

JOINT MODIFICATION NO. 3

TO

JUNE 13, 2001

MEMORANDUM OF AGREEMENT

Between the United States Department of Justice

and the

District of Columbia and

the District of Columbia Metropolitan Police Department

March 1, 2005

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I. BACKGROUND

1. Pursuant to provision 194 of the June 13, 2001, Memorandum of Agreement (“MOA”) between the United States Department of Justice (“DOJ”), the District of Columbia (the “City”), and the District of Columbia Metropolitan Police Department (“MPD”), the Parties hereby enter into this Third Modification (“Modification No. 3”).

2. The Parties agree that MPD has twice failed to meet certain timelines identified in the MOA (or a modification thereof) related to development of a Personnel Performance Management System (“PPMS”). Following MPD’s initial breach of deadlines set forth in the MOA,<sup>1</sup> the parties entered into a Second Modification of the MOA (“Modification No. 2”) on September 30, 2003. MPD experienced a funding crisis in the early Spring of 2004 which, despite its efforts, it was unable to resolve.<sup>2</sup> As a result, MPD shut the PPMS system down entirely on March 31, 2004. At DOJ’s request, MPD secured the assurance of the vendor selected to develop the PPMS that it would keep its offer open, negating the need to re-bid the

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<sup>1</sup> The First Modification of the MOA, dated September 30, 2002, specifically exempted those provisions of the MOA which relate to the development of the PPMS. See Joint Modification No. 1 at ¶ 5 (September 30, 2002).

<sup>2</sup> See Letter to Shanetta Y. Cutlar from Captain Matthew Klein, March 15, 2004.

project. DOJ has closely monitored MPD's efforts to secure new funding for the PPMS. In the absence of new funding, however, MPD was unable to meet the deadlines set forth in Modification No. 2 for MOA paragraphs 111 and 114(d), which required, respectively, that MPD submit the final PPMS protocol to DOJ for review and have a beta-version of the PPMS available for testing by June 25, 2004. As such, MPD requested a third modification of the MOA.

3. Notwithstanding that MPD has breached both the initial deadlines set forth in the MOA and the modified deadlines agreed upon by the parties pursuant to Modification No. 2, MPD has demonstrated its commitment to developing and implementing the PPMS by securing additional funding and proposing new timelines for the PPMS. MPD commits to provide appropriate and adequate staff to meet the new timelines set forth herein. In light of MPD's acknowledgment of the delay in developing the PPMS and its continuing commitment to the goals and contents of the MOA, the Parties have agreed to this Modification No. 3.

4. Upon execution of this Modification No. 3, MPD and the City shall be discharged from their current status of breach of the established timelines related to the PPMS as set forth in the MOA and in Modification No. 2 pursuant to the PPMS requirements in MOA paragraphs 106-117, and any other portions of the MOA which pertain to the PPMS.

## II. SCOPE OF MODIFICATION

5. This Modification No. 3 modifies the implementation and deliverable dates for the PPMS outlined in the MOA and in Modification No. 2. This Modification No. 3 does not alter the substantive provisions of the MOA.

## III. REVISED DELIVERABLE SCHEDULE

6. With respect to deliverables, MPD shall produce the computer system and all written policies, procedures, protocols, or other documentation relating to the PPMS and required by the MOA, according to the agreed upon deadlines on the attached Joint DOJ/MPD MOA Modification Chart No. 3. The following provisions are modified:

- a. MOA paragraph 106;
- b. MOA paragraph 107;
- c. MOA paragraph 108;
- d. MOA paragraph 109;
- e. MOA paragraph 110;
- f. MOA paragraph 111;
- g. MOA paragraph 112;
- h. MOA paragraph 113;
- i. MOA paragraph 114;
- j. MOA paragraph 115;
- k. MOA paragraph 116;
- l. and MOA paragraph 117.

7. With regard to producing the computer system and all policies, procedures, protocols, or other documentation relating to the PPMS and required by the MOA, MPD agrees that it will promptly respond to DOJ comments on all such documents requiring DOJ approval, and in no case will respond longer than 60 calendar days after receipt of such comments, unless delay in the completion of the document or response to DOJ's concerns is due to an external event, in which case MPD will notify DOJ of the reason for the delay and the date by which it will respond. DOJ will provide comments on MPD deliverables which are provided in final form within 60 calendar days of receipt of the deliverable, absent exceptional circumstances, in which case DOJ will timely notify MPD and provide the expected date of response.

#### IV. COMPLIANCE

8. The implementation schedule and the revised deadlines for deliverables contained in this Modification No. 3 are firm. Nonetheless, the parties agree that if MPD is unable to complete a deliverable on schedule due to articulable, unforeseen emergency circumstances, MPD shall contact DOJ and seek a revised mutually acceptable deliverable date or revised deadline.

9. As part of its efforts to ensure successful implementation of the PPMS, MPD has described to DOJ a series of steps it must complete in order to comply with the schedule set forth in the Joint DOJ/MPD MOA Modification Chart No. 3 for the completion and implementation of the PPMS. For the purposes of this Modification, MPD acknowledges that "unforeseen emergency circumstances" as described in ¶ 8, supra, do not include these steps, specifically:

(1) MPD's failure prior to March 7, 2005 to (a) complete a hardware site inventory, (b) identify and functionally define PPMS Reports, or (c) fully document and approve the Early Intervention Indicators; (2) failure of any aspect of the PPMS due to changes to the existing requirements as documented in the Joint Applications Development Consolidated Report & Fit Gap Analysis dated January 6, 2003; (3) failure to obtain funding for required infrastructure upgrades in time to rollout new hardware prior to either Phase I or Phase II application rollout; (4) failure of the MPD, the Office of the Chief Technology Officer ("OCTO"), the Office of Contracting and Procurement ("OCP"), or the Office of the Attorney General ("OAG"), to timely provide a technically, substantively, and legally sufficient contract package to City Council for approval prior to the anticipated project start date of March 7, 2005; (5) failure of OCTO to approve the PPMS Enterprise Architecture Plan prior to March 7, 2005; or (6) the need to bid or re-bid any aspect of the contract(s) required to fully implement the PPMS.

10. The parties agree that if MPD is unable to meet a deadline outlined in this Modification No. 3 due to a failure of the PPMS selected vendor, MPD shall be granted an automatic 30 calendar-day extension to the deadline upon written notification to DOJ that the deadline will not be met. "Vendor failure" is defined as a failure that is not caused in any way by MPD, but for which the vendor is solely responsible. Within the 30 calendar-day extension, MPD agrees to submit to DOJ, in writing, the cause for the vendor failure and agrees to work with DOJ to seek a mutually acceptable deliverable date or revised deadline. MPD will not be held in breach when a deliverable is late due to failure of the vendor. Nothing in this paragraph relieves MPD of its obligation to use its best efforts to comply with the MOA and to assist the vendor in meeting deadlines.

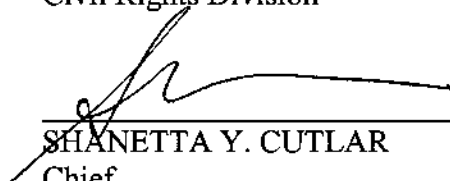
#### V. MISCELLANEOUS

11. The signatories below represent by their signatures that they are authorized to enter into this Modification No. 3 and are signing on behalf of their party and the original signatories to the MOA.

Signature Page For the United States Department of Justice:

R. ALEXANDER ACOSTA  
Assistant Attorney General  
Civil Rights Division

BRADLEY J. SCHLOZMAN  
Deputy Assistant Attorney General  
Civil Rights Division

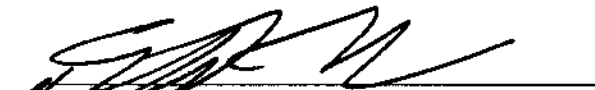


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SHANETTA Y. CUTLAR  
Chief  
Special Litigation Section  
Civil Rights Division

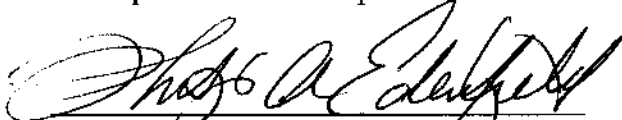
TAMMIE M. GREGG  
TODD J. SCHNEIDER  
SARAH H. GERHART  
Special Litigation Section  
Civil Rights Division  
U.S. Department of Justice  
950 Pennsylvania Ave, NW, PHB  
Washington, D.C. 20530  
202-514-0195

Signature Page For the District of Columbia and the Metropolitan Police Department:




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ANTHONY WILLIAMS  
Mayor of the District of Columbia




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PHILIP GRAHAM  
Chief Information Officer  
District of Columbia  
Metropolitan Police Department



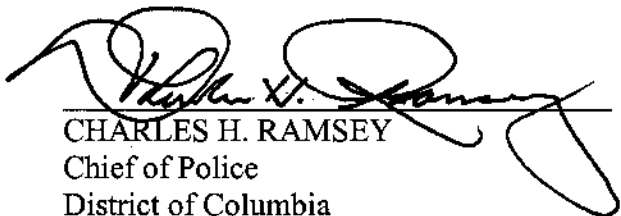
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EDWARD REISKIN  
Deputy Mayor of Public Safety and Justice  
for the District of Columbia



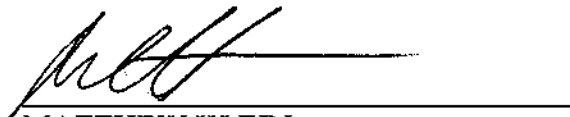
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WILLIAM R. PONTON  
Assistant Chief  
Office of Professional Responsibility  
District of Columbia  
Metropolitan Police Department



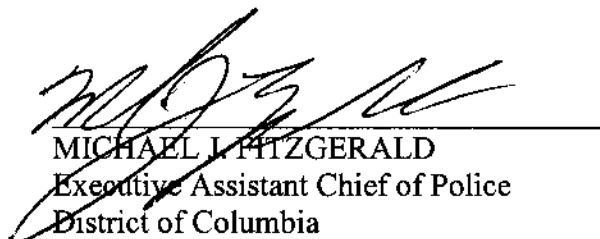
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CHARLES H. RAMSEY  
Chief of Police  
District of Columbia  
Metropolitan Police Department



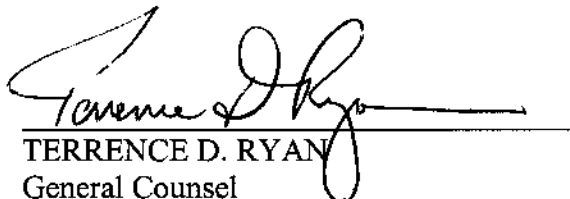
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MATTHEW KLEIN  
Inspector  
Office of Professional Responsibility  
District of Columbia  
Metropolitan Police Department



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MICHAEL J. FITZGERALD  
Executive Assistant Chief of Police  
District of Columbia  
Metropolitan Police Department



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TERRENCE D. RYAN  
General Counsel  
District of Columbia  
Metropolitan Police Department

Joint DOJ/MPD MOA Modification No. 3<sup>1</sup>

106	<p>Develop and implement a computerized relational database</p> <ul style="list-style-type: none"> <li>• PPMS Phase I</li> <li>• PPMS Phase II</li> </ul> <p>Use the computerized relational database regularly and affirmatively</p> <ul style="list-style-type: none"> <li>• PPMS Phase I</li> <li>• PPMS Phase II</li> </ul>	<p>January 19, 2006</p> <p>August 31, 2006</p> <p>January 19, 2006</p> <p>August 31, 2006</p>
107	<p>Submit to DOJ for approval a memorandum outlining MPD's plan for compliance with the minimum informational requirements of PPMS</p> <p>Submit revised memorandum to DOJ for approval</p>	<p>August 29, 2003<sup>2</sup></p> <p>August 31, 2004</p>
108	<p>Submit revised Data Input Plan to DOJ for approval</p>	<p>May 26, 2005</p>
109	<p>Submit to DOJ for approval a memorandum outlining MPD's plan for compliance with the requirement that PPMS include specified relevant numerical and descriptive information, copies of relevant documents, and minimum search and retrieval capabilities</p> <p>Submit revised memorandum to DOJ for approval</p>	<p>August 29, 2003</p> <p>August 31, 2004</p>
110	<p>Submit to DOJ for approval a memorandum outlining MPD's plan for compliance with the requirement that PPMS use a common control number and employee identification number to facilitate cross-referencing</p>	<p>August 29, 2003</p>

<sup>1</sup> The schedule is dependent on the milestone of March 7, 2005 for MOA paragraph 114(b) being met.

<sup>2</sup> Note, some dates in this schedule have already occurred. These represent PPMS-related tasks which are ongoing or which MPD has already accomplished, in partial or full satisfaction of various MOA requirements.



111	<p>Submit PPMS Protocol to DOJ</p> <p>Revise, modify and edit PPMS protocol based on DOJ's comments and as necessary to reflect developments in the PPMS system. Revisions will be promptly submitted to DOJ for review and approval</p> <p>Submit revised PPMS General Order for DOJ technical assistance review.</p> <p>Submit PPMS Standard Operating Procedures for DOJ technical assistance review.</p> <p>Submit final PPMS General Order and Standard Operating Procedures to DOJ for approval.</p>	<p>November 18, 2003</p> <p>Ongoing beginning November 18, 2003</p> <p>May 30, 2005</p> <p>August 30, 2005</p> <p>Due the date Phase I beta testing begins (see ¶ 114 (d))</p>
112	<p>Submit PPMS Protocol to DOJ for technical assistance</p> <p>Train managers and supervisors for risk management and use of PPMS</p> <p>Hold managers and supervisors accountable for implementation of PPMS protocol</p>	<p>November 18, 2003</p> <p>Ongoing beginning within 8 weeks of DOJ's final approval of the PPMS Protocol (see ¶ 111)</p> <p>Ongoing beginning within 8 weeks of DOJ's final approval of the PPMS Protocol (see ¶ 111)</p>
113	<p>Submit plan for maintaining personally identifiable information about officers for at least five years and information necessary for aggregate statistical analysis indefinitely; for entering information in a timely, accurate; and complete manner; and for maintaining officer data in a secure and confidential manner</p> <p>Submit revised plan to DOJ for approval</p>	<p>November 14, 2003</p> <p>April 28, 2005</p>

114(b)	Select the PPMS contractor  Secure finalized, signed contract with PPMS vendor	September 16, 2003  March 7, 2005
114(c)	Submit PPMS Protocol to DOJ	See ¶ 111
114(d)	Have ready for DOJ testing a beta version of PPMS  <ul style="list-style-type: none"> <li>• Phase I PPMS application design document complete</li> <li>• Phase I PPMS application delivery</li> <li>• Phase I user acceptance testing complete</li> <li>• MPD shall notify DOJ that: <ul style="list-style-type: none"> <li>• MPD believes the Phase I PPMS application is MOA compliant,</li> <li>• Beta test site installation is complete, and</li> <li>• The DOJ and OIM beta test may commence</li> </ul> </li> <li>• Phase II PPMS application design document complete</li> <li>• Phase II PPMS application delivery</li> </ul>	April 28, 2005  August 23, 2005  October 25, 2005  November 3, 2005  February 16, 2006  April 20, 2006
114(e)	PPMS computer program and computer hardware operational and fully implemented  <ul style="list-style-type: none"> <li>• Phase I PPMS rollout complete</li> <li>• Phase II PPMS rollout complete</li> </ul>	January 19, 2006  August 31, 2006
115	Until implementation of PPMS, utilize existing data for the purposes set forth for the PPMS	Ongoing until PPMS Phase II rollout is complete (see ¶ 114 (e))
116	Following implementation of PPMS, modify tables and fields, documents included, standardized reports, and queries, as warranted	Ongoing once PPMS is operational (see ¶ 114 (e))

117	Submit to DOJ for approval OPR plan for taking responsibility for MPD-wide risk assessments and PPMS operation and entering of information	October 17, 2003
	Submit to DOJ for approval OPR plan for providing assistance to managers and supervisors using PPMS and ensuring that appropriate reports and queries are programmed	October 17, 2003
	Submit revised plan to DOJ for approval	August 20, 2004
	Submit revised plan to DOJ for approval based on DOJ's September 22, 2004 comments	April 28, 2005