

MEMORANDUM OF AGREEMENT

Between the United States Department of Justice

and the

City of Cincinnati, Ohio and

the Cincinnati Police Department

April 12, 2002

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## I. DEFINITIONS

- (a.) The term "actively resisting" means the subject is making physically evasive movements to defeat the officer's attempt at control, including bracing, tensing, or pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody.
- (b.) The term "CCA" refers to the Citizen Complaint Authority.
- (c.) The term "CCRP" refers to the Citizen Complaint Review Process.
- (d.) The term "CIS" refers to the Criminal Investigation Section.
- (e.) The term "CPD" means the Cincinnati Police Department, its agents and its employees (both sworn and unsworn).
- (f.) The term "CPD unit" means any officially designated organization of officers within the CPD, including districts and specialized units.
- (g.) The term "CPRP" means the Citizens Police Review Panel.
- (h.) The term "canine apprehension" means any time a canine is deployed and plays a clear and well-documented role in the capture of a person. The mere presence of a canine at the scene of an arrest will not be counted as an apprehension.
- (i.) The term "canine bite ratio" means the number of apprehensions accomplished by means of a dog bite divided by the total number of apprehensions (both with and without a bite).
- (j.) The term "canine deployment" means any situation, except in cases involving an on-leash article search only, in which a canine is brought to the scene and either: i) the canine is released from the police car; or ii) the suspect gives up immediately after an announcement is made that if he/she does not surrender the canine will be released.
- (k.) The term "citizen resolution meeting" refers to the meeting between the complainant, the officer accused of misconduct and that officer's supervisor that occurs during the CCRP.
- (l.) The term "City" means the City of Cincinnati, including its agents, officers and employees.
- (m.) The term "Collaborative" refers to the parties to the Collaborative Settlement Agreement entered into in the case *In re Cincinnati Policing*, No. C-1-99-317 (S.D. Oh. 2001).
- (n.) "Collective Bargaining Agreement" means the labor agreement by and between the City and the Fraternal Order of Police, Queen City, Lodge No. 69 in effect on the date of this Agreement's execution.
- (o.) The term "Court" means the United States District Judge presiding over *In re Cincinnati Policing*, No. C-1-99-317 (S.D. Oh. 2001).

(p.) The term "critical firearm discharge" means each discharge of a firearm (excluding beanbag and forty millimeter foam round shotguns) by a CPD officer with the exception of range and training firings and discharges at animals.

(q.) "Complaint" means an allegation (excluding any criminal investigation) from any source, of any action or inaction by CPD personnel which the source considers to be contrary to law, proper procedure, good order, or in some manner prejudicial to the individual, the CPD or to the community.

(r.) The term "DOJ" means the United States Department of Justice and its agents and employees.

(s.) The term "discipline" means a written reprimand, suspension, demotion or dismissal.

(t.) The term "escorting" means the use of light pressure to guide a person, or keep a person in place.

(u.) The term "FTO" means a field training officer.

(v.) The term "force" means the following actions by an officer: any physical strike or instrumental contact with a person, or any significant physical contact that restricts movement of a person. The term includes, but is not limited to, the use of firearms, chemical spray, choke holds or hard hands; the taking of a subject to the ground; or the deployment of a canine. The term does not include escorting or handcuffing a person, with no or minimal resistance.

(w.) The term "hard hands" means using physical pressure to force a person against an object or the ground, or the use of physical strength or skill that causes pain or leaves a mark.

(x.) The term "IIS" means the Internal Investigations Section.

(y.) The term "including" means "including, but not limited to."

(z.) The term "manager" means a CPD supervisor.

(aa.) The term "non-disciplinary corrective action" refers to action other than discipline taken by a CPD supervisor to enable or encourage an officer to modify or improve his or her performance.

(bb.) The term "OMI" refers to the Office of Municipal Investigations.

(cc.) The term "parties" refers to DOJ, the City and the CPD.

(dd.) The term "police officer" or "officer" means any law enforcement officer employed by the CPD, including supervisors and managers.

(ee.) The term "proper use of force decision making" means the use of reasonable force, including proper tactics, and de-escalation techniques.

(ff.) The term "serious use of force" means any action by a CPD officer that involves: i) a critical firearm discharge; ii) the use of deadly force; iii) a baton strike to the head; or iv) a use of force in which the person is seriously injured (as defined by Ohio law) or requires hospital admission.

(gg.) The term "supervisor" means a sworn CPD employee at the rank of sergeant or above and non-sworn employees with oversight responsibility for CPD officers and managers.

(hh.) The terms "will" or "shall" mean that the provision imposes a mandatory duty.

## II. GENERAL PROVISIONS

1. This Agreement is effectuated pursuant to the authority granted DOJ under the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. &sect; 14141 ("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.
2. In April 2001, the Mayor of Cincinnati and other interested persons requested that DOJ review the CPD's use of force. This request indicated the City's commitment to minimizing the risk of excessive use of force in the CPD and to promoting police integrity. In response to these requests, DOJ decided to conduct an investigation pursuant to its authority under Section 14141.
3. DOJ's investigation, conducted with the full cooperation of the City, included extensive interviews with City and CPD officials, CPD officers, leaders of the Fraternal Order of Police and the African-American police officers' association, community members and civil rights organization representatives. With the cooperation of the City, DOJ reviewed all firearms investigations completed between 1995 and June 2001, every complaint filed and reduced to writing against the CPD between January 1998 and June 2001 alleging excessive force, and all uses of force from June 2000 to June 2001. In addition to analyzing CPD use of force incidents, DOJ examined CPD's management practices related to use of force, including its use of force policies, training curriculum, supervisory procedures, and disciplinary system.
4. DOJ has conducted an investigation pursuant to Section 14141 into the CPD's use of force and related management practices. During the investigation, in keeping with the Attorney General's pledge to provide technical assistance, DOJ made recommendations for changes in the CPD's policies and procedures and the City's internal mechanism for resolving citizen complaints. At the close of the investigation, DOJ determined that the jurisdictional requirements of the statute were sufficiently satisfied to permit the parties to enter into this Agreement. As a result of the City's and the CPD's high level of voluntary cooperation and willingness to implement meaningful change without need for litigation, DOJ believes this Agreement, rather than contested litigation, represents the best opportunity to address DOJ's concerns. Neither the City's entry into this Agreement, nor its decision to implement changes to CPD policies and procedures is an admission by the City, the CPD or any officer or employee of either, that any of them has engaged in any unconstitutional, illegal or otherwise improper activities or conduct, which the City and the CPD specifically deny.
5. Nothing in this Agreement is intended to alter the lawful authority of the CPD to use reasonable and necessary force, effect arrests and file charges, conduct searches or make seizures, or otherwise fulfill its law enforcement obligations in a manner consistent with the requirements of the Constitutions and laws of the United States and the State of Ohio.

6. Nothing in this Agreement is intended to: a) alter the Collective Bargaining Agreement; or b) impair the collective bargaining rights of employees under State and local law. Nothing in this Agreement is intended to amend or supercede any provision of State or local law, including the Charter of the City. DOJ and the City have attempted to draft this Agreement to avoid impairing the rights of the Queen City Lodge No. 69 of the Fraternal Order of Police under the Collective Bargaining Agreement. However, a determination that any such right is impaired will not excuse the City and the CPD from a failure to implement any provision of this Agreement.

7. This Agreement will constitute the entire integrated agreement of the parties. No prior drafts or prior or contemporaneous communications, oral or written, will be relevant or admissible for purposes of determining the meaning of any provisions herein in any litigation or any other proceeding.

8. This Agreement is binding upon the parties, by and through their officials, agents, employees, and successors. 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, and accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Agreement. This Agreement is not intended to impair or expand the right of any person or organization to seek relief against the City or its officials, employees or agents for their conduct or the conduct of CPD officers; accordingly, it does not alter legal standards governing any such claims, including those under Ohio law. This Agreement does not authorize, nor will it be construed to authorize, access to any City, CPD or DOJ documents, except as expressly provided by this Agreement, by persons or entities other than DOJ, the City, and the Monitor.

9. Other than expenses associated with the Monitor, where compliance with the terms of this Agreement would require expenditure by the City of funds in excess of \$100,000, DOJ agrees to provide technical assistance in locating and obtaining such funding. The City recognizes that this Agreement will impose significant costs on the City, for which it will be responsible, and which it currently estimates an annual maximum cost of approximately \$1.5 million and a one-time capital cost ranging from \$3-7 million. The City recognizes that cost-effective implementation of the Agreement will enhance its effectiveness. Therefore, DOJ agrees to assist the City's efforts to implement the Agreement in a cost-effective manner and will consider requests to modify the Agreement where such modifications will satisfy the goals, purposes and interests of this Agreement at a substantially reduced cost.

### III. GENERAL POLICIES

10. The CPD will create a cadre of specially trained officers available at all times to respond to incidents involving persons who are mentally ill. These specially trained officers will assume primary responsibility for responding to incidents involving persons who are mentally ill. They will be called to the scene of any incident involving a person who is mentally ill, unless the need for fast action makes this impossible. These officers will respond to any radio run known to involve a person who is mentally ill (including escapes from facilities or institutions). The officers selected for this training should be highly motivated volunteers and should receive high level, multi-disciplinary intervention training, with a particular emphasis on de-escalation strategies. This training will include instruction by mental health practitioners and alcohol and substance abuse counselors. The CPD will develop and implement a plan to form a partnership with mental health care professionals that makes such professionals available to assist the CPD on-site with interactions with persons who are mentally ill.

11. The CPD will develop and adopt a foot pursuit policy. This policy will require officers to consider particular factors in determining whether a foot pursuit is appropriate. These factors will include, *inter alia*, the offense committed by the subject, whether the subject is armed, the location (*i.e.*, lighting, officer familiarity), and the ability to apprehend the subject at a later date. The policy will emphasize alternatives to foot pursuits, including area containment, surveillance, and obtaining reinforcements.



## **IV. USE OF FORCE POLICY**

### **A. General Use of Force Policies**

12. The CPD will revise and augment its use of force policies to:

- (a.) clearly define terms;
- (b.) define force as that term is defined in this Agreement;
- (c.) incorporate a use of force model that relates the force options available to officers to the types of conduct by individuals that would justify the use of such force and teaches that disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements or calling in specialized units may be an appropriate response to a situation;
- (d.) re-enforce that, whenever possible, individuals should be allowed to submit to arrest before force is used;
- (e.) advise that the use of excessive force will subject officers to discipline, possible criminal prosecution, and/or civil liability;
- (f.) explicitly prohibit the use of choke holds and similar carotid holds except where deadly force is authorized; and
- (g.) remove the term "restraining force" from the CPD's Policies and Procedures.

13. The CPD will make available proposed policy revisions to the Community Councils, and other appropriate community groups, for their review, comment and education. Such policy revisions will also be published on the CPD's website to allow comments to be provided directly to the CPD.

### **B. Chemical Spray**

14. The CPD will revise and augment its chemical spray policy to:

- (a.) clearly define all terms;
- (b.) limit the use of chemical spray, including the use of chemical spray against a crowd or a group of individuals, to only those cases in which such force is necessary to protect the officer, the subject, or another party from physical harm, or is necessary to effect the arrest of an actively resisting subject, or prevent the escape of that subject;
- (c.) provide that chemical spray may be used only when verbal commands and other techniques that do not require the use of force would be ineffective, or where issuing verbal commands would present a danger to the officer or others;
- (d.) provide that absent exigent circumstances, the approval of a supervisor is required any time chemical spray is used against a crowd;

- (e.) require, that unless it would present a danger to the officers or others, a verbal warning to the subject that chemical spray will be used must be issued prior to use, and that, where feasible, the officer will defer using chemical spray a reasonable time to allow the subject to comply with the warning;
- (f.) require officers to aim chemical spray only at the target's face and upper torso;
- (g.) provide guidance regarding the proper duration of a burst of chemical spray and regulate the distance from which it is applied;
- (h.) require that, absent exceptional circumstances, officers will offer to decontaminate every sprayed subject within twenty minutes of the application of the spray;
- (i.) require that officers request medical response or medical assistance for sprayed subjects when they complain of continued effects after having been de-contaminated, or they indicate that they have a pre-existing medical condition (e.g., asthma, emphysema, bronchitis, heart ailment, etc.) that may be aggravated by chemical spray;
- (j.) provide that officers may not keep a sprayed subject in a face down position any longer than necessary to end the threat of harm or escape and handcuff the subject; and
- (k.) provide that chemical spray may be used on a restrained individual only when, absent the use of spray, the subject or another person is likely to suffer injury, or escape.

15. The CPD will require that all uses of spray against a restrained person be investigated by the officer(s)' supervisor, who must take tape recorded statements of all witnesses, including the officer(s), subject(s) and third-parties. These investigations will be reviewed, evaluated and signed by the Inspections Unit of the CPD.

16. To limit the use of chemical spray against subjects who are restrained in a police car, the CPD will ensure that it has sufficient equipment to properly restrain subjects, and train officers to use that equipment when necessary to restrain subjects.

17. The CPD will provide regular in-service training on the proper amount of spray to use, how to deliver spray effectively, and the proper anatomical targets for chemical spray.

18. The CPD will maintain an accounting of the number of chemical spray canisters annually distributed to and utilized by each officer.

19. The CPD will periodically review current research regarding the choice of chemical spray and consider the effectiveness and risk of injury to subjects, in determining the optimal chemical spray for CPD usage.

### **C. Canines**

20. The CPD will revise and augment its canine policies and procedures as follows:

(a.) The CPD will revise and augment, subject to DOJ review and approval, its canine policies. The CPD will continue to make significant improvements in its canine operations, including the introduction of an improved handler-controlled alert curriculum and the use of new canines, consistent with the CPD's policy as revised by this Agreement.

(b.) The policy will limit off-leash canine deployments, searches and other instances where there is otherwise a significant risk of a canine bite to a suspect, to searches of commercial buildings or instances in which the suspect is wanted for an offense of violence or reasonably is suspected to have a weapon.

(c.) The policy will require canine officers to have approval from an immediate supervisor before the canine can be deployed, except in cases involving only an on-leash article search. If the handler is unable to contact a canine unit supervisor, approval must be sought from a supervisor in charge at the scene before the canine can be deployed. The approving supervisor will not serve as a canine handler in the deployment.

(d.) The policy will require loud and clear announcement(s), appropriate for the particular deployment area at issue, that a canine will be deployed and advising the suspect to surrender and remain still if approached by a canine. The policy will require a sufficient interval between announcement and deployment to allow the suspect to surrender.

(e.) The policy will require that canine handlers will not allow a canine to bite a suspect except where the suspect poses a risk of imminent danger (i.e., is armed with a weapon or other instrumentality capable of producing significant bodily injury) to the handler or others or is actively resisting or escaping.

(f.) The policy will require that in all circumstances where a canine is permitted to bite or apprehend a suspect by biting, the handler will call off the dog at the first possible moment the canine can be safely released, taking into account that the average person will struggle if being seized or confronted by a canine and the policy will specify that struggling alone, will not preclude the release of the canine. The policy will prohibit canines from biting nonresistant subjects. Whenever a canine-related injury occurs, immediate medical treatment either by rescue ambulance, transportation to an emergency room, or admission to a hospital must be sought.

(g.) The policy will require the CPD 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.

(h.) The CPD will include as an element of the risk management system described in this Agreement, canine bite ratios, and provide for the review, pursuant to the protocol for that system, of the performance of any handler or canine whose bite ratio exceeds 20 percent during a 6 month period, or the entire unit if the unit's bite ratio exceeds that threshold.

#### **D. Beanbag Shotguns and Forty Millimeter Foam Rounds**

21. The CPD will revise and augment its beanbag shotgun and forty millimeter foam rounds policy to:

- (a.) clearly define all terms;
- (b.) provide that the weapons may only be used to subdue or incapacitate a subject to prevent imminent physical harm to the officer or another person;
- (c.) prohibit the use of the weapons to prevent theft or minor vandalism;
- (d.) prohibit the use of the weapons against a crowd absent the ability to target a specific individual who poses an immediate threat to cause imminent physical harm; and absent the ability to reasonably assure that other individuals in the crowd who pose no threat of violence will not be struck by the weapons;
- (e.) provide that the use of the weapons can be inappropriate even if the only alternative is to let the subject escape; and
- (f.) require, absent exigent circumstances, that a supervisor approve any use of a beanbag shotgun or forty millimeter round against a crowd.

22. The CPD will strictly enforce the provision of its current policy regarding beanbag shotguns and forty millimeter rounds that limits the number of simultaneous deployments of beanbags or forty millimeter rounds against a single individual. The CPD will require that use of force reports regarding beanbag or forty millimeter foam rounds estimate the distance between the officer and the subject.

23. Absent exigent circumstances, in cases in which the distance between the officer and the target makes it practical, verbal warnings will be given before a beanbag shotgun or foam round is used. Where possible, an appropriate interval should be required between the warning and the use of the beanbag shotgun or foam round.

## **V. INCIDENT DOCUMENTATION, INVESTIGATION, AND REVIEW**

### **A. Documentation**

24. The CPD will require all uses of force (except canine deployments that do not lead to a canine bite) to be reported in the same manner as the CPD currently reports incidents it classifies as uses of force, except to the extent those reporting requirements have been modified by this Agreement. The use of force report form will indicate each and every type of force that was used, and require the evaluation of each use of force. Use of force reports will continue to include a supervisor's narrative description of the events preceding the use of force, and include the officer(s)' narrative description of events and the officer(s)' audiotaped statement. The CPD will implement an automated document management system that will allow supervisors to access all use of force information according to multiple variables, including by incident, subject, officer and type of force used. In regard to canine deployments that do not result in a bite, the canine handler will fill out a form that provides a narrative explaining the circumstances that led to the deployment. The canine supervisor will review the narrative and evaluate whether the deployment complied with CPD policy and whether the handler used proper tactics and controls. This form will also be used to track and calculate bite ratios, as required by paragraph 20(h).

25. In the event the CPD implements a reporting requirement pertaining to incidents in which an officer points his/her firearm, compliance with that reporting requirement will become an enforceable obligation of this Agreement, and the data reported will be included in the risk management system described in this Agreement.

### **B. Investigation**

26. The CPD will continue to require officers to notify their supervisor following any use of force or upon the receipt of an allegation of excessive use of force. Supervisors will respond to the scene, examine the subject for injury, and ensure that the subject receives needed medical attention. Incidents will not be investigated by any officer who used force or chemical spray during the incident, whose conduct led to the injury to a prisoner or who authorized the conduct that led to these reportable incidents.

27. CPD supervisors will investigate, evaluate and document each incident giving rise to a use of force or injury to prisoner report for compliance with CPD policy and to evaluate the tactics used by the officer. The documentation will consist of a precise description of the facts and circumstances that either justify or fail to justify the officer's conduct. As part of this investigation, the CPD supervisor will review the basis for the initial stop or seizure, and determine whether the officer's actions in regard to the stop or seizure were within CPD policy.

28. IIS will respond to the scene of, and investigate all serious uses of force, and all canine bites which cause serious injury or hospital admission. The Inspections Unit of the CPD will be required to review and evaluate in writing the investigations of all canine bites (except those causing serious injury or hospital admission), and all uses of a beanbag shotgun, foam round, or baton.

29. The CPD will prohibit investigators from asking officers or other witnesses leading

questions during use of force investigations that improperly suggest legal justifications for the officer's conduct when such questions are contrary to appropriate law enforcement techniques. In each investigation, the CPD will consider all relevant evidence including circumstantial, direct and physical evidence, as appropriate, and make credibility determinations, if feasible. There will be no automatic preference for an officer's statement over a non-officer's statement, nor will the CPD disregard a witness's statement merely because the witness has some connection to the complainant. The CPD will make efforts to resolve material inconsistencies between witness statements. The CPD will train all of its supervisors on the factors to consider when evaluating complainant or witness credibility.

30. CPD investigators will ensure that all officers who witnessed a use of force or an injury to a prisoner provide a statement regarding the incident. CPD supervisors will ensure that all use of force and injury to prisoner reports identify all officers who were involved in the incident or were on the scene when it occurred. CPD supervisors will ensure that all use of force and injury to prisoner reports indicate whether medical care was provided, and whether the subject refused medical treatment.

31. CPD supervisors at a rank of lieutenant or higher will review each investigation conducted by CPD supervisors, identify any deficiencies in those investigations, and require supervisors to correct any deficiencies. CPD supervisors will be held accountable for the quality of their investigations. Appropriate non-disciplinary corrective action and/or disciplinary action will be taken when a supervisor fails to conduct a thorough investigation, fails to properly adjudicate an incident, or neglects to recommend appropriate corrective action.

### **C. Review of Critical Firearm Discharges**

32. In conducting investigations of critical firearm discharges, the CPD will, to the extent possible, ensure that the investigation accounts for all shots, and the locations of all officers who discharged their firearms. The CPD will conduct all appropriate ballistic or crime scene analyses, including gunshot residue or bullet trajectory tests.

33. The CPD will create a special board to review all critical firearm discharges. The board will review each IIS and CIS investigation of a critical firearm discharge for compliance with CPD policy, as well as for tactical and training implications. The board's review will include CIS and IIS investigative files and interviews of the principal CIS and IIS investigators. Following its review, the board will prepare a report to the Chief of Police. The report will be made a part of the investigation file, and it will include a description of the incident (including all uses of force), a summary and analysis of all relevant evidence, proposed findings, and analysis to support those findings. In particular, the board will determine: a) whether all uses of force during the encounter were consistent with CPD policy and training, b) whether the officer(s) involved employed proper tactics, and c) whether lesser force alternatives reasonably were available. Membership on the board will rotate, but will at least include a member of the CPD command staff, a Training Academy representative, the affected Bureau Commander and an attorney from the City Solicitor's Office.

34. The CPD policy that defines the firearm board's role will:

(a.) require the board, absent exceptional circumstances, to review within 90 days of the end of

all criminal reviews of the incident, all critical firearm discharges;

(b.) set forth the membership of the board;

(c.) authorize the board to recommend to the Chief of Police that non-disciplinary corrective action be taken;

(d.) require the board to act as a quality control mechanism for all shooting or firearm discharge investigations, with responsibility to return to the investigating unit all incomplete or mishandled shooting or firearm discharge investigations;

(e.) charge the board with the authority and responsibility to recommend to the Chief of Police investigative protocols and standards for all critical firearm discharge investigations; and

(f.) require the board annually to review each critical firearm discharge to detect patterns and/or problems and to report its findings and recommendations to the Chief of Police.

## **VI. CITIZEN COMPLAINT PROCESS**

### **A. Public Information**

35. The City and the CPD will develop and implement a program to inform persons that they may file complaints regarding the performance of any officer. This program will include distribution of complaint forms, fact sheets, informational posters, and public service announcements that describe the citizen complaint process.

36. The City will make complaint forms and informational materials available at City Hall, CCA, all CPD district stations, libraries, the internet, and, upon request, to community groups and community centers. At each CPD district station, the CPD will permanently post a placard describing the complaint process and include the relevant phone numbers. The CPD will require all officers to carry informational brochures and complaint forms in their vehicles at all times while on duty. If a citizen objects to an officer's conduct, that officer will inform the citizen of his or her right to make a complaint. Officers will not discourage any person from making a complaint.

### **B. Means of Filing and Tracking of Complaints**

37. Complaints may be filed in writing or verbally, in person or by mail, telephone (or TDD), facsimile or electronic mail. The duty officer at the front desk of each district station will be authorized to take complaints, including third-party complaints, which persons may file at any district station. Complaint intake officers may describe facts that bear upon a complainant's demeanor and physical condition but may not express opinions regarding his/her mental competency or veracity. A complaint form will be completed each time a person attempts to file a complaint as described herein, except where a complaint asserts only the individual's contention of innocence of a charge, without any allegation of misconduct by the officer, in which circumstance the complainant should be advised to seek judicial redress through established court procedures. Each complaint will be resolved in writing. Upon receipt, each complaint will be assigned a unique identifier, which will be provided to the complainant. Each complaint will be tracked according to the basis for the complaint (e.g., excessive force, discourtesy, improper search, etc.).

38. Copies of all allegations of misconduct against the CPD filed with the CPRP, OMI, CCA or the Cincinnati Human Relations Commission will be referred to IIS within five business days.

### **C. Investigation of Complaints**

39. Complaints will be evaluated based on a preponderance of the evidence standard, for which the City will develop and implement appropriate training.

40. The CPD will explicitly prohibit from investigating an incident any officer who used force or chemical spray during the incident, whose conduct led to the injury to a prisoner, or who authorized the conduct that led to these reportable incidents.

41. In each investigation, the CPD, OMI and CCA will consider all relevant evidence



including circumstantial, direct and physical evidence, as appropriate, and make credibility determinations, if feasible. There will be no automatic preference for an officer's statement over a non-officer's statement, nor will the CPD, OMI or CCA completely disregard a witness's statement merely because the witness has some connection to the complainant. The CPD, OMI and CCA will make efforts to resolve material inconsistencies between witness statements. The CPD, OMI and CCA will train all of their investigators on the factors to consider when evaluating complainant or witness credibility. The CPD, OMI and CCA will prohibit investigators, during complaint investigations, from improperly asking officers or other witnesses leading questions that improperly suggest legal justifications for the officer's conduct when such questions are contrary to appropriate law enforcement techniques. CPD investigators will ensure that all officers on the scene of an incident provide a statement regarding the incident.

42. During an investigation, all relevant police activity, including each use of force (*i.e.*, not just the type of force complained about) will be investigated. The investigation will also evaluate any searches or seizures that occurred during the incident. The CPD, OMI or CCA will not close an investigation simply because the complaint is withdrawn or the alleged victim is unwilling or unable to provide medical records or proof of injury; rather, the investigating agency will continue its investigation as necessary to determine whether the original allegation(s) can be resolved. In each investigation, the fact that a complainant pled guilty or was found guilty of an offense will not be considered as evidence whether a CPD officer used or did not use a type of force, nor will it justify discontinuing the investigation.

43. The complainant will be periodically kept informed regarding the status of the investigation. Upon completion of the investigation, the complainant will be notified of its outcome, including an appropriate statement regarding whether any non-disciplinary corrective action or disciplinary action was taken.

44. Each allegation in an investigation will be resolved by making one of the following dispositions:

- (a.) "Unfounded," where the investigation determined no facts to support that the incident complained of actually occurred;
- (b.) "Sustained," where the person's allegation is supported by sufficient evidence to determine that the incident occurred and the actions of the officer were improper;
- (c.) "Not Sustained," where there are insufficient facts to decide whether the alleged misconduct occurred; and
- (d.) "Exonerated," where a preponderance of the evidence shows that the alleged conduct did occur but did not violate CPD policies, procedures, or training.

45. Unit commanders will evaluate each investigation of an incident under their command to identify underlying problems and training needs. Any such problems or needs will be relayed in the form of a recommendation to the appropriate CPD entity.

## ***D. Jurisdiction of and Procedures for Investigative Bodies and Processes***

### **1. CPD**

46. IIS will investigate all complaints regarding uses of force, the pointing of firearms at persons, searches and seizures, and discrimination. However, any CPD supervisor can conduct interviews or gather evidence related to the complaint, to be used in IIS's investigation, when they arrive on the scene of the incident giving rise to the complaint and that supervisor's prompt action will preserve evidence or testimony that may not be available if the investigation started later. IIS will determine which complaints it will investigate, pursuant to the standard set forth in this paragraph. Only complaints not falling within the jurisdiction of IIS will be eligible for the CCRP. Nothing in this paragraph is intended to limit or prevent the CPD from conducting a use of force investigation of an incident that is also the subject of a separate complaint investigation by IIS.

#### **a. CCRP**

47. Complaints handled through the CCRP will be fully investigated, in accordance with CPD policy, and adjudicated, prior to a complaint resolution meeting. The complainant's willingness to participate in the resolution meeting, and the outcome of the complaint resolution meeting, will have no bearing on the investigation or the adjudication of that complaint.

48. Complaints handled through the CCRP will be investigated by the chain of command. At the conclusion of each investigation, the investigator will prepare a report on the investigation, which will be made a part of the investigation file. The report will include a description of the incident, a summary and analysis of all relevant evidence gathered during the investigation, proposed findings regarding whether the conduct comports with CPD policy, and analysis supporting the findings. Upon completion of the investigation, the investigator will forward the investigation to the district or unit commander, who will review the investigation to ensure that it is complete and that the findings are supported by the evidence. The district or unit commander will order additional investigation when appropriate.

#### **b. IIS**

49. In conducting investigations IIS will, subject to and in conformance with applicable law, at a minimum:

- (a.) continue to tape record or videotape interviews of complainants, involved officers, and witnesses;
- (b.) whenever practicable and appropriate, conduct interviews of complainants and witnesses at sites and times convenient for them, including at their residences or places of business;
- (c.) whenever practical, prohibit group interviews;
- (d.) notify the supervisors of the involved officers of the investigation, as appropriate;
- (e.) interview all appropriate CPD officers, including supervisors;

(f.) collect, preserve, and analyze all appropriate evidence, including canvassing the scene to locate witnesses and obtain the complainant's medical records, where appropriate; and

(g.) identify and report, in writing, all material inconsistencies in officer and witness interview statements gathered during the investigation.

50. At the conclusion of each investigation, the individual responsible for the investigation will prepare a report on the investigation, which will be made a part of the investigation file. The report will include a description of the alleged misconduct and any other misconduct issues identified during the course of the investigation; a summary, and, where appropriate, analysis of all relevant evidence gathered during the investigation; and proposed findings and analysis supporting the findings. Absent exceptional circumstances, IIS will complete all investigations within 90 days after receiving the allegations.

## 2. CCA

51. Within 120 days of this Agreement, or later with the agreement of DOJ, CCA will assume all responsibilities specified for it and OMI in this Agreement. Until that time, OMI will meet all such responsibilities.

52. Each complaint, excluding criminal investigations, will be directed to the CCA regardless of where it initially is filed. CCA will have jurisdiction, at a minimum, over all complaints alleging excessive force, the improper pointing of firearms at persons, unreasonable searches and seizures, and discrimination. All allegations within its jurisdiction will be actually investigated by CCA. CCA will accept complaints on behalf of third-parties. The CCA will have a sufficient number of professional investigators to achieve timely completion of all investigations.

53. CPD officers and other City employees will be required to submit to administrative questions from the CCA, consistent with existing law. In addition, the Executive Director of CCA will have reasonable access to city records, documents and employees, including employee personnel records and departmental investigation files and reports, consistent with Ohio law.

54. The City will develop formal procedures regarding timing, notification, and the interviewing of witnesses to ensure that parallel investigations conducted by CCA and IIS do not impair the effective investigation of incidents.

55. The City will take appropriate action, including imposing discipline and providing for non-disciplinary corrective action where warranted, in regard to each investigation completed by CCA.

56. The CCA will complete its investigation within 90 days of the filing of the complaint, provided that the Executive Director may extend an investigation upon consultation with the CCA Board, and the City Manager will take appropriate action within 30 days of the completion of CCA's investigation.

## VII. MANAGEMENT AND SUPERVISION

### A. Risk Management System

57. The CPD will enhance and expand its risk management system to include a new computerized relational database for maintaining, integrating, and retrieving data necessary for supervision and management of the CPD. Priority will be given to the CPD obtaining any established program and system. The CPD will regularly use this data to promote civil rights and best police practices; to manage risk and liability; and to evaluate the performance of CPD officers across all ranks, units and shifts.

58. The new risk management system will collect and record the following information:

- (a.) all uses of force;
- (b.) canine bite ratios;
- (c.) the number of canisters of chemical spray used by officers;
- (d.) all injuries to prisoners;
- (e.) all instances in which force is used and a subject is charged with "resisting arrest," "assault on a police officer," "disorderly conduct," or "obstruction of official business;"
- (f.) all critical firearm discharges, both on-duty and off-duty;
- (g.) all complaints (and their dispositions);
- (h.) all criminal proceedings initiated, as well as all civil or administrative claims filed with, and all civil lawsuits served upon, the City, or its officers, or agents, resulting from CPD operations or the actions of CPD personnel;
- (i.) all vehicle pursuits;
- (j.) all incidents involving the pointing of a firearm (if any such reporting requirement is imposed by paragraph 25); and
- (k.) all disciplinary action taken against officers.

59. The new risk management system will include, for the incidents included in the database, appropriate identifying information for each involved officer (e.g., name, badge number, shift and supervisor) and civilian (e.g., race, ethnicity or national origin).

60. Within 90 days of the implementation of the new risk management system, or later with the agreement of DOJ, the CPD will prepare, for the review and approval of DOJ, a plan for including appropriate fields and values of new and historical data into the risk management system (the "Data Input Plan"). The Data Input Plan will identify the data to be included and the means for inputting such data (direct entry or otherwise), the specific fields of information to be included, the past time periods for which information is to be included, the deadlines for inputting the data, and the responsibility for the input of the data. The Data Input Plan will include historical data that is up-to-date and complete in the risk management system. The CPD and DOJ will together seek to ensure that the protocol receives final review and approval within 30 days after it is presented for approval.

61. The CPD will, within 90 days, prepare for the review and approval of DOJ, and thereafter implement, a protocol for using the risk management system. The City will submit for the review and approval of DOJ all proposed modifications to the protocol prior to implementing such modifications.

62. The protocol for using the risk management system will include the following provisions and elements:

(a.) The protocol is comprised of the following components: data storage, data retrieval, reporting, data analysis, pattern identification, supervisory assessment, supervisory intervention, documentation and audit.

(b.) The protocol will require the automated system to analyze the data according to the following criteria: i) number of incidents for each data category by individual officer and by all officers in a unit; ii) average level of activity for each data category by individual officer and by all officers in a unit; and iii) identification of patterns of activity for each data category by individual officer and by all officers in a unit.

(c.) The protocol will require the system to generate reports on a monthly basis describing the data and data analysis and identifying individual and unit patterns.

(d.) The protocol will require that CPD commanders, managers, and supervisors will review, on a regular basis but not less than quarterly, system reports, and will evaluate individual officer, supervisor, and unit activity.

(e.) The protocol will require that CPD commanders, managers, and supervisors initiate intervention for individual officers, supervisors and for units based on appropriate activity and pattern assessment of the information contained in the risk management system.

(f.) The protocol will require that intervention options include discussion by commanders, managers, supervisors, and officers; counseling; training; and supervised, monitored, and documented action plans and strategies designed to modify activity. All interventions will be documented in writing and entered into the automated system (appropriate intervention options will be employed based on the evaluation described in subsection (e) above).

(g.) The protocol will specify that actions taken as a result of information from the risk management system be based on all relevant and appropriate information, including the nature of the officer's assignment, crime trends and crime problems, and not solely on the number or percentages of incidents in any category of information recorded in the risk management system.

(h.) The protocol will require that the system's data be accessible to CPD commanders, managers, and supervisors. Commanders, managers, and supervisors will promptly review records of all officers recently transferred to their sections and units.

(i.) The protocol will require that CPD commanders, managers, and supervisors be evaluated on their ability to use the risk management system to enhance effectiveness and reduce risk.

(j.) The protocol will require that the system be managed and administered by the Inspections Unit of the CPD. The Inspections Unit of the CPD will conduct quarterly audits of the system to ensure action is taken according to the process described above.

(k.) The protocol will require regular reviews, at no less than quarterly intervals, by appropriate managers of all relevant risk management system information to evaluate officer performance city wide, and to evaluate and make appropriate comparisons regarding the performance of all CPD units in order to identify any significant patterns or series of incidents.

63. The City will maintain all personally identifiable information about an officer included in the risk management system during the officer's employment with the CPD and for at least five years. Information necessary for aggregate statistical analysis will be maintained indefinitely in the risk management system. On an ongoing basis, the CPD will enter information into the risk management system in a timely, accurate, and complete manner, and maintain the data in a secure and confidential manner.

64. The new risk management system will be developed and implemented according to the following schedule:

(a.) Within 90 days of the effective date of this Agreement, subject to the review and approval of DOJ, the CPD will issue the Request for Proposal (RFP).

(b.) Within 210 days of the issuance of the RFP, or later with the agreement of DOJ, the CPD will select the contractor to create the risk management system.

(c.) Within 90 days of the effective date of this Agreement, the CPD will submit the protocol for using the risk management system to DOJ for review and approval. The CPD will share drafts of this document with DOJ and the Monitor (a position described in Section IX) to allow DOJ and the Monitor to become familiar with the document as it develops and to provide informal comments on it. The CPD and DOJ will together seek to ensure that the protocol receives final approval within 30 days after it is presented for review and approval.

(d.) Within 12 months of selecting the contractor, the City will have ready for testing a beta version of the risk management system consisting of: i) server hardware and operating systems installed, configured and integrated with the CPD's existing automated systems; ii) necessary data base software installed and configured; iii) data structures created, including interfaces to source data; and iv) the use of force information system completed, including historic data. DOJ and the Monitor will have the opportunity to participate in testing the beta version using use of force data and test data created specifically for purposes of checking the risk management system.

(e.) The risk management system computer program and computer hardware will be operational and fully implemented within 18 months of the selection of the risk management system contractor.

65. Prior to implementation of the new risk management system, the CPD will use existing databases and resources to the fullest extent possible, to identify patterns of conduct by CPD officers or groups of officers.

66. Following the initial implementation of the risk management system, and as experience and the availability of new technology may warrant, the CPD may propose to add, subtract, or modify data tables and fields, modify the list of documents scanned or electronically attached, and add, subtract, or modify standardized reports and queries. The CPD will submit all such proposals for review and approval by DOJ before implementation.

## **B. Oversight**

67. The CPD will develop a protocol for conducting audits. The protocol will be used by each officer or supervisor charged with conducting audits. The protocol will establish a regular and fixed schedule to ensure that such audits occur with sufficient frequency, and cover all five CPD districts.

68. The CPD will conduct the following audits pursuant to the protocol in paragraph 67:

(a.) It will conduct regularly scheduled quarterly audits, covering all five districts, that examine citizen complaints processed through the CCRP, including auditing selected samples of complaints that were resolved through the CCRP, contacting the complainants to evaluate whether the actions and views of the citizen were captured correctly in the CCRP report, and examining whether there is consistency in the CCRP across districts. It will issue a report on the results which will be provided to each district commander. Each district commander will review the report in regard to officers under their command and, if appropriate, the CPD will impose disciplinary or non-disciplinary corrective action.

(b.) It will conduct semi-annual integrity audits and issue a report on the investigations conducted by IIS. The report will evaluate IIS's investigation of selected use of force and citizen complaints. The report will assess the reliability and completeness of IIS's canvassing and interviewing of witnesses, preservation and analysis of the incident scene, and the appropriateness of IIS's conclusions.

69. The CPD will ensure regular meetings with local prosecutors to identify issues in officer, shift or unit performance.

### **C. Use of Video Cameras**

70. The CPD policy on video cameras will be revised and augmented to require:

(a.) mandatory activation for all traffic stops and pursuits that continues until the motor vehicle stop is completed and the stopped vehicle departs, or until the officer's participation in the motor vehicle stop ends;

(b.) to the extent practical, the recording of requests for consent to search a vehicle, deployments of drug-detection canines, and vehicle searches;

(c.) to the extent practical, manual activation for incidents in which the prisoner being transported is violent;

(d.) supervisors to review the tapes in all cars of all officers listed in any CPD report regarding any incident involving injuries to a prisoner or an officer, uses of force, vehicle pursuits, and citizen complaints; and

(e.) that the CPD retain and preserve tapes for at least 90 days, or as long as necessary for incidents subject to investigation.

71. If an officer actively participates in a motor vehicle stop and is aware that the motor vehicle stop was not recorded using the video camera equipment, the officer will continue to notify the shift supervisor of the reason the stop was not recorded.

72. The CPD will continue to conduct periodic random reviews of mobile camera videotapes for training and integrity purposes. Supervisors conducting these reviews will document their activity in a log book. In addition, the CPD will require periodic random surveys of mobile video recorder equipment to confirm that they are in proper working order.

### **D. Police Communications Section's Technology**

73. Consistent with available resources, the City will provide the CPD with sufficient staff, funds, and resources to continue to upgrade its Police Communications Section's ("PCS") communications technology to meet current standards.

74. The CPD will maintain a written protocol or checklists that guide PCS operators on how to respond to specific situations, and how to elicit all relevant information about the incident being reported.



## **E. Discipline**

75. The CPD will revise its disciplinary matrix to take into account an officer's violations of different rules, rather than just repeated violations of the same rule. The CPD will further revise this matrix to increase the penalties for uses of excessive force, improper searches and seizures, discrimination, or dishonesty, to reflect the seriousness of those infractions. The revised disciplinary matrix will provide the CPD with the discretion to impose any appropriate punishment when the CPD believes the officer's misconduct exhibits a lack of fitness for duty. This revised matrix will be subject to the review and approval of DOJ.

76. Absent exceptional circumstances, the CPD will not take only non-disciplinary corrective action in cases in which the disciplinary matrix indicates the imposition of discipline. The CPD will not fail to consider whether non-disciplinary corrective action is required in a case because discipline has been imposed on the officer.

## **VIII. TRAINING**

### **A. Management Oversight**

77. The CPD will coordinate and review all use of force policy and training to ensure quality, consistency, and compliance with applicable law and CPD policy. The CPD will conduct regular subsequent reviews, at least semi-annually.

78. The Director of the Training Academy, either directly or through his/her designee(s), consistent with Ohio law and the Ohio Peace Officer Training Academy standards, will:

- (a.) ensure the quality of all use of force training;
- (b.) develop and implement use of force training curricula;
- (c.) select and train CPD officer trainers;
- (d.) develop, implement, approve and oversee all in-service training and roll call curricula;
- (e.) establish procedures for evaluating all training curricula and procedures; and
- (f.) conduct regular needs assessments to ensure that use of force training is responsive to the knowledge, skills, and abilities of the officers being trained.

79. The CPD will provide training consistent with CPD policy, law, and proper police practices and ensure that only mandated objectives and approved lesson plans are taught by instructors.

### **B. Curriculum**

80. The CPD curriculum and policy committee will review all use of force training and use of force policies on a regular basis to ensure compliance with applicable laws and CPD policy. The committee will include core Training Academy staff, a broad cross section of field personnel, including CPD command staff, and a representative of the City Solicitor's office.

81. The CPD will continue to provide all CPD recruits, officers, supervisors and managers with annual training on use of force. Such training will include and address the following topics:

- (a.) the CPD's use of force model described in this Agreement;
- (b.) proper use of force decision making;
- (c.) the CPD's use of force reporting requirements;
- (d.) the Fourth Amendment and other constitutional requirements;
- (e.) examples of scenarios faced by CPD officers that illustrate proper use of force decision making;
- (f.) interactive exercises that emphasize proper use of force decision making;

- (g.) the proper amount of chemical spray to use, how to deliver spray effectively, and the proper anatomical targets for chemical spray;
- (h.) de-escalation techniques that allow officers to effect arrests without using force, and instruction that disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements, calling in specialized units, or even letting a subject temporarily evade arrest may be the appropriate response to a situation even when the use of force would be legally justified;
- (i.) additional training to its officers on alternate safe techniques for extracting subjects from stationary vehicles and disabling such vehicles;
- (j.) threat assessment;
- (k.) additional training on interacting with people with mental illnesses; and
- (l.) factors to consider in initiating or continuing a pursuit (pursuant to the CPD's new policy, required by this Agreement).

82. The CPD will provide all officers charged with accepting citizen complaints with appropriate training on handling citizen complaints with an emphasis on interpersonal skills. The CPD will provide training on the CPD citizen complaint process, including the role of CCRP, IIS, CCA and CPRP in the process, to all new recruits and as part of annual in-service training. The CPD will provide training on appropriate burdens of proof to all supervisors who are responsible for investigating and determining the outcomes of citizen complaints, as well as the factors to consider when evaluating complainant or witness credibility (to ensure that their recommendations regarding dispositions are unbiased, uniform and legally appropriate).

83. The CPD supervisors will continue to receive leadership and command accountability training, and learn techniques designed to promote proper police practices. This training will be provided to all CPD sergeants promoted to supervisory rank within 30 days of assuming supervisory responsibilities, and will be made part of annual in-service training.

84. The CPD will modify and augment its canine training as follows:

- (a.) The CPD will complete development and implementation of a comprehensive canine training curriculum and lesson plans which specifically identify goals, objectives and the mission of the Canine Unit, consistent with its canine policy, as amended by this Agreement.
- (b.) The CPD will continue to purchase only professionally-bred canines. The CPD will ensure that all canines, handlers and supervisors are formally trained in the CPD canine policy as revised by this Agreement, and are able to carry out the policy's requirements.
- (c.) The CPD will ensure that the canines receive annual re-certification and periodic refresher training. Deviations from certification or training requirements will result in the retraining of the handlers and/or removal of the canine from service until such requirements are fulfilled.

(d.) The CPD will continue to ensure that canine handlers are physically capable of implementing and maintaining the CPD's canine policy, as modified by this Agreement. Handlers should be able to maintain control of, and contact with the canine to ensure that the canine is not allowed to bite a suspect without a legal justification.

(e.) Within 180 days, the CPD will require that all of its in-house canine trainers are certified canine instructors.

85. The CPD will ensure that training instructors engage students in meaningful dialogue regarding particular scenarios, preferably taken from actual incidents involving CPD officers, with the goal of educating students regarding the legal and tactical issues raised by the scenarios.

86. The CPD periodically will meet with the City Solicitor's Office concerning the conclusion of civil lawsuits alleging officer misconduct. Information gleaned from this process will be used by CPD staff to develop or revise training.

87. The City and the CPD will provide copies and explain this Agreement to all CPD and all relevant City employees. The City and the CPD will provide initial training on this Agreement to all City and CPD employees whose job responsibilities are effected by this Agreement within 120 days of each provision's implementation. Thereafter, the CPD will provide training during in-service training.

### **C. FTOs**

88. The CPD will develop a protocol to enhance the FTO program. The protocol will address the criteria and method for selecting FTOs, and set standards that require the appropriate assessment of an officer's past complaint and disciplinary history before an officer is selected to serve as an FTO. FTO appointments will be subject to review for reappointment at the Training Academy Director's discretion. District commanders will also have discretion, upon consultation with the Training Academy staff, to remove an officer from the FTO program.

89. FTOs will be reviewed at least bi-annually, with re-certification dependant on satisfactory prior performance and feedback from the Training Academy.

### **D. Firearms Training**

90. The CPD will continue to ensure that all officers, supervisors and managers complete mandatory annual re-qualification firearms training. The CPD will provide its officers with increased in-service firearms training which will consist of satisfactorily completing all re-qualification courses in addition to achieving a passing score on the target shooting trials. The CPD will also include professional night training and stress training (i.e., training in using a firearm after undergoing physical exertion) in its annual in-service training program with the goal of adequately preparing officers for real life situations. Consistent with State law and standards, the CPD will revoke the police powers of those officers who fail to satisfactorily complete re-certification.

91. The CPD will 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. The CPD will create and implement a checklist identifying evaluation criteria to determine satisfactory completion of recruit and in-service firearms training. Such checklists will be completed for each student officer by a firearms instructor, who will sign the checklist indicating that these criteria have been satisfactorily reviewed during training. The checklist will include, but not be limited to:

- (a.) maintains finger off trigger unless justified and ready to fire;
- (b.) maintains proper hold of firearm and proper stance; and
- (c.) uses proper use of force decision making.

## **IX. MONITORING, REPORTING, AND IMPLEMENTATION**

### **A. Selection of the Monitor**

92. Within 150 days of the execution of this Agreement, in accordance with the timetable set forth below, DOJ and the Collaborative will select a Monitor with law enforcement experience who will review and report on the CPD's implementation of, and assist with the CPD's compliance with, this Agreement:

(a) Within 30 days of the execution of this Agreement, DOJ, together with the Collaborative, jointly will issue a solicitation for bid proposals for appointment of the Monitor. In addition to a targeted national mailing, the solicitation will be published in several national newspapers, and the web sites of the Collaborative and DOJ. The City will bear the cost of publicizing the solicitation.

(b.) The deadline for the submission of such proposals will be 30 days after publication of the solicitation on the City's website.

(c.) All proposals for providing the monitoring under this provision will include, but not be limited to, plans for experts to be utilized, resumes and curriculum vitae of proposed experts, cost proposals, and any other information that the Collaborative and DOJ deem necessary.

93. If the Collaborative and DOJ are unable to agree on a Monitor within 150 days, the Collaborative and DOJ will submit two names of persons with law enforcement experience, along with resumes or curriculum vitae and cost proposals, to the Court, and the Court will appoint the Monitor from among the names of qualified persons submitted.

94. In the interest of expediting the selection and contracting processes for the Monitor, the Collaborative and DOJ will be exempt from local contracting procurement regulations and all such regulations will be considered waived for this purpose.

95. The Monitor, at any time, may request to be allowed to hire or employ such additional persons or entities as are reasonably necessary to perform the tasks assigned to him/her by this Agreement. The Monitor will notify the Collaborative and DOJ in writing if and when the Monitor wishes to select such additional persons or entities. The notice will identify and describe the qualifications of the person or entity to be hired or employed and the monitoring task to be performed. If the Collaborative and DOJ agree to the Monitor's proposal, the Monitor will be authorized to hire or employ such additional persons or entities. The Collaborative or DOJ has ten days to disagree with the proposal. If the Collaborative and DOJ are unable to reach agreement within ten days of receiving notice of the disagreement, the Court will resolve the dispute.

96. The City will bear all reasonable fees and costs of the Monitor. In selecting the Monitor, the Collaborative and DOJ recognize the importance of ensuring that the fees and costs borne by the City are reasonable, and accordingly, fees and costs will be one factor considered in selecting the Monitor. In the event that any dispute arises regarding the payment of the Monitor's fees and costs, the Collaborative, DOJ, and the Monitor will attempt to resolve such dispute cooperatively. If the Collaborative and DOJ are unable to reach agreement, the Court will resolve the dispute.

97. The Monitor will not be subject to dismissal except upon good cause and the agreement of all of the Collaborative and DOJ, or by the Court upon motion of one of the Collaborative or DOJ and a showing of good cause.

## **B. Duties of the Monitor**

98. The Monitor will only have the duties, responsibilities, and authority conferred by this Agreement. The Monitor will not, and is not intended to, replace or take over the role and duties of any City or CPD employee. The Monitor may not modify, amend, diminish, or expand this Agreement.

99. The Monitor will offer the parties technical assistance regarding compliance with this Agreement. Technical assistance will be provided to a party upon request by that party, and it will be offered consistent with the provisions of this Agreement. The City and the CPD will provide the Monitor with full and unrestricted access to all CPD and City staff, facilities, and documents (including databases) necessary to carry out the duties assigned to the Monitor by this Agreement, provided, however, that the Monitor will not have access to any materials protected from disclosure by the attorney-client privilege and/or work product doctrine. The Monitor will retain any non-public information in a confidential manner and will not disclose any non-public information to any person or entity absent written notice to the City and either written consent by the City or a court order authorizing disclosure. In monitoring the implementation of this Agreement, the Monitor will maintain regular contact with the parties.

100. In order to monitor and report on the City and the CPD's implementation of each substantive provision of this Agreement, the Monitor will conduct the reviews specified in this Agreement and such additional reviews as the Monitor deems appropriate. The Monitor may make recommendations to the parties regarding measures necessary to ensure full and timely implementation of this Agreement.

## **C. Compliance Reviews**

101. In order to monitor and report on the City and the CPD's implementation of this Agreement, the Monitor, will, inter alia, regularly conduct compliance reviews to ensure that the City and the CPD have implemented and continue to implement all measures required by this Agreement. The Monitor will, where appropriate, when measuring compliance, employ appropriate sampling techniques.

102. Subject to the limitations set forth in this paragraph, the CPD will reopen for further investigation any investigation (including use of force, injury to prisoner and citizen complaint investigations) the Monitor determines to be incomplete. The Monitor will provide written instructions for completing any investigation determined to be incomplete. The Monitor will exercise this authority so that any directive to reopen an investigation is given within a reasonable period following the investigation's conclusion. The Monitor may not exercise this authority concerning any investigation the disposition of which has been officially communicated to the officer who is the subject of the investigation.

103. The parties agree that the CPD will hire and retain, or reassign a current CPD employee, for the duration of this Agreement, to serve as a full-time CPD Compliance Coordinator. The Compliance Coordinator will serve as a liaison between the CPD, the Monitor and DOJ, and will assist with the CPD's compliance with this Agreement. At a minimum, the Compliance Coordinator will: coordinate the CPD's compliance and implementation activities; facilitate the provision of data, documents and other access to CPD employees and material to the Monitor and DOJ as needed; ensure that all documents and records are maintained as provided in this Agreement; and assist in assigning compliance tasks to CPD personnel, as directed by the Chief of Police or his designee. The CPD Compliance Coordinator will take primary responsibility for collecting the information the Monitor requires to carry out the terms of this Agreement.

#### **D. Reports and Records**

104. Between 90 and 120 days following the effective date of this Agreement, and every three months thereafter until this Agreement is terminated, the City will file with the Monitor a status report, including any supporting documentation, delineating all steps taken during the reporting period to comply with this Agreement.

105. During the term of this Agreement, and subject to record retention requirements and procedures imposed by state or local law, the City and the CPD will maintain all records documenting compliance with this Agreement and all documents required by or developed pursuant to this Agreement. The City and the CPD will maintain all investigative files (including use of force, injury to prisoner and citizen complaint investigations) for at least 10 years from the date of the incident. The City and the CPD will maintain an officer's training records during the officer's employment with the CPD and for three years thereafter (unless required to be maintained for a longer period of time by applicable law).

106. DOJ will continue to have full and unrestricted access to any City and CPD documents (including databases), staff, and facilities that are relevant to evaluate compliance with this Agreement, except any documents protected by the attorney-client privilege. Should the City decline to provide the Monitor with access to a document based on attorney-client privilege, the City will provide the Monitor and DOJ with a log describing the document. This Agreement does not authorize, nor will it be construed to authorize, access to any CPD documents, except as expressly provided by this Agreement, by persons or entities other than DOJ, the City, the CPD, and the Monitor. DOJ will retain any non-public information in a confidential manner and will not disclose any non-public information to any person or entity, other than a court or the Monitor, absent written notice to the City and either written consent by the City or a court order authorizing disclosure.



107. The Monitor will issue quarterly public reports detailing the City's compliance with and implementation of this Agreement. The Monitor may issue reports more frequently if the Monitor determines it appropriate to do so. These reports will not include information specifically identifying any individual officer. Drafts of all status reports will be provided to DOJ and the City at least 10 days prior to publication to afford the parties an opportunity to identify factual errors.

108. The Monitor will not issue statements or make findings with regard to any act or omission of the City, the CPD, or their agents or representatives, except as required by the terms of this Agreement. The Monitor may testify in any case brought by any party to this Agreement regarding any matter relating to the implementation, enforcement, or dissolution of this Agreement. With the exception of *In re Cincinnati Policing*, No. C-1-99-317 (S.D. Oh. 2001), the Monitor will not testify in any other litigation or proceeding with regard to any act or omission of the City, the CPD, or any of their 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. Unless such conflict is waived by the parties, the Monitor will 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. The Monitor will not be liable for any claim, lawsuit, or demand arising out of the Monitor's performance pursuant to this Agreement. Provided, however, that this paragraph does not apply to any proceeding before a court related to performance of contracts or subcontracts for monitoring this Agreement.

## **E. Implementation, Termination, and Enforcement**

109. The City and the CPD will implement immediately all provisions of this Agreement which involve the continuation of current City or CPD policies, procedures, and practices. Within 90 days of the effective date of this Agreement, unless another time frame is specified in this Agreement, the City and the CPD will implement each and every provision of this Agreement. The canine policy revisions required by paragraph 20, the Data Input Plan required by paragraph 60, the risk management protocol required by paragraph 61, and all changes to the CPD's risk management system and disciplinary matrix made pursuant to this Agreement will be subject to DOJ review and approval. Additionally, all subsequent revisions to the risk management system and disciplinary matrix made during the Agreement's term will be subject to DOJ review and approval.

110. In regard to any provision that provides for DOJ "review and approval," approval will be granted in a timely fashion provided that the policy, protocol, plan, revision or other City or CPD action reasonably satisfies the requirements and standards set forth in the relevant provision(s).

111. The Agreement will terminate 5 years after the effective date of the Agreement or earlier if the parties agree that the CPD and the City are in substantial compliance with each of the provisions of this Agreement, and have maintained substantial compliance for at least two years. The burden will be on the City to demonstrate that it is in substantial compliance with each of the provisions of the Agreement and has maintained substantial compliance for at least two years. Noncompliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance, will not constitute failure to maintain substantial compliance. At the same time, temporary compliance during a period of otherwise sustained noncompliance will not constitute substantial compliance.

112. The parties agree to defend the provisions of this Agreement. The parties will notify each other of any court or administrative challenge to this Agreement.

113. This Agreement is enforceable through specific performance in Federal Court. Failure by any of the parties to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision herein will not be construed as a waiver of its right to enforce other deadlines and provisions of this Agreement.

114. In the event the CPD or the City fail to fulfill any obligation under this Agreement, DOJ will, prior to initiating any court proceeding to remedy such failure, give written notice of the failure to the CPD and the City. The CPD and the City will have 60 days from receipt of such notice to cure the failure. At the end of the 60-day period, in the event DOJ determines that the failure has not been cured, DOJ may, without further notice to the CPD or the City, file an action in the United States District Court for the Southern District of Ohio (the "Federal Court Action") against the CPD and the City for breach of contract and any other appropriate causes of action and may seek specific performance and any other appropriate form of relief.

115. In connection with the Federal Court Action, the CPD and the City agree as follows:

(a.) The City and the CPD will stipulate to subject matter and in personam jurisdiction and to venue.

(b.) The City and the CPD agree that service by hand delivery of the summons, complaint, and any other documents required to be filed in connection with the initiation of the Federal Court Action upon the City Manager, with a copy to the City Solicitor's Office, will be deemed good and sufficient service upon the City and the CPD.

(c.) The City and the CPD hereby waive the right to file, and agree not to file or otherwise assert, any motion to dismiss (except for failure to state a claim or failure to meet the service requirements of paragraph 115(b)), to stay or otherwise defer, a Federal Court Action alleging a failure to fulfill any obligation under this Agreement.

(d.) The City and the CPD agree to a trial of the Federal Court Action alleging a failure to fulfill any obligation under this Agreement commencing: i) 120 days after service of the summons and complaint as set forth above, or ii) the Court's earliest availability, whichever is later. The parties agree that discovery in the Federal Court Action alleging a failure to fulfill any obligation under this Agreement may begin within 15 days after service of the summons and complaint. The parties agree to submit all discovery requests and to schedule all depositions within 75 days after the service of the summons and complaint.

116. In the event, the Court finds that the City or the CPD has engaged in a material breach of the Agreement, the parties hereby stipulate that they will move jointly for the Court to enter the Agreement and any modifications as an order of the court and to retain jurisdiction over the Agreement to resolve any and all disputes arising out of the Agreement.

117. Nothing in this Agreement will preclude DOJ, after complying with paragraph 114, from filing an action under Section 14141 alleging a pattern or practice of excessive force in addition to or in lieu of the Federal Court Action described above. In the event that any such action is filed, the City and the CPD hereby waive, and agree not to assert, any defense to that action based on statute of limitations, laches, estoppel or any objection relating to the timeliness of the filing of such action. Nothing in this Agreement will preclude DOJ from filing an action under Section 14141 alleging a pattern or practice of unlawful conduct other than excessive force. Nothing in this Agreement will preclude DOJ from filing an action under any other provision of law.

#### **F. Misc.**

118. This Agreement will be posted on the web sites of the City or the CPD and of the Special Litigation Section of the Civil Rights Division of DOJ.

119. The City and the CPD agree that they will not retaliate against any person because that person has filed or may file a complaint, provided information or assistance, or participated in any other manner in an investigation or proceeding relating to this Agreement.

120. The parties may jointly agree, in writing, to modify this Agreement.

**For the United States Department of Justice:**

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**JOHN ASHCROFT**

**Attorney General**

**For the City of Cincinnati:**

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**CHARLIE LUKEN**

**Mayor**

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**VALERIE A. LEMMIE**

**City Manager**

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**FAY D. DUPUIS**

**City Solicitor**

**Dated: \_\_\_\_\_**