

CITY OF ALBUQUERQUE
Albuquerque, New Mexico
Office of the Mayor

Mayor Timothy M. Keller

INTER-OFFICE MEMORANDUM April 29, 2021

TO: Cynthia Borrego, President, City Council

FROM: Timothy M. Keller, Mayor

A handwritten signature in black ink, appearing to be 'TK', is written over the name 'Timothy M. Keller, Mayor'.

SUBJECT: Agreement with DLG Accounting Advisory Services

This Executive Communication requests approval of a contract with DLG Accounting Advisory Services for the purpose of complying with the *Stipulated Order Establishing an External Force Investigation Team*, issued by the judge on February 26, 2021 in the case of *United States v. City of Albuquerque*, 14-cv-1025 [Doc. 720]. The court order “requires the City to establish, on a temporary basis, an External Force Investigation Team (EFIT) to assist the Albuquerque Police Department (APD) in conducting investigations of Level 2 and Level 3 uses of force by APD officers, while also assisting APD with improving the quality of its own Internal Affairs (IA) force investigations.” (Doc. 720, p. 1).

DLG will serve as the External Force Investigation Team (EFIT) Administrator to: respond to use of force investigations; assist and advise APD’s Internal Affairs Force Investigators conducting the investigations and take over investigations when required; and perform other duties as required by the *Stipulated Order*.


In order to select the EFIT Administrator, APD issued a Request for Letters of Interest. Four entities applied. Two of the entities were determined to not meet the requirements of the Stipulated Order. The other two were interviewed and feedback was solicited from the Department of Justice and Independent Monitor. Based on the applications and interviews, this contractor was determined to be the best fit for APD.

The amount of the contract is \$2,713,312.50 for one year.

APD requests your acceptance of this Executive Communication.

Agreement with DLG Accounting Advisory Services

Approved:



Sarita Nair
Chief Administrative Officer


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Date

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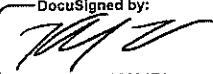
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Esteban A. Aguilar, Jr. Date
City Attorney

Recommended:

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Harold J Medina
Chief of Police

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Date

Cover Analysis

1. What is it? This Executive Communication is to approve an agreement with DLG Accounting Advisory Services.

2. What will this piece of legislation do? This legislation will authorize the City of Albuquerque Police Department to enter into a one-year agreement with the DLG. DLG will serve as the External Force Investigation Team (EFIT) Administrator to: respond to use of force investigations; assist and advise APD's Internal Affairs Force Investigators conducting the investigations and take over investigations when required; and perform other duties as required by a court order entered on February 26, 2021.

3. Why is this project needed? This contract is needed pursuant to a court order, the *Stipulated Order Establishing an External Force Investigation Team*, issued by the judge on February 26, 2021 in the case of *United States v. City of Albuquerque*, 14-cv-1025 [Doc. 720]. The court order "requires the City to establish, on a temporary basis, an External Force Investigation Team (EFIT) to assist the Albuquerque Police Department (APD) in conducting investigations of Level 2 and Level 3 uses of force by APD officers, while also assisting APD with improving the quality of its own Internal Affairs (IA) force investigations." (Doc. 720, p. 1).

4. How much will it cost and what is the funding source? This request will approve the funding of \$2,713,312.50 for one year. Current year funds are available in the FY2021 General Fund budget. Funding for FY2022 is contingent upon approval of the General Fund budget.

5. Is there a revenue source associated with this Plan? If so, what level of income is projected? No

FISCAL IMPACT ANALYSIS

TITLE: Agreement with DLG Accounting Advisory Services

R: O:
 FUND: 110
 DEPT: Police

- No measurable fiscal impact is anticipated, i.e., no impact on fund balance over and above existing appropriations.
- (If Applicable) The estimated fiscal impact (defined as impact over and above existing appropriations) of this legislation is as follows:

	Fiscal Years			
	2021	2022	2023 - 2024	Total
Base Salary/Wages				-
Fringe Benefits at	-	-	-	-
Subtotal Personnel	-	-	-	-
Operating Expenses	1,356,656	1,356,656	-	2,713,312
Property	-	-	-	-
Indirect Costs	-	-	-	-
Total Expenses	\$ 1,356,656	\$ 1,356,656	\$ -	\$ 2,713,312
<input type="checkbox"/> Estimated revenues not affected				
<input type="checkbox"/> Estimated revenue impact				
Revenue from program				-
Amount of Grant		-	-	
City Cash Match				
City Inkind Match				
City IDOH	-	-	-	-
Total Revenue	\$ -	\$ -	\$ -	\$ -

These estimates do not include any adjustment for inflation.

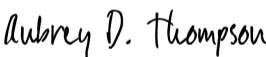
* Range if not easily quantifiable.

Number of Positions created 0


COMMENTS: The contract to DLG Accounting Advisory Services is to commence on signing date thru May 1, 2022.

COMMENTS ON NON-MONETARY IMPACTS TO COMMUNITY/CITY GOVERNMENT:

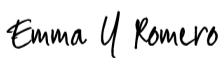
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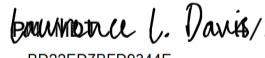
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 FISCAL MANAGER


APPROVED:

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 DIRECTOR (date)

REVIEWED BY:

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EXECUTIVE BUDGET ANALYST

BUDGET OFFICER (date)

CITY ECONOMIST

EXTERNAL FORCE INVESTIGATION TEAM ADMINISTRATOR AGREEMENT

THIS AGREEMENT is made and entered into as of the date of the last signature below by and between the City of Albuquerque, New Mexico, a municipal corporation (hereinafter referred to as the "City"), and DLG Accounting Advisory Services, whose address is 7073 Edison Place, Palm Beach Gardens, Florida, 33418 (hereinafter referred to as the "Contractor").

RECITALS

WHEREAS, the City of Albuquerque Police Department requires an external force investigation team to conduct investigations of uses of force and associated potential misconduct by Albuquerque Police Department officers; and

WHEREAS, the Contractor has the experience necessary to provide the services; and

WHEREAS, the City desires to engage the Contractor to render certain services in connection therewith and the Contractor is willing to provide such services.

NOW THEREFORE, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

1. Scope of Services. The Contractor shall perform the services ("Services") set forth in Exhibit A, attached hereto and incorporated herein, in a satisfactory and proper manner, as determined by the City.

2. Time of Performance. Services of the Contractor shall commence upon execution of this Agreement, and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this Agreement; provided, however, that in any event, all of the Services required hereunder shall be completed not later than May 1, 2022.

3. Compensation and Method of Payment.

A. Compensation. For performing the Services specified in Section 1 hereof, the City agrees to pay the Contractor up to the amount of \$2,713,312.50, which amount includes any applicable gross receipts taxes and which amount shall constitute full and complete compensation for the Contractor's Services under this Agreement, including all expenditures made and expenses incurred by the Contractor in performing the Services.

B. Method of Payment. Such amount shall be payable monthly at the rate set forth in Exhibit B, which rate includes any applicable gross receipt taxes. Payments shall be made to the Contractor monthly for completed Services upon receipt by the City of properly documented requisitions for payment as determined by the budgetary and fiscal guidelines of the City and on the condition that the Contractor has accomplished the Services to the satisfaction of the City.

C. **Appropriations.** Notwithstanding any provision in this Agreement to the contrary, the terms of this Agreement are contingent upon the City Council of the City of Albuquerque making the appropriations necessary for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement may be terminated at the end of the City's then current Fiscal Year upon written notice given by the City to the Contractor. Such event shall not constitute an event of default. All payment obligations of the City and all of its interest in this Agreement will cease upon the date of termination. The City's decision as to whether sufficient appropriations are available shall be accepted by Contractor and shall be final.

4. **Independent Contractor.** Neither the Contractor nor its employees are considered to be employees of the City of Albuquerque for any purpose whatsoever. The Contractor is considered as an independent contractor at all times in the performance of the Services described in Section 1. The Contractor further agrees that neither it nor its employees are entitled to any benefits from the City under the provisions of the Workers' Compensation Act of the State of New Mexico, or to any of the benefits granted to employees of the City under the provisions of the Merit System Ordinance as now enacted or hereafter amended.

5. **Personnel.**

A. The Contractor represents that it has, or will secure at its own expense, all personnel required in performing all of the Services required under this Agreement. Such personnel shall not be current or former employees of or have any current or previous contractual relationships with the City.

B. All the Services required hereunder will be performed by the Contractor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such Services.

C. None of the work or the Services covered by this Agreement shall be subcontracted without the prior written approval of the City. Any work or Services subcontracted hereunder shall be specified by written contract or Agreement and shall be subject to each provision of this Agreement.

6. **Indemnity.** The Contractor agrees to defend, indemnify and hold harmless the City and its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties because of any injury or damage received or sustained by any person, persons or property arising out of or resulting from the Services performed by the Contractor under this Agreement or by reason of any asserted act or omission, neglect or misconduct of the Contractor or Contractor's agents or employees or any subcontractor or its agents or employees. The indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this Agreement.

7. **Liability.** Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1 et seq., NMSA 1978, as amended.

8. Insurance. The Contractor shall procure and maintain at its expense until final payment by the City for Services covered by this Agreement, insurance in the kinds and amounts hereinafter provided with insurance companies authorized to do business in the State of New Mexico, covering all operations under this Agreement, whether performed by it or its agents. Before commencing the Services and on the renewal of all coverages, the Contractor shall furnish to the City a certificate or certificates in form satisfactory to the City showing that it has complied with this Section. All certificates of insurance shall provide that thirty (30) days' written notice be given to the Risk Manager, Department of Finance and Administrative Services, City of Albuquerque, P.O. Box 470, Albuquerque, New Mexico 87103, before a policy is canceled, materially changed, or not renewed. Various types of required insurance may be written in one or more policies. With respect to all coverages required other than professional liability or workers' compensation, the City shall be named an additional insured. All coverages afforded shall be primary with respect to operations provided. Kinds and amounts of insurance required are as follows:

A. Commercial General Liability Insurance. A commercial general liability insurance policy with combined limits of liability for bodily injury or property damage as follows:

\$2,000,000	Per Occurrence
\$2,000,000	Policy Aggregate
\$1,000,000	Products Liability/Completed Operations
\$1,000,000	Personal and Advertising Injury
\$ 50,000	Fire - Legal
\$ 5,000	Medical Payments

Said policy of insurance must include coverage for all operations performed for the City by the Contractor, and contractual liability coverage shall specifically insure the hold harmless provisions of this Agreement.

B. Automobile Liability Insurance. A Commercial Automobile Liability Insurance policy with not less than a \$1,000,000 combined single limit of liability for bodily injury, including death, and property damage in any one occurrence. The CAL policy must include coverage for the use of all owned, non-owned, and hired automobiles, vehicles and other equipment both on and off work. This CAL policy cannot be a personal automobile liability insurance policy as most personal automobile liability policies exclude coverage for work related losses.

C. Workers' Compensation Insurance. Workers' Compensation Insurance for its employees in accordance with the provisions of the Workers' Compensations Act of the State of New Mexico.

D. Professional Liability (Errors and Omissions) Insurance. Professional liability (errors and omissions) insurance in an amount not less than \$1,000,000 combined single limit of liability per occurrence with a general aggregate of \$1,000,000.

E. Cyber Liability Coverage. Cyber liability insurance in an amount not less than \$100,000 combined single limit of liability per occurrence with a general aggregate of \$100,000.

F. Increased Limits. If, during the term of this Agreement, the City requires the Contractor to increase the maximum limits of any insurance required herein, an appropriate adjustment in the Contractor's compensation will be made.

9. Discrimination Prohibited. In performing the Services required hereunder, the Contractor shall not discriminate against any person on the basis of race, color, religion, gender, sexual preference, sexual orientation, national origin or ancestry, age, physical handicap, or disability as defined in the Americans With Disabilities Act of 1990, as now enacted or hereafter amended.

10. ADA Compliance. In performing the Services required hereunder, the Contractor agrees to meet all the requirements of the Americans With Disabilities Act of 1990, and all applicable rules and regulations (the 'ADA'), which are imposed directly on the Contractor or which would be imposed on the City as a public entity. The Contractor agrees to be responsible for knowing all applicable requirements of the ADA and to defend, indemnify and hold harmless the City, its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties as a result of any acts or omissions of the Contractor or its agents in violation of the ADA.

11. Conflict of Interest. No officer, agent or employee of the City will participate in any decision relating to this Agreement which affects that person's financial interest, the financial interest of his or her spouse or minor child or the financial interest of any business in which he or she has a direct or indirect financial interest.

12. Interest of Contractor. The Contractor agrees that it presently does not have, and shall acquire no direct or indirect interest which conflicts in any manner or degree with the performance of the terms of this Agreement. The Contractor will not employ any person who has any such conflict of interest to assist the Contractor in performing the Services.

13. No Collusion. The Contractor represents that this Agreement is entered into by the Contractor without collusion on the part of the Contractor with any person or firm, without fraud and in good faith. The Contractor also represents that no gratuities, in the form of entertainment, gifts or otherwise, were, or during the term of this Agreement, will be offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view towards securing this Agreement or for securing more favorable treatment with respect to making any determinations with respect to performing this Agreement.

14. Debarment, Suspension, Ineligibility and Exclusion Compliance. The Contractor certifies that it has not been debarred, suspended or otherwise found ineligible to receive funds by any agency of the executive branch of the federal government, the State of New Mexico, any local public body of the State, or any state of the United States. The Contractor agrees that should any notice of debarment, suspension, ineligibility or exclusion be received by the Contractor, the Contractor will notify the City immediately.

15. Reports and Information. At such times and in such forms as the City may require, there shall be furnished to the City such statements, records, reports, data and information, as the City may request pertaining to matters covered by this Agreement. Unless otherwise authorized by the City, the Contractor will not release any information concerning the work product including any reports or other documents prepared pursuant to this Agreement until the final product is submitted to the City.

16. Open Meetings Requirements. Any nonprofit organization in the City which receives funds appropriated by the City, or which has as a member of its governing body an elected official, or appointed administrative official, as a representative of the City, is subject to the requirements of § 2-5-1 et seq., R.O.A. 1994, Public Interest Organizations. The Contractor agrees to comply with all such requirements, if applicable.

17. Public Records. The parties acknowledge that City is a government entity and subject to the New Mexico Inspection of Public Records Act (Sections 14-2-1 et seq., NMSA 1978). Notwithstanding anything contained herein to the contrary, City shall not be responsible to Contractor for any disclosure of Confidential Information pursuant to the Act or pursuant to the City of Albuquerque's public records act laws, rules, regulations, instructions or other legal requirement.

18. Establishment and Maintenance of Records. Records shall be maintained by the Contractor in accordance with applicable law and requirements prescribed by the City with respect to all matters covered by this Agreement. Except as otherwise authorized by the City, such records shall be maintained for a period of three (3) years after receipt of final payment under this Agreement.

17. Audits and Inspections. At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all of the Contractor's records with respect to all matters covered by this Agreement. The Contractor shall permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. The Contractor understands and will comply with the City's Accountability in Government Ordinance, §2-10-1 et seq. and Inspector General Ordinance, §2-17-1 et seq. R.O.A. 1994, and also agrees to provide requested information and records and appear as a witness in hearings for the City's Board of Ethics and Campaign Practices pursuant to Article XII, Section 8 of the Albuquerque City Charter.

19. Ownership, Publication, Reproduction and Use of Material. No material produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country. The City shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.

20. Compliance With Laws. In performing the Services required hereunder, the Contractor shall comply with all applicable laws, ordinances, and codes of the federal, state and local governments.

21. Changes. The City may, from time to time, request changes in the Services to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the City and the Contractor, shall be incorporated in written amendments to this Agreement.

22. Assignability. The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in this Agreement (whether by assignment or novation), without the prior written consent of the City thereto.

23. Termination for Cause. If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Agreement or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to the Contractor of such termination and specifying the effective date thereof at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, maps, studies, surveys, drawings, models, photographs and reports prepared by the Contractor under this Agreement shall, at the option of the City, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Contractor, and the City may withhold any payments to the Contractor for the purposes of set-off until such time as the exact amount of damages due the City from the Contractor is determined.

Cause for termination includes but is not limited to:

- A. A determination by the Independent Monitor based on the orientation or initial assessments that the EFIT Administrator's quality of work will not meet the requirements of the CASA;
- B. A determination by the Independent Monitor that the EFIT regularly fails to conduct investigations consistent with CASA requirement and APD policy;
- C. A determination by the City that the continued services of the EFIT are not likely to result in operational compliance with the requirements of the CASA;
- D. A determination by the Judge in *United States v. City of Albuquerque* that the contract or the CASA can be terminated; or
- E. Any other failure to meet the requirements set forth in this agreement or the Stipulated Order.

24. Termination for Convenience of City. The City may terminate this Agreement at any time by giving at least fifteen (15) days' notice in writing to the Contractor. If the Contractor is terminated by the City as provided herein, the Contractor will be paid an amount which bears the same ratio to the total compensation as the Services actually performed bear to the total Services of the Contractor covered by this Agreement, less payments of compensation previously made. If this Agreement is terminated due to the fault of the Contractor, the preceding Section hereof relative to termination shall apply.

25. Construction and Severability. If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.

26. Enforcement. The Contractor agrees to pay to the City all costs and expenses including reasonable attorney's fees incurred by the City in exercising any of its rights or remedies in connection with the enforcement of this Agreement.

27. Entire Agreement. This Agreement contains the entire agreement of the parties

and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

28. Applicable Law and Venue. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the laws, rules and regulations of the City of Albuquerque. The venue for actions arising out of this Agreement is Bernalillo County, New Mexico.

29. Force Majeure. City shall not be liable for failure to perform its obligations under this Agreement due to causes beyond the control and without the fault or negligence of either party. Such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or federal government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless City shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit vendor to meet the required delivery scheduled. The rights and remedies of the City provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

30. Electronic Signatures. Authenticated electronic signatures are legally acceptable pursuant to Section 14-16-7 NMSA 1978. The parties agree that this agreement may be electronically signed and that the electronic signatures appearing on the agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

31. Approval Required. This Agreement shall not become binding upon the City until approved by the highest approval authority of the City required under this Agreement.

IN WITNESS WHEREOF, the City and the Contractor have executed this Agreement as of the date first above written.

CITY OF ALBUQUERQUE:

Approved By: _____

Date: _____

Name: _____

Title: _____

Approved By: _____

Date: _____

Name: _____

Title: _____

Approved By: _____

Date: _____

Name: _____

Title: _____

Approved By: _____

Date: _____

Name: _____

Title: _____

Approved By: _____

Date: _____

Name: _____

Title: _____

CONTRACTOR:

Approved By: _____

Name: _____

EXHIBIT A
EXTERNAL FORCE INVESTIGATION TEAM
SCOPE OF SERVICES

DEFINITIONS

1. For the purposes of this Agreement:
 - a. “Administrator” means the individual or entity responsible for managing and overseeing the External Force Investigation Team (EFIT), including but not limited to selecting staff, hiring and firing EFIT personnel, day-to-day management of EFIT personnel and responsibilities, coordinating with the City, and making decisions with regards to use of force and misconduct investigation recommendations.
 - b. “CASA” means the *Court-Approved Settlement Agreement in United States v. City of Albuquerque*, 14-cv-1025, Doc. 465-1, or as subsequently amended by the United States and the City and approved by the Court [Attachment A].
 - c. The “City” means the City of Albuquerque and includes the Albuquerque Police Department (APD).
 - d. “IA force personnel” includes IA force investigators and supervisors, other than IA Commanding Officers.
 - e. Level 2 and Level 3 uses of force are defined in the CASA as well as in APD policy.
 - f. “Investigations of Level 2 and Level 3 uses of force” include both investigations and the review of investigations by supervisors.
 - g. “Independent Monitor” includes the Independent Monitor and members of the Independent Monitoring Team.
 - h. “Stipulated Order” means the *Stipulated Order Establishing an External Force Investigation Team* entered on February 26, 2021, in the case of *United States v. City of Albuquerque*, 14-cv-1025, Doc. 720. [Attachment B].
2. The Contractor identified in the Agreement will serve as the Administrator of the EFIT. The EFIT shall guide and direct IA force personnel and, when necessary, conduct investigations of Level 2 and Level 3 uses of force; provide written assessments of IA investigations carried out by IA force personnel; and provide written feedback on IA force personnel’s work product. *See* Doc. 465-1 ¶ 48 (defining Level 2 and Level 3 uses of force).
3. The Administrator’s Qualifications.
 - a. The Administrator shall have the following qualifications:
 - i. experience and expertise in investigating law enforcement misconduct;
 - ii. expertise in constitutional standards for police officers’ use of force.
 - b. Experience in law enforcement reform litigation is highly desirable and will receive preference.

4. The EFIT Administrator shall hire and retain the staff necessary to fulfill the requirements of this Agreement and the Stipulated Order filed in *United States v. City of Albuquerque*, 14-CV-1025, Doc. 720.
 - a. EFIT Supervisors and Investigators shall have a minimum of five (5) years' experience and expertise in investigating law enforcement misconduct and the constitutional standards for police officer's use of force.
 - b. The Administrator shall employ a sufficient number of investigators and supervisors to meet the requirements of the Stipulated Order. The number of staff will vary through the course of the contract. The Administrator shall ensure that a sufficient number of investigators are physically present in Albuquerque to respond to the scene of Level 2 and Level 3 uses of force as required by the Stipulated Order.
 - c. Neither the EFIT Administrator, Supervisors, nor Investigators shall have any current or previous employment relationship or contract for services with the City.
5. EFIT personnel shall cooperate with and participate in all meetings, trainings, orientations, technical assistance, informal assessments, and legal proceedings requested by the City, the Department of Justice (DOJ), and the Independent Monitor. EFIT shall also comply with all records requests, subpoenas, and other requests by or through the City, DOJ or Independent Monitor.

MONITORING

6. The Independent Monitor shall evaluate use of force and misconduct investigations consistent with its current methodology,¹ and the EFIT shall ensure that its work complies with the standards set forth in the CASA as measured by the Independent Monitor, City and APD Policy, and with the investigatory deadlines established by the CASA, APD policy, and the current Collective Bargaining Agreement between the City and the Albuquerque Police Officers' Association (CBA) (Attachment C) and any subsequent Collective Bargaining Agreements.

INVESTIGATIVE PROTOCOL

7. The EFIT Administrator shall assist the City in establishing protocols for how APD IA and EFIT will coordinate on investigations of Level 2 and Level 3 uses of force. The protocols will be submitted to DOJ and the Independent Monitor for review and comment pursuant to Paragraphs 147 and 148 of the CASA. At a minimum, the protocols will include:
 - a. procedures for coordinating the work of IA force personnel and EFIT personnel;
 - b. guidance on how APD IA will transmit investigative files to EFIT;
 - c. provisions stating that EFIT shall not assist APD IA with investigations of Level 2 and Level 3 uses of force for which the investigatory deadlines established by the CASA, APD policy, and the Collective Bargaining Agreement between the City

¹ The Independent Monitor's reports and Methodology can be found at:
<http://www.cabq.gov/police/documents-related-to-apds-settlement-agreement>.

and the Albuquerque Police Officers' Association (CBA) have expired at the time that EFIT begins providing services; and

- d. Other terms and protocols as determined necessary by the City and approved by DOJ and the Independent Monitor.
8. The EFIT will comply with relevant paragraphs of the CASA and other investigative processes established pursuant to the Stipulated Order.

REMEDIAL ACTION PLAN

9. The EFIT shall participate with the City in preparing a remedial action plan, which shall be drafted within five (5) months of the start date of the EFIT contract.
10. The EFIT will assist the City in identifying concrete actions that the City and the EFIT will take to improve the quality and timeliness of investigations of Level 2 and Level 3 uses of force conducted by APD IA.
11. The EFIT shall assist in any revisions to the remedial action plan requested by the City based on the feedback of the Monitor and DOJ.

INVESTIGATIONS

12. From the date the EFIT Administrator begins services and subject to EFIT staffing levels, EFIT will deploy investigators with APD IA force investigators to the scene for every Level 2 and Level 3 use of force, unless APD deploys an APD IA force investigator who has satisfied the requirements of Paragraph 35 of the Stipulated Order.
13. APD IA force investigators shall act as the lead on-scene investigators, and EFIT staff shall guide and direct APD IA force investigators, for all Level 2 and Level 3 uses of force, and APD IA force investigators shall be primarily responsible for conducting the on-scene requirements of CASA Paragraphs 69(a), (b), (c), (d), and (e) (Doc. 465-1 at 27). *See also* Paragraph 18 of the Stipulated Order.
14. EFIT will acknowledge receiving all documents from APD pertaining to on-scene investigations.
15. EFIT investigators shall jointly conduct investigations of all Level 2 and Level 3 uses of force, except as set forth below. In jointly conducting investigations, EFIT investigators shall advise, guide, direct, mentor, and conduct a written assessment of APD IA personnel's performance. All investigations shall be conducted within sixty (60) days and in a manner consistent with the requirements of the CASA, APD policy (available at <http://www.cabq.gov/police/standard-operating-procedures/standard-operating-procedures-manual>) and the CBA.
 - a. The written assessment shall be in a format and address criteria agreed upon by the City, the Independent Monitor and DOJ.

16. EFIT, whether conducting investigations jointly with APD or independently, shall identify all potential misconduct and violations of policy that occurred in the course of each use of force incident. EFIT shall notify APD within 24 hours of any potential misconduct or policy violation, and APD shall ensure the alleged violation is screened, assigned an internal affairs number, and tracked by APD IA. EFIT personnel shall (either jointly with APD IA force investigators or independently) complete the investigation of all misconduct related to the use of force, as assigned by APD.
 - a. The City and EFIT will agree to a process for EFIT to report misconduct or policy violations.

17. EFIT personnel shall ensure that an investigative report is completed for each use of force or misconduct investigation, whether the investigation was conducted jointly with APD or independently by EFIT.
 - a. The investigative report shall meet all requirements of the CASA; the investigative protocol; APD policy; and the CBA.
 - b. The investigative report shall reflect whether the use of force complied with APD policy as well as state and federal law.
 - c. The investigative report shall include recommendations regarding the appropriate corrective and/or disciplinary action, consistent with the CASA and APD policy.

18. At any point during a joint investigation, should EFIT personnel either determine that IA force personnel have committed misconduct in the course of an investigation, and that the continued participation by APD IA personnel is likely to undermine the integrity of an investigation, or determine that deficiencies in the tactics or work product of the APD IA force investigators is likely to prevent the investigation from being completed within the deadlines set forth in the CASA, APD policy, and the CBA, the EFIT Administrator shall:
 - a. Direct EFIT personnel to complete the investigation without the participation of APD IA personnel;
 - b. Provide written notice to DOJ, the City, and the Independent Monitor.
 - i. The written notice shall include a detailed explanation of the factual basis for the determination made by EFIT personnel; and
 - c. If DOJ or the City object to the investigation being completed without the involvement of APD IA personnel, meet with DOJ or the City, for the purpose of resolving the disagreement. If an agreed resolution cannot be reached, DOJ or the City may bring the matter before the Court for resolution. EFIT and all of its personnel shall cooperate with any legal proceeding brought pursuant to this paragraph.

19. EFIT shall coordinate with APD and its legal counsel, as requested, to gain access to APD personnel, facilities, and documents in a reasonable manner.

REPORTS AND ASSESSMENTS

20. The EFIT shall ensure the following reports are provided to the City:
- a. Written assessment of APD IA personnel's performance during IA investigations within one week of assuming sole investigative responsibility for an investigation or at the conclusion of each case;
 - b. Monthly summaries of written assessments of APD IA personnel's performance and work product, deidentified and in a format agreeable to the City for publication to the Court and the public in APD's quarterly reports;
 - c. A quarterly summary of the progress toward implementation of the written IA investigative process; and
 - d. Weekly summaries of:
 - i. The case number of each investigation assumed by EFIT;
 - ii. A summary of the allegations for each investigation assumed by the EFIT;
 - iii. The status of investigations assumed by EFIT;
 - iv. The deadline for each investigation assumed by EFIT;
 - v. The recommendation for each investigation assumed by the EFIT;
 - vi. Whether any investigation is not completed within the deadline set forth in this order, a description of why, and a recommendation regarding avoiding any future missed deadline; and
 - vii. The total number of cases being investigated independently by the EFIT.
21. The EFIT Administrator shall assist the APD IA Commanding Officers in preparing quarterly written evaluations of APD IA personnel.
- e. The evaluations shall be confidential consistent with the City's Personnel Rules and Regulations, APD Policy, and state law. As requested by APD, EFIT shall either assist in preparing or reviewing:
 - i. a summary of written assessments by EFIT of the quality of the IA force investigator's investigations;
 - ii. a summary of IA force supervisors' performance;
 - iii. a summary of written feedback by EFIT on the IA force investigator's or supervisor's work product;
 - iv. a description of any misconduct allegations that the IA force investigator or supervisor committed related to their investigations during the previous quarter, including how the allegation was ultimately resolved;
 - v. the number of the IA force investigator or supervisor's investigations from the previous quarter in which the IA force investigator or supervisor failed to satisfy CASA requirements for investigations, compared to the number of investigations that the IA force investigator or supervisor conducted during the previous quarter;
 - vi. an evaluation of the IA force investigator or supervisor's overall performance; and
 - vii. any actions that will be taken during the following quarter to improve the IA force investigator's or supervisor's performance.

COOPERATION WITH THE CITY

22. The parties to this Agreement intend to return responsibility for all investigations to APD as expeditiously as possible while meeting the requirements of the CASA and the Stipulated Order.
23. The Administrator shall ensure that its staff guide, mentor, and conduct on-the-job training for APD IA force investigators and supervisors to ensure they have the skills and knowledge necessary to complete thorough, objective, timely, and high-quality force and misconduct investigations.
24. Pursuant to the requirements of the Stipulated Order, APD shall notify the Administrator that it intends to return responsibility for investigations to an IA force investigator or supervisor. The EFIT Administrator shall determine whether it agrees based on its assessments of the investigator or supervisor's work product based on the criteria set forth in this Agreement. The EFIT Administrator shall promptly notify the City, APD, DOJ, and the Independent Monitor in writing if the EFIT Administrator determines that the IA force investigator or supervisor does not meet the qualifications identified in Paragraph 35 of the Stipulated Order (Doc. 720 at 14). The City, APD, DOJ, the Independent Monitor, and the EFIT Administrator shall confer about any disagreements between APD and the EFIT Administrator regarding the qualifications of any IA force investigator or supervisor to take responsibility for conducting full investigations of Level 2 and Level 3 uses of force.
25. The EFIT Administrator and EFIT personnel shall appear as requested or subpoenaed in legal proceedings, including the CASA or legal proceedings arising out of their investigations. Legal proceedings include depositions and testimony. The Administrator shall require its personnel to agree to appear for legal proceedings, and this requirement will continue until all legal proceedings arising from EFIT's services conclude. EFIT shall compensate its personnel for appearance at legal proceedings. If the personnel are no longer employed by the investigator, they shall only be entitled to customary witness fees.

EXHIBIT B
EXTERNAL FORCE INVESTIGATION TEAM
COSTS

Position Title	Number of positions	Yearly
EFIT Administrator	1	\$250,000
Deputy Administrator	1	\$185,000
Supervisor(s)	3 to 4	\$400,000
In-State Investigator	5 to 7	\$588,000
Out of State Investigator(s)	7	\$672,000
Expenses/Legal/Out of Pocket/Office Staff/Insurance		\$400,000
Gross Receipts Tax		\$218,312.5
Total		\$2,713,312.50

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	
)	
THE CITY OF ALBUQUERQUE,)	14-cv-1025 JB/SMV
)	
Defendant,)	
)	
vs.)	
)	
THE ALBUQUERQUE POLICE)	
OFFICERS' ASSOCIATION,)	
)	
Intervenor.)	

NOTICE OF SUBMISSION OF SECOND AMENDED AND RESTATED COURT-APPROVED SETTLEMENT AGREEMENT

Plaintiff United States of America and Defendant City of Albuquerque (the Parties), file this Notice with the with consent of Intervenor Albuquerque Police Officers' Association (APOA) and the concurrence of the Independent Monitor, for the purpose of submitting for the Court's convenience the Second Amended and Restated Court-Approved Settlement Agreement, which updates the First Amended and Restated Settlement Agreement filed on February 9, 2017, Doc. 247, by incorporating Court-approved changes, modifications, and amendments to the First Amended and Restated Settlement Agreement since its filing.

This Court approved the original Settlement Agreement and entered it as an Order of the Court on June 2, 2016. Doc. 134.

After the original Settlement Agreement was approved and entered as a Court Order, the Parties and APOA jointly stipulated, with the Independent Monitor's concurrence, to modify the original Settlement Agreement under Paragraph 338 of the Agreement, *see* Doc. 9-1, ¶ 338,

Attachment A

on five separate occasions, Docs. 140, 157, 166, 179, and 230, and the Court thereafter approved each stipulation. The First Amended and Restated Court-Approved Settlement Agreement incorporated each of these modifications to the original Settlement Agreement and was intended to facilitate access to the most current and complete version of the Court-Approved Settlement Agreement.

After the First Amended and Restated Court-Approved Settlement Agreement was filed in February 2017, the Parties and APOA jointly stipulated to modify the First Amended and Restated Court-Approved Settlement Agreement twice more with the concurrence of the Independent Monitor, *see* Doc. 354 and *errata* at Doc. 356 (filed on March 5, 2018 and March 9, 2018); Doc. 404 (filed on September 19, 2018), and the approval of this Court. Docs. 365 and 405. The Second Amended and Restated Court-Approved Settlement Agreement incorporates changes from those Court-approved Joint Stipulations.

These Joint Stipulations have resulted in modification of the following 112 paragraphs from the First Amended and Restated Court-Approved Settlement Agreement: Table of Contents, F.1 and F.2. Paragraphs: 12tt, 12uu, 12vv, 12ww, 12xx, 12yy, 12zz, 12aaa, 12bbb, 12ccc, 12ddd, 14h, 41, 42, 46, 47, 48, 48a, 48b, 48c, 49, 50, 52a, 52b, 52c, 52d, 52e, 52f, 52g, 52h, 52i, 52j, 52k, 52l, 52m, 52n, 52o, 52p, 52q, 52r, 53, 53d, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 68, 69, 69a, 69e, 69f, 69g, 69h, 69i, 69j, 69k, 69l, 69m, 70, 71, 71a, 71d, 72, 73, 74, 75, 76, 77, 78, 78a, 78b, 78c, 78d, 78e, 78f, 78g, 79c, 80, 86, 88, 88a, 157, 163, 173, 176, 177, 178, 179, 180, 181, 185, 187, 188, 191, 196, 198, 199, 210d, 286, 298e, 298fii, and 304.

WHEREFORE, the Parties, with the consent of the APOA and concurrence of the Independent Monitor, respectfully submit the Second Amended and Restated Court-Approved Settlement Agreement.

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Email Concurrence on July 30, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2019, I filed the foregoing pleading electronically through the CM/ECF system which caused all parties or counsel to be served by electronic means as more fully reflected on the Notice of Electronic Filing.

/s/ Elizabeth M. Martinez

ELIZABETH M. MARTINEZ|

Assistant U.S. Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
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vs.)	
)	
THE CITY OF ALBUQUERQUE,)	14-cv-1025 JB/SMV
)	
Defendant,)	
)	
vs.)	
)	
THE ALBUQUERQUE POLICE)	
OFFICERS' ASSOCIATION,)	
)	
Intervenor.)	

**SECOND AMENDED AND RESTATED
COURT-APPROVED SETTLEMENT AGREEMENT¹**

¹ The Second Amended and Restated Court-Approved Settlement Agreement incorporates changes, modifications, and amendments to the First Amended and Restated Court-Approved Settlement Agreement (Doc. 247-1). The Second Amended and Restated Court-Approved Settlement Agreement contains changes from the following Joint Stipulations filed by the Parties and Intervenor with the concurrence of the Independent Monitor, Doc. 354 and errata at Doc. 356 filed March 5, 2018 and March 9, 2018; Doc. 404 filed September 19, 2018, and approved by this Court. Docs. 365 and 405.

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I. INTRODUCTION

The United States of America and the City of Albuquerque (collectively “the Parties”) share a mutual interest in officer safety and accountability; constitutional, effective policing; and high-quality police services. They join together in entering into this agreement (“Agreement”) to ensure that the Albuquerque Police Department (“APD”) delivers police services that comply with the Constitution and laws of the United States and to further their mutual interests.

The provisions of this Agreement are designed to ensure police integrity, protect officer safety, and prevent the use of excessive force, including unreasonable use of deadly force, by APD. By increasing transparency and accountability on use of force, APD will promote more effective law enforcement and will strengthen public confidence in APD. This Agreement is also designed to provide APD officers with the skills, training, tools, and support they need to implement the goals and objectives of this Agreement. The Parties recognize that APD personnel are APD’s greatest resource and that the vast majority of officers are committed to upholding the Constitution while carrying out their duties with honor and distinction.

The Parties further recognize that maintaining public safety in a diverse and vibrant community requires that APD engage collaboratively with a broad spectrum of stakeholders on an ongoing basis. This Agreement is the product of such collaboration. This Agreement reflects the extensive participation of, and the Parties’ consultation with, many community leaders, police officers, advocates, residents, and other concerned individuals who offered meaningful recommendations and insights on reform. The Parties are committed to ongoing engagement with community stakeholders to foster continued participation and long-term sustainability of the reforms and goals embodied in this Agreement. The Agreement itself provides numerous mechanisms that promote ongoing community participation, including developing and

implementing a Civilian Police Oversight Agency, Mental Health Response Advisory Committee, Community Policing Councils, community policing partnerships, periodic community meetings, and public reports on the City's progress toward compliance.

For these reasons, and noting the general principle that settlements are to be encouraged, particularly settlements between government entities, the Parties agree to implement this Agreement under the following terms and conditions.

II. BACKGROUND

1. In November 2012, the United States Department of Justice launched an investigation into APD's policies and practices to determine whether APD engages in a pattern or practice of use of excessive force in violation of the Fourth Amendment and the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 ("Section 14141").

2. As part of its investigation, the Department of Justice consulted with police practices experts and conducted a comprehensive assessment of officers' use of force and APD policies and operations. The investigation included tours of APD facilities and Area Commands; interviews with Albuquerque officials, APD command staff, supervisors, and police officers; a review of numerous documents; and meetings with the Albuquerque Police Officers Association, residents, community groups, and other stakeholders.

3. The City and APD cooperated fully during the investigation and provided unimpeded access to documents, facilities and personnel. The Albuquerque community, APD officers, and the Albuquerque Police Officers Association also played a critical role in facilitating a thorough investigation.

4. On April 10, 2014, the Department of Justice issued a public letter to the City outlining its findings and recommending remedial measures. The Department of Justice found

reasonable cause to believe that APD engages in a pattern or practice of use of excessive force. The Department of Justice determined that although most force used by APD officers was reasonable, a significant amount of deadly and less lethal force was excessive and constituted an ongoing risk to the public. The Department of Justice also determined that systemic deficiencies contributed to the pattern or practice of excessive force, and these deficiencies relate to numerous operational and structural areas of APD, including hiring, training, policies, supervision, discipline, management, and oversight.

5. While the City does not concede the accuracy of these allegations, the City joined with the United States in a collaborative effort to promote the goals of this Agreement. Following the release of the Department of Justice's investigative findings, the Parties engaged in extensive community outreach to solicit recommendations and ideas on reform. This Agreement reflects the broad input that the Parties received.

6. This Agreement is effectuated under the authority granted to the Department of Justice under Section 14141 to seek declaratory or equitable relief to remedy a pattern or practice of conduct by law enforcement officers that deprives individuals of rights, privileges, or immunities secured by the Constitution or federal law.

7. This Agreement is not intended to limit the lawful authority of APD officers to use objectively reasonable force or otherwise to fulfill their law enforcement obligations under the Constitution and laws of the United States and the State of New Mexico.

8. This Agreement shall not be construed as an admission or evidence of liability under any federal, state, or municipal law including, but not limited to, 42 U.S.C. § 1983. Nor is the City's entry into this Agreement an admission by the City, APD, or any officer or employee that they have engaged in any unconstitutional, illegal, or otherwise improper activities or

conduct. The Parties acknowledge the many APD officers who have continued to work diligently and with integrity to maintain high-level, quality service; to ensure officer safety and accountability; and to promote constitutional, effective policing.

9. This Agreement shall constitute the entire integrated agreement of the Parties. No prior drafts or prior or contemporaneous communications, oral or written, shall be relevant or admissible for purposes of determining the meaning of any provisions herein in any litigation or any other proceeding, except for the Department of Justice's April 10, 2014 investigative findings letter.

10. This Agreement is binding upon all Parties hereto, by and through their officials, agents, employees, and successors. If the City establishes or reorganizes a government agency or entity whose function includes overseeing, regulating, investigating, or otherwise reviewing the operations of APD or any aspect thereof, the City shall ensure these functions and entities are consistent with the terms of this Agreement and shall incorporate the terms of this Agreement into the oversight, regulatory, investigation, or review functions of the government agency or entity as necessary to ensure consistency.

11. The Parties recognize that APD began taking steps to ensure greater accountability and supervision in response to a June 2011 report issued by the Police Executive Research Forum and both before and after the Department of Justice's release of its April 2014 findings letter. The Department of Justice further recognizes that certain APD policies and practices are consistent with generally accepted policing practices and should continue as set forth below to ensure that performance is maintained or improved in order to meet the overall goals and objectives of this Agreement. Among the measures that APD has taken are extensive use of on-body recording systems and the provision of behavioral health training to a large

majority of its officers. In addition, the City has chosen to eliminate the Repeat Offender Project within three months of the Effective Date.

III. DEFINITIONS AND ABBREVIATIONS

12. The following terms and definitions shall apply to this Agreement:
- a) “APD” or “the Department” shall refer to the Albuquerque Police Department and its agents, officers, supervisors, and employees (both sworn and unsworn).
 - b) “Chief” means the Chief of Police of the Albuquerque Police Department or his or her properly designated Acting Chief.
 - c) “City” shall refer to the City of Albuquerque, including its agents, officers, and employees.
 - d) “Department of Justice” or “DOJ” refers jointly to the United States Department of Justice’s Civil Rights Division and the United States Attorney’s Office for the District of New Mexico.
 - e) “USAO” means the United States Attorney’s Office for the District of New Mexico.
 - f) “Court” shall refer to the United States District Judge for the District of New Mexico presiding over this case.
 - g) “Active resistance” means resistance that poses a threat of harm to the officer or others, such as when a subject attempts to attack or does attack an officer; exhibits combative behavior (e.g., lunging toward the officer, striking the officer with hands, fists, kicks, or any instrument that may be perceived as a weapon such as a knife or stick); or attempts to leave the scene, flee, hide from detection, or pull away from the officer’s grasp. Verbal statements alone do not constitute active resistance. Bracing or tensing alone ordinarily do not constitute active resistance, but may if they pose a threat of harm to the officer or others.
 - h) “Apprehension” means the arrest, capture, or taking into custody of a person.
 - i) “Area commands” shall refer to police service areas of APD located throughout Albuquerque that are led through the chain of command by an Area Commander.
 - j) “Arrest” is the taking of one person into custody by another. To constitute arrest there must be an actual restraint of the person. The restraint may be imposed by force or may result from the submission of the person arrested to the custody of the one arresting the person. An arrest is a restraint of greater scope or duration than an investigatory stop or detention. An arrest is lawful when supported by probable cause.

- k) “Best practices” means guidelines or standards that represent the most efficient and current means for achieving constitutional and effective policing accepted by nationally recognized police professionals or organizations in the relevant subject area, as determined by the Parties.
- l) “Civilian employee” shall refer to any non-sworn personnel employed by APD, on either a temporary or permanent basis, in either a paid or unpaid capacity.
- m) “Community-oriented policing” is a policing philosophy that promotes and relies on collaborative partnerships between law enforcement agencies and the individuals and organizations they serve to develop solutions to problems, increase trust in police, and improve the effectiveness of policing efforts.
- n) “Complainant” means any person, including an APD officer or employee, who makes a complaint against APD or an APD officer or employee.
- o) “Complaint” means any complaint regarding APD services, policy, or procedure, any claim for damages, or any criminal matter that alleges possible misconduct by an APD officer or employee. For purposes of this Agreement, the term “complaint” does not include any allegation of employment discrimination.
- p) “Critical firearm discharge” means a discharge of a firearm by an APD officer, including accidental discharges and discharges where no person is struck. Range and training firings, destruction of animals, and off-duty hunting discharges where no person is struck are not critical firearms discharges.
- q) “Demographic category” means race, ethnicity, age, sex, gender expression or gender identity, sexual orientation, and limited English proficiency, if known.
- r) “Discipline” or “disciplinary action” means a personnel action for violation of an established law, regulation, rule, administrative rule, or APD policy, including, but not limited to, a verbal reprimand, written reprimand, suspension, or dismissal.
- s) “ECW” means Electronic Control Weapon, a weapon, including those manufactured by TASER International, designed primarily to discharge electrical charges into a subject that will cause involuntary muscle contractions and override the subject’s voluntary motor responses.
- t) “ECW application” means the contact and delivery of an electrical impulse to a subject with an Electronic Control Weapon.
- u) “Effective Date” means the day this Agreement has been signed by the Parties and submitted to the Court.
- v) “Firearm” means a pistol, revolver, shotgun, carbine, or machine gun, as well as any instrument capable of discharging a bullet or shot.

- w) “Implement” or “implementation” means the development or putting into place of a policy or procedure, including the appropriate training of all relevant personnel, and the consistent and verified performance of that policy or procedure in actual practice.
- x) “Include” and “including” mean “including, but not limited to.”
- y) “Interview” includes questioning for the purpose of eliciting facts or information.
- z) “Less lethal force” means a force application not intended or expected to cause death or serious injury and which is commonly understood to have less potential for causing death or serious injury than conventional, more lethal police tactics. Use of less lethal force can nonetheless result in death or serious injury.
- aa) “Lethal force” means any use of force likely to cause death or serious physical injury, including the use of a firearm, neck hold, or strike to the head, neck, or throat with a hard object.
- bb) “Mental health crisis” means an incident in which someone with an actual or perceived mental illness is experiencing intense feelings of personal distress (e.g., anxiety, depression, anger, fear, panic, hopelessness), obvious changes in functioning (e.g., neglect of personal hygiene, unusual behavior) or catastrophic life events (e.g., disruptions in personal relationships, support systems, or living arrangements; loss of autonomy or parental rights; victimization; or natural disasters), which may, but not necessarily, result in an upward trajectory of intensity culminating in thoughts or acts that are dangerous to his- or herself and/or others.
- cc) “Mental illness” is a medical condition that disrupts an individual’s thinking, perception, mood, or ability to relate to others such that daily functioning and coping with the ordinary demands of life are diminished. Mental illness includes serious mental illnesses such as major depression, schizophrenia, bipolar disorder, obsessive compulsive disorder (“OCD”), panic disorder, post-traumatic stress disorder (“PTSD”), and borderline personality disorder. Mental illness includes individuals with dual diagnosis of mental illness and another condition, such as drug and/or alcohol addiction.
- dd) “Misconduct” means a violation of departmental policies or procedures; violation of federal, state, or local criminal laws; constitutional violations, whether criminal or civil; violation of personnel rules; violation of the merit systems ordinance; violation of administrative rules; violation of regulations; and violation of the labor management relations laws.
- ee) “Monitor” means a person or team of people who shall be jointly selected to monitor and report on the implementation of this Agreement.
- ff) “Multi-Agency Task Force” refers to the investigative body comprised of, at a minimum, the New Mexico Department of Public Safety, the New Mexico State

Police, the Bernalillo County Sheriff's Office, and the Albuquerque Police Department that is charged with conducting criminal investigations of critical incidents involving officer actions, such as officer-involved shootings. The Multi-Agency Task Force is governed by an inter-governmental agreement among participating jurisdictions and is responsible for consulting, as appropriate, with prosecuting authorities in New Mexico, including the Bernalillo County District Attorney's Office, the State Attorney General's Office, and the U.S. Attorney's Office.

- gg) "Neck hold" refers to one of the following types of holds: (1) carotid restraint hold; (2) a lateral vascular neck constraint; or (3) a hold with a knee or other object to a subject's neck. A neck hold shall be considered lethal force.
- hh) "Non-disciplinary corrective action" refers to action other than discipline taken to enable or encourage an officer to improve his or her performance.
- ii) "Passive resistance" means non-compliance with officer commands that is non-violent and does not pose an immediate threat to the officer or the public. Bracing, tensing, linking arms, or verbally signaling an intention to avoid or prevent being taken into custody constitute passive resistance.
- jj) "Personnel" means all APD employees.
- kk) "Police officer" or "officer" means any law enforcement agent employed by or volunteering for APD, including supervisors and reserve officers.
- ll) "Policies and procedures" means written regulations or directives, regardless of the name of the regulation or directive, describing the duties, functions, and obligations of APD personnel, and providing specific direction on how to fulfill those duties, functions, or obligations. These include general orders, special orders, policies, procedures, and standard operating procedures.
- mm) "Qualified mental health professional" means an individual with a minimum of masters-level education and training in psychiatry, psychology, counseling, social work, or psychiatric nursing, who is currently licensed in the State of New Mexico to deliver the mental health services he or she has undertaken to provide.
- nn) "Reasonable force" means that force which is objectively reasonable under the circumstances and the minimum amount of force necessary to effect an arrest or protect the officer or other person.
- oo) "Seizure" occurs when an officer's words or actions convey to a reasonable person that he or she is not free to leave.
- pp) "Serious physical injury" means physical injury that creates a substantial risk of death; or that causes death or serious and protracted disfigurement; or impairment of the function of any bodily organ or limb.

- qq) “Serious use of force” means: (1) all uses of lethal force by an APD officer; (2) all critical firearm discharges by an APD officer; (3) all uses of force by an APD officer resulting in serious physical injury or requiring hospitalization; (4) all head, neck, and throat strikes with an object or neck holds; (5) all uses of force by an APD officer resulting in a loss of consciousness; (6) all canine bites; (7) more than two applications of an ECW on an individual during a single interaction, regardless of the mode or duration of the application, and regardless of whether the applications are by the same or different officers, or an ECW application for longer than 15 seconds, whether continuous or consecutive; (8) any strike, blow, kick, ECW application, or similar use of force against a handcuffed subject; and (9) more than three strikes with a baton. The term “serious use of force” is defined differently in the Memorandum of Understanding for the Multi-Agency Task Force in which APD participates to investigate officer involved shootings, serious uses of force (as defined in the Memorandum of Understanding), and in-custody deaths. The definition of “serious use of force” in this Agreement is not intended to substitute or alter in any way the definition in the Memorandum of Understanding.
- rr) “Service firearm” means any firearm issued or authorized by the Department for use by sworn personnel.
- ss) “Shall” or “agrees to” means that the provision imposes a mandatory duty.
- tt) “Show of force” means pointing a firearm, beanbag shotgun, or 40 millimeter launcher at a subject , or using an ECW to “paint” a subject with the laser sight.
- uu) “Specialized unit” means a designated law enforcement component with specialized training, skills, and mission. Specialized units include Specialized Tactical Units, whose focus is on tactical solutions to critical incidents that involve a threat to public safety or high-risk situations, which would otherwise exceed the capabilities of traditional law enforcement first responders or investigative units. Specialized Tactical Units include SWAT, the Canine Unit, and the Bomb Squad. Specialized units also include Specialized Investigation Units, whose focus is on the use of investigative methods and techniques to solve crimes and develop cases for prosecution, such as the Intelligence Unit and the Gang Unit.
- vv) “SWAT” unit means the Special Weapons and Tactics unit.
- ww) “Supervisor” means sworn APD personnel at the rank of sergeant or above (or anyone acting in those capacities) and non-sworn APD personnel with oversight responsibility for other personnel.
- xx) “Telecommunicators” means dispatchers, 911 operators, and NCIC operators.
- yy) “Unit” means any designated organization of officers within APD, including area and specialized units.

- zz) “Use of force” means physical effort to compel compliance by an unwilling subject above unresisted handcuffing, including a show of force. APD uses of force will be divided into three levels of force. Each level of force will require increasingly vigorous reporting, investigation, and review.
- aaa) “Use of force indicating apparent criminal conduct by an officer” means force that a reasonable and trained supervisor would conclude could result in criminal charges due to the apparent circumstances of the use of force, such as the level of force used as compared to the resistance encountered, or discrepancies in the use of force as described by the officer and the use of force as evidenced by any resulting injuries, witness statements, or other evidence.
- bbb) “Use of Force Report” means a written report documenting a use of force at Level 1 and above. The Use of Force Report includes a Use of Force Data Report and a Use of Force Narrative Report.
- ccc) “Welfare check” means a response by an APD officer to a call for service that is unrelated to an allegation of criminal conduct, but is instead to determine whether a person requires assistance for a medical or mental health crisis.
- ddd) “Operational Date” means the day this Agreement has been approved by the Court, which is June 2, 2015.”

IV. USE OF FORCE: INTERNAL CONTROLS AND ACCOUNTABILITY

13. To maintain high-level, quality service; to ensure officer safety and accountability; and to promote constitutional, effective policing, APD shall revise and implement force policies, training, and accountability systems to ensure that force is used in accordance with the Constitution and laws of the United States, and that any use of unreasonable force is identified and responded to appropriately. APD shall also ensure that officers use non-force techniques to effectively police, use force only when objectively reasonable under the circumstances, and de-escalate the use of force at the earliest possible moment. To achieve these outcomes, APD shall implement the requirements set out below.

A. Use of Force Principles

14. Use of force by APD officers, regardless of the type of force, tactics, or weapon used, shall abide by the following requirements:

- a) officers shall use advisements, warnings, and verbal persuasion, when possible, before resorting to force;
- b) force shall be de-escalated immediately as resistance decreases;
- c) officers shall allow individuals time to submit to arrest before force is used whenever possible;
- d) APD shall explicitly prohibit neck holds, except where lethal force is authorized;
- e) APD shall explicitly prohibit using leg sweeps, arm-bar takedowns, or prone restraints, except as objectively reasonable to prevent imminent bodily harm to the officer or another person or persons; to overcome active resistance; or as objectively reasonable where physical removal is necessary to overcome passive resistance and handcuff the subject;
- f) APD shall explicitly prohibit using force against persons in handcuffs, except as objectively reasonable to prevent imminent bodily harm to the officer or another person or persons; to overcome active resistance; or as objectively reasonable where physical removal is necessary to overcome passive resistance;
- g) officers shall not use force to attempt to effect compliance with a command that is unlawful;
- h) pointing a firearm at a person shall be reported as a Level 1 Use of Force, and shall be done only as objectively reasonable to accomplish a lawful police objective; and
- i) immediately following a use of force, officers, and, upon arrival, a supervisor, shall inspect and observe subjects of force for injury or complaints of pain resulting from the use of force and immediately obtain any necessary medical care. This may require an officer to provide emergency first aid until professional medical care providers arrive on scene.

15. APD shall develop and implement an overarching agency-wide use of force policy that complies with applicable law and comports with best practices. The use of force policy shall include all force techniques, technologies, and weapons, both lethal and less lethal, that are available to APD officers, including authorized weapons, and weapons that are made available only to specialized units. The use of force policy shall clearly define and describe each force option and the factors officers should consider in determining which use of such force is appropriate. The use of force policy will incorporate the use of force principles and factors

articulated above and shall specify that the use of unreasonable force will subject officers to discipline, possible criminal prosecution, and/or civil liability.

16. In addition to the overarching use of force policy, APD agrees to develop and implement protocols for each weapon, tactic, or use of force authorized by APD, including procedures for each of the types of force addressed below. The specific use of force protocols shall be consistent with the use of force principles in Paragraph 14 and the overarching use of force policy.

17. Officers shall carry only those weapons that have been authorized by the Department. Modifications or additions to weapons shall only be performed by the Department's Armorer as approved by the Chief. APD use of force policies shall include training and certification requirements that each officer must meet before being permitted to carry and use authorized weapons.

B. Use of Firearms

18. Officers shall carry or use only agency-approved firearms and ammunition while on duty.

19. APD issued Special Order 14-32 requiring all officers to carry a Department-issued handgun while on duty. APD shall revise its force policies and protocols to reflect this requirement and shall implement a plan that provides: (a) a timetable for implementation; (b) sufficient training courses to allow officers to gain proficiency and meet qualification requirements within a specified period; and (c) protocols to track and control the inventory and issuance of handguns.

20. Officers shall be required to successfully qualify with each firearm that they are authorized to use or carry on-duty at least once each year. Officers who fail to qualify on their primary weapon system shall complete immediate remedial training. Those officers who still fail

to qualify after remedial training shall immediately relinquish APD-issued firearms on which they failed to qualify. Those officers who still fail to qualify within a reasonable time shall immediately be placed in an administrative assignment and will be subject to administrative and/or disciplinary action, up to and including termination of employment.

21. APD training shall continue to require and instruct proper techniques for unholstering, drawing, or exhibiting a firearm.

22. APD shall adopt a policy that prohibits officers from discharging a firearm from a moving vehicle or at a moving vehicle, including shooting to disable a moving vehicle, unless an occupant of the vehicle is using lethal force, other than the vehicle itself, against the officer or another person, and such action is necessary for self-defense, defense of other officers, or to protect another person. Officers shall not intentionally place themselves in the path of, or reach inside, a moving vehicle.

23. APD shall track all critical firearm discharges. APD shall include all critical firearm discharges and discharges at animals in its Early Intervention System and document such discharges in its use of force annual report.

C. Electronic Control Weapons

24. ECWs shall not be used solely as a compliance technique or to overcome passive resistance. Officers may use ECWs only when such force is necessary to protect the officer, the subject, or another person from physical harm and after considering less intrusive means based on the threat or resistance encountered. Officers are authorized to use ECWs to control an actively resistant person when attempts to subdue the person by other tactics have been, or will likely be, ineffective and there is a reasonable expectation that it will be unsafe for officers to approach the person within contact range.

25. Unless doing so would place any person at risk, officers shall issue a verbal warning to the subject that the ECW will be used prior to discharging an ECW on the subject. Where feasible, the officer will defer ECW application for a reasonable time to allow the subject to comply with the warning.

26. ECWs will not be used where such deployment poses a substantial risk of serious physical injury or death from situational hazards, except where lethal force would be permitted. Situational hazards include falling from an elevated position, drowning, losing control of a moving motor vehicle or bicycle, or the known presence of an explosive or flammable material or substance.

27. Continuous cycling of ECWs is permitted only under exceptional circumstances where it is necessary to handcuff a subject under power. Officers shall be trained to attempt hands-on control tactics during ECW applications, including handcuffing the subject during ECW application (i.e., handcuffing under power). After one standard ECW cycle (5 seconds), the officer shall reevaluate the situation to determine if subsequent cycles are necessary. Officers shall consider that exposure to the ECW for longer than 15 seconds (whether due to multiple applications or continuous cycling) may increase the risk of death or serious injury. Officers shall also weigh the risks of subsequent or continuous cycles against other force options. Officers shall independently justify each cycle or continuous cycle of five seconds against the subject in Use of Force Reports

28. ECWs shall not be used solely in drive-stun mode as a pain compliance technique. ECWs may be used in drive-stun mode only to supplement the probe mode to complete the incapacitation circuit, or as a countermeasure to gain separation between officers and the subject, so that officers can consider another force option.

29. Officers shall determine the reasonableness of ECW use based upon all circumstances, including the subject's age, size, physical condition, and the feasibility of lesser force options. ECWs should generally not be used against visibly pregnant women, elderly persons, young children, or visibly frail persons. In some cases, other control techniques may be more appropriate as determined by the subject's threat level to themselves or others. Officers shall be trained on the increased risks that ECWs may present to the above-listed vulnerable populations.

30. Officers shall not intentionally target a subject's head, neck, or genitalia, except where lethal force would be permitted, or where the officer has reasonable cause to believe there is an imminent risk of serious physical injury.

31. ECWs shall not be used on handcuffed subjects, unless doing so is necessary to prevent them from causing serious physical injury to themselves or others, and if lesser attempts of control have been ineffective.

32. Officers shall keep ECWs in a weak-side holster to reduce the chances of accidentally drawing and/or firing a firearm.

33. Officers shall receive annual ECW certifications, which should consist of physical competency; weapon retention; APD policy, including any policy changes; technology changes; and scenario- and judgment-based training.

34. Officers shall be trained in and follow protocols developed by APD, in conjunction with medical professionals, on their responsibilities following ECW use, including:

- a) removing ECW probes, including the requirements described in Paragraph 35;
- b) understanding risks of positional asphyxia, and training officers to use restraint techniques that do not impair the subject's respiration following an ECW application;

- c) monitoring all subjects of force who have received an ECW application while in police custody; and
- d) informing medical personnel of all subjects who: have been subjected to ECW applications, including prolonged applications (more than 15 seconds); are under the influence of drugs and/or exhibiting symptoms associated with excited delirium; or were kept in prone restraints after ECW use.

35. The City shall ensure that all subjects who have been exposed to ECW application shall receive a medical evaluation by emergency medical responders in the field or at a medical facility. Absent exigent circumstances, probes will only be removed from a subject's skin by medical personnel.

36. Officers shall immediately notify their supervisor and the communications command center of all ECW discharges (except for training discharges).

37. APD agrees to develop and implement integrity safeguards on the use of ECWs to ensure compliance with APD policy. APD agrees to implement a protocol for quarterly downloads and audits of all ECWs. APD agrees to conduct random and directed audits of ECW deployment data. The audits should compare the downloaded data to the officer's Use of Force Reports. Discrepancies within the audit should be addressed and appropriately investigated.

38. APD agrees to include the number of ECWs in operation and assigned to officers, and the number of ECW uses, as elements of the Early Intervention System. Analysis of this data shall include a determination of whether ECWs result in an increase in the use of force, and whether officer and subject injuries are affected by the rate of ECW use. Probe deployments, except those described in Paragraph 30, shall not be considered injuries. APD shall track all ECW laser painting and arcing and their effects on compliance rates as part of its data collection and analysis. ECW data analysis shall be included in APD's use of force annual report.

D. Crowd Control and Incident Management

39. APD shall maintain crowd control and incident management policies that comply with applicable law and best practices. At a minimum, the incident management policies shall:

- a) define APD's mission during mass demonstrations, civil disturbances, or other crowded situations;
- b) encourage the peaceful and lawful gathering of individuals and include strategies for crowd containment, crowd redirecting, and planned responses;
- c) require the use of crowd control techniques that safeguard the fundamental rights of individuals who gather or speak out legally; and
- d) continue to prohibit the use of canines for crowd control.

40. APD shall require an after-action review of law enforcement activities following each response to mass demonstrations, civil disturbances, or other crowded situations to ensure compliance with applicable laws, best practices, and APD policies and procedures.

E. Use of Force Reporting

41. Uses of force will be divided into three levels for reporting, investigating, and reviewing purposes. APD shall develop and implement a use of force reporting policy and Use of Force Report Form that comply with applicable law and comport with best practices. The use of force reporting policy will require officers to immediately notify their immediate, on-duty supervisor within their chain of command following any use of force, prisoner injury, or allegation of any use of force. Personnel who have knowledge of a use of force by another officer will immediately report the incident to an on-duty supervisor. This reporting requirement also applies to off-duty officers engaged in enforcement action.

42. The use of force reporting policy shall require all officers to provide a written or recorded use of force narrative of the facts leading to the use of force to the supervisor conducting the review or the APD officer conducting the investigation. The written or recorded

narrative will include: (a) a detailed account of the incident from the officer's perspective; (b) the reason for the initial police presence; (c) a specific description of the acts that led to the use of force, including the subject's behavior; (d) the level of resistance encountered; and (e) a description of each type of force used and justification for each use of force. Officers shall not merely use boilerplate or conclusory language but must include specific facts and circumstances that led to the use of force.

43. Failure to report a use of force or prisoner injury by an APD officer shall subject officers to disciplinary action.

44. APD policy shall require officers to request medical services immediately when an individual is injured or complains of injury following a use of force. The policy shall also require officers who transport a civilian to a medical facility for treatment to take the safest and most direct route to the medical facility. The policy shall further require that officers notify the communications command center of the starting and ending mileage on the transporting vehicle.

45. APD shall require officers to activate on-body recording systems and record all use of force encounters. Consistent with Paragraph 228 below, officers who do not record use of force encounters shall be subject to discipline, up to and including termination.

F. Force Reviews and Investigations

46. The three levels of use of force will have different kinds of departmental review. All uses of force by APD shall be subject to supervisory review, and Level 2 and Level 3 uses of force are subject to force investigations as set forth below. All force reviews and investigations shall comply with applicable law and comport with best practices. All force reviews and investigations shall determine whether each involved officer's conduct was legally justified and complied with APD policy.

47. The quality of supervisory force reviews shall be taken into account in the performance evaluations of the officers performing such reviews.

48. APD agrees to develop and implement force classification procedures that include at least three categories of types of force that will determine the force review or investigation required. The categories or types of force shall be based on the level of force used and the risk of injury or actual injury from the use of force. The goal is to promote greater efficiency and reduce burdens on first-line supervisors, while optimizing critical investigative resources on higher-risk uses of force. The levels of force are defined as follow:

- a. Level 1 is force that is likely to cause only transitory pain, disorientation, or discomfort during its application as a means of gaining compliance. This includes techniques which are not reasonably expected to cause injury, do not result in actual injury, and are not likely to result in a complaint of injury (i.e., pain compliance techniques and resisted handcuffing). Pointing a firearm, beanbag shotgun, or 40 millimeter launcher at a subject, or using an ECW to “paint” a subject with the laser sight, as a show of force are reportable as Level 1 force. Level 1 force does not include interaction meant to guide, assist, or control a subject who is offering minimal resistance.
- b. Level 2 is force that causes injury, could reasonably be expected to cause injury, or results in a complaint of injury. Level 2 force includes use of an ECW, including where an ECW is fired at a subject but misses; use of a beanbag shotgun or 40 millimeter launcher, including where it is fired at a subject but misses; OC Spray application; empty hand techniques (i.e., strikes, kicks, takedowns, distraction techniques, or leg sweeps); and strikes with impact

weapons, except strikes to the head, neck, or throat, which would be considered a Level 3 use of force.

- c. Level 3 is force that results in, or could reasonably result in, serious physical injury, hospitalization, or death. Level 3 force includes all lethal force; critical firearms discharges; all head, neck, and throat strikes with an object; neck holds; canine bites; three or more uses of an ECW on an individual during a single interaction regardless of mode or duration or an ECW application for longer than 15 seconds, whether continuous or consecutive; four or more strikes with a baton; any strike, blow, kick, ECW application, or similar use of force against a handcuffed subject; and uses of force resulting in a loss of consciousness. As set forth in Paragraphs 81-85 below, APD shall continue to participate in the Multi-Agency Task Force, pursuant to its Memorandum of Understanding, in order to conduct criminal investigations of at least the following types of force or incidents: (a) officer-involved shootings; (b) serious uses of force as defined by the Memorandum of Understanding; (c) in-custody deaths; and (d) other incidents resulting in death at the discretion of the Chief.

49. Under the force classification procedures, officers who use Level 1 force shall report the force to their supervisor as required by Paragraph 42; Level 1 uses of force that do not indicate apparent criminal conduct by an officer will be reviewed by the chain of command of the officer using force. Level 2 and 3 uses of force shall be investigated by the Internal Affairs Division, as described below. When a use of force or other incident is under criminal investigation by the Multi-Agency Task Force, APD's Internal Affairs Division will conduct the administrative investigation. Pursuant to its Memorandum of Understanding, the Multi-Agency

Task Force shall periodically share information and coordinate with the Internal Affairs Division, as appropriate and in accordance with applicable laws, to ensure timely and thorough administrative investigations of uses of force.

1. Supervisory Force Reviews

50. The supervisor of an officer using force shall respond to the scene of all Level 1, 2, and 3 uses of force to ensure that the use of force is classified according to APD's force classification procedures. For Level 2 and Level 3 uses of force, the supervisor shall ensure that the Force Investigation Section of the Internal Affairs Division is immediately notified and dispatched to the scene of the incident to initiate the force investigation.

51. A supervisor who was involved in a reportable use of force, including by participating in or ordering the force being reviewed, shall not review the incident or Use of Force Reports for approval.

52. For all supervisory reviews of Level 1 uses of force, the supervisor shall:

- a) respond to the scene and immediately identify the officer(s) involved in Level 1 use of force;
- b) review the involved officer's lapel video, determining whether the incident involves a Level 1 use of force;
- c) review the lapel video of other officers on-scene where uncertainty remains about whether the incident rises to a Level 2 or Level 3 use of force;
- d) examine personnel and the subject for injuries and request medical attention where appropriate.;
- e) contact the Internal Affairs Division to conduct a Level 2 or Level 3 use of force investigation if lapel video does not affirm a Level 1 use of force;
- f) gather any evidence located at the scene of the Level 1 use of force;
- g) capture photographs of the officer(s) and subject involved in the Level 1 use of force;
- h) require the submission of a Use of Force Report from the involved officer by the end of shift; and

- i) conduct any other fact-gathering activities while on-scene, as necessary, to reach reliable conclusions regarding the officer's use of Level 1 force.

53. Each supervisor shall complete and document a supervisory force review of a Level 1 Use of Force within 72 hours of the use of force. Any extension of this 72-hour deadline must be authorized by a Commander. This review shall include:

- a) all written or recorded use of force narratives or statements provided by personnel or others;
- b) documentation of all evidence that was gathered, including names, phone numbers, and addresses of witnesses to the incident. In situations in which there are no known witnesses, the report shall specifically state this fact. In situations in which witnesses were present but circumstances prevented the author of the report from determining the identification, phone number, or address of the witnesses, the report shall state the reasons why. The report should also include all available identifying information for anyone who refuses to provide a statement;
- c) the names of all other APD employees witnessing the use of force;
- d) the supervisor's narrative evaluating the use of force, based on the supervisor's analysis of the evidence gathered, including a determination of whether the officer's actions complied with APD policy and state and federal law; and an assessment of the incident for tactical and training implications, including whether the use of force could have been avoided through the use of de-escalation techniques and
- e) documentation that additional issues of concern not related to the use of force incident have been identified and addressed by separate memorandum.

54. Upon completion of the review, the reviewing supervisor shall forward the review through his or her chain of command to the Commander, who shall review the entry to ensure that it is complete and that the findings are supported using the preponderance of the evidence standard. The Commander shall order additional review when it appears that there is additional relevant evidence that may assist in resolving inconsistencies or improving the reliability or credibility of the findings. These reviews shall be completed electronically and tracked in an automated database within the Internal Affairs Division.

55. Where the findings of the supervisory review are not supported by a preponderance of the evidence, the supervisor's Commander shall document the reasons for this determination and shall include this documentation as an addendum to the original review. The supervisor's superior shall take appropriate action to address the inadequately supported determination and any deficiencies that led to it. Commanders shall be responsible for the accuracy and completeness of the Level 1 force reviews prepared by supervisors under their command.

56. Where a supervisor repeatedly conducts deficient supervisory force reviews, the supervisor shall receive the appropriate corrective and/or disciplinary action, including training, demotion, and/or removal from a supervisory position in accordance with performance evaluation procedures and consistent with any existing collective bargaining agreements, personnel rules, Labor Management Relations Ordinance, Merit System Ordinance, regulations, or administrative rules. Whenever a supervisor or Commander finds evidence of a use of force indicating apparent criminal conduct by an officer, the supervisor or Commander shall suspend the supervisory force review immediately and notify the Internal Affairs Division and the Chief. The Force Investigation Section of the Internal Affairs Division shall immediately initiate the administrative and criminal investigation.

57. When the Commander finds that the supervisory force review is complete and the findings are supported by the evidence, the file shall be forwarded to the Performance Review Unit of the Compliance Bureau. The Performance Review Unit shall review the supervisory force review to ensure that it is complete and that the findings are supported by the evidence. The Performance Review Unit shall ensure that the file is forwarded to the Internal Affairs Division for recordkeeping. Where the Performance Review Unit of the Compliance Bureau

determines that a supervisory force review, which has been completed by the supervisor and reviewed by the chain of command, is deficient, the Performance Review Unit shall forward the review to the supervisor for correction. Any performance deficiencies in the investigation or review will be noted in the affected Commander's performance records.

58. At the discretion of the Chief, a supervisory force review may be assigned or re-assigned to another supervisor, whether within or outside of the Command in which the incident occurred, or may be returned to the original supervisor for further review or analysis. This assignment or re-assignment shall be explained in writing.

59. Where, after a supervisory force review, a use of force is found to violate policy, the Chief shall direct and ensure appropriate discipline and/or corrective action. Where the use of force indicates policy, training, tactical, or equipment concerns, the Chief shall also ensure that necessary training is delivered and that policy, tactical, or equipment concerns are resolved.

2. Force Investigations by the Internal Affairs Division

60. The Force Investigation Section of the Internal Affairs Division shall respond to the scene and conduct investigations of Level 2 and Level 3 uses of force, uses of force indicating apparent criminal conduct by an officer, uses of force by APD personnel of a rank higher than sergeant, or uses of force reassigned to the Internal Affairs Division by the Chief. In cases where an investigator in the Force Investigation Section initiates a Level 2 or Level 3 use of force investigation and identifies indications of apparent criminal conduct, the Section shall refer the use of force to an investigator in the Section, with no involvement in the initial administrative investigation into the Level 2 or 3 use of force, to conduct a criminal investigation. The criminal investigation shall remain separate from and independent of any administrative investigation. In instances where the Multi-Agency Task Force is conducting the

criminal investigation of a use of force, the Internal Affairs Division shall conduct the administrative investigation.

61. The Force Investigation Section of the Internal Affairs Division will be responsible for conducting both criminal and administrative investigations, except as stated in Paragraph 60. The Force Investigation Section of the Internal Affairs Division shall include sufficient personnel who are specially trained in both criminal and administrative investigations.

62. Within six months from the Operational Date, APD shall revise the Internal Affairs Division manual to include the following:

- a) definitions of all relevant terms;
- b) procedures on report writing;
- c) procedures for collecting and processing evidence;
- d) procedures to ensure appropriate separation of criminal and administrative investigations in the event of compelled subject officer statements;
- e) procedures for consulting with the District Attorney's Office or the USAO, as appropriate, including ensuring that administrative investigations are not unnecessarily delayed while a criminal investigation is pending;
- f) scene management procedures; and
- g) management procedures.

63. Within 39 months from the Operational Date, APD shall ensure that there are sufficient trained personnel assigned to the Internal Affairs Division and Force Investigation Section to fulfill the requirements of this Agreement. APD shall ensure that all Level 2 and Level 3 uses of force are investigated fully and fairly by individuals with appropriate expertise, independence, and investigative skills so that uses of force that are contrary to law or policy are identified and appropriately resolved; that policy, training, equipment, or tactical deficiencies related to the use of force are identified and corrected; and that investigations of sufficient

quality are conducted so that officers can be held accountable, if necessary. At the discretion of the Chief, APD may hire and retain personnel, or reassign current APD employees, with sufficient expertise and skills to the Internal Affairs Division or Force Investigation Section

64. Before performing force investigations, Force Investigation Section personnel shall receive force investigation training that includes, at a minimum, the following areas: force investigation procedures; call-out and investigative protocols; proper roles of on-scene counterparts such as crime scene technicians, the Office of the Medical Investigator, District Attorney staff, the Multi-Agency Task Force, City Attorney staff, and Civilian Police Oversight Agency staff; and investigative equipment and techniques. Force Investigation Section personnel shall also receive force investigation annual in-service training.

65. Where appropriate to ensure the fact and appearance of impartiality and with the authorization of the Chief, APD may refer a use of force indicating apparent criminal conduct by an officer to the Multi-Agency Task Force for criminal investigation.

66. To ensure that criminal and administrative investigations remain separate, APD's Violent Crimes Section may support the Force Investigation Section of the Internal Affairs Division or the Multi-Agency Task Force in the investigation of any Level 2 or Level 3 use of force, as defined by this Agreement, including critical firearm discharges, in-custody deaths, or police-initiated actions in which a death or serious physical injury occurs.

67. The Chief shall notify and consult with the District Attorney's Office, the Federal Bureau of Investigation, and/or the USAO, as appropriate, regarding any use of force indicating apparent criminal conduct by an officer or evidence of criminal conduct by an officer discovered during a misconduct investigation.

68. If APD initiates a criminal investigation, or where APD requests a criminal prosecution, the Force Investigation Section will delay any compelled interview of the target officer(s) pending consultation with the District Attorney's Office or the USAO, consistent with Paragraph 186. No other part of the administrative investigation shall be held in abeyance unless specifically authorized by the Chief in consultation with the agency conducting the criminal investigation.

69. In conducting its investigations of Level 2 or Level 3 uses of force, as defined in this Agreement, the Force Investigation Section shall:

- a) respond to the scene and consult with the on-scene supervisor to ensure that all personnel and subject(s) of use of force have been examined for injuries, that the use of force has been classified according to APD's classification procedures, that subject(s) have been interviewed for complaints of pain after advising the subject(s) of his or her rights, and that all officers and/or subject(s) have received medical attention, if applicable;
- b) ensure that all evidence to establish material facts related to the use of force, including but not limited to audio and video recordings, photographs, and other documentation of injuries or the absence of injuries is collected;
- c) ensure that a canvass for, and interview of, witnesses is conducted. In addition, witnesses should be encouraged to provide and sign a written statement in their own words;
- d) ensure, consistent with applicable law, that all officers witnessing a Level 2 or Level 3 use of force by another officer provide a use of force narrative of the facts leading to the use of force;
- e) provide a written admonishment to involved and witness officer(s) to the use of force that they are not to speak about the force incident with anyone until they are interviewed by the investigator of the Force Investigation Section;
- f) conduct only one-on-one interviews with involved and witness officers;
- g) review all Use of Force Reports to ensure that these statements include the information required by this Agreement and APD policy;
- h) ensure that all Use of Force Reports identify all officers who were involved in the incident, witnessed the incident, or were on the scene when it occurred;

- i) conduct investigations in a rigorous manner designed to determine the facts and, when conducting interviews, avoid asking leading questions and never ask officers or other witnesses any questions that may suggest legal justifications for the officers' conduct;
- j) record all interviews;
- k) consider all relevant evidence, including circumstantial, direct, and physical evidence, as appropriate, and make credibility determinations, if feasible;
- l) make all reasonable efforts to resolve material inconsistencies between the officer, subject, and witness statements, as well as inconsistencies between the level of force described by the officer and any injuries to personnel or subjects; and
- m) train all Internal Affairs Division force investigators on the factors to consider when evaluating credibility, incorporating credibility instructions provided to jurors.

70. The Force Investigation Section shall complete an initial Use of Force Data Report through the chain of command to the Chief as soon as possible, but in no circumstances later than 24 hours after learning of the use of force.

71. The Force Investigation Section shall complete Level 2 or Level 3 administrative investigations within three months after learning of the use of force. Any request for an extension to this time limit must be approved by the commanding officer of the Force Investigation Section through consultation with the Chief or by the Chief. At the conclusion of each use of force investigation, the Force Investigation Section shall prepare an investigation report. The report shall include:

- a) a narrative description of the incident, including a precise description of the evidence that either justifies or fails to justify the officer's conduct based on the Force Investigation Section's independent review of the facts and circumstances of the incident;
- b) documentation of all evidence that was gathered, including names, phone numbers, addresses of witnesses to the incident, and all underlying Use of Force Data Reports. In situations in which there are no known witnesses, the report shall specifically state this fact. In situations in which witnesses were present but circumstances prevented the author of the report from determining the

identification, phone number, or address of those witnesses, the report shall state the reasons why. The report should also include all available identifying information for anyone who refuses to provide a statement;

- c) the names of all other APD officers or employees witnessing the use of force;
- d) the Force Investigation Section's narrative evaluating the use of force, based on the evidence gathered, including a determination of whether the officer's actions complied with APD policy and state and federal law; and an assessment of the incident for tactical and training implications, including whether the use of force could have been avoided through the use of de-escalation techniques or lesser force options;
- e) if a weapon was used by an officer, documentation that the officer's certification and training for the weapon were current at the time of the incident; and
- f) the complete disciplinary history of the target officers involved in the use of force.

72. Upon completion of the Force Investigation Section investigation report, the Force Investigation Section investigator shall forward the report through his or her chain of command to the commanding officer of the Internal Affairs Division. The Internal Affairs Division commanding officer shall review the report to ensure that it is complete and that, for administrative investigations, the findings are supported using the preponderance of the evidence standard. The Internal Affairs Division commanding officer shall order additional investigation when it appears that there is additional relevant evidence that may assist in resolving inconsistencies or improve the reliability or credibility of the findings.

73. For administrative investigations, where the findings of the Force Investigation Section investigation are not supported by a preponderance of the evidence, the Internal Affairs Division commanding officer shall document the reasons for this determination and shall include this documentation as an addendum to the original investigation report. The commanding officer of the Internal Affairs Division shall take appropriate action to address any inadequately supported determination and any investigative deficiencies that led to it. The Internal Affairs

Division commanding officer shall be responsible for the accuracy and completeness of investigation reports prepared by the Internal Affairs Division.

74. Where a member of the Force Investigation Section repeatedly conducts deficient force investigations, the member shall receive the appropriate corrective and/or disciplinary action, including training or removal from the Force Investigation Section in accordance with performance evaluation procedures and consistent with any existing collective bargaining agreements, personnel rules, Labor Management Relations Ordinance, Merit System Ordinance, regulations, or administrative rules.

75. When the commanding officer of the Internal Affairs Division determines that the force investigation is complete and the findings are supported by the evidence, the investigation report file shall be forwarded to the Force Review Board with copy to the Chief.

76. At the discretion of the Chief, a force investigation may be assigned or re-assigned for investigation to the Multi-Agency Task Force or the Federal Bureau of Investigations, or may be returned to the Force Investigation Section for further investigation or analysis. This assignment or re-assignment shall be confirmed in writing.

77. Where, after an administrative force investigation, a use of force is found to violate policy, the Chief shall direct and ensure appropriate discipline and/or corrective action. Where a force investigation indicates apparent criminal conduct by an officer, the Chief shall ensure that the Internal Affairs Division or the Multi-Agency Task Force consults with the District Attorney's Office or the USAO, as appropriate. The Chief need not delay the imposition of discipline until the outcome of the criminal investigation. In use of force investigations, where the incident indicates policy, training, tactical, or equipment concerns, the Chief shall

ensure that necessary training is delivered and that policy, tactical, or equipment concerns are resolved.

G. Force Review Board

78. APD shall develop and implement a Force Review Board to review Level 2 and Level 3 uses of force. The Force Review Board shall be comprised of at least the following members: Deputy Chief of the Administrative Support Bureau, Deputy Chief of the Field Services Bureau, the Deputy Chief of the Investigative Bureau, a Field Services Commander, the Academy Division Commander, and the Legal Advisor. The Force Review Board shall conduct timely, comprehensive, and reliable reviews of Level 2 and Level 3 use of force investigations.

The Force Review Board shall:

- a) review each use of force investigation completed by the Force Investigation Section within 30 days of receiving the investigation report to ensure that it is complete and, for administrative investigations, that the findings are supported by a preponderance of the evidence;
- b) hear the case presentation from the lead investigator and discuss the case as necessary with the investigator to gain a full understanding of the facts of the incident. The officer(s) who used the force subject to investigation, or who are otherwise the subject(s) of the Internal Affairs Division investigation, shall not be present;
- c) order additional investigation when it appears that there is additional relevant evidence that may assist in resolving inconsistencies or improve the reliability or credibility of the force investigation findings. For administrative investigations, where the findings are not supported by a preponderance of the evidence, the Force Review Board shall document the reasons for this determination, which shall be included as an addendum to the original force investigation, including the specific evidence or analysis supporting their conclusions;
- d) determine whether the use of force violated APD policy. If the use of force violated APD policy, the Force Review Board shall refer it to the Chief for appropriate disciplinary and/or corrective action;
- e) determine whether the incident raises policy, training, equipment, or tactical concerns, and refer such incidents to the appropriate unit within APD to ensure the concerns are resolved;

- f) document its findings and recommendations in a Force Review Board Report within 45 days of receiving the completed use of force investigation and within 15 days of the Force Review Board case presentation; and
- g) review and analyze use of force data, on at least a quarterly basis, to determine significant trends and to identify and correct deficiencies revealed by this analysis.

79. At least annually, APD shall publish a Use of Force Annual Report. At a minimum, the following information should be included in the Annual Use of Force Report:

- a) number of calls for service;
- b) number of officer-initiated actions;
- c) number of aggregate uses of force, and uses of force by Level;
- d) number of arrests;
- e) number of custodial arrests that involved use of force;
- f) number of SWAT deployments by type of call out;
- g) number of incidents involving officers shooting at or from moving vehicles;
- h) number of individuals armed with weapons;
- i) number of individuals unarmed;
- j) number of individuals injured during arrest, including APD and other law enforcement personnel;
- k) number of individuals requiring hospitalization, including APD and other law enforcement personnel;
- l) demographic category; and
- m) geographic data, including street, location, or Area Command.

80. APD shall be responsible for maintaining a reliable and accurate tracking system on all officers' use of force; all force reviews carried out by supervisors; all force investigations carried out by the Force Investigation Section, Internal Affairs Division, or Multi-Agency Task Force; and all force reviews conducted by the Performance Review Unit of the Compliance

Bureau and the Force Review Board. APD shall integrate the use of force tracking system with the Early Intervention System database and shall utilize the tracking system to collect and analyze use of force data to prepare the Use of Force Annual Report and other reports, as necessary.

H. Multi-Agency Task Force

81. APD shall continue to participate in the Multi-Agency Task Force for as long as the Memorandum of Understanding continues to exist. APD agrees to confer with participating jurisdictions to ensure that inter-governmental agreements that govern the Multi-Agency Task Force are current and effective. APD shall ensure that the inter-governmental agreements are consistent with this Agreement.

82. APD agrees to consult with participating jurisdictions to establish investigative protocols for the Multi-Agency Task Force. The protocols shall clearly define the purpose of the Multi-Agency Task Force; describe the roles and responsibilities of participating agencies, including the role of the lead investigative agency; and provide for ongoing coordination among participating agencies and consultation with pertinent prosecuting authorities.

83. APD agrees to consult and coordinate with the Multi-Agency Task Force on the release of evidence, including video recordings of uses of force, and dissemination of information to preserve the integrity of active criminal investigations involving APD personnel.

84. APD agrees to participate in all briefings of incidents involving APD personnel that are investigated by the Multi-Agency Task Force.

85. If the Memorandum of Understanding governing the Multi-Agency Task Force expires or otherwise terminates, or APD withdraws from the Multi-Agency Task Force, APD shall perform all investigations that would have otherwise been conducted pursuant to the Memorandum of Understanding. This Agreement does not prevent APD from entering into

other investigative Memoranda of Understanding with other law enforcement agencies to conduct criminal investigation of officer-involved shootings, serious uses of force, and in-custody deaths.

I. Use of Force Training

86. Within 36 months of the Operational Date, APD will review all use of force policies and training to ensure they incorporate, and are consistent with, the Constitution and provisions of this Agreement. APD shall also provide all APD officers with 40 hours of use of force training within 12 months of the Operational Date, and 24 hours of use of force training on at least an annual basis thereafter, including, as necessary, training on developments in applicable law and APD policy.

87. APD's use of force training for all officers shall be based upon constitutional principles and APD policy and shall include the following topics:

- a) search and seizure law, including the Fourth Amendment and related law;
- b) APD's use of force policy, use of force reporting requirements, and the importance of properly documenting use of force incidents;
- c) use of force decision-making, based upon constitutional principles and APD policy, including interactions with individuals who are intoxicated, or who have a mental, intellectual, or physical disability;
- d) use of de-escalation strategies;
- e) scenario-based training and interactive exercises that demonstrate use of force decision-making and de-escalation strategies;
- f) deployment and use of all weapons or technologies, including firearms, ECWs, and on-body recording systems;
- g) crowd control; and
- h) initiating and disengaging foot pursuits.

88. Supervisors of all ranks, including those assigned to the Internal Affairs Division, as part of their initial and annual in-service supervisory training, shall receive additional training that includes:

- a) conducting use of force reviews or investigations, including evaluating officer, subject, and witness credibility;
- b) strategies for effectively directing officers to minimize uses of force and to intervene effectively to prevent or stop unreasonable force;
- c) incident management; and
- d) supporting officers who report unreasonable or unreported force, or who are retaliated against for using only reasonable force or attempting to prevent unreasonable force.

89. Included in the use of force training set out above, APD shall deliver firearms training that comports with constitutional principles and APD policy to all officers within 12 months of the Operational Date and at least yearly thereafter. APD firearms training shall:

- a) require officers to complete and satisfactorily pass firearms training and qualify for regulation and other service firearms, as necessary, on an annual basis;
- b) require recruits, officers in probationary periods, and officers who return from unarmed status to complete and satisfactorily pass firearm training and qualify for regulation and other service firearms before such personnel are permitted to carry and use firearms;
- c) incorporate professional low-light training, stress training (e.g., training in using a firearm after undergoing physical exertion), and proper use of force decision-making training, including continuous threat assessment techniques, in the annual in-service training program; and
- d) ensure that firearm instructors critically observe students and provide corrective instruction regarding deficient firearm techniques and failure to utilize safe gun handling procedures at all times.

V. SPECIALIZED UNITS

90. To maintain high-level, quality service; to ensure officer safety and accountability; and to promote constitutional, effective policing, APD shall operate and manage its specialized units in a manner that increases the likelihood of safely resolving critical incidents

and high-risk situations, prioritizes saving lives in accordance with the totality of the circumstances, provides for effective command-level accountability, and ensures force is used in strict compliance with applicable law, best practices, and this Agreement. To achieve these outcomes, APD shall implement the requirements set out below.

A. Specialized Tactical Units

91. APD's specialized tactical units shall be comprised of law enforcement officers who are selected, trained, and equipped to respond as a coordinated team to resolve critical incidents that exceed the capabilities of first responders or investigative units. The specialized tactical units shall consist of SWAT, Canine, and Bomb Squad/EOD.

92. APD shall ensure that specialized tactical units are sufficiently trained to complete the following basic operational functions: Command and Control; Containment; and Entry, Apprehension, and Rescue.

93. Each specialized tactical unit shall have clearly defined missions and duties. Each specialized tactical unit shall develop and implement policies and standard operating procedures that incorporate APD's agency-wide policies on use of force, force reporting, and force investigations.

94. APD policies and procedures on specialized tactical units shall include the following topics:

- a) team organization and function, including command relationships with the incident commander, Field Services Bureau, other specialized investigative units, Crisis Negotiation Team, Crisis Intervention Unit, crisis intervention certified responders, and any other joint or support elements to ensure clear lines of responsibility;
- b) coordinating and implementing tactical operations in emergency life-threatening situations, including situations where an officer's view may be obstructed;
- c) personnel selection and retention criteria and mandated physical and tactical competency of team members, team leaders, and unit commanders;

- d) training requirements with minimum time periods to develop and maintain critical skills to include new member initial training, monthly training, special assignment training, and annual training;
- e) equipment appropriation, maintenance, care, and inventory;
- f) activation and deployment protocols, including when to notify and request additional services;
- g) conducting threat assessments to determine the appropriate responses and necessary resources;
- h) command and control issues, including a clearly defined command structure; and
- i) documented after-action reviews and reports.

95. The policies and standard operating procedures of specialized tactical units shall be reviewed at least annually and revisions shall be based, at a minimum, on legal developments, training updates, operational evaluations examining actual practice from after-action reviews, and reviews by the Force Review Board or other advisory or oversight entities established by this Agreement.

96. In addition to Use of Force Reports, APD shall require specialized tactical units to document their activities in detail, including written operational plans and after-action reports created after call-outs and deployments to critical situations. After-action reports shall address any areas of concern related to policy, training, equipment, or tactics.

97. APD shall require specialized tactical units to conduct mission briefings before an operation, unless exigent circumstances require an immediate deployment. APD shall also ensure that specialized tactical team members designate personnel to develop and implement operational and tactical plans before and during tactical operations. All specialized tactical team members should have an understanding of operational planning.

98. All specialized tactical units shall wear uniforms that clearly identify them as law enforcement officers.

99. All specialized tactical unit deployments shall be reviewed by the Force Review Board in order to analyze and critique specialized response protocols and identify any policy, training, equipment, or tactical concerns raised by the action. The Force Review Board shall identify areas of concern or particular successes and implement the appropriate response, including modifications to policy, training, equipment, or tactics.

100. APD shall establish eligibility criteria for all team members, team leaders, and supervisors assigned to tactical units and conduct at least annual reviews of unit team members to ensure that they meet delineated criteria.

101. APD shall train specialized tactical units conducting barricaded gunman operations on competencies and procedures that include: threat assessment to determine the appropriate response and resources necessary, mission analysis, determination of criminal offense, determination of mental illness, requirements for search warrant prior to entry, communication procedures, and integration of the Crisis Negotiation Team, the Crisis Intervention Unit, and crisis intervention certified responders.

102. APD shall continue to require the Canine Unit to complete thorough post-deployment reviews of all canine deployments.

103. APD shall continue to track canine deployments and canine apprehensions, and to calculate and track canine bite ratios on a monthly basis to assess its Canine Unit and individual Canine teams.

104. APD shall include canine bite ratios as an element of the Early Intervention System and shall provide for the review, pursuant to the protocol for that system, of the performance of any handler whose bite ratio exceeds 20 percent during a six-month period, or

the entire unit if the unit's bite ratio exceeds that threshold, and require interventions as appropriate. Canine data and analysis shall be included in APD Use of Force Annual Report.

105. APD agrees to track and analyze the number of specialized tactical unit deployments. The analysis shall include the reason for each tactical deployment and the result of each deployment, to include: (a) the location; (b) the number of arrests; (c) whether a forcible entry was required; (d) whether a weapon was discharged by a specialized tactical unit member; (e) whether a person or domestic animal was injured or killed; and (f) the type of tactical equipment deployed. This data analysis shall be entered into the Early Intervention System and included in APD's annual reports.

B. Specialized Investigative Units

106. Each specialized investigative unit shall have a clearly defined mission and duties. Each specialized investigative unit shall develop and implement policies and standard operating procedures that incorporate APD's agency-wide policies on use of force, force reporting, and force investigations.

107. APD shall prohibit specialized investigative units from providing tactical responses to critical situations where a specialized tactical unit is required. APD shall establish protocols that require communication and coordination by specialized investigative units when encountering a situation that requires a specialized tactical response. The protocols shall include communicating high-risk situations and threats promptly, coordinating effectively with specialized tactical units, and providing support that increases the likelihood of safely resolving a critical incident.

108. Within three months of the Operational Date, APD shall conduct an inspection of specialized investigative units to determine whether weapons and equipment assigned or

accessible to specialized investigative units are consistent with the units' mission and training. APD shall conduct re-inspections on at least an annual basis.

109. APD agrees to track and analyze the number of specialized investigative unit responses. The analysis shall include the reason for each investigative response, the legal authority, type of warrant (if applicable), and the result of each investigative response, to include: (a) the location; (b) the number of arrests; (c) the type of evidence or property seized; (d) whether a forcible entry was required; (e) whether a weapon was discharged by a specialized investigative unit member; (f) whether the person attempted to flee from officers; and (g) whether a person or domestic animal was injured or killed. This data analysis shall be entered into the Early Intervention System and included in APD's annual reports.

VI. CRISIS INTERVENTION

110. To maintain high-level, quality service; to ensure officer safety and accountability; and to promote constitutional, effective policing, APD agrees to minimize the necessity for the use of force against individuals in crisis due to mental illness or a diagnosed behavioral disorder and, where appropriate, assist in facilitating access to community-based treatment, supports, and services to improve outcomes for the individuals. APD agrees to develop, implement, and support more integrated, specialized responses to individuals in mental health crisis through collaborative partnerships with community stakeholders, specialized training, and improved communication and coordination with mental health professionals. To achieve these outcomes, APD agrees to implement the requirements below.

A. Mental Health Response Advisory Committee

111. Within six months of the Operational Date, APD and the City shall establish a Mental Health Response Advisory Committee ("Advisory Committee") with subject matter expertise and experience that will assist in identifying and developing solutions and interventions

that are designed to lead to improved outcomes for individuals perceived to be or actually suffering from mental illness or experiencing a mental health crisis. The Advisory Committee shall analyze and recommend appropriate changes to policies, procedures, and training methods regarding police contact with individuals with mental illness.

112. The Advisory Committee shall include representation from APD command staff, crisis intervention certified responders, Crisis Intervention Unit (“CIU”), Crisis Outreach and Support Team (“COAST”), and City-contracted mental health professionals. APD shall also seek representation from the Department of Family and Community Services, the University of New Mexico Psychiatric Department, community mental health professionals, advocacy groups for consumers of mental health services (such as the National Alliance on Mental Illness and Disability Rights New Mexico), mental health service providers, homeless service providers, interested community members designated by the Forensic Intervention Consortium, and other similar groups.

113. The Advisory Committee shall provide guidance to assist the City in developing and expanding the number of crisis intervention certified responders, CIU, and COAST. The Advisory Committee shall also be responsible for considering new and current response strategies for dealing with chronically homeless individuals or individuals perceived to be or actually suffering from a mental illness, identifying training needs, and providing guidance on effective responses to a behavioral crisis event.

114. APD, with guidance from the Advisory Committee, shall develop protocols that govern the release and exchange of information about individuals with known mental illness to facilitate necessary and appropriate communication while protecting their confidentiality.

115. Within nine months of the Operational Date, APD shall provide the Advisory Committee with data collected by crisis intervention certified responders, CIU, and COAST pursuant to Paragraphs 129 and 137 of this Agreement for the sole purpose of facilitating program guidance. Also within nine months of the Operational Date, the Advisory Committee shall review the behavioral health training curriculum; identify mental health resources that may be available to APD; network and build more relationships; and provide guidance on scenario-based training involving typical situations that occur when mental illness is a factor.

116. The Advisory Committee shall seek to enhance coordination with local behavioral health systems, with the goal of connecting chronically homeless individuals and individuals experiencing mental health crisis with available services.

117. Within 12 months of the Operational Date, and annually thereafter, the Advisory Committee will provide a public report to APD that will be made available on APD's website, which shall include recommendations for improvement, training priorities, changes in policies and procedures, and identifying available mental health resources.

B. Behavioral Health Training

118. APD has undertaken an aggressive program to provide behavioral health training to its officers. This Agreement is designed to support and leverage that commitment.

119. APD agrees to continue providing state-mandated, basic behavioral health training to all cadets in the academy. APD also agrees to provide 40 hours of basic crisis intervention training for field officers to all academy graduates upon their completion of the field training program. APD is also providing 40 hours of basic crisis intervention training for field officers to all current officers, which APD agrees to complete by July 15, 2016.

120. The behavioral health and crisis intervention training provided to all officers will continue to address field assessment and identification, suicide intervention, crisis de-escalation,

scenario-based exercises, and community mental health resources. APD training shall include interaction with individuals with a mental illness and coordination with advocacy groups that protect the rights of individuals with disabilities or those who are chronically homeless.

Additionally, the behavioral health and crisis intervention training will provide clear guidance as to when an officer may detain an individual solely because of his or her crisis and refer them for further services when needed.

121. APD shall ensure that new telecommunicators receive 20 hours of behavioral health training. This training shall include: telephonic suicide intervention; crisis management and de-escalation; interactions with individuals with mental illness; descriptive information that should be gathered when telecommunicators suspect that a call involves someone with mental illness; the roles and functions of COAST, crisis intervention certified responders, and CIU; the types of calls that should be directed to particular officers or teams; and recording information in the dispatch database about calls in which mental illness may be a factor.

122. APD shall provide two hours of in-service training to all existing officers and telecommunicators on behavioral health-related topics biannually.

C. Crisis Intervention Certified Responders and Crisis Intervention Unit

123. APD shall maintain a sufficient number of crisis intervention certified responders who are specially trained officers across the Department who retain their normal duties and responsibilities and also respond to calls involving those in mental health crisis. APD shall also maintain a Crisis Intervention Unit (“CIU”) composed of specially trained detectives housed at the Family Advocacy Center whose primary responsibilities are to respond to mental health crisis calls and maintain contact with mentally ill individuals who have posed a danger to themselves or others in the past or are likely to do so in the future. APD agrees to expand both the number of crisis intervention certified responders and CIU.

124. The number of crisis intervention certified responders will be driven by the demand for crisis intervention services, with an initial goal of 40% of Field Services officers who volunteer to take on specialized crisis intervention duties in the field. Within one year of the Operational Date, APD shall reassess the number of crisis intervention certified responders, following the staffing assessment and resource study required by Paragraph 204 of this Agreement.

125. During basic crisis intervention training for field officers provided to new and current officers, training facilitators shall recommend officers with apparent or demonstrated skills and abilities in crisis de-escalation and interacting with individuals with mental illness to serve as crisis intervention certified responders.

126. Within 18 months of the Operational Date, APD shall require crisis intervention certified responders and CIU to undergo at least eight hours of in-service crisis intervention training biannually.

127. Within 18 months of the Operational Date, APD will ensure that there is sufficient coverage of crisis intervention certified responders to maximize the availability of specialized responses to incidents and calls for service involving individuals in mental health crisis; and warrant service, tactical deployments, and welfare checks involving individuals with known mental illness.

128. APD will ensure that crisis intervention certified responders or CIU will take the lead, once on scene and when appropriate, in interacting with individuals in crisis. If a supervisor has assumed responsibility for the scene, the supervisor will seek input of the crisis intervention certified responder or CIU on strategies for resolving the crisis when it is practical to do so.

129. APD shall collect data on the use of crisis intervention certified responders and CIU. This data will be collected for management purposes only and shall not include personal identifying information of subjects or complainants. APD shall collect the following data:

- a) date, shift, and area command of the incident;
- b) subject's age, race/ethnicity, and gender;
- c) whether the subject was armed and the type of weapon;
- d) whether the subject claims to be a U.S. military veteran;
- e) name and badge number of crisis intervention certified responder or CIU detective on the scene;
- f) whether a supervisor responded to the scene;
- g) techniques or equipment used;
- h) any injuries to officers, subjects, or others;
- i) disposition of the encounter (e.g., arrest, citation, referral); and
- j) a brief narrative of the event (if not included in any other document).

130. APD will utilize incident information from actual encounters to develop case studies and teaching scenarios for roll-call, behavioral health, and crisis intervention training; to recognize and highlight successful individual officer performance; to develop new response strategies for repeat calls for service; to identify training needs for in-service behavioral health or crisis intervention training; to make behavioral health or crisis intervention training curriculum changes; and to identify systemic issues that impede APD's ability to provide an appropriate response to an incident involving an individual experiencing a mental health crisis.

131. Working in collaboration with the Advisory Committee, the City shall develop and implement a protocol that addresses situations involving barricaded, suicidal subjects who are not posing an imminent risk of harm to anyone except themselves. The protocol will have

the goal of protecting the safety of officers and suicidal subjects while providing suicidal subjects with access to mental health services.

D. Crisis Prevention

132. APD shall continue to utilize COAST and CIU to follow up with chronically homeless individuals and individuals with a known mental illness who have a history of law enforcement encounters and to proactively work to connect these individuals with mental health service providers.

133. COAST and CIU shall provide crisis prevention services and disposition and treatment options to chronically homeless individuals and individuals with a known mental illness who are at risk of experiencing a mental health crisis and assist with follow-up calls or visits.

134. APD shall continue to utilize protocols for when officers should make referrals to and coordinate with COAST and CIU to provide prevention services and disposition and treatment options.

135. APD shall maintain a sufficient number of trained and qualified mental health professionals in COAST and full-time detectives in CIU to satisfy its obligations under this Agreement. Within three months of completing the staffing assessment and resource study required by Paragraph 204 of this Agreement, APD shall develop a recruitment, selection, and training plan to assign, within 24 months of the study, 12 full-time detectives to the CIU, or the target number of detectives identified by the study, whichever is less.

136. COAST and CIU shall continue to look for opportunities to coordinate in developing initiatives to improve outreach, service delivery, crisis prevention, and referrals to community health resources.

137. APD shall collect and analyze data to demonstrate the impact of and inform modifications to crisis prevention services. This data will be collected for management purposes only and shall not include personal identifying information of subjects or complainants. APD shall collect the following data:

- a) number of individuals in the COAST and CIU case loads;
- b) number of individuals receiving crisis prevention services;
- c) date, shift, and area command of incidents or follow up encounters;
- d) subject's age, race/ethnicity, and gender;
- e) whether the subject claims to be a U.S. military veteran;
- f) techniques or equipment used;
- g) any injuries to officers, subjects, or others;
- h) disposition of the encounter (e.g., arrest, citation, referral); and
- i) a brief narrative of the event (if not included in any other document).

VII. POLICIES AND TRAINING GENERALLY

138. To maintain high-level, quality service; to ensure officer safety and accountability; and to promote constitutional, effective policing, APD's policies and procedures shall reflect and express the Department's core values and priorities and shall provide clear direction to ensure that officers and civilian employees deliver effective and constitutional policing services. APD shall ensure that officers and civilian employees are trained to understand and carry out consistently and competently the duties and responsibilities specified in APD policies and procedures. To achieve these outcomes, APD agrees to implement the requirements below.

A. Policy Development, Review, and Implementation

139. APD shall review, develop, and implement policies and procedures that fully implement the terms of this Agreement, comply with applicable law, and comport with best practices. APD policies and procedures shall use terms that are defined clearly, shall be written plainly, and shall be organized logically.

140. APD policies and procedures shall be indexed and maintained in an organized manner using a uniform numbering system for ease of reference. APD policies and procedures shall be accessible to all APD officers and civilian employees at all times in hard copy or electronic format.

141. Within three months of the Operational Date, APD shall provide officers from varying ranks and units with a meaningful opportunity to review and comment on new or existing policies and procedures.

142. Within three months of the Operational Date, APD shall ensure that the Policy and Procedures Review Board is functional and its members are notified of the Board's duties and responsibilities. The Policy and Procedures Review Board shall include a representative of the Technology Services Division in addition to members currently required under Administrative Order 3-65-2 (2014).

143. Within nine months of the Operational Date, the Policy and Procedures Review Board shall review, develop, and revise policies and procedures that are necessary to implement this Agreement. The Policy and Procedures Review Board shall submit its formal recommendations to the Chief through the Planning and Policy Division.

144. Unless otherwise noted, all new and revised policies and procedures that are necessary to implement this Agreement shall be approved and issued within one year of the Operational Date. APD shall continue to post approved policies, procedures, and administrative

orders on the City website to ensure public accessibility. There shall be reasonable exceptions for policies, procedures, and administrative orders that are law enforcement sensitive, such as procedures on undercover officers or operations.

145. The Policy and Procedures Review Board shall review each policy or procedure six months after it is implemented and annually thereafter, to ensure that the policy or procedure provides effective direction to APD personnel and remains consistent with this Agreement, best practices, and current law. The Policy and Procedures Review Board shall review and revise policies and procedures as necessary upon notice of a significant policy deficiency during audits or reviews.

146. APD shall apply policies uniformly and hold officers accountable for complying with APD policy and procedure.

147. APD shall submit all policies, procedures, manuals, and other administrative orders or directives related to this Agreement to the Monitor and DOJ for review and comment before publication and implementation. If the Monitor or DOJ objects to the proposed new or revised policy, procedure, manual, or other administrative order or directive, because it does not incorporate the requirements of this Agreement or is inconsistent with this Agreement or the law, the Monitor or DOJ shall note this objection in writing to all parties within 15 business days of the receipt of the policy, procedure, manual, or directive from APD. If neither the Monitor nor DOJ objects to the new or revised policy, procedure, manual, or directive, APD agrees to implement it within one month of it being provided to DOJ and the Monitor.

148. APD shall have 15 days to resolve any objections to new or revised policies, procedures, manuals, or directives implementing the specified provisions. If, after this 15-day period has run, the DOJ maintains its objection, then the Monitor shall have an additional 15

days to resolve the objection. If either party disagrees with the Monitor's resolution of the objection, either party may ask the Court to resolve the matter. The Monitor shall determine whether in some instances an additional amount of time is necessary to ensure full and proper review of policies. Factors to consider in making this determination include: 1) complexity of the policy; 2) extent of disagreement regarding the policy; 3) number of policies provided simultaneously; and 4) extraordinary circumstances delaying review by DOJ or the Monitor. In determining whether these factors warrant additional time for review, the Monitor shall fully consider the importance of prompt implementation of policies and shall allow additional time for policy review only where it is clear that additional time is necessary to ensure a full and proper review. Any extension to the above timelines by the Monitor shall also toll APD's deadline for policy completion.

B. Training on Revised Policies, Procedures, and Practices

149. Within two months of the Operational Date, APD shall ensure that all officers are briefed and presented the terms of the Agreement, together with the goals and implementation process of the Agreement.

150. Within three months of issuing a policy or procedure pursuant to this Agreement, APD agrees to ensure that all relevant APD personnel have received and read their responsibilities pursuant to the policy or procedure, including the requirement that each officer or employee report violations of policy; that supervisors of all ranks shall be held accountable for identifying and responding to policy or procedure violations by personnel under their command; and that personnel will be held accountable for policy and procedure violations. APD agrees to document that each relevant APD officer or other employee has received and read the policy. Training beyond roll-call or similar training will be necessary for many new policies to ensure officers understand and can perform their duties pursuant to the policy.

151. Unless otherwise noted, the training required under this Agreement shall be delivered within 18 months of the Operational Date, and annually thereafter. Within six months of the Operational Date, APD shall set out a schedule for delivering all training required by this Agreement.

152. APD shall ensure that all new lateral hires are certified law enforcement officers and that they receive all training required by this Agreement prior to entry onto duty.

153. APD shall maintain complete and accurate records of all training provided to sworn APD officers during pre-service and in-service training programs, including curricula, course materials, lesson plans, classroom presentations, handouts, videos, slides, recordings, and attendance records. APD shall also maintain complete and accurate records of any audit, review, assessment, or evaluation of the sufficiency or effectiveness of its training programs. APD shall make these records available for inspection by the Monitor and DOJ.

154. APD shall ensure that changes in relevant case law and statutes are disseminated to APD personnel in a timely manner and incorporated, as appropriate, into annual and pre-service training.

C. Field Training Officer Program

155. APD shall supervise and manage its field training program to ensure that new officers develop the necessary technical and practical skills required to use force in accordance with APD policy and applicable law. The field training program should reinforce, rather than circumvent, the agency's values, core principles, and expectations on use of force and engagement with the community. Field Training Officers should demonstrate the highest levels of competence, professionalism, impartiality, and ethics.

156. APD shall revise the policies applicable to its field-training program to provide that academy graduates will receive 16 weeks of field training following the training academy and that recruits will not be released from the field training program early.

157. APD shall revise the qualifications for Field Training Officers to require three years of non-probationary experience as a sworn police officer and to ensure that Field Training Officers have a demonstrated commitment to constitutional policing, ethics, and professionalism.

158. New Field Training Officers and Area Sergeant Coordinators shall receive at least 40 hours of initial supervisory-level training and annual in-service training in the following areas: management and supervision; constitutional, community-oriented policing; de-escalation techniques; and effective problem-solving techniques. Field Training Officers and Area Sergeant Coordinators shall be required to maintain, and demonstrate on a regular basis, their proficiency in managing recruits and subordinates, as well as practicing and teaching constitutional, community-oriented policing; de-escalation techniques; and effective problem solving. APD shall maintain records of all evaluations and training of Field Training Officers and Area Sergeant Coordinators.

159. Recruits in the field training program shall be trained in multiple Area Commands and shifts and with several Field Training Officers.

160. APD shall provide a mechanism for recruits to provide confidential feedback regarding the quality of their field training, including the extent to which their field training was consistent with what they learned in the academy, and suggestions for changes to academy training based upon their experience in the field training program. APD shall consider feedback and document its response, including the rationale behind any responsive action taken or decision to take no action.

161. The City shall provide APD with the necessary support and resources to designate a sufficient number of Field Training Officers to meet the requirements of this Agreement.

VIII. MISCONDUCT COMPLAINT INTAKE, INVESTIGATION, AND ADJUDICATION

162. To maintain high-level, quality service; to ensure officer safety and accountability; and to promote constitutional, effective policing, APD and the Civilian Police Oversight Agency shall ensure that all allegations of officer misconduct are received and are fully and fairly investigated; that all findings in administrative investigations are supported by a preponderance of the evidence; and that all officers who commit misconduct are held accountable pursuant to a fair and consistent disciplinary system. To achieve these outcomes, APD and the Civilian Police Oversight Agency shall implement the requirements below.

A. Reporting Misconduct

163. APD shall require that all officers and employees report misconduct by any APD officer or employee, including themselves, to a supervisor or directly to the Internal Affairs Division for review and investigation. Where alleged misconduct is reported to a supervisor, the supervisor shall immediately document and report this information to the Internal Affairs Division. Failure to report or document alleged misconduct or criminal behavior shall be grounds for discipline, up to and including termination of employment.

B. Public Information on Civilian Complaints

164. Within six months of the Operational Date, APD and the Civilian Police Oversight Agency shall develop and implement a program to ensure the Albuquerque community is aware of the procedures to make civilian complaints against APD personnel and the availability of effective mechanisms for making civilian complaints. The requirements below shall be incorporated into this program.

165. APD and the Civilian Police Oversight Agency shall make complaint forms and informational materials, including brochures and posters, available at appropriate government properties, including APD headquarters, Area stations, APD and City websites, City Hall, public libraries, community centers, and the office of the Civilian Police Oversight Agency. Individuals shall be able to submit civilian complaints through the APD and City websites and these websites shall include, in an identifiable and accessible form, complaint forms and information regarding how to file civilian complaints. Complaint forms, informational materials, and the APD and City websites shall specify that complaints may be submitted anonymously or on behalf of another person. Nothing in this Agreement prohibits APD from soliciting officer commendations or other feedback through the same process and methods as above.

166. APD shall post and maintain a permanent placard describing the civilian complaint process that includes relevant contact information, such as telephone numbers, email addresses, and Internet sites. The placard shall specify that complaints may be submitted anonymously or on behalf of another person. APD shall require all officers to carry complaint forms, containing basic complaint information, in their Department vehicles. Officers shall also provide the officer's name, officer's identification number, and, if applicable, badge number upon request. If an individual indicates that he or she would like to make a misconduct complaint or requests a complaint form for alleged misconduct, the officer shall immediately inform his or her supervisor who, if available, will respond to the scene to assist the individual in providing and accepting appropriate forms and/or other available mechanisms for filing a misconduct complaint.

167. APD agrees to accept all civilian complaints and shall revise any forms and instructions on the civilian complaint process that could be construed as discouraging civilians from submitting complaints.

168. Complaint forms and related informational materials shall be made available and posted in English and Spanish.

C. Complaint Intake, Classification, and Tracking

169. Within six months of the Operational Date, APD shall train all personnel in handling civilian complaint intake.

170. APD shall accept complaints regardless of when they are filed. The City shall encourage civilians to promptly report police misconduct so that full investigations can be made expeditiously and the full range of disciplinary and corrective action be made available.

171. The refusal to accept a misconduct complaint, discouraging the filing of a misconduct complaint, or providing false or misleading information about filing a misconduct complaint shall be grounds for discipline.

172. APD and the Civilian Police Oversight Agency shall accept all misconduct complaints, including anonymous and third-party complaints, for review and investigation. Complaints may be made in writing or verbally, in person or by mail, telephone (or TDD), facsimile, or electronic mail. Any Spanish-speaking individual with limited English proficiency who wishes to file a complaint about APD personnel shall be provided with a complaint form in Spanish to ensure that the individual is able to make a complaint. Such complaints will be investigated in accordance with this Agreement.

173. All APD personnel who receive a misconduct complaint shall immediately inform a supervisor of the misconduct complaint so that the supervisor can ensure proper intake of the

misconduct complaint. All misconduct complaints shall be submitted to the Internal Affairs Division by the end of the shift following the shift in which it was received.

174. APD and the Civilian Police Oversight Agency shall develop a system to ensure that allegations by a judicial officer of officer misconduct made during a civil or criminal proceeding are identified and assessed for further investigation. Any decision to decline investigation shall be documented.

175. APD and the Civilian Police Oversight Agency shall track allegations regarding misconduct involving individuals who are known to be homeless or have a mental illness, even if the complainant does not specifically label the misconduct as such.

176. Within six months of the Operational Date, the Internal Affairs Division, in coordination with the Civilian Police Oversight Agency, shall develop and implement a centralized numbering and tracking system for all misconduct complaints. Upon the receipt of a complaint, the Internal Affairs Division shall promptly assign a unique numerical identifier to the complaint, which shall be provided to the complainant at the time the numerical identifier is assigned when contact information is available for the complainant.

177. The Internal Affairs Division's tracking system shall maintain accurate and reliable data regarding the number, nature, and status of all misconduct complaints, from initial intake to final disposition, including investigation timeliness and notification to the complainant of the interim status and final disposition of the investigation. This system shall be used to determine the status of complaints and to confirm that a complaint was received, as well as for periodic assessment of compliance with APD policies and procedures and this Agreement, including requirements on the timeliness of administrative investigations.

178. Where a supervisor receives a complaint alleging that misconduct has just occurred, the supervisor shall gather all relevant information and evidence and provide the information and evidence to the Internal Affairs Division. All information should be referred to the Internal Affairs Division by the end of the shift following the shift in which the misconduct complaint was received, absent exceptional circumstances.

179. Within three business days of the receipt of a misconduct complaint from a civilian, the Internal Affairs Division shall refer the complaint to the Civilian Police Oversight Agency.

180. Internal misconduct complaints submitted by APD personnel shall remain with the Internal Affairs Division for review and classification. The Internal Affairs Division shall determine whether the internal complaint will be assigned to a supervisor for investigation or retained by the Internal Affairs Division for investigation. In consultation with the Chief, the commanding officer of the Internal Affairs Division shall also determine whether a civilian or internal complaint will be investigated criminally by the Internal Affairs Division, the Multi-Agency Task Force, and/or referred to the appropriate federal law enforcement agency.

181. APD shall continue to maintain an internal complaint classification protocol that is allegation-based rather than anticipated-outcome-based to guide the Internal Affairs Division in determining where an internal complaint should be assigned.

182. An internal complaint investigation may not be conducted by any supervisor who used force during the incident; whose conduct led to the injury of a person; who authorized the conduct that led to the reported incident or complaint; or who witnessed or was involved in the incident leading to the allegation of misconduct.

D. Investigation of Complaints

183. APD and the Civilian Police Oversight Agency shall ensure that investigations of officer misconduct complaints shall be as thorough as necessary to reach reliable and complete findings. The misconduct complaint investigator shall interview each complainant in person, absent exceptional circumstances, and this interview shall be recorded in its entirety, absent specific, documented objection by the complainant. All officers in a position to observe an incident, or involved in any significant event before or after the original incident, shall provide a written statement regarding their observations, even to state that they did not observe anything.

184. APD and the Civilian Police Oversight Agency shall investigate all misconduct complaints and document the investigation, its findings, and its conclusions in writing. APD and the Civilian Police Oversight Agency shall develop and implement a policy that specifies those complaints other than misconduct that may be resolved informally or through mediation. Administrative closing or inactivation of a complaint investigation shall be used for the most minor policy violations that do not constitute a pattern of misconduct, duplicate allegations, or allegations that even if true would not constitute misconduct.

185. APD shall require personnel to cooperate with Internal Affairs Division and Civilian Police Oversight Agency investigations, including appearing for an interview when requested by an APD or Civilian Police Oversight Agency investigator and providing all requested documents and evidence under the person's custody and control. Supervisors shall be notified when a person under their supervision is summoned as part of a misconduct complaint or internal investigation and shall facilitate the person's appearance, absent extraordinary and documented circumstances.

186. APD and the City shall develop and implement protocols to ensure that criminal and administrative investigations of APD personnel are kept appropriately separate, to protect

APD personnel's rights under the Fifth Amendment. When an APD employee affirmatively refuses to give a voluntary statement and APD has probable cause to believe the person has committed a crime, APD shall consult with the prosecuting agency (e.g., District Attorney's Office or USAO) and seek the approval of the Chief before taking a compelled statement.

187. Advisements by the Internal Affairs Division or the Civilian Police Oversight Agency to APD personnel of their Fifth Amendment rights shall only be given where there is a reasonable likelihood of a criminal investigation or prosecution of the subject employee.

188. If at any time during misconduct complaint intake or investigation the investigator determines that there may have been criminal conduct by any APD personnel, the investigator shall immediately notify the Internal Affairs Division commanding officer. If the complaint is being investigated by the Civilian Police Oversight Agency, the investigator shall transfer the administrative investigation to the Internal Affairs Division. The Internal Affairs Division commanding officer shall immediately notify the Chief. The Chief shall consult with the relevant prosecuting agency or federal law enforcement agency regarding the initiation of a criminal investigation. Where an allegation is investigated criminally, the Internal Affairs Division shall continue with the administrative investigation of the allegation. Consistent with Paragraph 186, the Internal Affairs Division may delay or decline to conduct an interview of the subject personnel or other witnesses until completion of the criminal investigation unless, after consultation with the prosecuting agency and the Chief, the Internal Affairs Division deems such interviews appropriate.

189. Nothing in this Agreement or APD policy shall hamper APD personnel's obligation to provide a public safety statement regarding a work-related incident or activity, including Use of Force Reports and incident reports. APD shall make clear that all statements by

personnel in incident reports, arrest reports, Use of Force Reports and similar documents, and statements made in interviews such as those conducted in conjunction with APD's routine use of force investigation process, are part of each employee's routine professional duties and are not compelled statements. Where an employee believes that providing a verbal or written statement will be self-incriminating, the employee shall affirmatively state this and shall not be compelled to provide a statement without prior consultation with the prosecuting agency (e.g., District Attorney's Office or USAO), and approval by the Chief.

190. In each investigation, APD and the Civilian Police Oversight Agency shall consider all relevant evidence, including circumstantial, direct, and physical evidence. There will be no automatic preference for an officer's statement over a non-officer's statement, nor will APD or the Civilian Police Oversight Agency disregard a witness's statement merely because the witness has some connection to the complainant or because of any criminal history. During their investigation, APD and the Civilian Police Oversight Agency shall take into account any convictions for crimes of dishonesty of the complainant or any witness. APD and the Civilian Police Oversight Agency shall also take into account the record of any involved officers who have been determined to have been deceptive or untruthful in any legal proceeding, misconduct investigation, or other investigation. APD and the Civilian Police Oversight Agency shall make efforts to resolve material inconsistencies between witness statements.

191. All administrative investigations conducted by the Internal Affairs Division or the Civilian Police Oversight Agency shall be completed within 90 days of the initiation of the complaint investigation. The 90-day period shall not include time for review. An extension of the investigation of up to 30 days may be granted but only if the request for an extension is in writing and is approved by the Chief. Review and final approval of the investigation, and the

determination and imposition of the appropriate discipline, shall be completed within 30 days of the completion of the investigation. To the extent permitted by state and city law, extensions may also be granted in extenuating circumstances, such as military deployments, hospitalizations of the officer, and extended absences.

192. The APD or Civilian Police Oversight Agency investigator shall explicitly identify and recommend one of the following dispositions for each allegation of misconduct in an administrative investigation:

- a) “Unfounded,” where the investigation determines, by clear and convincing evidence, that the alleged misconduct did not occur or did not involve the subject officer;
- b) “Sustained,” where the investigation determines, by a preponderance of the evidence, that the alleged misconduct did occur;
- c) “Not Sustained,” where the investigation is unable to determine, by a preponderance of the evidence, whether the alleged misconduct occurred;
- d) “Exonerated,” where the investigation determines, by a preponderance of the evidence, that the alleged conduct did occur but did not violate APD policies, procedures, or training;
- e) “Sustained violation not based on original complaint,” where the investigation determines, by a preponderance of the evidence, that misconduct did occur that was not alleged in the original complaint but that was discovered during the misconduct investigation; or
- f) “Administratively closed,” where the policy violations are minor, the allegations are duplicative, or investigation cannot be conducted because of the lack of information in the complaint.

193. Administratively closed complaints may be re-opened if additional information becomes available. The deadlines contained in Paragraph 191 shall run from when the complaint is re-opened.

194. In addition to determining whether APD personnel committed the alleged misconduct, administrative investigations shall assess and document whether the action was in

compliance with training and legal standards and whether the incident suggests the need for a change in policy, procedure, or training. In reviewing completed administrative investigations, APD shall also assess and document whether: (a) the incident suggests that APD should revise strategies and tactics; and (b) the incident indicates a need for additional training, counseling, or other non-disciplinary corrective measures. This information shall be shared with the relevant commander(s).

E. Preventing Retaliation

195. The City shall continue to expressly prohibit all forms of retaliation, including discouragement, intimidation, coercion, or adverse action, against any person who reports misconduct, makes a misconduct complaint, or cooperates with an investigation of misconduct.

196. Within six months of the Operational Date, and annually thereafter, the Internal Affairs Division and the Civilian Police Oversight Agency shall review APD's anti-retaliation policy and its implementation. This review shall consider the alleged incidents of retaliation that occurred or were investigated during the reporting period, the discipline imposed for retaliation, and supervisors' performance in addressing and preventing retaliation. Following such review, the City shall modify its policy and practice, as necessary, to protect individuals, including other APD personnel, from retaliation for reporting misconduct.

197. Retaliation for reporting misconduct or for cooperating with an investigation of misconduct shall be grounds for discipline, up to and including termination of employment.

F. Staffing and Training Requirements

198. The City shall ensure that APD and the Civilian Police Oversight Agency have a sufficient number of well-trained staff assigned and available to complete and review thorough and timely misconduct investigations in accordance with the requirements of this Agreement. The City shall re-assess the staffing of the Internal Affairs Division after the completion of the

staffing study to be conducted pursuant to Paragraph 204. The City further shall ensure sufficient resources and equipment to conduct thorough and timely investigations.

199. All APD personnel conducting misconduct investigations, whether assigned to the Internal Affairs Division, an Area Command, or elsewhere, shall receive at least 24 hours of initial training in conducting misconduct investigations within one year of the Operational Date, and shall receive at least eight hours of training each year. The training shall include instruction on APD's policies and protocols on taking compelled statements and conducting parallel administrative and criminal investigations.

200. Investigators from the Civilian Police Oversight Agency shall receive at least 40 hours of initial training in conducting misconduct investigations within one year of the Operational Date, and shall receive at least eight hours of training each year. The training shall include instruction on APD's policies and protocols on taking compelled statements and conducting parallel administrative and criminal investigations.

G. Discipline Process and Transparency

201. APD shall ensure that discipline for sustained allegations of misconduct is consistently applied, fair, and based on the nature of the allegation, and that mitigating and aggravating factors are set out and applied consistently.

202. APD shall establish a disciplinary matrix that:

- a) establishes a presumptive range of discipline for each type of rule violation;
- b) increases the presumptive discipline based on an officer's prior violations of the same or other rules;
- c) sets out defined mitigating or aggravating factors;
- d) requires that any departure from the presumptive range of discipline must be justified in writing;

- e) provides that APD shall not take only non-disciplinary corrective action in cases in which the disciplinary matrix calls for the imposition of discipline; and
- f) provides that APD shall consider whether non-disciplinary corrective action also is appropriate in a case where discipline has been imposed.

IX. STAFFING, MANAGEMENT, AND SUPERVISION

203. To maintain high-level, quality service; to ensure officer safety and accountability; and to promote constitutional, effective policing, the City shall ensure that APD has the staffing necessary to implement the terms of this Agreement. APD shall also deploy a sufficient number of first-line supervisors to respond to scenes of uses of force; investigate thoroughly each use of force to identify, correct, and prevent misconduct; and provide close and effective supervision necessary for officers to improve and develop professionally. APD shall revise and implement policies for supervision that set out clear requirements for supervision and comport with best practices.

A. Staffing

204. In order to successfully implement the provisions of this Agreement, APD shall assess the appropriate number of sworn and civilian personnel to perform the different Department functions necessary to fulfill its mission. APD therefore shall conduct a comprehensive staffing assessment and resource study. The study shall be the predicate for determining appropriate staffing and resource levels that are consistent with community-oriented policing principles and support the systematic use of partnerships and problem-solving techniques. The study shall also consider the distribution of officers to patrol functions as opposed to specialized units, as well as the distribution of officers with less than three years of experience across shifts and Area Commands. This staffing assessment and resource study shall be completed within one year of the Operational Date. Within six months of the completion of

the staffing assessment and resource study, the Parties shall assess its results and jointly develop a staffing plan to ensure that APD can meet its obligations under this Agreement.

B. Duties of Supervisors

205. First-line supervisors shall investigate officers' use of force as described in Section IV of this Agreement, ensure that officers are working actively to engage the community and increase public trust and safety, review each arrest report, and perform all other duties as assigned and as described in departmental policy.

206. All field officers shall be assigned to a primary, clearly identified first-line supervisor and shall also report to any other first-line supervisor within the chain of command. First-line supervisors shall be responsible for closely and consistently supervising all officers under their primary command. Supervisors shall also be responsible for supervising all officers under their chain of command on any shift to which they are assigned to ensure accountability across the Department.

207. First-line supervisors shall ordinarily be assigned as primary supervisor to no more than eight officers. Task complexity will also play a significant role in determining the span of control and whether an increase in the level of supervision is necessary.

208. APD Commanders and lieutenants shall be responsible for close and effective supervision of officers under their command. APD Commanders and lieutenants shall ensure that all officers under their direct command comply with APD policy, federal, state and municipal law, and the requirements of this Agreement.

C. Supervisor Training

209. Sergeant training is critical to effective first-line supervision. Every sergeant shall receive 40 hours of mandatory supervisory, management, leadership, and command accountability training before assuming supervisory responsibilities.

210. APD's sergeant training program shall include the following topics:
- a) techniques for effectively guiding and directing officers and promoting effective and ethical police practices;
 - b) de-escalating conflict;
 - c) evaluating written reports, including those that contain canned language;
 - d) categorizing and reviewing officer uses of force;
 - e) understanding supervisory tools such as the Early Intervention System and on-body recording systems;
 - f) responding to and investigating allegations of officer misconduct;
 - g) evaluating officer performance;
 - h) consistent disciplinary sanction and non-punitive corrective action;
 - i) monitoring use of force to ensure consistency with policies;
 - j) building community partnerships and guiding officers on this requirement; and
 - k) legal updates.

211. All sworn supervisors shall also receive a minimum of 32 hours of in-service management training, which may include updates and lessons learned related to the topics covered in the sergeant training and other areas covered by this Agreement.

D. Early Intervention System

212. Within nine months of the Operational Date, APD shall revise and update its Early Intervention System to enhance its effectiveness as a management tool that promotes supervisory awareness and proactive identification of both potentially problematic as well as commendable behavior among officers. APD supervisors shall be trained to proficiency in the interpretation of Early Intervention System data and the range of non-punitive corrective action to modify behavior and improve performance; manage risk and liability; and address underlying stressors to promote officer well-being.

213. APD shall review and adjust, where appropriate, the threshold levels for each Early Identification System indicator to allow for peer-group comparisons between officers with similar assignments and duties.

214. APD shall implement rolling thresholds so that an officer who has received an intervention of use of force should not be permitted to engage in additional uses of force before again triggering a review.

215. The Early Intervention System shall be a component of an integrated employee management system and shall include a computerized relational database, which shall be used to collect, maintain, integrate, and retrieve data department-wide and for each officer regarding, at a minimum:

- a) uses of force;
- b) injuries and deaths to persons in custody;
- c) failures to record incidents with on-body recording systems that are required to be recorded under APD policy, whether or not corrective action was taken, and cited violations of the APD's on-body recording policy;
- d) all civilian or administrative complaints and their dispositions;
- e) all judicial proceedings where an officer is the subject of a protective or restraining order;
- f) all vehicle pursuits and traffic collisions involving APD equipment;
- g) all instances in which APD is informed by a prosecuting authority that a declination to prosecute any crime occurred, in whole or in part, because the officer failed to activate his or her on-body recording system;
- h) all disciplinary action taken against employees;
- i) all non-punitive corrective action required of employees;
- j) all awards and commendations received by employees, including those received from civilians, as well as special acts performed by employees;
- k) demographic category for each civilian involved in a use of force or search and seizure incident sufficient to assess bias;

- l) all criminal proceedings initiated against an officer, as well as all civil or administrative claims filed with, and all civil lawsuits served upon, the City and/or its officers or agents, allegedly resulting from APD operations or the actions of APD personnel; and
- m) all offense reports in which an officer is a suspect or offender.

216. APD shall develop and implement a protocol for using the updated Early Intervention System and information obtained from it. The protocol for using the Early Intervention System shall address data storage, data retrieval, reporting, data analysis, pattern identification, supervisory use, supervisory/departmental intervention, documentation and audits, access to the system, and confidentiality of personally identifiable information. The protocol shall also require unit supervisors to periodically review Early Intervention System data for officers under their command.

217. APD shall maintain all personally identifying information about an officer included in the Early Intervention System for at least five years following the officer's separation from the agency except where prohibited by law. Information necessary for aggregate statistical analysis will be maintained indefinitely in the Early Intervention System. On an ongoing basis, APD will enter information into the Early Intervention System in a timely, accurate, and complete manner and shall maintain the data in a secure and confidential manner.

218. APD shall provide in-service training to all employees, including officers, supervisors, and commanders, regarding the updated Early Intervention System protocols within six months of the system improvements specified in Paragraphs 212-215 to ensure proper understanding and use of the system. APD supervisors shall be trained to use the Early Intervention System as designed and to help improve the performance of officers under their command. Commanders and supervisors shall be trained in evaluating and making appropriate comparisons in order to identify any significant individual or group patterns of behavior.

219. Following the initial implementation of the updated Early Intervention System, and as experience and the availability of new technology may warrant, the City may add, subtract, or modify thresholds, data tables and fields; modify the list of documents scanned or electronically attached; and add, subtract, or modify standardized reports and queries as appropriate. The Parties shall jointly review all proposals that limit the functions of the Early Intervention System that are required by this Agreement before such proposals are implemented to ensure they continue to comply with the intent of this Agreement.

E. On-Body Recording Systems for Documenting Police Activities

220. To maintain high-level, quality service; to ensure officer safety and accountability; and to promote constitutional, effective policing, APD is committed to the consistent and effective use of on-body recording systems. Within six months of the Operational Date, APD agrees to revise and update its policies and procedures regarding on-body recording systems to require:

- a) specific and clear guidance when on-body recording systems are used, including who will be assigned to wear the cameras and where on the body the cameras are authorized to be placed;
- b) officers to ensure that their on-body recording systems are working properly during police action;
- c) officers to notify their supervisors when they learn that their on-body recording systems are not functioning;
- d) officers are required to inform arrestees when they are recording, unless doing so would be unsafe, impractical, or impossible;
- e) activation of on-body recording systems before all encounters with individuals who are the subject of a stop based on reasonable suspicion or probable cause, arrest, or vehicle search, as well as police action involving subjects known to have mental illness;
- f) supervisors to review recordings of all officers listed in any misconduct complaints made directly to the supervisor or APD report regarding any incident involving injuries to an officer, uses of force, or foot pursuits;

- g) supervisors to review recordings regularly and to incorporate the knowledge gained from this review into their ongoing evaluation and supervision of officers; and
- h) APD to retain and preserve non-evidentiary recordings for at least 60 days and consistent with state disclosure laws, and evidentiary recordings for at least one year, or, if a case remains in investigation or litigation, until the case is resolved.

221. APD shall submit all new or revised on-body recording system policies and procedures to the Monitor and DOJ for review, comment, and approval prior to publication and implementation. Upon approval by the Monitor and DOJ, policies shall be implemented within two months.

222. The Parties recognize that training regarding on-body recording systems is necessary and critical. APD shall develop and provide training regarding on-body recording systems for all patrol officers, supervisors, and command staff. APD will develop a training curriculum, with input from the Monitor and DOJ, that relies on national guidelines, standards, and best practices.

223. APD agrees to develop and implement a schedule for testing on-body recording systems to confirm that they are in proper working order. Officers shall be responsible for ensuring that on-body recording systems assigned to them are functioning properly at the beginning and end of each shift according to the guidance of their system's manufacturer and shall report immediately any improperly functioning equipment to a supervisor.

224. Supervisors shall be responsible for ensuring that officers under their command use on-body recording systems as required by APD policy. Supervisors shall report equipment problems and seek to have equipment repaired as needed. Supervisors shall refer for investigation any officer who intentionally fails to activate his or her on-body recording system before incidents required to be recorded by APD policy.

225. At least on a monthly basis, APD shall review on-body recording system videos to ensure that the equipment is operating properly and that officers are using the systems appropriately and in accordance with APD policy and to identify areas in which additional training or guidance is needed.

226. APD policies shall comply with all existing laws and regulations, including those governing evidence collection and retention, public disclosure of information, and consent.

227. APD shall ensure that on-body recording system videos are properly categorized and accessible. On-body recording system videos shall be classified according to the kind of incident or event captured in the footage.

228. Officers who wear on-body recording systems shall be required to articulate on camera or in writing their reasoning if they fail to record an activity that is required by APD policy to be recorded. Intentional or otherwise unjustified failure to activate an on-body recording system when required by APD policy shall subject the officer to discipline.

229. APD shall ensure that on-body recording systems are only used in conjunction with official law enforcement duties. On-body recording systems shall not be used to record encounters with known undercover officers or confidential informants; when officers are engaged in personal activities; when officers are having conversations with other Department personnel that involve case strategy or tactics; and in any location where individuals have a reasonable expectation of privacy (e.g., restroom or locker room).

230. APD shall ensure that all on-body recording system recordings are properly stored by the end of each officer's subsequent shift. All images and sounds recorded by on-body recording systems are the exclusive property of APD.

231. The Parties are committed to the effective use of on-body recording systems and to utilizing best practices. APD currently deploys several different platforms for on-body recording systems that have a range of technological capabilities and cost considerations. The City has engaged outside experts to conduct a study of its on-body recording system program. Given these issues, within one year of the Operational Date, APD shall consult with community stakeholders, officers, the police officer's union, and community residents to gather input on APD's on-body recording system policy and to revise the policy, as necessary, to ensure it complies with applicable law, this Agreement, and best practices.

X. RECRUITMENT, SELECTION, AND PROMOTIONS

232. To maintain high-level, quality service; to ensure officer safety and accountability; and to promote constitutional, effective policing, APD shall develop a comprehensive recruitment and hiring program that successfully attracts and hires qualified individuals. APD shall develop a recruitment policy and program that provides clear guidance and objectives for recruiting police officers and that clearly allocates responsibilities for recruitment efforts.

A. Recruitment Plan

233. APD shall develop a strategic recruitment plan that includes clear goals, objectives, and action steps for attracting qualified applicants from a broad cross section of the community. The recruitment plan shall establish and clearly identify the goals of APD's recruitment efforts and the duties of officers and staff implementing the plan.

234. APD's recruitment plan shall include specific strategies for attracting a diverse group of applicants who possess strategic thinking and problem-solving skills, emotional maturity, interpersonal skills, and the ability to collaborate with a diverse cross-section of the community.

235. APD's recruitment plan will also consult with community stakeholders to receive recommended strategies to attract a diverse pool of applicants. APD shall create and maintain sustained relationships with community stakeholders to enhance recruitment efforts.

B. Hiring Practices

236. APD shall develop and implement an objective system for hiring and selecting recruits. The system shall establish minimum standards for recruiting and an objective process for selecting recruits that employs reliable and valid selection devices that comport with best practices and anti-discrimination laws.

237. APD shall continue to require all candidates for sworn personnel positions, including new recruits and lateral hires, to undergo a psychological, medical, and polygraph examination to determine their fitness for employment. APD shall maintain a drug testing program that provides for reliable and valid pre-service testing for new officers and random testing for existing officers. The program shall continue to be designed to detect the use of banned or illegal substances, including steroids.

238. APD shall ensure that thorough, objective, and timely background investigations of candidates for sworn positions are conducted in accordance with best practices and federal anti-discrimination laws. APD's suitability determination shall include assessing a candidate's credit history, criminal history, employment history, use of controlled substances, and ability to work with diverse communities.

239. APD shall complete thorough, objective, and timely pre-employment investigations of all lateral hires. APD's pre-employment investigations shall include reviewing a lateral hire's history of using lethal and less lethal force, determining whether the lateral hire has been named in a civil or criminal action; assessing the lateral hire's use of force training

records and complaint history, and requiring that all lateral hires are provided training and orientation in APD's policies, procedures, and this Agreement.

240. APD shall annually report its recruiting activities and outcomes, including the number of applicants, interviewees, and selectees, and the extent to which APD has been able to recruit applicants with needed skills and a discussion of any challenges to recruiting high-quality applicants.

C. Promotions

241. APD shall develop and implement fair and consistent promotion practices that comport with best practices and federal anti-discrimination laws. APD shall utilize multiple methods of evaluation for promotions to the ranks of Sergeant and Lieutenant. APD shall provide clear guidance on promotional criteria and prioritize effective, constitutional, and community-oriented policing as criteria for all promotions. These criteria should account for experience, protection of civil rights, discipline history, and previous performance evaluations.

242. APD shall develop objective criteria to ensure that promotions are based on knowledge, skills, and abilities that are required to perform supervisory and management duties in core substantive areas.

243. Within six months of the Operational Date, APD shall develop and implement procedures that govern the removal of officers from consideration from promotion for pending or final disciplinary action related to misconduct that has resulted or may result in a suspension greater than 24 hours.

D. Performance Evaluation

244. APD shall develop and implement fair and consistent practices to accurately evaluate the performance of all APD officers in areas related to constitutional policing, integrity, community policing, and critical police functions on both an ongoing and annual basis. APD

shall develop objective criteria to assess whether officers meet performance goals. The evaluation system shall provide for appropriate corrective action, if such action is necessary.

245. As part of this system, APD shall maintain a formalized system documenting annual performance evaluations of each officer by the officer's direct supervisor. APD shall hold supervisors accountable for submitting timely, accurate, and complete performance evaluations of their subordinates.

246. As part of the annual performance review process, supervisors shall meet with the employee whose performance is being evaluated to discuss the evaluation and develop work plans that address performance expectations, areas in which performance needs improvement, and areas of particular growth and achievement during the rating period.

XI. OFFICER ASSISTANCE AND SUPPORT

247. To maintain high-level, quality service; to ensure officer safety and accountability; and to promote constitutional, effective policing, APD agrees to provide officers and employees ready access to mental health and support resources. To achieve this outcome, APD agrees to implement the requirements below.

248. APD agrees to develop and offer a centralized and comprehensive range of mental health services that comports with best practices and current professional standards, including: readily accessible confidential counseling services with both direct and indirect referrals; critical incident debriefings and crisis counseling; peer support; stress management training; and mental health evaluations.

249. APD shall provide training to management and supervisory personnel in officer support protocols to ensure support services are accessible to officers in a manner that minimizes stigma.

250. APD shall ensure that any mental health counseling services provided to APD employees remain confidential in accordance with federal law and generally accepted practices in the field of mental health care.

251. APD shall involve mental health professionals in developing and providing academy and in-service training on mental health stressors related to law enforcement and the mental health services available to officers and their families.

252. APD shall develop and implement policies that require and specify a mental health evaluation before allowing an officer back on full duty following a traumatic incident (e.g., officer-involved shooting, officer-involved accident involving fatality, or all other uses of force resulting in death) or as directed by the Chief.

253. APD agrees to compile and distribute a list of internal and external available mental health services to all officers and employees. APD should periodically consult with community and other outside service providers to maintain a current and accurate list of available providers.

XII. COMMUNITY ENGAGEMENT AND OVERSIGHT

254. To maintain high-level, quality service; to ensure officer safety and accountability; and to promote constitutional, effective policing, APD shall promote the sustainability of reforms by supporting strong community participation and creating formal and informal mechanisms that facilitate ongoing and constructive communication between APD and the many communities that make up Albuquerque. APD shall take an active role in generating broad community support and mutual respect with the diverse communities it serves by adopting greater transparency, forming problem-solving and goal-oriented partnerships, and sharing

responsibility for positive outcomes and continuous improvement through meaningful civilian oversight. To achieve these objectives, APD shall implement the provisions below.

A. Community and Problem-Oriented Policing

255. APD agrees to ensure its mission statement reflects its commitment to community-oriented policing and agrees to integrate community and problem-oriented policing principles into its management, policies and procedures, recruitment, training, personnel evaluations, resource deployment, tactics, and accountability systems.

256. As part of the Parties' staffing plan described in Paragraph 204, APD shall realign its staffing allocations and deployment, as indicated, and review its recruitment and hiring goals to ensure they support community and problem-oriented policing.

257. APD shall ensure that officers are familiar with the geographic areas they serve, including their issues, problems, and community leaders; engage in problem identification and solving activities with the community members around the community's priorities; and work proactively with other city departments to address quality-of-life issues.

258. Within 12 months of the Operational Date, APD agrees to provide 16 hours of initial structured training on community and problem-oriented policing methods and skills for all officers, including supervisors, commanders, and executives. This training shall include:

- a) methods and strategies to improve public safety and crime prevention through community engagement;
- b) leadership, ethics, and interpersonal skills;
- c) community engagement, including how to establish formal partnerships and actively engage community organizations, including youth, homeless, and mental health communities;
- d) problem-oriented policing tactics, including a review of the principles behind the problem solving framework developed under the "SARA Model" (Scanning, Analysis, Response, Assessment), which promotes a collaborative, systematic process to address issues of the community, safety, and quality of life;

- e) conflict resolution and verbal de-escalation of conflict; and
- f) cultural awareness and sensitivity training.

These topics shall also be included in APD's annual in-service training.

259. Within six months of the Operational Date, APD agrees to develop and implement mechanisms to measure officer outreach to a broad cross-section of community members, with an emphasis on mental health, to establish extensive problem-solving partnerships and develop and implement cooperative strategies that build mutual respect and trusting relationships with this broader cross-section of stakeholders.

B. Community Meetings and Public Information

260. APD shall develop a Community Outreach and Public Information program in each Area Command.

261. The Community Outreach and Public Information program shall require at least one semi-annual meeting in each Area Command that is open to the public. During the meetings, APD officers from the Area Command and the APD compliance coordinator or his or her designee shall inform the public about the requirements of this Agreement, update the public on APD's progress meeting these requirements, and address areas of community concern. At least one week before such meetings, APD shall widely publicize the meetings.

262. The Community Outreach and Public Information meetings shall, with appropriate safeguards to protect sensitive information, include summaries of all audits and reports completed pursuant to this Agreement and any policy changes made and other significant action taken as a result of this Agreement. The meetings shall also include public education on an individual's rights and responsibilities during a police encounter.

263. For at least the first two years of this Agreement, every APD officer and supervisor assigned to an Area Command shall attend at least two community meetings or other

meetings with residential, business, religious, civic or other community-based groups per year in the geographic area to which the officer is assigned.

264. APD shall continue to maintain and publicly disseminate accurate and updated crime statistics on a monthly basis.

265. APD audits and reports related to the implementation of this Agreement shall be posted on the City or APD's website, with reasonable exceptions for materials that are legally exempt or protected from disclosure.

C. Community Policing Councils

266. The City shall establish Community Policing Councils in each of the six Area Commands with volunteers from the community to facilitate regular communication and cooperation between APD and community leaders at the local level. The Community Policing Councils shall meet, at a minimum, every six months.

267. In conjunction with community representatives, the City shall develop a mechanism to select the members of the Community Policing Councils, which shall include a representative cross-section of community members and APD officers, including, for example, representatives of social services providers and diverse neighborhoods; leaders in faith, business, or academic communities; and youth. Members of the Community Policing Councils shall possess qualifications necessary to perform their duties, including successful completion of the Citizens Police Academy.

268. The City shall allocate sufficient resources to ensure that the Community Policing Councils possess the means, access, training, and mandate necessary to fulfill their mission and the requirements of this Agreement. APD shall work closely with the Community Policing Councils to develop a comprehensive community policing approach that collaboratively identifies and implements strategies to address crime and safety issues. In order to foster this

collaboration, APD shall share appropriate information and documents with the Community Policing Councils, provided adequate safeguards are taken not to disclose information that is legally exempt or protected from disclosure.

269. APD shall seek the Community Policing Councils' assistance, counsel, recommendations, or participation in areas including:

- a) reviewing and assessing the propriety and effectiveness of law enforcement priorities and related community policing strategies, materials, and training;
- b) reviewing and assessing concerns or recommendations about specific APD policing tactics and initiatives;
- c) providing information to the community and conveying feedback from the community to APD;
- d) advising the Chief on recruiting a qualified, diverse workforce; and
- e) advising the Chief on ways to collect and publicly disseminate data and information, including information about APD's compliance with this Agreement, in a transparent and public-friendly format to the greatest extent allowable by law.

270. The Community Policing Councils shall memorialize their recommendations in an annual public report that shall be posted on the City's website. The report shall include appropriate safeguards not to disclose information that is legally exempt or protected from disclosure.

D. Civilian Police Oversight Agency

271. The City shall implement a civilian police oversight agency ("the agency") that provides meaningful, independent review of all citizen complaints, serious uses of force, and officer-involved shootings by APD. The agency shall also review and recommend changes to APD policy and monitor long-term trends in APD's use of force.

272. The City shall ensure that the agency remains accountable to, but independent from, the Mayor, the City Attorney's Office, the City Council, and APD. None of these entities

shall have the authority to alter the agency's findings, operations, or processes, except by amendment to the agency's enabling ordinance.

273. The City shall ensure that the individuals appointed to serve on the agency are drawn from a broad cross-section of Albuquerque and have a demonstrated commitment to impartial, transparent, and objective adjudication of civilian complaints and effective and constitutional policing in Albuquerque.

274. Within six months of their appointment, the City shall provide 24 hours of training to each individual appointed to serve on the agency that covers, at a minimum, the following topics:

- a) this Agreement and the United States' Findings Letter of April 10, 2014;
- b) the City ordinance under which the agency is created;
- c) state and local laws regarding public meetings and the conduct of public officials;
- d) civil rights, including the Fourth Amendment right to be free from unreasonable searches and seizures, including unreasonable uses of force;
- e) all APD policies related to use of force, including policies related to APD's internal review of force incidents; and
- f) training provided to APD officers on use of force.

275. The City shall provide eight hours of training annually to those appointed to serve on the agency on any changes in law, policy, or training in the above areas, as well as developments in the implementation of this Agreement.

276. The City shall require those appointed to the agency to perform at least two ride-alongs with APD officers every six months.

277. The City shall provide the agency sufficient resources and support to assess and make recommendations regarding APD's civilian complaints, serious uses of force, and officer-

involved shootings; and to review and make recommendations about changes to APD policy and long-term trends in APD's use of force.

278. The City shall provide the agency a dedicated budget and grant the agency the authority to administer its budget in compliance with state and local laws. The agency shall have the authority to hire staff and retain independent legal counsel as necessary.

279. The agency shall retain a full-time, qualified investigative staff to conduct thorough, independent investigations of APD's civilian complaints and review of serious uses of force and officer-involved shootings. The investigative staff shall be selected by and placed under the supervision of the Executive Director. The Executive Director will be selected by and work under the supervision of the agency. The City shall provide the agency with adequate funding to ensure that the agency's investigative staff is sufficient to investigate civilian complaints and review serious uses of force and officer-involved shootings in a timely manner.

280. The Executive Director will receive all APD civilian complaints, reports of serious uses of force, and reports of officer-involved shootings. The Executive Director will review these materials and assign them for investigation or review to those on the investigative staff. The Executive Director will oversee, monitor, and review all such investigations or reviews and make findings for each. All findings will be forwarded to the agency through reports that will be made available to the public on the agency's website.

281. Investigation of all civilian complaints shall begin as soon as possible after assignment to an investigator and shall proceed as expeditiously as possible.

282. The City shall ensure that the agency, including its investigative staff and the Executive Director, have access to all APD documents, reports, and other materials that are reasonably necessary for the agency to perform thorough, independent investigations of civilian

complaints and reviews of serious uses of force and officer-involved shootings. At a minimum, the City shall provide the agency, its investigative staff, and the Executive Director access to:

- a) all civilian complaints, including those submitted anonymously or by a third party;
- b) the identities of officers involved in incidents under review;
- c) the complete disciplinary history of the officers involved in incidents under review;
- d) if requested, documents, reports, and other materials for incidents related to those under review, such as incidents involving the same officer(s);
- e) all APD policies and training; and
- f) if requested, documents, reports, and other materials for incidents that may evince an overall trend in APD's use of force, internal accountability, policies, or training.

283. The City shall provide reasonable access to APD premises, files, documents, reports, and other materials for inspection by those appointed to the agency, its investigative staff, and the Executive Director upon reasonable notice. The City shall grant the agency the authority to subpoena such documents and witnesses as may be necessary to carry out the agency functions identified in this Agreement.

284. The City, APD, and the agency shall develop protocols to ensure the confidentiality of internal investigation files and to ensure that materials protected from disclosure remain within the custody and control of APD at all times.

285. The Executive Director, with approval of the agency, shall have the authority to recommend disciplinary action against officers involved in the incidents it reviews. The Chief shall retain discretion over whether to impose discipline and the level of discipline to be imposed. If the Chief decides to impose discipline other than what the agency recommends, the

Chief must provide a written report to the agency articulating the reasons its recommendations were not followed.

286. The findings of the Executive Director shall be documented by APD's Internal Affairs Division for tracking and analysis.

287. The City shall permit complainants a meaningful opportunity to appeal the Executive Director's findings to the agency.

288. The agency shall make recommendations to the Chief regarding APD policy and training. APD shall submit all changes to policy related to this Agreement (i.e., use of force, specialized units, crisis intervention, civilian complaints, supervision, discipline, and community engagement) to the agency for review, and the agency shall report any concerns it may have to the Chief regarding policy changes.

289. For any of the agency's policy recommendations that the Chief decides not to follow, or any concerns that the agency has regarding changes to policy that Chief finds unfounded, the Chief shall provide a written report to the agency explaining any reasons why such policy recommendations will not be followed or why the agency's concerns are unfounded.

290. The agency shall conduct regular public meetings in compliance with state and local law. The City shall make agendas of these meetings available in advance on websites of the City, the City Council, the agency, and APD.

291. The City shall require the agency and the Executive Director to implement a program of community outreach aimed at soliciting public input from broad segments of the community in terms of geography, race, ethnicity, and socio-economic status.

292. The City shall require the agency to submit semi-annual reports to the City Council on its activities, including:

- a) number and type of complaints received and considered, including any dispositions by the Executive Director, the agency, and the Chief;
- b) demographic category of complainants;
- c) number and type of serious force incidents received and considered, including any dispositions by the Executive Director, the agency, and the Chief;
- d) number of officer-involved shootings received and considered, including any dispositions by the Executive Director, the agency, and the Chief;
- e) policy changes submitted by APD, including any dispositions by the Executive Director, the agency, and the Chief;
- f) policy changes recommended by the agency, including any dispositions by the Chief;
- g) public outreach efforts undertaken by the agency and/or Executive Director; and
- h) trends or issues with APD's use of force, policies, or training.

293. The City shall not, through the City Attorney's office or other means, interpret the originating ordinance of the agency in any way that contradicts the provisions of this Agreement.

XIII. IMPLEMENTATION, COMPLIANCE ASSESSMENT, AND ENFORCEMENT

A. Independent Monitor

294. The Parties will jointly select an Independent Monitor ("Monitor") who will assess and report whether the requirements of this Agreement have been implemented, and whether this implementation is resulting in high-level, quality service; officer safety and accountability; effective, constitutional policing; and increased community trust of APD.

295. The Monitor shall only have the duties, responsibilities, and authority conferred by this Agreement. The Monitor shall not, and is not intended to, replace or assume the role and duties of APD, including the Chief or any other City official. The Monitor shall be subject to the supervision and orders of the Court, consistent with this Agreement and applicable law.

296. In order to assess and report on the implementation of this Agreement and whether implementation is resulting in the outcomes outlined in Paragraph 294, the Monitor shall

conduct the reviews specified in this Agreement, and shall review APD policies, training curricula, and programs developed and implemented under this Agreement.

B. Compliance Reviews and Audits

297. The Monitor shall conduct compliance reviews or audits as necessary to determine whether the City has implemented and continues to comply with the material requirements of this Agreement. Compliance with a material requirement of this Agreement requires that the City has: (a) incorporated the requirement into policy; (b) trained all relevant personnel as necessary to fulfill their responsibilities pursuant to the requirement; and (c) that the requirement is being carried out in actual practice. Compliance reviews and audits shall contain the elements necessary for reliability and comprehensiveness, and may be conducted using sampling and compilation data in accordance with this Paragraph.

C. Outcome Assessments

298. In addition to compliance reviews and audits, the Monitor shall conduct qualitative and quantitative assessments to measure whether implementing this Agreement has resulted in the outcomes expressed in Paragraph 294. These outcome assessments shall include collecting and analyzing the following outcome data trends and patterns:

- a) use of force measurements including:
 - i. number of uses of force overall and by force type, area command, type of arrest, and demographic category;
 - ii. number of force complaints overall, disposition of complaints, force type, area command, and demographic category;
 - iii. number of uses of force that violate policy overall and by force type, area command, type of arrest, and demographic category;
 - iv. number of use of force administrative investigations supported by a preponderance of the evidence;

- v. number of officers who are identified in the Early Intervention System for which use of force is a factor, or have more than one instance of force found to violate policy;
 - vi. number of injuries to officers and members of the public overall and by type, area command, and demographic category; and
 - vii. ratio of use of force compared per arrest, force complaints, calls for service, and other factors that the parties deem appropriate;
- b) Specialized Units:
- i. number of activations and deployments of specialized tactical units; and
 - ii. number of uses of force used overall and by force type, area command, and demographic category;
- c) crisis intervention measures, including the information outlined in Paragraphs 129 and 137;
- d) recruitment measurements, including number of highly qualified recruit candidates;
- i. detailed summary of recruitment activities, including development and leveraging community partnerships;
 - ii. the number of recruit applicants who failed to advance through the selection process after having been identified as well qualified, grouped by the reason for the failure to advance (this provision does not apply to those who fail to pre-qualify through APD's online recruiting or other pre-screening system);
 - iii. the number of well-qualified recruit applicants who were granted any exceptions to the hiring standards, grouped by exceptions granted, and the reasons exceptions were granted;
 - iv. the number of well-qualified recruit applicants with fluency in languages other than English, grouped by the specific languages spoken;
 - v. the number of well-qualified recruit applicants with previous law enforcement experience, grouped by former agencies and years of service; and
 - vi. the number of well-qualified recruit applicants grouped by educational level achieved or years of military service;
- e) force reviews and investigations indicating a policy, training, or tactical deficiency;
- f) training data, including:

- i. number of officers trained pursuant to this Agreement, by the type of training provided; and
 - ii. training deficiencies identified through use of force reviews or investigations, the Performance Review Unit of the Compliance Bureau, the Force Review Board, civilian complaints, internal complaints, the disciplinary process, and the Civilian Police Oversight Agency;
- g) officer assistance and support measurements, including:
- i. availability and use of officer assistance and support services; and
 - ii. officer reports or surveys of adequacy of officer assistance and support;
- h) supervision measurements, including initial identification of policy violations and performance problems by supervisors, and effective response by supervisors to identified problems; and
- i) civilian complaints, internal investigations, and discipline, including:
- i. the number of misconduct complaints, and whether any increase or decrease appears related to access to the complaint process;
 - ii. number of sustained, not sustained, exonerated, and unfounded misconduct complaints;
 - iii. number of misconduct complaint allegations supported by a preponderance of the evidence;
 - iv. number of officers who are subjects of repeated misconduct complaints, or have repeated instances of sustained misconduct complaints; and
 - v. number of criminal prosecutions of officers for on- or off-duty conduct.

299. In conducting these outcome assessments, the Monitor may use any relevant data collected and maintained by APD (e.g., crime trend pattern analysis), provided that it has determined, and the Parties agree, that this data is reasonably reliable and complete.

D. Monitoring Plan and Methodology

300. Within three months of his or her appointment date as the Monitor, the Monitor shall develop a plan for conducting the above compliance reviews and outcome assessments, and shall submit this plan to the Parties for review and approval. This plan shall:

- a) clearly delineate the requirements of this Agreement to be assessed for compliance, indicating which requirements will be assessed together;
- b) set out a methodology for reviewing serious use of force and serious misconduct complaint investigations;
- c) set out a schedule for conducting outcome measure assessments for each outcome measure at least annually, except where otherwise noted, with the first assessment occurring within 24 months of the Effective Date; and
- d) set out a schedule for conducting a compliance review or audit of each requirement of this Agreement within 18 months of the Effective Date, and a comprehensive compliance review or audit of each requirement within two years of the Effective Date and at least annually thereafter; and
- e) set out a schedule for conducting comprehensive compliance and outcome re-assessments, pursuant to Paragraphs 306 and 307.

301. Within 45 days of his or her appointment date as the Monitor, the Monitor shall review and recommend any changes to the outcome measures detailed in section XIII, above, that the Monitor deems useful in assessing whether implementation is achieving the goals of this Agreement. The Parties shall adopt any recommendations upon which they agree. If the Parties disagree whether to adopt a particular outcome measure, the Party seeking adoption may seek Court resolution.

302. Where the Parties agree, the Monitor shall refrain from conducting a compliance review of a requirement previously found by the Monitor to be in sustained compliance for at least two years pursuant to audits or reviews, or where outcome assessments or other information indicate that the outcome intended by the requirement has been achieved.

303. Beginning six months after the Effective Date, the Monitor shall submit a proposed methodology for the assessment or review to the Parties at least three months before the initiation of any outcome measure assessment or compliance review. The Parties shall submit any comments or concerns regarding the proposed methodology to the Monitor within 45 days of the proposed date of the assessment or review. The Monitor shall modify the

methodology as necessary to address any concerns or shall inform the Parties in writing of the reasons it is not modifying its proposed methodology. Any unresolved disputes involving the Monitor's methodology may be submitted to the Court for resolution.

E. Review of Use of Force and Misconduct Investigations

304. The City shall provide each investigation of a Level 3 use of force, or use of force that is the subject of a misconduct investigation, and each investigation report of a serious misconduct complaint (i.e., criminal misconduct; unreasonable use of force; untruthfulness/false statements; and retaliation) to the Monitor once closed. The Monitor shall review each Level 3 use of force investigation and each serious misconduct complaint investigation for completeness, consistent with the methodology developed pursuant to Paragraphs 300 and 303.

F. Monitor Recommendations and Technical Assistance

305. The Monitor may make recommendations to the Parties regarding measures necessary to ensure timely, full, and effective implementation of this Agreement and its underlying objectives. Such recommendations may include changing, modifying, or amending a provision of the Agreement; additional training in any area related to this Agreement; or seeking technical assistance. In addition to such recommendations, the Monitor may also, at the request of DOJ or the City and based on the Monitor's reviews, provide technical assistance consistent with the Monitor's responsibilities under this Agreement.

G. Comprehensive Re-Assessment

306. Two years after the Effective Date, the Monitor shall conduct a comprehensive compliance assessment.

307. Two years and six months after the Effective Date, the Monitor shall conduct a comprehensive outcome assessment to determine whether and to what extent the outcomes intended by this Agreement have been achieved, and whether any modifications to this

Agreement are necessary for continued achievement in light of changed circumstances or unanticipated impact (or lack of impact) of the requirement. This assessment shall also address areas of greatest achievement and the requirements that appear to have contributed to this success, as well as areas of greatest concern, including strategies for accelerating full and effective compliance. Based upon this comprehensive assessment, the Monitor shall recommend modifications to this Agreement necessary to achieve and sustain intended outcomes. Where the Parties agree with the Monitor's recommendations, the Parties shall stipulate to modify the Agreement accordingly. This provision in no way diminishes the Parties' ability to stipulate to modifications to this Agreement as set out in Paragraph 338 below. Nothing in this assessment shall enable the Monitor to unilaterally modify the terms of this Agreement.

H. Monitor Reports

308. Commencing six months after the Operational Date and through November 2016, the Monitor shall file with the Court written, public compliance reports every four months. After November 2016 and commencing with the fifth public compliance report, the Monitor shall file these written, public reports every six months. These reports shall include the following:

- a) a description of the work conducted by the Monitor during the reporting period;
- b) a list of each Agreement requirement, indicating which requirements have been:
 - i. incorporated into policy;
 - ii. the subject of sufficient training for all relevant APD officers and employees;
 - iii. reviewed or audited by the Monitor to determine whether the requirements have been fully implemented in actual practice, including the date of the review or audit; and
 - iv. found by the Monitor to have been fully implemented in practice;
- c) the methodology and specific findings for each review conducted, where appropriate, and redacted as necessary for privacy concerns. An unredacted version shall be filed under seal with the Court and provided to the Parties. The

underlying data for each review shall not be publicly available but shall be retained by the Monitor and provided to either or both Parties upon request;

- d) for any requirements that were reviewed or audited and found not to have been fully implemented in practice, the Monitor's recommendations regarding necessary steps to achieve compliance; and
- e) a projection of the work to be completed during the upcoming reporting period and any anticipated challenges or concerns related to implementation of this Agreement.

309. The Monitor shall provide a copy of the compliance reports to the Parties in draft form within two months after the end of each reporting period. The Parties shall have 15 calendar days upon receipt of the report to allow the Parties to informally comment on the draft report. The Monitor shall consider the Parties' responses and make appropriate changes, if any, before issuing the final report. The Monitor shall issue the final report within one month of issuing the draft report.

I. Communication Between Monitor, Parties, and Public

310. The Monitor shall maintain regular contact with the Parties in order to ensure effective and timely communication regarding the status of APD's implementation of and compliance with this Agreement. To facilitate this communication, the Monitor shall conduct monthly meetings, which shall include participation by the Chief, counsel for the City, the APD Implementation Unit, and DOJ.

311. The Monitor shall meet with community stakeholders to explain the Monitor's reports and inform the public about this Agreement's implementation process, as well as to hear community perspectives of police interactions.

J. Public Statements, Testimony, Records, and Conflicts of Interest

312. Except as required or authorized by the terms of this Agreement or the Parties acting together, the Monitor (including, for the purposes of this paragraph, any agent, employee,

or independent contractor thereof) shall not make any public statements or issue findings with regard to any act or omission of the City, its agents, representatives, or employees; nor shall it disclose non-public information provided to the Monitor pursuant to this Agreement. Any press or public statement made by the Monitor regarding its employment or monitoring activities under this Agreement shall first be approved by DOJ and the City.

313. Members of the monitoring team may testify only in this matter as to their observations, findings, and recommendations, but no member of the monitoring team shall testify in any other litigation or proceeding with regard to any act or omission of the City or any of its agents, representatives, or employees related to this Agreement or regarding any matter or subject that the Monitor may have received knowledge of as a result of his or her performance under this Agreement. This paragraph does not apply to any proceeding before a court related to performance of contracts or subcontracts for monitoring this Agreement.

314. Unless such conflict is waived by the Parties, the Monitor shall not accept employment or provide consulting services that would present a conflict of interest with the Monitor's responsibilities under this Agreement, including being retained (on a paid or unpaid basis) by any current or future litigant or claimant, or such litigant's or claimant's attorney, in connection with a claim or suit against the City or its departments, officers, agents or employees.

315. The Monitor is not a state or local agency or an agent thereof, and accordingly, the records maintained by the Monitor or communications between the Monitor and the Parties shall not be deemed public records subject to public inspection.

316. The Monitor shall not be liable for any claim, lawsuit, or demand arising out of the Monitor's performance pursuant to this Agreement brought by non-parties to this Agreement.

K. APD Implementation Unit

317. Implementation of this Agreement will require flexibility in assignments and staffing to ensure that this Agreement maintains high-level, quality service; ensures officer safety and accountability; and promotes effective, constitutional policing. The City agrees to hire and retain, or reassign current APD employees, at the discretion of the Chief, to form an interdisciplinary unit with the skills and abilities necessary to facilitate implementation of this Agreement. This unit will serve as a liaison between the Parties and the Monitor and will assist with the City's and APD's implementation of and compliance with this Agreement. At a minimum, this unit will: coordinate the City's and APD's compliance and implementation activities; facilitate the provision of data, documents, materials, and access to the City's and APD's personnel to the Monitor and DOJ, as needed; ensure that all data, documents and records are maintained as provided in this Agreement; and assist in assigning implementation and compliance-related tasks to APD personnel, as directed by the Chief.

L. Implementation Assessment and Report

318. The City agrees to collect and maintain all data and records necessary to: (1) document implementation of and compliance with this Agreement, including data and records necessary for the Monitor to conduct reliable outcome assessments, compliance reviews, and audits; and (2) allow APD or other City entities to perform ongoing quality assurance in each of the areas addressed by this Agreement.

319. Within six months of the Operational Date, APD agrees to file a status report with the Court, with a copy also provided to the Monitor and DOJ. This report shall delineate the steps taken by APD during the reporting period to implement this Agreement; APD's assessment of the status of its progress; plans to correct any problems; and response to any concerns raised in the Monitor's previous report. Beginning with the Monitor's first report, and

following the schedule for Monitor reports in Paragraph 308, APD agrees to file a status report one month before the Monitor reports are due, for the duration of this Agreement.

M. Access and Confidentiality

320. To facilitate its work, the Monitor may conduct on-site visits and assessments without prior notice to the City. The Monitor shall have access to all necessary individuals, facilities, and documents, which shall include access to Agreement-related trainings, meetings, and reviews such as critical incident review and disciplinary hearings. APD shall notify the Monitor as soon as practicable, and in any case within 12 hours, of any critical firearms discharge, in-custody death, or arrest of any officer.

321. The City agrees to ensure that the Monitor shall have timely, full, and direct access to all City staff, employees, and facilities that the Monitor reasonably deems necessary to carry out the duties assigned to the Monitor by this Agreement. The Monitor shall cooperate with the City to access people and facilities in a reasonable manner that, consistent with the Monitor's responsibilities, minimizes interference with daily operations.

322. The City shall ensure that the Monitor has full and direct access to all City and APD documents and data that the Monitor reasonably deems necessary to carry out the duties assigned to the Monitor by this Agreement, except any documents or data protected by the attorney-client or work product privilege. The attorney-client or work product privilege may not be used to prevent the Monitor from observing reviews, trainings, or disciplinary hearings. Should the City decline to provide the Monitor access to documents or data based on privilege, the City shall inform the Monitor and DOJ that it is withholding documents or data on this basis, and shall provide the Monitor and DOJ with a log describing the documents or data and the basis of the privilege.

323. DOJ and its consultants and agents shall have full and direct access to all City staff, employees, facilities, documents, and data to the extent necessary to assess implementation of this Agreement, in coordination with the City's legal counsel. DOJ and its consultants and agents shall cooperate and coordinate with the City and its legal counsel to access involved personnel, facilities, and documents in a reasonable manner that, consistent with DOJ's responsibilities to enforce this Agreement, minimizes interference with daily operations. Should the City decline to provide DOJ with access to documents or data based on privilege, the City shall inform DOJ that it is withholding documents or data on this basis, and shall provide DOJ with a log describing the documents or data and the basis of the privilege.

324. The Monitor and DOJ shall provide the City with reasonable notice of a request for copies of documents. Upon such request, the City shall provide in a timely manner copies (electronic, where readily available) of the requested documents to the Monitor and DOJ.

325. The Monitor shall have access to all records and information relating to ongoing criminal investigations of APD officers that would be subject to disclosure under state public records laws. The Monitor shall have access to all documents in criminal investigation files that have been closed by APD after the Effective Date. The Monitor shall also have reasonable access to all arrest reports, warrants, and warrant applications initiated after the Effective Date.

326. The Monitor and DOJ shall maintain all non-public information provided by the City in a confidential manner. Other than as expressly provided in this Agreement, this Agreement shall not be deemed a waiver of any privilege or right the City may assert, including those recognized at common law or created by statute, rule, or regulation, against any other person or entity with respect to the disclosure of any document.

N. Selection and Compensation of the Monitor

327. Within two months of the Effective Date, or additional time if agreed to by the Parties, the City and DOJ shall together select a Monitoring Team, acceptable to both, which shall assess and report on the implementation of this Agreement. The Parties have agreed to use an open Request for Information process in selecting the Monitoring Team. This process shall be implemented in a manner consistent with this Agreement, including the requirement that the Monitoring Team be jointly selected and acceptable to both DOJ and the City. The Parties' Monitoring Team selection shall be subject to the approval of the Court. The Monitoring Team shall consist of individuals of the highest ethics.

328. The Parties commit to working together to implement this Agreement. Accordingly, the Parties commit to working collaboratively to select a Monitoring Team. If the Parties are unable to agree on a Monitor or an alternative method of selection within the timeframe agreed to by all parties, each Party shall submit the names of three candidates, or three groups of candidates, along with resumes and cost proposals, to the Court, and the Court will select a Monitoring Team from among the qualified candidates/candidate groups.

329. The Monitoring Team shall be appointed for a period of four years from the Effective Date and shall have its appointment extended automatically should the City not demonstrate full and effective compliance at the end of this four-year period. The extension of the Monitoring Team beyond six years shall be allowed only if the Court determines that it is reasonably necessary in order to assess and facilitate full and effective compliance with this Agreement.

330. The City shall bear all reasonable fees and costs of the Monitor. DOJ and the City recognize the importance of ensuring that the fees and costs borne by the City are reasonable. Accordingly, fees and costs shall be one factor considered in selecting the Monitor.

Before the Monitor is selected, candidates for the position of Monitor shall prepare annual budgets for the first four years of this Agreement. Upon selecting the Monitor, the Court will approve the annual budgets for the first four years of this Agreement. Those budgets will only be revised upon the agreement of the Parties, or, if the Parties are unable to agree on a budget revision, the matter shall be submitted to the Court to revise the budgets pursuant to Federal Rule of Civil Procedure 60(b).

331. In the event that any dispute arises regarding the reasonableness or payment of the Monitor's fees and costs, the City, DOJ, and the Monitor shall attempt to resolve such dispute cooperatively prior to seeking the assistance of the Court.

332. The City shall provide the Monitor with permanent office space and reasonable office support such as office furniture, telephones, Internet access, secure document storage, and photocopying.

333. The Monitor, at any time after its initial selection, may request permission to hire, employ, or contract with such additional persons or entities as are reasonably necessary to perform the tasks assigned to the Monitor by this Agreement. Any person or entity hired or otherwise retained by the Monitor to assist in furthering any provision of this Agreement shall be subject to the provisions of this Agreement. The Monitor shall notify the City and DOJ in writing if the Monitor wishes to select such additional persons or entities. The notice shall identify and describe the qualifications of the person or entity to be hired or employed and the monitoring task to be performed. If the City and DOJ agree to the Monitor's proposal, the Monitor shall be authorized to hire or employ such additional persons or entities. The City or DOJ have ten business days to disagree with the proposal. If the City and DOJ are unable to

reach agreement within ten business days of receiving notice of the disagreement, the Court will resolve the dispute.

334. If full and effective implementation of this Agreement requires technical assistance beyond the scope of the Monitor's duties, DOJ, APD, and/or the Monitor shall inform the City of the need for technical assistance and its relation to implementation of this Agreement. The Monitor, with assistance from the City, shall arrange for the prompt initiation of the required technical assistance, to be performed by the Monitor or its agent or independent contractor, or a separate entity. The City shall set aside \$100,000.00 for this purpose, and shall allocate additional funds as necessary. If any party disagrees with the need for the technical assistance requested, the party shall, within 15 days of being informed in writing of the requested technical assistance, and within 10 business days of providing notice of the disagreement, inform the Court, which shall resolve the dispute.

335. Should any of the Parties to this Agreement determine that the Monitor or the Monitor's individual members, agents, employees, or independent contractors have exceeded their authority, or failed to satisfactorily perform the duties required by this Agreement, the party may petition the Court for such relief as the Court deems appropriate, including replacement of the Monitor and/or any individual members, agents, employees, or independent contractors.

O. Court Jurisdiction, Modification of the Agreement, and Enforcement

336. This Agreement shall become effective upon signature of the Parties and submission to the Court.

337. To ensure that the requirements of this Agreement are properly and timely implemented, the Court will retain jurisdiction of this action for all purposes until such time as full and effective compliance with this Agreement and compliance is maintained for no less than two years. At all times, the City shall bear the burden of demonstrating full and effective

compliance with this Agreement. The United States acknowledges the good faith of the City of Albuquerque in trying to address measures that are needed to maintain high-level, quality service; to ensure officer safety and accountability; and promote effective, constitutional policing. The United States, however, reserves its right to seek enforcement of the provisions of this Agreement if it determines that the City has failed to fully comply with any provision of this Agreement. The United States agrees to consult with officials from the City of Albuquerque and its counsel before instituting enforcement proceedings.

338. The Parties may jointly stipulate to make changes, modifications, and amendments to this Agreement, which shall be effective, absent further action from the Court, 45 days after a joint motion has been filed with the Court. Such changes, modifications, and amendments to this Agreement shall be encouraged when the Parties agree, or where the reviews, assessments, and/or audits of the Monitor demonstrate that the Agreement provision as drafted is not furthering the purpose of this Agreement or that there is a preferable alternative that will achieve the same purpose. Where the Parties or the Monitor are uncertain whether a change to the Agreement is advisable, the Parties may agree to suspend the current Agreement requirement for a time period agreed upon at the outset of the suspension. During this suspension, the Parties may agree to temporarily implement an alternative requirement. The Monitor shall assess whether the suspension of the requirement, and the implementation of any alternative provision, is as, or more, effective at achieving the purpose as the original or current Agreement requirement, and the Parties shall consider this assessment in determining whether to jointly stipulate to make the suggested change, modification, or amendment.

339. The Parties agree to defend the provisions of this Agreement. The Parties shall notify each other of any court or administrative challenge to this Agreement by non-parties. In

the event any provision of this Agreement is challenged in any state court, the Parties shall seek removal to federal court and consolidation with this action.

340. The City agrees to promptly notify DOJ if any term of this Agreement becomes subject to collective bargaining consultation and to consult with DOJ in a timely manner regarding the position the City takes in any collective bargaining consultation connected with this Agreement.

341. The City agrees to require compliance with this Agreement by their respective officers, employees, agencies, assigns, or successors.

P. Termination of the Agreement

342. The City will endeavor to reach full and effective compliance with this Agreement within four years of its Effective Date. The Parties agree to jointly ask the Court to terminate this Agreement after this date, provided that the City has been in full and effective compliance with this Agreement for two years. "Full and Effective Compliance" shall be defined to require sustained compliance with all material requirements of this Agreement or sustained and continuing improvement in constitutional policing, as demonstrated pursuant to the Agreement's outcome measures.

343. If after six years from the Effective Date the Parties disagree whether the City has been in full and effective compliance for two years, either Party may seek to terminate this Agreement. In the case of termination sought by the City, prior to filing a motion to terminate, the City agrees to notify DOJ in writing when the City has determined that it is in full and effective compliance with this Agreement and that such compliance has been maintained for no less than two years. Thereafter, the Parties shall promptly confer as to the status of compliance. If, after a reasonable period of consultation and the completion of any audit or evaluation that DOJ and/or the Monitor may wish to undertake, including on-site observations, document

review, or interviews with City personnel, the Parties cannot resolve any compliance issues, the City may file a motion to terminate this Agreement. If the City moves for termination of this Agreement, DOJ will have 60 days after the receipt of the City's motion to object to the motion. If DOJ does not object, the Court may grant the City's motion. If DOJ does make an objection, the Court will hold a hearing on the motion, and the burden shall be on the City to demonstrate that it is in full and effective compliance with this Agreement and has maintained such compliance for at least two years.

344. This Agreement is enforceable only by the Parties. No person or entity is intended to be a third-party beneficiary of the provisions of this Agreement for purposes of any civil, criminal, or administrative action. Accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Agreement.

Respectfully submitted this 29th day of July, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2019, I filed the foregoing pleading electronically through the CM/ECF system which caused all parties or counsel to be served by electronic means as more fully reflected on the Notice of Electronic Filing.

/s/ Elizabeth M. Martinez
ELIZABETH M. MARTINEZ
Assistant U.S. Attorney

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO
FEB 26 2021

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

MITCHELL R. ELFERS
CLERK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE CITY OF ALBUQUERQUE,

No. CIV. 14-1025 JB\SMV

Defendant,

vs.

THE ALBUQUERQUE POLICE
OFFICERS' ASSOCIATION,

Intervenor.

**STIPULATED ORDER ESTABLISHING AN
EXTERNAL FORCE INVESTIGATION TEAM**

This matter comes before the Court on the Joint Motion of Plaintiff United States of America and Defendant City of Albuquerque (collectively, the Parties), with the concurrence of the Independent Monitor, for entry of this Stipulated Order, which requires the City to establish, on a temporary basis, an External Force Investigation Team (EFIT) to assist the Albuquerque Police Department (APD) in conducting investigations of Level 2 and Level 3 uses of force by APD officers, while also assisting APD with improving the quality of its own Internal Affairs (IA) force investigations. This Stipulated Order also requires the City to improve APD's IA processes, increase the number APD IA force investigators, and provide additional training to APD's IA force investigators. The Parties intend the measures in this Stipulated Order to ensure high-quality, timely investigations of Level 2 and Level 3 force incidents, and to address the investigative deficiencies in APD's IA force investigations identified in the Independent

RFJ
2/10/21

Monitor's Twelfth Report, Doc. 652. The Court approves this Stipulated Order and enters it as an Order of the Court.

A. Establishment of the External Force Investigation Team

1. The City shall establish an EFIT to guide and direct IA force personnel, and when necessary, conduct investigations of Level 2 and Level 3 uses of force; provide written assessments of IA investigations carried out by IA force personnel; and provide written feedback on IA force personnel's work product. *See* Doc. 465-1 ¶ 48 (defining Level 2 and Level 3 uses of force).
2. For the purposes of this Order, "IA force personnel" includes IA force investigators and supervisors, other than IA Commanding Officers; "investigations of Level 2 and Level 3 uses of force" include both investigations and the review of investigations by supervisors; and "Independent Monitor" may include members of the Independent Monitoring Team.
3. EFIT shall be overseen by an Administrator. The City shall empower the EFIT Administrator to hire and retain the staff necessary to fulfill the requirements of this Order. It is anticipated that the EFIT Administrator will hire and retain a number of Investigators, as well as administrative support staff and Supervisors, as necessary to fulfill the duties under the EFIT Administrator's contract with the City. The EFIT Administrator shall ensure that a sufficient number of EFIT Investigators to meet the requirements of Paragraph 17 of this Order are physically present in Albuquerque and able to respond to the scene of Level 2 and Level 3 uses of force.
4. The EFIT Administrator shall have experience and expertise in investigating law enforcement misconduct, the constitutional standards for police officers' use of force, and systems reform litigation. The EFIT Supervisors and Investigators shall have experience

and expertise in investigating law enforcement misconduct and the constitutional standards for police officers' use of force. Neither the EFIT Administrator, Supervisors, nor Investigators shall have any current or previous employment relationship or contract for services with APD or the City.

5. The City shall contract with the EFIT Administrator and fund the operations of EFIT in accordance with its Public Purchases Ordinance, specifically, ROA 1994, § 5-5-20(U) (exempting “[c]ontracts and expenditures in connection with court or administrative proceedings, including, but not limited to, experts, mediators, interpreters, translators, court reporters, process servers, witness fees, and printing and duplicating of materials for filing” from competitive requirements of the article), or any other appropriate provision of the Public Purchases Ordinance.
6. The City shall widely publish a request for letters of interest for the EFIT Administrator no later than March 1, 2021. ^(S) ^{ACB} ^{2/26/21}
7. The City shall accept input from the United States Department of Justice (DOJ) as the City solicits EFIT Administrator candidates and on the candidate that the City ultimately selects. DOJ shall provide input within two (2) weeks of receiving information about the candidates, unless otherwise agreed by the City and DOJ.
8. The contract between the EFIT Administrator and the City shall include all standard terms for City contracts.
9. Within two weeks of the EFIT Administrator's selection, the City and DOJ shall file a notice with the Court to inform the Court of the Administrator's identity and professional background.

10. The City shall enter into a contract with an EFIT Administrator no later than May 3, 2021.

11. Within one month of the EFIT Administrator's selection, the City and the EFIT Administrator shall establish protocols for how APD IA and EFIT will coordinate on investigations of Level 2 and Level 3 uses of force. At a minimum, the protocols will specify procedures for coordinating the work of IA force personnel and EFIT personnel; and how APD IA will transmit investigative files to EFIT. The protocols will specify that EFIT shall not assist APD IA with investigations of Level 2 and Level 3 uses of force for which the investigatory deadlines established by the Court-Approved Settlement Agreement (CASA), APD policy, and the Collective Bargaining Agreement between the City and the Albuquerque Police Officers' Association (CBA) have expired at the time that EFIT begins providing services. The protocols shall be submitted to DOJ and the Independent Monitor for review and comment pursuant to the procedures of Paragraphs 147 and 148 of the CASA. Doc. 465-1 at 49-50.

B. Staffing of IA Force Investigators; Technical Assistance

12. The City shall ensure that APD maintains at least twenty-five (25) force investigators assigned to IA, unless and until APD can demonstrate by an internal staffing analysis that fewer investigators are necessary to timely investigate all Level 2 and Level 3 uses of force.

13. The Independent Monitor has provided and will continue to provide extensive technical to the City regarding IA processes, including the period before an EFIT administrator is selected.

14. Based on the technical assistance set forth in Paragraph 13, within two months of the entry of this Order, the City will submit a proposed written IA investigative process to DOJ and the Independent Monitor. DOJ and the Independent Monitor will have 14 days to submit proposed revisions to the written IA investigative process. The City will have seven days to agree to or reject any proposed revisions. After the City, DOJ, and the Independent Monitor reach agreement on the proposed written IA investigative process, the written IA investigative process shall be filed with the Court. If the City, DOJ, and the Independent Monitor cannot reach an agreement on the proposed written IA investigative process, the City or DOJ may submit the matter to the Court for resolution.

15. After APD implements the written IA investigative process, the Independent Monitor will spend an additional week providing intensive technical assistance, in addition to the extensive technical assistance provided to date.

16. The City shall endeavor to negotiate longer investigative deadlines with the recognized exclusive representatives of relevant bargaining agreements. Nothing in this order requires the City to violate the Labor Management Relations Ordinance or any collective bargaining agreement.

C. Investigations of Level 2 and Level 3 Uses of Force

17. From the date the EFIT contractor begins services and subject to EFIT staffing levels, APD and EFIT will both deploy investigators to the scene for every Level 2 and Level 3 use of force, unless APD deploys an APD IA investigator who has satisfied the requirements of Paragraph 35.

18. APD IA investigators shall act as the lead on-scene investigators for all Level 2 and Level 3 uses of force and shall be primarily responsible for conducting the on-scene

requirements of CASA Paragraphs 69(a), (b), (c), (d), and (e) (Doc. 465-1 at 27),

including but not limited to:

- a. respond to the scene and consult with the on-scene supervisor to ensure that all personnel and subject(s) of use of force have been examined for injuries, that the use of force has been classified according to APD's classification procedures, that subject(s) have been interviewed for complaints of pain after advising the subject(s) of his or her rights, and that all officers and/or subject(s) have received medical attention, if applicable;
- b. ensure that all evidence to establish material facts related to the use of force, including but not limited to audio and video recordings, photographs, and other documentation of injuries or the absence of injuries is collected;
- c. ensure that a canvass for, and interview of, witnesses is conducted. In addition, witnesses should be encouraged to provide and sign a written statement in their own words;
- d. ensure, consistent with applicable law, that all officers witnessing a Level 2 or Level 3 use of force by another officer provide a use of force narrative of the facts leading to the use of force;
- e. provide a written admonishment to involved and witness officer(s) to the use of force that they are not to speak about the force incident with anyone until they are interviewed by [an] . . . investigator . . .

19. The City shall transmit all documents, evidence, and investigative notes created or obtained by the on-scene investigator(s) to EFIT within 72 hours of the use of force, and

on an ongoing basis as additional evidence is provided. EFIT will acknowledge receiving all forwarded investigative documents, evidence, and notes.

20. IA force personnel and EFIT personnel shall jointly conduct investigations of all Level 2 and Level 3 uses of force, subject to the exception in Paragraph 23. IA force personnel and EFIT personnel shall jointly investigate and review all Level 2 and Level 3 uses of force in a manner that is consistent with the requirements of the CASA, APD policy, and the CBA.
21. EFIT shall have full, direct, and timely access to APD staff, employees, facilities, documents, data, and evidence to the extent necessary to fulfill the requirements of this Order. EFIT shall coordinate with APD and its legal counsel to access personnel, facilities, and documents in a reasonable manner. Should APD or its legal counsel decline to provide EFIT with access to documents or data based on privilege, APD shall inform EFIT, DOJ, and the Independent Monitor that it is withholding documents or data on this basis, and shall provide EFIT, DOJ, and the Independent Monitor with a log describing the documents or data and the basis of the privilege.
22. For each use of force investigation, EFIT shall evaluate the quality of IA force personnel's investigations and immediately notify APD and APD's legal counsel of any deficiencies or misconduct by IA force personnel related to their investigations. APD shall promptly address these deficiencies or misconduct through corrective action or discipline, consistent with the CASA, APD policy, and the CBA.
23. EFIT shall be authorized to complete investigations and supervisory reviews of investigations of Level 2 and Level 3 uses of force without the involvement of IA force personnel if either of the following conditions are met:

- a. EFIT or APD has alleged that the IA force personnel assigned to the investigation has committed misconduct in the course of the investigation, and EFIT believes that the IA force personnel's continued participation in the investigation is likely to undermine the integrity of the investigation; or
 - b. EFIT or APD believes that deficiencies in the tactics or work product of the IA force personnel assigned to the investigation is likely to prevent the investigation from being completed within the deadlines provided for in the CASA, APD policy, and the CBA.
24. EFIT shall provide written notice to DOJ, APD, and the Independent Monitor when EFIT exercises its authority under Paragraph 23 to complete investigations of Level 2 and Level 3 uses of force without the involvement of IA force personnel. EFIT's notice shall explain in writing the grounds for its actions. If DOJ or the City believes that EFIT's actions were improper, they will seek to resolve the matter with EFIT and the other party. If DOJ, APD, and EFIT cannot reach a resolution, DOJ or the City may bring the matter before the Court for resolution.
25. APD and EFIT shall identify all misconduct that occurred during the course of each use of force incident and provide information about all misconduct that it identifies to APD, for the purposes of screening, assigning an internal affairs number, and tracking by APD IA. IA force personnel and EFIT personnel shall complete the investigation of all misconduct related to the use of force, and APD IA shall complete the investigation of all misconduct not related to the use of force.
26. EFIT shall complete its investigations within 60 days of receiving on-scene investigation materials from APD. At the conclusion of each investigation, IA force personnel and

EFIT personnel shall prepare a joint investigative report, consistent with the requirements of the CASA and APD policy. In the report, IA force personnel and EFIT personnel shall recommend a determination of whether each use of force complied with APD policy and state and federal law. For any use of force for which the investigation determines that an officer violated APD policy or state or federal law, IA force personnel and EFIT shall recommend appropriate corrective and/or disciplinary action, consistent with the CASA and APD policy.

27. An IA Commanding Officer shall review each investigative report and recommendation, and state in writing whether he or she concurs with the report and recommendation's findings of whether the use of force complied with policy; the recommended disposition of any misconduct allegations; and any recommended corrective and/or disciplinary action. The IA Commanding Officer shall explain any concurrence or non-concurrence in writing. Any recommended discipline resulting from an investigation will be reviewed by APD's executive staff consistent with APD policy.

D. Role of the Independent Monitor with Regard to EFIT

28. The Independent Monitor shall assist APD, DOJ, and the EFIT Administrator as the EFIT is established by, at a minimum:

- a. orienting EFIT regarding CASA requirements and relevant CASA compliance deficiencies by APD;
- b. providing technical assistance to EFIT regarding the Independent Monitor's compliance assessment methodology; expectations regarding EFIT's processes, work product, and records production; and other relevant matters, as the EFIT Administrator and the Independent Monitor deem appropriate; and

c. conducting informal assessments of force investigations completed with EFIT's involvement, particularly in the early stages of EFIT's implementation, to ensure that investigations completed with EFIT's involvement comply with CASA requirements regarding the quality of force investigations. The Independent Monitor shall convey the outcome of these informal assessments to the EFIT Administrator, APD, and DOJ.

29. The City recognizes that the requirements of Paragraph 28 of this Order are beyond the scope of the Independent Monitor's duties under the CASA and the City's annual budgets for the Independent Monitor's services under the CASA. The City shall therefore enter into separate compensation agreements with the Independent Monitor for the provision of the services required by Paragraph 28 of this Order, as described in Paragraph 334 of the CASA.

30. The Independent Monitor shall conduct formal compliance assessments of force investigations completed with EFIT's involvement as it would investigations completed by APD. Except for the requirements of Paragraph 28 of this Order, this Order is not intended to, and does not, alter the responsibilities or authority of the Independent Monitor under the CASA.

E. Remedial Action Plan

31. Within five months of the start date of the contract with EFIT, the City shall draft a remedial action plan for IA force investigations and submit it to DOJ, the Independent Monitor, and the EFIT Administrator. The plan will identify concrete actions that the City and EFIT will take to improve the quality and timeliness of investigations of Level 2 and Level 3 uses of force by IA. The Independent Monitor may recommend changes or

approve the plan consistent with the requirements of Paragraph 147 of the CASA. After the Independent Monitor approves of the plan, the City shall file it with the Court. If either the City, DOJ, or both disagree with the Monitor's recommendations, such party or parties may file the plan with the Court and move for its approval.

32. After filing a joint remedial action plan or after the Court approves the plan, and until the plan has been fully implemented, the City shall file brief reports to the Court, due every three months from the date the remedial action plan was filed, to inform the Court of progress in implementing the plan, any barriers to implementation that it has faced, and any modifications to the plan that may be necessary. The City's quarterly reports will include, at a minimum:

- a. a summary of the City's progress regarding the implementation of the written IA investigative process required by Paragraph 14, including a summary of the intensive technical assistance provided by the Independent Monitor;
- b. a summary of written evaluations by EFIT of the quality of IA force investigators' investigations during the previous quarter;
- c. a summary of written feedback by EFIT of IA force investigators' work product during the previous quarter;
- d. any formal training that IA force investigators received during the previous quarter;
- e. the number of force investigators assigned to IA and, if APD has not yet retained 25 force investigators, the steps that APD will take in the next quarter to achieve full staffing;

- f. the number of investigations or reviews of investigations that EFIT completed without the involvement of IA force personnel, pursuant to Paragraph 23;
- g. the number of IA force investigators conducting investigations independent of the EFIT, pursuant to Paragraph 35; and
- h. for Level 2 and Level 3 force investigations:
 - i. the number of investigations initiated during the previous quarter;
 - ii. the number of investigations completed during the previous quarter;
 - iii. the average and mean number of days from initiation to completion for the investigations completed during the previous quarter;
 - iv. the number of investigations during the previous quarter that were completed within the deadlines required by the CASA, APD policy, and the CBA; and
 - v. the number of investigations during the previous quarter that were not completed within the deadlines required by the CASA, APD policy, and the CBA.

F. Training of IA Force Personnel

33. Subject to extensions necessary due to COVID-19-related restrictions and availability, and subject to the approval of the proposed contractor by the by the Monitoring Team and DOJ, within three months of the entry of this Order, APD shall identify and hire a contractor to who shall, in concert with APD's Academy, develop and provide training to IA force personnel on conducting high-quality and timely force investigations. This training shall be developed, approved, and provided consistent with APD policy and the CASA, and shall incorporate problem-solving, experiential adult-learning principles.

This training shall be subject to review and approval by the Independent Monitor and

DOJ.

G. Returning Responsibility for Full Investigations of Level 2 and Level 3 Uses of Force to APD

34. An IA Commanding Officer and EFIT shall prepare written evaluations of each investigator and supervisor who are assigned as IA force personnel on a quarterly basis. These evaluations shall be considered confidential consistent with City Personnel Rules and Regulations and state law, but shall be provided to the Monitor and DOJ upon request and shall be kept confidential pursuant to the requirements of Paragraph 326 of the CASA. These evaluations shall include, at a minimum:
- a. a description of the nature and extent of all training provided to the IA force investigator or supervisor during the previous quarter;
 - b. a summary of written assessments by EFIT of the quality of the IA force investigator's or supervisor's investigations;
 - c. a summary of written feedback by EFIT on the IA force investigator's or supervisor's work product;
 - d. a description of any allegations that the IA force investigator or supervisor committed misconduct related to their investigations during the previous quarter, including how the allegation was ultimately resolved;
 - e. the number of the IA force investigator's or supervisor's investigations from the previous quarter in which the IA force investigator or supervisor failed to satisfy CASA requirements for investigations, compared to the number of investigations that the IA force investigator or supervisor conducted during the previous quarter;

- f. an evaluation of the IA force investigator's or supervisor's overall performance;
-
- and
- g. any actions that will be taken during the following quarter to improve the IA force investigator's or supervisor's performance.
35. APD may transfer responsibility for conducting full investigations of Level 2 and Level 3 uses of force from EFIT to IA force personnel only after a quarterly evaluation demonstrates:
- a. that the IA force investigator or supervisor has received training on all aspects of Level 2 and Level 3 force investigations;
 - b. that the IA force investigator or supervisor has regularly conducted high-quality investigations for at least two months, as demonstrated by EFIT's written assessments of the investigations;
 - c. that the IA force investigator or supervisor regularly produces high-quality work product, as demonstrated by EFIT's written feedback;
 - d. that the IA force investigator or supervisor has not committed misconduct during the course of investigations; and
 - e. that 95% of the IA force investigator's or supervisor's investigations from the previous quarter satisfied all CASA requirements for investigations.
36. APD shall notify the EFIT Administrator in writing two weeks before APD intends to transfer sole responsibility for conducting full investigations of Level 2 and Level 3 uses of force from EFIT to an IA force investigator or supervisor. The EFIT Administrator shall promptly notify the City, APD, DOJ, and the Independent Monitor in writing if the EFIT Administrator determines that the IA force investigator or supervisor does not meet

the qualifications identified in Paragraph 35 of this Order. ~~The~~ City, APD, DOJ, the Independent Monitor, and the EFIT Administrator shall confer about any disagreements between APD and the EFIT Administrator regarding the qualifications of any IA force investigator or supervisor to take responsibility for conducting full investigations of Level 2 and Level 3 uses of force. The City and DOJ shall seek to resolve any such disagreements. If the City and DOJ are unable to resolve such disagreements, they may bring the matter before the Court for resolution.

37. The City and DOJ anticipate that APD will take responsibility for conducting full investigations of Level 2 and Level 3 uses of force over time as individual IA force investigators and supervisors meet the qualifications identified in Paragraph 35.
38. The City will endeavor to ensure that the responsibility for conducting full investigations of Level 2 and Level 3 uses of force returns entirely to APD within nine (9) months of EFIT beginning to provide services. Within six (6) months of the EFIT beginning to provide services, the Parties will evaluate the progress of APD, to include considering whether the EFIT is contributing to improvements in the progress of APD to meet the requirements of the CASA. Based on this evaluation, the Parties will file a status report with the Court within seven (7) months of the EFIT beginning to provide services, indicating whether the services of the EFIT should extend beyond nine (9) months.
39. The City and DOJ agree to jointly ask the Court to terminate this Order once there are a sufficient number of IA force personnel who have met the qualifications identified in Paragraph 35 to complete all full investigations of Level 2 and Level 3 uses of force within the timelines required by the CASA, APD policy, and the CBA.

40. Notwithstanding Paragraph 39 of this Order, if the Independent Monitor, after conducting

the informal assessments required by Paragraph 28(c) of this Order, or the formal assessments required by the CASA, determines that EFIT regularly fails to conduct investigations consistent with CASA requirements and APD policy, the City, with the concurrence of DOJ, may seek to terminate its contract with EFIT, and the Parties may seek to modify this Order accordingly.

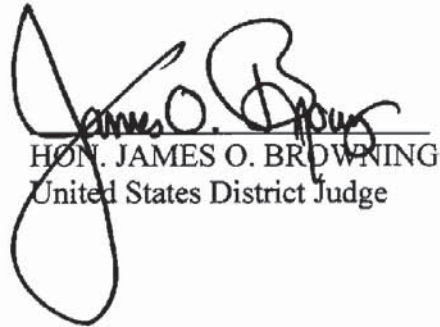
41. If the City and DOJ are unable to reach agreement about asking the Court to terminate this Order, either Party may seek to terminate this Order. In the case of termination sought by the City, prior to filing a motion to terminate, the City agrees to notify DOJ in writing when the City has determined that there are grounds for termination of this Order. Thereafter, the City and DOJ shall promptly confer about the City's assertions. If, after a reasonable period of consultation and the completion of any audit or evaluation that DOJ and/or the Independent Monitor may wish to undertake, the City and DOJ cannot resolve any disagreements, the City may file a motion to terminate this Order. If the City moves for termination of this Order, DOJ will have 60 days after the receipt of the City's motion to object to the motion. If DOJ does not object, the Court may grant the City's motion. If DOJ objects, the Court will hold a hearing on the motion, and the burden shall be on the City to demonstrate that it has fully complied with this Order and that the grounds for termination of this Order are supported by a preponderance of the evidence.

The Court recognizes and approves of the measures in the Stipulated Order as good faith efforts by the Parties to address investigative deficiencies in APD's force investigations, as identified by the Independent Monitor in his Twelfth Report, and therefore approves this Stipulated Order as an Order of the Court.

THEREFORE,

IT IS ORDERED that the Parties' Joint Motion for Entry of Stipulated Order Establishing an External Force Investigation Team is approved, and the Stipulated Order is hereby entered as an Order of the Court.

IT IS FURTHER ORDERED that that the Court will retain jurisdiction to enforce the provisions of the Order.



HON. JAMES O. BROWNING
United States District Judge

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COLLECTIVE BARGAINING AGREEMENT
EFFECTIVE JULY 7, 2018 THROUGH JUNE 30, 2020

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AGREEMENT

1. RECITALS

1.1. Authority

1.1.1. This Agreement is entered into by and between the City of Albuquerque, a municipal corporation of the state of New Mexico, hereinafter sometimes referred to as "City", and the Albuquerque Police Officers' Association, hereinafter referred to as "Association".

1.2. Agreement Control/Scope of Agreement

1.2.1. The parties have reached an agreement on all matters which have been a subject of negotiation as required by the City of Albuquerque Labor-Management Relations Ordinance 153-1971: *am* Ordinance 4-1977 Section 3-2-12A and have reduced such agreement to writing as reflected in this agreement.

1.3. Recognition

1.3.1 The APOA is recognized as the Exclusive Representative for regular full time, non-probationary police officers through the rank of Lieutenants in the APD and Aviation department.

1.3.2. The City of Albuquerque extends to the Albuquerque Police Officers' Association representing such unit of employees the following rights:

1.3.2.1 To represent the employees in negotiations and in the settlement of grievances;

1.3.2.2 To membership dues deduction, upon presentation of dues authorization cards signed by individual employees;

1.3.2.3 To exclusive representation status during the term of this agreement as provided in the Employee Relations Ordinance; and

1.3.2.4 Unless specifically stated otherwise, all sections in this collective bargaining agreement will apply to APD and Aviation.

2. GENERAL LABOR/MANAGEMENT PROVISION

2.1 Agency Fee/Fair Share

2.1.1 Payment of an agency fee by non-dues paying members of the bargaining unit employees has been authorized by Resolution of the Albuquerque City Council; and Resolution requires that any agency fee provision negotiated pursuant to the Resolution comply with all state and federal legal requirements.

2.1.1.1 The APOA will retain an independent auditor to audit its receipts and expenditures for the previous twelve (12) months and once every twelve (12) months thereafter.

2.1.1.2 The APOA will publish the results of the audit, including an adequate explanation of the agency fee to the bargaining unit members.

2.1.1.3 Bargaining unit members shall have thirty (30) days to file a challenge to the apportionment of the agency fee.

2.1.1.4 Any challenge shall be heard by an impartial decision maker.

2.1.1.5 The amount of the agency fee shall only include costs which arise from the negotiation and administration of the collective bargaining agreement and the adjustment of grievances or prohibited practices charges filed by the APOA.

2.1.1.6 Under no circumstances shall non-dues paying members of the bargaining unit be required to contribute towards the APOA social, political or charitable activities, nor shall any bargaining unit member be subject to any retaliation for refusal to contribute to such activities.

2.1.1.7 The APOA has the burden at all times of proving that its costs were properly apportioned to the agency fee.

2.1.1.8 Any portion of the agency fee, which is specifically challenged shall be held in escrow until resolution of the challenge.

2.1.1.9 To the extent permitted by law the APOA will indemnify and hold the City harmless, including payment of attorney fees and costs for counsel chosen by agreement of the parties for any claim or challenge to this Section or the imposition of an agency fee;

2.1.1.10 Once the appropriate amount of the agency fee for the previous 12 months has been determined, the City agrees to deduct that amount from the pay of non-dues paying members of the bargaining unit for the subsequent 12 months;

2.1.1.11 The City shall make such fair share payment deductions for employees in the Union's bargaining unit who do not submit an authorization form for Union dues deduction, as otherwise provided for by the current collective bargaining agreement.

2.1.1.12 The City shall make employee payroll deductions for fair share payments upon notification to the non-dues paying bargaining unit employee of the amount and reason for such payment

2.1.1.13 All money deducted from wages for fair share payment shall be remitted to the Union after payday covering the pay period deduction. If any employee has insufficient earnings for the pay period, no fair share payroll deduction will be made for that employee for that pay period.

2.1.1.14 If as a result of litigation, changes to this Section become necessary, the parties will meet to negotiate the issues.

2.2 Payroll Deduction for Dues

2.2.1 The City shall for the duration of this Agreement and for any officer, who submits authorization thereof, deduct from such officer's pay for each pay period of each month Association dues in the amount specified.

2.2.2 The City shall forward the amount withheld to the Association.

2.2.3 The Union shall indemnify, defend, and save the City harmless against any and all claims, demands, suits or other forms of liability that shall arise out of or as a result of any conduct taken by the City for the purpose of complying with this section.

2.3 Union Rights

2.3.1 Association Representative

2.3.1.1 The Association President and Vice-President will be assigned to a sworn day shift position as determined by the Chief.

2.3.1.2 APOA members shall, on or about January 1st of each year, contribute four and one-half (4.5) hours of their accrued vacation pool of time to be known as Association Time. This time will be utilized by Association Officers to conduct any and all Association business that requires release time from APD assigned work regular duty time.

2.3.1.3 Hours worked utilizing the Association Time are understood between the parties to be within the course and scope of employment for the purposes of Workers' Compensation Act protections and PERA service credits. The city shall manage the Association hours and provide an annual audit on June 1 of each year to the Union Treasurer. Unused Association hours shall roll-over and be added to the subsequent yearly allocation.

2.3.1.4 If an investigation results in the implementation of disciplinary action and the affected employee requests APOA representation, the APOA may designate up to two (2) representatives to participate at all stages of the proceedings. The employee shall be provided with copies of the charges and decision. In all cases where a formal grievance over discipline has been filed with the CAO by a bargaining unit employee who documents in writing that the employee does not wish to be represented by the APOA, the City will notify the APOA President.

2.3.1.5 Association Officers shall be authorized to be present with an employee at any disciplinary interview, disciplinary interrogation, or disciplinary investigation initiated by the City.

2.3.1.6 All Association Business Leave under this Section will be properly documented and approved by the Chief of Police or the Chief's designee on a City approved P-Form.

2.3.1.7 The APOA President or the President's designee will be placed on the call out roster for any officer involved shooting and any on-duty injury to an officer, reported to Dispatch that requires medical intervention provided the injured officer authorizes assistance from the APOA. The Department shall place the APOA President or the President's designee on the APD Communications call out protocol list. The call to the APOA President or designee is a courtesy call and not an order to report to duty. The APOA President shall on his own determine whether he will or will not report to the scene it will be considered Association business and will be handled accordingly.

2.3.2 The City will notify the Association of elections or appointments to the City's Labor Relations Board and the Personnel Board.

2.3.3 Bulletin Boards

2.3.3.1 The City shall provide a reasonable amount of bulletin board space in sizes and location mutually agreed upon by the parties for the display of official Association literature, correspondence or notices.

2.3.3.2 The Association will not post literature, correspondence or notices at any city facility or in any location other than the bulletin boards, employee mailboxes, or briefing blotters.

2.3.3.3 The bulletin board will not be used to criticize the Association officers, the City, any City policies, or any City officials or employees.

2.3.3.4 The Association or the City may remove any material which violates this Section.

2.4 Employer Rights

2.4.1 The parties hereby incorporate by reference all rights reserved to the City as set forth in Sections 3-2-5 and 3-2-7 of the City's Labor-Management Relations Ordinance.

2.5 The City and the APOA recognize the necessity to collaborate on issues that arise as a result of the Department of Justice's (DOJ) investigation and proposals related to the findings of the DOJ regarding the Albuquerque Police Department. If the City anticipates the implementation of policies or directives related to its agreement discussions with the DOJ that impacts Officers' terms or conditions of employment, the City will notify the APOA of its anticipated changes and provide APOA the opportunity to meet and confer with the City in a timely manner on the anticipated changes. The commitment will not prevent the APOA from submitting the changes for negotiations when the parties negotiate a successor collective bargaining agreement.

3. PAY PROVISIONS

Increases in compensation are effective the first full pay period following August 1, 2018 and the first full pay period following July 1, 2019. There shall be no retroactive compensation benefit in this agreement.

3.1.1 Salary Schedule

APOA Pay Plan

	Years of Service	Hourly
Police Officer 1/C	up through 4	\$29.00
Senior Police Officer 1/C	5 through 14	\$30.00
Master Police Officer 1/C	15 and above	\$31.50
Sergeant		\$35.00
Lieutenant		\$40.00

For purposes of this section only, Salary Schedule, the classification of Police Officer 1C is an officer in the bargaining unit who has completed probation up through four (4) years of service as an APD Sworn Officer. The classification of Senior Police Officer 1C is an officer in the bargaining unit with five through fourteen (5-14) years of service as an APD Sworn Officer. The classification of Master Police Officer 1C is an officer in the bargaining unit with fifteen or more (≥15) years of service as an APD Sworn Officer. The definition of serve and service is “actual time worked”. No other criteria or qualifications are applicable to these classifications.

3.1.2 Specialty Pay: The City shall pay the following to officers assigned to hazardous classifications as follows:

<u>Hazardous Classifications</u>	<u>Amount per pay period</u>
Pilots	\$23.08
Aerial Observers	\$23.08
Motorcycle Officers	\$23.08
Horse Mounted Unit	\$23.08
Search & Rescue Dive Team	\$23.08
CNT	\$23.08
EOD Part-Time	\$23.08
ECIT (Enhanced Crisis Intervention Team)	\$23.08 This applies only to officers who are certified by the Crisis Intervention Unit and only to those who are assigned and serve on the team.
Tactical Team (SWAT,K-9, EOD Full-time)	\$115.38: 6 Hrs of compensatory time for each week of On-Call Status-this applies only to officers who are “On-Call Status”

Officers are eligible for only one hazardous duty pay. Assignment to the above hazardous classifications shall be voluntary; however, re-assignment to another classification shall not be a grievable issue.

3.1.3 **Special Skills Pay:** The City shall pay the following to officers who have the following specialties (to be paid to officers on the department's active rosters in these specialties):

<u>Special Skill</u>	<u>Amount per pay period</u>
APD Area Sgt. Coordinators	\$ 50.00
CARES	\$ 50.00
APD Field Training Officers	\$ 100.00

This special skill pay is separate and additional to any other incentive pay.

3.1.4 **Court Allowance:** The City will pay a minimum of two (2) hours court time at time-and-one-half, unless the officer appears in court within one (1) hour of his/her tour of duty, starting or ending. In the event that court appearance is within one (1) hour of the tour of duty, starting or ending, the officer will be paid a sum of one (1) hour. This section does not apply to officers appearing in court during their tour of duty.

Officers assigned to graveyard shift who have worked the previous shift will be paid a minimum of two (2) hours at time-and-one-half beginning thirty (30) minutes after shift ends plus actual time spent in court following two-and-one-half (2-1/2) hours after close of shift.

3.1.5 **Bilingual Pay:** Only those languages recognized by the Human Resources and Productivity Committee as adding to the increased productivity and efficiency of the Police Department shall qualify for bilingual pay.

An officer shall qualify for bilingual pay upon demonstrating an acceptable level of reading, writing and conversational proficiency. Job-related material will be used in determining the reading, writing and conversational proficiency. The certification of proficiency will be established by an expert selected by the H.R.P. Committee.

Officers who are certified in all three proficiency areas shall be paid \$23.08 per pay period. Should an officer only pass the conversational portion of the test, that officer shall be paid \$9.23 per pay period.

It is recognized that if an officer is bilingual but fails to apply for or pass the certification required for bilingual pay, the officer must continue to utilize whatever bilingual abilities he/she has as needed on the job.

3.1.6 **Shift Differential:** The current language in this section is retained. However, during the term of this Agreement the parties will abide by the conditions of the 12-Hour MOU. Patrolmen, sergeants, and lieutenants assigned to Watch 1 will be paid \$23.08 per pay period, and patrolmen, sergeants, and lieutenants assigned to Watch III will be paid \$11.54 per pay period.

3.1.7. Longevity Pay for Members

3.1.7.1

FY/19 Longevity Pay Scale effective the first full pay period following August 1, 2018.

	<u>Bi-Weekly</u>	<u>Annual Amount</u>
Beginning Year 5 through 9	\$ 100	\$ 2,600
Beginning Year 10 through 14	\$ 150	\$ 3,900
Beginning Year 15 through 17	\$ 200	\$ 5,200
Beginning Year 18 through 19	\$ 300	\$ 7,800
Beginning Year 20 and above	\$ 500	\$ 13,000

FY/20 Longevity Pay Scale effective the first full pay period following July 1, 2019.

This Longevity scale will replace the FY/19 Longevity scale

	<u>Bi-Weekly</u>	<u>Annual Amount</u>
Beginning Year 5 through 5	\$ 100	\$ 2,600
Beginning Year 6 through 6	\$ 125	\$ 3,250
Beginning Year 7 through 9	\$ 225	\$ 5,850
Beginning Year 10 through 12	\$ 300	\$ 7,800
Beginning Year 13 through 15	\$ 350	\$ 9,100
Beginning Year 16 through 17	\$ 450	\$ 11,700
Beginning Year 18 and above	\$ 600	\$ 15,600

Longevity Definition: For the purposes of this section only, “years” shall be defined as the complete years identified by the City and documented by an officer that an officer has served as a sworn public safety officer in any United States jurisdiction in good standing, excluding military police, and for time with APD shall be complete year(s) from the date an officer achieves P2C status (or higher rank if a lateral). Special circumstances, however create exceptions to this rule. The definition of serve and service is “actual time worked”. Officers are encouraged to contact APOA to determine and verify their “longevity dates”.

3.1.7.2. Longevity Scale#2

Years of Sworn Service	
6-7	\$65.35
8-9	\$66.01
10-11	\$90.90
12-13	\$91.68

14-15	\$93.22
16-17	\$96.29
18-19	\$100.14
20 +	\$103.98

Employees currently receiving longevity pay under Longevity Scale #2 will continue to receive longevity pay. No other officers shall move into this longevity scale. This is a transitional accommodation applicable only to employees currently receiving such payment.

The current Longevity Plan identified as Longevity Scale #2 will continue in effect for the term of this Agreement for employees currently being paid under this plan.

Aviation will be included in the above (APD Longevity) pay plan subject to the conditions of this subsection.

3.1.8 Super Longevity - Once an officer has been at the top step of his/her grade for 364 days or more, the officer will receive \$34.62 per pay period. Once an officer has received this "Super Longevity", this compensation will not be lost upon promotion within the bargaining unit. Officers currently receiving Super Longevity will continue to receive this pay during the term of the contract. Employees shall not become eligible for this benefit after July 1, 2004.

3.1.9 As required by law and ordinance, all economic terms are subject to annual appropriation of the amounts set forth in the Agreement by the City Council, including but not limited to appropriation in the Budget Resolutions for the Fiscal Year in which an increase in compensation is set forth in this Agreement.

3.2 Overtime

The current language in this section and subsections is retained. However, during the term of this Agreement the Parties will abide by the conditions of the 12-Hour MOU.

3.2.1 Employees shall be entitled to overtime compensation at the rate of time-and-one-half their regular straight-time rate when they perform work in excess of forty (40) hours in any one workweek.

3.2.1.1 The workweek shall consist of seven (7) consecutive days beginning at 0001 each Saturday, or the tour starting the nearest to that time.

3.2.1.2 The workday will be any regularly scheduled, consecutive twenty-four hour period beginning at the start of the employees regularly assigned shift.

3.2.1.3 In accordance with Subsection 2.5 (FLSA) of this Agreement, the workdays, days off and start times of the shifts will be fixed and will not vary from week to week. The bid will include a variety of work schedules for the four (4) day workweek. A number of work schedules will include a schedule of one (1) start time for two (2) days and another start time for the other two (2) days. Additionally, a number of the schedules will include a schedule of one start time for three (3) days and another time for the other day. The remaining schedules will have the same start time for all four days. If a shift begins on or between the hours of 1700 and 0329, this shift will be Watch I. If a shift begins on or between 0330 and 0959, this shift will be Watch II and no shift differential will be paid. If

a shift begins on or between 1000 and 1659, then the shift will be Watch III. Shift differential will be paid in accordance with Subsection 3.1.8 (Shift Differential) of this Agreement. For those schedules with varying start times as described above, shift differential will be paid on a prorated basis based on the start time of each shift in accordance with the amounts provided in Subsection 3.1.8 (Shift Differential).

3.2.1.4 The Department shall retain the prerogative to implement either a four ten hour or five eight hour work schedule.

3.2.1.5 For the purpose of this section, an employee who elects to change shifts will not be considered to have worked in excess of eight hours on any one workday.

3.2.1.6 For the purpose of computing overtime, paid leave shall be considered time worked, as per Subsection 2.5 (FLSA).

3.3 Compensatory Time

The current language in this section is retained. However, during the term of this Agreement the Parties will abide by the conditions of the 12 hour MOU.

3.3.1 Time worked over 40 hours per week will be compensated at 1-1/2 times the officer's regular rate of pay, or in the form of compensatory time. Compensatory time will be computed at the rate of 1-1/2 times the hours actually worked. The maximum accrual of comp time for any officer, including Aviation Police, is 150 hours.

3.3.2 Upon separation of employment from the Albuquerque Police Department and Aviation, an officer is limited to cash-out of no more than forty (40) hours of unused comp time at straight time pay. Any accrual of comp time over forty (40) hours must be used 6 months prior to separation.

3.4 Fair Labor Standards Act

3.4.1 Under the Fair Labor Standards Act (FLSA), paid leave is not considered time worked for the purpose of computing overtime and the regular rate for the purpose of computing overtime includes all remunerations.

3.4.2 The current language in this subsection is retained. However, during the term of this Agreement the Parties will abide by the conditions of the 12 hour MOU. The parties hereto agree that for the purpose of computing overtime, paid leave will be considered time worked and the regular rate includes the hourly rate with no other remunerations included. Under 7K of the FLSA, the parties agree that for the purpose of computing overtime, the pay schedule will be a 7-consecutive-day, 40-hour workweek.

3.4.3 Applications of the FLSA as it pertains to the exempt status of positions will not change from current practice.

4. **INSURANCE COVERAGE and BENEFITS**

4.1 Premium Costs

4.1.1 The City provides certain voluntary group medical, hospitalization, vision, and dental insurance to its employees. The officer shall pay twenty percent (20%) of the premium

cost for the employee and the employee's family if the employee elects to participate in one or more of the plans. The City will pay the remaining eighty percent (80%) of the premium cost.

4.2 Insurance Programs

4.2.1 The City shall maintain the existing benefits for life and accidental death and dismemberment at no cost to the employee.

5. **RETIREMENT PLANS**

5.1. NM Public Employees Retirement Association

5.1.1 The City shall pay twelve and twenty-three hundredths percent (12.23%) of each Employee's PERA contribution in addition to the City's employer premium contribution.

5.2. Deferred Compensation Plan – Catch-up Deferral

5.2.1 Any officer, on a deferred compensation program, who retires at the end of the calendar year is entitled to be paid a catch-up deferral from accumulated sick and vacation leave in conjunction with the last regular paycheck of the calendar year.

5.2.2 The officer will be entitled to a second similar catch-up deferral in conjunction with or immediately following final payment of hours worked in the first regular payroll of the new calendar year.

5.2.3 Such catch-up deferrals shall be for amounts allowed by federal law and shall use payroll practices currently in place.

5.2.4 Any officer who intends to retire during a calendar year, but not at the end of a calendar year as stipulated above, is entitled to be paid a catch-up deferral from accumulated sick and vacation leave in conjunction with the last regular paycheck of the calendar year immediately preceding the year in which retirement will occur, subject to submittal of an irrevocable letter of retirement.

5.2.5 The officer will be entitled to a second similar catch-up deferral in conjunction with or immediately following final payment of hours worked in the final regular paycheck at retirement.

5.2.6 Payment of any balance remaining of accumulated sick or vacation hours shall be in accordance with the current cash-out policy as stated elsewhere within this agreement.

5.2.7 Under no circumstances will the allowable deferral be exceeded in any calendar year.

6. **VACATION LEAVE**

6.1 Vacation Leave

6.1.1 All excess vacation accruals will be paid to the employee as monetary compensation at the end of the calendar year on an hour for hour basis. Effective January 12, 2002, excess vacation accruals up to a maximum of (80) hours will be paid to the employee as monetary compensation at the end of the calendar year on an hour for hour basis.

6.1.2 Any employee may request advanced vacation leave pay for forty (40) or more hours of approved vacation leave by submitting a written request to the Chief of Police (with an approval Line) ten days in advance. Payment will be made in the regularly scheduled payday prior to the vacation leave being taken. Special checks will normally not be authorized except in emergency situation approved by the Chief of Police.

6.2 Vacation Leave Accrual Rates

6.2.1 Vacation leave will accrue as follows:

Continuous Service Accrual per Year	Accrual Rate per Bi-Weekly Pay Period	Per Year
		(based on an 8-hour Day)
Less than 5 years	3.85 hours	12.5 days
More than 5 years/less than 10 years	4.62 hours	15.0 days
More than 10 years/less than 15 years	5.54 hours	18.0 days
More than 15 years	6.16 hours	20.0 days

7. LEAVE

7.1 Sick Leave

7.1.1 A police officer may accumulate sick leave up to a maximum of 2000 hours. Sick leave accrued over the maximum will automatically be converted to hazardous duty leave at the rate of two days of sick leave for one day of hazardous duty leave.

7.1.2 Sick leave will accrue at the rate of three and seven tenths (3.70) hours per pay period.

7.1.3 Emergency Leave: Emergency leave charged to sick leave for up to three (3) work days may be requested when the presence of the employee is required by a physician as a result of a serious illness or injury to a member of an employee's immediate family.

7.1.4 Employees may elect to use accrued vacation leave instead of sick leave for an "emergency leave", however, they shall be subject to the conditions of using "emergency leave."

7.2 Sick Leave Death Benefit

7.2.1 The City will pay to the designated beneficiary of a deceased police officer the total amount of sick leave accumulated as of the date of his/her death; provided, however, that the police officer is killed in the line of duty or dies of injuries or illness sustained in the line of duty.

7.2.2 The City will pay to the designated beneficiary of a deceased police officer the total amount of sick leave accumulated whether or not the deceased police officer dies in the line of duty; provided however, that the death of the police officer is under honorable circumstances.

7.2.3 Payment under this section will be made to the specific beneficiary identified for this benefit, the payment will be made to the current spouse or if the officer was not married at the time of death, the payment will be made to the officer's estate.

7.3 Bereavement Leave

7.3.1 The City will allow as many as three (3) workdays emergency leave for a death in the employee's immediate family. For the purposes of this section, an employee's immediate family shall include the employee's spouse, child, parent, parent-in-law, grandparent, brother or sister. If travel over five hundred miles (500) miles (one way from Albuquerque) is required for a death of a member of the immediate family of an employee, one (1) additional leave day per five hundred (500) mile increment shall be granted.

7.4 Hazardous Duty Leave

7.4.1 It is mutually understood by the parties hereto that police officers perform duty, which is hazardous in nature, in that it is strenuous, both mentally and physically, and in many instances involves physical danger. Therefore, because of this fact, the City will allow sick leave to be converted to leave to be known as hazardous duty leave as follows:

7.4.2 When an officer has accumulated and maintains 360 hours of sick leave, he/she may convert any part of the sick leave accumulated over and above 360 hours to hazardous duty leave on the basis of eight (8) hours hazardous duty leave for twenty-four (24) hours sick leave.

7.4.3 When a police officer has accumulated and maintains a total of 720 hours of sick leave the police officer may convert any sick leave accumulated over and above 720 hours to hazardous-duty leave on the basis of one (1) hour hazardous-duty leave for one (1) hour of sick leave.

7.5 Parental Leave

7.5.1 The City will grant leave benefits set forth in the Family and Medical Leave Act (FMLA) for the purposes set forth in the FMLA and the City's Rules and Regulations. The employee shall notify the City of the employee's intent to use FMLA Leave as required by the City's Rules and Regulations.

7.5.2 Employees taking FMLA Leave for the purposes of childbirth or care of a newborn child may choose to take either sick leave, vacation or compensatory time. In accordance with federal regulations either the employer or the City may designate such leave as FMLA Leave.

7.5.3 The Chief of Police may grant up to 720 hours of Leave without Pay for the purpose of the medical condition related to childbirth and care of a newborn child. The leave will be granted in the following manner: (1) up to 360 hours of Leave Without pay in lieu of

sick leave for a medical condition related to childbirth; and (2) up to 360 hours of Leave without Pay for care of a newborn child. The officer is limited to one request in a 12-month period. It is recognized that staffing requirements may be a major factor in the approval of the request for leave for care of a newborn child.

7.5.4 Upon returning to active duty under this section the employee will retain full seniority, in the same grade and step, rank and previously held position.

7.5.5 Employees are eligible to request additional Leave Without Pay up to one (1) year under the City's Rules and Regulations to be approved by the Chief Administrative Officer upon the recommendation of the Chief of Police. Such requests may only be approved if the officer agreed in writing to allow their seniority/anniversary date to be adjusted for the time they are on leave without pay beyond the 720 hours allowed by this section. This change in anniversary date will also be used in calculating the experience requirement for promotion. The anniversary date shall be calculated from the day the employee returns to paid status, less the 720-hour period provided by this section.

8. RECOGNIZED HOLIDAYS

8.1 Paid Holidays

8.1.1 Legal holidays for police officers shall be as follows:

Independence Day	Wednesday, July 4, 2018
Labor Day	Monday, September 3, 2018
Veteran's Day	Monday, November 12, 2018
Thanksgiving Day	Thursday, November 22, 2018
Day After Thanksgiving	Friday, November 23, 2018
Christmas Day	Tuesday, December 25, 2018
New Year's Day	Tuesday, January 1, 2019
Martin Luther King's Birthday	Monday, January 21, 2019
President's Day	Monday, February 18, 2019
Memorial Day	Monday, May 27, 2019
Independence Day	Thursday, July 4, 2019
Labor Day	Monday, September 2, 2019
Verteran's Day	Monday, November 11, 2019
Thanksgiving Day	Thursday, November 28, 2019
Day After Thanksgiving	Friday, November 29, 2019
Christmas Day	Wednesday, December 25, 2019
New Year's Day	Wednesday, January 1, 2020
Martin Luther King's Birthday	Monday, January 20, 2020
President's Day	Monday, February 17, 2020
Memorial Day	Monday, May 25, 2020

And those holidays that the CAO announces as legal holidays for city employees. If the CAO designates additional holidays the City and Association will meet to determine how the additional holiday should be compensated. As dates for the listed holidays change in subsequent calendar

years this Agreement will change those dates. As dates for the listed holidays change in subsequent calendar years this Agreement will change those dates.

8.2 Holiday Pay

8.2.1 Police officers shall receive holiday pay at straight time at their hourly rate for either 8 hours or 10 hours based on their normal work shift for all holiday hours not worked. In the event a police officer is required to work on a holiday, and does not exercise the option to take a floating holiday, he or she shall be paid holiday pay as mentioned above plus time and one-half for the duration of the Employee's assigned shift.

8.2.2 Any or all holidays mentioned in Subsection 8.1 may be designated as floating holidays by the employee. A floating holiday is one that the employee may convert to vacation (their option), either eight (8) hours or ten (10) hours per holiday depending on normal work shift, any time after the actual holiday has occurred, or within the pay period prior to the holiday as an additional vacation day.

8.2.3 In filing the routine manning requirements for the holidays, the required personnel shall be assigned from a roster of those police officers who are normally scheduled to work the holiday as defined in Subsection 8.1, based upon seniority in rank within sections or division and by shift. If manning requirements cannot be met from those who volunteer, then those officers who are required to work shall be assigned on the basis of reverse order of seniority. Officers ordered to work a holiday may choose to float the holiday or receive holiday pay as specified in Subsection 8.2.1.

8.2.4 Any officer forced off on a holiday may elect to work the holiday and float the day off by converting it to vacation.

8.2.5 Sections that are not required to be manned on holidays may be allowed, at the discretion of the Division Commander to work that holiday only as a floating holiday.

9. MILITARY LEAVE

9.1 Military Leave of Absence :

9.1.1 Employees who are members of the National Guard, Air National Guard, ~~or~~ any organized reserve unit of the Armed Forces of the United States, including the Public Health Services, or any unorganized reserve component shall be granted a maximum of 420 hours of paid military leave per calendar year for the following purposes:

- (1) annual training or drill schedules for annual training and/or
- (2) the employee is mobilized to active duty by the President of the United States in support of operations overseas, in defense of our nation, or in response to national disasters, or in response to an emergency declared by the Governor of New Mexico. This additional leave may be used for regular training, pre-deployment training or active duty service.

9.1.2 An employee's maximum paid military leave shall be 420 hours per calendar year

for any and all purposes set forth above.

9.1.3 Officers called to duty for any of the above reasons shall provide either a copy of military orders or alternatively a copy of a letter from their commander detailing the leave for which they are seeking reimbursement to Central Payroll. Additionally, a copy of the employee's military orders or a letter from the officer's commander shall be provided when requesting future leave.

9.1.4 When an officer is called into active service with the National Guard or Air National Guard of New Mexico or any organized unit of the armed forces of the United States, including the public health service, the Officer may choose to utilize sick leave for hazardous duty purposes while on the assignment. This provision shall only apply for activations of eighty (80) hours or more.

9.1.5 Employees whose military commitment requires leave time in excess of that granted above may elect:

- (1) to be placed into unpaid military leave of absence status; or
- (2) to use accrued vacation leave, in whole or in part, during their period of military leave. When an employee has used all available paid military leave and paid vacation leave, that employee will be placed into unpaid military leave of absence status for the balance of their military leave period.

9.2 Vacation and Sick Leave Accruals While in Military Active Duty Status:

9.2.1 Employees mobilized to active duty by the President of the United States on or after September 12, 2001 in support of operations overseas, in defense of our nation, or in response to national disasters will continue to accrue vacation and sick leave at the same accrual rate as if the employee was not on active military duty during all periods of active military duty, regardless of whether the military leave of absence is paid or unpaid.

This accrual shall continue while the employee is in active military duty status and until: 1) the employee returns to City employment; or 2) until the employee notifies the City of their resignation from City employment while in active military duty status; or 3) until the employee notifies the City of their intention not to return to City employment at the end of their active military duty, whichever date is earlier.

Any retroactive vacation or sick leave accrual allowed to an employee in active military duty status between September 12, 2001 and October 1, 2004 may not be converted to cash at the time the employee terminates his employment with the City. This provision shall be administered only with respect to employees who terminate their City employment within twenty-four months of returning to City employment after their completion of activity military duty.

9.3 Health Insurance Benefits While in Military Active Duty Status: For employees mobilized to active duty by the President of the United States on or after September 12, 2001 in support of operations overseas, in defense of our nation, or in response to national disasters, the City shall continue to pay the employer portion of health insurance premiums for that employee to the same extent as if that employee were not on active military duty status.

The employee on active military duty status must continue to timely make payment of the employee portion of health insurance premiums to the same extent as if that employee were not on active military duty status. Failure to do so will result in termination of health insurance coverage. It is the obligation of the employee on active military duty status to notify the Benefits Division of the Human Resources Department and to complete all necessary forms and make all necessary elections to ensure that the employee's portion of health insurance premiums are made timely, if the employee wishes to continue to have health insurance coverage.

Provided the employee is and remains current on all required employee contributions to health insurance premiums, the City shall continue to pay the employer portion of health insurance premiums while the employee is in active military duty status and until: 1) the employee returns to City employment; or 2) until the employee notifies the City of their resignation from City employment while in active military duty status; or 3) until the employee notifies the City of their intention not to return to City employment at the end of their active military duty, whichever date is earlier.

9.4 GENERAL PROVISIONS

9.5.1 In no case shall the hours of paid military leave in a calendar year exceed the maximum number of hours provided above, even though the maximum number of hours may be calculated by reference to "work days".

All military leave pay is paid at the employee's straight-time rate of pay.

Employees-working on a part-time basis will be granted paid military leave on a prorated basis.

9.5 TRANSITION PROVISION

9.6.1 Any employee who has received paid military leave prior to January 1, 2008 in excess of the maximum amount allowable in any calendar year under the terms of this Administrative Instruction shall not be required to reimburse the City for the excess.

9.6 OTHER LEAVE WITH PAY

Birthday Leave

9.6.1. An employee's birthday shall be considered a personal leave day. Officers shall not be required to work their birthday except in emergencies. Should an employee be forced to work their birthday they will be compensated under Subsection 8.2.1.

9.7 PHYSICAL EXAMINATION LEAVE

9.8.1 Each employee may utilize one half (1/2) day paid leave each year for the purpose of undergoing a physical examination. The leave shall not be deducted from the employee's accumulated paid leave. An employee who utilizes this leave shall be required to provide written medical documentation verifying that the physical examination has taken place.

10. WORK WEEK

10.1 General Work Week Provision

The current language in this section is retained. However, during the term of this Agreement the Parties will abide by the conditions of the 12 hour MOU.

10.1.1 The normal workweek will be forty (40) hours comprised of either five (5) eight-hour or four (4) ten-hour days.

10.1.2 Under normal circumstances, management will assign consecutive days off in a normal workweek.

11. WORK HOURS

11.1 General Work Day Provisions

The current language in this section is retained. However, during the term of this Agreement the Parties will abide by the conditions of the 12 hour MOU.

11.1.1 The normal workday shall be eight (8) or ten (10) hours. The ten hour workday shall be consecutive.

11.1.1.1 Should Aviation Police return to an eight (8) hour workday, their eight-hour (8) workday shall be consecutive.

11.1.2 Upon request of the APOA, the Chief or the Chief's designee shall meet with the APOA to discuss 4/10 schedules. The department will notify the APOA when the department decides to place a division or bureau on a 4/10 schedule.

11.2 On Call and Call Backs

11.2.1 On call status shall be defined as the ability of an officer to assume full responsibilities of the officer's assignment with one (1) hour's notice. The standards for the assumption of these responsibilities shall be those required by the Fair Labor Standards Act's Rules and Regulations for standby time.

11.2.2 Call-Back Time: When an officer is called to work at a period other than his/her regularly scheduled working hours, he/she is guaranteed pay at either his/her hourly overtime rate for two (2) hours work or overtime pay for the hours actually worked, whichever is greater. Callback time will not apply when the assignment immediately precedes or follows the regular assignment.

The two-hour call back time guarantee will not apply if the call-out is cancelled within fifteen (15) minutes of the notification to the officer.

11.2.3 Time shall be computed from the time of notification.

11.2.4 When an employee is assigned to on-call status, the officer will receive eight (8) hours of straight compensatory time for each seven (7) days of such assignment. If an officer is on call on a day-to-day basis, the officer will receive two (2) hours of straight compensatory time for every twenty-four hours of such assignment, not to exceed eight (8) hours in a week. The determination of the need for the use of on-call status and the

number of officers required will be made by Chief or the chief's designee.

11.2.5 An employee who is authorized or approved by the Chief or the Chief's designee for call-back time shall receive five (5) hours of compensatory time each pay period provided the employee is authorized or approved for this status for at least six (6) workdays during the pay period.

11.3 Change in Work Hours

11.3.1 In the event a supervisor proposes to permanently change the work hours of an officer who is not part of the bidding Section 13 (Seniority), the Association will be provided the opportunity for input in accordance with the provisions of Section 32 (Rules and Regulations). Should the Department not agree with the input provided by the Association, the final decision on the employee's work hours will be made by the Chief of Police. A permanent change is defined as a change of more than 45 working days.

11.3.2 Upon seven (7) days advance notice a section commander may adjust an officer's shift/days off on a temporary basis for training or dignitary protection. This may be done at the request of the officer or the Department.

11.4 CSA Part-Timers

11.4.1 For the purposes of this agreement CSAs shall be defined as certified and armed personnel who are authorized to perform administrative and law enforcement duties on a part-time capacity. The city shall limit the number of CSAs employed at any given time to a maximum of twenty-two (22). CSAs shall be allowed to work a maximum of one thousand six hundred (1600) hours per year. The Chief of Police may increase weekly hours up to thirty-nine (39) as needed. Such an increase shall be on a short-term basis only and authorized only by department heads.

12. **WORK ASSIGNMENTS**

12.1 Chief's Time

12.1.1 Section 1-11-3 of the Standard Operating Procedures for the Albuquerque Police Department will continue in full force for the duration of this Agreement.

12.1.2 If the Aviation Police Department decides to initiate a Chief's Time Program, the City and the Association will meet and negotiate a program.

13. **SENIORITY**

13.1 Seniority Determination

Except for sections, which contain specific different definitions such as Section 35.1 (Layoff and Recall) of this Agreement, for this Agreement, seniority is defined as follows:

13.1.1 Higher ranks have seniority on junior ranks. The officer with the most continuous

service within rank is senior within that given rank. For the purpose of breaking a tie on seniority, the first criteria to be applied shall be continuous service with the Albuquerque Police Department, with the officer with the most continuous time being senior. Should the continuous service with the Department be identical, then the tie will be broken by the use of the employee numbers or lottery numbers, whichever is applicable. The officer with the lowest number is senior. The term continuous service shall be interpreted to mean total service from the date of last hire as a sworn police officer.

13.1.2 Departmental seniority for non-supervisory personnel will be the only recognized method of establishing seniority within a unit, section, division, or bureau.

13.1.3 For the purpose of establishing seniority for entry into the bargaining unit beginning with the 55th, 56th, and 57th Cadet Classes and all classes thereafter, seniority will initially be established by using the following method:

13.1.3.1 Highest seniority within the class will be given to those cadets who were in the employment of the Police Department, when they were accepted into the Police Academy. If there is more than one cadet with the same date of hire, their seniority will be determined by their overall class standing between them.

13.1.3.2 The remaining cadets will be assigned seniority by overall class standing upon graduation. The cadet who had the highest overall class standing in the group will be given the highest seniority within the cadet class.

13.1.3.3 Final seniority will be determined when an officer becomes non-probationary.

13.1.3.4 The final seniority standing is not subject to grievance.

13.1.4 When section cut backs occur, the mandatory transfers between units should be made in such a way as to maximize the efficiency and effectiveness of the Police Department. In making such transfer decisions, the following facts shall be considered:

13.1.4.1 The nature of the transfer and the skill it calls for within the unit being transferred to;

13.1.4.2 The availability of pre-qualified persons;

13.1.4.3 The stated assignment preferences; and

13.1.4.4 All other factors being equal, seniority of members of the bargaining unit.

13.1.5 If within one year a unit that was cut back is increased in size, the officer subjected to mandatory transfer will be given at their option the opportunity to return prior to any other officer.

13.1.6 An employee who voluntarily leaves the department and is rehired after ninety (90) days will be placed at the bottom of the non-probationary seniority list. An employee who

is rehired within ninety (90) days will retain all seniority.

14. BIDDING and VACANCIES

14.1 Bidding

14.1.1 Unless there is justifiable cause (i.e. for efficiency, discipline or general conduct), bidding by APO lieutenants, sergeants and patrolmen for assignment based on seniority City wide will occur every twelve (12) months. Lieutenants will bid first, sergeants will bid second and patrolmen will bid third.

Bidding is for shift, days off, squad and area command. This applies to officers taking calls for service. Traffic, Open Space officers, Aviation officers, and field investigators will bid within their sections first. The bid for traffic officers, Open Space officers and field investigators will occur every six (6) months, and take effect on the first day of the pay period closest to March 1 and September 1.

14.1.2 Unless there is justifiable cause (i.e. for efficiency, discipline or general conduct), City Wide bidding by APO lieutenants, sergeants, and patrolmen for assignment based on seniority will occur every twelve (12) months. Lieutenants will bid first, sergeants will bid second and patrolmen will bid third. Bidding is for shift, days off, squad and area command. This applies to all officers taking calls for service. Traffic and Open Space officers, Aviation officers, and field investigators will bid within their sections first. The bid for traffic officers and Open Space officers, Aviation officers, and field investigators will occur every six (6) months, and take effect on the first day of the pay period closest to March 1 and September 1.

The current language for Section 14.1 is retained. However, during the term of this Agreement the Parties will abide by the MOU dealing with Bidding During Military Deployment.

14.1.3 PERA Retiree Officers' Assignments:

14.1.3.1 All PERA Retiree officers shall be assigned to uniformed field services patrol functions upon rehire with the City. This shall not be applied retroactively.

14.1.3.2 After a PERA Retiree Officer has been rehired and assigned to uniformed field services for at least one (1) year, the officer shall be eligible to participate in the general bid for work schedules and vacations and will also be eligible to participate in any test for circularized positions. The officer will bid with seniority accrued since the officer's resworn date.

14.1.4 The PERA retiree officers' staffing levels set forth herein shall not result in a reduction of staffing assignments offered to other officers.

14.1.5 The subsequent bids shall remain in effective for one year each.

14.2 Shift Exchanges

14.2.1 Nothing in this section shall prevent an area commander from permitting employees to mutually exchange bidded slots for hardship reasons.

14.2.2 Sworn personnel of equal rank and assigned the same basic duties may exchange shifts or portions thereof when the change does not interfere with the operations of the Department. Shift exchanges are at the discretion of and subject to the approval of the watch commander.

14.2.3 The parties agree that shift exchanges shall not involve any exchanges of money, but are strictly an exchange of time.

14.2.4 The Department may develop appropriate administrative guidance.

14.2.5 Officers who agree to work that shift shall be responsible for working the shift. In the event an officer fails to report under the shift exchange for any reason, it shall be in the sole discretion of Department's Commander to authorize an overtime replacement and the officer failing to report, may at the Department's discretion, be docked at time and one half at his/her hourly rate. No other disciplinary action will be taken against the officer.

15. UNIFORMS, BODY ARMOR

15.1 Uniforms

15.1.1 It is understood by the parties of this Agreement that uniform regulations of the Departments are established by the Chiefs of Police, and the primary purpose of this section is to protect covered employees from financial hardship resulting from changes in uniform regulations.

15.1.2 Optional changes in the authorized uniform regulations may be made at any time. Optional items of uniforms shall remain optional during the term of this Agreement. Replacement changes in the uniform regulations that delete a previously authorized piece of uniform apparel, insignia, or item, shall only be mandatory for those hired after the effective date of this Agreement, or the date of the most current change.

15.1.3 Sworn personnel shall not be required to purchase newly approved uniform apparel, insignia, or items until any existing, owned uniform items, insignia, or apparel are deemed unserviceable or in need of replacement.

15.1.4 All replacement purchase or gifts of uniform apparel must conform to current uniform regulations as of the date of purchase or receipt of the gift.

15.1.5 All Employees will be provided with two (2) uniforms (shirts, pants, patches, and hemming) per calendar year for the duration of this agreement.

15.2 Body Armor

15.2.1 Replacement of Body Armor. The City will annually replace body armor that is five years old for uniformed personnel as soon as practical. Non-uniformed and other Officers requesting body armor replacement prior to the five years will be considered on a case-by-case basis.

16. OCCUPATIONAL HEALTH and SAFETY

16.1 Union Management Safety/Security Committees

16.1.1 It is the responsibility of all bargaining unit members, officials of the association, and managers to contribute to a healthful and safe working environment. In the furtherance of this policy, a joint Union Management Safety/Security Committee will be established to review safety issues and make recommendations for improvement to the director.

16.1.2 Security is included in this Section only as it relates to safety. Members of the Safety/Security Committee will meet at least once per month during working hours without loss of pay. If issues arise requiring immediate attention, the parties may agree to meet on a more frequent basis. If minutes of the committee meetings are kept, such minutes shall be made available to all committee members

16.1.3 The parties hereby propose a Pilot Program regarding injury time to be implemented through an MOU. Any conflicts that arise between the Pilot Program MOU and Section 16.3 Injury Time, the Pilot Program MOU language shall control.

16.1.4 The Safety Committee will not initiate or recommend disciplinary action.

16.1.5 Each Committee will adopt guidelines governing the focus of its review.

16.1.6 Concerns regarding the effectiveness of Safety Committees may be addressed at the department level or through the Employee Relations Office.

16.1.7 At the request of the Safety/Security Committee, the Chief or his/her designee will meet to confer with the Association to discuss and attempt to resolve issues related to safety, including equipment and training needs.

16.1.8 In the event that equipment issued by the Department is considered unsafe or defective by an employee, the employee must identify the problem to the best of his/her ability and submit the issue in writing to his/her supervisor. Management will respond within ten (10) working days.

16.2 Inoculation and Immunization

16.2.1 If a police officer, while carrying out the officer's duties, is exposed to a contagious disease, the City agrees to pay the expense for inoculation and immunization for members of the officer's family. The City further agrees to reimburse any officer covered by one of the City's H.M.O. Programs any co-payment required for inoculation and/or immunization required due to the exposure to a contagious disease as a result of the officer carrying out the officers duties. This is subject to the review and approval of the Chief on the basis of documentation and verification presented by the employee to the employee health department and the Chief of Police.

16.2.2 Should an officer miss duty as a direct result of exposure to a contagious disease, which resulted from carrying out the officer's official duties, and the exposure is determined

by the City medical authorities to be job-related, the time off will be charged to available injury time.

16.3 Injury Time

16.3.1 An officer injured, or suffering an occupational disease while actually engaged in the performance of his/her duties and who, as a result of such injuries, receives benefits under the Workers' Compensation Act of New Mexico, shall be granted injury time from the date of injury as provided for under Section 3-1-15 "Injuries In Performance of Duty" of the Merit System Ordinance, as amended, and in effect on the date of the injury.

16.3.2 The current language in this subsection is retained. However, during the term of this Agreement the MOU regarding Injury Time and Light Duty will supersede this section.

Injury time may be extended for a period not to exceed 12 months beyond the current provisions of the Merit System Ordinance. This extension may be granted by the CAO upon the written request of an injured police officer subject to the following conditions being met:

16.3.2.1 A certification, in writing, by the City selected doctor confirming, barring unforeseen medical complications, that the employee will be physically and mentally able to return to full, unrestricted duty on the previously held position within the requested extended injury time period.

16.3.2.2 And that the Chief of Police recommends that the extension of injury time be granted.

16.3.2.3 That the employee has not and will not refuse to:

16.3.3 In order to participate in the Injury Time program, including Light Duty, the employee shall agree to:

16.3.3.1 Submit to medical examination(s) by the City-selected doctors.

16.3.3.2 Perform a limited-duty assignment that is not detrimental to the officer's condition or recovery as determined by the City's doctors.

16.3.4 An officer who is terminated from the City for physical medical which were brought about as a result of and in the performance of the officer's duties, will be eligible for reinstatement to the previous position held with the same rank and grade restored if, within thirty-six (36) months from date of termination, the medical condition(s) responsible for the termination have been completely corrected and the officer is otherwise fit to perform as a police officer.

16.3.5 No provision herein will restrict an officer so injured from applying for the additional leave period provided for under the hardship provision of the Merit System Ordinance.

16.3.6 The parties agree that the officers injured in the line of duty are subject to the provisions of the Department's light duty/modified duty program.

17. PROMOTIONAL PROCEDURES and POLICIES

17.1 Circularized Positions

17.1.1 All positions will be advertised.

17.1.2 Advertisements will identify the qualifications for positions.

17.1.3 Interested individuals will submit their resumes to APO Personnel prior to the deadline.

17.1.4 A testing and interview process will be utilized to determine the best qualified applicant for circularized positions. The position will be offered based on the highest test results. Three (3) officers in the Mayor's office shall be exempt; rotation after a maximum of three (3) years for undercover officers in Narcotics, Vice; Internal Affairs officers after a maximum of two (2) years. Task Force officers shall be assigned to this assignment for a maximum of two (2) years. The rotation time periods shall commence July 1, 2006. This two (2) year limitation may be extended by the Chief provided a request for extension is submitted by the affected officer. This process shall not be subject to this Agreement's grievance procedure.

17.1.5 Assignments to exempt positions will be made by the Division Commander based upon the unit supervisor's recommendation, subject to the approval of the Chief.

17.1.6 The term "Exempt Position" only refers to the final selection process of qualified applicants after the testing and interview process.

17.1.7 All personnel selected for circularized positions shall be subject to a minimum assignment of one year unless otherwise mutually agreed upon by the employee and the Department.

17.1.8 After the one-year trial period an officer may only be removed from a circularized position with cause.

17.1.9 Removal from any circularized position during the one-year trial period is not subject to grievance.

17.1.10 Involuntary reassignments are subject to the review and approval of the Chief of Police.

17.1.11 The Department may transfer an officer within a bureau without advertising the position provided the reason for the transfer is hardship. The APOA President or designee shall be informed of the transfer prior to its implementation.

A bureau may temporarily assign an officer already assigned to the bureau for a maximum of three (3) months in order to maintain adequate staffing levels and/or bureau efficiency. The three (3) month temporary assignment may be extended by mutual agreement of the parties.

This provision shall be considered separate and distinct from the rights set forth in Article 11.3 of this Agreement. This provision does not violate Article 11.3.

Unless the parties agree to maintain this section within the Agreement, this section shall cease to exist upon expiration of this Agreement.

17.2 Payroll Upgrading

17.2.1 An employee who is assigned the responsibilities and temporarily performs the duties of a position graded higher than the one he/ she holds shall upon approval of the Director or Chief, be reimbursed accordingly. Such employee shall receive the entrance rate of the class or one step above his present rate whichever is higher, while so assigned. Employees selected for Payroll upgrading must be qualified to perform the duties of the higher position. The need for upgrades shall be determined by the division commander.

17.3 General Promotion/ Transfer Provisions

17.3.1 PERA retirees shall not be eligible to participate in any promotional process within the Albuquerque Police Department.

17.3.2 For promotional purposes, final score standing in the promotional process will determine the seniority for being promoted off the list. In the event of a tie, departmental seniority will break the tie.

17.3.3 An employee who transfers from one APOA bargaining unit department to another shall retain all benefits based on time that the employee received while serving in the original department.

18. PERSONNEL FILES and RECORDS

18.1 Employee Records

18.1.1 A copy of any material pertaining to an employee's performance or to disciplinary actions to be placed in the employee's personnel files must be presented to the employee for signature and review.

18.1.2 By arranging an appointment in advance, employees shall be allowed to review the contents of their Department personnel file during working hours. Reasonable requests for copies or documents in the file shall be honored and reasonable charges made for such copies.

18.1.3 Only the personnel files kept in the Human Resources Department and the department where the employee is currently assigned will be used for interdepartmental interviews.

18.1.4 Employees shall have the right to submit written responses to all derogatory documents placed in their Human Resources or Departmental file within each department. Such written responses will be placed in the appropriate file. Derogatory material may be purged within twelve (12) months from the employee's departmental file at the department head's discretion.

18.1.5 Human Resources Department files are a permanent record of an employee's performance with the City of Albuquerque. Such files will not be purged. However, employees who have been cleared of any charges shall not have reference of these charges included in their permanent personnel file.

18.1.6 It is hereby recognized that, upon written notification by the employee, the Association will be allowed to view his/her file.

18.1.7 The Association President or designee may request to meet with the Department Director to mediate disputes concerning purging of derogatory material from the Human Resources Department files.

19. CONDITIONS of EMPLOYMENT

19.1 Probation Period

19.1.1 The probationary period for Albuquerque Police Officers, including laterals, except sworn officers who are PERA Retirees shall be twelve (12) months from the date of graduation from the Albuquerque Police Academy, whether or not such appointee has been previously employed by the City. A PERA Retiree Officer who has been hired as a sworn officer by the City will serve a twelve (12) month probationary period from the date of PERA Retiree Officers hire whether or not the PERA Retiree Officer has been previously employed by the City. Discipline or termination of a probationary officer is not a grievable issue under the terms of this Agreement.

19.1.2 APD lateral transfers from agencies outside the City, will serve a probationary period of twelve (12) months from the date the employee completes the Lateral Academy.

19.1.3 For purposes of this section, Aviation Officers shall serve a probationary period of one year from the date of hire.

19.1.4 APD officers and Aviation Officers who laterally transfer between departments shall serve a one year trial period. The trial period shall be used to closely evaluate the Officer's work.

19.1.4.1 At any time during the trial period, an Officer may be dismissed for any reason which is no prohibited by law. Such dismissal shall not be subject of a grievance.

19.1.4.2 An Officer dismissed for a non-disciplinary reason(s) during the Officer's APD trial period shall be entitled to reinstatement as an Aviation officer, if a vacancy exists. An Officer shall retain rehire rights for a period of three (3) months from the date of his/her dismissal during the trial period. During the rehire period, the Officer shall have the right to be offered any entry-level vacancy, subject to the provisions of Section 3-1-7 B of the Merit System Ordinance. It is the responsibility of the Officer to keep the City informed as to his/her current address and telephone number. If an Officer is offered a rehire and fails or refuses to report back to work, the officer shall lose any further rehire rights.

19.1.4.3 An Officer rehired under this subsection shall not be required to serve a probationary period. In all other aspects, an Officer rehired under this subsection shall be treated as a new hire, and the Officer's seniority date shall be his/her date of rehire.

20. INVESTIGATION and DISCIPLINE

20.1 Administrative Investigations

To insure that investigations are conducted in a manner conducive to public confidence, good order, discipline, good management practices, and recognizing the individual rights of each member of the force, the following guidelines are hereby established.

20.1.1 The interrogation of any officer shall be at reasonable hours, preferably when the officer is on duty and during the daylight hours unless the exigencies of the investigation dictate otherwise as determined by the City.

20.1.2 The interrogation shall take place at a location designated by the investigating officer, usually a police department facility.

20.1.3 The name of the charging officer, complainant, or citizen making the charge shall be disclosed if this information is known to the officer conducting the investigation. If this information is not known, this shall also be disclosed. Disclosure of the complainant's name will not be required if revealing his/her name jeopardizes the investigation; however, once the investigation is completed, the name(s) of the complainants will be revealed at the request of the officer who was under investigation along with a copy of the official complaint, signed or unsigned.

20.1.3.1 Official complaint shall be defined as any complaint made by a citizen where the complainant provides his name, address, and telephone number and the complainant has completed a signed statement. The signed statement will not be required where the complainant is a member of the department. Complaints will also be classified as official if the complainant refuses to complete a signed statement and the charge is of such a serious nature as to warrant investigation, or the charge is of a criminal nature.

20.1.3.2 Unofficial complaints shall be defined as any complaint of a non-criminal nature made by a citizen where the complainant refuses to complete a signed statement. The Department will not conduct administrative investigations into unofficial complaints of a non-criminal nature. The department is not prohibited from conducting preliminary investigation to determine if allegations are in fact true. This may result in an unofficial Complain being elevated into an official complaint.

20.1.4 The officer shall be informed of the nature of the investigation before any interrogation commences. Prior to any administrative interview being conducted sufficient information shall be disclosed to reasonably apprise the officer of the allegations. This information will be provided to the target officer(s) in writing via certified US Mail. Through the course of the investigation, additional issues of concern may arise that may be incorporated into the investigation.

If it is known that the member being interrogated is a witness only, he/she shall be so informed. If the officer(s) being questioned may be the subject(s) of the investigation, this fact shall be immediately disclosed prior to any questioning.

20.1.5 The interrogation shall be completed as soon as possible and the actual interrogation shall be limited as follows:

20.1.5.1 On-duty and off-duty personnel: Maximum of two, (2) two-hour sessions within any twenty-four (24) hour period with a one (1) hour break between sessions. In no event shall the officer's tour of duty and interrogation exceed fourteen (14) hours unless both parties agree to continuation of the sessions.

20.1.5.2 In all instances, in addition to the one-hour break provided for in section 20.1.5.1 above, time shall be provided for personal necessities, telephone calls, and rest period as are reasonably necessary.

20.1.6 Only two interrogators, the involved officer and his/her representatives (up to two) will be allowed to participate, observe or monitor the interrogation. Others may be allowed by mutual consent.

The officer shall not be subjected to any offensive language, coercion ,or promise of reward as an inducement to answering questions. Nothing herein is to be construed to prohibit the investigating officer from informing the officer that his/her conduct can become the subject of disciplinary action.

20.1.7 The complete interrogation of the member shall be recorded mechanically or by stenographer. There will be no "off-the-record" conversations except by mutual agreement. All recesses called during the investigation shall be noted in the record. Nothing discussed "off-the-record" during the administrative interrogation shall be used as part of the administrative interrogation, investigation, or official file, or shall be submitted for any official action.

20.1.8 If a member is under arrest or is likely to be; that is, if he/she is a suspect or the target of a criminal investigation, the criminal investigation shall not be handled by the Internal Affairs unit, but by a criminal investigative unit of the Police Department and/or an appropriate Law Enforcement Agency with jurisdiction over the matter in question. The officer shall be given his/her rights pursuant to the Miranda Decision or applicable law. Should the officer decide to exercise his/her Miranda Rights, the Department is in no way limited from taking any administrative and/or criminal action regarding the incident, provided however, that no administrative and/or criminal action will be based on the officer's exercise or his/her Miranda or any other legal rights.

20.1.9 The officer shall be given an exact copy of the written statement he/she may execute, or if the questioning is mechanically or steno graphically recorded, the member shall be allowed to provide his/her own mechanical recording device.

20.1.10 An officer must, as a condition of continuing employment, truthfully answer any and all questions relating to the matter under investigation whether the officer is a subject or a witness to the matter. The determination of whether a question is relevant to the matter under investigation shall be made solely by the Internal Affairs officer conducting the investigation. All compelled statements will remain confidential and will only be used

for the Civilian Police Oversight Agency. Unless the City is ordered to release the documents pursuant to an order issued by a court of competent jurisdiction, the compelled statements will only be released to Internal Affairs, the Chief of Police, the City Attorney, the Director of the Civilian Police Oversight Agency, the involved officer and his/her representative. Information from a compelled statement shall not be made public by the city.

The Director of the Civilian Police Oversight Agency may prepare an investigative summary of discipline administered by the Department. The only information released to the Police Oversight Board, will consist of the alleged charges, disposition of the case (i.e. findings of sustained/non-sustained), and any discipline imposed.

If a complainant citizen appeals the discipline that has been issued to the target officer, the investigative file, minus the compelled statements, may be forwarded to the Police Oversight Board for its review.

If an appeal is taken, the Director of the Civilian Police Oversight Agency may provide a summary of conclusions to the Police Oversight Board. The summary would be in his/her own words and would be a synopsis of the investigation. The summary of conclusions shall not contain any direct quotes, statements or actual language as contained within the compelled statement.

Any information released to the Police Oversight Board shall not contain information that identifies sworn department personnel; this includes any report completed by the Director of the Civilian Police Oversight Agency, and any statements by complainants, witnesses, target officers, suspects, etc. An officer can allow portions or summaries of his/her compelled statements to be released to the Police Oversight Board if he/she chooses. Should the officer choose not to release summaries or the compelled statements, this shall not be considered as a lack of cooperation in the process. The Chief of Police will have access to all compelled statements for the purpose of disciplinary decisions.

Nothing contained herein shall be the basis for an individual waiving his/her Fifth Amendment rights under the Constitution of the United States of America.

20.1.10.1 The Association will, upon direction of the Chief of Police or the Chief's designee, comply with the Police Oversight Ordinance by submitting to interrogations in connection with administrative investigations by the Director of the Civilian Police Oversight Agency and/or full-time investigators employed by the City.

20.1.10.2 The named administrative investigators shall be bound by all the provisions of this section of the Collective Bargaining Agreement and by all confidentiality provisions in the Police Oversight Ordinance currently in effect.

20.1.10.3 The provisions of this article shall not be interpreted in a manner which violates those rights guaranteed by the Garrity vs. New Jersey or subsequent decisions.

20.1.11 The Department shall afford an opportunity for an officer, if he/she so requests, to consult with counsel before being questioned, provided the interrogation is not delayed for more than two hours. Counsel and another person of his/her choice who is a member of the bargaining unit may be present during the interrogation.

All interviewing shall be limited in scope to activities, circumstances, events, conduct or acts, which pertain to the incident, which is the subject of the investigation. Nothing in this section shall prohibit the employer from questioning the employee about information, which is developed during the course of the interview.

The representative may ask for a question to be repeated or restated for clarification purposes.

The representative may also object to any questions they feel is inappropriate and state into the record the reasons why. The interviewer will consider the objection and the question asked.

At the end of the interview, the interviewer will allow the employee or representative the opportunity to make any additional comments or provide any information they deem necessary.

If the officer's representative(s) disrupts the interview process, the representative may be removed. If an officer's representative is removed, the officer may be allowed up to two (2) hours to obtain another representative before the interview is continued.

If a representative is removed, the APOA President or his/her designee will be notified and provided a copy of the audiotape of the interview within four calendar days. The APOA President may request a meeting with the Internal Affairs Commander to discuss the matter.

20.1.12 When available, before an administrative investigator interrogates an officer as a direct result of an official complaint by a citizen whose identity is known, that citizen shall be required to sign a statement clearly provided to the officer at the same time of the interrogation.

20.1.13 In the event it is determined that the complainant falsified his/her statements, the City may take whatever action it deems appropriate and the officer may at his/her discretion pursue whatever legal remedies are available.

20.1.14 The Chief, and only the Chief, may order or request a polygraph examination. Unless there are extenuating circumstances, deception detection examinations shall be employed only after:

20.1.14.1 The Chief has carefully reviewed the entire case;

20.1.14.2 All investigative leads have been exhausted;

20.1.14.3 The APOA President, or his designated representative, has been briefed on the facts of the case and the reasons for ordering the polygraph examination. The APOA President will receive a copy of the entire case with reasonable review time. The APOA will be given reasonable time to suggest (on the record) any investigative leads that need to be followed.

20.1.14.4 The citizen complainant has submitted to and passed such an examination.

20.1.14.5 A copy of the polygraph examination shall be provided to the accused officer immediately following the examination. A copy of the independent evaluator's report shall be provided to the accused officer immediately upon receipt with the Department. When the polygraph examination is used, the accused officer and APOA will be advised 24 hours in advance, in writing, prior to the administration of the polygraph test.

20.1.15 In all cases where a sworn member becomes aware of a violation of the S.O.P or a violation of federal, state, or municipal law that is or is likely to lead to an investigation, Internal Affairs must be notified.

20.1.16 Any administrative investigation will be completed within 90 days. The 90 day period shall not include time for review. An extension of up to 30 days may be granted but will only be obtained in writing and approved by the Chief of Police. A copy of the approval will be sent to APOA. The review process shall be completed within 30 days.

20.1.17 Officers who are the subject of an investigation shall be provided with written notification as to the disposition of the investigation within fourteen (14) days.

20.1.18 As soon as an officer is determined to be the subject of an administrative investigation, he/she will be notified unless this disclosure would jeopardize the investigation.

21. GRIEVANCE and APPEAL PROCEDURES

21.1 Grievance Procedures

21.1.1 The purpose of this procedure is to secure, in an atmosphere of courtesy and cooperation and at the lowest possible administrative level, an equitable solution to the problems, which may arise. A grievance or appeal should first be discussed with the aggrieved person's immediate supervisor with the objective of resolving the matter informally.

21.1.2 Grievances and Appeals are formal complaints of employees concerning actions taken by management, which result in loss of pay or seniority, or in written reprimand. Other complaints officers have about working conditions, rules and regulations, promotions and transfers must be made through the chain of command.

21.1.3 Since it is important that grievances be resolved as rapidly as possible, time limits given shall be considered as maximum and every effort shall be made to expedite the process. In the event that the last day of a time limit falls on a weekend or a legal holiday as defined herein, the time limit shall include the next working day.

21.1.4 Refusal to appear and participate in a grievance or appeal proceeding at any formal stage in a proceeding shall result in forfeiture of the right to grieve or appeal. As a condition of employment, employees are required to appear as witnesses in grievances and appeal hearings when requested by the aggrieved employee or by members of the City administrative staff.

21.1.5 Before taking action which could result in loss of pay or seniority or in a written reprimand, a Chief of Police or the Chief's designee, may call for an informal review of the circumstances surrounding the proposed action. An officer who is aggrieved by such action may appeal the decision to the Chief of Police, the Chief's designee, or in the case of Aviation or officers, the appropriate department director or his designee within ten (10)

calendar days of the action being taken. A supervisor contemplating discipline shall not be required to submit the issue to the City Mediation Program Coordinator prior to the employee's response to the discipline.

The decision of the Chief of Police or the Chief's designee₁ may be grieved or appealed through the procedures set forth in this Section.

21.1.6 Disciplinary action in the form of a suspension may be implemented immediately or postponed pending the outcome of a grievance or appeal. The decision by the Chief of Police or the Chief's designee as it relates to the immediate implementation or postponement of the suspension will be made on a case by case basis, and shall not be considered to set precedent.

21.1.7 An attempt will be made to notify an officer in a disciplinary action in everyday languages and not track the language of a criminal statute or criminal ordinance. No specific language is required to meet any jurisdictional test. The language need only be specific enough to notify the officer of the alleged misconduct. This section will not limit the City from pursuing any criminal charges against the officer.

21.1.8 Participation in the City Mediation Program shall be voluntary. The member may elect mediation or he/she may bypass the City Mediation Program and the additional review by the Chief of Police or the Chief's designee.

21.1.9 Written reprimands will not be grievable through the Chief Administrative Officer as per the Merit System Ordinance 3-1-23, reference Grievance Procedure. The following will be the process for written reprimands.

21.1.9.1 Unless there is a request for mediation, the parties will not be required to submit written reprimands through the City Mediation Program.

21.1.9.2 A written reprimand will only be determined and issued through the employee's chain of command.

21.1.9.3 A written reprimand will be appealed to the appropriate deputy chief of the issuing individual who determined and issued the reprimand. This will be the employee's opportunity to respond to the discipline. This appeal may be in writing or in person and must occur within 10 days after the employee receives and has the opportunity to sign for the reprimand. The decision of the deputy chief will be final.

21.1.9.4 The discipline will be considered imposed after the final decision of the appropriate Major, Deputy Chief, Assistant Chief, or Chief. If there is no request for review the discipline will be considered imposed after the ten day period passes.

21.1.9.5 The Chief of Police or the Chief's designee has the sole authority to discipline.

21.1.10 A written reprimand contained in any file that was issued more than one (1) year before the date any discipline is being considered shall not be used for progressive disci-

pline purposes. A written reprimand will not be considered for transfer or in the promotional process. If a written reprimand is used for progressive discipline, the Ad Hoc Grievance Committee may consider the underlying issues in determining the appropriateness of the progressive discipline.

21.2 Appeals

21.2.1 Grievances involving discipline resulting in a suspension of 40 hours or less and transfers as a result of a disciplinary action will be appealed through the City's Merit System Ordinance.

21.2.2 Appeals involving discipline resulting in suspensions of more than 35 hours, demotion or discharge, will be appealed in accordance with the provisions of Section 3-1-24 of the Merit System Ordinance.

21.2.3 The Chief of Police or his designee has the option on a suspension of five (5) days or less to prohibit the employee from the workplace or to allow the employee to work through the suspension with pay.

21.2.4 The employee may file a written response to any document containing adverse comments entered into his/her personnel file. The written response shall be attached to the document.

22. EMPLOYEE REIMBURSEMENTS

22.1 Other Employee Reimbursements

22.1.1 The City will reimburse an officer for replacement or repair, at the City's option, for health aids, uniform apparel and personal equipment approved by the Department, lost, damaged, or stolen in the line of duty as a result of a direct delivery of service that has been officially documented. In the case of a uniform replacement, the Officer will receive a voucher for the purchase of another uniform. The City will reimburse the cost for replacement or repair of health aids, personal equipment or for each piece of uniform apparel, according to the City Risk Management guidelines. The City will have the right to retain any damaged equipment that is replaced. This language is not intended to be used to replace old, worn out health aids or uniform apparel. Any replacement equipment will be of equal value to the damages property.

If the health aids, uniform apparel or personal equipment are lost, stolen or damaged as a result of the contributory negligence of the officer, proven to the satisfaction of the chain-of command, the City will not be liable for reimbursement for replacement or repair.

23. LEGAL PROTECTION

23.1 Legal Protection/ Civil Actions

23.1.1 Should a police officer be sued in a civil action for any allegations arising out of the course and scope of the officer's employment, the City will defend and indemnify that officer pursuant to the requirements of the New Mexico Tort Claims Act, Section 41-4-1 et. seq., NMSA 1978, as amended.

23.1.2 The city will notify the officer prior to the first interview with the City Attorney if there is any conflict of interest between the city and the officer or if the city intends to dispute

that the officer was in the course and scope of employment at the time of the incident on which the complaint is based. If a conflict exists or if the city intends to dispute that the officer was in the course and scope of employment, the officer, an APOA Representative and/or Association Attorney, and the City Attorney must meet and confer to address the conflict or the dispute. Additionally, if the officer perceives a conflict of interest the officer, an APOA Representative and the City Attorney must meet and confer to address and resolve the conflict.

In the event the officer is notified of a conflict of interest or dispute that the officer was in the course and scope of employment, there shall be no interview between the officer and the City Attorney until such time as the officer is represented by counsel and/or consents to an interview.

If a conflict of interest is identified, the City will provide a contract attorney from a list compiled by the City Attorney's office. If the officer agrees to waive the conflict, the city must have this waiver in writing.

No information provided by an officer to the City Attorney's office or any agent of that office shall be used in any disciplinary or criminal action against the officer.

23.1.3 In the event an officer is sued in a civil action in which punitive damages are alleged, and the officer was not personally served with the summons and complaint, it shall be the duty of the City to notify the officer, in writing (either personally or through the APOA representative), within thirty (30) days of the receipt of the suit by the City Attorney's Office of the potential personal exposure of the officer for punitive damages. This provision shall only apply to suits filled after the effective date of this contract.

23.1.4 The officer shall have the right to consult the attorney of the officer's choice after notifying the City Attorney's office regarding a lawsuit to which the officer is a party at City expense up to \$300.00 per lawsuit.

23.1.5 The City further agrees to communicate to the officer's chosen attorney, once the officer's attorney has notified the City Attorney in writing of his/her representation, any and all settlement offers communicated by the plaintiffs attorney. The City likewise agrees to meet in good faith with the officer's chosen attorney to discuss such settlement offers, upon the request of the officer's chosen attorney.

23.1.6 Should an officer have punitive damages awarded against him/her by a judge or jury, the City agrees to appeal that judgment should cause exist in the discretion of the City.

23.2 Public Policy/ Criminal Actions

23.2.1 It is understood by the parties that it is against public policy to defend an officer in a criminal suit once the officer is indicted for a criminal act.

23.3 Legal Protection/ General Provisions

23.3.1 If the City, or its insurer, declines to defend and indemnify an officer because the City believes that officer acted outside the course and scope of the officer's employment, the City, or its insurer, agrees to pay the reasonable hourly attorney's fees of an attorney of the employee's choice (up to \$150.00 per hour) to litigate in a declaratory judgment action the issue of whether the conduct was within the course and scope of the officer's

employment. If such a declaratory judgment action is decided favorably to the officer, that is, if it is determined that the officer was acting within the course and scope of the officer's employment, then the City, or its insurer, will defend and indemnify the officer, pursuant to the New Mexico Tort Claims Act 41-4-1 et. seq., NMSA 1978, as amended.

23.3.2 For purpose of this section and Agreement, the phrase "course and scope of employment" means the lawful acts, which an officer is requested, required, or authorized to perform by the City.

23.3.3 Nothing herein shall bar the use in Court of case law and common law in the resolution of any disputes arising out of an interpretation of the New Mexico Tort Claims Act 41-4-1 et. seq., NMSA 1978.

23.3.4 It is understood by the parties that a breach of this Agreement shall not, in itself, cause the City to be liable for any punitive damages arising out of any suit to which the officer is a party.

24. EMPLOYEE ASSISTANCE PROGRAMS

24.1 Burial and Funeral Expense

24.1.1 The City agrees to defray funeral and burial expense of any officer who dies while performing their law enforcement duties up to a maximum of nine thousand dollars, (\$9,000).

25. TAKE HOME CAR PLAN

25.1 The continuation of the "Take Home Vehicle Plan" is within the sole prerogative of the Chief of Police. If the Chief of Police decides to discontinue the "Take Home Vehicle Plan", he/she shall give the APOA 45 days advance notice. Officer's hired after 7/1/11 who live outside of the territorial city limits of the City of Albuquerque are prohibited from participating in the take home car plan.

25.2 During the 45 days, the Chief of Police, or his/her designee, and the Association will meet and attempt to solve problems relating to this program, in an effort to continue the "Take Home Vehicle Program." If no agreement is reached, the Chief of Police may discontinue the "Take Home Vehicle Plan." Nothing in this section prohibits the Chief from discontinuing the program, then implementing a new program after the 45 days' notice has expired.

25.3 Participation Provisions

25.3.1 Participation in this program shall be totally voluntary and will be available to every non-probationary officer, subject to Department Rules and Regulations governing this program (herein referred to as "regulations"). The right to limit or deny participation in this program is reserved to the Chief of Police.

25.3.2 Officers volunteering to participate in this program agree to abide by all regulations governing this program.

25.3.3 The Take Home Motorcycle Plan will be held to the same condition as the “take Home Vehicle Plan.”

25.4 Due Process

25.4.1 If an officer fails to follow the regulations governing this program, it will be cause for the Vehicle to be taken away from an officer.

25.4.2 The Department gas allotment will be followed. Officers who fail to abide by the policy will be subject to the sanction set forth in this agreement.

25.4.3 A vehicle may be taken from an officer for other infractions, not listed, and the appeal process will be the same.

25.4.4 Sanctions

1 st infraction in a 12 –month period	14 calendar days
2 nd infraction in a 12-month period	4 weeks
3 rd infraction in a 12-month period	6 months

25.4.5 Officers will be notified in writing of the suspension of their take home vehicle privileges.

25.4.6 The following will be the only appeal process for suspension of an officer’s take home vehicle privileges for cause.

25.4.6.1 Upon being notified of the suspension of his/her take home car vehicle privileges, the officers may acknowledge the violation and begin serving the sanction.

25.4.6.2 If the officer wishes to appeal the sanction, within five (5) days of notification of suspension of the officer’s take home vehicle privileges, he/she must submit a letter in writing to the President of the Association, notifying the President of his/her intention to appeal and specifying the reasons the officer feels the sanction should be imposed.

25.4.6.3 Within five (5) days of notification, the President of the Association will advise the Chief of Police, a panel will be selected to hear the appeal.

25.4.6.4 The panel will consist of 3 sworn personnel chosen by the Chief of Police and 2 sworn personnel chosen by the APOA president.

25.4.6.5 The panel will meet at a mutually agreed upon time. Attendance at the meeting is voluntary on the part of the officer. If the officer does not appear before the panel, an Association representative will present the case.

25.4.6.6 The decision of the panel will be binding.

25.4.6.7 The officer will be advised of the panel’s decision at the end of the review, in writing.

25.4.6.8 The loss of a take home vehicle will not occur until after the entire review process is completed, if the officer appeals the suspension.

25.4.6.9 The final decision of the panel will not be considered disciplinary action and will not be placed on the officer's employee card.

25.5 Regulations

25.5.1 The regulations of the "Take Home Vehicle Plan" will be identified separately from this contract.

25.5.2 The regulations of the "Take Home Vehicle Plan" may be modified at the discretion of the Chief of Police. Prior to any modification of the regulations, the City will provide notice to the Association pursuant to Section 32 (Rules and Regulations).

25.6 Aviation Police

25.6.1 Nothing in this Section shall be interpreted to require a "Take Home Vehicle Plan" be implemented for Aviation Police.

26. FIREARMS

26.1 Firearms regulations of the Albuquerque Police Department as prescribed in the Department's Standard Operating Procedures Manual at the signing of this Agreement shall remain in full force and effect for all bargaining unit employees for the term of the Agreement.

26.2 The Employer shall provide practice and duty ammunition for all department issued firearms.

27. CITY PROVIDED EQUIPMENT and TOOLS

27.1 Lost, Damaged or Stolen Property

27.1.1 Officers who have lost, damaged or have had City property stolen in the line of duty, regardless of the cost, will not be required to reimburse the City unless negligence is proven to the satisfaction of their chain-of command.

27.1.2 Officers who have been determined to have contributory negligence for lost, damaged, or stolen property shall only be required to reimburse the City up to the value of \$250, or may elect to replace the lost, damaged, or stolen item. Appropriate disciplinary action may also be taken when necessary.

28. EMPLOYEE INCENTIVE PROGRAMS

28.1 Employee Recognition Program

28.1.1 The Parties recognize that the City has the discretion to develop and implement a system of awards pursuant to Section 3-1-19 of the Merit System Ordinance. The decision

of the City to implement or continue an awards system, or the decision to make an award under such a system, shall not be the subject of a grievance or claim of contract violation.

28.2 Sick Leave Incentive Program

28.2.1 A police officer will receive one extra day of vacation every six (6) months, if that officer does not use any sick leave during the same six (6) month period.

28.3 Academic Incentive Program

28.3.1 Credit hours shall be compensated for on a fixed dollar amount as follows:

28.3.1.1 All officers shall continue to receive academic incentive pay at the rate they are receiving as of the effective date of this agreement.

28.3.1.2 Bachelor's Degree shall be compensated at sixty-two dollars and thirty-one cents (\$62.31) biweekly so long as such degree is from an accredited college or university and can be officially verified.

28.3.1.3 Master's Degree shall be compensated at seventy-three dollars and eighty-five cents (\$73.85) bi-weekly so long as such degree is from an accredited college or university and can be officially verified.

28.3.1.4 A Ph.D. shall be compensated at eighty-five dollars and thirty-eight cents (\$85.38) bi-weekly so long as such degree is from an accredited college university and can be officially verified.

28.3.1.5 Payment shall be implemented bi-weekly.

28.3.1.6 Officers will be paid for only one degree at the highest academic level obtained.

28.3.2 The initial verification of education status made by the department for entry into police service will also be used to determine the qualification for the Academic Incentive.

28.3.3 It is the responsibility of the officer to update his/her file from transcripts from an accredited college or university and can be officially verified.

29. **EMPLOYEE PAYROLL DEDUCTIONS**

29.1 Officers will be required to sign up for pay by direct deposit. Paychecks will be cut for officers in cases where hardships would otherwise result.

30. **LAYOFF/REDUCTION IN FORCE and RECALL**

30.1 Layoff and Recall

30.1.1 In the event that layoffs are necessary, the City shall provide the Police Departments and the APOA with an opportunity to propose alternatives.

30.1.2 When it is necessary to have a reduction in work force, officers will be laid off in reverse order of seniority within the Department.

30.1.3 Officers laid off due to a reduction in force will be called back to work in their seniority order according to the following procedures:

30.1.3.1 The City will advise the officer to be recalled by certified or registered United States mail. A copy of such recall notice will be furnished to the APOA.

30.1.3.2 An officer, upon receiving notice of recall, within seven (7) days will acknowledge receipt by certified or registered mail advising the Chief of Police of the date he/she will be available for service, which available dates must not be later than twenty (20) calendar days from the date the officer receives the recall notice, unless there are extenuating circumstances.

30.1.3.3 Officers failing to comply with this section will forfeit their recall right to this position and be placed at the end of the recall list. Failure to report after the second recall notice will be considered an automatic resignation. It is understood that the City will have discharged its obligations of notification to laid-off officers by having forwarded recall notices as herein outlined.

30.1.4 The City will not start a new academy police class until police officers, laid off as a result of a reduction in the work force, have been given an opportunity to return to work.

30.1.5 The term seniority, for purpose of this section, shall mean time in rank. In situations where officers are required to bump into a lower rank, the officer moving to the lower rank shall be credited with time earned prior to the promotion.

30.1.6 As officers are called back, the officers assigned to lower ranks will be returned to the former rank, in order of seniority, as the position becomes available.

30.1.7 Officers may remain on layoff status for a period of two years. Officers on layoff status will not lose seniority as a result of being on layoff status.

31. RESIGNATION and RETIREMENT

31.1 Resignation

31.1.1 Employees shall be compensated in cash at their regular rate of pay for any unused accumulation of vacation when they are permanently separated from the City.

31.2 Retirement

31.2.1 The City will pay to a police officer the total amount of his/her accumulated sick leave at the time of his/her retirement, provided he/she has completed a minimum of fifteen (15) years of service in the Police Department. In lieu thereof, the police officer who is contemplating retirement, may, immediately prior to his/her retirement, convert his/her accumulated sick leave to leave with pay on the basis of one (1) day sick leave for one (1) day leave with pay. No sick leave will be accrued while the officer is on early retirement leave.

31.2.2 If the police officer is eligible to early retire, he/she may convert his or her accumulated sick leave with pay on the basis of (1) day sick leave with pay regardless of the number of years he/she worked for the Albuquerque Police Department.

32. RULES and REGULATIONS

32.1 The employer reserves the right to develop and implement such directives rules and regulations as may be deemed necessary to the employer for the conduct of affairs of the Department.

32.2 The Association (APOA) agrees that the employees shall be bound by and obey such directives, rules, and regulations insofar as the same do not conflict with this Agreement, the laws of the United States, the laws of the State of New Mexico and/or the laws of the City of Albuquerque. Under normal circumstances, the Association will be given written notice of proposed changes to Department directives, rules and regulations that directly affect the wages, hours, and working conditions of bargaining unit member and may submit written input to the Chief within fourteen (14) days.

32.3 An M.O.U. between the parties must be reached and executed in the case where either party wishes to change or amend a policy which would be in conflict with the provisions of this Agreement. All MOUs shall require the signature of the CAO and the President of the Union, the signatures must be dated.

33. SPECIAL PROVISIONS FOR AVIATION

33.1 Aviation

33.1.1 During the month of December the Aviation Department will provide for its employees the right to bid for vacation on scheduling for the following year. Vacation will be bid in seniority order by department. A calendar for bidding, identifying vacation slots will be provided for employees to bid for their vacation. It is required that one Union representative on each shift be identified to assist management with the bidding process. Employees will be allowed to bid in conjunction with their days off, and will not be required to bid in blocks of three. Units that are currently on a 6-month bid will continue to do so for the duration of this contract.

33.1.2 Unscheduled vacation is defined as accrued vacation time which was not scheduled during the bidding period. Such vacation time may be requested on an individual basis for available days on a first come, first serve basis. These requests will be submitted to the employee's immediate supervisor on a P-30 form and the request will identify the date and time received.

33.1.3 All P-30's will be returned to employees within forty-eight hours (48) hours.

33.1.4 If an employee is on suspension, injury leave, administrative leave, sick leave or other leave during their scheduled vacation, any other employee may request such vacation time as unscheduled vacation on a first-come, first-served basis.

33.2 Aviation

33.2.1 For Aviation Departments, sergeants and officers will bid for assignment based on seniority and the bidding will occur every (6) months. Sergeants will bid first, followed by the officer's bid. Bidding is for shift, days off, overtime, and vacation. The Department Director's or Chief's decisions shall not be subject to challenge under this Agreement's Grievance Procedure.

33.2.2 The uniform allowance of \$23.08 per pay period shall be terminated when the department begins its distribution of uniforms to employees.

34. **STRIKES and LOCKOUTS**

34.1 The Association, its elected officials, and members of the Association agree that they will not call, sanction, encourage, or participate in any way in any strike. For the purposes of this section, a person will be deemed a member of the Association if that employee is currently a member or if the employee has resigned the employee's membership within sixty (60) days of the first day of a strike or during a strike.

34.2 Strike shall be defined as stated in the City of Albuquerque Labor Management Relations Ordinance (Ordinance 4-1977).

35. **GENERAL ADMINISTRATIVE PROVISIONS**

35.1 Memoranda of Understanding (MOU)

35.1.1 The parties may execute memoranda of Understanding (MOUs) during the term of this agreement. The MOUs will expire no later than the termination date of this Agreement.

35.2 Complete Agreement

35.2.1 It is understood and agreed by and between the parties hereto that this Agreement is the only existing Agreement between the parties, and replaces any and all previous Agreements.

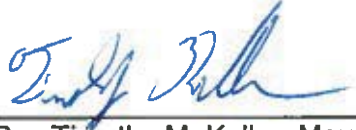
35.3 Savings Clause

35.3.1 Should any part of this Agreement or any provision contained herein be declared invalid by a District Court or competent jurisdiction, the validity of the remaining portions shall not be affected. Should this occur, the parties will immediately meet to negotiate a suitable provision or replace the provision held invalid.

35.4 Term of the Agreement – This Agreement shall become effective on the first full pay period following ratification by the rank and file membership, approval by the Mayor, and signature by the parties, and shall remain in full force and effect through June 30, 2020.

IN WITNESS WHEREOF, the parties have entered their names and affixed the signatures of their authorized representatives on this 26 day of June, 2018.

CITY OF ALBUQUERQUE



By: Timothy M. Keller, Mayor
City of Albuquerque

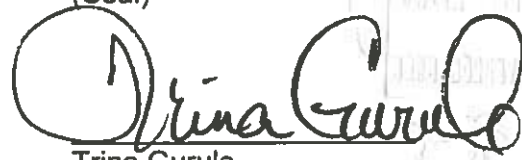
ALBUQUERQUE POLICE
OFFICERS ASSOCIATION



By: Shaun Willoughby,
President APOA

Form Reviewed by Legal Department

mmk 
By: Steve Aguilar,
City Attorney

(Seal) 
Trina Gurule,
Interim City Clerk

OFFICERS'

(“City”) (“MOU”) (“Union”)
Officers’ “Parties”). (“CBA”)

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IN WITNESS WHEREOF, each party has executed this agreement on the date indicated by the signature.

ALBUQUERQUE POLICE OFFICERS ASSOCIATION

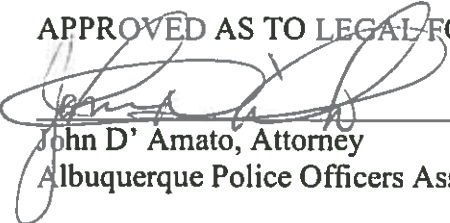
APPROVED BY:



Shaun Willoughby, President
Albuquerque Police Officers Association

6-28-18
Date

APPROVED AS TO LEGAL FORM:



John D' Amato, Attorney
Albuquerque Police Officers Association

7-3-2018
Date

CITY OF ALBUQUERQUE


APPROVED BY:



Sarita Nair, Chief Administrative Officer
City of Albuquerque

7/8/18
Date

APPROVED AS TO FORM:



Michael Geier, Chief
Albuquerque Police Department


7/2/18
Date



Mary Scott, Director
Human Resources Department

7/2/18
Date

APPROVED AS TO LEGAL FORM:

mmk


Esteban Aguilar, Jr., City Attorney
City of Albuquerque

 7-2-18
Date

(“APOA”) (“City”) (“MOU”) Officers’
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I. Term of MOU

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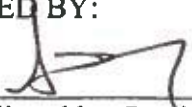
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ALBUQUERQUE POLICE OFFICERS ASSOCIATION

APPROVED BY:



Shaun Willoughby, President
Albuquerque Police Officers Association

6-28-18
Date

CITY OF ALBUQUERQUE

APPROVED BY:



 Sarita Nair, Chief Administrative Officer
City of Albuquerque

7/8/18
Date

APPROVED AS TO FORM:



Michael Geier, Chief
Albuquerque Police Department

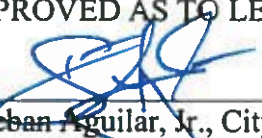
7/2/18
Date




Mary Scott, Director
Human Resources Department

7/2/18
Date

APPROVED AS TO LEGAL FORM:



 Esteban Aguilar, Jr., City Attorney
City of Albuquerque

7-2-18
Date

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE ALBUQUERQUE POLICE OFFICERS' ASSOCIATION
AND THE CITY OF ALBUQUERQUE REGARDING
SUPPLEMENT TO COLLECTIVE BARGAINING AGREEMENT**

This MEMORANDUM OF UNDERSTANDING (“MOU”) is entered into by and between the City of Albuquerque (“City”) and the Albuquerque Police Officers’ Association (“APOA”) (the City of Albuquerque and the APOA are collectively referred to as the “Parties”).

WHEREAS, the Parties have entered into a Collective Bargaining Agreement (“CBA”) and

WHEREAS, the Parties have agreed to memorialize the current practices regarding the Canine Unit in the Albuquerque Aviation Police and

WHEREAS, the parties have agreed to supplement the CBA currently in effect to reflect these practices.

NOW, THEREFORE, the parties agree to the following:

I. TERM OF MOU

This MOU is effective the date the last party signs the agreement and shall remain in full force and effect until June 30, 2020.

II. COLLECTIVE BARGAINING AGREEMENT ADDITIONAL LANGUAGE

Add the following language to Article 33 – Special Provisions for Aviation

- a. Section 33.3.1, Aviation Police K9 officers will not be required to remain at home for the purposes of stand-by, so long as the officer assigned to stand-by is able to respond to the Albuquerque International Sunport within forty-five (45) minutes of call. Canine Officers will be issued cell phones to facilitate this response time.
- b. Section 33.3.2, In the event the Aviation Police Department Canine Unit is discontinued, all Canine Officers will be reassigned to the Aviation Patrol Unit.
- c. Section 33.3.3, Vacancies within the canine unit will be hired from within the Aviation Police Department. If no qualified Officers are available to fill such vacancies, the department may then consider hiring certified law enforcement officers from within Albuquerque Police Department. Such outside hires will be required to satisfy Section 19 of the Contract.
- d. Section 33.3.4, The Take Home Car Plan will be applicable by Aviation Police Canine Officers. The Aviation Police Department will provide such a take home car. The continued use of such take home car will be within the sole prerogative of the Director of Aviation, in accordance with Section 25, and will only be used in accordance with the Aviation Police Canine Standard Operating Procedure or at the direction of the AAPD Deputy Chief Operations.
- e. Section 33.3.5, Higher ranks have seniority over junior ranks. The officer with the most continuous service within the Canine Unit is senior within the unit. For

the purpose of breaking a tie on seniority, the first criteria to be applied shall be date of hire with the department. Should the date of hire within the department be identical, then the tie will be broken by the use of employee numbers or lottery numbers, whichever is applicable.

1. Aviation Canine Officers returning to Aviation Police Patrol will retain seniority per Section 13.
- f. Section 33.3.6, the work days, days off and start times of shifts will be fixed, but as training and utilization are required, shifts can be flexible as agreed upon by Canine Handlers and AAPD management. Canine Handlers will receive one (1) hour of regular time per day for each eight-hour (8) shift (7 hours on duty, 1 hour dog care), or one (1) hour and fifteen (15) minutes of a ten (10) hour shift (8 hours, 45 minutes on duty, 1 hour, 15 minutes dog care) for upkeep of the canine and associated equipment.
- g. Section 33.3.7, Canine Officers will receive Hazardous Duty Pay at \$23.08 per pay period.

III. MOU CREATES NO THIRD PARTY BENEFITS

By entering into this MOU, the parties do not intend to create any right, title, or interest in or for the benefit of any person other than the Parties. No person shall claim any right, title or interest under this MOU or to seek to enforce this MOU as a third party beneficiary of this MOU. The parties agree that this MOU shall only be applicable to positions within the APOA bargaining unit.

IV. NO FURTHER AGREEMENT

This MOU incorporates all the agreements, covenants, and understandings between the Parties hereto concerning the services to be performed hereunder, and all such agreements, covenants and understandings have been merged into this MOU. This MOU expresses the entire MOU and understanding between the parties. No prior agreement or understanding, verbal or otherwise, of the Parties or their agents shall be valid or enforceable unless embodied in this MOU.

VI. SEVERABILITY

In case any one or more of the provisions contained in this MOU or any application thereof shall be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

ALBUQUERQUE POLICE OFFICERS ASSOCIATION

APPROVED BY:



Shaun Willoughby, President
Albuquerque Police Officers Association

6-28-18
Date

CITY OF ALBUQUERQUE

APPROVED BY:



Sarita Nair, Chief Administrative Officer
City of Albuquerque

7/8/18
Date

APPROVED AS TO FORM:



Michael Geier, Chief
Albuquerque Police Department

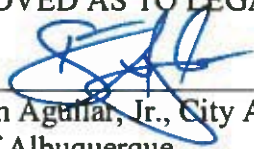
7/2/18
Date



Mary Scott, Director
Human Resources Department

7/2/18
Date

APPROVED AS TO LEGAL FORM:

mmk


Esteban Aguilar, Jr., City Attorney
City of Albuquerque

7-2-18
Date

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF ALBUQUERQUE AND THE
ALBUQUERQUE POLICE OFFICERS ASSOCIATION
REGARDING
TWELVE (12) HOUR SHIFTS**

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ALBUQUERQUE POLICE OFFICERS ASSOCIATION


APPROVED BY:



Shaun Willoughby, President
Albuquerque Police Officers Association

6-28-18
Date

APPROVED AS TO LEGAL FORM:



John D' Amato, Attorney
Albuquerque Police Officers Association

7-3-2018
Date

CITY OF ALBUQUERQUE

APPROVED BY:



Sarita Nair, Chief Administrative Officer
& City of Albuquerque

7/18/18
Date

APPROVED AS TO FORM:



Michael Geier, Chief
Albuquerque Police Department


7/2/18
Date



Mary Scott, Director
Human Resources Department

7/2/18
Date

APPROVED AS TO LEGAL FORM:

mmk


Esteban Aguilar, Jr., City Attorney
City of Albuquerque

7-2-18
Date

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE ALBUQUERQUE POLICE OFFICERS' ASSOCIATION (APOA)
AND THE CITY OF ALBUQUERQUE REGARDING
CAO LEAVE DISCRETION**

This **MEMORANDUM OF UNDERSTANDING** ("MOU") is entered into by and between the City of Albuquerque ("City") and the Albuquerque Police Officers' Association, ("Union") (The City of Albuquerque and the Union are collectively referred to as the "Parties").

WHEREAS, the Parties have entered into a Collective Bargaining Agreement ("CBA") that is in place from July 7, 2018 through June 30, 2020.

WHEREAS, the CBA allows the Parties to enter into written MOUs to change or amend policies that would be in conflict with the CBA pursuant to Section 32.3;

WHEREAS, the Parties wish to enter into this MOU which may be extended, or incorporated into a successor CBA. This provision will supplement the CBA sections providing for pay leave;

NOW, THEREFORE, the parties agree to the following:

I. EFFECTIVE DATE.

The Parties agree that, so long as both Parties sign this MOU, the "effective date" is the date that the last Party executes this MOU.

II. TERM OF MOU.

This MOU will expire on June 30, 2020, but may be extended or incorporated into a successor CBA.

III. ADDITIONAL LEAVE AT DISCRETION OF CAO

If the Chief Administrative Officer (CAO) authorizes leave for City employees outside the bargaining unit, she may authorize the same paid leave for bargaining unit members for certain purposes not originally contemplated by the CBA. Such a grant of paid leave shall be considered part of an employee's overall compensation for the services he or she is or will be performing. When announcing such leave, the CAO will set the following:

- (1) the purpose of the leave;
- (2) how much leave is authorized;
- (3) how and when such leave shall be taken;
- (4) the necessary pay code.

Once paid leave is authorized, the Chief Administrative Officer maintains discretion over when the employees may use the leave based on the City's man-power needs.

IV. NO FURTHER AGREEMENT

This MOU incorporates all the agreements, covenants, and understandings between the Parties hereto concerning the services to be performed hereunder, and all such agreements, covenants and understandings have been merged into this MOU. This MOU expresses the entire MOU and understanding between the parties. No prior agreement or understanding, verbal or otherwise, of the Parties or their agents shall be valid or enforceable unless embodied in this MOU.

V. SEVERABILITY

In case any one or more of the provisions contained in this MOU or any application thereof shall be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

IN WITNESS WHEREOF, each party has executed this agreement on the date indicated by the signature.

SIGNATURES CONTINUE ON NEXT PAGE
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CITY OF ALBUQUERQUE

APPROVED BY:


Sarita Nair, Chief Administrative Officer
CITY OF ALBUQUERQUE


Date 10/16, 2018

APPROVED AS TO FORM:


Michael Geier, Chief *John Ross*
Albuquerque Police Department

Date: 10/12, 2018


APPROVED AS TO LEGAL FORM:

MMK 
Esteban A. Aguilar Jr., City Attorney
City of Albuquerque

Date 10-12, 2018

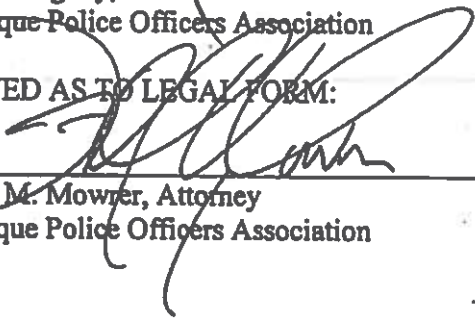
ALBUQUERQUE POLICE OFFICERS ASSOCIATION

APPROVED BY:


Shaun Willoughby, President
Albuquerque Police Officers Association

Date 10-8, 2018

APPROVED AS TO LEGAL FORM:


Frederick M. Mowrer, Attorney
Albuquerque Police Officers Association

Date 10-8, 2018

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE ALBUQUERQUE POLICE OFFICERS ASSOCIATION
AND THE CITY OF ALBUQUERQUE
REGARDING THE COVID-19 OUTBREAK**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is entered into by and between the City of Albuquerque (“City”) and the Albuquerque Police Officers Association (The Union) (The City and the Union are collectively referred to as the “Parties”).

WHEREAS, the Union is the exclusive bargaining representative for the employees covered by this MOU;

WHEREAS, the parties agree that the City of Albuquerque values its employees and the public’s welfare and wants to take all appropriate precautions to restrict the spread of the COVID-19 virus;

WHEREAS, the Parties agree that the temporary modification of certain policies and procedures under the collective bargaining agreement(s) applicable to these employees is mutually beneficial to the Parties and is in the best interest of serving the public.

WHEREAS, the Parties recognize that the City has the management right to take actions as may be necessary to carry out the mission of the city government in emergencies;

WHEREAS, the Parties recognize that this MOU does not alter or waive that management right, or create precedent or past practice;

WHEREAS, the Parties desire to cooperate in good faith to serve the residents of the City during this public health emergency.

NOW, THEREFORE, the parties agree to the following:

- I. **TERM OF MOU.** This Memorandum of Understanding (MOU) shall remain in full force and effect until April 15, 2020. The parties agree that upon expiration of the MOU on April 15, 2020, the terms of the MOU no longer apply and the Parties shall no longer receive benefits therefrom.
- II. **EFFECTIVE DATE.** The Parties agree that, so long as both Parties sign this MOU, the “effective date” is the date that the last Party executes this MOU.
- III. **TERMS PERTAINING TO COVID-19 OUTBREAK**
 1. The Parties hereby incorporate and will abide by the following Administrative Instructions in the entirety:
 - a. *Telecommuting During the COVID-19 Outbreak (Revised)*, Administrative Instruction No. 7-30 (2020);

- b. *Modified Sick Leave Policy During the COVID-19 Outbreak (Revised)*, Administrative Instruction No. 7-58 (2020);and
 - c. *Reporting Requirements During the COVID-19 Outbreak*, Administrative Instruction No. 7-59 (2020) in its entirety.
2. Employees calling in will be placed in a “PEM” paid status. Employees should remain in contact with their direct supervisor on a daily basis and return to work once they are no longer symptomatic and no longer at risk of potentially spreading the virus. The City reserves the right to require medical assessment or a doctor’s note from employees who are taking leave under this Administrative Instruction. If an employee is presenting as symptomatic at work, his or her supervisor shall notify their Department Director. The Director will make a decision as to whether the employee should not report for work until he or she is no longer symptomatic and will be placed in “PEM” status.
3. All timelines for investigations and discipline in the collective bargaining agreement(s) are suspended. At the request of either party and agreement of the parties, current or pending investigations or discipline may be reviewed on a case by case basis during this period. This includes current pending investigations and discipline as well as potential future investigations and discipline. The timelines and deadlines will resume 30 days after the expiration of this MOU.
4. Employees should report all personal out of state travel within the last thirty days and through May 15, 2020, to the Chief of Police or his designee. The Chief of Police or his designee may request that the employee not return to work under this instruction for fourteen days. If an employee is symptomatic, he or she should not return to work and self-quarantine for fourteen days. The employee will be placed on “PEM” paid status during this time.
5. Employees who utilized sick leave under a previous version of the *Modified Sick Leave Policy During the COVID-19 Outbreak (Revised)* will be retroactively placed in a “PEM” paid status for that time period as appropriate. Any sick leave accruals shall be returned to the employee.
6. Grievance and appeal procedures and deadlines, including, but not limited to, first and second step grievances, prohibited practices complaints, and disciplinary appeals, shall be suspended. The Parties agree to waive all timelines and deadlines associated with these complaints during the term of this MOU. The timelines and deadlines will resume at the expiration of this MOU and the City will accept grievances or PPC that occurred during the suspended time until June 15, 2020.
7. To the extent contract negotiations are ongoing, the Parties shall suspend negotiations pending the expiration of this MOU. Negotiations shall remain open. Should negotiations be completed and signed by October 1,2020 , all employees shall receive a bonus equal to the amount if the negotiations completed on July 31, 2020.

8. To the extent upgrading bargaining unit members becomes necessary due to absence, qualified employees may volunteer and shall be selected by rotating seniority. If no employee volunteers, the City has the authority to unilaterally select and upgrade bargaining unit members to higher positions based on need. Bargaining unit members selected shall receive upgrade pay according to Section 17.2.1 of the CBA.

9. All bargaining unit members shall follow all recommended safety guidelines to safeguard against infection.

IV. **MOU CREATES NO THIRD PARTY BENEFITS.** By entering into this MOU, the Parties do not intend to create any right, title, or interest in or for the benefit of any person other than the Parties. No person shall claim any right, title, or interest under this MOU or to seek to enforce this MOU as a third party beneficiary of this MOU.

V. **NO FURTHER AGREEMENT.** This MOU incorporates all the agreements, covenants, and understandings between the parties hereto concerning the COVID-19 outbreak. This MOU expresses the entire MOU and understanding between the parties. No prior agreement or understanding, verbal or otherwise, of the Parties or their agents shall be valid or enforceable unless embodied in this MOU regarding the COVID-19 outbreak.


VI. **SEVERABILITY.** In case any one or more of the provisions contained in this MOU or any application thereof shall be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

IN WITNESS WHEREOF, each Party has executed this agreement on the date indicated by the signature.

SIGNATURES TO BEGIN ON NEXT PAGE
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ALBUQUERQUE AREA FIRE FIGHTERS
UNION IAFF LOCAL 244:

APPROVED BY:

 Date: 4-14-20
Shaun Willoughby, President
Albuquerque Police Officers Association

CITY OF ALBUQUERQUE

APPROVED BY:

EAJ _____ Date: _____
Sarita Nair,
Chief Administrative Officer

APPROVED AS TO FORM:

 Date: 4/17/20
Mary Scott, Director
Human Resources Department

APPROVED AS TO LEGAL FORM:

MMK /S/ Esteban Aguilar, Jr. Date: 4/16/2020
Esteban Aguilar, Jr.
City Attorney

