

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

**IN RE CINCINNATI POLICING** : **Case No. C-1-99-317**  
:   
: **Judge Dlott**  
:   
: **COLLABORATIVE**  
: **AGREEMENT**  
:

1. The Cincinnati Black United Front (“Front”), the American Civil Liberties Union of Ohio Foundation, Inc. (“ACLU”), on behalf of the class, as defined herein (“the Plaintiffs”), the City of Cincinnati (“City”), and the Fraternal Order of Police (“FOP”), hereinafter collectively referred to as the “Parties” hereby enter into this Collaborative Settlement Agreement dated as of April 11, 2002 (the "Agreement" or "Collaborative Agreement") providing for full and complete settlement of the claims of all of the Parties as described in certain litigation commenced by Plaintiff Bomani Tyehimba against the City and others in United States District Court in case No. C-1-99-317 as later sought to be amended by Amended Complaint and subsequent pleadings filed by the Front and the ACLU on or after March 1, 2001, against the City and others, herein described as the Litigation, in consideration of the mutual promises of the Parties and pursuant to the terms and conditions set forth below, all subject to the approval of the Court.

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## **I. VALUE STATEMENT**

2. The overall Collaborative Agreement described in this document contains a description of problem oriented policing which frames the overall philosophy and practices at its core. Central to a problem solving orientation is that problems are dilemmas to be engaged and learned from and that blame is an obstacle to progress. The overall collaborative effort suggests an alternative to blame: that different groups within the community with different experiences and perspectives share much more in common than not, and can work together on common goals and solve problems together.

## **II. INTRODUCTION**

3. This Collaborative on Police Community Relations was proposed by the Parties, authorized by the City Council of the City of Cincinnati and established by United States District Judge Susan J. Dlott as an alternative dispute resolution effort to resolve social conflict, improve community relations, and avoid divisive litigation. The Collaborative has been pursued with Judge Dlott's direction, encouragement and assistance as a joint project of the Parties. The Litigation alleges racially biased policing by the Cincinnati Police Department (CPD). The City and the FOP have denied the allegations but have agreed to pursue this unique partnership as a means of resolving the conflict. The Court has appointed as Special Master, Jay Rothman, Ph.D., who has been leading the resolution process.

4. The Collaborative includes outreach to the entire Cincinnati community through eight stakeholder groups: African-Americans, social service and religious organizations, businesses and philanthropic groups, police line officers and spouses, City officials, white citizens, other minorities and youth. The community outreach included responses to an online questionnaire as well as interviews with citizens for whom a computer was not easily accessed. Feedback sessions were used to collect and discuss the information that was gathered. Over 3500 persons participated in this process. The collaborative also included an expert research effort headed by John Eck, Ph.D., charged with identifying best practices and model programs. The results of this community dialogue and expert research were shared with the Parties for use in settlement negotiations.

5. The Parties have studied and received the results from community based work done through Study Circles by the Cincinnati Human Relations Commission; Neighbor to Neighbor, sponsored by numerous Cincinnati organizations; suggestions by the National Conference for Community and Justice (NCCJ) and Cincinnati Community Action Now (CCAN).

6. The Collaborative has engaged the entire community in a constructive dialogue that has resulted in an ongoing commitment to cooperation between the police and the community. The Parties, through this Agreement, make a commitment to promote and foster this ongoing cooperation.

## **III. CLASS CERTIFICATION AND FRIENDS OF THE COLLABORATIVE**

7. The Parties agree that the goal of securing continuing, broad based community commitment to implementation of the terms of this Agreement shall be accomplished through certification of a plaintiff class action under Fed.R.Civ.P. 23(b)(2). The representative Plaintiffs shall be the Cincinnati Black United Front ("Front") and the American Civil Liberties Union of Ohio

Foundation, Inc. The Parties shall permit the Urban League of Cincinnati and NAACP, Cincinnati Branch to join as class representatives within thirty days of the signing of this Agreement if they agree. The Parties agree to the certification of a mandatory class for settlement purposes under Fed. Rule Civ. P. 23(b) (2). The class shall be defined as:

All African-American or Black persons and people perceived as such who reside, work in and/or travel on public thoroughfares in the City of Cincinnati, Ohio either now or in the future and who are stopped, detained, or arrested by Cincinnati Police Officers or their agents, and citizens of any race who have been or will be subjected to a use of force by Cincinnati police officers and their agents.

8. A community advisory committee of Cincinnati organizations, the Friends of the Collaborative, shall be established within 30 days of the approval of this Agreement by the Court. Such Committee will consult with and support the parties regarding the implementation of the Agreement.

9. The Parties agree that they are entering into this class action settlement agreement for settlement purposes only. Any acquiescence or agreement to the class certification in this case does not constitute an admission of liability or fault by the City of Cincinnati or any of its officials, agents, or employees and may not be used as evidence in any proceeding by any member of the class except proceedings under this Agreement.

#### **IV. PURPOSE OF COLLABORATIVE SETTLEMENT AGREEMENT**

10. The purposes of this Agreement are to resolve social conflict, to improve community-police relationships, to reduce crime and disorder, and to fully resolve all of the pending claims of all individuals and organizations named in the underlying litigation, to implement the consensus goals identified by the community through the collaborative process (listed below), and to foster an atmosphere throughout the community of mutual respect and trust among community members including the police. The Parties recognize that there has been friction between some members of both the community and the CPD. The ultimate goal of this Agreement is to reduce that friction and foster a safer community where mutual trust and respect is enhanced among citizens and police. This Agreement reflects the following goals adopted by the 3500 respondents through the feedback process developed by the Parties through the Collaborative:

First Goal: Police Officers and Community Members Will Become Proactive Partners in Community Problem Solving

Second Goal: Build Relationships of Respect, Cooperation and Trust Within and Between Police and Communities

Third Goal: Improve Education, Oversight, Monitoring, Hiring Practices and Accountability of CPD

Fourth Goal: Ensure Fair, Equitable, and Courteous Treatment for All

Fifth Goal: Create Methods to Establish the Public's Understanding of Police Policies and Procedures and Recognition of Exceptional Service in an Effort to Foster Support for the Police

11. Further, this Agreement will resolve the issues raised by the amended complaint and motion for preliminary injunction. The Parties believe that this settlement can support and build upon the current mission statement of the Cincinnati Police Department:

"The mission of the Cincinnati Police Department is to work in partnership with the citizens of the community to provide a safe environment where the quality of life may be improved through delivery of fair and impartial police services."

12. The Parties, their agents, successors and all persons in active concert or participation with any of them shall abide by the terms of this Agreement.

13. This Collaborative Agreement is founded on three principles. First, the social conflict necessitating this Agreement arises out of a cultural context much broader than police community relationships. Second, many conflicts can be addressed through careful analysis based on detailed information and a willingness to explore a wide range of alternatives. This is called problem solving. Third, achieving mutually agreeable solutions to the above mentioned goals described by the citizens of Cincinnati is the criteria for success. Consequently, this Agreement is outcome oriented, putting great emphasis on objective measures of police-citizen relations and police effectiveness. Only through comprehensive measurement can we determine if progress is being made and whether the means for reaching mutually agreeable solutions to these goals are working. This is one form of accountability. Though problem solving is described first and outcome accountability is described last these two principles are woven into the entire plan.

14. It is understood and agreed that the terms and implementation of this Agreement are not intended to and shall not be construed to violate the terms of any collective bargaining agreement by and between the City and the FOP or any other entities representing employees of the City, and further will not include any terms and conditions of employment that must be negotiated by and between the FOP and the City.

15. The Plaintiffs and FOP shall cooperate with the City to develop and implement a plan of community engagement to prepare Cincinnati residents, business owners, non-profit agencies, community and religious organizations, and others as partners with the City in problem solving activities.

## **V. OPERATIVE PROVISIONS**

### **A. The Parties Shall Implement a Policing Strategy of Community Problem Oriented Policing (CPOP)**

16. The City of Cincinnati, the Plaintiffs and the FOP, shall adopt problem solving as the principal strategy for addressing crime and disorder problems. Initiatives to address crime and disorder will be preceded by careful problem definition, analysis and an examination of a broad range of

solutions. The City of Cincinnati will routinely evaluate implemented solutions to crime and disorder problems, regardless of the agency leading the problem-solving effort. The City will develop and implement a plan to coordinate the City's activities so that multi-agency problem solving with community members becomes a standard practice. Such an approach does not preclude law enforcement and prosecution.

### **Introduction to Community Problem Oriented Policing**

17. The City of Cincinnati is committed to community problem oriented policing (CPOP) as a means to reduce crime and improve the quality of life for its citizens. The Plaintiffs and the FOP join in that commitment. The CPD recognizes CPOP as the next phase of effective community policing. Current research and case studies from around the world indicate that the problem-solving process known as SARA (Scanning, Analysis, Response, and Assessment) effectively addresses crime, disorder, and the fear of crime in communities. The Parties acknowledge that there are broad causes of crime and disorder. For a long period of time the police have been looked at as the only entity to address crime and disorder in our community. This Agreement is designed to encourage the Parties to commit to help the police and community work together to address crime, disorder, and quality of life issues in the Cincinnati metropolitan area.

18. The CPD has recently adopted a strategic plan that embraces community problem oriented policing. This Collaborative Agreement builds on that commitment. Implementing a widespread, in-depth community problem oriented policing strategy in Cincinnati can increase the police, City, and community effectiveness in preventing and solving crime, reducing disorder, improving quality of life, and restoring functional neighborhoods.

19. The CPD consulted Advisors Helping Agencies in the development of its strategic plan in order to gain an outside perspective of the Cincinnati Police Department. One of the goals identified through this process was the use of problem oriented policing, in partnership with the community, to implement effective solutions. This is the process the CPD adopted to help communities solve problems. Part of this goal is the implementation of a problem tracking and reporting system to document successes and failures. The CPD is still implementing this system and is working to improve it. The Collaborative Agreement will directly assist in this effort.

### **Explanation of Community Problem Oriented Policing**

20. Community problem oriented policing is one form of police work that seeks resolution of troublesome circumstances in the community. These troublesome circumstances are framed as problems to solve. They usually reveal themselves as a form of repeat pattern of offending, victimization, or locations. First, problems need to be carefully defined. A useable problem definition requires a description of harmful behaviors and the environments where these behaviors occur.

21. The second principle guiding community problem oriented policing is that problems are carefully analyzed prior to developing a solution. Community problem oriented policing is an information intensive strategy that places a premium on data, intelligence, community input, and analysis. The analysis is designed to reveal critical aspects of the problem that can be altered to effect a reduction in the problem.

22. The third principle is that the police and their partners engage in a broad search for solutions based on the analysis of information. A law enforcement response is always a possibility, but may not be required. Rather, a range of options is explored, often drawing from the field of "situational crime prevention" that block opportunities to commit crimes and disorder. Effective solutions to problems may require the active participation of and partnership with other City agencies, community members, and the private sector. This implies that for a community problem oriented policing strategy to be effective there must be close police-community relations and the City must support this approach.

23. The fourth principle is that problem-solving efforts are evaluated to determine if the problem has been reduced. Here again, the use of information technology and analysis is critical to assure continuous improvement. If the problem has been successfully addressed, the police can move on to other problems. If it has not, then more work needs to be done, including a re-analysis of the problem or a search for alternative solutions.

24. Beginning in the fall of 1993 through February 1994, all CPD personnel received eight hours of police problem solving training using the SARA model as the process for community problem solving. The CPD has also specifically trained all neighborhood officers in the SARA model. In 1998, Police Officers and Police Specialists received a one-hour overview of community oriented policing that examined successes of community oriented policing. The overview also helped educate beat officers on how neighborhood officers could assist them in finding solutions to problems on their beat. Also in 1998, the problem solving method was used during Critical Incident Training for all Sergeants and Lieutenants. All of this suggests a solid foundation for even more focused and comprehensive commitment to community problem oriented policing.

25. The CPD also uses crime analysis and mapping for problem solving. CPD analysts receive numerous requests for information during the analysis and assessment phases of problem solving. They have the ability to draw a picture of crime for those involved in the problem solving initiative. Several years ago, the CPD, Klotter Street Homeowners Association and the Cincinnati Public Works Department collaborated to develop a strategy for combating increasing incidents of theft and vandalism in the Klotter Street neighborhood.<sup>1</sup> This is only one example of the use of technology and crime mapping for problem solving by the City and provides a further successful foundation for this Collaborative Agreement.

26. Citizens of Cincinnati have expressed a strong and uniform desire to see greater positive interaction between the police and the public. During the nine-month collaborative process in 2001, the public called for the City to "reinforce and expand community-oriented policing and practice." They have recommended that the City "establish and maintain greater understanding, positive interaction, and communications between the community and the police." They have asked the City to "promote a partnership of shared responsibility for community problem-solving." Citizens want to "develop more trust, respect and acceptance between the police and community." They want to "increase public's understanding of police policies, procedures, duties and roles." The public wants to "foster greater appreciation and support for police through professional and public recognition of outstanding service as

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<sup>1</sup> They used the SARA model for problem solving and the project and findings were published in *Crime Mapping Case Studies: Successes in the Field*, Volume 2, 2000, Police Executive Research Forum.

well as awareness of the motivations of police officer and challenges they face." Citizens want to "improve communications and foster greater understanding, trust, respect and sensitivity between the community and the police." And the public wants to "increase community accountability and responsibility."

27. The Parties, and especially the CPD, understand that fully engaging the community is a fundamental key to effective law enforcement. The CPD will continue to implement policies and procedures that are guided by the principles of community problem oriented policing. In accordance with these principles, the CPD continues to work in partnership with the community to solve problems that impact the community. As part of that process the Department has expanded its successful Citizens on Patrol Program to include neighborhoods of Bond Hill, College Hill, Madisonville, Mt. Washington, Price Hill, Carthage, Hartwell, Westwood, Northside, Clifton/University Heights/Fairview (CUF), Kennedy Heights and Pleasant Ridge. This program started with only four communities in 1997. Its success was recognized by other neighborhoods that wanted to work in partnership with the police to take back their neighborhoods. Neighborhood officers have been encouraged to utilize the SARA model and explain the process to citizens.

28. It is abundantly clear that the citizens of Cincinnati and their police officials want a two way dialogue about effective and fair policing. Taking a proactive and preventative approach toward informing the public about police operations will go a long way toward improving police-citizen relations and preventing information vacuums that increase friction between the community and the police. The ultimate goal of this Agreement is to reduce that friction and foster a safer community where mutual trust and respect is enhanced among citizens and police.

### **Implementation of Community Problem Oriented Policing (CPOP)**

29. The Parties shall be jointly accountable for the implementation of community problem solving policing. The Parties, through their attorneys, shall meet each of the development deadlines by drafting whatever policies, procedures or other documents that may be necessary to carry the commitments of this Agreement into operation. The Parties will work together to mutually insure that each of the following implementation steps is accomplished by the deadlines set for implementation.

a) The City, in consultation with the other Parties, shall develop and implement a plan to coordinate City departments with the CPOP focus of the CPD.

Plan Development Deadline: 60 days after fairness hearing.

Plan Implementation Deadline: 90 days after fairness hearing.

b) The Parties shall develop and implement a system for regularly researching and making available to the public a comprehensive library of best practices in community problem oriented policing.

Plan Development Deadline: 60 days after fairness hearing

Plan Implementation Deadline: 90 days after fairness hearing

c) The City, in consultation with the Parties shall develop a “continuous learning” process through the CPD. Experiences with problem solving efforts in the field will be documented and disseminated throughout the police department and made available to the public. Problem solving will continue to be emphasized in (included but not limited to) academy training, in-service training, and field officer training.

Plan Development Deadline: 60 days after fairness hearing  
Plan Implementation Deadline: 90 days after fairness hearing

d) The Parties will seek out information on how problem solving is conducted in other police agencies. Research and best practices on successful and unsuccessful methods for tackling problems, and analogous processes used by other professions (e.g., conflict resolution, organization development, epidemiology, military, civil engineering, and business) will be disseminated.

Plan Development Deadline: 60 days after fairness hearing  
Plan Implementation Deadline: 90 days after fairness hearing

e) The Parties, consistent with the Community Partnering Program, attached as Exhibit A, shall conduct CPOP training for community groups, jointly promote CPOP, and implement said CPOP training.

Plan Development Deadline: 60 days  
Plan Implementation Deadline: 90 days

f) The Parties shall coordinate efforts undertaken through the Community Partnering Program and establish an ongoing community dialogue and interaction including, but not limited, to structured involvement between the CPD and youth as well as with property owners, businesses, tenants, community and faith-based organizations, motorists, low income residents and other city residents on purposes and practices of CPOP.

Development Deadline for training and informational materials: 60 days after fairness hearing  
Plan Implementation Deadline: Immediate. 90 days after fairness hearing

g) The Parties shall establish an annual CPOP award to recognize the efforts of citizens, police officials, and other public officials who have made substantial contributions to CPOP by addressing community problems in Cincinnati.

Deadline to Complete Award(s) Design: 120 days after fairness hearing  
Deadline for Implementation: 180 days after fairness hearing

h) The City, in consultation with the Parties and consistent with the Ohio Law, shall develop and implement a system for consistently informing the public about police policies and procedures. In accomplishing this item, The City, in consultation with the Parties, shall conduct a communications audit, and develop and implement a plan for the improvement of internal and external communications. This will be funded by NCCJ pursuant to the attached description in Exhibit B.



System Development Deadline: 60 days after fairness hearing  
System Implementation Deadline: 120 days after fairness hearing

i) The CPD shall create and staff a Community Relations office that will coordinate within the CPD implementation of this Agreement.

Deadline for Creation of Community Relations Office: 60 days after fairness hearing

j) The Parties shall describe the current status of problem solving throughout the CPD and what is being done to improve it through an annual report. Each party shall provide information detailing what it has done relating to its role in CPOP.

Implementation Deadline: One year after fairness hearing

k) CPD District Commanders and Special Unit Commanders or officials at comparable levels shall prepare quarterly reports that detail problem solving activities within their Districts. To the extent practicable, these reports shall identify specific problems addressed and steps taken by the City and the community toward their resolution. The reports also shall identify obstacles faced and recommendations for future improvement. Consistent with individual privacy and relevant law, these reports shall be available to the public through the CPD's Community Relations Office.

Deadline to Commence Quarterly Reports: 90 days after fairness hearing

l) The Parties shall review existing courses and recommend any new ones that may be appropriate for the Police Training Academy in order to effectively and accurately inform police recruits, officers and supervisors about the urban environment in which they are working.

Deadline to Complete Course Review and Design: 90 days after fairness hearing  
Deadline for Implementation: 120 days after fairness hearing

m) The Parties, in conjunction with the Monitor, shall develop and implement a problem tracking system that will have the goal of documenting problem-solving activities, including problem definition, analysis and response activities and information, evaluation results, and partnerships with police, government, and community organizations and individuals.

System Development Deadline: 180 days after the fairness hearing  
System Implementation Deadline: 240 days after the fairness hearing

n) The City shall periodically review its staffing plan in light of its commitments under CPOP and make revisions as necessary subject to funding provisions of this Agreement.

Deadline for Staffing Plan review: ongoing

o) The City shall review and, where necessary and appropriate, revise, police department policies and procedures, organizational plans, job descriptions, and performance evaluation standards, consistent with its commitment to CPOP.

Deadline to Complete Review : 60 days after fairness hearing

Deadline for Revision: 90 days after fairness hearing

p) Consistent with applicable federal and state law regarding protection of personal privacy and the Ohio Public Records Act, the City shall design a system that will permit the retrieval and linkage of certain information including that which is already collected by the CPD but may not be routinely searchable under the present system. Further, the system shall enable the tracking of repeat offenders, repeat victims, and/or repeat locations that are necessary to community problem oriented policing. Finally, the system established under this paragraph shall include, but not be limited to, that information necessary to comply with the terms in this Agreement regarding nondiscrimination in policing and early warning.

Deadline to Complete Request for Proposal: 180 days after fairness hearing

Deadline for Implementation: to be determined by the Monitor

q) The City, in consultation with the Parties, shall study the options and then determine if and how to best secure appropriate information technology so that police officers, supervisors, managers, and executives, as well as other City agencies and community members, can get access to timely and useful information needed to detect, analyze, and respond to problems and evaluate their effectiveness subject to the provisions of this Agreement with respect to funding.

Deadline for Development of Procurement Plan: 180 days after fairness hearing

Deadline for Securing Funding: 240 days after fairness hearing

Deadline for Procurement: one year after fairness hearing

Deadline for Implementation: immediately regarding those aspects that need no new purchases, otherwise two years after fairness hearing

**B. Parties' Mutual Accountability and Responsibility for Evaluation Of The Implementation of the Agreement**

**Introduction**

30. The Parties, in consultation with appropriate experts and under the supervision of the Monitor, shall develop a system of evaluation to track the attainment of goals agreed to between the Parties in the Collaborative Agreement. This tracking enables the Agreement to serve as a mutual accountability plan. The term "mutual accountability plan" is defined as a plan that ensures that the conduct of the City, the police administration, members of the Cincinnati Police Department and members of the general public are closely monitored so that the favorable and unfavorable conduct of all is fully documented and thereby available as a tool for improving police-community relations under this Agreement. The Parties will regularly meet with the Monitor to study the results of the evaluation instruments and determine what changes, if any, in the Agreement or in their actions should be pursued

in light of the evaluation results. That system shall also include a plan for determining what parts of this evaluation oversight may be transferred from the Monitor's supervision to a successor agency before this Agreement expires in order that ongoing evaluation efforts of police-community relations continue.

### **Protocol Development**

31. The Parties shall, with the advice of expert consultants, and under the supervision of the Monitor, develop a Protocol to accomplish this system of evaluation. This Protocol (hereafter, the "Evaluation Protocol") shall be developed within 90 days of the Court approval of this Agreement, and implementation shall be commenced not more than 60 days thereafter.

32. The Evaluation Protocol shall set forth (i) a schedule for implementation of its terms, (ii) the cost of implementation, (iii) the individual or entity that will perform its requirements, (iv) data collection methods, forms, and procedures, (v) guidelines for analysis of collected data and reporting formats, (vi) levels of statistical confidence, and (vii) levels of statistical power.<sup>2</sup>

### **Cost**

33. The cost to implement the provisions of this Section B, including the cost to implement the Evaluation Protocol, shall not exceed the limit set forth in paragraph 130.

### **Elements of Evaluation Protocol**

34. This Evaluation Protocol shall include (i) periodic surveys, (ii) periodic observations of programs in which the police are involved, and (iii) annual statistical compilations of police interactions with the community and the community's interactions with the police.

#### **Periodic Surveys**

35. Subject to final decision after development of the Evaluation Protocol, the Parties anticipate utilizing several types of surveys regarding events occurring after the signing of this Agreement. The Evaluation Protocol shall provide that for all probability sample surveys, the Parties will assure that the response rate of sampled respondents is not lower than 70 percent.

- a) A probability sample<sup>3</sup> of citizens will be surveyed, periodically citywide. This survey will provide a barometer of citizen attitudes toward and satisfaction with the police. The survey should be large enough that meaningful distinctions can be drawn among neighborhoods, race, gender and ages of respondents. Special consideration will be given to the use of a non-

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<sup>2</sup> Statistical confidence refers to the probability that a difference between two groups is real and not due to randomness. Statistical power refers to the ability to detect a given non-random difference between two groups.

<sup>3</sup> A probability sample is a group of people selected in a way that allows researchers to calculate the proportion of the population they represent with known accuracy. Simple random samples are a type of probability sample, but there are many other types as well.

probability sample of residents who have no fixed address and who are likely to be missed by probability sampling. The citywide survey of citizens will include measures of neighborhood conditions, fear of crime, community efficacy, awareness of policing efforts, participation in policing efforts, perception of policing effectiveness, police responsiveness, performance, officer civility and demeanor, and citizen conduct with the police. The surveys shall also include multiple items that are specifically designed to fairly measure identification and prioritization of problems; awareness of community problem oriented policing efforts, participation in such efforts, and program effectiveness in community relations.

- b) A probability sample of citizens with police encounters will be surveyed periodically to determine the nature of the contacts, citizens' perceptions of the police involved and the outcomes of the contacts. These citizens will be drawn from police records, including but not limited to, lists of citizens attending neighborhood meetings with the police, involved in police-community problem-solving efforts, stopped and questioned by the police, and arrested by the police. The periodic survey of citizens with police encounters will include: measures of police responsiveness, performance, demeanor, the perceived performance of other city agencies involved in the problem-solving process, the perceived effectiveness of the problem solving itself, and perceived community receptiveness to police involvement. The exact nature of the questions asked will depend on the nature of the encounter. Consequently, citizens involved in traffic stops and citizens involved in police-community problem-solving efforts will be asked similar questions about police demeanor, for example, but different questions about the outcomes of the encounter.
- c) A probability sample of police officers, specialists, sergeants, lieutenants, and other members of the Cincinnati Police Department who have significant contact with the public and their immediate families will be surveyed periodically to determine their perceptions of their organizational work climate, citizen support, and methods for improving the CPD and police-community relations. The periodic survey of officers will include measures of officer perceptions of personal safety, perceptions of citizen conduct, their perceptions of support or lack thereof from the CPD, the City, and elected officials, and recommendations for improving the working conditions and effectiveness of police officers. Such surveys shall also include multiple items that are specifically designed to fairly measure identification and prioritization of problems, participation in community problem oriented policing efforts, program effectiveness in community relations. The reasonable surveys of members of the CPD and members of their families shall not be deemed an unfair labor practice and the results of the survey shall not be utilized by the City for any purpose other than those set forth in this Agreement.
- d) Probability samples of officers and citizens involved in the citizen complaint processes will be taken to determine their levels of satisfaction with the fairness of the process. Also, a probability sample of officers involved in internal investigations and the disciplinary processes will be taken to determine their levels of satisfaction with the fairness of the process.

## **Periodic Observations**

36. The Evaluation Protocol shall include provisions for periodic observations of a representative sample of community-police meeting, problem-solving projects, and citizen complaint processes to examine how police and citizens interact in these settings. The periodic observations of problem-solving activities and community policing programs will focus on describing the activity, meeting, or process and the characteristics of effective and ineffective programs, procedures, processes, and personnel.

## **Privacy and Anonymity of Survey and Observation Respondents**

37. The Evaluation Protocol shall provide protection for the privacy of the individual survey and observation respondents (citizens and members of the CPD and their immediate family members) who must feel confident in providing frank and meaningful information. The Evaluation Protocol shall assure that no data with individual respondent identifiers will be released to the public, news organizations, members of the CPD, the City, or other Parties to this Agreement. These survey data and observation data collected as part of this Agreement shall be retained by the Monitor and access to data with personal identifiers shall be restricted to the Monitor, the Monitor's staff, and others the Monitor designates for the sole purpose of accomplishing the goals of this Agreement. This provision may be implemented with any appropriate protective order issued by the Court.

## **Statistical Compilations from Official Records**

38. In addition to surveys, and subject to the final determination of the Parties, the Evaluation Protocol shall include a means for providing the following data to the Parties and the public by the City of Cincinnati on a periodic basis. Citizen and officer information shall not carry personal identifiers but shall include age (by subgroupings of 7-17, 18-25, 26-35, 36-45, 46-55, 56-65, and 65 and over), race, national origin, gender, geographical area (by neighborhood), years of service, rank, assignment and other characteristics as deemed appropriate.

39. Compilations shall include an analysis, by percentage attributable to each of the fifty-two (52) city neighborhoods:

- Arrests
- Reported crimes and drug complaints
- Citations of vehicles and pedestrians
- Stops of vehicles and pedestrians without arrest or issuance of citation
- Uses of force
- Citizen reports of positive interaction with members of the CPD by assignment, location, and nature of circumstance<sup>4</sup>

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<sup>4</sup> All favorable encounters between citizens and police officers shall be reported as soon as they are made known to the City and police administrations and any police supervisor. Citizens, City councilpersons and their staffs, all City departments, divisions and agencies and their staffs, City and

- Reports by members of the CPD of unfavorable conduct by citizens in encounters with the police
- Injuries to officers during police interventions
- Injuries to citizens during arrests and while in police custody
- Citizen complaints against members of the CPD

40. For each of the above items, the city shall provide to the Monitor incident-based data so that the nature, circumstances, and results of the events can be examined. These data will allow examination of trends in the use of force, their geographic patterns, their association with criminal activity, and differences among groups.

### **Evaluation of Problem Solving Processes**

41. The Evaluation Protocol shall also include data recording processes for study of the problem-solving projects undertaken by members of the CPD and the community and the community-police meetings attended by members of the CPD. For these items, the Evaluation Protocol will allow an assessment of core strategic processes of the Cincinnati Police Department.

### **Evaluation Of Video And Audio Records**

42. The Evaluation Protocol shall also include a procedure for representative sampling of police vehicle mounted video and audio recordings in all police districts, and for creating a database describing the sampled recordings. If possible, the Evaluation Protocol will seek to develop a method to study how citizens of various racial and ethnic backgrounds are treated by the police, and how these same people treat the police. Compliance with this term shall be coordinated with compliance with the City-DOJ Agreement attached as Exhibit C.

### **Evaluation of Staffing**

43. The Evaluation Protocol shall also allow examination of the hiring, promotion and transfer processes within the CPD. Accordingly, the Evaluation Protocol shall require review of data from the CPD regarding staffing, including data on recruits, promotions, transfers, retirements, and overall organizational staffing by rank, assignment, race, gender, age, and years of experience with the CPD.

### **Evaluation Reports**

44. Using the data from the above sources, and subject to the final determination of the Parties, the Evaluation Protocol will include provision for periodic reports that will address each of the following questions, taking into consideration breakdowns by age (by subgroupings of 7-17, 18-25, 26-

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police administrations and their staffs, and all members of the CPD shall be encouraged to promptly report all favorable or positive actions taken by all members of the CPD to ensure that a complete record of all such favorable and positive actions are made a permanent part of any data base relating to the CPD's dealings with the community.

35, 36-45, 46-55, 56-65, and 65 and over), race, national origin, gender, geographical area (by neighborhood), years of service, rank, assignment and other characteristics as deemed appropriate:

- Is public safety improving throughout the City of Cincinnati?
- Have the number of reports by police of unfavorable conduct by citizens during encounters with the police increased or decreased in the neighborhoods of Cincinnati?
- Is police use of force declining relative to the City's population and serious crime rate?
- Is police use of force equitably distributed across racial, gender, and age groups, once involvement in crime, disorder, and other relevant factors is taken into account?
- Do police officers feel their supervisors, City officials, and citizens support their actions?
- Are the citizen complaint processes and discipline outcomes perceived to be fair by involved citizens and officers?
- Are police-community relations improving throughout Cincinnati?
- What can be done to continue to reduce police use of force, make police activities more equitable, address community problems, increase the fairness of the citizen complaint process, improve police-citizen relations, and improve community safety?
- Has the use of police force declined/ or increased relative to the number of police/citizen contacts?
- Were persons of any particular race or national origin, gender, or age in any of the fifty-two (52) community geographic areas subjected to a disproportionate share of use of force by the police?
- Were members of the CPD in any of the fifty-two community geographic areas subjected to a disproportionate share of use of force by persons of any particular race or national origin, gender, or age?
- Is there any correlation between the answers to the two previous questions?
- Are community problems being successfully addressed?
- Are police problems being successfully addressed?
- Do police officers feel that their supervisors, City elected and appointed officials, and citizens have done anything positive or negative with respect to supporting their police-related actions?
- Do citizens have any adequate means for positive engagement with police officers and police officials?
- Do lower ranking members of the CPD have any adequate means for positive engagement with higher ranking police officials and elected and appointed officials of the city?
- Do members of the CPD have any adequate means for positive engagement with the community?
- Is the citizen complaint process perceived to be fair by the involved citizens?
- Is the citizen complaint process perceived to be fair by the involved police officer?
- Is anything further required to make the citizen complaint process more fair?
- Is the police complaint process against citizens perceived to be fair by the police?
- Is the police complaint process against citizens perceived to be fair by the involved citizen?
- Is anything further required to make the police complaint process against citizens more fair?
- Are police/community relations improving throughout the Cincinnati area?
- What is required to improve police/community relations throughout the Cincinnati area?
- What has been done to continue to reduce police and citizen use of force?
- What has been done to help make police activities toward the citizens more equitable?
- What has been done to help make citizen activities toward the police less confrontational?
- What has been done to help the police respond to the citizens in a more respectful manner?

- What has been done to help the citizens respond to the police in a more respectful manner?
- What has been done to improve community safety?
- What has been done to improve police safety?
- What has been done to encourage citizens to report favorable or positive actions taken by members of the CPD?

45. The Parties will publish an annual report answering these questions, along with summaries of supporting data. The City will distribute this report to City libraries and schools, community and social service organizations, religious organizations, neighborhood associations, business associations, police officer associations and organizations, higher educational institutions, and news organizations, and shall make the report available for pick-up in readily accessible points in the City. The report will also be available from the City's website.

46. Measurement of the success of the mutual accountability process shall be based on the following criteria:

- Was an accountability system implemented in accordance with the terms of this Agreement?
- Was the data gathered in a manner consistent with the terms of this Agreement?
- Was the data analyzed in a full and fair manner?
- Was the data published and distributed in a manner consistent with the terms of this Agreement?
- Was the data fully and fairly used to assess progress toward attaining the goals set forth in this Agreement?
- Was the data used to adjust City, police and community strategies to address problems, reduce police and citizen use of force and improve police/community interaction?

**C. Use Of Force And Status Of Terms Of The City - Department Of Justice Agreement**

47. The City shall abide by the terms of the City-Department of Justice ("DOJ") Agreement attached as Exhibit C (hereafter referred to as the "City-DOJ Agreement"). This Paragraph shall be enforceable solely through the mechanism of Paragraph 113 hereof.

48. There are many persons in the community who contend that officers should report when they draw a firearm. The parties to the collaborative have been unable to agree on this issue. In the spirit of the collaborative and in an effort to settle the entire matter and considering the best interest of the entire community, the parties have agreed to the following protocol:

- a) The parties hereby agree to this expedited citizen complaint process for addressing concerns based on pointed firearms.
- b) Any person who believes that an officer has unnecessarily pointed a firearm at a person on or after March 31, 2000 may file a complaint with any of the Plaintiff organizations, the CPD, or other available civilian complaint processes. Any cases previously investigated and adjudicated since March 31, 2000, shall be sent directly to the Monitor.
- c) That complaint shall be immediately investigated by a select team of CPD officers selected by the Chief after consultations with the Plaintiffs.



- d) The investigator(s) shall make a determination on each complaint within thirty days of the time it is filed, absent exceptional circumstances, and shall file said determination with the parties and the complainant and Monitor.
- e) After six months, all of the complaints and investigator determinations shall be provided to the Monitor. The Monitor shall compile the data and forward it to the Conciliator.
- f) The Conciliator shall review the information provided by the Monitor. If the Conciliator finds, by a preponderance of the evidence, that there exists a pattern of improper pointing of firearms at citizens, then the parties agree that the city shall henceforth require officers to report all instances where they point a firearm at or in the direction of a citizen. This provision is subject to the dispute resolution process set forth more fully at Paragraph 113 and appeal under Fed. R. Civ. P. 53.

49. Due to the fact that the Memorandum of Agreement between the City and the Department of Justice was negotiated without the involvement of the Fraternal Order of Police (FOP), and because the City-DOJ Agreement contains a substantial number of items that may create many additions, modifications, and deletions to the current Police Procedure Manual that have not yet been submitted to the FOP in compliance with the terms of Article XII, Section 5 of the Collective Bargaining Agreement by and between the City and the FOP, the FOP does not agree to, adopt, or afford any precedential effect to the terms of the City-DOJ Agreement, but will allow it to be appended to the Collaborative Agreement, so long as the FOP reserves the right to raise issues relating to the City-DOJ Agreement through the Monitoring, Reporting, and Dispute resolution provisions of the Collaborative Agreement. The decision of the FOP, acting as a Collaborative partner, not to file any unfair labor practice claims or grievances as a result of the above shall not be used as a precedent, estoppel, or waiver by the City in this matter or in any unfair labor practice claim involving the City and the FOP.

**D. The Parties Shall Collaborate to Ensure Fair, Equitable, and Courteous Treatment for All**

50. The City shall provide police services in a fair and impartial manner without any discrimination on the basis of race, color, or ethnicity. The City, in consultation with the Parties, shall take appropriate action to track compliance as set out in this section.

**Implementation of Commitment to Bias-Free Policing**

51. The City, pursuant to Ordinance 88-2001, has commenced an effort to measure whether any racial disparity is present in motor vehicle stops by the CPD. The analysis of this data will be reported pursuant to Paragraph 39.

52. The Parties shall cooperate in the ongoing training and dissemination of information regarding the Professional Traffic Stops Bias-Free Policing Training Program.

53. The Monitor, in consultation with the Parties, shall in all public reports, include detailed information including, but not limited to, the racial composition of those persons stopped (whether in a

motor vehicle or not), detained, searched, arrested, or involved in a use of force with a member of the CPD, as well as the race of the officer stopping such persons.

54. In providing police services, the members of CPD shall conduct themselves in a professional, courteous manner, consistent with professional standards. Except in exigent circumstances, when a citizen is stopped or detained and then released as part of an investigation, the officer shall explain to the citizen why he or she was stopped or detained in a professional, courteous manner. An officer must always display his or her badge on request and must never retaliate or express disapproval if a citizen seeks to record an officer's badge number. This paragraph shall be incorporated into the written CPD policies.

#### **E. Civilian Review: The City Will Establish A Citizen Complaint Authority**

55. The new Citizen Complaint Authority (CCA) will replace the Citizen Police Review Panel (CPRP) and the police investigations functions of OMI. The CCA's mission will be to investigate serious interventions by police officers, including but not limited to shots fired, deaths in custody and major uses of force, and to review and resolve all citizen complaints in a fair and efficient manner. It is essential that the CCA uniformly be perceived as fair and impartial, and not a vehicle for any individuals or groups to promote their own agendas. It is also essential that the CCA be encouraged to act independently consistent with its duties.

#### **Staffing and Powers of CCA**

56. The CCA will have three components: (1) a Board of seven Citizens appointed by the Mayor and approved by City Council, (2) a full-time Executive Director with appropriate support staff, and (3) a team of professional investigators.

#### **The Board of Citizens**

57. The Board will include a diverse array of seven individuals, from a cross-section of the Cincinnati community, who have the requisite education and experience to impartially review evidence and render judgments on alleged officer misconduct. The Mayor will accept nominations from the City's fifty-two Community Councils, business, civic, social service and other agencies and organizations. The Mayor also will accept applications from individual City residents. The members will serve for a maximum of two terms of two years each, except that three of the initial appointees will be appointed for one year. Those three shall be limited to a single second term of two years in order to ensure that the Board has staggered terms. In the event of the resignation, removal, death, or incapacitation of a member of the panel, any replacement member shall serve the remainder of that term.

58. Applicants for a position on the Board shall execute a signed release authorizing a thorough background check, including a criminal check. No person may serve on the Board who has been convicted of a felony, assault on a police officer, or any crime of dishonesty. The results of the background check for any person appointed to the Board shall be a matter of public record and shall be retained for five years.

59. The Board shall select a chairperson from among its members, who shall serve for a term of one year.

60. The Board and the Executive Director, in consultation with the City Manager, shall develop Standards of Professional Conduct and a comprehensive training program for Board appointees. Said standards shall be approved by the City Manager. Before assuming office and prior to beginning their duties, each member of the Board shall be required to complete a basic course of training, including courses at the Cincinnati Police Academy, instruction in constitutional and criminal protections, and ride-alongs with members of the CPD assigned to patrolling the City, in order to fully and adequately inform each Board member of the training and duties of Cincinnati police officers. Each appointee must promise to abide by the Standards and satisfactorily complete the training as a condition of appointment and prior to service on any cases. The Mayor, after consultation with the other Board members, may remove an individual from the Board for cause, including failure to strictly abide by (including action inconsistent with) the Standards or failure to properly discharge the duties of the office. The Mayor shall seek to act in a manner consistent with the recommendations of the other Board members.

61. The CCA will not commence operations until each member of the Board has satisfactorily completed the training program and promised to abide by the Standards. Until that time, OMI and the Citizens Police Review Panel shall continue in their current roles. Thereafter, new appointees to the Board shall be afforded up to a maximum of ninety (90) days to complete training and promise to abide by the Standards. The CCA shall assume jurisdiction over all of the police cases pending before OMI and the CPRP at the time of the transfer. There shall be no break in civilian review as a result of this transition.

62. The Board and Executive Director shall develop the specific procedures necessary for the CCA to carry out its mission, including the procedure to convene hearings on cases, procedures for investigations, procedures for coordination of work with CPD, and other operating procedures. Consistent with the City Charter, any procedures affecting the administrative service shall be approved by the City Manager.

63. Board members shall be compensated at the rate of \$100 per meeting. The chairperson shall be compensated at the rate of \$125 per meeting.

64. The City Solicitor shall provide legal counsel on a routine basis to the CCA. The City Solicitor shall designate an assistant city solicitor for the CCA who shall maintain independence from and not be involved with any other legal work involving the CPD or individual police officers. If the Board determines on an individual case that it requires outside counsel, it shall notify the City Solicitor. The Solicitor will respond to and cooperate fully with the Board to employ counsel whenever the Solicitor determines in the exercise of her professional discretion that there is the need for such outside counsel. If the City Solicitor determines that there is no need for outside counsel she shall explain her determination to the City Manager, who shall relay it to the Board.

### Executive Director

65. The City Manager shall appoint the CCA's Executive Director, who shall be an unclassified employee of the City. The City Manager shall consult with the Board and seek the Board's recommendations, provided, however, that the final selection of the Executive Director shall be made by the City Manager. The Executive Director shall serve as an unclassified employee and may be discharged by the City Manager after consultation with the Board. This provision shall not relieve the City Manager of the duty to respect the need of the Executive Director to act independently, consistent with the duties of the Executive Director. The Executive Director will be accountable for the efficient operations of the CCA, and for the achievement of the desired outcomes set forth above.

66. The Executive Director shall have professional experience in the investigation of allegations of police misconduct, and he/she should be perceived as fair and impartial. To this end, the City Manager and other City officials, including elected officials, shall be prohibited from interfering with individual investigations.

67. The Executive Director shall be responsible for day-to-day operations of the CCA, including (i) recommendations for hiring of professional and support staff, (ii) preparation, submission and adherence to a budget, (iii) conduct and timely completion of investigations, (iv) reporting to the City on the CCA's work, and (v) maintaining an effective working relationship with the CPD and other branches of government. Within the resources allocated by City Council, the Executive Director shall ensure that the CCA's human and other resources are sufficient to ensure timely completion of investigations and maintenance of complete and accurate records.

68. As a condition of employment, all police officers and city employees are required to provide truthful and accurate information to the CCA. In addition to the foregoing, when a key witness other than a City employee refuses to cooperate in an investigation, the Executive Director may recommend to the Board that a subpoena be issued to compel such testimony, and the Board shall have the authority to request such a subpoena from City Council. Subpoenas for the attendance of persons shall be secured only through City Council. The Board shall have the authority to issue subpoenas for documents, photographs, audio tapes, electronic files and tangible things, subject to approval by the Board's legal counsel.

### Investigators

69. The City's Office of Municipal Investigations currently has four full-time investigators assigned to police cases. The CCA shall have a minimum of five professional investigators and one support person to achieve timely completion of all investigations. Each investigator shall have prior professional experience in investigations, and may be a former police or other law enforcement officer from outside the City.

## CCA Investigation Process

### Intake and Assignment

70. Each citizen complaint, excluding matters involving criminal investigations, will be directed to the CCA regardless of where it initially is filed, and the Executive Director, in consultation with the Board, shall establish criteria to determine whether specific complaints are suitable for CCA investigation or referral to the CPD's Citizen Complaint Resolution Process (CCRP). At a minimum, the CCA shall open its own investigation upon (i) receipt of a complaint of serious misconduct, or (ii) knowledge by the Executive Director of allegations of serious police intervention.<sup>5</sup> The CCA will immediately provide the CPD with detailed information regarding the complaint, including the time and location of the underlying events and the name(s) of the officer(s) involved.

71. Where a complaint is to be investigated by the CCA, it will be assigned to an investigator within 48 business hours of receipt. The CPD shall notify the CCA Executive Director immediately upon the occurrence of a serious police intervention and the Executive Director shall immediately dispatch an investigator(s) to the scene. The CPD shall not interfere with the ability of the CCA investigator to monitor the work of the CPD at the scene and to monitor all interviews conducted by CPD. CCA investigators shall not physically enter the crime scene or delay or impede a criminal investigation.

72. The Chief of Police will retain the discretion to initiate a parallel CPD investigation of any complaint under investigation by the CCA. In addition, the CPD will investigate all complaints initiated within the Department (*i.e.*, where the complainant is a police employee).

### CPD and City Cooperation

73. Police officers and other City employees will be required to submit to administrative questions consistent with existing constitutional and statutory law. See, e.g., CMC §13(f); §20(f)(5). The Executive Director of CCA shall have reasonable access to city records, documents and employees, including employee personnel records and departmental investigation files and reports consistent with Ohio public record laws. CCA investigations shall be conducted consistent with professional standards.

74. The Chief of Police and the Executive Director will develop written procedures that will assure the timely exchange of information and the efficient coordination of CCA and CPD investigations.

### CCA Investigations

75. The CCA will complete its investigations within 90 days of its receipt of the complaint from a complaining citizen, provided, however, that the Executive Director may extend an investigation

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<sup>5</sup> "Serious police intervention" shall include, but not be limited to, major use of force, shots fired or deaths in custody.

upon consultation with the Board. The time required to complete investigations will be a performance accountability measure.

76. Upon completion of a CCA investigation, the Executive Director will forward the investigative report to the Board. That report shall include any positive information about the officer that may be relevant. Similarly, where a complaint is referred to the CCRP, the CPD will report the results of that process to the CCA, and the Executive Director will submit those reports to the Board. Each CCA report shall include proposed findings and recommendations. The Executive Director shall recommend each report either for a Board hearing or summary disposition. The complainant and respondent officer(s) also will be provided the investigative report, and each may challenge the report and/or appeal the Executive Director's recommendation to the Board.

77. If the Board conducts a review hearing, its purpose shall be to confirm the completeness of the CCA investigation and approve or disapprove the Executive Director's report (findings and recommendations). The Board's review hearing will not be an adversarial proceeding and should not be used to reinvestigate the matter. The Board may receive witness testimony including that of the complainant and/or police officer(s). Interviews of city employees or other witnesses shall be conducted only in closed inquiry sessions unless the witness requests otherwise. Such sessions shall not be open to the public and shall include only CCA Board members, and any necessary staff or support personnel. A written record shall be kept of any statements, testimony, or other evidence obtained in such sessions. Any city employee directed to answer questions in an inquiry session shall be advised that the statements and answers given can be used only for administrative purposes relating to city employment and cannot be used in any criminal proceedings involving that employee. Such advice shall be consistent with the constitutional principles identified in *Garrity v. New Jersey*. The employee shall be further advised that a failure or refusal to answer truthfully and completely can subject the employee to disciplinary action including termination. Any employee directed to appear before the CCA for such an inquiry session may bring a legal representative or other support person of choice. Any police officer or complainant, who is directly involved in the circumstances under review, may also attend such sessions and may bring a legal representative or support person, who shall be strictly limited to consultation and such persons may not otherwise participate in the inquiry proceedings.

78. Following a hearing, the Board may either approve or disapprove the Executive Director's findings and recommendations. Where the findings and recommendations are approved, they shall be submitted to the Police Chief and City Manager. If they are disapproved, the Board shall state its reasons and may direct that further investigation be pursued. The Board may issue its own findings and recommendations, and submit them along with the Executive Director's original report to the Police Chief and City Manager. In all cases, the City Manager and Police Chief will refrain from making a final decision on discipline until after receipt of the CCA report. The City Manager shall agree, disagree or agree in part with any findings and recommendations of either the Board or the Executive Director, and she shall inform the Executive Director and the Board in writing of any reasons for agreeing in part or disagreeing with said findings and recommendations. It shall be the Executive Director's responsibility to inform the officer(s) involved in the complaint and the complainant when a final decision has been reached on a complaint.

79. Reports prepared by the CCA, the CPD or the City Manager pursuant to this process shall be publicly available to the extent provided by Ohio law.

## Records

80. The CCA and CPD will create a shared electronic database that will track all citizen complaints, including the manner in which they were addressed (*e.g.*, CCA investigation or CCRP) and their dispositions. Subject to restrictions which may exist in any applicable collective bargaining agreements, this database also will capture data sufficient for the CCA and the CPD to identify officers involved in repeat allegations, citizens making repeat allegations and circumstances giving rise to citizen complaints. This data will be integrated into, or regularly shared with, an electronic information management system to be developed by the CPD. Procedures will be adopted to secure information which is not subject to release under Ohio law.

81. In addition to the foregoing, the CCA shall maintain its files for each investigation for a period of five years or such shorter period as may be provided in any applicable collective bargaining agreement. Where feasible, those files shall include tape-recorded interviews of officers, complainants and witnesses. These data will be made available for the accountability system.

## Prevention

82. There are two methods used for reducing citizen complaints: (i) thorough investigation of officers charged with misconduct, and (ii) examination of complaint patterns to identify at-risk officers, citizens and circumstances. The former represents the traditional method of complaint prevention. The latter method involves an examination both of circumstances that lead to complaints and opportunities to alter those circumstances. It is a problem-solving approach that may prove effective in Cincinnati.

83. The CCA will examine complaint patterns that might provide opportunities for the CPD and community to reduce complaints. At a minimum, the CCA will look for three types of patterns: (i) repeat officers, (ii) repeat citizen complainants, and (iii) repeat complaint circumstances. Following the identification of such patterns, the CCA and the CPD jointly will undertake a problem-solving project to determine the reason(s) for the pattern and whether there are opportunities to eliminate or reduce root causes. Where feasible, this project should involve both affected officers and the community.

## Information Dissemination

84. The CCA will develop a clear and direct information brochure to inform citizens how they can access the CCA and how the CCA operates. The City will make this brochure available to all citizens, including at public libraries and other public facilities.

85. The Executive Director will be responsible for working with the CPD and community to develop and implement an information plan that ensures officers and citizens fully understand the investigation, mediation, restoration, and prevention processes outlined above, and that the CCA's achievements are clearly articulated to the public and the CPD.

86. The CCA shall issue annual reports summarizing its activities for the previous year including a review of significant cases and recommendations. Such reports shall be issued to City Council and the City Manager, and made available to the public.

### Resources and Redundancy

87. The City Council will allocate resources sufficient for the CCA and CPD to accomplish the foregoing.

88. The CPRP and police investigation functions of OMI will be eliminated, and associated resources will be allocated to the CCA.

### 89. ACCOUNTABILITY MEASUREMENTS

- Was the CCA established on a timely basis?
- Was the CCA fully staffed and resourced?
- Was an effective Memorandum of Understanding developed establishing a co-operative working relationship between the CPD and the CCA?
- How many complaints were handled and what were the categories of those complaints?
- What was the time to disposition of the complaints?
- What were the outcomes of the complaints?
- Was a mediation process established?
- Was a restorative justice process established and evaluated?
- Were basic goals/objectives/outcomes achieved?

## **VI. MONITORING AND DISPUTE RESOLUTION**

90. The provisions of this Article VI shall be construed consistent with, and shall in no way modify or amend, the provisions of Paragraph 130.

### Selection of the Monitor

91. Within 150 days of the execution of the City-DOJ Agreement, in accordance with the timetable set forth below, the Parties, together with the DOJ, will select a Monitor with law enforcement experience who will review and report on the Parties' implementation of, and assist with the Parties' compliance with, this Agreement.

- a. Within 30 days of the execution of the City-DOJ Agreement, the Parties, together with the DOJ, jointly will issue a solicitation for bid proposals for appointment of the Monitor. In addition to a targeted national mailing, the solicitation shall be published in several national newspapers, and the websites of the Parties and the DOJ. The City shall bear the cost of publicizing the solicitation.
- b. The deadline for the submission of such proposals will be 30 days after publication of the solicitation on City's website.



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

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

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

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

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

96. The Monitor shall not be subject to dismissal except upon good cause and the Agreement of all of the Parties and the DOJ or by the Court upon motion of one of the Parties or the DOJ and a showing of good cause.

#### Selection of the Conciliator

97. The Honorable Michael R. Merz, United States Magistrate Judge, will be appointed by the Court pursuant to Fed. R. Civ. P. 53 as the Conciliator for compliance with this Agreement.

#### Duties of the Monitor

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

99. The Monitor shall offer the Parties technical assistance regarding compliance with this Agreement. Technical assistance will be provided to a party upon request by that party, and it will be offered consistent with the provisions of this Agreement.

100. The City and the CPD shall provide the Monitor with full and unrestricted access to all CPD and City staff, facilities, and documents (including databases) necessary to carry out the duties assigned to the City and the CPD by this Agreement, provided, however, that the Monitor shall not have access to any materials protected from disclosure by the attorney-client privilege and/or work product doctrine. Any materials or information claimed to be protected by the attorney-client or work product privilege shall be logged with information including author, date, nature of the material, reason for the claim of privilege, and persons to whom the material was disseminated. The Monitor shall cooperate with the City to access people and facilities in a reasonable manner that, consistent with the Monitor's duties, minimizes interference with daily operations.

101. The Monitor shall retain any non-public information in a confidential manner and shall not disclose any non-public information to any person or entity absent written notice to the City and either written consent by the City or a court order authorizing disclosure. In monitoring the implementation of this Agreement, the Monitor shall maintain regular contact with the Parties.

102. The Monitor shall file with the Conciliator written public reports detailing the Parties' compliance with and implementation of each substantive provision of this Agreement. The first such report shall be 180 days after Court approval of this Agreement, and quarterly thereafter. The Monitor may make recommendations to the Parties regarding measures necessary to ensure full and timely implementation of this Agreement.

### Compliance Reviews

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

104. Each Party shall designate a person or persons to serve as liaisons to the Monitor for compliance purposes. The City Solicitor shall serve as a liaison between the City and the Monitor, and shall assist with the City's compliance with this Agreement.

### Reports and Records

105. Between 90 and 120 days following Court approval of this Agreement, and every three months thereafter until this Agreement is terminated, the Parties shall file with the Monitor a status report, including any supporting documentation, delineating all steps taken during the reporting period to comply with this Agreement.

106. During the term of this Agreement, and subject to record retention requirements and procedures imposed by state or local law, any existing consent decree, or any relevant collective

bargaining agreement, the Parties shall maintain all records documenting compliance with this Agreement and all documents required by or developed pursuant to this Agreement.

107. The Monitor shall issue quarterly public reports to the Parties and the Conciliator detailing the Parties' compliance with and implementation of this Agreement, after filing the first such report 180 days after Court approval of this Agreement. These reports shall not include information specifically identifying any individual officer. Drafts of the status reports will be provided to each of the Parties at least 10 days prior to publication to afford the Parties an opportunity to identify factual errors.

108. The Monitor shall not issue statements or make findings with regard to any act or omission of any Party, or their agents or representatives, except as required by the terms of this Agreement. The Monitor may testify in any enforcement proceedings regarding provisions of this Agreement and the Parties' compliance. The Monitor shall not testify in any other litigation or proceeding with regard to any act or omission of any Party, or any of their agents, representatives or employees, related to this Agreement or regarding any matter or subject that the Monitor may have received knowledge of as a result of his or her performance under this Agreement. Unless such conflict is waived by the Parties, neither the Monitor nor a member of his or her staff shall accept employment or provide consulting services that would present a conflict of interest with the Monitor's responsibilities under this Agreement, including being retained (on a paid or unpaid basis) by any current or future litigant or claimant, or such litigant's or claimant's attorney, in connection with a claim or suit against the City or its departments, officers, agents or employees. The Parties agree to request an appropriate protective order for non-public records in the possession of the Monitor. The Monitor shall not be liable for any claim, lawsuit, or demand arising out of the Monitor's performance pursuant to this Agreement. Provided, however, that this paragraph does not apply to any proceeding before a court related to performance of contracts or subcontracts for monitoring this Agreement.

109. The reporting requirements set forth in Paragraphs 102 to 107 herein do not limit the reporting requirements under the DOJ-City Agreement.

#### Duties of the Conciliator

110. The Conciliator will evaluate the Monitor's reports, instruct the Parties on how to remedy areas of non-compliance and, if necessary, may issue an order pursuant to Fed. R. Civ. P. 53, on issues of compliance regarding particular provisions of this Agreement.

111. The Conciliator shall be responsible to review the quarterly reports of the Monitor and to determine whether each of the Parties is in compliance with the Agreement, pursuant to Fed. R. Civ. P. 53.

112. If the Conciliator determines that a Party is not in substantial compliance with a provision of this Agreement, he shall so inform the Party, and the Party shall have 60 days from receipt of such notice to cure the asserted failure. If the Party fails to cure the asserted failure within that period, then the Conciliator may without further notice, issue an order consistent with the Agreement. Any party may appeal said order pursuant to Rule 53.

113. If the Monitor determines in a report made pursuant to the City-DOJ Agreement that the City is not in substantial compliance with a provision of the City-DOJ Agreement, the Monitor shall notify the Special Litigation Section of DOJ in writing. If the DOJ declines after 60 days to move the Court for specific performance to correct persistent substantial non-compliance, then the Monitor shall notify the Parties to this Agreement of that dispute, and the Parties may request, and the Conciliator shall, giving due deference to the action or determination of the DOJ, determine whether the City is in substantial compliance with a provision of the DOJ Agreement. If the Conciliator determines that the City is not in substantial compliance with a provision of the DOJ Agreement, and if the City fails to remedy that non-compliance within 60 days of the Conciliator's determination, then the Conciliator shall issue an order directing such compliance pursuant to Fed. R. Civ. P. 53. In the event a Party disagrees with the Conciliator's order, that Party may appeal to the Court pursuant to Rule 53. The Parties agree that the Department of Justice shall be permitted to intervene beginning at the Conciliator level regarding the terms of the City-DOJ Agreement with the Court in the event of such proceedings.

114. Pursuant to the dispute resolution process set out in this Agreement, in the event that the Court finds that any Party has engaged in a material breach of the Agreement, the Parties hereby stipulate that the Court may enter the Agreement and any modifications pursuant to paragraph 124 as an order of the Court and to retain jurisdiction over the Agreement to resolve any and all disputes arising out of the Agreement.

## **VII. INDIVIDUAL ACTIONS, MEDIATION**

115. All litigation matters regarding the damage claims in the case at bar (*Tyehimba v. City of Cincinnati*) and the following cases, in which the statute of limitations have not expired, are tolled until July 1, 2002:

*Antonio Johnson v. City of Cincinnati*, Case No. C-1-99-1063  
*Matthew Shaw v. City of Cincinnati*, Case No. C-1-00-1064  
*Mark A. Ward v. City of Cincinnati*, Case No. C-1-99-494  
*Charles A. Wiley v. City of Cincinnati*, Case No. C-1-00-267  
*Lisa Youngblood-Smith v. City of Cincinnati*, Case No. C-1-00-434  
*Elsie Carpenter v. City of Cincinnati*, Case No. C-1-99-227  
*Nathaniel Livingston v. Thomas Streicher*, Case No. C-1-01-233  
*Lasha Simpson v. Thomas Streicher*, (re force on 4/14/01)(to be refiled federal court)  
Claim of Vinnie Clarke and Terry Horton  
Claim of William Haysbert  
Claim of John E. Harris  
Claim of Ms. Stephanie Keith and Paul Keith  
Claim of Enrico Martin  
Claim of Roderick Glenn  
Claim of Arnold White  
Claim of Tony Stillwell  
Claim of Sheila Barnes  
Claim of Iweka Okaraocha  
Claim of Patricia Watkins

Undersigned Plaintiffs' counsel are counsel of record for the above and are authorized to so stipulate on their behalf.

116. The Parties agree to develop an expedited arbitration process for the above cases within thirty days of the approval of this Agreement. The process will include a provision for an exchange of lists by the City, the attorney for any individual defendants and the claimants of the cases and claims each party is willing to submit to arbitration. All statutes of limitation that have not expired are tolled until July 1, 2002 in the above matters. All settlements achieved shall be available to the public. For any case on the above list that is not settled by July 1, 2002, that case may be filed if not already filed or returned to the active litigation docket if already pending.

### **VIII. MISCELLANEOUS PROVISIONS**

117. This Collaborative Settlement Agreement is the product of extensive arms-length negotiations by competent legal counsel for the Parties.

118. The Parties agree that they are entering into this class action settlement agreement for settlement purposes only. Any acquiescence or agreement to the class certification in this case does not constitute an admission of liability or fault by the City of Cincinnati and may not be used as evidence in any proceeding for damages by any member of the class.

119. No Party shall retaliate in any manner against any other Party or person for their participation in this case.

120. All Parties hereto agree to exercise their best efforts and to take all reasonable steps necessary to effectuate the Settlement set forth in this Agreement.

121. This Agreement constitutes the entire Agreement among the Parties with regard to the subject matter of this Agreement.

122. Any notice, request, instruction or other document to be given hereunder by any Party hereto to any other Party (other than class notification) shall be in writing and delivered personally or sent registered or certified mail, postage prepaid, to the Parties as follows:

To: City of Cincinnati

City Manager Valerie Lemmie with a copy to  
City Solicitor Fay D. Dupuis  
City Hall  
801 Plum Street  
Cincinnati, OH 45202

To: Class Counsel and Plaintiffs or class members:

Alphonse A. Gerhardstein  
Class Counsel  
1409 Enquirer Building  
617 Vine Street  
Cincinnati, OH 45202

Kenneth L. Lawson  
Class Counsel  
1575 Kroger Building  
1014 Vine Street  
Cincinnati, OH 45202

Scott T. Greenwood  
Class Counsel  
1 Liberty House  
P.O. Box 54400  
Cincinnati, Ohio 45254-0400

ACLU Foundation of Ohio, Inc.  
4506 Chester Avenue  
Cleveland, OH 44103

To: Fraternal Order of Police

Don Hardin  
Steve Lazarus  
915 Cincinnati Club Building  
30 Garfield Place  
Cincinnati, OH 45202

123. This Agreement is a public document and shall be posted on the websites of the City or CPD and of the Plaintiffs.

124. This Agreement may only be modified in writing and on consent of the Parties.

125. The Parties agree to join in a motion to approve a class action settlement that will incorporate the terms of this Agreement and protect the City from other lawsuits seeking injunctive relief on the matters addressed herein. Further, the Parties agree that this is not a consent decree and stipulate to continuing jurisdiction and venue in the United States District Court for the Southern District of Ohio for enforcement in accordance with this Agreement's provisions. Further, the Parties agree that this matter may be appropriate for administrative processing in the Court's discretion after the fairness hearing.

126. This Agreement will terminate five years after the Court's approval of this Agreement. The Agreement may terminate earlier if the City-DOJ Agreement between the City and DOJ has terminated, and if the Parties agree that the Plaintiffs, the FOP and the City have substantially complied with each of the provisions of this Agreement and maintained substantial compliance for at least two years. Such Agreement will not be unreasonably withheld. If the Parties do not agree, the issue of early termination shall be submitted to the Conciliator. The burden shall be on the party owing the duty to demonstrate that it has substantially complied with each of the relevant provisions of the Agreement and

maintained substantial compliance for at least two years. For the purposes of this paragraph, "substantial compliance" means there has been performance of the material terms of this Agreement. Materiality shall be determined by reference to the overall objectives of this Agreement. Noncompliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance, shall not constitute failure to maintain substantial compliance. At the same time, temporary compliance during a period of otherwise sustained noncompliance shall not constitute substantial compliance.

### **Long-Term Fiscal Impact Of Collaborative Agreement**

127. The Plaintiffs agree to take lead responsibility for securing funding for the Community Partnering Program through grant applications to local and national philanthropic organizations. The other Parties agree to assist with the grant application process as needed. It is estimated that such cost will total at least \$175,000 per year early in the Agreement but that cost could be reduced as CPOP takes root in the community.

128. The other costs associated with this Agreement shall be the responsibility of the City subject to the provisions of this section.

129. The Parties agree that for the purposes of budgeting, all technology purchases, one-half of the increased expenditures associated with civilian review of alleged police misconduct, one-half of the police staffing expenses and one-half of the monitoring costs necessary will be required to satisfy the terms of the City-DOJ Agreement, regardless of the relationship between the DOJ and the Collaborative Agreement. The Parties will cooperate in seeking federal and private assistance with those costs. The City will be ultimately responsible for those costs.

130. The Parties estimate that the overall cost attributable to the City of meeting the terms of this Agreement, other than the costs of the preceding paragraph attributable to the City-DOJ Agreement, is five million dollars. These costs include, e.g., the costs of implementing CPOP, implementing and evaluating the Parties' mutual accountability, monitoring, and operating civilian review. If the overall cost to the City under this Agreement is in excess of an average of one million dollars per year over the life of the Agreement, or in excess of one million two hundred fifty thousand dollars in the first year, the Parties shall revisit the schedule for implementation of the terms of this Agreement to determine if that schedule should be modified in light of the cost.

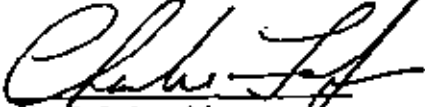
131. Any procurement of services or goods under the terms of this Agreement shall be open to all persons, including African-Americans, regardless of race or gender and affirmatively available to all African-American vendors, consistent with City policy.


132. During the life of this Agreement, if any Party is unable to meet an interim or long-term goal due to finances, that Party shall notify the others and the Monitor of the problem, all efforts that have been taken to resolve the problem, and any plan to address the problem in the future. The Monitor shall investigate the relevant facts and make a recommendation on the issue to the Parties and the Conciliator.

**Parties:**

  
Rev. Damon Lynch, III  
Cincinnati Black United Front

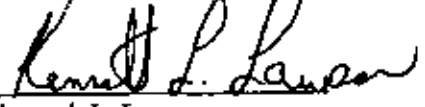
  
Scott T. Greenwood  
American Civil Liberties Union of Ohio Foundation, Inc.

  
Charlie Luken, Mayor  
The City of Cincinnati


  
Valerie Lemmie, City Manager  
The City of Cincinnati

  
Roger Webster  
The Fraternal Order of Police

**Plaintiffs' and Proposed Plaintiffs' Class Counsel:**

  
Kenneth L. Lawson  
Trial Attorney for Plaintiff Class

  
Scott T. Greenwood  
Trial Attorney for Plaintiff Class

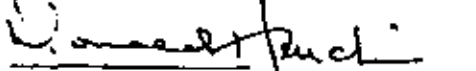
  
Alphonse A. Gerhardstein  
Trial Attorney for Plaintiff Class



**Defendants' Counsel:**

  
Fay O. Dupuis  
City Solicitor

**Trial Attorneys for Defendants**

  
Donald Hardin  
Trial Attorney for Individual Defendants  
And the Fraternal Order of Police