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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

DELPHINE ALLEN, et al.,  
Plaintiffs,  
v.  
CITY OF OAKLAND, et al.,  
Defendants.

Master Case No. C00-4599 TEH (JL)  
**SETTLEMENT AGREEMENT  
RE: PATTERN AND PRACTICE CLAIMS**

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1 **I. PURPOSE**

2 The City of Oakland (hereinafter referred to as “the City”) and the plaintiffs share a mutual  
3 interest in promoting effective and respectful policing. The parties join in entering into this  
4 Settlement Agreement (hereinafter “Agreement”) to promote police integrity and prevent conduct  
5 that deprives persons of the rights, privileges and immunities secured or protected by the  
6 Constitution or laws of the United States. The overall objective of this document is to provide for  
7 the expeditious implementation, initially, with the oversight of an outside monitoring body  
8 (hereinafter “the Monitor”), of the best available practices and procedures for police management  
9 in the areas of supervision, training and accountability mechanisms, and to enhance the ability of  
10 the Oakland Police Department (hereinafter “the Department” or “OPD”) to protect the lives,  
11 rights, dignity and property of the community it serves.

12 This document is intended as the basis for an agreement to be entered into between the City  
13 and Plaintiffs in the Delphine Allen, et al. v. City of Oakland, et al., consolidated case number C00-  
14 4599 TEH (JL) otherwise known as the “Riders” cases. This document shall constitute the entire  
15 agreement of the parties. No prior or contemporaneous communications, oral or written, or prior  
16 drafts shall be relevant or admissible for purposes of determining the meaning of any provisions  
17 herein in any litigation or any other proceedings.

18 In the Riders cases, the plaintiffs have alleged that the Oakland Police Department was  
19 deliberately indifferent to, or otherwise ratified or encouraged, an ongoing practice of misconduct  
20 by the defendant officers to violate the plaintiffs’ civil rights. Plaintiffs further alleged that the  
21 Oakland Police Department was deliberately indifferent to and or negligent in its hiring, training,  
22 supervision and discipline of its police officers, and that such indifference caused the alleged  
23 violations of the plaintiffs’ constitutional rights. All such claims are hereinafter referred to as the  
24 “pattern and practice” claims. The City of Oakland defendants expressly deny such allegations  
25 asserted in the consolidated Riders complaints.

26 Nothing in this Agreement, the complaints filed in this action or the negotiation process

1 leading to the settlement of the pattern and practice claims shall be construed as an admission of  
2 liability or evidence of liability under any federal, state or local law, including 42 U.S.C. §§1983,  
3 14141, 2000d and/or 3789d (c).

4 Subject to all plaintiffs settling their monetary damage claims, this Agreement resolves all  
5 pattern and practice claims in the Riders complaints. Upon termination of this Agreement, as set  
6 forth in Section XV, paragraph B (3), plaintiffs agree to dismiss such claims with prejudice.

7 Nothing in this document is intended to alter the lawful authority of OPD personnel to use  
8 reasonable and necessary force, effect arrests and file charges, conduct searches or make seizures,  
9 or otherwise fulfill their law enforcement obligations to the people of the City of Oakland in a  
10 manner consistent with the requirements of the Constitution and laws of the United States and the  
11 State of California.

12 Nothing in this Agreement is intended to alter the existing collective bargaining agreement  
13 between the City and OPD member/employee bargaining units or to impair the collective  
14 bargaining rights of OPD member/employee bargaining units under state law or local law. The City  
15 recognizes that the implementation of certain provisions of this Agreement may require compliance  
16 with meet-and-confer processes. The City shall comply with any such legal requirements and shall  
17 do so with the goal of concluding such processes in a manner consistent with the purposes of this  
18 Agreement and to otherwise permit the City to timely implement this Agreement. The City shall  
19 give appropriate notice of this Agreement to the OPD member/employee bargaining units to allow  
20 such processes to begin, as to this Agreement, as filed with the Court.

21 This Agreement is binding upon the parties hereto, by and through their officials, agents,  
22 employees, successors and attorneys of record. This Agreement is enforceable only by the parties,  
23 as described elsewhere in this document. No person or entity is intended to be a third-party  
24 beneficiary of the provisions of this Agreement for the purposes of any civil, criminal, or  
25 administrative action, and accordingly, no person or entity may assert any claim or right as a  
26 beneficiary or protected class under this Agreement. This Agreement is not intended to impair or



1 expand the right of any person or organization to seek relief against the City defendants for their  
2 conduct or the conduct of Oakland police officers; accordingly, it does not alter legal standards  
3 governing any such claims, including those under California Business and Provisions Code Section  
4 17200, et seq. This Agreement does not authorize, nor shall it be construed to authorize, access to  
5 any City or Department documents, except as expressly provided by this Agreement, by persons or  
6 entities other than the City defendants and the Monitor.

7 This Agreement is entered into with the understanding that all OPD personnel shall strive to  
8 act in full compliance with its provisions. Acts of non-compliance with the provisions of this  
9 Agreement by OPD personnel shall result in corrective measures, up to and including termination.

## 10 **II. DEFINITIONS**

### 11 **A. Bureau:**

12 The first subordinate organizational unit within the Department.

### 13 **B. Citizen:**

14 Any individual person, regardless of citizenship status.

### 15 **C. Command Officer/Commander:**

16 Members of the Department holding the rank of Lieutenant or higher.

### 17 **D. Command Staff**

18 All members of the Department holding the rank of Lieutenant or higher.

### 19 **E. Complaint**

20 Any complaint regarding OPD services, policy or procedure, claims for damages (which  
21 allege member/employee misconduct); and any allegation of possible misconduct by an OPD  
22 member or employee. For purposes of this Agreement, the term “complaint” does not include any  
23 allegation of employment discrimination.

### 24 **F. Effective Date**

25 The date this Agreement was entered by the Court.

26 ///

*Section II*

1 **G. Employee**

2 Every person, other than members, appointed or assigned to the Department in any  
3 permanent or temporary civil service classification.

4 **H. Force**

5 1. **Investigated Use of Force**

6 That level of force which requires an investigation and the preparation of a Use of  
7 Force Report (TF-967) in accordance with the provisions of Departmental General Order (DGO) K-  
8 3, "The Use of Force" and K-4, "Reporting and Investigating the Use of Force."

9 2. **Lethal Force**

10 Any force reasonably likely to cause death or serious physical injury with a  
11 reasonable probability of causing death.

12 3. **Non-Investigated Use of Force**

13 Any use of force by OPD personnel to effect an arrest or gain control of a person not  
14 rising to the level of force defined in Section II, paragraph H(1), of this Agreement.

15 4. **Reports of Force**

16 Uses of force – lethal, investigated, and non-investigated – shall be reported as  
17 outlined in Section V, "Policy and Procedures for Use of Force Notification and Report."

18 5. **Unnecessary Use of Force**

19 Any use of force that is not reasonably necessary in light of the totality of  
20 information available to and circumstances confronting the member (see DGO K-3, "The Use of  
21 Force").

22 6. **Use of Force**

23 Any physical or mechanical coercion used by OPD personnel to defend themselves  
24 or others, or to otherwise affect, influence, or persuade an individual to comply with an order. This  
25 includes, but is not limited to, hand strikes, kicks, leg sweeps, and takedowns. The drawing of and  
26 intentional pointing of a firearm at another person shall be considered as use of force for the

*Section II*

1 purposes of this Agreement.

2 **I. Integrity Tests**

3 Targeted or random integrity tests, or “stings,” designed to identify and investigate OPD  
4 personnel who are engaged in at-risk behavior, to measure compliance with Department directives  
5 and orders, and/or the terms and conditions of this Agreement.

6 **J. Investigation, Division-Level**

7 An investigation, by the subject member/employee’s organizational unit, into allegations of  
8 that member/employee’s violation of the law or Departmental rules, regulations or policies.

9 **K. Investigation, Internal**

10 An investigation, by a Department investigator, into allegations of a violation of the law or  
11 Departmental rules, regulations or policies.

12 **L. Manager**

13 An employee of the Department in charge of a Division or Section.

14 **M. Manual of Rules (MOR)**

15 The Department publication which provides additional specificity to the standards of  
16 conduct embodied in the Law Enforcement Code of Ethics and the Department’s Statement of  
17 Values.

18 **N. Member**

19 Any person appointed to the Department as a full-time, regularly salaried peace officer. For  
20 the purposes of this Agreement, Rangers are included in this definition.

21 **O. Non-Disciplinary Action**

22 Action, other than discipline, taken by a superior, commander, or manager to enable or  
23 encourage a subordinate to improve, modify, or correct his or her work performance.

24 **P. OPD Personnel**

25 All members, employees, Reserve Officers, volunteers, and other persons working under the  
26 direction of the Department.

*Section II*

1 **Q. Personnel Assessment System (PAS)**

2 The computerized complaint-tracking and select-indicator system, as designed within a  
3 relational database, for maintaining, integrating and retrieving data necessary for supervision and  
4 management of OPD and its personnel.

5 **R. Serious Misdemeanor**

6 Any misdemeanor crime the commission of which would preclude a member or employee  
7 from continuing to successfully complete his/her responsibilities as a member/employee of the  
8 Department. These crimes involve those that negatively impact the integrity and values of the  
9 Department. Examples are those that involve sex, theft, possession of drugs and those listed in  
10 California Penal Code §12021(c)(1), “Unlawful Possession of a Firearm.”

11 **S. Subject Officer/Employee**

12 The member or employee, under an investigation, against whom allegations of a violation of  
13 the law or Departmental rules, regulations or policies have been made.

14 **T. Supervisor**

15 A member or employee of the Department assigned to a position requiring the exercise of  
16 immediate supervision over the activities of other members and employees.

17 **U. Vehicle Stop**

18 Any instance in which a member directs a civilian operating a vehicle of any type (including  
19 bicycles, mopeds, motorized scooters, etc.) to stop, and the driver is detained for any length of time.

20 **V. Walking Stop**

21 Any instance in which a member detains a person (i.e., the person is not free to leave) who  
22 is not in or on a vehicle.

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1 **TASK 10 (Section III)**

2 **III. INTERNAL AFFAIRS DIVISION (IAD)**

3 With the exception of subparagraphs G, H, I, J, K, M, N and as otherwise set forth below,  
4 within 616 days from the effective date of this Agreement, the Chief of Police shall revise  
5 Departmental policy and procedures and develop a manual for conducting complaint investigations.  
6 Training shall be provided to ensure all personnel have received, understand, and comply with new  
7 and revised Departmental policies and procedures. For the policies that are developed in paragraphs  
8 III.B.1, III.D.1, III.E.1, III.E.2.a, III.G, III.H, III.I, III.J, III.K, III.M, III.N, and III.O, all training on  
9 those policies shall be completed on or before June 1, 2004. The IAD Procedural Manual shall  
10 include, at a minimum, the following provisions of this Section:

11 **TASK 1 (Section III)**

12 **A. IAD Staffing and Resources**

- 13 1. Assignment;
- 14 2. Rotation;
- 15 3. Training and qualifications of members and other personnel in IAD;
- 16 4. Appropriate background checks on IAD personnel;
- 17 5. Confidentiality of IAD information.

18 **TASK 2 (Section III)**

19 **B. Timeliness Standards and Compliance with IAD Investigations**

20 Fairness to complainants, members/employees and the public requires that internal  
21 investigations be completed in a timely fashion.

- 22 1. On or before December 1, 2003, OPD shall develop policies regarding timeliness  
23 standards for the completion of Internal Affairs investigations, administrative findings and  
24 recommended discipline.
- 25 2. Compliance with these timeliness standards shall be regularly monitored by IAD  
26 command and the Department's command staff. If IAD experiences an unusual proliferation of

**TASK 2**  
**Section III.B.2**

1 cases and/or workload, IAD staffing shall be increased to maintain timeliness standards.

2 **TASK 3 (Section III)**

3 **C. IAD Integrity Tests**

4 IAD shall be proactive as well as reactive.

5 1. IAD shall conduct integrity tests in situations where members/employees are the  
6 subject of repeated allegations of misconduct.

7 2. IAD shall have frequency standards, among other parameters, for such integrity  
8 tests.

9 **TASK 4 (Section III)**

10 **D. Complaint Control System for IAD**

11 1. Within 90 days, OPD shall develop a policy regarding an informal complaint  
12 resolution process which may be used by supervisors and IAD to resolve service complaints and  
13 Class II violations that do not indicate a pattern of misconduct as described in Section III,  
14 paragraph H (2). This process shall document the receipt of the complaint, date, time, location,  
15 name or the person making the complaint, the name of the person receiving the complaint, how the  
16 matter was resolved and that the person making the complaint was advised of the formal complaint  
17 process with the CPRB. The documentation shall be forwarded to an IAD Commander for review.  
18 If the informal complaint resolution process fails to resolve the complaint or if the person making  
19 the complaint still wishes to make a formal complaint, the person receiving the complaint shall  
20 initiate the formal complaint process pursuant to Section III, paragraph E. An IAD Commander  
21 shall make the final determination whether the ICR process will be utilized to resolve the  
22 complaint. OPD personnel shall not unduly influence persons making a complaint to consent to the  
23 informal complaint resolution process.

24 2. IAD shall establish a central control system for complaints and Departmental  
25 requests to open investigations. Every complaint received by any supervisor or commander shall be  
26 reported to IAD on the day of receipt. If IAD is not available, IAD shall be contacted at the start of

**TASK 4**  
**Section III.D.2**

1 the next business day. Each complaint shall be assigned an Internal Affairs case number and be  
2 entered into a complaint database with identifying information about the complaint. OPD personnel  
3 shall notify IAD and the Chief of Police, or designee, as soon as practicable, in cases likely to  
4 generate unusual public interest.

5 3. Criteria shall be established which must be met prior to moving, from “open” to  
6 “closed,” any investigation in the complaint database.

7 **TASK 5 (Section III)**

8 **E. Complaint Procedures for IAD**

9 1. On or before December 1, 2003, OPD shall develop a policy so that, OPD personnel  
10 who become aware that a citizen wishes to file a complaint shall bring such citizen immediately, or  
11 as soon as circumstances permit, to a supervisor or IAD or summon a supervisor to the scene. If  
12 there is a delay of greater than three (3) hours, the reason for such delay shall be documented by the  
13 person receiving the complaint. In the event that such a complainant refuses to travel to a  
14 supervisor or to wait for one, the member/employee involved shall make all reasonable attempts to  
15 obtain identification, including address and phone number, as well as a description of the allegedly  
16 wrongful conduct and offending personnel, from the complainant and any witnesses. This  
17 information, as well as a description of the complaint, shall immediately, or as soon as  
18 circumstances permit, be documented on a Complaint Form and submitted to the immediate  
19 supervisor or, in his/her absence, the appropriate Area Commander, and shall be treated as a  
20 complaint. The supervisor or appropriate Area Commander notified of the complaint shall ensure  
21 the Communications Division is notified and forward any pertinent documents to the IAD.

22 2. An on-duty supervisor shall respond to take a complaint received from a jail inmate  
23 taken into custody by OPD, who wishes to make a complaint of Class I misconduct  
24 contemporaneous with the arrest. The supervisor shall ensure the Communications Division is  
25 notified and forward any pertinent documents to the IAD. All other misconduct complaints, by a  
26 jail inmate shall be handled in the same manner as other civilian complaints.

**TASK 5**  
**Section III.E.3**

1           3.       In each complaint investigation, OPD shall consider all relevant evidence, including  
2 circumstantial, direct and physical evidence, and make credibility determinations, if feasible. OPD  
3 shall make efforts to resolve, by reference to physical evidence, and/or use of follow-up interviews  
4 and other objective indicators, inconsistent statements among witnesses.

5           4.       OPD shall develop provisions for the permanent retention of all notes, generated  
6 and/or received by OPD personnel in the case file.

7           5.       OPD shall resolve each allegation in a complaint investigation using the  
8 “preponderance of the evidence” standard. Each allegation shall be resolved by making one of the  
9 following dispositions: Unfounded, Sustained, Exonerated, Not Sustained, or Administrative  
10 Closure. The Department shall use the following criteria for determining the appropriate  
11 disposition:

- 12           a.       *Unfounded*: The investigation disclosed sufficient evidence to determine that  
13 the alleged conduct did not occur. This finding shall also apply when  
14 individuals named in the complaint were not involved in the alleged act.
- 15           b.       *Sustained*: The investigation disclosed sufficient evidence to determine that  
16 the alleged conduct did occur and was in violation of law and/or Oakland  
17 Police Department rules, regulations, or policies.
- 18           c.       *Exonerated*: The investigation disclosed sufficient evidence to determine that  
19 the alleged conduct did occur, but was in accord with law and with all  
20 Oakland Police Department rules, regulations, or policies.
- 21           d.       *Not Sustained*: The investigation did not disclose sufficient evidence to  
22 determine whether or not the alleged conduct occurred.
- 23           e.       *Administrative Closure*: The investigation indicates a service complaint, not  
24 involving an MOR violation, was resolved without conducting an internal  
25 investigation; OR
- 26           f.       To conclude an internal investigation when it has been determined that the



**TASK 5**  
**Section III.E.5.f**

- 1 investigation cannot proceed to a normal investigative conclusion due to  
2 circumstances to include but not limited to the following:
- 3 1) Complainant wishes to withdraw the complaint and the IAD  
4 Commander has determined there is no further reason to continue the  
5 investigation and to ensure Departmental policy and procedure has  
6 been followed;
  - 7 2) Complaint lacks specificity and complainant refuses or is unable to  
8 provide further clarification necessary to investigate the complaint;
  - 9 3) Subject not employed by OPD at the time of the incident; or
  - 10 4) If the subject is no longer employed by OPD, the IAD Commander  
11 shall determine whether an internal investigation shall be conducted.
  - 12 5) Complainant fails to articulate an act or failure to act, that, if true,  
13 would be an *MOR* violation; or
  - 14 6) Complaints limited to California Vehicle Code citations and resulting  
15 tows, where there is no allegation of misconduct, shall be referred to  
16 the appropriate competent authorities (i.e. Traffic Court and Tow  
17 Hearing Officer).
- 18 g. Administrative Closures shall be approved by the IAD Commander and  
19 entered in the IAD Complaint Database.
- 20 6 The disposition category of "Filed" is hereby redefined and shall be included under  
21 Administrative Dispositions as follows:
- 22 a. An investigation that cannot be presently completed. A filed investigation is  
23 not a final disposition, but an indication that a case is pending further  
24 developments that will allow completion of the investigation.
  - 25 b. The IAD Commander shall review all filed cases quarterly to determine  
26 whether the conditions that prevented investigation and final disposition have

**TASK 5**  
**Section III.E**

1 c. changed and may direct the closure or continuation of the investigation.

2 7. Any member or employee who is a subject of an internal investigation, as well as  
3 any other member or employee on the scene of an incident at which misconduct has been alleged  
4 by a complainant, shall be interviewed and a recorded statement taken . However, investigators,  
5 with the approval of an IAD Commander, are not required to interview and/or take a recorded  
6 statement from a member or employee who is the subject of a complaint or was on the scene of the  
7 incident when additional information, beyond that already provided by the existing set of facts  
8 and/or documentation, is not necessary to reach appropriate findings and conclusions.

9 **TASK 6 (Section III)**

10 **F. Refusal to Accept or Refer Citizen Complaint**

11 Refusal to accept a citizen complaint, failure to refer a citizen to IAD (when that citizen can  
12 be reasonably understood to want to make a citizen’s complaint), discouraging a person from filing  
13 a complaint, and/or knowingly providing false, inaccurate or incomplete information about IAD  
14 shall be grounds for discipline for any OPD member or employee.

15 **TASK 7 (Section III)**

16 **G. Methods for Receiving Citizen Complaints**

17 On or before December 1, 2003, OPD shall develop a policy to strengthen procedures for  
18 receiving citizen complaints:

19 1. IAD or Communication Division personnel shall staff a recordable toll-free  
20 complaint phone line, 24-hours a day, and receive and process complaints in accordance with the  
21 provisions of Departmental General Order M-3. The complainant shall be advised that the call is  
22 being recorded when a complaint is taken by IAD.

23 2. Guidelines for filing a citizen’s complaint shall be prominently posted and  
24 informational brochures shall be made available in key Departmental and municipal locations.

25 3. OPD shall accept anonymous complaints. To the extent possible, OPD shall ask  
26 anonymous complainants for corroborating evidence. OPD shall investigate anonymous complaints

**TASK 7**  
**Section III.G**

1 to the extent reasonably possible to determine whether the allegation can be resolved.

2 4. OPD personnel shall have available complaint forms and informational brochures on  
3 the complaint process in their vehicles at all times while on duty. Members/employees shall  
4 distribute these complaint forms and informational brochures when a citizen wishes to make a  
5 complaint, or upon request.

6 5. IAD shall be located in a dedicated facility removed from the Police Administration  
7 Building.

8 6. Complaint forms and informational brochures shall be translated consistent with  
9 City policy.

10 7. Complaint forms shall be processed in accordance with controlling state law.

11 **TASK 8 (Section III)**

12 **H. Classifications of Citizen Complaints**

13 On or before December 1, 2003, OPD shall develop a policy so that misconduct complaints  
14 shall be categorized according to “Class I” or “Class II” offenses.

15 1. Class I offenses are the most serious allegations of misconduct, which, if proven,  
16 might serve as the basis for a criminal prosecution and/or for dismissal from OPD.

17 a. The Class I offenses are:

- 18 1) Use of excessive force;
- 19 2) Fabrication of evidence, including the planting of inculpatory  
20 evidence;
- 21 3) Untruthfulness;
- 22 4) Knowingly and intentionally filing a false police report;
- 23 5) Insubordination;
- 24 6) Commission of a felony or serious misdemeanor;
- 25 7) Exhibition of bias or harassment, actions of a retaliatory nature, or  
26 failure to take reasonable steps to prevent retaliation;

**TASK 8**  
**Section III.H.1.a.8**

- 1                   8)     Solicitation or acceptance of gifts or gratuities as specified in the
- 2                                 *Manual of Rules*;
- 3                   9)     Willful false arrest, made knowingly without probable cause;
- 4                   10)    Failing to report others who commit any Class I offense.

5           b.     Unless otherwise directed by the Chief of Police or acceptable designee (i.e.,  
6 Acting Chief, Assistant Chief, or Deputy Chief), Class I offenses shall be investigated by IAD  
7 investigators. Statements and interviews in Class I investigations shall be tape recorded, but not  
8 transcribed except at the request of the subject member/employee, complainant, command staff,  
9 Monitor, or the OIG.

10           2.     Class II offenses shall include minor misconduct situations. Complaints received  
11 from private persons, alleging a Class II violation, shall be processed as a complaint and referred  
12 for investigation or resolved through the Informal Complaint Resolution process. A Class II  
13 violation discovered by a supervisor, commander, or manager in the normal course of supervision,  
14 that does not indicate a pattern of misconduct, may be addressed through non-disciplinary  
15 corrective action. Statements and interviews from OPD personnel in Class II investigations shall be  
16 recorded, but not transcribed except at the request of the subject member/employee, complainant,  
17 command staff, Monitor, or the OIG. When a unit commander or the assigned investigator  
18 encounters a Class I violation during a Class II, division-level investigation, he/she shall contact the  
19 IAD Commander. The IAD Commander shall consult with the Chief of Police to determine whether  
20 the investigation shall be forwarded to IAD or remain in the unit in which the Class II violation was  
21 originally assigned.

22 **TASK 9 (Section III)**

23 **I.     Contact of Citizen Complainant**

24           On or before December 1, 2003, OPD shall develop a policy to ensure that citizen  
25 complainants shall be contacted, as soon as possible, by IAD or the investigator assigned to the  
26 investigation, to determine the nature, scope and severity of the complaint, as well as to identify

**TASK 11**  
**Section III**

1 potential witnesses and/or evidence as quickly as possible.

2 **TASK 10 (Section III)**

3 *See Section III, Introduction*

4 **TASK 11 (Section III)**

5 **J. Summary of Citizen Complaints Provided to OPD Personnel**

6 1. On or before December 1, 2003, OPD shall develop a policy to ensure that the  
7 investigator shall provide the member/employee with a brief synopsis of any complaint alleged  
8 against them, but shall not allow the member/employee to read the complaint itself or to review  
9 citizen or other witness statements prior to the member/employee's interview. Such synopses shall  
10 be preserved within the IAD file.

11 2. When notifying a member/employee that a complaint has been filed against him or  
12 her, IAD shall also notify the subject's immediate supervisor and commander.

13 3. Upon completion of the IAD investigation and issuance of a final report by IAD, the  
14 subject member/employee shall have access to the underlying data on which the report is based,  
15 including all tape-recorded interviews, transcripts and investigator's notes.

16 **TASK 12 (Section III)**

17 **K. Disclosure of Possible Investigator Bias**

18 On or before December 1, 2003, OPD shall establish a policy requiring that investigators  
19 (this covers IAD and field investigators) disclose relationships which might lead to a perception of  
20 bias regarding the subject(s) of any investigation, including such as family relationships, outside  
21 business relationships, romantic relationships, close work or personal friendships. In cases where it  
22 is clear that the nature of the relationship could be perceived to compromise the investigative  
23 process, the involved investigator(s) shall recuse him/herself from the investigation. In more  
24 ambiguous situations, the investigator(s) involved shall make full disclosure, in writing, to his/her  
25 supervisor. In the case of a Class I investigation, that supervisor shall then make a recommendation  
26 to the IAD or, in the case of a division-level investigation, the unit commander. The IAD, unit

**TASK 13**  
**Section III.K**

1 commander or, as appropriate, his/her superior, shall replace the investigator in question with  
2 another investigator.

3 **TASK 13 (Section III)**

4 **L. Documentation of Pitchess Responses**

5 OPD shall implement an additional check on responses to Pitchess discovery motion  
6 responses.

7 **TASK 14 (Section III)**

8 **M. Investigation of Allegations of *Manual of Rules* Violations Resulting from Lawsuits**  
9 **and Legal Claims**

10 1. Internal investigations shall be handled separately and not delayed, halted, or  
11 modified because the underlying matter is in civil litigation, unless such delay is specifically  
12 authorized in writing by the Chief of Police.

13 2. If the Chief of Police determines that concurrent civil litigation is likely to yield  
14 additional information relevant to an internal investigation, he/she may hold the findings of the  
15 internal investigation in abeyance. Such delay shall last no longer than necessary to obtain the  
16 relevant information. The reason(s) for any delay shall be documented in the CAL. The Chief of  
17 Police shall ensure the investigation continues on all areas of the internal investigation.

18 **TASK 15 (Section III)**

19 **N. Reviewing Findings and Disciplinary Recommendations**

20 On or before June 15, 2005, OPD shall develop a policy to ensure that, except upon written  
21 authorization from the Chief of Police, the investigator's first-level commander/manager and the  
22 IAD Commander or designee shall be responsible for reviewing recommended findings. The  
23 Discipline Officer shall be responsible for making disciplinary recommendations in sustained  
24 internal investigations.

25 **TASK 16 (Section III)**

26

1 **O. Supporting IAD Process – Supervisor/Managerial Accountability**

2 On or before December 1, 2003, OPD shall develop a policy to ensure that supervisors and  
3 commanders, as well as other managers in the chain of command, shall be held accountable for  
4 supporting the IAD process. If an IAD investigation finds that a supervisor or manager should have  
5 reasonably determined that a member/employee committed or violated a Class I offense, then that  
6 supervisor or manager shall be held accountable, through the Department’s administrative  
7 discipline process, for failure to supervise, failure to review, and/or failure to intervene.

8 **TASK 17 (Section III)**

9 **P. Audit, Review and Evaluation of IAD Functions**

10 OPD and the Monitor shall conduct audits, reviews and evaluations as specified in Section  
11 XIII, paragraph H, and Section XIV, paragraph B.

12 **TASK 18 (Section IV)**

13 **IV. SUPERVISORY SPAN OF CONTROL AND UNITY OF COMMAND**

14 Within 260 days from the effective date of this Agreement, the Chief of Police shall, based  
15 on contemporary police standards and best practices, develop and implement policies to address the  
16 following standards and provisions:

17 **A. Approval of Field-Arrest by Supervisor**

18 1. OPD shall develop standards for field supervisors that encourage or mandate close  
19 and frequent supervisory contacts with subordinates on calls for service. The policies developed in  
20 this Section shall require supervisors to respond to the scene of (at least) the following categories of  
21 arrest, unless community unrest or other conditions at the scene make this impractical:

- 22 a. All Felonies;
- 23 b. All drug offenses (including narcotics, controlled substances and marijuana  
24 arrests if the subject is taken to jail).
- 25 c. Where there is an investigated use of force;
- 26 d. Penal Code §§69, 148 and 243(b)(c).

**TASK 18**  
**Section IV. A.2**

1           2.       The responding supervisor shall review the arrest documentation to determine  
2 whether probable cause for the arrest, or reasonable suspicion for the stop, is articulated, to ensure  
3 that available witnesses are identified, to approve or disapprove the arrest in the field, and to log the  
4 time of the contact.

5 **TASK 19 (Section IV)**

6 **B.       Unity of Command**

7           1.       With rare exceptions (justified on a case-by-case basis), each member or employee  
8 of the Department shall have a single, clearly identified supervisor or manager.

9           2.       In general, sergeants should work the same schedule and have the same days off as  
10 the individuals they supervise.

11 **TASK 20 (Section IV)**

12 **C.       Span of Control for Supervisors**

13           On or before August 14, 2003, OPD shall develop and implement a policy to ensure  
14 appropriate supervision of its Area Command Field Teams. The policy shall provide that:

15           1.       Under normal conditions, OPD shall assign one primary sergeant to each Area  
16 Command Field Team, and, in general, (with certain exceptions) that supervisor's span of control  
17 shall not exceed eight (8) members.

18           2.       During day-to-day operations, in the absence of the primary supervisor (e.g., due to  
19 sickness, vacation, compensatory time off, schools, and other leaves), the appropriate Area  
20 Commander shall determine, based on Department policy and operational needs, whether or not to  
21 backfill for the absence of the sergeant on leave.

22           3.       If a special operation, (e.g., Beat Feet, Special Traffic Offenders Program (STOP),  
23 etc.) requires more than eight (8) members, the appropriate Area Commander shall determine the  
24 reasonable span of control for the supervisor.

25           4.       If long-term backfill requires the loan or transfer of a supervisor from another unit,  
26               the Chief of Police and/or the Deputy Chief of Police shall make that decision.



1 **TASK 21 (Section IV)**

2 D. Members', Employees' and Supervisors' Performance Review

3 1. Every OPD commander/manager shall meet at least twice per year with each of  
4 his/her immediate subordinate members, employees and supervisors, to coach them regarding their  
5 strengths and weaknesses. The provisions of this section do not obviate the commander/manager of  
6 his or her responsibility to comply with the provisions outlined in Section VII, Use of Personnel  
7 Assessment System (PAS), paragraph B, Use of Personnel Assessment System (PAS). These  
8 meetings shall be documented. If a member, employee or supervisor exhibits a performance  
9 problem, the commander/manager shall meet with him/her in accordance with the provision of  
10 Section VII, paragraph B (7)-(8), of this Agreement.

11 2. Supervisors of the following units shall meet individually with members and  
12 employees at least twice per month for informal performance reviews. Supervisors shall maintain a  
13 record of these informal reviews. Affected units include:

- 14 a. Patrol Division (team);
- 15 b. Crime Reduction Teams (CRT);
- 16 c. Internal Affairs Division;
- 17 d. Intelligence Division;
- 18 e. Parole and Corrections (PAC) team;
- 19 f. Special Duty Units (SDU);
- 20 g. Traffic Operations Section;
- 21 h. Special Operations Section;
- 22 i. Fugitive Unit;
- 23 j. Problem Solving Officers (PSO); and
- 24 k. Campus Life and School Safety (CLASS).

25 Members and employees assigned to administrative duties within these units and civilian crossing  
26 guards are exempt from this requirement.

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1 **TASK 22 (Section IV)**

2 **E. OPD/DA Liaison Commander**

3 Within 60 days from the effective date of this Agreement, OPD shall establish a  
4 Management-Level Liaison (MLL) to the courts, the District Attorney's Office, and the Public  
5 Defender's Office. This unit or person shall ensure that cases which are lost or dropped due to bad  
6 reports, defective search warrants, granted 'Motion to Suppress,' contradictory evidence or  
7 testimony, or any other indication of performance problems or misconduct, are tracked. The OPD  
8 MLL shall be required to meet and cooperate with the Monitor. The DA's and PD's Offices may  
9 attend meetings, as they deem appropriate.

10 **TASK 23 (Section IV)**

11 **F. Command Staff Rotation**

12 The Chief of Police is committed to the regular rotation of Departmental command staff as  
13 consistent with best practices in law enforcement agency management, based upon the  
14 Department's immediate needs and best interests, including:

- 15 1. Special skills needed for an assignment;
- 16 2. Career development; and
- 17 3. Increasing Departmental efficiency and effectiveness.

18 **TASK 24 (Section V)**

19 **V. POLICY AND PROCEDURES FOR USE OF FORCE NOTIFICATION AND**  
20 **REPORTING**

21 Within 390 days from the effective date of this Agreement, OPD shall develop and  
22 implement a revised policy, and appropriate forms, regarding use of force reporting and review.

23 **A. Use of Force Reporting Policy**

24 The policy shall require that:

- 25 1. Members/employees notify their supervisor as soon as practicable following any  
26 investigated use of force or allegation of excessive use of force.

**TASK 24**  
**Section V.A**

1           2.       In every investigated use of force incident, every member/employee using force, and  
2 every member/employee on the scene of the incident at the time the force was used, shall report all  
3 uses of force on the appropriate form, unless otherwise directed by the investigating supervisor.

4           3.       OPD personnel document, on the appropriate form, any use of force and/or the  
5 drawing and intentional pointing of a firearm at another person.

6           4.       A supervisor respond to the scene upon notification of an investigated use of force  
7 or an allegation of excessive use of force, unless community unrest or other conditions makes this  
8 impracticable.

9           5.       OPD notify:

10           a.       The Alameda County District Attorney’s Office immediately or as soon as  
11 circumstances permit, following a use of lethal force resulting in death or  
12 injury likely to result in death.

13           b.       The City Attorney’s Office as soon as circumstances permit following the  
14 use of lethal force resulting in death or serious injury. At the discretion of the  
15 City Attorney’s Office, a Deputy City Attorney shall respond to the scene.  
16 The Deputy City Attorney shall serve only in an advisory capacity and shall  
17 communicate only with the incident commander or his/her designee.

18           c.       Departmental investigators regarding officer-involved shootings, in  
19 accordance with the provisions of Section V, paragraph H, of this  
20 Agreement.

21           6.       OPD enter data regarding use of force into OPD’s Personnel Assessment System  
22 (PAS).

23 **TASK 25 (Section V)**

24 **B.       Use of Force Investigation and Report Responsibilities**

25           An on-scene supervisor is responsible for completing an investigated Use of Force Report in  
26 accordance with the provisions of Departmental General Order K-4, “Reporting and Investigating

**TASK 25**  
**Section V.B**

1 the Use of Force.”

2 1. OPD shall develop and implement a policy for conducting and documenting use of  
3 force investigations that include, at a minimum:

- 4 a. Documentation of the incident in either an Offense or Supplemental Report  
5 from the member(s)/employee(s) using force; and/or, when necessary, a  
6 statement taken from the member(s)/employee(s) using force;
- 7 b. Separating and separately interviewing all officers who were at the scene at  
8 the time of the incident;
- 9 c. A Supplemental Report from other members/employees on the scene or a  
10 statement taken, if deemed necessary by the investigating supervisor;
- 11 d. Identification and interviews of non-Departmental witnesses;
- 12 e. Consideration of discrepancies in information obtained from members,  
13 employees and witnesses, and statements in the reports filed;
- 14 f. Whether arrest reports or use of force reports contain “boilerplate” or “pat  
15 language” (e.g., “fighting stance”, “minimal force necessary to control the  
16 situation”);
- 17 g. Documentation of physical evidence and/or photographs and a summary and  
18 analysis of all relevant evidence gathered during the investigation; and
- 19 h. Consideration of training/tactical issues involving the availability and  
20 practicality of other force options.
- 21 i. Supervisor’s justification as to why any element of the policy was not  
22 documented; and

23 2. All supervisors shall be trained in conducting use of force investigations and such  
24 training shall be part of a supervisory training course.

25 3. Use of force investigations shall include a recommendation whether the use of force  
26 was objectively reasonable and within Department policy and training. The recommendation shall

**TASK 25**  
**Section V.B.3**

1 be based on the totality of the circumstances and shall consider, but is not limited to, the following  
2 factors:

- 3 a. Whether the force used was pursuant to a legitimate law-enforcement  
4 objective;
- 5 b. Whether the type and amount of force used was proportional to the resistance  
6 encountered and reasonably related to the objective the members/employees  
7 were attempting to achieve;
- 8 c. Whether the member/employee used reasonable verbal means to attempt to  
9 resolve the situation without force, if time and circumstances permitted such  
10 attempts;
- 11 d. Whether the force used was de-escalated or stopped reasonably when  
12 resistance decreased or stopped;

13 4. Use of Force Reports shall be reviewed by the appropriate chain-of-review as  
14 defined by policy.

15 The type of force used, the identity of the involved members, and the report preparer shall  
16 be the determining criteria for utilizing the appropriate chain-of-review. Reviewers may include,  
17 when appropriate, the chain-of-command of the involved personnel, the appropriate Area  
18 Commander on duty at the time the incident occurred, other designated Bureau of Field Operations  
19 commanders, and as necessary, the chain-of-command of the involved personnel up to the Division  
20 Commander or Deputy Chief/Director, and the Internal Affairs Division.

21 Reviewers for Level 1-3 use of force investigations shall:

- 22 a. Make a recommendation as to whether the use of force was in or out of  
23 policy,
- 24 b. Order additional investigation and investigative resources when necessary,  
25 and
- 26 c. Comment on any training issue(s) when appropriate.

**TASK 25**  
**Section V.B.5**

1           5.       Any recommendation that the use of force did not comply with Department policy  
2 shall result in the incident being referred to the Internal Affairs Division to conduct additional  
3 investigation/analysis, if necessary.

4           6.       Members/employees involved in a use of force incident resulting in serious injury or  
5 death and/or an officer-involved shooting, shall be separated from each other as soon as practicable  
6 at the incident scene, and kept apart until they have completed their reports and been interviewed.

7 **TASK 26 (Section V)**

8 **C.    Force Review Board (FRB)**

9           OPD shall develop and implement a policy concerning its FRB proceedings. The policy  
10 shall:

11          1.       Set out procedures, membership and a timetable for FRB review of use of force  
12 investigations involving Level 2 incidents, as defined in Department General Order K-4,

13 **REPORTING AND INVESTIGATING THE USE OF FORCE;**

14          2.       Require the FRB to review all use of force investigations;

15          3.       Require the FRB to make a recommendation as to whether the use of force was in  
16 policy or out of policy;

17          4.       Require the FRB to forward sustained policy violations to the Discipline Officer.

18          5.       Require the FRB not to review any use of force allegation until the internal  
19 investigations has been completed;

20          6.       Authorize the FRB to recommend to the Chief of Police additional use of force  
21 training or changes in policies or tactics, or additional standards, investigatory policies, or training  
22 for use of force investigations;

23          7.       Require the FRB to conduct an annual review of use of force cases examined, so as  
24 to identify any patterns of use of force practices that may have policy or training implications, and  
25 thereafter, issue a report to the Chief of Police;

26          8.       Require that the FRB membership include, at a minimum, one member from the

1 Training Division, one member from the Field Training Officer program, and either the Bureau of  
2 Field Operations Deputy Chief or his/her designee;

3 9. Minimally, that one member of the FRB shall be replaced at least annually.

4 **TASK 27 (Section V)**

5 **D. Oleoresin Capsicum Log and Checkout Procedures**

6 OPD shall continue to keep a log of Oleoresin Capsicum (OC) spray canisters checked out  
7 and used by any member or authorized employee. The log shall be computerized and electronically  
8 accessible within one year of entry of this Agreement and regular reports shall be prepared and  
9 distributed.

10 **TASK 28 (Section V)**

11 **E. Use of Force — Investigation of Criminal Misconduct**

12 OPD shall develop a policy to report, as soon as possible, evidence of criminal misconduct  
13 by a member/employee to the Alameda County District Attorney's Office for their review and  
14 collaboration. Said report to the District Attorney shall be made when there is reasonable suspicion  
15 to believe the member/employee has been involved in a felony or serious misdemeanor.

16 **TASK 29 (Section V)**

17 **F. IAD Investigation Priority**

18 OPD shall coordinate its administrative investigation of a member/employee with the  
19 Alameda County District Attorney's Office if a criminal proceeding is potentially viable. When  
20 OPD initiates an interview or interrogation of OPD personnel and it appears that the subject may be  
21 charged with a crime, or the subject asserts his or her Fifth Amendment rights on grounds that the  
22 answers to questions posed may be incriminating, such interrogation must be preceded by a  
23 Lybarger warning.

24 **TASK 30 (Section V)**

25 **G. Executive Force Review Board (EFRB)**

26 1. An EFRB shall be convened to review the factual circumstances surrounding any



**TASK 31**  
**Section V.G.1**

1 Level 1 force, in-custody death, or vehicle pursuit-related death incidents. A firearm discharge at an  
2 animal shall be reviewed by the EFRB only at the direction of the Chief of Police. The Board shall  
3 have access to recordings and/or transcripts of interviews of all personnel on the scene, including  
4 witnesses, and shall be empowered to call any OPD personnel to provide testimony at the hearing.

5 2. OPD shall continue the policies and practices for the conduct of EFRB, in  
6 accordance with the provisions of DGO K-4.1, FORCE REVIEW BOARDS.

7 **TASK 31 (Section V)**

8 **H.** OPD shall develop a policy to ensure that, in every officer-involved shooting in which a  
9 person is struck, Homicide and Internal Affairs investigators respond to the scene. The Homicide  
10 Section's investigation shall be conducted in partnership with, and when deemed appropriate by,  
11 the Alameda County District Attorney's Office. Interviews of the subject officer(s) shall be  
12 conducted jointly with the appropriate staff from Homicide and the Office of the District Attorney.  
13 The District Attorney and City Attorney shall be notified in accordance with the provisions of  
14 Section V, paragraph A (5), of this Agreement. Homicide shall duplicate and provide all completed  
15 reports and documents to the District Attorney's Office, the Office of the City Attorney, and the  
16 Internal Affairs Division. IAD shall provide information and/or documents as required by law.

17 **TASK 32 (Section V)**

18 **I. Use of Camcorders**

19 OPD shall explore the use and cost-effectiveness of camcorders in Patrol vehicles.

20 **TASK 33 (Section VI)**

21 **VI. REPORTING PROCEDURES**

22 Within 154 days from the effective date of this Agreement, OPD shall establish policy and  
23 procedures for the following:

24 **A. Misconduct**

25 OPD personnel shall report misconduct by any other member or employee of the  
26 Department to their supervisor and/or IAD. The policy shall state that corrective action and or

**TASK 33**  
**Section VI.A**

1 discipline shall be assessed for failure to report misconduct. OPD shall require every member and  
2 employee encountering a use of force that appears inappropriate, or an arrest that appears improper,  
3 to report the incident to his/her supervisor and/or IAD. OPD shall establish and maintain a  
4 procedure for a member/employee to report police misconduct on a confidential basis.

5 1. Any member/employee of OPD may report a suspected case of police misconduct  
6 confidentially to the commander of IAD.

7 2. The member/employee reporting this conduct shall indicate clearly to the  
8 commander of IAD that the report is being made under these confidential provisions.

9 3. The report may be made in person, by telephone, or in writing. The IAD  
10 Commander shall document the report in a confidential file that shall remain accessible only to the  
11 IAD Commander.

12 4. The case shall be investigated without disclosure of the complainant's name, unless  
13 and until such disclosure is required by law.

14 5. This confidential reporting procedure shall be made known to every member/  
15 employee of OPD and to all new members/employees of OPD within two (2) weeks of hiring.

16 **TASK 34 (Section VI)**

17 **B. Vehicle Stops, Field Investigation and Detentions**

18 1. OPD shall require members to complete a basic report on every vehicle stop, field  
19 investigation and every detention. This report shall include, at a minimum:

- 20 a. Time, date and location;
- 21 b. Identification of the initiating member or employee commencing after the  
22 first year of data collection;
- 23 c. Reason for stop;
- 24 d. Apparent race or ethnicity, and gender of individual(s) stopped;
- 25 e. Outcome of stop (arrest, no arrest);
- 26 f. Whether a search was conducted, and outcome of search;

**TASK 35**  
**Section VI.B**

- 1 g. Offense categories (felony, misdemeanor or infraction).
- 2 2. This data shall be entered into a database that can be summarized, searched, queried
- 3 and reported by personnel authorized by OPD.
- 4 3. The development of this policy shall not pre-empt any other pending or future
- 5 policies and or policy development, including but not limited to “Promoting Cooperative Strategies
- 6 to Prevent Racial Profiling.”

7 **TASK 35 (Section VI)**

8 **C. Use of Force Reports – Witness Identification**

- 9 1. OPD shall require, by policy, that every Use of Force Report, whether felonies were
- 10 involved or not, include the names, telephone numbers, and addresses of witnesses to the incident,
- 11 when such information is reasonably available to the members/employees on the scene.
- 12 2. In situations in which there are no known witnesses, the report shall specifically
- 13 state this fact. Policy shall further require that in situations in which witnesses were present but
- 14 circumstances prevented the author of the report from determining the identification or phone
- 15 number or address of those witnesses, the report shall state the reasons why the member/employee
- 16 was unable to obtain that information. Reports shall also include the names of all other
- 17 members/employees of OPD witnessing the use of force incident.

18 **TASK 36 (Section VI)**

19 **D. Procedures for Transporting Detainees and Citizens**

- 20 1. OPD shall continue to require every member and employee to log in and log out on
- 21 the radio when transporting a detainee or any other civilian. The radio report shall include time,
- 22 mileage, location, purpose of transport, gender of individual being transported, and identification of
- 23 the member or employee involved in the transport.

24 If the purpose of the transport can be determined from the location of the

25 transport, the purpose does not need to be recorded. These locations can include the

26 Police Administration Building, the Substation (Eastmont Station), Youth and Family

1 Violence Center, the Jail (Santa Rita or North County), John George Psychiatric Hospital  
2 or any other medical facility.

3 The transportation of a civilian ride-a-long shall be exempt from this requirement.

4 2. This requirement does not apply to “wagons” engaged exclusively in the transport of  
5 prisoners. These “wagons” shall continue to comply with the provisions of Departmental General  
6 Order (DGO) O-2, “Transportation of Prisoners and Persons in Custody.”

7 **TASK 37 (Section VI)**

8 **E. Internal Investigations – Retaliation Against Witnesses**

9 OPD shall prohibit retaliation against any member or employee of the Department who:

- 10 1. Reports misconduct by any other member or employee, or  
11 2. Serves as a witness in any proceeding against a member or employee.

12 The policy prohibiting retaliation shall acknowledge that retaliation may be informal and  
13 subtle, as well as blatant, and shall define retaliation as a violation for which dismissal is the  
14 presumptive disciplinary penalty. Supervisors, commanders and managers shall be held  
15 accountable for the conduct of their subordinates in this regard. If supervisors, commanders or  
16 managers of persons engaging in retaliation knew or reasonably should have known that the  
17 behavior was occurring, they shall be subject to the investigative, and if appropriate, the  
18 disciplinary process.

19 **TASK 38 (Section VI)**

20 **F. Citizens Signing Police Forms**

21 OPD personnel shall be required to ensure that citizens who sign written statements on a  
22 Statement form draw a diagonal stripe from the end of the written narrative to the bottom of the  
23 page, and sign along that stripe. Statements taken on offense reports shall be signed by the citizen  
24 immediately following the statement.

25 **TASK 39 (Section VI)**

26

1 **G. Personnel Arrested, Sued and/or Served with Civil or Administrative Process**

2 1. OPD shall continue its policy requiring OPD personnel to report, to IAD directly  
3 and through his/her chain of command, within 72 hours, any occurrence in which that member or  
4 employee has been:

5 a. Arrested; or

6 b. Sued and/or served with civil or administrative process related to his/her  
7 employment or containing allegations which rise to the level of a *Manual of*  
8 *Rules* violation.

9 2. OPD shall develop a policy requiring OPD personnel to report to the Chief of Police,  
10 through his/her chain of command, within 72 hours, that they have been served with civil or  
11 administrative process, including tort claims, financial claims, whenever applying for a transfer to  
12 or serving in:

13 a. The Gang Unit, Vice/Narcotics Section, Intelligence Division or Internal  
14 Affairs Division;

15 b. An assignment that may tend to indicate a conflict of interest with respect to  
16 the performance of his/her official duties; or

17 c. A specialized unit in which there is a strong possibility that bribes or other  
18 improper inducements may be offered.

19 3. For the purposes of this Agreement, allegations involving “financial claims” mean  
20 civil or administrative process claims relating to judgments for collection related to property  
21 seizures, taxes, judgments for money owed, debt as a debtor or creditor, filing bankruptcy,  
22 garnishments, liens, attachments on bank or savings accounts, spousal support, child support and/or  
23 foreclosure.

24 **TASK 40 (Section VII)**

25  
26

1 **VII. PERSONNEL ASSESSMENT SYSTEM (PAS)**

2 **A. Purpose**

3 Within 635 days from the effective date of this Agreement, OPD shall enhance its existing  
4 complaint-tracking and select indicator systems so that it has a fully implemented, computerized  
5 relational database for maintaining, integrating and retrieving data necessary for supervision and  
6 management of OPD and its personnel. This data shall be used by OPD: to promote professional  
7 police practices; to manage the risk of police misconduct; and to evaluate and audit the  
8 performance of OPD members of all ranks, employees, and OPD units, subunits and shifts. PAS  
9 shall contain information on the following:

- 10 1. All uses of force required to be reported by OPD;
- 11 2. OC spray canister check-out log (see Section V, paragraph D)
- 12 3. All police-canine deployments; where the canine is deployed in a search for or to  
13 apprehend a suspect(s). It does not include, deployments for the purpose of locating bombs, narcotics,  
14 missing persons, etc., where the canine is not involved in an investigated use of force (i.e., deliberately  
15 or inadvertently bites or injures a person) If such force occurs, a Use of Force report is required.
- 16 4. All officer-involved shootings and firearms discharges, both on duty and off duty,  
17 excluding an intentional discharge while at a range facility; a discharge while engaged in a lawful  
18 recreational activity, such as hunting or target practice; a discharge by Criminalistics Division  
19 personnel for the purpose of scientific examination; and a discharge at an object (e.g., street light,  
20 alarm box, door lock or vehicle tire) to accomplish a tactical police purpose that does not result in  
21 injury;
- 22 5. All on-duty vehicle pursuits and on-duty vehicle collisions;
- 23 6. All complaints, whether made to OPD or CPRB;
- 24 7. All civil suits and/or tort claims related to members' and employees' employment at  
25 OPD, or which contain allegations which rise to the level of a *Manual of Rules* violation;
- 26 8. Reports of a financial claim as described in Section VI, paragraph G (3).

**TASK 40**  
**Section VII.A**

- 1           9.       All in-custody deaths and injuries;
- 2           10.       The results of adjudications of all investigations related to items (1) through (9),
- 3 above, and a record of investigative findings, including actual discipline imposed or non-
- 4 disciplinary action administered;
- 5           11.       Commendations and awards;
- 6           12.       All criminal arrests of and charges against OPD members and employees;
- 7           13.       All charges of resisting or obstructing a police officer (Penal Code §§69 and 148),
- 8 assault on a police officer (Penal Code §243(b)(c), or assault-with-a-deadly-weapon on a police
- 9 officer [Penal Code §245(c)(d)];
- 10          14.       Assignment history and rank history for each member/employee;
- 11          15.       Training history for each member/employee;
- 12          16.       Line-of-duty injuries;
- 13          17.       Sick leave usage, particularly one-day sick leaves;
- 14          18.       Report Review Notices or Case Evaluation Reports for the reporting
- 15 member/employee and the issuing investigator;
- 16          19.       Criminal cases dropped due to concerns with member veracity, improper searches,
- 17 false arrests, etc.; and
- 18          20.       Other supervisory observations or concerns.

19 **TASK 41 (Section VII)**

20 **B.     Use of Personnel Assessment System (PAS)**

21           Within 375 days from the effective date of this Agreement, OPD shall develop a policy for

22 use of the system, including supervision and audit of the performance of specific members,

23 employees, supervisors, managers, and OPD units, as well as OPD as a whole. The policy shall

24 include the following elements:

- 25           1.       The Chief of Police shall designate a PAS Administration Unit. The PAS
- 26 Administration Unit shall be responsible for administering the PAS policy and, no less frequently

**TASK 41**  
**Section VII.B.3**

1 than quarterly, shall notify, in writing, the appropriate Deputy Chief/Director and the responsible  
2 commander/manager of an identified member/employee who meets the PAS criteria. PAS is to be  
3 electronically maintained by the City Information Technology Department.

4         2.       The Department shall retain all PAS data for at least five (5) years.

5         3.       The Monitor, Inspector General and Compliance Coordinator shall have full access  
6 to PAS to the extent necessary for the performance of their duties under this Agreement and  
7 consistent with Section XIII, paragraph K, and Section XIV of this Agreement.

8         4.       PAS, the PAS data, and reports are confidential and not public information.

9         5.       On a quarterly basis, commanders/managers shall review and analyze all relevant  
10 PAS information concerning personnel under their command, to detect any pattern or series of  
11 incidents which may indicate that a member/employee, supervisor, or group of members/employees  
12 under his/her supervision may be engaging in at-risk behavior. The policy shall define specific  
13 criteria for determining when a member/employee or group of members/employees may be  
14 engaging in at-risk behavior.

15         6.       Notwithstanding any other provisions of the PAS policy to be developed, the  
16 Department shall develop policy defining peer group comparison and methodology in consultation  
17 with Plaintiffs' Counsel and the IMT. The policy shall include, at a minimum, a requirement that  
18 any member/employee who is identified using a peer group comparison methodology for  
19 complaints received during a 30-month period, or any member who is identified using a peer group  
20 comparison methodology for Penal Code §§69, 148 and 243(b)(c) arrests within a 30-month period,  
21 shall be identified as a subject for PAS intervention review. For the purposes of these two criteria, a  
22 single incident shall be counted as "one" even if there are multiple complaints arising from the  
23 incident or combined with an arrest for Penal Code §§69, 148 or 243(b)(c).

24         7.       When review and analysis of the PAS threshold report data indicate that a  
25 member/employee may be engaging in at-risk behavior, the member/employee's immediate  
26 supervisor shall conduct a more intensive review of the member/employee's performance and



**TASK 41**  
**Section VII.B.7**

1 personnel history and prepare a PAS Activity Review and Report. Members/employees  
2 recommended for intervention shall be required to attend a documented, non-disciplinary PAS  
3 intervention meeting with their designated commander/manager and supervisor. The purpose of this  
4 meeting shall be to review the member/employee's performance and discuss the issues and  
5 recommended intervention strategies. The member/employee shall be dismissed from the meeting,  
6 and the designated commander/manager and the member/employee's immediate supervisor shall  
7 remain and discuss the situation and the member/employee's response. The primary responsibility  
8 for any intervention strategies shall be placed upon the supervisor. Intervention strategies may  
9 include additional training, reassignment, additional supervision, coaching or personal counseling.  
10 The performance of members/ employees subject to PAS review shall be monitored by their  
11 designated commander/manager for the specified period of time following the initial meeting,  
12 unless released early or extended (as outlined in Section VII, paragraph B (8)).

13         8.         Members/employees who meet the PAS threshold specified in Section VII,  
14 paragraph B (6) shall be subject to one of the following options: no action, supervisory monitoring,  
15 or PAS intervention. Each of these options shall be approved by the chain-of-command, up to the  
16 Deputy Chief/Director and/or the PAS Activity Review Panel.

17         Members/employees recommended for supervisory monitoring shall be monitored for a  
18 minimum of three (3) months and include two (2) documented, mandatory follow-up meetings with  
19 the member/employee's immediate supervisor. The first at the end of one (1) month and the second  
20 at the end of three (3) months.

21         Members/employees recommended for PAS intervention shall be monitored for a minimum  
22 of 12 months and include two (2) documented, mandatory follow-up meetings with the  
23 member/employee's immediate supervisor and designated commander/manager: The first at three  
24 (3) months and the second at one (1) year. Member/employees subject to PAS intervention for  
25 minor, easily correctable performance deficiencies may be dismissed from the jurisdiction of PAS  
26 upon the written approval of the member/employee's responsible Deputy Chief, following a

**TASK 41**  
**Section VII.B.8**

1 recommendation in writing from the member/employee's immediate supervisor. This may occur at  
2 the three (3)-month follow-up meeting or at any time thereafter, as justified by reviews of the  
3 member/employee's performance. When a member/employee is not discharged from PAS  
4 jurisdiction at the one (1)-year follow-up meeting, PAS jurisdiction shall be extended, in writing,  
5 for a specific period in three (3)-month increments at the discretion of the member/employee's  
6 responsible Deputy Chief. When PAS jurisdiction is extended beyond the minimum one (1)-year  
7 review period, additional review meetings involving the member/employee, the member/  
8 employee's designated commander/manager and immediate supervisor, shall take place no less  
9 frequently than every three (3) months.

10       9.       On a quarterly basis, Division/appropriate Area Commanders and managers shall  
11 review and analyze relevant data in PAS about subordinate commanders and/or managers and  
12 supervisors regarding their ability to adhere to policy and address at-risk behavior. All  
13 Division/appropriate Area Commanders and managers shall conduct quarterly meetings with their  
14 supervisory staff for the purpose of assessing and sharing information about the state of the unit and  
15 identifying potential or actual performance problems within the unit. These meetings shall be  
16 scheduled to follow-up on supervisors' assessments of their subordinates' for PAS intervention.  
17 These meetings shall consider all relevant PAS data, potential patterns of at-risk behavior, and  
18 recommended intervention strategies since the last meeting. Also considered shall be patterns  
19 involving use of force, sick leave, line-of-duty injuries, narcotics-related possessory offenses, and  
20 vehicle collisions that are out of the norm among either personnel in the unit or among the unit's  
21 subunits. Division/appropriate Area Commanders and managers shall ensure that minutes of the  
22 meetings are taken and retained for a period of five (5) years. Commanders/managers shall take  
23 appropriate action on identified patterns of at-risk behavior and/or misconduct.

24       10.       Division/appropriate Area Commanders and managers shall meet at least annually  
25 with his/her Deputy Chief/Director and the IAD Commander to discuss the state of their commands  
26 and any exceptional performance, potential or actual performance problems or other potential

**TASK 41**  
**Section VII.B.11**

1 patterns of at-risk behavior within the unit. Division/appropriate Area Commanders and managers  
2 shall be responsible for developing and documenting plans to ensure the managerial and  
3 supervisory accountability of their units, and for addressing any real or potential problems that may  
4 be apparent.

5 11. PAS information shall be taken into account for a commendation or award  
6 recommendation; promotion, transfer, and special assignment, and in connection with annual  
7 performance appraisals. For this specific purpose, the only disciplinary information from PAS that  
8 shall be considered are sustained and not sustained complaints completed within the time limits  
9 imposed by Government Code Section 3304.

10 12. Intervention strategies implemented as a result of a PAS Activity Review and Report  
11 shall be documented in a timely manner.

12 13. Relevant and appropriate PAS information shall be taken into account in connection  
13 with determinations of appropriate discipline for sustained misconduct allegations. For this  
14 specific purpose, the only disciplinary information from PAS that shall be considered are sustained  
15 and not sustained complaints completed within the time limits imposed by Government Code  
16 Section 3304.

17 14. The member/employee's designated commander/manager shall schedule a PAS  
18 Activity Review meeting to be held no later than 20 days following notification to the Deputy  
19 Chief/Director that the member/employee has met a PAS threshold and when intervention is  
20 recommended.

21 15. The PAS policy to be developed shall include a provision that a member/employee  
22 making unsatisfactory progress during PAS intervention may be transferred and/or loaned to  
23 another supervisor, another assignment or another Division, at the discretion of the Bureau  
24 Chief/Director if the transfer is within his/her Bureau. Inter-Bureau transfers shall be approved by  
25 the Chief of Police. If a member/employee is transferred because of unsatisfactory progress, that  
26 transfer shall be to a position with little or no public contact when there is a nexus between the at-

**TASK 41**  
**Section VII.B.16**

1 risk behavior and the “no public contact” restriction. Sustained complaints from incidents  
2 subsequent to a member/employee’s referral to PAS shall continue to result in corrective measures;  
3 however, such corrective measures shall not necessarily result in a member/employee’s exclusion  
4 from, or continued inclusion in, PAS. The member/employee’s exclusion or continued inclusion in  
5 PAS shall be at the discretion of the Chief of Police or his/her designee and shall be documented.

6 16. In parallel with the PAS program described above, the Department may wish to  
7 continue the Early Intervention Review Panel.

8 17. On a semi-annual basis, beginning within 90 days from the effective date of this  
9 Agreement, the Chief of Police, the PAS Activity Review Panel, PAS Oversight Committee, and  
10 the IAD Commander shall meet with the Monitor to review the operation and progress of the PAS.  
11 At these meetings, OPD administrators shall summarize, for the Monitor, the number of  
12 members/employees who have been identified for review, pursuant to the PAS policy, and the  
13 number of members/employees who have been identified for PAS intervention. The Department  
14 administrators shall also provide data summarizing the various intervention strategies that have  
15 been utilized as a result of all PAS Activity Review and Reports. The major objectives of each of  
16 these semi-annual meetings shall be consideration of whether the PAS policy is adequate with  
17 regard to detecting patterns of misconduct or poor performance issues as expeditiously as possible  
18 and if PAS reviews are achieving their goals.

19 18. Nothing in this Agreement, and more specifically, no provision of PAS, shall be  
20 construed as waiving, abrogating or in any way modifying the Department’s rights with regard to  
21 discipline of its members/employees. The Department may choose, at its discretion, to initiate the  
22 administrative discipline process, to initiate PAS review or to use both processes concurrently or  
23 consecutively.

24 **TASK 42 (Section VIII)**

25 **VIII. FIELD TRAINING PROGRAM**

26 Within 323 days of the effective date of this Agreement, OPD shall develop and implement

1 a plan to enhance its Field Training Program. This plan shall address the criteria and method for  
2 selecting FTOs, the training provided to FTOs to perform their duty, supervision and evaluation of  
3 FTOs, the length of time that trainee officers spend in the program, and the methods by which  
4 FTOs assess and evaluate trainee officers in field training. The plan must ensure proper reporting,  
5 review and approval of probationary officers' reports.

6 **A. Field Training Program Coordinator**

7 The Chief of Police shall assign a full-time sergeant for the first year who shall develop and  
8 implement the new policies and procedures described in this section. The Chief of Police shall  
9 determine, upon successful completion of the development and implementation of these policies, if  
10 it is necessary to continue the position at the rank of sergeant, but in any event, the position shall  
11 continue as a full-time position.

12 **B. Trainee Rotation**

13 During their field training, trainee officers shall rotate to a new FTO and a new geographic  
14 area of the City at predetermined intervals. Prior to rotation, trainee officers shall be interviewed by  
15 the Field Training Program Coordinator or his/her designee and given an opportunity to raise any  
16 questions or concerns they may have about the quality of training provided to them.

17 **C. FTO Participation Incentives**

18 OPD shall increase the incentives for participation in the FTO program so that the  
19 Department will have a larger pool of qualified, experienced candidates from which to choose.

20 **D. FTO Candidate Nomination and Requirements**

21 FTO candidates shall be nominated by field supervisors and commanders, but shall be  
22 approved for assignments to this duty, and for retention in it, by the Chief of Police. All FTO  
23 candidates must have completed three (3) years of Departmental service before selection, unless  
24 specifically authorized by the Chief of Police. FTO candidates shall be required to demonstrate  
25 their commitment to community policing, and their problem- solving and leadership abilities.  
26 Ethics, professionalism, relationships with the community, quality of citizen contacts and

1 commitment to OPD philosophy shall be primary criteria in the selection of FTOs. Excessive  
2 numbers of sustained and not sustained complaints completed within the time limits imposed by  
3 Government Code Section 3304, or excessive numbers of use of force incidents shall bar a  
4 candidate from selection as an FTO for no less than two (2) years.

5 ///

6 **E. Decertification**

7 The presumptive result of sustained disciplinary action, completed within the time limits  
8 imposed by Government Code Section 3304, against an FTO or the FTO Program Coordinator for  
9 excessive force, unlawful arrest, false testimony, racial, ethnic, sexual-orientation or gender-based  
10 discrimination or slurs, or other serious examples of police misconduct, shall be removal from the  
11 FTO program. The Deputy Chief of the member's chain of command may recommend to the Chief  
12 of Police to grant an exception to this presumption after conducting a hearing on the facts of the  
13 matter. The Chief of Police shall document the approval/disapproval in writing.

14 **F. FTO Assignment**

15 Assignment to an FTO position shall be contingent upon successful completion of a training  
16 course designed for this position and shall be approved by OPD and the State of California Peace  
17 Officers' Standards and Training.

18 **G. FTO Evaluation**

19 At the end of a complete FTO cycle, trainee officers leaving the FTO program shall  
20 anonymously evaluate each of their FTOs. OPD shall develop a form for such evaluations which  
21 emphasize effectiveness at training and effectiveness at supervision. The evaluation form shall also  
22 assess the degree to which the FTO program reflected policies, procedures, values and other  
23 information taught in the recruit academy. The FTO evaluation forms shall be reviewed by the  
24 Field Training Program Coordinator and the individual FTO's commander and supervisor. The  
25 Field Training Program Coordinator shall provide evaluation information to the FTOs as a group,  
26 concerning program effectiveness. Each FTO shall also be provided with evaluation information

1 regarding their individual performance. The individual evaluation forms shall not be made available  
2 to individual FTOs in the interest of maintaining anonymity of trainee officers who have completed  
3 the forms.

4 **H. Daily Evaluation Audit**

5 The Field Training Program Coordinator, or his/her designee, shall conduct random audits  
6 of the FTO program to ensure that FTOs complete daily evaluations of trainee officers and that the  
7 selection standards for FTOs are maintained.

8 **I. Trainee Officer Assignment**

9 When a trainee officer's FTO is absent, the trainee officer shall not be assigned to field  
10 duties with an "acting" FTO. They shall be placed with another certified FTO, or shall be assigned  
11 to non-field duties, pending the availability of a certified FTO.

12 **J. Field Commander and FTO Supervisor Training**

13 OPD shall provide field commanders and supervisors with training on the FTO program,  
14 including the field-training curriculum, the role of the FTO, supervision of FTOs and probationary  
15 employees, the evaluation process and the individual duties and responsibilities within the FTO  
16 program.

17 **K. Focus Groups**

18 The Field Training Program Coordinator and Academy staff shall conduct focus groups  
19 with randomly selected trainee officers midway through the field-training cycle, upon completion  
20 of field training, and six (6) months after completion of the field training program, to determine the  
21 extent to which the Academy instructors and curriculum prepared the new officers for their duties.

22 **L. Consistency of Training**

23 The results of these focus group sessions shall be reviewed at a meeting to include the  
24 Training Division Commander, the FTO Program Coordinator, the BFO Deputy Chief, and the  
25 BOS Deputy Chief. If it is determined that there is a substantial discrepancy between what is taught  
26 in the Academy and what is taught in the FTO program, there shall be a determination as to which

**TASK 42**  
**Section VIII.L**

1 is correct, and either the training Academy or the FTO program shall make the necessary changes  
2 so that the desired training information is consistent. In the event that the discrepancies appear to be  
3 the result of one or more individual FTOs, rather than the FTO program as a whole, the review  
4 group shall determine whether the discrepancies are serious enough to warrant removal of that  
5 officer or officers from the FTO program. The results of the meeting of this review group shall be  
6 documented and this information shall be provided to the Monitor.

7 **TASK 43 (Section IX)**

8 **IX. ACADEMY AND IN-SERVICE TRAINING**

9 **A. Academy Training Plan**

10 Within 540 days of the effective date of this Agreement, OPD shall develop and implement  
11 a plan to enhance its Academy and in-service training to ensure that OPD members, dispatchers,  
12 and civilian evidence technicians are adequately trained for their positions, and aware of and able to  
13 implement the most contemporary developments in police training. This plan shall include a review  
14 of OPD's training curriculum, with additional emphasis on ethics and professionalism, critical  
15 thinking and problem solving, conflict resolution, and relationships with the community. The plan  
16 shall also address the criteria and method for selecting OPD training instructors, the training  
17 provided to instructors, procedures for evaluating the content and quality of training provided to  
18 OPD personnel and procedures for maintaining training records for OPD personnel. In arriving at  
19 the plan regarding staffing, training content and methodology, OPD shall consult with at least four  
20 (4) other, large law-enforcement agencies within the United States which have excellent reputations  
21 for professionalism. In particular, OPD shall consult with these agencies about qualifications and  
22 other criteria to be used in selecting staff for training positions. OPD shall also review the approach  
23 of these other law enforcement agencies in training both new staff and experienced staff on ethics  
24 and professionalism, critical thinking and problem solving, conflict resolution, and relationships  
25 with the community.  
26



1 **B. Professionalism and Ethics**

2 OPD shall expand professionalism and ethics as a training topic within the recruit academy,  
3 in-service training, and field training. Wherever possible, OPD shall include and address issues of  
4 professionalism and ethics using curricula that employ realistic scenario-based training exercises.

5 **C. Supervisory and Command Training**

6 OPD shall provide all sergeants and commanders with mandatory 40-hour in-service  
7 supervisory and leadership training. Officers shall attend training prior to promotion to the rank of  
8 sergeant. Lieutenants shall attend training within six (6) months of promotion. Such training shall  
9 include supervisory and command accountability, and ethics and professionalism, with emphasis on  
10 supervisory and management functions and situations, and shall include both scenario-based  
11 training and case studies.

12 **D. In-Service Training**

13 OPD shall provide all members with forty (40) hours of in-service training every eighteen  
14 (18) months.

15 1. Sergeants shall receive at least 20 hours of training designed for supervisors every  
16 18 months.

17 2. Members at the rank of lieutenant and above shall receive at least 20 hours of  
18 training designed for commanders every 18 months.

19 **E. Training Staff Record Review**

20 Appointment to the Academy staff or other staff training position shall also require a review  
21 of the record of the individual being considered, to ensure that the individual does not have a record  
22 of any Class I offense, as defined in Section III, paragraph H (1), within the prior two (2) years, and  
23 that the individual is supportive of the philosophy and values of OPD.

24 **TASK 44 (Section X)**

25 **X. PERSONNEL PRACTICES**

26 Within 120 days from the effective date of this Agreement, (except as provided for in

1 paragraph B), OPD shall develop and implement enhanced personnel policies and practices as  
2 follows:

3 **A. Performance Appraisal Policy**

4 Performance appraisals shall be written individually for the member/employee being  
5 evaluated and shall accurately reflect the quality of each member/employee's performance.

6 1. Supervisors and commanders shall document, in performance appraisals, that they  
7 are aware of the nature and progress of complaints and investigations against members/employees,  
8 and shall consider all sustained and not sustained complaint findings completed within the time  
9 limits imposed by Government Code Section 3304, in their performance appraisal of subordinates.

10 2. Supervisors and commanders shall document, in performance appraisals, that they  
11 have carefully monitored members': uses of force; "sick" and "injured" leaves; arrests for  
12 narcotics-related possessory offenses not made as a result of searches conducted pursuant to arrests  
13 for other offenses; arrests involving charges of Penal Code §§69, 148 and/or 243(b)(c); and vehicle  
14 accidents. When appropriate, supervisors and commanders shall be held accountable for having  
15 identified and acted upon patterns, among personnel in the unit, involving use of force, sick leave,  
16 line-of-duty injuries, narcotics-related possessory offenses, and on-duty vehicle accidents.

17 3. OPD shall use the performance appraisal system to hold PSA lieutenants  
18 accountable for whether their subordinate supervisors are working to enhance the quality of  
19 community contacts by their beat officers.

20 4. OPD shall conduct regular audits of the performance appraisal system to ensure  
21 compliance with the above requirements.

22 5. The immediate supervisor of every member/employee of the Department shall have  
23 primary responsibility for conducting and writing the performance appraisal for that  
24 member/employee. For example, the patrol sergeant shall be responsible for conducting and writing  
25 the performance appraisal for each member/employee he or she supervises. However, every  
26 supervisor/manager in that member/employee's direct chain of command, up to and including the

**TASK 45**  
**Section X.A.6**

1 Deputy Chief of that Bureau, shall review, sign and date every performance appraisal of every  
2 member/employee within his or her command. If the reviewer disagrees, he/she shall write an  
3 addendum to the evaluation expressing his/her concerns.

4 6. When a member/employee, during the course of the period being appraised, had  
5 substantial collateral duties supervised by someone other than his or her regular and direct  
6 supervisor, the member/employee's immediate supervisor shall consult with the other supervisor,  
7 manager, or person in charge of the collateral duty regarding the subject member/employee's  
8 performance and document the results of the consultation in the performance appraisal.

9 **TASK 45 (Section X)**

10 **B. Consistency-of-Discipline Policy**

11 On or before October 6, 2003, OPD shall revise and update its disciplinary policy to ensure  
12 that discipline is imposed in a fair and consistent manner.

13 1. The policy shall describe the circumstances in which disciplinary action is  
14 appropriate and those in which Division-level corrective action is appropriate.

15 2. The policy shall establish a centralized system for documenting and tracking all  
16 forms of discipline and corrective action, whether imposed centrally or at the Division level.

17 3. All internal investigations which result in a sustained finding shall be submitted to  
18 the Discipline Officer for a disciplinary recommendation. The Discipline Officer shall convene a  
19 meeting with the Deputy Chief or designee in the affected chain-of-command for a confidential  
20 discussion of the misconduct, including the mitigating and aggravating factors and the  
21 member/employee's overall performance.

22 4. The COP may direct the Discipline Officer to prepare a Discipline Recommendation  
23 without convening a Discipline Conference.

24 **TASK 46 (Section X)**

25 **C. Promotional Consideration**

26 1. Sustained misconduct cases completed within the time limits imposed by

**TASK 46**  
**Section X.C.2**

1 Government Code Section 3304 against a member/employee shall be an important factor in  
2 determining promotability. There shall be a presumptive ineligibility for promotion for 12 months  
3 following the sustained finding of a Class I offense as defined in Section III, paragraph H(1). Such  
4 cases shall be considered important in evaluating promotability for three (3) years following the  
5 completion of the investigation.

6 2. In addition to other factors, the Chief of Police shall consider the following criteria  
7 in making promotional determinations:

- 8 a. Commitment to community policing;
- 9 b. Quality of citizen contacts;
- 10 c. Number of sustained and not sustained complaints completed within the time  
11 limits imposed by Government Code Section 3304;
- 12 d. Instances of unnecessary use of force;
- 13 e. Support for Departmental integrity measures.

14 **TASK 47 (Section XI)**

15 **XI. COMMUNITY POLICING PLAN**

16 Within 138 days from the effective date of this Agreement, OPD shall develop and  
17 implement a plan to strengthen its commitment to relationships with local communities including,  
18 but not limited to, the following:

- 19 **A.** OPD shall host at least one (1) community meeting per quarter in each Patrol Service Area.
- 20 **B.** Each patrol supervisor, and officer assigned to a regular beat or geographic area of the City,  
21 shall attend a minimum of one (1) community meeting per quarter in the Area he/she is  
22 regularly assigned.
- 23 **C.** OPD shall develop mechanisms to measure its community policing and problem solving  
24 activities.
- 25 **D.** OPD shall incorporate positive statistics on community policing and problem solving  
26 activities in “Crime-Stop” meetings, along with information on citizen complaints and use

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of force incidents.

**E.** The appropriate Departmental personnel shall arrange a meeting within 60 days unless not feasible with representatives of an established organization active within Oakland (PUEBLO, ACLU, NAACP, etc.), community groups or church groups, if an organization communicates a concern regarding specific police personnel or practices.

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1 **TASK 48 (Section XII)**

2 **XII. DEPARTMENTAL MANAGEMENT AND ANNUAL MANAGEMENT REPORT**

3 On or before September 5, 2003, , OPD shall develop and implement a policy requiring  
4 each functional unit of OPD to prepare a management report every 12 months. The division  
5 commanders individually shall meet with the Chief of Police and their respective Deputy Chief to  
6 thoroughly review the management report of that division. These management reports shall include  
7 relevant operating data and also highlight ongoing or extraordinary problems and noteworthy  
8 accomplishments.

9 **TASK 49 (Section XIII)**

10 **XIII. INDEPENDENT MONITORING**

11 **A. Monitor Selection and Compensation**

12 1. Within 60 days after entry of this Agreement, the City and plaintiffs' counsel shall  
13 mutually select a Monitor, subject to the approval of the Court, who shall review and report on  
14 OPD's implementation of, and assist with OPD's compliance with this Agreement. The selection of  
15 the Monitor shall be pursuant to a method jointly established by the plaintiffs' counsel and the City.  
16 In selecting the Monitor, plaintiffs' counsel and the City recognize the importance of ensuring that  
17 the fees and costs borne by the City are reasonable, and, accordingly, fees and costs shall be one  
18 factor considered in selecting the Monitor.

19 2. The maximum sum to be paid the Monitor, including any additional persons he or  
20 she may associate pursuant to Section XIII, paragraph C (1)(2) (excluding reasonable costs or fees  
21 associated with non-compliance or breach of the Agreement by the City or the Department), shall  
22 be set forth in a contract between the City and the Monitor and approved by the City Council. The  
23 contract amount shall be calculated to fairly and reasonably compensate the Monitor for  
24 accomplishing the tasks and responsibilities set forth in this Agreement. The maximum amount  
25 specified in the contract will not exceed four million dollars (\$4,000,000.00) for the entire five  
26 years of the implementation of the Settlement Agreement. Should the monitoring be extended for

1 an additional period of time, the compensation will be renegotiated subject to the approval of the  
2 City Council.

3 3. If the plaintiffs' counsel and City are unable to agree on a Monitor, or on an  
4 alternative method of selection, the plaintiffs' counsel and the City each shall submit to the Court  
5 no more than two (2) names of persons who shall have the following attributes:

- 6 a. A reputation for integrity, even-handedness and independence;
- 7 b. Experience as a law enforcement officer, expertise in law enforcement  
8 practices, or experience as a law enforcement practices monitor;
- 9 c. An absence of bias, including any appearance of bias, for or against the  
10 plaintiffs, the City, the Department, or their officers or employees; and
- 11 d. No personal involvement, in the last five (5) years, whether paid or unpaid,  
12 with a claim or lawsuit against the City or the Department, or any of their  
13 officers, agents or employees, unless waived by the parties, which waiver  
14 shall not be unreasonably withheld.

15 To assist the Court in selecting the Monitor when there is a disputed selection as above, the  
16 City and the plaintiffs' counsel shall submit to the Court the resumes, cost proposals, and other  
17 relevant information for such persons demonstrating the above qualifications, and the Court shall  
18 appoint the Monitor from among the names of qualified persons so submitted.

19 **B. Period and Appointment**

20 The Monitor shall be appointed for a period of five (5) years, but in no circumstances to  
21 exceed seven (7) years past the date on which this Agreement was entered by the Court by the  
22 agents of the plaintiffs and the agents of the City. The extension of the Monitor beyond five years  
23 shall be allowed only if the Court determines that it is reasonably necessary in order for the  
24 Monitor to fulfill his/her duties pursuant to this Agreement.

25 **C. Staffing**

- 26 1. The Monitor may associate such additional persons or entities as are reasonably

1 necessary to perform the monitoring tasks specified in this Agreement. Any additional persons or  
2 entities associated by the Monitor shall possess the following attributes: a reputation for integrity,  
3 even-handedness and independence; an absence of bias, including any appearance of bias, for or  
4 against the plaintiffs, the City, the Department, or their members or employees; and no personal  
5 involvement in the last five (5) years, whether paid or unpaid, with a claim or lawsuit against the  
6 City or the Department or any of their officers, agents or employees unless waived by the parties,  
7 which waiver shall not be unreasonably withheld.

8         2.         The Monitor shall notify the City and the Court if and when such additional persons  
9 or entities are selected for association by the Monitor. The notice shall identify the person or entity  
10 to be associated and the monitoring task to be performed, and, if a waiver is being requested, the  
11 notice shall indicate if the person had any such involvement in the last five (5) years, whether paid  
12 or unpaid, with a claim or lawsuit against the City or the Department, or any of their members,  
13 agents, or employees. Either the plaintiffs' counsel or the City may notify the Monitor, in writing,  
14 within 10 days (excluding weekends, and federal or state holidays) of any objection either may  
15 have to the selection. If the parties and the Monitor are unable to resolve any such objection, and  
16 the Monitor believes that the specific person or entity in question is needed to assist the Monitor,  
17 and such person or entity satisfies the qualifications and requirements in this paragraph, the  
18 Monitor may seek Court authorization to hire such person. For purposes of all paragraphs of this  
19 Agreement, other than the preceding paragraph, the term Monitor shall include any and all persons  
20 or entities that the Monitor associates to perform monitoring tasks, and such persons shall be  
21 subject to the same provisions applicable to the Monitor under this Agreement.

22 **D.         Replacement of Monitor**

23         Should any of the parties to this Agreement determine that the Monitor, and/or his/her  
24 agents, employees, independent contractors, has exceeded his/her authority or failed to  
25 satisfactorily perform or fulfill his/her duties under this Agreement, the party may petition the  
26 Court for such relief as the Court deems appropriate, including replacement of the Monitor and/or



1 his/her agents, employees and/or independent contractors.

2 **E. City-Provided Office Space, Services and Equipment**

3 The City shall provide the Monitor and any staff of the Monitor with office space, which  
4 may be in the Police Department or within other City offices, and with reasonable office support  
5 such as telephones, access to fax and photocopying, etc. The City and OPD shall bear all reasonable  
6 fees and costs for the Monitor. The Court retains the authority to resolve any dispute that may arise  
7 regarding the reasonableness of fees and costs charged by the Monitor.

8 **F. Resolving Monitor Fee Disputes**

9 In the event that any dispute arises regarding the payment of the Monitor's fees and  
10 costs, the City, plaintiffs' counsel and the Monitor shall attempt to resolve such dispute  
11 cooperatively, prior to seeking the Court's assistance.

12 **G. Responsibilities and Authority**

13 The Monitor shall be the agent of the Court and shall be subject to the supervision and  
14 orders of the Court, consistent with this Agreement. The Monitor shall have only the duties,  
15 responsibilities and authority conferred by this Agreement. The role of the Monitor shall be to  
16 assess and evaluate compliance with the provisions of the Agreement. The Monitor shall not, and is  
17 not intended to, replace or take over the role or duties of the Chief of Police or other police or City  
18 officials. The Monitor shall offer the City and OPD technical assistance regarding compliance with  
19 and implementing the Agreement.

20 **H. Required Audits, Reviews and Evaluations**

21 In order to report on OPD's implementation and compliance with the provisions of this  
22 Agreement, the Monitor shall conduct audits, reviews and evaluations, in addition to any others  
23 deemed relevant by the Monitor, of the following:

- 24 1. OPD policies and procedures established to implement the Agreement, to ensure that  
25 these policies and procedures are consistent with both the purposes of this  
26 Agreement and, as reasonably practicable, the best practices in law enforcement.

**TASK 49**  
**Section XIII.H.1**

- 1           2.     All completed and pending internal affairs proceedings and files except  
2                 investigator[s] notes while the investigation is open.
- 3           3.     Policy and procedures used by OPD for Internal Affairs misconduct investigations,  
4                 including a review of an appropriate sample of closed IA cases; assess and evaluate  
5                 the quality and timeliness of the investigations; recommend reopening of  
6                 investigations that the Monitor determines to be incomplete; recommend additional  
7                 measures that should be taken with respect to future investigations in order to satisfy  
8                 this Agreement; and review and evaluate disciplinary actions or other interventions  
9                 taken as a result of misconduct investigations.
- 10          4.     Quality and timeliness, from appropriate samples, of OPD use of force incident  
11                 reports and use of force (K-4) investigations; review and evaluation of actions of  
12                 OPD's Use of Force (K-4) Board and Firearms-Discharge Board of Review (K-3);  
13                 and review and evaluation of disciplinary actions or other interventions taken as a  
14                 result of use of force investigations or K-3 and K-4 Board reviews.
- 15          5.     If the Monitor determines that any use of force investigation or internal (IAD or  
16                 Division-level) investigation/report which has been adjudicated or otherwise  
17                 disposed or completed, is inadequate under this Agreement, the Monitor shall confer  
18                 with the Chief of Police, IAD Commander and the Inspector General, and provide a  
19                 confidential written evaluation to the Department and the Court. Such evaluation  
20                 shall be for the purpose of assisting the Chief of Police in conducting future  
21                 investigations, and shall not obligate the Department to reopen or re-adjudicate any  
22                 investigation.
- 23          6.     Implementation of provisions of this Agreement related to OPD training, including  
24                 changes to the FTO program.
- 25          7.     OPD's development and implementation of PIMS as required by this Agreement,  
26                 including any supervisory action taken in response to analyses from such a system.

- 1 8. City/OPD's Performance Appraisal System.
- 2 9. Compliance with provisions in this Agreement relating to command, management  
3 and supervisory duties.
- 4 10. The Monitor may request information about "court related" problem officers from  
5 OPD's MLL, the Office of the District Attorney (DA), or the Office of the Public  
6 Defender (PD). All information provided to the Monitor by the DA and/or PD shall  
7 be confidential and serve as a "check and balance" of the PIMS.
- 8 11. Other reviews as deemed relevant, such as sampling cases developed from the  
9 directives targeting specific geographic areas, to ensure that OPD enforcement  
10 activities fully comply with all applicable Department procedures and federal and  
11 state law.  
12 When appropriate, the reviews and evaluations shall include, at a minimum, annual  
13 audits of stratified random samples.

14 **I. Reports**

15 During the first two (2) years of this Agreement, the Monitor shall issue quarterly reports to  
16 the parties and to the Court. Thereafter, the Monitor shall issue semi-annual reports to the parties  
17 and the Court. At any time during the pendency of this Agreement, however, the Monitor may issue  
18 reports more frequently if the Monitor determines it appropriate to do so. These reports shall not  
19 include information specifically identifying any individual member/employee. Before issuing a  
20 report, the Monitor shall provide to the parties a draft for review to determine if any factual errors  
21 have been made, and shall consider the parties' responses; the Monitor shall then promptly issue  
22 the report. All efforts to make these reports available to the general public shall be made, including  
23 posting on the Department's web site, unless the Court orders that the reports or any portions of the  
24 reports should remain confidential. In addition, public disclosure of the reports and any information  
25 contained therein shall comply with the Public Safety Officers' Procedural Bill of Rights.

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1 **J. Meetings**

2 1. During the first year of this Agreement, the Monitor shall conduct monthly meetings that  
3 shall include representatives of OPD, the City Attorney's Office, the City Manager's Office, the  
4 Oakland Police Officers' Association, and plaintiffs' counsel. These meetings may be continued  
5 beyond the first year at the request of the parties to this Agreement. The purpose of these meetings  
6 is to ensure effective and timely communication between the Monitor, OPD, the City Attorney's  
7 Office, the City Manager's Office, the Oakland Police Officers' Association and plaintiffs' counsel  
8 regarding the development of procedures and policies under the Agreement, implementation,  
9 compliance and information-access issues. Throughout the duration of this Agreement, directives,  
10 policies and procedures developed by OPD pursuant to this Agreement shall be provided to  
11 plaintiffs' counsel for review and comment as a part of the Department's existing staffing process.  
12 Written comments may be returned to the Department by the specified deadline, or verbal  
13 comments may be given at the monthly meetings.

14 2. The Monitor shall also convene meetings with representatives of OPD, City Attorney's  
15 Office, City Manager's Office, the Oakland Police Officers' Association and plaintiffs' counsel to  
16 provide a forum for the discussion and comment of the Monitor's reports before the reports are  
17 issued to the Court. The plaintiffs' counsel and their retained experts and/or consultants shall be  
18 compensated by the City up to but not to exceed Fifty Thousand Dollars (\$50,000); this amount  
19 includes all fees and costs over the duration of this Agreement for their participation in the review  
20 of policies called for in this Agreement. The plaintiffs' counsel shall submit to the City, on an  
21 annual basis during the duration of the Agreement, a statement of such fees and costs.

22 **K. Access and Limitations to OPD Documentation and Staff**

23 1. By policy, OPD personnel shall be required to cooperate fully with the Monitor and  
24 to provide access to information and personnel in a timely fashion. The Monitor shall have the right  
25 to interview any member/employee of OPD pursuant to the provisions of this Agreement.

26 2. Except as restricted below, the City and OPD shall provide the Monitor with full and

1 unrestricted access to all OPD staff, facilities and non-privileged documents (including databases)  
2 necessary to carry out the duties assigned to the Monitor in a timely fashion. The Monitor shall  
3 have the right to interview any member/employee of OPD pursuant to the provisions of this  
4 Agreement. The Monitor shall cooperate with the City and the Department to access personnel and  
5 facilities in a reasonable manner that, consistent with the Monitor's responsibilities, minimizes  
6 interference with daily operations. This right of access shall include all documents regarding use of  
7 force data, policies and analyses. The Monitor shall provide the City or Department with reasonable  
8 notice of a request for copies of documents. Upon such request, the City and the Department shall  
9 provide the Monitor with copies (electronic, where readily available, or hardcopy) of any  
10 documents to which the Monitor is entitled access under this Agreement. The Monitor shall  
11 maintain all documents obtained from the City, OPD or the plaintiffs' counsel in a confidential  
12 manner and shall not disclose non-public information to any person or entity other than the Court or  
13 the parties, absent written notice to the City and either consent by the City or a Court order  
14 authorizing disclosure.

15         3.       The Monitor shall have access to OPD personnel medical records, generally, if  
16 permission for such access is granted by the applicable member/employee, or the information from  
17 such records is otherwise contained in investigative files.

18         4.       For any other OPD personnel medical records reasonably necessary to carry out the  
19 duties assigned to the Monitor by this Agreement, the Monitor shall notify the Court and the City in  
20 writing of the need for such documents, and the City shall so notify the affected member/employee.  
21 The Court, the City, or the affected member/employee may, and the City if requested by the  
22 affected member/employee shall, notify the Monitor in writing within 10 days (excluding  
23 weekends, and federal or state holidays) of any objection they may have to such access. If the  
24 parties, the Monitor and, where applicable, the affected member/employee are unable to resolve  
25 any such objection, and the Monitor continues to believe that the documents in question are  
26 reasonably necessary to assist the Monitor, the Monitor may seek Court authorization for access to

1 such documents, subject to any appropriate protective orders. The City shall assert applicable  
2 defenses and privileges from disclosure and protections of such records for the City and the  
3 affected member/employee. Any documents obtained by this procedure shall be treated as  
4 confidential.

5 **L. Limitations to Personal and Confidential Information**

6 Nothing in this Agreement shall be construed to require disclosure of strictly personal  
7 information not material to implementation of this Agreement. Personal information includes, but is  
8 not limited to, background investigations, personal financial information other than compensation  
9 paid by the City, personal medical (including psychological) information, and residential or marital  
10 information. The Monitor shall not access attorney-client privileged information or work-product  
11 information. If the City or OPD objects to the access to any material, the City shall state why the  
12 material is not relevant, or that the information is privileged or otherwise confidential, and shall  
13 provide a privilege log. The City and OPD acknowledge that in order to evaluate the performance  
14 appraisal system, the disciplinary system for staff, the PIMS system, IAD investigations and other  
15 aspects of OPD, the Monitor will need substantial access to information about individual members,  
16 information about situations which may be currently in litigation or which may be the subject of  
17 future litigation, and information related to ongoing criminal investigations and prosecutions to the  
18 extent that disclosures of such information to the Monitor may not compromise or may not  
19 reasonably tend to compromise the integrity of the pending criminal investigation. If, after efforts  
20 among the parties to resolve the disagreement, the objection remains, the Court shall make the final  
21 determination.

22 **M. Access to Criminal Investigation Files**

23 1. The Monitor shall have direct access to all documents in criminal investigation files  
24 that have been closed by OPD. The Monitor shall also have direct access to all arrest reports,  
25 warrants and warrant applications, whether or not contained in open criminal investigation files;  
26 where practicable, arrest reports, warrants and warrant applications shall be obtained from sources

1 other than open criminal investigation files.

2           2.       The Monitor shall have access to documents containing confidential information  
3 prepared for and contained solely in open criminal investigations of OPD personnel reasonably  
4 necessary to monitor compliance with this Agreement (other than arrest reports, warrants and  
5 warrant applications which shall be subject to the general access provisions).

6           3.       If the Monitor reasonably deems that access to documents contained solely in either:

7           a.       Open criminal investigation files, which investigations have been open for  
8 more than ten months; or

9           b.       Open criminal investigation files of OPD personnel, which investigations  
10 have been open for less than ten months, is necessary to carry out the duties  
11 assigned to the Monitor by this Agreement, the Monitor shall notify the  
12 Court and the City, in writing, of the need for such documents. After  
13 notification by the Monitor, either the Court or the City may respond in  
14 writing to the Monitor within ten days (excluding weekends, and federal or  
15 state holidays), should either have any objection to such access. If the parties  
16 and the Monitor are unable to resolve any such objection, and the Monitor  
17 continues to believe that the documents in question are reasonably necessary  
18 to assist the Monitor, the Monitor may seek Court authorization for access to  
19 such documents, subject to any appropriate protective orders. Any  
20 documents obtained by this procedure shall be treated as confidential.

21 **N.    Access to Intelligence Files**

22           The access provisions of the previous paragraphs do not apply to documents contained  
23 solely in Anti-Terrorist files, or solely in Intelligence files, or Investigative Notes files or similar  
24 files in joint task forces with other law enforcement agencies.

25 **O.    Access to “Whistle Blowers”**

26           The Monitor shall have full access to any “whistle blower” who wishes to communicate

1 with the Monitor. The Monitor shall be informed of any and all “whistle blower” reports made by  
2 such OPD personnel. The Monitor shall not be given the name of any OPD member/employee who  
3 uses the confidential reporting process described above and who indicates that he or she does not  
4 want their names given to the Monitor.

5 **P. Testimony**

6 The Monitor shall be an agent of the Court and may testify in this case regarding any matter  
7 relating to the implementation, enforcement or dissolution of the Agreement. The Monitor shall not  
8 testify and/or respond to subpoenas or documents in other matters relating to the City and OPD,  
9 except as required or authorized by the Court. The Monitor shall not be retained by any current or  
10 future litigant or claimant in a claim or suit against the City and its employees.

11 **Q. Confidential Records Maintenance**

12 The records maintained by the Monitor shall not be deemed public records. All documents,  
13 records, computerized data, and copies of any reports or other information provided to the monitor,  
14 as well as any reports, memoranda or other information produced by the monitor, shall be  
15 maintained for a period of 12 years following the entry of this Agreement.

16 **R. Court Resolution of Disputes**

17 In the event the Monitor reports that the duties and the responsibilities of the Monitor, as  
18 specified in this Agreement, cannot be carried out because of lack of cooperation, failure to provide  
19 appropriate data and documents otherwise called for in this Agreement, lack of timely response or  
20 other forms of unwarranted delays from OPD or the City, the Court may impose such remedies as it  
21 deems just and necessary. Plaintiffs’ counsel may bring motions based on their belief that the City  
22 or OPD is failing to comply with the provisions of this Agreement. The City may also bring  
23 motions to amend the Agreement, should it determine such changes are necessary to achieve the  
24 overall purposes of the Agreement. Before any such motions are brought, the parties shall meet and  
25 confer following the exchange of a letter brief. Should it be necessary to continue the meet and  
26 confer process, the parties may request mediation before Magistrate Judge Larson, another



1 Magistrate Judge mutually requested, or another Magistrate Judge as designated by the Court. The  
2 Court shall hold hearings on such matters and, if plaintiffs prevail, plaintiffs' counsel shall be  
3 entitled to their costs and legal fees. Should the plaintiffs not prevail, the standards set forth in  
4 FRCP Rule 11 and 42 USC Section 1988 shall apply so as to determine if the City shall be entitled  
5 to an award of fees and costs. Additionally, in the event of substantial and/or chronic non-  
6 compliance with provisions of this Agreement, the Court may impose such sanctions and/or  
7 remedies as it deems just and necessary, including, but not limited to, attorneys' fees.

8 **S. Petitions for Relief**

9 At any time during the pendency of this Agreement, the City may petition the Court for  
10 relief from any provisions of this Agreement. However, such relief shall not be granted unless the  
11 City demonstrates that all good faith efforts have been undertaken to comply with the subject  
12 provision, that the provision is inconsistent with the overall purposes of the Agreement, and that  
13 implementation of the provision is operationally and/or fiscally onerous or impracticable.

14 **TASK 50 (Section XIV)**

15 **XIV. COMPLIANCE UNIT**

16 **A. Compliance Unit Liaison Policy**

17 Within 30 days from the effective date of this Agreement, OPD shall hire and retain, or  
18 reassign current OPD members/employees, to serve as an OPD Compliance Unit for the duration of  
19 this Agreement. The Compliance Unit shall serve as the liaison between OPD, the Monitor and the  
20 plaintiffs' counsel, and shall assist with OPD's compliance with the Agreement. Among other  
21 things, the Compliance Unit shall:

- 22 1. Facilitate the provision of data and documents;
- 23 2. Provide to the Monitor access to OPD personnel, as needed;
- 24 3. Ensure that documents and records are maintained as required by the Agreement;
- 25 4. Prepare a semi-annual report describing the steps taken, during that reporting period,

26 to comply with the provisions of the Agreement.

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3 **TASK 51 (Section XIV)**

4 **B. Compliance Audits and Integrity Tests**

5 Upon implementation of policies and procedures pursuant to this Agreement, OPD shall  
6 conduct annual audits of stratified, random samples of:

- 7 1. Arrest and offense reports, and follow-up investigation reports, including, but not  
8 limited to, arrests for narcotics-related possessory offenses not discovered in the course of a search  
9 pursuant to arrest for other crimes;
- 10 2. Use of force incident reports and use of force investigations;
- 11 3. Complaint processing and investigation, to include but not limited to timeliness and  
12 quality;
- 13 4. Mobile Data Terminal traffic;
- 14 5. Personnel evaluations;
- 15 6. Citizen accessibility to the complaint process and the availability of complaint  
16 forms.

17 The review of documents shall entail, at a minimum, a review for completeness of the  
18 information contained, and an examination for inappropriate “boilerplate” language, inconsistent  
19 information, or lack of articulation of the legal basis for the applicable action.

20 OPD shall conduct audits of the identified areas annually, unless the timing of an IMT audit  
21 of the same area makes an OIG audit redundant or unnecessary. If the OIG determines an audit of  
22 any of the six areas to be redundant or unnecessary, an audit of another area outlined in this  
23 Agreement may be substituted that would result in identifying and correcting other pressing  
24 compliance issues. The OIG shall notify the IMT and determine due dates for substitute audits.  
25 Audit methodology should include random and stratified sampling, where appropriate.

26 The results of audits conducted pursuant to this paragraph shall be included in OPD’s semi-

1 annual compliance reports.

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3 **TASK 52 (Section XV)**

4 **XV. HOUSEKEEPING PROVISIONS**

5 **A. Reports and Records to be Maintained by the OPD**

6 1. The City and OPD shall file regular status reports with the Court delineating the  
7 steps taken by OPD to comply with the provisions of this Agreement. Commencing within 120  
8 days from the effective date of this Agreement, these reports shall be filed twice annually, at six (6)  
9 month intervals, until this Agreement is terminated.

10 2. During the term of this Agreement, the City and OPD shall maintain all records  
11 necessary to document compliance with the Agreement.

12 **B. Implementation and Jurisdiction**

13 1. This Agreement shall become effective on the date of entry by the Court. The  
14 implementation of the provisions of this Agreement is as specified in each provision.

15 2. All deadlines stated in this document are to be calculated as business days, not calendar  
16 days, unless otherwise specified. The deadlines, specified in Section XV, paragraph C (Meet and  
17 Confer), are to be calculated as calendar days. The calculation of days in the Settlement Agreement will  
18 be based on the Federal Court calendar referencing holidays. The deadlines provided for  
19 implementation specified in the Settlement Agreement are mandatory deadlines and failure to meet  
20 these deadlines will result in the City being deemed out of compliance unless the Monitor and or the  
21 Court deems otherwise. Appended to this Agreement is the Department's Business Implementation  
22 Plan. The interim dates specified in this Plan are recommended dates to assist the Department's critical  
23 path planning of the overall implementation of the reforms. These interim dates may be adjusted based  
24 on operational efficiencies and budgetary restraints.

25 3. The Court shall retain jurisdiction over this action, for all purposes, during the term  
26 of this Agreement. This Agreement shall remain in effect for five (5) years following the entry by

1 the Court, but shall, under no circumstances, exceed seven (7) years. Without further action, the  
2 Agreement shall terminate five (5) years from the effective date, unless the Monitor reports to the  
3 Court that an extension of time, not to exceed two (2) years, is reasonably necessary to serve the  
4 purposes of the Agreement. The City may contest the extension, by motion to be heard by the  
5 Court, no later than 60 days prior to the expiration of the Agreement. The City may present  
6 evidence to the Court in support of the motion. At such hearing, the City has the burden to establish  
7 substantial compliance with the Agreement during the five-year period. “Substantial compliance” is  
8 defined, for the purposes of this Agreement, as meaning that OPD has complied with the material  
9 provisions of the Agreement. Materiality is determined by reference to the overall objectives of the  
10 Agreement. Non-compliance with technicalities or, otherwise, minor failures to comply while  
11 generally complying with the Agreement, shall not be deemed failure to substantially comply with  
12 the Agreement.

13         4.       The City and the plaintiffs may jointly stipulate, by and through their counsel of  
14 record, to make changes, modifications and amendments to this Agreement. Such stipulations shall  
15 be reported to the Monitor and are subject to the approval of the Court.

16         5.       If any term or provision of this Settlement Agreement shall be found to be void, invalid,  
17 illegal or unenforceable by the Court, notwithstanding such determination, such term or provision shall  
18 remain in force and effect to the extent allowed by such ruling. In addition, notwithstanding such  
19 determination, all other terms and provisions of this Settlement Agreement shall remain in full force  
20 and effect.

21         6.       The City shall not be deemed to be in violation of any provision of this Agreement  
22 by reason of the failure to perform any of its obligations hereunder to the extent that such failure is  
23 due to unforeseen circumstances. “Unforeseen circumstances” include conditions not reasonably  
24 foreseeable by the City at the time the Agreement was executed: acts of God, catastrophic weather  
25 conditions, riots, insurrection, war, acts of a court of competent jurisdiction or any similar  
26 circumstance for which the City is not responsible and which is not within the City’s control.

1 Delays caused by unforeseen circumstances shall reasonably extend the time of compliance. The  
2 City may seek from the Court a reasonable extension of time to comply with the provision of the  
3 Agreement, or other relief, as soon as practicable, but no later than 45 days of the time the City  
4 becomes aware of the unforeseen circumstances. The City shall issue a notice to the Court, Monitor  
5 and plaintiffs' counsel. The notice shall include a description of the unforeseen circumstances and  
6 the steps taken to minimize the risk of non-compliance.

7 7. If any unforeseen circumstance occurs which causes a failure to timely carry out any  
8 requirements of this Agreement, the City shall notify the Court and plaintiffs' counsel in writing  
9 within 20 calendar days of the time that the City becomes aware of the unforeseen circumstance  
10 and its impact on the City's ability to perform under the Agreement. The notice shall describe the  
11 cause of the failure to perform and the measures taken to prevent or minimize the failure. The City  
12 shall implement all reasonable measures to avoid or minimize any such failure.

13 8. If plaintiffs' counsel and the City agree or the Court determines that delay in  
14 meeting any schedule or obligation in this Agreement has been caused by unforeseen circumstances  
15 then, subject to the provisions of Section XV, paragraph B (4), the time for performance shall be  
16 extended for a period up to that equal to such delay.

17 **C. Meet-and-Confer Process**

18 1. As part of any meet-and-confer or consulting process demanded by OPD  
19 member/employee bargaining units, as described on page 2, lines 12-20, the City shall discuss and  
20 seek to resolve with those OPD member/employee bargaining units any disputes or uncertainties  
21 regarding which provisions are subject to such process. The City shall identify and provide to the  
22 OPD member/employee bargaining units the provisions of this Agreement such as it believes are  
23 subject to the process being demanded. Within 30 days of the date of the completion of the meet-  
24 and-confer process, the City shall report to the Court the results of any such discussion on this  
25 question. In the event that the City and the OPD member/employee bargaining units are unable to  
26 resolve the list of the provisions of the Agreement which are subject to the meet-and-confer

1 process, the City shall seek declaratory relief from this Court to resolve such issue, provided that  
2 the OPD member/employee bargaining units shall receive notice and an opportunity to be heard by  
3 the Court on this issue.

4 2. Following the resolution of any dispute or uncertainty regarding the issues subject to  
5 a demanded process, the City shall continue with that process. The City shall report to the Court on  
6 the progress of such process. The reports shall include:

7 a. Proposed agreements with the OPD member/employee bargaining units  
8 relating to provisions of this Agreement as they are resolved by the City  
9 arising from the meet-and-confer process as they are determined, and

10 b. A list of provisions identified, pursuant to paragraph (1) of this Section, such  
11 as are scheduled for implementation within 45 days.

12 3. With regard to a matter that is not a mandatory subject of collective bargaining, the  
13 City shall not propose or enter into any such agreement with OPD member/employee bargaining  
14 units that will adversely affect the City's timely implementation of this Agreement. With regard to  
15 all such agreements with the OPD member/employee bargaining units, the City shall not make  
16 them effective before the expiration of 45 days after such proposed agreement is reported to the  
17 Court. The time for implementation of any provisions of this Agreement affected by such  
18 agreement with the OPD member/employee bargaining units, concerning a mandatory subject of  
19 bargaining, shall be extended for such 45-day period. If the Court determines that implementation  
20 of such proposed agreement would not significantly impact the City's ability to implement the  
21 affected provision(s) of this Agreement, the Court shall waive some or all of such 45-day period,  
22 and the City shall initiate such implementation. If such determination is not made, the parties shall  
23 discuss appropriate clarifications or modifications to this Agreement. Where the parties believe that  
24 a modification of this Agreement is appropriate, they shall present such modification to the Court  
25 for its consideration. The implementation date for the affected provision(s) of this Agreement shall  
26 be extended while the matter is before the Court, unless the Court orders earlier implementation.

**TASK 52**  
**Section XV.C**

1 Any motion concerning a proposed bargaining agreement with the OPD member/employee  
2 bargaining units, pertaining to the provisions of this Agreement, shall be brought during the 45-day  
3 period.

4 4. In the event that the City believes the meet-and-confer process, consultation, or any  
5 such proposed agreement or resolution of a dispute with OPD member/employee bargaining units  
6 resulting from the meet-and-confer process, will impair the City's ability to timely implement one  
7 or more provisions of this Agreement, and the OPD member/employee bargaining units and the  
8 City are unable to agree upon or reach an appropriate resolution, then the City shall so report to the  
9 Court and shall seek appropriate declaratory or injunctive relief (including specific performance) on  
10 such provision(s). The plaintiffs' counsel also may seek relief from the Court in the event that the  
11 plaintiffs' counsel believe the meet-and-confer process, consultation, or any such proposed  
12 agreements or resolution of disputes with OPD member/employee bargaining units will impair the  
13 City's ability timely to implement one or more provisions of this Agreement, and the plaintiffs'  
14 counsel and the City are unable to agree on an appropriate resolution. Any such motion shall  
15 demonstrate the ways in which the City would be so impaired.

16 5. In ruling on a motion under page 2, lines 12-20, or in regard to any meet and confer  
17 issue identified pursuant to Section XV, paragraphs C (1), (2) and (3), the Court shall consider,  
18 *inter alia*, whether the City's proposed agreements, or the resolution of disputes with OPD  
19 member/employee bargaining units which address provision(s) of this Agreement, are consistent  
20 with the objectives underlying such provision(s), and whether the City has satisfied its labor  
21 relations obligations under state and local law. On any such motion, if the City has engaged in good  
22 faith efforts (including consideration of the manner in which the City carried out any applicable  
23 meet-and-confer or consulting obligations) to be able to implement this Agreement in a timely  
24 manner, the City:

- 25 a. Shall not be in contempt or liable for any other penalties, and
- 26 b. May be potentially held in breach for such provision(s) only for the limited

1 purpose of the issuance of declaratory or injunctive remedies (including  
2 specific performance), but may not be regarded as in breach for any other  
3 purpose.

4 6. If there is a significant change in a state law that impairs or impedes the City's  
5 ability to implement this Agreement, then each of the parties reserves the right to seek declaratory  
6 relief or other relief from the Court regarding implementation of the affected provisions of this  
7 Agreement in light of the change in state law.

8 7. The parties agree to defend this Agreement. The parties shall notify each other of  
9 any Court or administrative challenge to this Agreement. In the event any provision of this  
10 Agreement is challenged in any local or state court, the parties may seek removal of the action to a  
11 federal court.

12 8. In order to meet this provision of the Settlement Agreement, and facilitate the  
13 orderly dissemination of new or revised directives, policies and procedures, the following  
14 procedures are recommended:

- 15 a. Upon final draft approval by the Chief of Police, the unsigned draft shall be  
16 forwarded by hand delivery, facsimile, or United States mail to the  
17 Independent Monitor, plaintiff's counsel, and the OPOA.
- 18 b. If the new or revised directive, policy or procedure does not require the Chief  
19 of Police's signature, the Office of Inspector General will forward by either  
20 hand delivery, facsimile or United States mail to the Independent Monitor,  
21 plaintiff's counsel and the OPOA.
- 22 c. The plaintiff's counsel and the OPOA shall have fifteen (15) calendar days  
23 from the date of receipt of any draft directive, policy or procedure to make  
24 written comments. All written or verbal comments or recommendations  
25 should be directed to the Office of Inspector General.
- 26 d. Any party may request that a discussion over any draft directive, policy or



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procedure be placed on the agenda for discussion at the next monthly meeting required by this Settlement Agreement. Placing of the item on this agenda shall automatically extend any deadlines associated with the directive, policy or procedure until either 15 calendar days (or the next regular work day if the 15<sup>th</sup> day falls on a Saturday, Sunday, or holiday) after the next monthly meeting where the item is discussed or, if the item is not resolved at the next monthly meeting, until 15 calendar days (or the next regular work day if the 15<sup>th</sup> day falls on a Saturday, Sunday, or holiday) after the monthly meeting at which the item is resolved and agreed to by the parties as reflected in the minutes of the monthly meeting in the event of an extension as contemplated by this paragraph, or in the case of any other directive, policy or procedure where the parties desire to extend the deadline, the parties can stipulate to a different deadline date other than as set forth above without Court approval, with said stipulation to be reflected in a letter agreement and in the minutes of the monthly meeting.

e. In the event the plaintiffs counsel or the OPOA fails to respond to any draft directive, policy or procedure within fifteen (15) calendar days, (or the next regular work day if the 15<sup>th</sup> day falls on a Saturday, Sunday, or holiday) the parties shall have deemed to have no comments or recommendations.

f. Once the draft is returned to the Department, drafts requiring the Chiefs signature shall be reviewed by the Chief of Police for final approval. The Office of Inspector General and the appropriate Task Manager will review drafts not requiring the Chiefs signature.

**END OF DOCUMENT**

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