

Mayor Richard J. Berry

EC-14-194  
CITY OF ALBUQUERQUE


Albuquerque, New Mexico

Office of the Mayor

INTER-OFFICE MEMORANDUM

October 31, 2014

**To:** Ken Sanchez, President, City Council

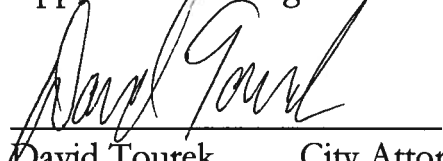
**From:** Richard J. Berry, Mayor 

**Subject:** Settlement Agreement between the Department of Justice and the City of Albuquerque

The Department of Justice and the City of Albuquerque 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** to ensure that the Albuquerque Police Department 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 continue to build community and police relationships.

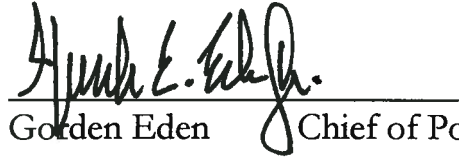
Approved as to Legal Form:



David Tourek City Attorney

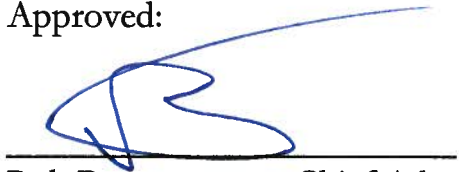
10/31/14

Approved:



Gordon Eden Chief of Police

Approved:



Rob Perry Chief Administrative Officer

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF ALBUQUERQUE,

Defendant.

CIVIL NO. 14-\_\_\_\_\_

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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) “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.
- uu) “SWAT” unit means the Special Weapons and Tactics unit.
- vv) “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.
- ww) “Telecommunicators” means dispatchers, 911 operators, and NCIC operators.
- xx) “Unit” means any designated organization of officers within APD, including area and specialized units.
- yy) “Use of force” means physical effort to compel compliance by an unwilling subject above unresisted handcuffing, including pointing a firearm at a person.

- zz) “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.
- aaa) “Use of Force Report” means a written report documenting a use of force above unresisted handcuffing; hand control or escort techniques applied for the purposes of handcuffing; or escorts that are not used as pressure point compliance techniques, do not result in injury or complaint of injury, and are not used to overcome resistance. The Use of Force Report is comprised of a Use of Force Data Report and a Use of Force Narrative Report.
- bbb) “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.

#### **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 in the same manner as a 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. 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 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 Investigations**

46. All uses of force by APD shall be subject to supervisory force investigations as set forth below. All force investigations shall comply with applicable law and comport with best practices. All force investigations shall determine whether each involved officer's conduct was legally justified and complied with APD policy.

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

48. APD agrees to develop and implement force classification procedures that include at least two categories or types of force that will determine the force 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 optimize APD's supervisory and investigative resources on uses of force. 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, serious uses of force shall be investigated by the Internal Affairs Bureau, as described below. When a serious use of force or other incident is under criminal investigation by the Multi-Agency Task Force, APD's Internal Affairs Bureau 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 Bureau, as appropriate and in accordance with applicable laws, to ensure timely and thorough administrative investigations of serious uses of force. Uses of force that do not rise to the level of serious uses of force or that do not indicate apparent criminal conduct by an officer will be reviewed by the chain of command of the officer using force.

#### **1. Supervisory Force Investigations**

50. The supervisor of an officer using force shall respond to the scene of the use of force to initiate the force investigation and ensure that the use of force is classified according to APD's force classification procedures. For serious uses of force, the supervisor shall ensure that the Internal Affairs Bureau is immediately notified and dispatched to the scene of the incident.

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 investigations of uses of force, the supervisor shall:

- a) respond to the scene, examine all personnel and subjects of use of force for injuries, interview the subject(s) for complaints of pain after advising the subject(s) of his or her rights, and ensure that the officers and/or subject(s) receive medical attention, if applicable;

- b) identify and collect all relevant evidence and evaluate that evidence to determine whether the use of force was consistent with APD policy and identifies any policy, training, tactical, or equipment concerns;
- c) ensure that all evidence to establish material facts related to the use of force, including audio and video recordings, photographs, and other documentation of injuries or the absence of injuries is collected;
- d) ensure that a canvass for, and interview of, witnesses is conducted. In addition, witnesses are to be encouraged to provide and sign a written statement in their own words;
- e) ensure that all officers witnessing a use of force incident by another officer provide a use of force narrative of the facts leading to the use of force;
- f) separate all officers involved in a use of force incident until each has been interviewed and never conduct group interviews of these officers;
- g) 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;
- h) 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;
- i) utilize on-body recording systems to record all interviews;
- j) review all use of force narratives and ensure that all Use of Force Reports include the information required by this Agreement and APD policy;
- 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;
- m) obtain a unique tracking number; and
- n) where a supervisor determines that there may have been misconduct in the use of force, immediately notify the Area Commander and the Internal Affairs Bureau.

53. Each supervisor shall complete and document a supervisory force investigation using a Use of Force Report within 72 hours of completing the on-scene investigation. Any

extension of this 72-hour deadline must be authorized by a Commander. This Report 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 or lesser force options; 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 Use of Force Report, the investigating supervisor shall forward the report through his or her chain of command to the Commander, who shall review the report to ensure that it is complete and that the findings are supported using the preponderance of the evidence standard. The Commander shall order additional investigation when it appears that there is additional relevant evidence that may assist in resolving inconsistencies or improving the reliability or credibility of the findings.

55. Where the findings of the Use of Force Report are not supported by a preponderance of the evidence, the supervisor's chain of command shall document the reasons for this determination and shall include this documentation as an addendum to the original investigation. The supervisor's superior shall take appropriate action to address the inadequately

supported determination and any investigative deficiencies that led to it. Commanders shall be responsible for the accuracy and completeness of Use of Force Reports prepared by supervisors under their command.

56. Where a supervisor repeatedly conducts deficient supervisory force investigations, 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 investigation immediately and notify the Internal Affairs Bureau and the Chief. The Internal Affairs Bureau shall immediately take over the administrative investigation and initiate the criminal investigation.

57. When the Commander finds that the supervisory force investigation is complete and the findings are supported by the evidence, the investigation file shall be forwarded to the Force Review Board. The Force Review Board shall review the supervisory force investigation to ensure that it is complete and that the findings are supported by the evidence. The Force Review Board shall ensure that the investigation file is forwarded to the Internal Affairs Bureau for recordkeeping.

58. At the discretion of the Chief, a supervisory force investigation 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 investigation or analysis. This assignment or re-assignment shall be explained in writing.

59. Where, after a supervisory force investigation, 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 Bureau**

60. The Internal Affairs Bureau shall respond to the scene and conduct investigations of serious 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 Bureau by the Chief. In cases where the Internal Affairs Bureau initiates a criminal investigation, it shall ensure that such investigation remains separate from and independent of any administrative investigation. In instances where the Multi-Agency Task Force is conducting the criminal investigation of a serious use of force, the Internal Affairs Bureau shall conduct the administrative investigation.

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

62. Within six months from the Effective Date, APD shall revise the Internal Affairs Bureau 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 ten months from the Effective Date, APD shall ensure that there are sufficient trained personnel assigned to the Internal Affairs Bureau to fulfill the requirements of this Agreement. APD shall ensure that all serious 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 Bureau.

64. Before performing force investigations, Internal Affairs Bureau 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. Internal Affairs Bureau 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 serious use of force or force indicating apparent criminal conduct by an officer to the Multi-Agency Task Force for investigation.

66. To ensure that criminal and administrative investigations remain separate, APD's Violent Crimes Section may support the Internal Affairs Bureau or the Multi-Agency Task Force in the investigation of any serious 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 the Internal Affairs Bureau determines that a case will proceed criminally, or where APD requests a criminal prosecution, the Internal Affairs Bureau 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 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 serious uses of force, as defined in this Agreement, the Internal Affairs Bureau 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 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 serious use of force by another officer provide a use of force narrative of the facts leading to the use of force;
- e) ensure that all officers involved in a use of force incident remain separated until each has been interviewed and never conduct group interviews of these officers;
- f) review all Use of Force Reports to ensure that these statements include the information required by this Agreement and APD policy;
- g) 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;
- h) 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;
- i) record all interviews;
- j) consider all relevant evidence, including circumstantial, direct, and physical evidence, as appropriate, and make credibility determinations, if feasible;
- k) 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
- l) train all Internal Affairs Bureau force investigators on the factors to consider when evaluating credibility, incorporating credibility instructions provided to jurors.

70. The Internal Affairs Bureau 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 Internal Affairs Bureau shall complete administrative investigations within two 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 Internal Affairs Bureau through consultation with the Chief or by the Chief. At the conclusion of each use of force investigation, the Internal Affairs Bureau 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 Internal Affairs Bureau'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 Internal Affairs Bureau'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 Internal Affairs Bureau investigation report, the Internal Affairs Bureau investigator shall forward the report through his or her chain of command to the commanding officer of the Internal Affairs Bureau. The Internal Affairs Bureau 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 Bureau 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 Internal Affairs Bureau investigation are not supported by a preponderance of the evidence, the Internal Affairs Bureau 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 Bureau shall take appropriate action to address any inadequately supported determination and any investigative deficiencies that led to it. The Internal Affairs Bureau commanding officer shall be responsible for the accuracy and completeness of investigation reports prepared by the Internal Affairs Bureau.

74. Where a member of the Internal Affairs Bureau repeatedly conducts deficient force investigations, the member shall receive the appropriate corrective and/or disciplinary action, including training or removal from the Internal Affairs Bureau 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 Bureau determines that the force investigation is complete and the findings are supported by the evidence, the investigation 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 Internal Affairs Bureau 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 Bureau 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 all uses of force. The Force Review Board shall be comprised of at least the following members: Assistant Chief of the Professional Accountability Bureau, the Deputy Chief of the Field Services Bureau, the Deputy Chief of the Investigations Bureau, a Field Services Major, the Training Director, and the Legal Advisor. The Force Review Board shall conduct timely, comprehensive, and reliable reviews of all use of force investigations. The Force Review Board shall:

- a) review each use of force investigation completed by the Internal Affairs Bureau 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 Bureau investigation, shall not be present;
- c) review a sample of supervisory force investigations that have been completed and approved by Commanders every 90 days to ensure that the investigations are

complete and timely and that the findings are supported by a preponderance of the evidence;

- d) 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;
- e) 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;
- f) 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;
- g) 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, or 15 days of the review of sample supervisory force investigation; and
- h) 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;
- 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 investigations carried out by supervisors, the Internal Affairs Bureau, or Multi-Agency Task Force; and all force reviews conducted by 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. 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 Effective 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 Bureau, as part of their initial and annual in-service supervisory training, shall receive additional training that includes:

- a) conducting use of force 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 Effective 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 Effective 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 Effective 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 Effective 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 Effective 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 Effective 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 the end of 2015.

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 Effective 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 Effective 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 Effective 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 Effective 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 Effective 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 Effective 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 Effective 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 Effective 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 Effective Date, and annually thereafter. Within six months of the Effective 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 four 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

Bureau 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 Bureau. 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 Effective 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 Effective 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 Bureau 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 Effective Date, the Internal Affairs Bureau, 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 Bureau 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 Bureau'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 Bureau. All information should be referred to the Internal Affairs Bureau 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 Bureau shall refer the complaint to the Civilian Police Oversight Agency.

180. Internal misconduct complaints submitted by APD personnel shall remain with the Internal Affairs Bureau for review and classification. The Internal Affairs Bureau shall determine whether the internal complaint will be assigned to a supervisor for investigation or retained by the Internal Affairs Bureau for investigation. In consultation with the Chief, the commanding officer of the Internal Affairs Bureau shall also determine whether a civilian or internal complaint will be investigated criminally by the Internal Affairs Bureau, 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 Bureau 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 Bureau 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 Bureau 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 Bureau 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 Bureau. The Internal Affairs Bureau 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 Bureau shall continue with the administrative investigation of the allegation. Consistent with Paragraph 186, the Internal Affairs Bureau 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 Bureau 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 Bureau 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 Effective Date, and annually thereafter, the Internal Affairs Bureau 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 Bureau 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 Bureau, an Area Command, or elsewhere, shall receive at least 24 hours of initial training in conducting misconduct investigations within one year of the Effective 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 Effective 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 Effective 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) investigating 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 Effective 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 Effective 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 Effective 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 Effective 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 Effective 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 Effective 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 Bureau 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 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 investigations, 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 18 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 serious 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 serious 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. For the first two years after the Monitor has been appointed, the Monitor shall file with the Court written, public compliance reports every four months, and after two years, 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 15 days 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 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 Effective 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 \_\_\_\_\_ day of \_\_\_\_\_, 2014,

For Plaintiff UNITED STATES OF AMERICA:

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District of New Mexico

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SO ORDERED, this \_\_\_\_\_ day of \_\_\_\_\_, 2014

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U.S. DISTRICT JUDGE