

# **Oakland Police Department**



## **Negotiated Settlement Agreement**

**United States District Court  
Northern District of California**

**Delphine Allen, et al.,  
Plaintiffs,  
v.  
City of Oakland, et al.,  
Defendants.**

**Updated per Stipulations as of February 4, 2004**

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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 in  
9 the areas of supervision, training and accountability mechanisms, and to enhance the ability of the  
10 Oakland Police Department (hereinafter “the Department” or “OPD”) to protect the lives, rights,  
11 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  
15 City recognizes that the implementation of certain provisions of this Agreement may require  
16 compliance with meet-and-confer processes. The City shall comply with any such legal  
17 requirements and shall do so with the goal of concluding such processes in a manner consistent  
18 with the purposes of this Agreement and to otherwise permit the City to timely implement this  
19 Agreement. The City shall give appropriate notice of this Agreement to the OPD  
20 member/employee bargaining units to allow such processes to begin, as to this Agreement, as filed  
21 with the Court.

22 This Agreement is binding upon the parties hereto, by and through their officials, agents,  
23 employees, successors and attorneys of record. This Agreement is enforceable only by the parties,  
24 as described elsewhere in this document. No person or entity is intended to be a third-party  
25 beneficiary of the provisions of this Agreement for the purposes of any civil, criminal, or  
26 administrative action, and accordingly, no person or entity may assert any claim or right as a

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

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

## 11 **II. DEFINITIONS**

### 12 **A. Bureau:**

13 The first subordinate organizational unit within the Department.

### 14 **B. Citizen:**

15 Any individual person, regardless of citizenship status.

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

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

### 18 **D. Command Staff**

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

### 20 **E. Complaint**

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

### 25 **F. Effective Date**

26 The date this Agreement was entered by the Court.

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)  
8 K-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

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.

1 **Q. Personnel Information Management System (PIMS)**

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.

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

24 With the exception of subparagraphs G, H, I, J, K, M, N, and O, and as otherwise set forth  
25 below, within 616 days from the effective date of this Agreement, the Chief of Police shall revise  
26 Departmental policy and procedures and develop a manual for conducting complaint investigations.

1 Training shall be provided to ensure all personnel have received, understand, and comply with new  
2 and revised Departmental policies and procedures. For the policies that are developed in  
3 paragraphs 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  
4 III.O., all training on those policies shall be completed on or before June 1, 2004. The IAD  
5 Procedural Manual shall include, at a minimum, the following provisions of this Section:

6 **A. IAD Staffing and Resources**

- 7 1. Assignment;
- 8 2. Rotation;
- 9 3. Training and qualifications of members and other personnel in IAD;
- 10 4. Appropriate background checks on IAD personnel;
- 11 5. Confidentiality of IAD information.

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

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

15 1. On or before December 1, 2003, OPD shall develop policies regarding timeliness  
16 standards for the completion of Internal Affairs investigations, administrative findings and  
17 recommended discipline.

18 2. Compliance with these timeliness standards shall be regularly monitored by IAD  
19 command and the Department's command staff. If IAD experiences an unusual proliferation of  
20 cases and/or workload, IAD staffing shall be increased to maintain timeliness standards.

21 **C. IAD Integrity Tests**

22 IAD shall be proactive as well as reactive.

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

25 2. IAD shall have frequency standards, among other parameters, for such integrity  
26 tests.

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

2 1. On or before December 1, 2003, OPD shall develop a policy regarding an informal  
3 complaint resolution process which may be used by supervisors and IAD to resolve minor  
4 complaints which do not rise to the level of misconduct as described in Section III, paragraph H (1).  
5 This process shall document the receipt of the complaint, date, time, location, name or the person  
6 making the complaint, the name of the person receiving the complaint, how the matter was resolved  
7 and that the person making the complaint was advised of the formal complaint process. The  
8 documentation shall be forwarded to IAD for review. If the informal complaint resolution process  
9 fails to resolve the complaint or if the person making the complaint still wishes to make a formal  
10 complaint, the person receiving the complaint shall initiate the formal complaint process pursuant  
11 to Section III, paragraph E. OPD personnel shall not unduly influence persons making a complaint  
12 to consent to the informal complaint resolution process.

13 2. IAD shall establish a central control system for complaints and Departmental  
14 requests to open investigations. Every complaint received by any supervisor or commander shall be  
15 reported to IAD on the day of receipt. If IAD is not available, IAD shall be contacted at the start of  
16 the next business day. Each complaint shall be assigned an Internal Affairs case number and be  
17 entered into a complaint database with identifying information about the complaint. OPD  
18 personnel shall notify IAD and the Chief of Police, or designee, as soon as practicable, in cases  
19 likely to generate unusual public interest.

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

22 **E. Complaint Procedures for IAD**

23 1. On or before December 1, 2003, OPD shall develop a policy so that, with the  
24 exception of the provisions listed in paragraph E (2), below, OPD personnel who become aware  
25 that a citizen wishes to file a complaint shall bring such citizen immediately, or as soon as  
26 circumstances permit, to a supervisor or IAD or summon a supervisor to the scene. If there is a

1 delay of greater than three (3) hours, the reason for such delay shall be documented by the person  
2 receiving the complaint. In the event that such a complainant refuses to travel to a supervisor or to  
3 wait for one, the member/employee involved shall make all reasonable attempts to obtain  
4 identification, including address and phone number, as well as a description of the allegedly  
5 wrongful conduct and offending personnel, from the complainant and any witnesses. This  
6 information, as well as a description of the complaint, shall immediately, or as soon as  
7 circumstances permit, be provided, in writing, to the unit commander or, in his/her absence, the  
8 Watch Commander, and shall be treated as a complaint, as specified in this paragraph. The  
9 commander notified of the complaint shall ensure that IAD is notified.

10 2. Except for complaints being handled by the informal complaint resolution process in  
11 Section III, paragraph D (1), inmates being processed at or held in the Oakland City Jail shall have  
12 the opportunity to file a complaint against an arresting officer or any other member/employee of  
13 OPD.

14 a. On or before December 1, 2003, a police complaint form shall be developed,  
15 and copies of that form shall be available at the Jail on a 24-hour basis. Any inmate requesting a  
16 complaint form from any member/employee shall be given a copy of the form immediately, or as  
17 soon as circumstances permit. If the delay is greater than three (3) hours, the reason for such delay  
18 shall be documented by the person or Watch Supervisor delivering the form. The complaint form  
19 shall be printed on three-part carbonless paper. The three (3) parts to be completed and distributed  
20 as follows:

- 21 1) The white copy (original) shall be given to the shift supervisor at the  
22 Jail, who shall call IAD with the complaint information and then send  
23 the original form to IAD. The phone call shall be documented on the  
24 form, by the shift supervisor.
- 25 2) The canary copy shall be forwarded to the Jail Commander, who shall  
26 ensure that any such written complaint received is delivered and



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logged with IAD.

3) The pink copy shall be given to the inmate completing the form, for his or her records.

b. OPD personnel who become aware that an inmate wishes to file a complaint shall inform the inmate about the complaint process and provide the individual with a copy of the complaint form.

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

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

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

- a. *Unfounded*: The investigation disclosed sufficient evidence to determine that the alleged conduct did not occur. This finding shall also apply when individuals named in the complaint were not involved in the alleged act.
- b. *Sustained*: The investigation disclosed sufficient evidence to determine that the alleged conduct did occur and was in violation of law and/or Oakland Police Department rules, regulations, or policies.
- c. *Exonerated*: The investigation disclosed sufficient evidence to determine that the alleged conduct did occur, but was in accord with law and with all Oakland Police Department rules, regulations, or policies.
- d. *Not Sustained*: The investigation did not disclose sufficient evidence to

1 determine whether or not the alleged conduct occurred.

2 e. *Filed*: The investigation cannot be completed due to the unavailability of a  
3 witness or victim, or, the administrative investigation has been held in  
4 abeyance pending the outcome of criminal charges against the member or  
5 employee. “Filed” is not a final disposition, but an indication that a case is  
6 pending further developments that all allow the completion of investigation.  
7 All “Filed” cases shall be reviewed quarterly, by the IAD Commander or  
8 his/her designee, to determine whether the conditions that prevented  
9 investigation and final disposition have changed.

10 6. Any member or employee who is a subject of an internal investigation, as well as  
11 any other member or employee on the scene of an incident at which misconduct has been alleged by  
12 a complainant, shall be interviewed.

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

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

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

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

- 21 1. A recordable, toll-free complaint hotline shall be established. The hotline, staffed by  
22 OPD personnel, shall have an advisement that the call is being recorded.
- 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  
25 locations.
- 26 3. OPD shall accept anonymous complaints. To the extent possible, OPD shall ask

1 anonymous complainants for corroborating evidence. OPD shall investigate  
2 anonymous complaints to the extent reasonably possible to determine whether the  
3 allegation can be resolved.

4 4. OPD personnel shall have available complaint forms and informational brochures on  
5 the complaint process in their vehicles at all times while on duty.

6 Members/employees shall distribute these complaint forms and informational  
7 brochures when a citizen wishes to make a complaint, or upon request.

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

10 6. Complaint forms and informational brochures shall be translated consistent with  
11 City policy.

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

13 **H. Classifications of Citizen Complaints**

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

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

18 a. The Class I offenses are:

19 1) Use of excessive force;

20 2) Fabrication of evidence, including the planting of inculpatory  
21 evidence;

22 3) Untruthfulness;

23 4) Knowingly and intentionally filing a false police report;

24 5) Insubordination;

25 6) Commission of a felony or serious misdemeanor;

26 7) Exhibition of bias or harassment, actions of a retaliatory nature, or

1 failure to take reasonable steps to prevent retaliation;

2 8) Solicitation or acceptance of gifts or gratuities;

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, Class I offenses shall be  
6 investigated by IAD investigators. Statements and interviews in Class I investigations shall be tape  
7 recorded, but not transcribed except at the request of the subject member/employee, complainant,  
8 command staff, Monitor, or the OIG.

9 2. Class II offenses shall include all other misconduct situations, such as rudeness, use  
10 of obscenities, lack of attention, timeliness of response, or other performance deficiencies. Class II  
11 investigations shall be conducted by the appropriate supervisor or manager, unless otherwise  
12 directed by the Chief of Police. Statements and interviews from OPD personnel in Class II  
13 investigations shall be tape recorded, but not transcribed except at the request of the subject  
14 member/employee, complainant, command staff, Monitor, or the OIG. When a unit commander or  
15 the assigned investigator encounters a Class I violation during a Class II, division-level  
16 investigation, he/she shall contact the IAD Commander. The IAD Commander shall consult with  
17 the Chief of Police to determine whether the investigation shall be forwarded to IAD or remain in  
18 the unit in which the Class II violation was originally assigned.

19 **I. Contact of Citizen Complainant**

20 On or before December 1, 2003, OPD shall develop a policy to ensure that citizen  
21 complainants shall be contacted, as soon as possible, by IAD or the investigator assigned to the  
22 investigation, to determine the nature, scope and severity of the complaint, as well as to identify  
23 potential witnesses and/or evidence as quickly as possible.

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

25 1. On or before December 1, 2003, OPD shall develop a policy to ensure that the  
26 investigator shall provide the member/employee with a brief synopsis of any complaint alleged

1 against them, but shall not allow the member/ employee to read the complaint itself or to review  
2 citizen or other witness statements prior to the member/employee's interview. Such synopses shall  
3 be preserved within the IAD file.

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

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

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

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

21 **L. Documentation of Pitchess Responses**

22 OPD shall implement an additional check on responses to Pitchess discovery motion  
23 responses.

24 **M. Investigation of Allegations of *Manual of Rules* Violations Resulting from**  
25 **Lawsuits and Legal Claims**

26 On or before December 1, 2003, OPD shall develop a policy to ensure that OPD shall

1 investigate allegations of *Manual of Rules* violations resulting from lawsuits involving misconduct  
2 and legal claims, and/or tort claims involving Class I and Class II violations, treating them in the  
3 same manner as other citizens' complaints.

4 1. The litigation and IA processes shall be handled separately to avoid either process  
5 being unnecessarily compromised should a personnel investigation be delayed, halted, not  
6 undertaken, or in any way modified because the underlying matter is in litigation.

7 2. Personnel investigations shall not be delayed in any manner because the underlying  
8 incident has resulted in litigation.

9  
10 **N. Reviewing Findings and Disciplinary Recommendations**

11 On or before December 1, 2003, OPD shall develop a policy to ensure that, except upon  
12 written authorization from the Chief of Police, the operational chain of command, from lieutenant  
13 up, shall be responsible for reviewing recommended findings and making disciplinary  
14 recommendations in sustained internal investigations.

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

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

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

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

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

26 Within 260 days from the effective date of this Agreement, the Chief of Police shall, based

1 on contemporary police standards and best practices, develop and implement policies to address the  
2 following standards and provisions:

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

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

- 8 a. Felonies;
- 9 b. Narcotics-related possessory offenses;
- 10 c. Where there is an investigated use of force;
- 11 d. Penal Code §§69, 148 and 243(b)(c).

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

16 **B. Unity of Command**

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

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

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

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

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





1 with no underlying offense leading to the search, and Penal Code §§69, 148 and 243(b)(c) arrests  
2 with no underlying offense. Failure to identify such patterns and instances of misconduct when the  
3 supervisors or commanders/managers knew or reasonably should have known of the misconduct  
4 shall constitute grounds for discipline.

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

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

13 **F. Command Staff Rotation**

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

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

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

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

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

25 The policy shall require that:

- 26 1. Members/employees notify their supervisor as soon as practicable following any

- 1 investigated use of force or allegation of excessive use of force.
- 2 2. In every investigated use of force incident, every member/employee using force, and
- 3 every member/employee on the scene of the incident at the time the force was used,
- 4 shall report all uses of force on the appropriate form, unless otherwise directed by
- 5 the investigating supervisor.
- 6 3. OPD personnel document, on the appropriate form, any use of force and/or the
- 7 drawing and intentional pointing of a firearm at another person.
- 8 4. A supervisor respond to the scene upon notification of an investigated use of force or
- 9 an allegation of excessive use of force, unless community unrest or other conditions
- 10 makes this impracticable.
- 11 5. OPD notify:
- 12 a. The Alameda County District Attorney’s Office immediately or as soon as
- 13 circumstances permit, following a use of lethal force resulting in death or
- 14 injury likely to result in death.
- 15 b. The City Attorney’s Office as soon as circumstances permit following the
- 16 use of lethal force resulting in death or serious injury. At the discretion of the
- 17 City Attorney’s Office, a Deputy City Attorney shall respond to the scene.
- 18 The Deputy City Attorney shall serve only in an advisory capacity and shall
- 19 communicate only with the incident commander or his/her designee.
- 20 c. Departmental investigators regarding officer-involved shootings, in
- 21 accordance with the provisions of Section V, paragraph H, of this
- 22 Agreement.
- 23 6. OPD enter data regarding use of force into OPD’s Personnel Information
- 24 Management System (PIMS).

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

26 An on-scene supervisor is responsible for completing an investigated Use of Force Report in

1 accordance with the provisions of Departmental General Order K-4, “Reporting and Investigating  
2 the Use of Force.”

3 1. OPD shall develop and implement a policy for conducting K-4 investigations that  
4 include, at a minimum:

- 5 a. A statement taken from the member(s)/employee(s) using force;
- 6 b. Separating and separately interviewing all officers at the scene;
- 7 c. A Supplemental Report from other members/employees on the scene or a  
8 statement taken, if deemed necessary by the investigating supervisor;
- 9 d. Identification and interviews of witnesses;
- 10 e. Consideration of discrepancies in information obtained from members,  
11 employees and witnesses, and statements in the reports filed;
- 12 f. Whether the force used was pursuant to a legitimate law-enforcement  
13 objective;
- 14 g. Whether the type and amount of force used was proportional to the resistance  
15 encountered and reasonably related to the objective the members/employees  
16 were attempting to achieve;
- 17 h. Whether the member/employee used reasonable verbal means to attempt to  
18 resolve the situation without force, if time and circumstances permitted such  
19 attempts;
- 20 i. Whether the force used was de-escalated or stopped reasonably when  
21 resistance decreased or stopped;
- 22 j. Whether arrest reports or use of force reports contain “boilerplate” or “pat  
23 language” (e.g., “fighting stance”, “minimal force necessary to control the  
24 situation”);
- 25 k. Whether, in these and other regards, the use of force was in compliance with  
26 OPD use of force policy;



1 death and/or an officer-involved shooting, shall be separated from each other as soon as practicable  
2 at the incident scene, and kept apart until they have completed their reports and been interviewed.

3 **C. Use of Force Review Board (UFRB)**

4 OPD shall develop and implement a policy to enhance the UFRB. The policy shall:

- 5 1. Set out procedures, membership and a timetable for UFRB review of use of force  
6 investigations, except in those incidents involving the discharge of firearms;
- 7 2. Require the UFRB to review all K-4 investigations;
- 8 3. Require the UFRB to make a recommendation as to whether the use of force was in  
9 policy or out of policy;
- 10 4. Require that any UFRB recommendation when the use of force was out of  
11 compliance shall be forwarded to the Internal Affairs Division for investigation;
- 12 5. Require that the UFRB not review any use of force allegation until the completion of  
13 all internal investigations;
- 14 6. Authorize the UFRB to recommend to the Chief of Police additional use of force  
15 training or changes in policies or tactics, or additional standards, investigatory  
16 policies, or training for use of force investigations;
- 17 7. Require the UFRB to conduct an annual review of use of force cases examined, so as  
18 to identify any patterns of use of force practices (including K-3) that may have  
19 policy or training implications, and thereafter, issue a report to the Chief of Police;
- 20 8. Require that the UFRB membership include, at a minimum, one member from the  
21 Training Division, one member from the Field Training Officer program, and either  
22 the Bureau of Field Operations Deputy Chief or his/her designee;
- 23 9. Minimally, that one member of the UFRB shall be replaced at least annually.

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

25 OPD shall continue to keep a log of Oleoresin Capsicum (OC) spray canisters checked out  
26 and used by any member or authorized employee. The log shall be computerized and electronically

1 accessible within one year of entry of this Agreement and regular reports shall be prepared and  
2 distributed.

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

4 OPD shall develop a policy to report, as soon as possible, any use of force situation, citizen  
5 complaint or other member-/employee-involved action in which there is apparent evidence of  
6 criminal misconduct by a member/employee to the Alameda County District Attorney's Office for  
7 their review and collaboration.

8 **F. IAD Investigation Priority**

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

15 **G. Firearms-Discharge Board of Review**

16 1. A Firearms-Discharge Board of Review shall be convened for every officer-involved  
17 firearms discharge, as defined in Departmental General Order K-3. The Board shall have access to  
18 tapes and/or transcripts of interviews of all personnel on the scene, including citizen witnesses, and  
19 shall be empowered to call in any OPD personnel it believes should testify.

20 2. OPD shall continue the policies and practices for the conduct of Firearms Discharge  
21 Boards of Review, as contained in Special Order 5095 (July 13, 2001).

22 **H. Officer-Involved Shooting Investigation**

23 OPD shall develop a policy to ensure that, in every officer-involved shooting in which a  
24 person is struck, Homicide and Internal Affairs investigators respond to the scene. The shooting  
25 investigation shall be conducted in partnership with, and when deemed appropriate by, the Alameda  
26 County District Attorney's Office. Interviews of the subject officer(s) shall be conducted jointly

1 with the appropriate staff from Homicide and the Office of the District Attorney. The District  
2 Attorney and City Attorney shall be notified in accordance with the provisions of Section V,  
3 paragraph A (5), of this Agreement. All evidentiary material shall be duplicated and provided to  
4 the Alameda County District Attorney's Office, the Internal Affairs Division, and the City  
5 Attorney's Office.

6 **I. Use of Camcorders**

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

8 **VI. REPORTING PROCEDURES**

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

11 **A. Misconduct**

12 OPD personnel shall report misconduct by any other member or employee of the  
13 Department to their supervisor and/or IAD. The policy shall state that corrective action and or  
14 discipline shall be assessed for failure to report misconduct. OPD shall require every member and  
15 employee encountering a use of force that appears inappropriate, or an arrest that appears improper,  
16 to report the incident to his/her supervisor and/or IAD. OPD shall establish and maintain a  
17 procedure for a member/employee to report police misconduct on a confidential basis.

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

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

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

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

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

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

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

- 6           a.       Time, date and location;
- 7           b.       Identification of the initiating member or employee commencing after the  
8               first year of data collection;
- 9           c.       Reason for stop;
- 10          d.       Apparent race or ethnicity, and gender of individual(s) stopped;
- 11          e.       Outcome of stop (arrest, no arrest);
- 12          f.       Whether a search was conducted, and outcome of search;
- 13          g.       Offense categories (felony, misdemeanor or infraction).

14          2.       This data shall be entered into a database that can be summarized, searched, queried  
15 and reported by personnel authorized by OPD.

16          3.       The development of this policy shall not pre-empt any other pending or future  
17 policies and or policy development, including but not limited to “Promoting Cooperative Strategies  
18 to Prevent Racial Profiling.”

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

20          1.       OPD shall require, by policy, that every Use of Force Report, whether felonies were  
21 involved or not, include the names, telephone numbers, and addresses of witnesses to the incident,  
22 when such information is reasonably available to the members/employees on the scene.

23          2.       In situations in which there are no known witnesses, the report shall specifically  
24 state this fact. Policy shall further require that in situations in which witnesses were present but  
25 circumstances prevented the author of the report from determining the identification or phone  
26 number or address of those witnesses, the report shall state the reasons why the member/employee



1 was unable to obtain that information. Reports shall also include the names of all other  
2 members/employees of OPD witnessing the incident.

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

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

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

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

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

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

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

22 **F. Citizens Signing Police Forms**

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

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 and  
3 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 **VII. PERSONNEL INFORMATION MANAGEMENT SYSTEM (PIMS)**

25 **A. Purpose**

26 Within 635 days from the effective date of this Agreement, OPD shall enhance its existing

1 complaint-tracking and select indicator systems so that it has a fully implemented, computerized  
2 relational database for maintaining, integrating and retrieving data necessary for supervision and  
3 management of OPD and its personnel. This data shall be used by OPD: to promote professional  
4 police practices; to manage the risk of police misconduct; and to evaluate and audit the performance  
5 of OPD members of all ranks, employees, and OPD units, subunits and shifts. PIMS shall contain  
6 information on the following:

- 7 1. All uses of force required to be reported by OPD;
- 8 2. OC spray canister check-out log (see Section V, paragraph D)
- 9 3. All police-canine deployments where the canine is deployed in a search for or to  
10 apprehend a suspect(s). It does not include deployments for the purpose of locating  
11 bombs, narcotics, missing persons, etc., where the canine is not involved in an  
12 investigated use of force (i.e., deliberately or inadvertently bites or injures a person)  
13 If such force occurs, a Use of Force report is required;
- 14 4. All officer-involved shootings and firearms discharges, both on duty and off duty;
- 15 5. All on-duty vehicle pursuits, traffic accidents and traffic violations;
- 16 6. All citizen complaints, whether made to OPD or CPRB;
- 17 7. All civil suits and/or tort claims related to members' and employees' employment at  
18 OPD, or which contain allegations which rise to the level of a *Manual of Rules*  
19 violation;
- 20 8. Reports of a financial claim as described in Section VI, paragraph G (3).
- 21 9. All in-custody deaths and injuries;
- 22 10. The results of adjudications of all investigations related to items (1) through (9),  
23 above, and a record of all tentative and final decisions or recommendations  
24 regarding discipline, including actual discipline imposed or non-disciplinary action;
- 25 11. Commendations and awards;
- 26 12. All criminal arrests of and charges against OPD members and employees;

- 1 13. All charges of resisting or obstructing a police officer (Penal Code §§69 and 148),
- 2 assault on a police officer (Penal Code §243(b)(c), or assault-with-a-deadly-weapon
- 3 on a police officer (Penal Code §245(b)(c);
- 4 14. Assignment and rank history for each member/employee;
- 5 15. Training history for each member/employee;
- 6 16. Line-of-duty injuries;
- 7 17. Sick leave usage, particularly one-day sick leaves;
- 8 18. Report Review Notices or Case Evaluation Reports for the reporting
- 9 member/employee and the approving supervisor;
- 10 19. Criminal cases dropped due to concerns with member veracity, improper searches,
- 11 false arrests, etc.; and
- 12 20. Other supervisory observations or concerns.

13 **B. Use of Personnel Information Management System (PIMS)**

14 Within 375 days from the effective date of this Agreement, OPD shall develop a policy for  
15 use of the system, including supervision and audit of the performance of specific members,  
16 employees, supervisors, managers, and OPD units, as well as OPD as a whole. The policy shall  
17 include the following elements:

- 18 1. Within 90 days from the effective date of this Agreement, the Chief of Police shall
- 19 designate a PIMS Administration Unit. The PIMS Administration Unit shall be
- 20 responsible for administering PIMS and, no less frequently than quarterly, shall
- 21 notify, in writing, the appropriate Deputy Chief and the responsible
- 22 commander/manager of an identified member/employee who meets the PIMS
- 23 criteria.
- 24 2. The Department shall maintain all the PIMS data for at least five (5) years.
- 25 3. The Monitor, Inspector General and Compliance Coordinator shall have full access
- 26 to PIMS to the extent necessary for the performance of their duties under this

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Agreement and consistent with Section XIII, paragraph K, and Section XIV of this Agreement.

4. PIMS, and the PIMS data and reports are confidential and not public information.
5. On a quarterly basis, commanders/managers shall review and analyze all relevant system information concerning personnel under their command, to detect any pattern or series of incidents which may indicate that a member/employee, supervisor, or group of members/employees under his/her supervision may be engaging in at-risk behavior. The policy shall define specific criteria for determining when a member/employee or group of members/employees may be engaging in at-risk behavior.
6. Notwithstanding any other provisions of the PIMS policy to be developed, the policy shall include, at a minimum, a requirement that any member/employee who receives three (3) or more citizen complaints during an 30-month period, or any member/employee who has any combination of five (5) or more citizen complaints, Penal Code §§69, 148 and 243(b)(c) arrests within a 30-month period, shall be identified as a subject for PIMS intervention. For the purposes of these two criteria, a single incident shall be counted as “one” even if there are multiple citizen complaints arising from the incident or combined with an arrest for Penal Code §§69, 148 or 243(b)(c).
7. When review and analysis of data indicate that a member/employee may be engaging in at-risk behavior, commanders/managers shall undertake a more intensive review of the member/employee’s performance and personnel history. Members/employees shall be required to attend a documented, non-disciplinary PIMS review meeting with their designated commander/manager and supervisor. The purpose of this meeting shall be to review the member/employee’s performance and recommend appropriate remedial action, if necessary. After discussing the

1 issues, the member/employee shall be dismissed from the meeting, and the  
2 designated commander/manager and the member/employee's immediate supervisor  
3 shall remain and discuss the situation and the member/employee's response. The  
4 primary responsibility for any corrective action required should be placed upon the  
5 supervisor. Remedial action may include additional training, reassignment,  
6 additional supervision, coaching or personal counseling. The performance of  
7 members/ employees subject to PIMS review shall be monitored by their designated  
8 commander/manager for the specified period of time following the initial meeting,  
9 unless released early or extended (as outlined in Section VII, paragraph B (8)).

10 8. Members/employees who meet the PIMS criteria specified in Section VII, paragraph  
11 B (6), shall be monitored for a minimum of 12 months. There shall be two (2)  
12 documented, mandatory follow-up meetings with the member/ employee's  
13 immediate supervisor and designated commander/manager: The first at three (3)  
14 months and the second at one (1) year. Member/employees subject to PIMS review  
15 for minor, easily correctable performance deficiencies may be dismissed from the  
16 jurisdiction of PIMS upon the written approval of the member/employee's  
17 responsible Deputy Chief, following a recommendation in writing from the  
18 member/employee's immediate supervisor. This may occur at the three-month  
19 follow-up meeting or at any time thereafter, as justified by reviews of the  
20 member/employee's performance. When a member/employee is not discharged  
21 from PIMS jurisdiction at the one-year follow-up meeting, PIMS jurisdiction shall  
22 be extended, in writing, for some discrete period in three-month increments at the  
23 discretion of the member/employee's responsible Deputy Chief. When PIMS  
24 jurisdiction is extended beyond the minimum one-year review period, additional  
25 review meetings involving the member/employee, the member/ employee's  
26 designated commander/manager and immediate supervisor, shall take place no less

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frequently than every three (3) months.

9. On a quarterly basis, OPD commanders/managers shall review and analyze relevant data in PIMS about subordinate commanders and/or managers and supervisors regarding their ability to adhere to policy and address at-risk behavior. All commanders/managers shall conduct quarterly unit-integrity meetings with their supervisory staffs for the purpose of assessing and sharing information about the state of the unit and identifying potential or actual integrity-control problems within the unit. These meetings shall be scheduled to follow-up on supervisors' assessments of their subordinates' eligibility for PIMS participation. These meetings shall consider all outstanding complaints and investigations, as well as complaints and investigations closed since the last integrity meeting. Also considered shall be patterns involving use of force, sick leave, line-of-duty injuries, narcotics-related possessory offenses, and vehicle accidents that are out of the norm among either personnel in the unit or among the unit's subunits. Commanders/managers shall ensure that confidential minutes of the meetings are taken and retained for a period of five (5) years. Commanders/managers shall take appropriate action on apparent patterns of the conduct specified in this paragraph.

10. At least annually, commanders shall meet with the IAD to discuss the state of their commands and any potential or actual integrity-control problems within the unit. Prior to such meetings, minutes of unit-integrity meetings shall be submitted to the IAD for review. Commanders shall be responsible for developing and documenting plans to ensure the integrity of their units, and for addressing any real or potential problems that may be apparent.

11. PIMS information shall be taken into account for promotion, transfer and special assignment, and in connection with annual personnel performance evaluations.

12. Actions taken as a result of PIMS review shall be documented in a timely manner.

- 1 13. Relevant and appropriate PIMS information shall be taken into account in  
2 connection with determinations of appropriate discipline for sustained misconduct  
3 allegations.
- 4 14. Notwithstanding other requirements of the policy developed for PIMS, a review  
5 meeting involving the member/employee's designated commander/manager shall be  
6 held no later than 20 days following notification of the Deputy Chief that the  
7 member/employee has met the PIMS criteria.
- 8 15. The PIMS policy to be developed shall include a provision that a member/employee  
9 making unsatisfactory progress within PIMS review may be transferred and/or  
10 loaned to another supervisor, another assignment or another Division, at the  
11 discretion of the Bureau Chief if the transfer is within his/her Bureau. Inter-Bureau  
12 transfers shall be approved by the Chief of Police. In general, when a  
13 member/employee is transferred because of unsatisfactory progress, that transfer  
14 shall be to a position with little or no citizen contact. Sustained citizens' complaints  
15 from incidents subsequent to a member/employee's referral to PIMS shall continue  
16 to result in corrective measures; however, such corrective measures shall not  
17 necessarily result in a member/employee's exclusion from, or continued inclusion in,  
18 PIMS. The member/employee's exclusion or continued inclusion in PIMS shall be  
19 at the discretion of the Chief of Police or his/her designee and shall be documented.
- 20 16. In parallel with the PIMS program described above, the Department may wish to  
21 continue the Early Intervention Review Panel.
- 22 17. On a semi-annual basis, beginning within 90 days from the effective date of this  
23 Agreement, the Chief of Police, the Bureau of Field Operations Deputy Chief, the  
24 commander of IAD, and the commander responsible for the PIMS Administration  
25 Unit shall meet with the Monitor to review the operation and progress of the PIMS.  
26 At these meetings, OPD administrators shall summarize, for the Monitor, the



1 number of members/employees who have been identified for review, pursuant to the  
2 PIMS policy, and the number of members/employees who have been identified for  
3 inclusion in the PIMS system pursuant to those reviews. The Department  
4 administrators shall also provide data summarizing the number of times that various  
5 corrective actions have been taken as a result of PIMS and/or the disciplinary  
6 sanctions which been administered. The major objectives of each of these semi-  
7 annual meetings shall be consideration of whether the PIMS policy is adequate with  
8 regard to detecting patterns of misconduct or poor performance issues as  
9 expeditiously as possible and if PIMS reviews are achieving their goals.

10 18. Nothing in this Agreement, and more specifically, no provision of PIMS, shall be  
11 construed as waiving, abrogating or in any way modifying the Department's rights  
12 with regard to discipline of its members/employees. The Department may choose, at  
13 its discretion, to initiate the administrative discipline process, to initiate PIMS  
14 review or to use both processes concurrently or consecutively.

## 15 **VIII. FIELD TRAINING PROGRAM**

16 Within 323 days of the effective date of this Agreement, OPD shall develop and implement  
17 a plan to enhance its Field Training Program. This plan shall address the criteria and method for  
18 selecting FTOs, the training provided to FTOs to perform their duty, supervision and evaluation of  
19 FTOs, the length of time that trainee officers spend in the program, and the methods by which  
20 FTOs assess and evaluate trainee officers in field training. The plan must ensure proper reporting,  
21 review and approval of probationary officers' reports.

### 22 **A. Field Training Program Coordinator**

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

1 continue as a full-time position.

2 **B. Trainee Rotation**

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

7 **C. FTO Participation Incentives**

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

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

11 FTO candidates shall be nominated by field supervisors and commanders, but shall be  
12 approved for assignments to this duty, and for retention in it, by the Chief of Police. All FTO  
13 candidates must have completed three (3) years of Departmental service before selection, unless  
14 specifically authorized by the Chief of Police. FTO candidates shall be required to demonstrate  
15 their commitment to community policing, and their problem- solving and leadership abilities.  
16 Ethics, professionalism, relationships with the community, quality of citizen contacts and  
17 commitment to OPD philosophy shall be primary criteria in the selection of FTOs. Excessive  
18 numbers of citizen complaints, sustained investigations or excessive numbers of use of force  
19 incidents shall bar a candidate from selection as an FTO for no less than two (2) years.

20 **E. Decertification**

21 The presumptive result of sustained disciplinary action against an FTO or the FTO Program  
22 Coordinator for excessive force, unlawful arrest, false testimony, racial, ethnic, sexual-orientation  
23 or gender-based discrimination or slurs, or other serious examples of police misconduct, shall be  
24 removal from the FTO program. The Deputy Chief of the member's chain of command may  
25 recommend to the Chief of Police to grant an exception to this presumption after conducting a  
26 hearing on the facts of the matter. The Chief of Police shall document the approval/disapproval in

1 writing.

2 **F. FTO Assignment**

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

6 **G. FTO Evaluation**

7 At the end of a complete FTO cycle, trainee officers leaving the FTO program shall  
8 anonymously evaluate each of their FTOs. OPD shall develop a form for such evaluations which  
9 emphasize effectiveness at training and effectiveness at supervision. The evaluation form shall also  
10 assess the degree to which the FTO program reflected policies, procedures, values and other  
11 information taught in the recruit academy. The FTO evaluation forms shall be reviewed by the  
12 Field Training Program Coordinator and the individual FTO's commander and supervisor. The  
13 Field Training Program Coordinator shall provide evaluation information to the FTOs as a group,  
14 concerning program effectiveness. Each FTO shall also be provided with evaluation information  
15 regarding their individual performance. The individual evaluation forms shall not be made  
16 available to individual FTOs in the interest of maintaining anonymity of trainee officers who have  
17 completed the forms.

18 **H. Daily Evaluation Audit**

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

22 **I. Trainee Officer Assignment**

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

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

2 OPD shall provide field commanders and supervisors with training on the FTO program,  
3 including the field-training curriculum, the role of the FTO, supervision of FTOs and probationary  
4 employees, the evaluation process and the individual duties and responsibilities within the FTO  
5 program.

6 **K. Focus Groups**

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

11 **L. Consistency of Training**

12 The results of these focus group sessions shall be reviewed at a meeting to include the  
13 Training Division Commander, the FTO Program Coordinator, the BFO Deputy Chief, and the  
14 BOS Deputy Chief. If it is determined that there is a substantial discrepancy between what is  
15 taught in the Academy and what is taught in the FTO program, there shall be a determination as to  
16 which is correct, and either the training Academy or the FTO program shall make the necessary  
17 changes so that the desired training information is consistent. In the event that the discrepancies  
18 appear to be the result of one or more individual FTOs, rather than the FTO program as a whole, the  
19 review group shall determine whether the discrepancies are serious enough to warrant removal of  
20 that officer or officers from the FTO program. The results of the meeting of this review group shall  
21 be documented and this information shall be provided to the Monitor.

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

23 **A. Academy Training Plan**

24 Within 540 days of the effective date of this Agreement, OPD shall develop and implement  
25 a plan to enhance its Academy and in-service training to ensure that OPD personnel at all levels are  
26 adequately trained for their positions, and aware of and able to implement the most contemporary

1 developments in police training. This plan shall include a review of OPD's training curriculum,  
2 with additional emphasis on ethics and professionalism, critical thinking and problem solving,  
3 conflict resolution, and relationships with the community. The plan shall also address the criteria  
4 and method for selecting OPD training instructors, the training provided to instructors, procedures  
5 for evaluating the content and quality of training provided to OPD personnel and procedures for  
6 maintaining training records for OPD personnel. In arriving at the plan regarding staffing, training  
7 content and methodology, OPD shall consult with at least four (4) other, large law-enforcement  
8 agencies within the United States which have excellent reputations for professionalism. In  
9 particular, OPD shall consult with these agencies about qualifications and other criteria to be used  
10 in selecting staff for training positions. OPD shall also review the approach of these other law  
11 enforcement agencies in training both new staff and experienced staff on ethics and  
12 professionalism, critical thinking and problem solving, conflict resolution, and relationships with  
13 the community.

14 **B. Professionalism and Ethics**

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

18 **C. Supervisory and Command Training**

19 OPD shall provide all supervisors and commanders/managers with mandatory 40-hour in-  
20 service supervisory and leadership training. Supervisors shall attend training prior to promotion.  
21 Commanders shall attend training within six (6) months of promotion. Such training shall include  
22 supervisory and command accountability, and ethics and professionalism, with emphasis on  
23 supervisory and management functions and situations, and shall include both scenario-based  
24 training and case studies.

25 **D. In-Service Training**

26 OPD shall provide all members with forty (40) hours of in-service training every eighteen

1 (18) months.

2 1. Sergeants shall receive at least 20 hours of training designed for supervisors every  
3 18 months.

4 2. Staff at the rank of lieutenant and above shall receive at least 20 hours of training  
5 designed for commanders/managers and administrators every 18 months.

6 **E. Training Staff Record Review**

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

11 **X. PERSONNEL PRACTICES**

12 Within 120 days from the effective date of this Agreement, (except as provided for in  
13 paragraph B), OPD shall develop and implement enhanced personnel policies and practices as  
14 follows:

15 **A. Performance Appraisal Policy**

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

18 1. Supervisors and commanders shall document, in performance appraisals, that they  
19 are aware of the nature and progress of complaints and investigations against members/employees,  
20 and shall consider such complaints and investigations in their performance appraisal of  
21 subordinates.

22 2. Supervisors and commanders shall document, in performance appraisals, that they  
23 have carefully monitored members': uses of force; "sick" and "injured" leaves; arrests for  
24 narcotics-related possessory offenses not made as a result of searches conducted pursuant to arrests  
25 for other offenses; arrests involving charges of Penal Code §§69, 148 and/or 243(b)(c); and vehicle  
26 accidents. When appropriate, supervisors and commanders shall be held accountable for having

1 identified and acted upon patterns, among personnel in the unit, involving use of force, sick leave,  
2 line-of-duty injuries, narcotics-related possessory offenses, and on-duty vehicle accidents.

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

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

8 5. The immediate supervisor of every member/employee of the Department shall have  
9 primary responsibility for conducting and writing the performance appraisal for that  
10 member/employee. For example, the patrol sergeant shall be responsible for conducting and  
11 writing the performance appraisal for each member/employee he or she supervises. However,  
12 every supervisor/manager in that member/employee's direct chain of command, up to and including  
13 the Deputy Chief of that Bureau, shall review, sign and date every performance appraisal of every  
14 member/employee within his or her command. If the reviewer disagrees, he/she shall write an  
15 addendum to the evaluation expressing his/her concerns.

16 6. When a member/employee, during the course of the period being appraised, had  
17 substantial collateral duties supervised by someone other than his or her regular and direct  
18 supervisor, the other supervisor or manager shall contribute to the performance appraisal by  
19 consulting with the direct immediate supervisor and by, at a minimum, writing a separate narrative  
20 evaluation that shall be signed, dated and included as a regular part of the performance appraisal.  
21 Similarly, when a member/employee has been supervised by two (2) or more individuals during the  
22 course of the appraisal period, because of transfer of the member/employee or the supervisor,  
23 primary responsibility for the performance appraisal shall be in accordance with the provisions of  
24 Departmental General Order B-6, "Performance Appraisal." In the case of a promotion, the  
25 promotee's new supervisor shall be responsible for the evaluation.  
26

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

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

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

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

8 3. Class I investigations which result in a sustained finding shall be submitted to the  
9 subject's accountable commander/manager for a disciplinary recommendation. The Chief of Police  
10 may convene a meeting of commanders/managers in the affected chain-of-command for a  
11 confidential discussion of the misconduct taking into consideration the member/employee's overall  
12 performance.

13 4. Class II offenses investigated at the Division level which result in a sustained finding  
14 shall be corrected through progressive discipline so as to address overall performance deficiencies.  
15 Before recommending corrective actions, the designated commander/manager shall review the  
16 sustained person's prior history of disciplinary and corrective actions to determine if there is an  
17 indication of a pattern of unacceptable behavior. If the review does not indicate a pattern of  
18 unacceptable behavior, the designated commander/ manager may choose to counsel the member or  
19 employee, send the member or employee for retraining, or issue a "Performance Deficiency  
20 Notice." If the review indicates a pattern of unacceptable behavior, then the designated  
21 commander/manager shall notify his/her immediate superior that a higher level of discipline is  
22 recommended and shall discuss the appropriate level of that discipline to correct the pattern.

23 **C. Promotional Consideration**

24 1. Sustained misconduct cases against a member/employee shall be an important factor  
25 in determining promotability. There shall be a presumptive ineligibility for promotion for 12  
26 months following the sustained finding of a Class I offense as defined in Section III, paragraph



1 H(1). Such cases shall be considered important in evaluating promotability for three (3) years  
2 following the completion of the investigation.

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

- 5 a. Commitment to community policing;
- 6 b. Quality of citizen contacts;
- 7 c. Number of citizen complaints;
- 8 d. Instances of unnecessary use of force;
- 9 e. Support for Departmental integrity measures.

#### 10 **XI. COMMUNITY POLICING PLAN**

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

- 14 1. OPD shall host at least one (1) community meeting per quarter in each Patrol  
15 Service Area.
- 16 2. Each patrol supervisor, and officer assigned to a regular beat or geographic area of  
17 the City, shall attend a minimum of one (1) community meeting per quarter in the  
18 Area he/she is regularly assigned.
- 19 3. OPD shall develop mechanisms to measure its community policing and problem  
20 solving activities.
- 21 4. OPD shall incorporate positive statistics on community policing and problem  
22 solving activities in “Crime-Stop” meetings, along with information on citizen  
23 complaints and use of force incidents.
- 24 5. The appropriate Departmental personnel shall arrange a meeting within 60 days  
25 unless not feasible with representatives of an established organization active within  
26 Oakland (PUEBLO, ACLU, NAACP, etc.), community groups or church groups, if

1 an organization communicates a concern regarding specific police personnel or  
2 practices.

3 **XII. DEPARTMENTAL MANAGEMENT AND ANNUAL MANAGEMENT**  
4 **REPORT**

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

11 **XIII. INDEPENDENT MONITORING**

12 **A. Monitor Selection and Compensation**

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

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

1 years of the implementation of the Settlement Agreement. Should the monitoring be extended for  
2 an additional period of time, the compensation will be renegotiated subject to the approval of the  
3 City Council.

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

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

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

20 **B. Period and Appointment**

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

1 **C. Staffing**

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

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

24 **D. Replacement of Monitor**

25 Should any of the parties to this Agreement determine that the Monitor, and/or his/her  
26 agents, employees, independent contractors, has exceeded his/her authority or failed to

1 satisfactorily perform or fulfill his/her duties under this Agreement, the party may petition the Court  
2 for such relief as the Court deems appropriate, including replacement of the Monitor and/or his/her  
3 agents, employees and/or independent contractors.

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

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

10 **F. Resolving Monitor Fee Disputes**

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

14 **G. Responsibilities and Authority**

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

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

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

- 26 1. OPD policies and procedures established to implement the Agreement, to ensure that

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- these policies and procedures are consistent with both the purposes of this Agreement and, as reasonably practicable, the best practices in law enforcement.
2. All completed and pending internal affairs proceedings and files except investigator[s] notes while the investigation is open.
  3. Policy and procedures used by OPD for Internal Affairs misconduct investigations, including a review of an appropriate sample of closed IA cases; assess and evaluate the quality and timeliness of the investigations; recommend reopening of investigations that the Monitor determines to be incomplete; recommend additional measures that should be taken with respect to future investigations in order to satisfy this Agreement; and review and evaluate disciplinary actions or other interventions taken as a result of misconduct investigations.
  4. Quality and timeliness, from appropriate samples, of OPD use of force incident reports and use of force (K-4) investigations; review and evaluation of actions of OPD's Use of Force (K-4) Board and Firearms-Discharge Board of Review (K-3); and review and evaluation of disciplinary actions or other interventions taken as a result of use of force investigations or K-3 and K-4 Board reviews.
  5. If the Monitor determines that any use of force investigation or internal (IAD or Division-level) investigation/report which has been adjudicated or otherwise disposed or completed, is inadequate under this Agreement, the Monitor shall confer with the Chief of Police, IAD Commander and the Inspector General, and provide a confidential written evaluation to the Department and the Court. Such evaluation shall be for the purpose of assisting the Chief of Police in conducting future investigations, and shall not obligate the Department to reopen or re-adjudicate any investigation.
  6. Implementation of provisions of this Agreement related to OPD training, including changes to the FTO program.

- 1 7. OPD’s development and implementation of PIMS as required by this Agreement,  
2 including any supervisory action taken in response to analyses from such a system.  
3 8. City/OPD’s Performance Appraisal System.  
4 9. Compliance with provisions in this Agreement relating to command, management  
5 and supervisory duties.  
6 10. The Monitor may request information about “court related” problem officers from  
7 OPD’s MLL, the Office of the District Attorney (DA), or the Office of the Public  
8 Defender (PD). All information provided to the Monitor by the DA and/or PD shall  
9 be confidential and serve as a “check and balance” of the PIMS.  
10 11. Other reviews as deemed relevant, such as sampling cases developed from the  
11 directives targeting specific geographic areas, to ensure that OPD enforcement  
12 activities fully comply with all applicable Department procedures and federal and  
13 state law.

14 When appropriate, the reviews and evaluations shall include, at a minimum, annual  
15 audits of stratified random samples.

16 **I. Reports**

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

1 information contained therein shall comply with the Public Safety Officers' Procedural Bill of  
2 Rights.

3 **J. Meetings**

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

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

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

25 1. By policy, OPD personnel shall be required to cooperate fully with the Monitor and  
26 to provide access to information and personnel in a timely fashion. The Monitor shall have the



1 right to interview any member/employee of OPD pursuant to the provisions of this Agreement.

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

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

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

1 such objection, and the Monitor continues to believe that the documents in question are reasonably  
2 necessary to assist the Monitor, the Monitor may seek Court authorization for access to such  
3 documents, subject to any appropriate protective orders. The City shall assert applicable defenses  
4 and privileges from disclosure and protections of such records for the City and the affected  
5 member/employee. Any documents obtained by this procedure shall be treated as confidential.

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

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

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

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

1 where practicable, arrest reports, warrants and warrant applications shall be obtained from sources  
2 other than open criminal investigation files.

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

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

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

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

22 **N. Access to Intelligence Files**

23 The access provisions of the previous paragraphs do not apply to documents contained  
24 solely in Anti-Terrorist files, or solely in Intelligence files, or Investigative Notes files or similar  
25 files in joint task forces with other law enforcement agencies.  
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1 **O. Access to “Whistle Blowers”**

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

7 **P. Testimony**

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

13 **Q. Confidential Records Maintenance**

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

18 **R. Court Resolution of Disputes**

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

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

10 **S. Petitions for Relief**

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

16 **XIV. COMPLIANCE UNIT**

17 **A. Compliance Unit Liaison Policy**

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

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

1 to comply with the provisions of the Agreement.

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

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

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

15 The review of documents shall entail, at a minimum, a review for completeness of the  
16 information contained, and an examination for inappropriate “boilerplate” language, inconsistent  
17 information, or lack of articulation of the legal basis for the applicable action. The results of audits  
18 conducted pursuant to this paragraph shall be included in OPD’s semi-annual compliance reports.

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20 **XV. HOUSEKEEPING PROVISIONS**

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

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

26 2. During the term of this Agreement, the City and OPD shall maintain all records

1 necessary to document compliance with the Agreement.

2 **B. Implementation and Jurisdiction**

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

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

15 3. The Court shall retain jurisdiction over this action, for all purposes, during the term  
16 of this Agreement. This Agreement shall remain in effect for five (5) years following the entry by  
17 the Court, but shall, under no circumstances, exceed seven (7) years. Without further action, the  
18 Agreement shall terminate five (5) years from the effective date, unless the Monitor reports to the  
19 Court that an extension of time, not to exceed two (2) years, is reasonably necessary to serve the  
20 purposes of the Agreement. The City may contest the extension, by motion to be heard by the  
21 Court, no later than 60 days prior to the expiration of the Agreement. The City may present  
22 evidence to the Court in support of the motion. At such hearing, the City has the burden to  
23 establish substantial compliance with the Agreement during the five-year period. "Substantial  
24 compliance" is defined, for the purposes of this Agreement, as meaning that OPD has complied  
25 with the material provisions of the Agreement. Materiality is determined by reference to the overall  
26 objectives of the Agreement. Non-compliance with technicalities or, otherwise, minor failures to

1 comply while generally complying with the Agreement, shall not be deemed failure to substantially  
2 comply with the Agreement.

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

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

11 6. The City shall not be deemed to be in violation of any provision of this Agreement  
12 by reason of the failure to perform any of its obligations hereunder to the extent that such failure is  
13 due to unforeseen circumstances. "Unforeseen circumstances" include conditions not reasonably  
14 foreseeable by the City at the time the Agreement was executed: acts of God, catastrophic weather  
15 conditions, riots, insurrection, war, acts of a court of competent jurisdiction or any similar  
16 circumstance for which the City is not responsible and which is not within the City's control.  
17 Delays caused by unforeseen circumstances shall reasonably extend the time of compliance. The  
18 City may seek from the Court a reasonable extension of time to comply with the provision of the  
19 Agreement, or other relief, as soon as practicable, but no later than 45 days of the time the City  
20 becomes aware of the unforeseen circumstances. The City shall issue a notice to the Court,  
21 Monitor and plaintiffs' counsel. The notice shall include a description of the unforeseen  
22 circumstances and the steps taken to minimize the risk of non-compliance.

23 7. If any unforeseen circumstance occurs which causes a failure to timely carry out any  
24 requirements of this Agreement, the City shall notify the Court and plaintiffs' counsel in writing  
25 within 20 calendar days of the time that the City becomes aware of the unforeseen circumstance  
26 and its impact on the City's ability to perform under the Agreement. The notice shall describe the



1 cause of the failure to perform and the measures taken to prevent or minimize the failure. The City  
2 shall implement all reasonable measures to avoid or minimize any such failure.

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

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

8 1. As part of any meet-and-confer or consulting process demanded by OPD  
9 member/employee bargaining units, as described in page 2, lines 12-20, the City shall discuss and  
10 seek to resolve with those OPD member/employee bargaining units any disputes or uncertainties  
11 regarding which provisions are subject to such process. The City shall identify and provide to the  
12 OPD member/employee bargaining units the provisions of this Agreement such as it believes are  
13 subject to the process being demanded. Within 30 days of the date of the completion of the meet-  
14 and-confer process, the City shall report to the Court the results of any such discussion on this  
15 question. In the event that the City and the OPD member/employee bargaining units are unable to  
16 resolve the list of the provisions of the Agreement which are subject to the meet-and-confer  
17 process, the City shall seek declaratory relief from this Court to resolve such issue, provided that  
18 the OPD member/employee bargaining units shall receive notice and an opportunity to be heard by  
19 the Court on this issue.

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

- 23 a. Proposed agreements with the OPD member/employee bargaining units  
24 relating to provisions of this Agreement as they are resolved by the City  
25 arising from the meet-and-confer process as they are determined, and  
26 b. A list of provisions identified, pursuant to paragraph (1) of this Section, such

1 as are scheduled for implementation within 45 days.

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

19 4. In the event that the City believes the meet-and-confer process, consultation, or any  
20 such proposed agreement or resolution of a dispute with OPD member/employee bargaining units  
21 resulting from the meet-and-confer process, will impair the City's ability to timely implement one  
22 or more provisions of this Agreement, and the OPD member/employee bargaining units and the  
23 City are unable to agree upon or reach an appropriate resolution, then the City shall so report to the  
24 Court and shall seek appropriate declaratory or injunctive relief (including specific performance) on  
25 such provision(s). The plaintiffs' counsel also may seek relief from the Court in the event that the  
26 plaintiffs' counsel believe the meet-and-confer process, consultation, or any such proposed

1 agreements or resolution of disputes with OPD member/employee bargaining units will impair the  
2 City's ability timely to implement one or more provisions of this Agreement, and the plaintiffs'  
3 counsel and the City are unable to agree on an appropriate resolution. Any such motion shall  
4 demonstrate the ways in which the City would be so impaired.

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

- 14             a.         Shall not be in contempt or liable for any other penalties, and
- 15             b.         May be potentially held in breach for such provision(s) only for the limited  
16                         purpose of the issuance of declaratory or injunctive remedies (including  
17                         specific performance), but may not be regarded as in breach for any other  
18                         purpose.

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

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

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

- 4           a.       Upon final draft approval by the Chief of Police, the unsigned draft shall be  
5 forwarded by hand delivery, facsimile, or United States mail to the  
6 Independent Monitor, plaintiff's counsel, and the OPOA.
- 7           b.       If the new or revised directive, policy or procedure does not require the Chief  
8 of Police's signature, the Office of Inspector General will forward by either  
9 hand delivery, facsimile or United States mail to the Independent Monitor,  
10 plaintiff's counsel and the OPOA.
- 11          c.       The plaintiff's counsel and the OPOA shall have fifteen (15) calendar days  
12 from the date of receipt of any draft directive, policy or procedure to make  
13 written or verbal comments. All written or verbal comments or  
14 recommendations should be directed to the Office of Inspector General.
- 15          d.       Any party may request that a discussion over any draft directive, policy or  
16 procedure be placed on the agenda for discussion at the next monthly  
17 meeting required by this Settlement Agreement. Placing of the item on this  
18 agenda shall automatically extend any deadlines associated with the  
19 directive, policy or procedure until either 15 calendar days (or the next  
20 regular work day if the 15<sup>th</sup> day falls on a Saturday, Sunday, or holiday) after  
21 the next monthly meeting where the item is discussed or, if the item is not  
22 resolved at the next monthly meeting, until 15 calendar days (or the next  
23 regular work day if the 15<sup>th</sup> day falls on a Saturday, Sunday, or holiday) after  
24 the monthly meeting at which the item is resolved and agreed to by the  
25 parties as reflected in the minutes of the monthly meeting. In the event of an  
26 extension as contemplated by this paragraph, or in the case of any other

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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 plaintiff’s 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 Chief’s 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 Chief’s signature.

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Dated: JOHN A. RUSSO, City Attorney

By: \_\_\_\_\_  
Attorneys for Defendant, CITY OF OAKLAND

Dated: RANDOLPH W. HALL, Chief Assistant City Attorney

By: \_\_\_\_\_  
Attorneys for Defendant, CITY OF OAKLAND

Dated: CLAUDIA LEED, Senior Deputy City Attorney

By: \_\_\_\_\_  
Attorneys for Defendant, CITY OF OAKLAND

Dated: BERTRAND, FOX & ELLIOT

By: \_\_\_\_\_  
Attorneys for Defendant, CITY OF OAKLAND

Dated: SIMONCINI & ASSOCIATES

By: \_\_\_\_\_  
Attorneys for Defendant, CITY OF OAKLAND

Dated: \_\_\_\_\_  
ROBERT C. BOBB, CITY MANAGER  
CITY OF OAKLAND

Dated: \_\_\_\_\_  
RICHARD L. WORD, CHIEF OF POLICE  
OAKLAND POLICE DEPARTMENT

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Dated: LAW OFFICES OF JOHN L. BURRIS  
  
\_\_\_\_\_  
JOHN L. BURRIS, Attorney for Plaintiffs

Dated: LAW OFFICES OF JAMES B. CHANIN  
  
\_\_\_\_\_  
JAMES B. CHANIN, Attorney for Plaintiffs

Dated: LAW OFFICE OF JOHN HOUSTON SCOTT  
  
\_\_\_\_\_  
JOHN HOUSTON SCOTT, Attorney for Plaintiffs

**ORDER**

Pursuant to the agreement of the parties,

IT IS SO ORDERED.

Dated:

\_\_\_\_\_  
THELTON E. HENDERSON  
United States District Judge

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