) days prior to the closing date to each office of Job and Family Services in the Dayton area and to the placement offices of each two-year or four-year post-secondary school in the Dayton area.

21. The City shall make its applications for firefighter positions available on its website, and it shall permit firefighter applicants to submit applications in person, by mail, by facsimile, or electronically to addresses established by the City for that purpose or to its recruitment staff.

V. NOTICE OF DECREE AND INITIAL FAIRNESS HEARING

22. Upon execution of this Decree, the United States and the City shall file a joint motion for the approval and entry of the Decree and shall request an Initial Fairness Hearing on the Consent Decree to allow the Court to determine whether the terms of the Decree are fair, reasonable, equitable and otherwise consistent with federal law. The Court shall provide the parties a minimum of ninety (90) days notice of the date and time set for the Initial Fairness Hearing.

23. No later than seventy-five (75) days prior to the Initial Fairness Hearing, the City shall mail a Notice of Settlement and Fairness Hearing, Instructions for Filing an Objection Prior to the Fairness Hearing, and an Objection to the Entry of the Consent Decree form, in a form

substantially similar to Appendix A, as follows:

- (a) via certified U.S. mail to the last known address of each African American applicant who took the written examination for police officer administered by the City in 2006 and received a score of less than 70%, along with a cover letter in the form of Appendix D to this Decree;
- (b) via certified U.S. mail to the last known address of each African American applicant who applied to take the Dayton professional firefighter examination at any time since January 1, 2004, but who did not meet the minimum qualifications because he or she did not have EMT-Basic or Firefighter I or II or equivalent certifications, along with a cover letter in the form of Appendix D to this Decree;
- (c) via certified U.S. mail to the last known address of each African American applicant who applied to take the Dayton firefighter examination at any time from January 1, 2000 to January 1, 2004, along with a cover letter in the form of Appendix D to this Decree;
- (d) to each police officer and firefighter employed by the City of Dayton Police Department and Fire Department, including the delayed hire claimants identified in Paragraph 36 via hand delivery at the place of employment of such individual, as an attachment to each such individual's regularly distributed pay check information, the City will provide a cover letter in the form of Appendix C with the notice, instructions, and objection form; and
- (e) via certified U.S. mail to the current address of each labor organization that

represents Dayton police officers or firefighters.

At or before the time these notices are mailed, the City shall provide to the United States a separate list, corresponding to each subparagraph above, identifying the address of each individual or entity to whom such notice is being sent.

24. Persons who wish to object to the terms of the Consent Decree may submit objections, in accordance with the requirements and format set forth in Appendix A, as follows:

- (a) Objections shall state the objector's name, address and telephone number; set forth a description of the objector's basis for objecting; include copies of any documentation supporting the objections; state the name and address 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 Consent Decree.
- (b) Objections shall be submitted by mailing a copy of any objection to the United States Department of Justice at the following address:

Barbara Thawley
Senior Trial Attorney
Employment Litigation Section
U.S. Department of Justice
Civil Rights Division
PHB, Room 4928
950 Pennsylvania Avenue, NW
Washington, DC 20530

- (c) Objections must be mailed to the United States no later than forty-five (45) days prior to the date set for the Initial Fairness hearing. The United States shall serve upon the City copies of the objections it has received no later than thirty (30) days prior to the date set for the Fairness Hearing on the

Consent Decree.

25. The City shall publish a notice, in a form substantially similar to that set forth in Appendix B to this Decree, on Wednesday, Friday and Sunday editions of the Dayton Daily News. The notice shall be no smaller than six (6) inches by ten (10) inches, and shall be placed in the local news section or other prominent location agreed to by the parties. The notice shall be published for two consecutive weeks at least sixty (60) days prior to the date set for the Fairness Hearing on entry of the this Decree.

26. No later than ten (10) days prior to the Initial Fairness Hearing on the Decree, the United States shall file with the Court copies of all objections received by the United States. In addition, no later than ten (10) days prior to the Fairness Hearing on the Consent Decree, the United States and the City shall file their responses, if any, to all objections timely received by the United States in accordance with the deadlines set forth in Appendix A.

VI. ENTRY OF THE CONSENT DECREE

27. If the Court determines that the terms of this Decree are fair, reasonable, equitable and otherwise consistent with federal law, the Court shall enter the Decree at or following the Fairness Hearing on the Consent Decree.

VII. INDIVIDUAL RELIEF

A. Deposit of the Settlement Fund and Relief Payable from the Settlement Fund

28. The City shall provide the sum of Four Hundred Fifty Thousand dollars (\$450,000.00) (the "Settlement Fund") in two installments, as described below, to be used to satisfy all monetary claims to be paid under this Consent Decree. Within thirty (30) days from the date of

entry of this Decree, the City shall deposit the sum of Two Hundred Twenty-Five Thousand dollars (\$225,000.00) into an account in a federally insured financial institution agreed to by the parties (the "Settlement Fund"). On or before January 30, 2010, the City shall deposit an additional Two Hundred Twenty-Five Thousand dollars (\$225,000.00) into the Settlement Fund. The Settlement Fund will be used to satisfy all approved claims for monetary relief under this Decree. The City will propose in writing to the United States a federally insured financial institution for deposit of the Settlement Fund no later than fourteen (14) days from the date of entry of this Decree.

29. The Settlement Fund, including any interest that it accrues, shall be distributed by the City to African American claimants entitled to monetary relief under this Decree, as provided in Paragraphs 38 and 44 and Section VII.J of this Decree

30. The City shall pay all federal, state or local taxes or contributions that normally are paid by employers and that are due on any monetary relief award paid to a claimant, including the appropriate employer's contributions to Medicare and the Social Security fund. No such taxes or contributions shall be deducted from the Settlement Fund, the interest that accrues on the Settlement Fund, or any claimant's monetary relief award.

31. The City shall, to the extent required by law, withhold from each claimant's monetary relief award federal and state income taxes and any other required employee withholdings or deductions. Such amounts shall be deducted by the City from each claimant's monetary relief award.

B. Eligibility For Individual Relief

32. Individuals eligible for consideration for individual relief are African Americans who:
- (a) took the Dayton police officer examination in 2006, and received a score of less than 70%;
 - (b) applied to take the Dayton professional firefighter examination since January 1, 2004, but did not meet the minimum qualifications because they did not have the required certifications as an EMT-Basic or as a Firefighter I or II or equivalent certification;
 - (c) applied for the Dayton firefighter position from January 1, 2000 through December 31, 2003, and met the minimum qualifications then in effect, but did not apply for a Dayton firefighter position in 2004 or 2005 because they lacked EMT-Basic and/or Firefighter I and II certification; or
 - (d) met all of the minimum qualifications other than the EMT-Basic and/or firefighter I and II certification requirement, knew of the City's minimum requirements for Professional Firefighter in 2004 or 2005 and did not apply because they lacked EMT-Basic and/or Firefighter I and II certification effect.

Individuals who are eligible for monetary relief from the Settlement Fund need not seek priority hiring relief or accept an offer of employment with the City in order to receive an award of monetary relief.

33. No later than (14) days after the date of entry of this Decree by the Court, the City shall send a copy of the Notice of Entry of Consent Decree and Interest in Relief Form, attached to this

Decree as Appendices E and F, via certified U.S. mail to the last known address of each individual preliminarily eligible for relief as described in the subparagraphs (a) through (c) of the preceding paragraph.

34. No later than (14) days from the date of entry of this Decree, the City shall publish notice of the entry of the Decree and the availability of individual relief available under this Decree in a form substantially similar to Appendix E to this Decree in the Wednesday and Sunday editions of the Dayton Daily News for two consecutive weeks. Notice as set forth in Appendix E, and the Interest in Relief form attached as Appendix F, shall also be published on the City's web-site within fourteen (14) days of the date of the entry of this Decree for at least twenty (20) days.

35. The City shall keep records of all notices required by Paragraph 33 that are returned to the City as undeliverable. Within fourteen (14) days of the mailing of the notices required by Paragraph 33, the City shall provide to the United States a list of all delivered and undelivered notices, and a copy of all notices, envelopes and mail receipts for all persons to whom a notice was sent. If the United States provides the City with an alternative address for any individual whose notice was returned to the City as undeliverable, the City shall promptly re-mail the notice to the alternative address for that individual.

C. Individual Relief to Police Officers Whose Hiring Was Delayed

36. The parties have identified African American applicants from the City's 2006 police officer eligible list whose hiring was delayed as a result of the City's use of that eligible list in descending rank order based on examination score. These police officer applicants are eligible for individual relief as delayed hire claimants: Erica Cash, Stephfon Daniels, Raymond Roberts

III, and Maurice Lucas. Subject to the approval of this Decree by the Court, these delayed hire claimants are eligible for monetary relief, remedial retroactive seniority, and retroactive pension relief as described herein.

37. For delayed hire claimants who are employed by the City and accept remedial retroactive seniority relief, the City shall use the constructive hire date of May 14, 2007 for all purposes for which a date of hire or seniority is used, except for time-in-grade required for promotion. This includes, but is not limited to, the date used for calculation of salary, longevity pay or any other pay, accrual of all types of leave, shift assignment, day off, vacation scheduling, and layoffs or reductions in force.

38. Each delayed hire claimant who accepts monetary relief in accordance with the terms of this Decree will be entitled to the following monetary relief: Erica Cash: \$18,900.00; Stephfon Daniels: \$18,900.00; Raymond Roberts, III: \$7,673.00; and Maurice Lucas: \$ 6,492.00. These payments shall be paid by the City from the Settlement Fund. These payments are subject to the same required withholdings, and the City is liable for the employer share of required taxes, as the payments to all other claimants described in Paragraphs 30 and 31.

39. Pension eligibility and benefits shall be provided to the delayed hire claimants who are employed with the City retroactive to May 14, 2007, to the extent that the Ohio Police and Fire Pension Fund and state law permit. For each delayed hire claimant who accepts retroactive pension relief and agrees to pay the employee's share of any required pension contributions, the City shall pay the employer's share of the pension contributions necessary to obtain pension credit for each of the delayed hire claimants from their constructive hire date to their actual date of hire, and any interest on either the employee's share or the employer's share that may be

required. This payment is in addition to the monetary payments required to be made by the City in Paragraph 38, and shall not be paid by the City from the Settlement Fund. The City shall offer each of the delayed hire claimants who accepts such relief the option to pay the employee's share required for the retroactive pension credit either by a lump sum payment or through an additional payroll withholding, as each employee shall elect.

40. Within fourteen (14) days after the date of entry of this Decree by the Court, the City shall send a copy of the Notice of Entry of Consent Decree, attached to this Decree as Appendix E; a copy of the Notice of Determination for Incumbent Police Officers, attached to this Decree as Appendix K; and a copy of the Acceptance of Relief Award and Release of Claims, attached to this Decree as Appendix M, via certified U.S. mail, restricted to addressee, to the home address of each delayed hire claimant. If the City will require the delayed hire claimants to complete any forms in order to enable the City to comply with its payment and withholding obligations under Paragraphs 30, 31, and 38, it shall also include a copy of such forms with this mailing. If a delayed hire claimant is no longer employed by the City at the time these documents are to be provided, the City shall send them via certified U.S. mail, restricted to addressee, to last known address of each delayed hire claimant.

D. All Claimants to Submit Required Forms

41. Any person who wishes to be considered for an award of individual remedial relief under this Decree, other than the delayed hire claimants listed in Paragraph 36, must return the completed Interest in Relief Form (Appendix F) to the United States no later than forty-five (45) days from the date of entry of this Decree. Any person who fails to do so shall be deemed to have waived any right to be considered for an award of individual remedial relief under this Decree, except for good cause as determined by the United States. The date of the return of the

potential claimant's Interest in Relief form shall be deemed the date the form was mailed, faxed or otherwise delivered to the United States. In the event that no date of mailing is indicated by the Postal Service, the date of return of the Interest in Relief form shall be deemed to be ten days prior to the date the form was received by the Employment Litigation Section of the Civil Rights Division.

42. Any delayed hire claimant who wishes to accept the individual relief set forth in this Decree must return a completed Acceptance of Relief and Release of Claims (Appendix M) to the United States no later than forty-five (45) days from the date of entry of this Decree. Any delayed hire claimant who fails to do so shall be deemed to have waived his or her right to relief under this Decree, except for good cause as determined by the United States. The date of the return of the delayed hiring claimant's Acceptance of Relief and Release of Claims form shall be deemed the date the form was mailed, faxed or otherwise delivered to the United States. In the event that no date of mailing is indicated by the Postal Service, the date of return of the Interest in Relief form shall be deemed to be ten days prior to the date the form was received by the Employment Litigation Section of the Civil Rights Division.

E. Implementation of Relief for Delayed Hire Claimants

43. No later than thirty (30) days from the deadline for delayed hire claimants to return an executed Acceptance of Relief and Release of Claims, the City shall adjust the salary and benefits of delayed hire claimants who accepted remedial seniority relief to the salary and benefits he or she would be entitled to earn if hired by the City on May 14, 2007. For the purpose of determining relative seniority for individuals hired on the same date, delayed hire

claimants will rank behind all other individuals appointed as police officers on May 14, 2007.

44. No later than thirty (30) days from the deadline for delayed hire claimants to return an executed Acceptance of Relief and Release of Claims, the City shall issue a check from the Settlement Fund to the delayed hire claimants who accepted monetary relief in the amounts listed in Paragraph 38, less any deductions required to be withheld as set forth in Paragraph 39. This payment shall be included in the W-2's issued by the City to the delayed hire claimants. The City shall also pay within this time frame all employer contributions and interest necessary to implement the delayed hire claimant's retroactive pension relief for each delayed hire claimant who accepts such relief.

F. United States' Report on Individual Relief for All Other Claimants

45. Within sixty (60) days from the final date for returning an Interest in Relief form under Paragraph 41, the United States shall serve upon the City a written Report on Individual Relief along with copies of each Interest in Relief form it received. The Report on Individual Relief shall list each person who filed a claim form and state: whether the claimant's Interest in Relief form was timely submitted; the type(s) of relief sought by the claimant; the type(s) of relief which the United States believes each claimant should be awarded; the claimant's proposed constructive hire date, if any; and the share of the Settlement Fund that the United States has determined should be awarded to each claimant, if any.

46. The determination of each claimant's share of the Settlement Fund is within the sole discretion of the United States. If the City disagrees with any of the United States' determinations as to non-monetary relief stated in the Report on Individual Relief, or if the City

has additional information it would like the United States to consider regarding these determinations, the City shall notify the United States in writing no later than thirty (30) days after the service of the Report on Individual Relief. For each proposed relief determination with which the City disagrees, the City's written notice shall state all grounds for its disagreement, identify and produce all documents relating to each of the City's grounds for disagreement, and identify and provide contact information for all witnesses with knowledge of facts supporting each of the City's grounds for disagreement. If any of the witnesses identified in the City's written notice are represented by counsel for the City, the City shall indicate its representation of the witness in its written notice and shall make reasonable efforts to make any such witness available to be interviewed within (10) days of a request by the United States.

47. If the City does not provide written notice of its disagreement with the Report on Individual Relief to the United States by the time set forth in the preceding paragraph, the United States shall file the Report on Individual Relief with the Court. If the City provides written notice to the United States in accordance with the preceding paragraph, the United States will consider the City's bases for disagreement with the Report on Individual Relief and any evidence submitted in support thereof and determine whether the Report on Individual Relief should be modified. The United States will file its Report on Individual Relief with the Court no later than thirty (30) days after the City provides its written notice.

G. Fairness Hearing on Individual Relief

48. Upon filing the Report on Individual Relief described in Section VII.F of this Decree, the United States shall move the Court to hold a Fairness Hearing on Individual Relief to review the

proposed individual relief. The Court shall provide the parties with at least ninety (90) days notice of the date and time set for the Fairness Hearing on Individual Relief.

49. No later than seventy-five (75) days before the date set for the Fairness Hearing on Individual Relief, the United States shall notify each claimant who filed an Appendix F Interest in Relief form of the specific relief, if any, that the United States has proposed be awarded to that claimant. The notice shall also inform each claimant of the opportunity to object to the United States' determination of individual relief. The notice to claimants shall be sent via first class U.S. mail to the address listed on the claimants' Interest in Relief form, and shall include a notice in a form substantially similar to Appendix G, a cover letter in a form substantially similar to Appendix I, and an objection form substantially similar to Appendix H.

50. Claimants may submit objections, in accordance with the requirements and format of Appendix H, to the United States' Report on Individual Relief as follows:

- (a) Objections shall state the objector's name and address; set forth a description of the objector's basis for objecting to the relief designated; include copies of any documentation supporting the objections, state the name, address and telephone number of the objector's counsel, if any, and state whether the objector wishes to be heard at the Fairness Hearing on Individual Relief.
- (b) Claimants must mail a copy of any objections to the United States at the following address:

Barbara E. Thawley
Employment Litigation Section
Civil Rights Division
United States Department of Justice

Room 4928 PHB
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530
Facsimile: (202) 514-3852

- (c) Objections must be mailed to the United States no later than forty-five (45) days prior to the date set for the Fairness Hearing on Individual Relief. The United States serve upon the City copies of the objections it has received no later than thirty (30) days prior to the date set for the Fairness Hearing on Individual Relief.

51. 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 United States. In addition, no later than ten (10) days prior to the Fairness Hearing on Individual Relief, the United States and the City shall file their responses, if any, to all objections timely received by the United States in accordance with the deadlines set forth in Appendix H.

H. Approval of Final Relief Awards List

52. At or following the Fairness Hearing on Individual Relief, the Court shall determine which, if any, objections to the United States' relief determinations, as stated in the United States' Report on Individual Relief, are well-founded. The Court shall then approve the Report on Individual Relief as submitted, or, if the Court finds that any objection(s) are well-founded, shall amend the list to adjust the amount and nature of the relief to be awarded to the claimants consistent with such finding, provided that any such adjustment by the Court does not result in total payments by the City in excess of the amount agreed to by the parties. The relief approved by the Court will be the Final Relief Awards List.

53. The Court shall find that any objection regarding the amount of monetary relief to be

awarded to a claimant is well-founded only if the amount is not reasonable and equitable in relation to the claimant population and the total amount of monetary relief to be awarded under this Decree.

I. Notice of Determination and Offer and Acceptance of Relief

54. Within thirty (30) days from the date the Court approves the Final Relief Awards List, the City shall send to each claimant listed on the Final Relief Awards List: (a) a Notice of Determination, in a form substantially similar to Appendix J, setting forth any monetary relief, consideration for priority hire, remedial seniority, and remedial pension relief provided in Final Relief Awards List; (b) an Acceptance of Relief and Release Form, in a form substantially similar to Appendix L; and (c) an addressed and stamped envelope for the return of these forms. In addition, if the City will require the claimants to complete any forms in order to enable the City to comply with its payment and withholding obligations under Paragraphs 30 and 31, it shall include a copy of such forms with this mailing. Each claimant on the Final Relief Awards List must complete and return the Acceptance of Relief and Release form within sixty (60) days of the date the Court approves the Final Relief Awards List in order to receive individual relief under this Decree. If the claimant designated to receive individual relief does not accept the relief by returning a completed Acceptance of Relief and Release Form within that time frame, the City shall be released from its obligation to provide any individual relief to that person except for good cause, as determined by the United States.

J. Distribution of Monetary Relief

55. No later than ninety (90) days after the Court approves the Final Relief Awards list, the

City shall pay the monetary awards to all claimants designated as eligible for such relief who timely returned the Acceptance of Relief and Release Form and accepted such relief. The amount of each claimant's check shall be the amount stated for the claimant on the Final Relief Awards list, less any deductions required to be withheld as set forth in Paragraph 31. These payments shall be included in the W-2 forms issued by the City to claimants.

56. If a claimant listed in the Final Relief Awards List is deceased or has an appointed legal guardian, any monetary relief indicated in the Final Relief Awards List shall be paid to the claimant's authorized legal representatives, their heirs, or their guardians, as appropriate, in accordance with the laws of the State of Ohio.

57. No later than ninety (90) days after the Court approves the Final Relief Awards List, the City shall send the United States a written report setting forth: (1) the name and address of individual who accepted the relief offered; (2) the name and address of each individual who did not accept relief; (3) a copy of each of the Appendix J notices sent; (4) a copy of each of Appendix J Notice and Appendix L Acceptance of Relief and Release form returned to the City; (5) the monetary award paid to each claimant listed in the United States' Report on Individual Relief; (6) the amount of the monetary award to each claimant that was withheld pursuant to the terms of Paragraph 31; (8) the name and address of each individual who failed to timely complete and return an Appendix L Acceptance of Relief and Release form and a copy of the signed certified mail returned receipt for each; (9) an identification of any mailings that the City was unable to deliver to a claimant, together with the name and last known address of each such claimant, and a copy of each undelivered returned receipt; and (10) the amount of money

remaining in the Settlement Fund and any other monetary relief that has not been distributed by the City, including any accrued interest.

58. Individual monetary relief that is undistributed by the City due to its inability to locate any claimant, or due to any claimant's rejection of the offer of monetary relief, shall be held until the parties have taken reasonable efforts to locate and notify those persons. If the parties are unable to locate and notify any person who is entitled to monetary relief after making a reasonable effort, that money shall be distributed to the remaining claimants in the Final Relief Awards List at the United States' sole discretion, unless the United States determines that the amount of undistributed monetary relief is *de minimus*. The United States shall file and serve upon the City a Supplemental Report on Individual Relief designating the distribution of any such residual funds.

K. Priority Hire and Seniority Relief

59. No later than one hundred and twenty (120) days after the Court approves the Final Relief Awards List, the United States shall file with the Court and serve on the City a written report establishing the Priority Hire Lists for Police Officer and Firefighter. The Priority Hire Lists for Police Officer and Firefighter shall identify the claimants who accepted relief and are eligible for consideration for priority hire by the City.

60. No later than (14) days after the filing of the United States' Priority Hire Lists for Police Officer and Firefighter, the City shall notify by certified mail, return receipt requested (and by e-mail if an e-mail address is provided by the claimant) each claimant listed on the United States' Priority Hire Lists for Police Office and Firefighter that he or she is listed on the Priority Hire

Lists.

61. In order to obtain a priority job offer, claimants listed on the Priority Hire Lists must successfully complete the City's police officer or firefighter selection process then in effect and required of all other applicants. This may include, but is not limited to: the minimum requirements, the passing of a lawful entry-level examination, a background screening, an oral examination, a psychological screening, a medical screening and physical ability screening.

62. Claimants on the Priority Hire Lists who successfully complete the City's selection process for police officer or firefighter shall be offered the first available job until the lists are exhausted, or until the required number of positions have been filled, whichever comes first. The City's offer shall be made in writing, and the claimant shall have fourteen (14) days from the date the written offer is received to accept it. The City and the claimant shall make a reasonable effort to agree on the claimant's start date, but in no event may the City require a claimant to report to work with less than thirty (30) days notice. If a claimant fails to timely accept the City's offer of priority hire, or if the claimant fails to report for work after having been given at least thirty (30) days notice by the City, the City's obligation to provide the offer to that claimant ceases, except for good cause as determined by the United States.

63. If the City disqualifies any claimant listed on the Priority Hire Lists from an offer of employment based on any part of its selection process, the City shall, within ten (10) days of making such determination, send both the individual claimant and the United States written notice of its determination, the basis of its determination and any supporting documentation. The City's letter to the claimant shall also invite the claimant to submit a response, together with any

further information he or she wishes to submit, within ten (10) days. The City shall send a copy of any responses it receives from a claimant to the United States within seven (7) days of receipt by the City. 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 meet and confer in order to resolve the disagreement. If the parties are unable to resolve the disagreement, the United States may submit an objection to the claimant's disqualification to the Court for resolution.

64. The City shall make no more than five (5) priority hire appointments to police officer positions and no more than nine (9) priority hire appointments to firefighter positions. Once those required appointments are made, or once the Priority Hire List is exhausted because all persons on the list have either been hired, have withdrawn, or have been disqualified, the City will have no further obligation to appoint individuals from the applicable Priority Hire List.

65. The City shall make all required offers of priority hire as expeditiously as possible by offering claimants on the Priority Hire List the first available jobs in accordance with Paragraph 62, and shall fulfill its obligation to make priority hire appointments using the results of the first administration of the selection procedures developed for police officer and firefighter after the date of entry of this Decree.

66. A claimant who accepts priority hire under this Decree shall be entitled to retroactive seniority credit according to his or her constructive hire date identified on the Final Relief Awards List. For the purpose of determining relative seniority for individuals with the same hire date, claimants will rank behind all incumbent individuals appointed as police officers on that

constructive hire date. Retroactive seniority shall be credited to the claimant by the City on the date that the claimant completes his or her probationary period as a police officer or firefighter.

A claimant's constructive hire date shall not be used to satisfy any applicable probationary period or minimum time-in-grade requirements for promotion from the ranks of police officer or firefighter, but shall be used for all other purposes, including without limitation: salary or other pay, longevity pay, accrual of leave, including vacation and sick leave, shift assignment, day off, vacation scheduling, and layoffs/reductions in force.

67. To the extent permitted by the Ohio Police and Fire Pension Fund, any priority hire claimant who accepts retroactive pension and retirement relief shall be entitled to pension and retirement benefits retroactive to his or her constructive hire date set forth in the Final Relief Awards List. The City shall pay the employer's share of the pension contributions necessary to obtain pension credit for each claimant from his or her constructive hire date to his or her actual date of hire, and any interest on either the employee's share or the employer's share that may be required. The City shall offer each of the priority hire claimants the option to pay the employee's share required for the retroactive pension credit either by a lump sum payment or through an additional payroll withholding, as each employee shall elect.

VIII. RECORD KEEPING AND COMPLIANCE MONITORING

68. The City shall retain for the duration of this Decree: (a) all documents (including email and other electronically stored information ("ESI") related to the selection and hire of police officers and firefighters; (b) all documents created in connection with the City's obligations under Section IV.B of this Decree, regardless of whether copies of those materials have been

produced to the United States; (c) all documents related to individual relief under this Decree; (d) all communication between the City and any claimant; (e) all applications for police officer or firefighter; (f) all records related to the screening and hiring of police officer and firefighter applicants, including applicant files; and (g) all City personnel, discipline and benefit records of each person awarded individual relief pursuant to this Decree.

69. The City shall produce copies of any records maintained in accordance with the preceding paragraph, or any other records relating to any dispute arising under this Decree, to the United States within fourteen (14) days of a written request by the United States. The City shall also make the records maintained in accordance with the preceding paragraph or related to its compliance with this Decree available to the United States for inspection and copying within fourteen (14) days upon the United States' written request.

70. Beginning six months from the date of the entry of this Decree, the City shall provide to the United States a written report of its compliance every six months until this Decree is terminated. The City's semi-annual compliance report required by this paragraph shall include the following:

- (a) the City's distribution of individual relief during the reporting period, including the amount of money or other relief provided to each claimant;
- (b) a copy of any police officer or firefighter eligible list established or in use during the reporting period;
- (c) the status of each police officer or firefighter applicant, including the reason each such applicant was found to be unqualified, if any, whether the applicant failed to

appear for any phase of the selection process, and whether the applicant failed to successfully complete any phase of the applicant process, and the applicant's hire date, if any; and

- (d) the name, race and rank of each person employed in the police department and fire department at the end of the reporting period.

IX. DISPUTE RESOLUTION AND DEFENSE OF DECREE

71. The United States and the City shall use their best efforts to resolve any disagreement that may arise concerning the implementation of this Decree. If the parties are unable to agree on a matter concerning the implementation of a provision of this Decree thirty (30) days after such agreement is brought to the attention of one party by another party, in writing, either party may move the Court for resolution, but only after: (1) providing written notice to the other party of the dispute at least thirty (30) days prior to filing such a motion; and (2) submitting with its motion a written certification that it has conferred with counsel for the other party and unsuccessfully attempted to resolve the issue through negotiation. The thirty-day period of notice and attempted resolution may be waived by the Court if the matter, in the Court's judgment, requires a more immediate resolution.

72. In the event this Decree or its implementation is challenged by the filing of a suit, including a claim for entitlement to damages against the City arising out of the implementation of this Decree, the United States and the City shall fully defend the lawfulness of this Decree. If such collateral challenge arises in state court, the City shall promptly notify the United States, in writing, and shall promptly seek to remove such action to federal court.

X. DURATION OF DECREE

73. This Decree shall be dissolved and this action shall be dismissed, without further order of the Court, upon the occurrence of the later of the following two events:

- (a) the passage of thirty-six (36) months from the date of entry of this Decree; or
- (b) the fulfillment of all the parties' obligations regarding Individual Relief contained in Section VI of this Decree, including crediting by the City of retroactive hire date to claimants hired as priority hires.

XI. COSTS AND FEES

74. Except as set forth in this Decree, each party shall bear its own costs, expenses and attorney's fees incurred in this litigation, including any costs and expenses incurred as a result of obligations imposed by this Decree.

XII. RETENTION OF JURISDICTION

75. This Court retains jurisdiction to enter additional orders as may be necessary to effectuate the purposes of this Decree.

APPROVED AND ORDERED, this ____ day of _____, 2009.


THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE
Southern District of Ohio

AGREED AND CONSENTED TO:

For Plaintiff United States of America:


Loretta King
Acting Assistant Attorney General
Civil Rights Division

By:


JOHN M. GADZICHOWSKI
Chief
DIANA EMBREY
Deputy Chief

/s/ Barbara Thawley
BARBARA E. THAWLEY
Senior Trial Attorney
MEREDITH L. BURRELL
Senior Trial Attorney
Employment Litigation Section
Civil Rights Division
Room 4928 PHB
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530
Telephone: (202) 514-3852
Facsimile: (202) 514-1105
Barbara.E.Thawley@usdoj.gov

For Defendant City of Dayton:


JOHN J. DANISH (0046639)
City Attorney
JOHN C. MUSTO (0071512)
Assistant City Attorney
Dayton City Hall
101 West Third Street
Post Office Box 22
Dayton, Ohio 45401
Telephone: (937) 333-4100
Facsimile: (937) 333-3628
John.Danish@cityofdayton.org

FEB 26 2009

APPENDIX A

NOTICE OF SETTLEMENT AND FAIRNESS HEARING

On [insert date], the United States and the City of Dayton, Ohio (the "City") executed a settlement of a lawsuit filed by the United States on September 26, 2008 in the federal District Court for the Southern District of Ohio, Western Division. In the lawsuit, the United States alleged that the City engaged in employment practices that violated Title VII of the Civil Rights Act of 1964, as amended ("Title VII"). In particular, the United States alleged that the City's use of a written examination for police officer and the City's requirement that firefighter applicants possess Emergency Medical Technician-Basic and Firefighter I and II certification at the time they apply disproportionately excluded African-Americans from employment as police officers and firefighters, and that these requirements had not been shown to be job related and consistent with business necessity, as required by federal law.

The City denies that any of its selection practices for police officer or firefighter have discriminated against African-Americans. However, in order to resolve this lawsuit without contested litigation, the United States and the City have voluntarily entered into a "Consent Decree" settling the lawsuit.

The terms of the Consent Decree include an agreement by the City that in the future it will not use the written police officer examination it used in 2006, and it will no longer require firefighter candidates to possess Emergency Medical Technician-Basic and Firefighter I and II certification at the time they apply. In addition, the City has agreed to consider for possible employment as police officers and firefighters individuals who were adversely affected by the City's use of its 2006 written police officer examination and its Emergency Medical Technician-Basic and Firefighter I and II minimum qualifications, if these individuals would have otherwise been qualified and meet current lawful requirements for the position. If hired, these individuals could be awarded retroactive hire dates based on the hire dates of individuals who took the 2006 written police officer examination or the hire dates of individuals who took the City's 2005 professional firefighter examination. The City also has agreed to provide \$450,000.00 in a Settlement Fund to be distributed among African-American individuals who were affected by the City selections procedures alleged to be unlawful and four identified African American police officers hired in 2008, who will also receive monetary relief and retroactive seniority, because they were not hired earlier, in 2007.

The parties now have requested that the Court hold a "Fairness Hearing" to determine whether the terms of the Consent Decree are fair, reasonable, equitable and otherwise consistent with federal law. This Fairness Hearing will be held on [insert date], at the federal district courthouse located at 200 West Second Street, Dayton, Ohio. **You have the right to attend this Fairness Hearing.**

In addition, you have the right submit a written objection to any of the terms of the Consent Decree that you believe are unfair or unlawful. Copies of the Consent Decree are

available from the City Attorney offices located at Dayton City Hall, 101 West Third Street, Dayton, OH 45401. Instructions for filing an objection are enclosed with this notice. **Making an objection is voluntary, but if you do not object at this time, you may be prohibited from taking any action against this Consent Decree in the future.**

INSTRUCTIONS FOR FILING AN OBJECTION
PRIOR TO THE FAIRNESS HEARING

1. If you believe the terms of the Consent Decree are unfair, unreasonable or unlawful, you may object to its final entry by the Court. **Making an objection is voluntary, but if you do not object at this time, you may be prohibited from taking any action against this Consent Decree in the future.** If you choose to object, you must follow the instructions set out on this page. If you choose to object, the judge will consider your objection before deciding whether to approve the terms of the Consent Decree.
2. **All objections must be returned by [insert date]. If your objection is not returned to the United States by this date, your objection may not be considered and you may be prohibited from objecting at a later time.**
3. **All objections must be made in writing.** Your objection should be made on the attached form, showing the caption of the case. You must fill out this page completely. You must include a description of the basis of your objection. If you have retained an attorney to assist you in this matter, indicate with your objection the name, address and phone number of your attorney. You may attach additional pages to the objection form if necessary.
4. You must submit one copy of your objection to the following address:

Barbara E. Thawley
Employment Litigation Section
U.S. Department of Justice
Civil Rights Division
PHB, Room 4928
950 Pennsylvania Avenue, NW
Washington, DC 20530
5. The court will hold the Fairness Hearing on [insert date]. You may attend this hearing if you wish, but need not attend in order to have the Court consider any written objections you submit.
6. If you have any questions concerning the procedure to submit an objection, you may consult with an attorney of your own choosing and at your own expense, or you may call the Employment Litigation Section of the Civil Rights Division of the Department of Justice at 1-800- [insert number]. If you do call this number, please leave your name, telephone number and a time when you can be reached.

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE CITY OF DAYTON, OHIO,

Defendant.

Civil Action No. 3:08-cv-348 (TMR)

Judge Thomas M. Rose

OBJECTION TO THE ENTRY OF THE CONSENT DECREE

I am objecting to the terms of settlement of this case included in the Consent Decree agreed to by the United States and the City of Dayton, Ohio.

Name: _____

Address: _____

Telephone: _____

Basis of my objection: _____

Are you requesting the opportunity to state your objection in person at the Fairness Hearing?

Yes No

YOU MAY USE ADDITIONAL PAGES TO EXPLAIN THE BASIS OF YOUR OBJECTION IF NECESSARY. YOU MUST SEND ONE COPY OF YOUR OBJECTION TO THE CLERK OF THE COURT, ONE COPY TO THE DEPARTMENT OF JUSTICE AND ONE COPY TO THE CITY AT THE ADDRESSES PROVIDED IN THE INSTRUCTIONS.

APPENDIX B

Newspaper Notice

AFRICAN AMERICANS TAKING THE DAYTON 2006 POLICE OFFICER EXAM AND AFRICAN AMERICANS DISQUALIFIED BY OR DETERRED FROM APPLYING FOR DAYTON FIREFIGHTER JOBS BY THE CITY'S MINIMUM REQUIREMENTS MAY BE ENTITLED TO MONETARY RELIEF AND JOB OFFERS

On [insert date], the United States and the City of Dayton, Ohio (the "City") executed a settlement of a lawsuit filed by the United States in the federal District Court for the Southern District of Ohio, Western Division. In the lawsuit, the United States alleged that the City engaged in employment practices that violated Title VII of the Civil Rights Act of 1964, as amended ("Title VII"). In particular, the United States alleged that the City's use of a written examination for police officer and the City's requirement that firefighter applicants possess Emergency Medical Technician-Basic and Firefighter I and II certification at the time they apply disproportionately excluded African-Americans from employment as police officers and firefighters, and that these requirements had not been shown to be job related and consistent with business necessity, as required by federal law.

The City denies that any of its selection practices for police officer or firefighter have discriminated against African-Americans. However, in order to resolve this lawsuit without contested litigation, the United States and the City have voluntarily entered into a "Consent Decree" settling the lawsuit. Copies of the Consent Decree are available from the City Attorney offices located at Dayton City Hall, 101 West Third Street, Dayton, OH 45401.

The terms of the Consent Decree include an agreement by the City that in the future it will not use the written police officer examination it used in 2006, and it will no longer require firefighter candidates to possess Emergency Medical Technician-Basic and Firefighter I and II certification at the time they apply. In addition, the City has agreed to consider for possible employment as police officers and firefighters individuals who were adversely affected by the City's use of its 2006 written police officer examination and its Emergency Medical Technician-Basic and Firefighter I and II minimum qualifications, if these individuals would have otherwise been qualified and meet current lawful requirements for the position. If hired, these individuals could be awarded retroactive hire dates based on the hire dates of individuals who took the 2006 written police officer examination or the hire dates of individuals who took the City's 2005 professional firefighter examination. The City also has agreed to provide \$450,000 in a Settlement Fund to be distributed among African-American individuals who were affected by the City selections procedures alleged to be unlawful and four identified African American police officers hired in 2008, who will also receive monetary relief and retroactive seniority, because they were not hired earlier, in 2007.

The United States and the City have identified those African-American applicants who failed the 2006 police officer examination from application materials maintained by the City. We have also identified African Americans who applied for firefighter positions from 2000 to 2005, and whose opportunities to be employed as a firefighter since 2004 may have been affected

by the City's adoption of additional minimum requirements for firefighter applicants in 2004. However, the parties have been unable to locate some of these individuals due to changes of address, telephone number or name. Other persons may also be entitled to relief. Persons who wish to be considered for relief will be required to file a claim according to a schedule to be set by the Court.

If you are:

- (1) African American, took the 2006 Dayton police officer examination, failed that examination, and have not been contacted by the United States regarding the settlement;
- (2) African American, applied for a Dayton firefighter position in 2004 or 2005, but were disqualified because you did not have certification as an Emergency Medical Technician-Basic and/or as a Firefighter I and II; or
- (3) African American and you would have applied for a Dayton firefighter position in 2004 or 2005, and met all of the minimum requirements other than having certification as an Emergency Medical Technician-Basic and/or as a Firefighter I and II, and you did not apply for a Dayton firefighter position in 2004 or 2005 because you did not have these certifications.

Call the Employment Litigation Section of the Civil Rights Division of the Department of Justice at 1-800- [insert number] before [insert date]. Leave your name, address and telephone number and a time when you can be reached. If you may be eligible to be considered for relief under the settlement, you will receive information regarding the settlement and your right to object to the terms of the settlement.

All objections must be returned by [insert date]. If your objection is not returned to the United States by this date, your objection may not be considered and you may be prohibited from objecting at a later time. All objections must be made in writing. If you wish to object, you must submit one copy of your objection to the following address:

Barbara E. Thawley
Employment Litigation Section
U.S. Department of Justice
Civil Rights Division
PHB, Room 4928
950 Pennsylvania Avenue, NW
Washington, DC 20530

APPENDIX C

Letter to Incumbent Police Officers and Firefighters and Police and Fire Union

Re: United States v. City of Dayton, Ohio, Civil Action No. 3:08-cv-348 (TMR) (S.D. Ohio)

Dear _____:

This letter is to notify you of a settlement of a civil lawsuit between the United States and the City Dayton, Ohio.

Enclosed please find a document entitled "**NOTICE OF SETTLEMENT AND FAIRNESS HEARING.**" This document describes the basis of the lawsuit and the terms of the settlement. In addition, the document provides the time and place of a Fairness Hearing regarding the settlement and tells you how to make an objection to the terms of the settlement if you choose to do so. Please read the document carefully as your right to object to the settlement or participate in the Fairness Hearing may be affected.

[Insert for Letter to Four Named Police Officers only:]

The Decree provides for an offer of individual relief to you, contingent on your acceptance of the relief offered and your signing the required Acceptance of Relief Award and Release of Claims. If the Court approves the settlement of this case after the Fairness Hearing, you will be contacted about the manner in which to submit your Acceptance of Relief Award and Release of Claims. You do not need to take any action at this time in order to be eligible for relief under the settlement.

Sincerely,

City of Dayton, Ohio

Enclosures

APPENDIX D

Letter to Applicants

Re: United States v. The City of Dayton, Ohio, Civil Action No. 3:08-cv-348 (TMR) (S.D. Ohio)

Dear _____:

Our records indicate that you took the 2006 written examination for the entry-level police officer position with the City of Dayton, Ohio, or you applied for a City of Dayton firefighter position from January 1, 2000 to December 31, 2005. This letter is to notify you of a settlement of a civil lawsuit between the United States and the City of Dayton which may affect you.

Enclosed please find a document entitled "**NOTICE OF SETTLEMENT AND FAIRNESS HEARING**." This document describes the basis of the lawsuit and the terms of the settlement. In addition, the document provides the time and place of a Fairness Hearing regarding the settlement and tells you how to make an objection to the terms of the settlement if you choose to do so. Please read the document carefully as your rights may be affected.

If you are African American and you took the Dayton 2006 written examination for the entry-level police officer position, but did not receive a passing score, you may be eligible for monetary relief and possible priority consideration for a position as a Dayton police officer. If you are African American and you applied for a Dayton firefighter position from January 1, 2000 to December 31, 2003, but you did not apply for a Dayton firefighter positions in 2004 or 2005 because you did not meet the requirement that you have certification as an Emergency Medical Technician and as a Firefighter I and II, or you applied in 2004 and/or 2005, but you were disqualified because you did not meet the certification requirements, you may be eligible for monetary relief and possible priority consideration for a position as a firefighter.

If the Court approves the settlement of this case after the Fairness Hearing, you will be contacted about the manner in which to submit a claim for such relief. You do not need to take any action at this time in order to be eligible for relief under the settlement.

Sincerely,

City of Dayton, Ohio

Enclosures

APPENDIX E

NOTICE OF ENTRY OF CONSENT DECREE

On [insert date], a Consent Decree resolving a lawsuit between the United States and the City of Dayton, Ohio was entered by the Court. **As a result, you may be eligible for monetary relief and/or consideration for hire as an entry-level police officer or firefighter with the City of Dayton, with a retroactive hire date.**

The Consent Decree settles a lawsuit filed by the United States in the federal District Court for the Southern District of Ohio. In the lawsuit, the United States alleged that the City engaged in employment practices that violated Title VII of the Civil Rights Act of 1964 ("Title VII"). In particular, the United States alleged that the City's use of a written examination for police officer, and the City's requirement that firefighter applicants possess Emergency Medical Technician-Basic and Firefighter I and II certification at the time they apply, disproportionately excluded African Americans from employment as police officers and firefighters, and that these requirements had not been shown to be job related and consistent with business necessity, as required by federal law.

The City denies that any of its selection practices for police officer or firefighter have discriminated against African Americans. However, in order to resolve this lawsuit without further litigation, the United States and the City have voluntarily entered into a "Consent Decree" settling the lawsuit.

The terms of the Consent Decree include an agreement by the City that in the future it will not use the written police officer examination it used in 2006, and it will no longer require firefighter candidates to possess Emergency Medical Technician-Basic and Firefighter I and II certification at the time they apply. In addition, the City has agreed to consider for possible employment as police officers and firefighters individuals who were adversely affected by the City's use of its 2006 written police officer examination and its Emergency Medical Technician-Basic and Firefighter I and II minimum qualifications, if these individuals would have otherwise been qualified and meet current lawful requirements for the position. If hired, these individuals could be awarded retroactive hire dates based on the hire dates of individuals who took the 2006 written police officer examination or the hire dates of individuals who took the City's 2005 professional firefighter examination. The City also has agreed to provide \$450,000 in a Settlement Fund to be distributed among African-American individuals who were affected by because of the City selections procedures alleged to be unlawful and four identified African American police officers hired in 2008, who will also receive monetary relief and retroactive seniority, because they were not hired earlier, in 2007.

You may be eligible for relief if you are African American and you: (1) took the 2006 written examination for employment as an Dayton entry-level police officer and failed that examination; or (2) you applied for a Dayton firefighter position in 2004 or 2005 and met all of the minimum requirements other than having certification as an Emergency Medical Technician-Basic and/or as a Firefighter I and II, and you were disqualified because you did not have these certifications; or (3) you would have applied for a Dayton

firefighter position in 2004 or 2005 and met all of the minimum requirements other than having certification as an Emergency Medical Technician-Basic and/or as a Firefighter I and II, and you did not apply for a firefighter position because you did not have these certifications.

If you believe you are entitled to relief and wish to request hiring and/or monetary relief under the terms of the settlement, you should fill out the Interest In Relief Form enclosed with this notice and return it by mail no later than [insert date] to:

Barbara E. Thawley
Employment Litigation Section
U.S. Department of Justice
Civil Rights Division
PHB, Room 4928
950 Pennsylvania Avenue, NW
Washington, DC 20530

If you have any questions about how to submit a claim, you may consult with an attorney of your own choosing and at your own expense, or you may call the Employment Litigation Section of the Civil Rights Division of the Department of Justice at 1-800- [insert number] . If you do call this number, please leave your name, address and telephone number and a time when you can be reached.

SUBMITTING THE CLAIM FORM BY [insert date] , DOES NOT GUARANTEE THAT YOU ARE ENTITLED TO OR WILL RECEIVE ANY RELIEF. HOWEVER, IF YOU FAIL TO FILE A CLAIM FORM BY [insert date] YOU MAY BE BARRED FROM OBTAINING RELIEF.

APPENDIX F

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE CITY OF DAYTON, OHIO,

Defendant.

Civil Action No. 3:08-cv-348 (TMR)

Judge Thomas M. Rose

INTEREST IN RELIEF FORM

I am interested in obtaining relief under the Consent Decree agreed to by the United States and the City of Dayton, Ohio and entered by the Court in the above-captioned case. By signing and returning this form, I certify that (place a check mark next to each applicable numbered paragraph):

For Dayton Police Officer Applicants:

- (1) I am African American;
- (2) I applied for a job as a police officer with the City of Dayton and took the Dayton 2006 written police officer examination; and
- (3) I failed the Dayton 2006 police officer written examination; and
- (4) when I took the written police officer examination I was at least 20 years old, I had a high school diploma or G.E.D., I had a valid driver's license, I was a citizen of the United States, I had never been convicted of a felony, and met all other minimum requirements for the Dayton police officer position.

OR

For Dayton Firefighter Claimants:

- (1) I am African American;
- (2) I knew of the minimum qualifications for the Dayton Firefighter position in 2004

and 2005; and

_____ (3) in 2004 and 2005, I did not have one or more of the following certifications: Emergency Medical Technician-Basic, Firefighter I, or Firefighter II;

_____ (4) in 2004 and/or 2005 I was at least 20 years old, I had a high school diploma or G.E.D., I had never been convicted of a felony, and met all other minimum requirements for the Dayton firefighter position other than the requirement that I have certifications as a Emergency Medical Technician-Basic and as a Firefighter I and II; and

_____ (5) I was either:

_____ (a) interested in a positions as a Dayton Professional Firefighter position in 2004 and/or 2005 but did not apply because I did not have certification as an Emergency Medical Technician-Basic, and/or certification as a Firefighter I and II; or

_____ (b) disqualified after applying for the Professional Firefighter position by the City of Dayton in 2004 or 2005 because I did not have certification as an Emergency Medical Technician-Basic, and/or certification as a Firefighter I and II.

Name: _____ Social Security Number: _____

Other name(s) used: _____ Address: _____

Telephone: _____

Are you African American? [] Yes [] No

I wish to be considered to receive the following forms of relief :

[] Monetary relief [] Hiring relief [] None

I understand that, if I have indicated above that I wish to be considered for monetary relief, information regarding my work history and earnings may be requested, and I may be required to provide such information. I understand that, if I have indicated above that I wish to be considered for hiring relief, I may be required to participate and cooperate in selection procedures used by the City (such as a an examination, background investigation, medical examination, psychological examination, etc.) to remain eligible for hiring relief under the Consent Decree.

Dated: _____

Name: _____

APPENDIX G

NOTICE OF FAIRNESS HEARING ON INDIVIDUAL RELIEF

On [insert date], the United States and the City of Dayton, Ohio executed a Consent Decree settling a lawsuit filed by the United States in the federal District Court for the Eastern District of Virginia. On [insert date], the Consent Decree was entered by the Court.

Under the terms of the Consent Decree, the City must consider African Americans who failed the City's 2006 police officer written examination, or who were adversely affected by the City's requirement that firefighter candidates possess Emergency Medical Technician-Basic and Firefighter I and II certifications, and submitted a timely claim for relief, including monetary relief and/or possible employment as entry-level police officers or firefighter if these individuals meet current City of Dayton requirements. In addition, the Consent Decree provides that, if hired, these individuals could be awarded retroactive hire dates based on the hire dates of individuals who took the written examination at the same time.

The Consent Decree requires the City to provide [insert amount of settlement fund minus awards to four delayed hire police officer claimants] in monetary relief to be distributed among African American applicants who have been determined to have been adversely affected by the City's use of the challenged police officer examination or individuals denied employment opportunity due to the challenged minimum requirements for firefighter and who have filed a timely claim for monetary relief. The Consent Decree also provides for separate monetary relief and retroactive seniority to four African Americans who were hired as Dayton police officers in 2008, and who the United States alleged would have been hired earlier but for the effect of the challenged police officer examination.

With this Notice you should receive a letter stating what, if any, forms of relief the United States has determined preliminarily that you are eligible for under the Consent Decree. The letter also states the United States' determination with regard to your share of the monetary relief available under the Consent Decree.

The parties now have requested that the Court hold a Fairness Hearing on Individual Relief to review and approve the United States' determinations with regard to the types of relief and the shares of monetary relief to which you and other individuals are entitled. At or after the Fairness Hearing on Individual Relief, the Court may approve the United States' determinations or may adjust them.

The Fairness Hearing on Individual Relief will be held on [insert date], at the federal district courthouse located 200 West Second Street, Dayton, Ohio. **You have the right to attend this Fairness Hearing.**

In addition, you have the right to file with the Court a written objection to the United

States' determination regarding the type(s) of relief or the share of monetary relief which you should be awarded under the Consent Decree. **Making an objection is voluntary, but if you do not object at this time, you may be prohibited from objecting in the future.**

INSTRUCTIONS FOR FILING AN OBJECTION TO INDIVIDUAL RELIEF

1. If you wish to object in any respect to the United States' preliminary determinations regarding the relief to which you are entitled under the Consent Decree, you must do so in the manner described below. **Making an objection is voluntary, but if you do not object at this time, you may be prohibited from objecting in the future.** If you choose to make an objection, the judge will consider your objection before deciding whether or not to approve the types and amounts of relief to be provided to you and other individuals under the Consent Decree.
2. **All objections must be returned by [insert date]. If your objection is not received by this date, your objection may not be considered and you may be prohibited from objecting at a later time.**
3. **All objections must be made in writing.** Your objection should be made on the attached form, showing the caption of the case. You must fill out this form completely. You must include a description of the nature and basis of your objection. If you have retained an attorney to assist you in this matter, please indicate with your objection the name, address and phone number of your attorney. You may attach additional pages to the form if necessary.
4. You must submit one copy of your objection to the following address:

Barbara E. Thawley
Employment Litigation Section
U.S. Department of Justice
Civil Rights Division
PHB, Room 4928
950 Pennsylvania Avenue, NW
Washington, DC 20530
5. The court will hold the Fairness Hearing on Individual Relief on [insert date] at the federal district courthouse located 200 West Second Street, Dayton, Ohio. You may attend this hearing if you wish, but need not attend the hearing in order to have the Court consider any written objections you submit.
6. If you have any questions concerning the procedure for submitting an objection, you may consult with an attorney of your own choosing and at your own expense, or you may call the Employment Litigation Section of the Civil Rights Division of the Department of Justice at 1-800-556-1950. If you do call this number, please leave your name, address, and telephone number and a time when you can be reached.

APPENDIX H
IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE CITY OF DAYTON, OHIO,

Defendant.

Civil Action No. 3:08-cv-348 (TMR)

Judge Thomas M. Rose

OBJECTION TO UNITED STATES' DETERMINATION REGARDING
INDIVIDUAL RELIEF TO BE AWARDED UNDER THE CONSENT DECREE

I am objecting to the United States' determinations regarding the relief to which I am entitled under the Consent Decree.

Name: _____

Address: _____

Telephone: _____

Nature and basis of my objection: _____

YOU MUST ATTACH A COPY OF ANY DOCUMENTATION
THAT YOU HAVE THAT SUPPORTS YOUR OBJECTIONS

Are you requesting the opportunity to state your objection in person at the Fairness Hearing on Individual Relief? Yes No

YOU MAY USE ADDITIONAL PAGES TO EXPLAIN THE BASIS OF YOUR OBJECTION IF NECESSARY. YOU MUST SEND ONE COPY OF YOUR OBJECTION TO THE CLERK OF THE COURT, ONE COPY TO THE DEPARTMENT OF JUSTICE AND ONE COPY TO THE CITY AT THE ADDRESSES PROVIDED IN THE INSTRUCTIONS.

YOUR OBJECTIONS MUST BE POSTMARKED BY [INSERT DATE]

APPENDIX I

Re: United States v. City of Dayton, Ohio, Civil Action No. 3:08-cv-348 (TMR) (S.D. Ohio)

Dear _____:

Enclosed please find a document entitled "**NOTICE OF FAIRNESS HEARING ON INDIVIDUAL RELIEF**." This document describes the relief available under the terms of the Consent Decree entered by the Court in United States v. City of Dayton, Ohio, Civil Action No. 3:08-cv-348 (TMR) (S.D. Ohio).

As described below, the United States has made certain determinations concerning your eligibility for relief under the terms of the Consent Decree. **Please read the following very carefully.**

1. The United States has made a determination that you [] are [] are not eligible for an award of monetary relief and that you should receive at least [insert amount], less employee withholding required by law.
2. The United States has made a determination that you [] are [] are not eligible to be considered for hiring relief. This does not insure that you will be hired by the City. However, if you are hired pursuant to the Consent Decree and complete training and a probationary period, you will be given a constructive hire date of [insert date].
3. The United States has made a determination that you [] are [] are not eligible to be considered for remedial seniority with a constructive hire date of [insert date] hiring relief.
4. To the extent that the United States has determined that you are not eligible for an award of monetary relief or has determined that you are not eligible to be considered for hiring relief, the reason(s) for this determination are:

In addition to the determinations indicated above, the United States has made determinations regarding the nature and amount of relief that each of the individuals who submitted an Interest in Relief form should receive under the Consent Decree. The United States will ask the Court to approve all of the United States' determinations at a **Fairness Hearing on Individual Relief** which will be held on [insert date], at the federal district courthouse located at 200 West Second Street, Dayton, Ohio. At or after the Fairness Hearing on Individual Relief, the Court may approve the United States' determinations or may adjust them with respect to you and/or other claimants under the procedures set forth in the Consent Decree.

If you wish to object to the United States' preliminary determinations in any respect, you must take action, as explained in the enclosed "**INSTRUCTIONS FOR FILING AN OBJECTION TO INDIVIDUAL RELIEF**." You may request an opportunity to be heard at the Fairness Hearing, but you do not need to appear at the Fairness Hearing in order for the Court to consider your objections.

Sincerely,

Employment Litigation Section
Civil Rights Division
United States Department of Justice

APPENDIX J

NOTICE OF DETERMINATION
United States v. City of Dayton, Ohio

[Date]

[Name]
[Address]

Dear [Name]:

A Consent Decree has been entered settling a employment discrimination action filed by the United States against the City of Dayton, Ohio in *United States v. State of City of Dayton, Ohio*, Civil Action No. 3:08-cv-348 (TMR) (S.D. Ohio). Under the terms of the Consent Decree, the defendant City of Dayton is offering you individual relief, as settlement for any claims of race discrimination you may have related to your opportunity to be hired as a police officer or firefighter with the City of Dayton.

You may accept all forms of relief offered to you, you may reject all forms of relief, or you may accept some forms of relief and reject others.

[FOR PERSONS RECEIVING MONETARY RELIEF:]

As a monetary payment, you are being offered a total of \$[amount]. This sum is back pay and is therefore subject to both federal and state income taxes and other regular employee payroll withholding.

[FOR PERSONS RECEIVING OFFERS OF PRIORITY APPOINTMENT
CONSIDERATION:]

You are also offered consideration for a priority appointment as [insert position]. In order to be appointed you must successfully complete all of the City's current requirements for appointment as a [position], which may include, for example, passing an examination, a medical screening, a background screening and other requirements. If you fail to meet any of those requirements you will not be appointed. If you are appointed, you will also receive remedial seniority with a constructive hire date of [date]. This constructive hire date is to be used instead of your actual date of hire by the City as a [position] for all purposes except for the purposes of meeting your probationary period, or the time-in-grade requirements for qualification for promotion.

You are also being offered retirement credit for the period from your constructive hire date to your actual date of hire if you are given a priority appointment. **If you accept the retirement credit you will have to pay the employee's share of the required withholding to purchase this credit.** If you accept retirement credit, the City will pay the employer's share and any interest on these contributions that the pension plan may require.

The relief is offered to you on the following condition: if you accept any or all of the relief offered, the City of Dayton will require you to release it, and its officials, employees and agents, from all employment discrimination claims based on race that you presently may have against them related to your opportunities to be hired as a police officer or firefighter.

You may obtain the relief offered to you by completing, before a notary public, and returning the enclosed Release Form to the following address: [address].

IF YOU FAIL TO SIGN AND RETURN THE ENCLOSED RELEASE TO THE CITY OF DAYTON AT THE ABOVE ADDRESS WITHIN THIRTY (30) DAYS OF YOUR RECEIPT OF THIS NOTICE, YOU WILL FORFEIT YOUR RIGHT TO ANY RELIEF UNDER THIS CONSENT DECREE, UNLESS YOU CAN SHOW GOOD CAUSE FOR YOUR FAILURE TO DO SO WITHIN A REASONABLE TIME THEREAFTER.

If you have any questions about this Notice you may write to Barbara Thawley at:

Employment Litigation Section
Civil Rights Division
U.S. Department of Justice
Room 4928 PHB
950 Pennsylvania Avenue, NW,
Washington, D.C. 20530

or telephone her at (202) 514-3852.

Sincerely,

Employment Litigation Section
Civil Rights Division
United States Department of Justice

Enclosure

APPENDIX K

NOTICE OF DETERMINATION FOR INCUMBENT POLICE OFFICERS

United States v. City of Dayton, Ohio

[Date]

[Name]
[Address]

Dear [Name]:

A Consent Decree has been entered settling a employment discrimination action filed by the United States against the City of Dayton, Ohio in *United States v. State of City of Dayton, Ohio*, Civil Action No. 3:08-cv-348 (TMR) (S.D. Ohio). Under the terms of the Consent Decree, the defendant City of Dayton is offering you individual relief, as settlement for any claims of race discrimination you may have related to your opportunity to be hired as a police officer or firefighter with the City of Dayton.

You may accept all forms of relief offered to you, you may reject all forms of relief, or you may accept some forms of relief and reject others.

As a monetary payment, you are being offered a total of \$[amount]. This sum is back pay and is therefore subject to both federal and state income taxes and other regular employee payroll withholding.

[For Individuals Listed in Paragraph 38 Who Are Currently Employed as Dayton Police Officers:

You are also offered remedial seniority with a constructive hire date of [date]. This constructive hire date is to be used instead of your actual date of hire by the City as a police officer for all purposes except for the purposes of meeting your probationary period, or the time-in-grade requirements for qualification for promotion.

You are also being offered retirement credit for the period from your constructive hire date to your actual date of hire. **If you accept the retirement credit you will have to pay the employee's share of the required withholding to purchase this credit.** If you accept retirement credit, the City will pay the employer's share and any interest on these contributions that the pension plan may require.]

The relief is offered to you on the following condition: if you accept any or all of the relief offered, the City of Dayton will require you to release it, and its officials, employees and

agents, from all employment discrimination claims based on race that you presently may have against them related to your opportunities to be hired as a police officer.

You may obtain the relief offered to you by completing, before a notary public, and returning the enclosed Release Form to the following address: [address].

IF YOU FAIL TO SIGN AND RETURN THE ENCLOSED RELEASE TO THE CITY OF DAYTON AT THE ABOVE ADDRESS WITHIN THIRTY (30) DAYS OF YOUR RECEIPT OF THIS NOTICE, YOU WILL FORFEIT YOUR RIGHT TO ANY RELIEF UNDER THIS CONSENT DECREE, UNLESS YOU CAN SHOW GOOD CAUSE FOR YOUR FAILURE TO DO SO WITHIN A REASONABLE TIME THEREAFTER.

If you have any questions about this Notice you may write to Barbara Thawley at:

Employment Litigation Section
Civil Rights Division
U.S. Department of Justice
Room 4928 PHB
950 Pennsylvania Avenue, NW,
Washington, D.C. 20530

or telephone her at (202) 514-3852.

Sincerely,

Employment Litigation Section
Civil Rights Division
United States Department of Justice

Enclosure

APPENDIX L

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE CITY OF DAYTON, OHIO,

Defendant.

Civil Action No. 3:08-cv-348 (TMR)

Judge Thomas M. Rose

**ACCEPTANCE OF RELIEF AWARD
AND RELEASE OF CLAIMS**

I, [insert name], have received notice from the United States Department of Justice of the individual relief award offered to me pursuant to the provisions of the Consent Decree entered by the Court on [insert date] in the above-named lawsuit. I understand that the payment to be made to me and the other relief given or to be given to me does not constitute an admission by any of the parties released of the validity of any claim raised by me, or on my behalf. I acknowledge that a copy of the Consent Decree has been made available to me.

The **MONETARY RELIEF AWARD** I am being offered consists of:

[insert amount] dollars (\$ _____), minus the required withholdings for taxes, Social Security (FICA) and Medicare.

 I ACCEPT THIS AWARD.

INITIAL HERE: _____

The NON-MONETARY RELIEF AWARD I am being offered consists of:

Consideration for priority appointment to a [insert position] by the city of Dayton with a constructive hire date of [insert date]. I understand that I am not guaranteed a position as a Dayton [insert position], and my appointment is subject to the number of available positions and my satisfying all of the City's current requirements for appointment as a [insert position].

 I ACCEPT THIS AWARD.

Pension credit with a constructive hire date of [insert date], with the condition that I shall pay the employee's share of the necessary contribution to the pension fund, and the City shall pay the employer's share due plus any interest on both the employee's share or the employer's share that the pension plan may require.

 I ACCEPT THIS AWARD.

In consideration for this award of the relief stated above, I release the City of Dayton, Ohio and all prior and current elected and appointed officials thereof, and their employees, agents, attorneys, successors, and assigns from all or any legal claims based upon alleged discrimination on the basis of race with respect to the hiring of African Americans into the positions of entry-level police officer or firefighter in violation of any federal or state statutes, regulations or executive orders providing for or giving rise to claims or rights of action relating to equal employment, including Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq., that were, or could have been, the subject of the above described lawsuit, of which I am aware, or through the exercise of reasonable diligence could have been aware. The above-named lawsuit was resolved by entry of the Consent Decree by the Court on [insert date].

The release of claims contained herein is not conditioned on my receipt of any other relief under the Consent Decree. Specifically, I understand that, although I may or may not be eligible for hiring relief with a retroactive hire date, I am not assured that I will be offered employment or hired under the Consent Decree even if I am eligible for such relief.

I understand that I must properly and completely fill out this Acceptance of Relief Award and Release of Claims form, initial the first page of this form, sign the form in the presence of a notary public, and return it to the Department of Justice no later than [insert date] in order to receive the relief award.

I also understand that I must complete and return the enclosed forms so that required withholdings for taxes, Social Security (FICA) and Medicare may be made from the monetary award.

I HAVE READ THIS ACCEPTANCE OF RELIEF AWARD AND RELEASE OF CLAIMS FORM AND UNDERSTAND THE CONTENTS THEREOF. I SIGN THIS FORM OF MY OWN FREE ACT AND DEED.

Date Signed

Signature

(Street Address)

(City) (State) (Zip code)

() - _____
(Home Telephone)

() - _____
(Work Telephone)

(Social Security Number)

Subscribed and sworn to before me this _____ day of _____, 2009.

Notary Public

My commission expires: _____, _____.

Seal:

Return this form to:

Barbara E. Thawley
Employment Litigation Section
U.S. Department of Justice
Civil Rights Division
PHB, Room 4928
950 Pennsylvania Avenue, NW
Washington, DC 20530

APPENDIX M

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE CITY OF DAYTON, OHIO,

Defendant.

Civil Action No. 3:08-cv-348 (TMR)

Judge Thomas M. Rose

**ACCEPTANCE OF RELIEF AWARD
AND RELEASE OF CLAIMS**

I, [insert name], have received notice from the United States Department of Justice of the individual relief award offered to me pursuant to the provisions of the Consent Decree entered by the Court on [insert date] in the above-named lawsuit. I understand that the payment to be made to me and the other relief given or to be given to me does not constitute an admission by any of the parties released of the validity of any claim raised by me, or on my behalf. I acknowledge that a copy of the Consent Decree has been made available to me.

The **MONETARY RELIEF AWARD** I am being offered consists of:

[insert amount] dollars (\$ _____), minus the required withholdings for taxes, Social Security (FICA) and Medicare.

 I ACCEPT THIS AWARD.

[Add if applicable:

The **NON-MONETARY RELIEF AWARD** I am being offered consists of:

Remedial seniority with a constructive hire date of [insert date] to be used for all purposes except satisfying my probationary period and qualification for promotion consideration.

 I ACCEPT THIS AWARD.]

INITIAL HERE: _____

[Add if applicable:

Pension credit with a constructive hire date of [insert date], with the condition that I shall pay the employee's share of the necessary contribution to the pension fund, and the City shall pay the employer's share due plus any interest on both the employee's share or the employer's share that the pension plan may require.

 I ACCEPT THIS AWARD.]

In consideration for this award of the relief stated above, I release the City of Dayton, Ohio and all prior and current elected and appointed officials thereof, and their employees, agents, attorneys, successors, and assigns from all or any legal claims based upon alleged discrimination on the basis of race with respect to the hiring of African Americans into the positions of entry-level police officer or firefighter in violation of any federal or state statutes, regulations or executive orders providing for or giving rise to claims or rights of action relating to equal employment, including Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq., that were, or could have been, the subject of the above described lawsuit, of which I am aware, or through the exercise of reasonable diligence could have been aware. The above-named lawsuit was resolved by entry of the Consent Decree by the Court on [insert date].

The release of claims contained herein is not conditioned on my receipt of any other relief under the Consent Decree.

I understand that I must properly and completely fill out this Acceptance of Relief Award and Release of Claims form, initial the first page of this form, sign the form in the presence of a notary public, and return it to the Department of Justice no later than [insert date] in order to receive the relief award.

I also understand that **I must complete and return the enclosed forms** so that required withholdings for taxes, Social Security (FICA) and Medicare may be made from the monetary award.

INITIAL HERE: _____

I HAVE READ THIS ACCEPTANCE OF RELIEF AWARD AND RELEASE OF CLAIMS FORM AND UNDERSTAND THE CONTENTS THEREOF. I SIGN THIS FORM OF MY OWN FREE ACT AND DEED.

Date Signed

Signature

(Street Address)

(City) (State) (Zip code)

() _____
(Home Telephone)

() _____
(Work Telephone)

(Social Security Number)

Subscribed and sworn to before me this _____ day of _____, 2009.

Notary Public

My commission expires: _____, _____.

Seal:

Return this form to:

Barbara E. Thawley
Employment Litigation Section
U.S. Department of Justice
Civil Rights Division
PHB, Room 4928
950 Pennsylvania Avenue, NW
Washington, DC 20530