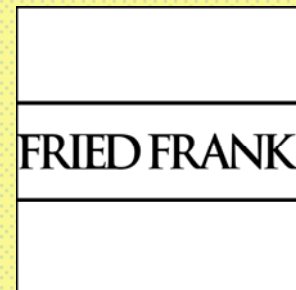


Fifteenth Quarterly Report of the Independent Monitor for the Metropolitan Police Department

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Executive Summary

This report is the Fifteenth Quarterly Report of the Office of the Independent Monitor (“OIM”), which covers the period October 1, 2005 through December 31, 2005. The OIM is now in its fourth year of monitoring compliance by the District of Columbia (“the City”) and the Metropolitan Police Department (“MPD”) with the Memorandum of Agreement (“MOA”) they jointly entered into with the Department of Justice (“DOJ”) on June 13, 2001. The OIM was established in March 2002 to monitor the City’s and MPD’s compliance with the MOA. Paragraph 179 of the MOA requires the OIM to “issue quarterly reports detailing the City’s and MPD’s compliance with and implementation of this Agreement” and to issue additional reports at its own discretion.

This is also our sixth report containing detailed assessments of MPD’s and the City’s progress in achieving substantial compliance with the full range of the MOA’s requirements. As explained in our prior reports, the parties have agreed to specific standards for measuring substantial compliance with each of the substantive provisions of the MOA. The parties also have agreed that, while MPD’s and the City’s compliance with the substantive provisions of the MOA will be measured, where feasible, based on objective standards (generally requiring at least 95% compliance), the evaluation of MPD’s achievement of substantial compliance also will include a subjective component involving assessments made by the OIM (or DOJ, where DOJ review and approval are required) and supported by appropriate analysis and explanation. For ease of reference, a matrix of the objective substantial compliance standards is included at Appendix C of this Report.

This report continues our tracking of MPD’s and the City’s progress toward meeting the substantial compliance standards in those areas in which we have previously found that substantial compliance has not been achieved. We also are continuing to monitor those areas in which we have found MPD and the City to be in substantial compliance with the MOA’s requirements to ensure that substantial compliance is maintained continuously for two years, as required by paragraph 182 of the MOA.

The implementation of the reforms prescribed in the MOA are intended to endure beyond the expiration of the monitorship, which will occur once the City and MPD have satisfied the requirements of

paragraph 182 of the MOA. Our monitoring in recent quarters has found deficiencies in several important areas of MOA compliance -- such as use of force reporting, tracking of in-service training attendance, and tracking of requests received from the Office of Police Complaints ("OPC") -- that were troubling not only because of the deficiencies themselves but also because MPD did not have an internal monitoring system in place to detect such problems. For MPD to build on its significant progress over the past several years in implementing reforms under the MOA, it must develop an effective internal audit function to track and evaluate its success in maintaining substantial compliance with the MOA's standards.

Over the past several quarters, MPD has been developing such an internal audit function. MPD now has established within its Office of Professional Responsibility ("OPR") a Quality Assurance Unit ("QAU"), the mission of which is to perform Department-wide inspections and audits to regularly assess MPD's compliance with the MOA as well as the Department's policies and procedures. This quarter, the QAU began actively performing audits, including an assessment of MPD's compliance with the MOA's requirements and Department policy related to the receipt of citizen complaints, an initiative conducted in collaboration with the OIM. Establishment of the QAU is a significant development because a properly functioning and effective internal audit and monitoring function is essential to MPD's ability to achieve and maintain substantial compliance with the MOA as well as to assure compliance with the Department's policies.

In addition to our collaboration with the QAU in monitoring MPD's receipt of complaints from the public, this quarter our monitoring focused on, among other things, the following substantive areas of the MOA: (1) the use of oleoresin capsicum ("OC") spray, (2) apprehensions involving canine units, (3) internal investigations of misconduct and use of force, (4) investigations performed by OPC, and (5) development and implementation of the Personnel Performance Management System ("PPMS").

Receipt of Citizen Complaints

This quarter, MPD's QAU and the OIM completed a comprehensive audit of MPD's compliance with the MOA's requirements related to the receipt of complaints from the public against officers. The audit involved using volunteers, primarily drawn from MPD recruits, to pose as civilian members of the public seeking to lodge a complaint alleging police misconduct based on three scenarios prepared by the OIM. The audit

was performed in three phases: (1) walk-in testing was conducted at all seven MPD district headquarters, three MPD district substations, and the Special Operations Division (“SOD”) headquarters for all three daily tours of duty; (2) on-street testing, involving requests that an MPD patrol officer respond to a scene under surveillance, was conducted in all seven districts for the day and evening tours of duty; and (3) telephone calls reporting incidents were placed to all seven district headquarters, three substations, and SOD headquarters for all three shifts.

The QAU took the lead in aggregating and analyzing the data collected during the audit. The results of the audit show that MPD is not in substantial compliance with any of the provisions in paragraphs 87 through 90 and 92 of the MOA related to the receipt of citizen complaints regarding officer conduct. In certain areas, such as the requirement that officers provide their names and badge numbers upon request, MPD officers performed well, in the range of 90% compliance. In other areas, MPD officers performed quite poorly, including with respect to the requirement that officers keep complaint forms and information in their patrol cars. The on-street phase of the audit revealed 0% compliance with this requirement.

OC Spray

This quarter, we reviewed 49 MPD internal investigations regarding incidents involving the use of OC spray between January and November 2005. In none of the cases was OC spray used on an elderly person or on a child. We found that the officers issued appropriate warnings in 30 of these cases; and, in the 14 cases in which warnings were not issued, there were exigent circumstances justifying the failure to provide the suspect with a warning that OC spray would be used.¹ We found no cases in which we could determine that a warning should have been issued and was not. None of the OC spray cases we reviewed involved deployment of the chemical agent that was unjustified or excessive under the circumstances. Finally, we found only 1 case in which, although decontamination likely was necessary, there was no evidence that it was performed.

¹ In five cases, we could not determine based on information in the investigation files whether officers issued the appropriate warnings prior to using OC spray.

Apprehensions Involving Canine Units

In 2005, MPD canine units were reported as being involved in a total of 56 apprehensions, 8 of which resulted in “bites” or contact between the canine and the suspect, which is a bite-to-apprehension ratio of 14.3%. The bite-to-apprehension ratio for 2005 is quite acceptable for a police agency the size of MPD and is the lowest we have observed during all of our reviews of MPD canine activity.² MPD’s Canine Unit has made tremendous strides since execution of the MOA, and these bite-to-apprehension figures appear to reflect the effectiveness of MPD’s implementation of policies and training based on the Handler-Controlled Alert Methodology.

This quarter, we also reviewed incident reports related to each of the 56 apprehensions reported as involving a canine in order to determine whether a canine unit actually was involved in each of these apprehensions, as opposed to merely being present at the scene but not actually involved with the apprehension, which could artificially depress the bite-to-apprehension ratio if the number of canine-involved apprehensions were inflated. We found only one case in which it was questionable whether the canine actually was involved in the arrest. Accordingly, we found that MPD’s bite-to-apprehension ratio for 2005 is an accurate reflection of canine involvement in apprehensions.

Non-FIT Use of Force and Misconduct Investigations

MPD has taken several steps to improve the quality and timeliness of its internal investigations, including revising and distributing investigation templates and issuing a teletype requiring documentation of special circumstances justifying delays in completion of investigations. Although there has been an understandable time lag between implementation of these measures and our observing their effects, MPD has maintained and built upon the significant improvements in the quality and organization of investigations being conducted by the Internal Affairs Division (“IAD”) and the chain of command in the districts that we reported over the past two quarters. These improvements appear to be attributable to the templates MPD has

² DOJ has pointed out that many effectively run canine programs have a bite-to-apprehension ratio of no more than 10%. DOJ, however, shares the view of our police practices experts that a bite-to-apprehension ratio of up to 20% is acceptable for MPD.

developed as well as to the emphasis OPR has placed on enhancing the quality of the Department's internal investigations. MPD's concentrated effort to improve both the timeliness and the quality of these investigations has been quite effective.

We found this quarter that 83.3% of MPD's non-FIT use of force and misconduct investigations were complete, which is the first time MPD has achieved a completeness rate exceeding 80.0%.³ Moreover, 86.2% of the investigations we reviewed were sufficient, which again is also a new high-water mark for these investigations.⁴ If pending investigations are not considered in this quarter's sample, the completeness rate for these investigations was 93% and the sufficiency rate was 96.5%.

OPC Investigations

This quarter, we reviewed a sample of 30 OPC cases, all of which were closed in the months of May 2005 through November 2005, and found that only 90.0% of these cases were complete, which is lower than the rate of completeness we have observed in previous samples of OPC cases. However, 96.7% of the OPC investigations we reviewed this quarter were sufficient.

OPC closed 160 cases during the months of May 2005 through November 2005. The average time it took OPC to complete these cases was 426.3 days, which reflects that OPC is still working to clear its backlog of cases. However, with respect to the 63 cases that were assigned to OPC investigators in 2005 and closed during these months, those cases were completed on average in 96.4 days, which is well within the 135-day window agreed upon by DOJ and MPD for purposes of defining timeliness of OPC investigations under paragraph 86 of the MOA.

³ Our police practices experts rated an investigation "complete" if it reflected the performance of all of the substantive investigative steps and contained all of the documentation required by both the MOA and by generally accepted police practices.

⁴ An investigation is "sufficient" if the evidence and analysis reflected in the investigation file were adequate to support a reasonable and defensible conclusion, even in cases where certain investigative procedures or analysis had not been completed.

PPMS

MPD had two PPMS-related deadlines this quarter. First, MPD met the November 3, 2005 deadline for submission to DOJ of final versions of the PPMS General Order and the PPMS standard operating procedures (“SOP”). Second, MPD also was required to notify DOJ by November 3, 2005 that, among other things, PPMS was ready for Beta testing. Paragraph 114.d of the MOA requires that the following four elements of PPMS must be accomplished and ready for Beta testing by this deadline:

- (i) server hardware and operating systems installed, configured and integrated with MPD’s existing automated systems;
- (ii) necessary data base software installed and configured;
- (iii) data structures created, including interfaces to source data; and
- (iv) the use of force information system completed, including historic data.

On November 3, 2005, MPD notified DOJ that three of the four elements required under paragraph 114.d of the MOA were completed and ready for Beta testing. However, by the deadline, MPD had not finalized the interfaces to the source data as required. MPD reports that it has experienced technical issues with Motorola’s “data connector” (*i.e.*, the software used to load data into PPMS). On December 30, 2005, MPD notified DOJ that these interfaces would not be completed and tested until January 17, 2006.

Even though the interfaces to source data were not completed and ready for testing, on November 17, 2005, MPD prepared a demonstration of the PPMS software for representatives from DOJ and the OIM. We found that PPMS clearly has great potential, but there is still much to be done in its development. Because there was not yet any connectivity to source data, we were not able to test the system’s search and analytic capabilities. As Phase I of the PPMS development process -- which involves activating the system in the Third District as a pilot program -- comes on line in January 2006, we look forward to participating in further test sessions related to PPMS.

Conclusion

We have now provided six quarters of comprehensive substantial compliance assessments across the entire scope of the MOA's requirements. MPD and the City continue to make progress toward substantial compliance with the MOA. The parties' achievements in areas such as the performance of the UFRB, implementation of the Handler Controlled Alert Methodology in the Canine Unit, and investigations of allegations of police misconduct by OPC are particularly noteworthy. However, the list of areas in which MPD and the City continue to fall short of substantial compliance is quite long.

MPD's establishment this quarter of an internal audit and monitoring unit -- the Quality Assurance Unit within the Office of Professional Responsibility -- is an important, if overdue, development. We will monitor the QAU's performance as well as continue to provide it with technical assistance based on our experience reviewing and evaluating MPD under the standards established by the MOA. MPD has devoted substantial energy, time, and funding resources to developing and implementing the reforms required by the MOA. The QAU's mission will be to ensure that the City's and MPD's investment in the Department's professionalism and responsiveness to the community continues to pay dividends in the future, even after the termination of the OIM's monitorship. Although establishment of an internal audit and monitoring function such as the QAU is not specifically required under the terms of the parties' agreement with DOJ, its creation reflects the City's and MPD's commitment to institutionalizing the reforms embodied by the MOA.

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Appendix A: Acronyms

Appendix B: Summary of Results of the OIM’s Review of the Investigations Samples

Appendix C: Matrix of Objective Substantial Compliance Standards

Introduction

This report is the Fifteenth Quarterly Report of the Office of the Independent Monitor (“OIM”), which covers the period October 1, 2005 through December 31, 2005. The OIM is now in its fourth year of monitoring compliance by the District of Columbia (“the City”) and the Metropolitan Police Department (“MPD”) with the Memorandum of Agreement (“MOA”) they jointly entered into with the Department of Justice (“DOJ”) on June 13, 2001. The OIM was established in March 2002 to monitor the City’s and MPD’s compliance with the MOA. Paragraph 179 of the MOA requires the OIM to “issue quarterly reports detailing the City’s and MPD’s compliance with and implementation of this Agreement” and to issue additional reports at its own discretion.

This report continues our tracking of MPD’s and the City’s progress toward meeting the substantial compliance standards in those areas in which we have previously found that substantial compliance has not been achieved. We also are continuing to monitor those areas in which we have found MPD and the City to be in substantial compliance with the MOA’s requirements to ensure that substantial compliance is maintained continuously for two years, as required by paragraph 182 of the MOA.

The implementation of the reforms prescribed in the MOA are intended to endure beyond the expiration of the monitorship, which will occur once the City and MPD have satisfied the requirements of paragraph 182 of the MOA. Our monitoring in recent quarters has found deficiencies in several important areas of MOA compliance -- such as use of force reporting, tracking of in-service training attendance, and tracking of requests received from the Office of Police Complaints (“OPC”) -- that were troubling not only because of the deficiencies themselves but also because MPD did not have an internal monitoring system in place to detect such problems. For MPD to build on its significant progress over the past several years in implementing reforms under the MOA, it must develop an effective internal audit function to track and evaluate its success in maintaining substantial compliance with the MOA’s standards.

Over the past several quarters, MPD has been developing such an internal audit function. MPD now has established within its Office of Professional Responsibility (“OPR”) a Quality Assurance Unit (“QAU”), the mission of which is to perform Department-wide inspections and audits

to regularly assess MPD's compliance with the MOA as well as the Department's policies and procedures. This quarter, the QAU began actively performing audits, including an assessment of MPD's compliance with the MOA's requirements and Department policy related to the receipt of citizen complaints, an initiative conducted in collaboration with the OIM. Establishment of the QAU is a significant development because a properly functioning and effective internal audit and monitoring function is essential to MPD's ability to achieve and maintain substantial compliance with the MOA as well as to assure compliance with the Department's policies.

In addition to collaborating with the QAU in monitoring MPD's receipt of complaints from the public, this quarter our monitoring focused on, among other things, the following substantive areas of the MOA: (1) the use of oleoresin capsicum ("OC") spray, (2) apprehensions involving canine units, (3) internal investigations of misconduct and use of force, (4) investigations performed by OPC, and (5) development and implementation of the Personnel Performance Management System ("PPMS"). Our monitoring activity this quarter, including each of these areas, is discussed below.

Compliance Assessment

This is the sixth quarter in which, in addition to reporting on our current monitoring activity, we provide comprehensive assessments of MPD’s status in satisfying the objective substantial compliance standards agreed upon by the parties. This report first provides a general overview of MPD’s status in achieving substantial compliance with the substantive provisions of the MOA and discusses the establishment of the Department’s internal monitoring function, the QAU. The remainder of the report adheres to the format we adopted starting in our Tenth Quarterly Report, when we first included substantial compliance assessments tied to the standards we developed in consultation with DOJ, MPD, and the City. For ease of reference, we have attached a matrix containing the current objective substantial compliance standards at Appendix C to this report.

Generally, in each section of this report, we summarize the requirements imposed by each substantive paragraph of the MOA (“Requirements”). We then provide our status report and assessment of MPD’s progress toward compliance with those requirements as well as the current status of our monitoring activity in each of the substantive areas of the MOA (“Status and Assessment”). Next, we assess whether MPD and the City, as of the close of this quarter, are in substantial compliance with the substantive provisions of the MOA, as defined by the objective standards agreed to by the parties (“Substantial Compliance Evaluation”). Finally, as in all of our quarterly reports, where appropriate, we include recommendations for MPD and the City based on our observations made during the quarter (“Recommendations”).¹

I. Substantial Compliance and the Quality Assurance Unit

A. The Definition of Substantial Compliance

Paragraph 182 of the MOA provides that:

¹ Paragraph 166 of the MOA requires that the “Monitor shall offer the City and MPD technical assistance regarding compliance with this Agreement.” The “Recommendations” sections of the OIM’s quarterly reports are included in connection with fulfilling this responsibility. The recommendations do not impose additional obligations upon MPD or the City beyond those contained in the MOA.

[t]he Agreement shall terminate five years after the effective date of the Agreement if the parties agree that MPD and the City have substantially complied with each of the provisions of this Agreement and maintained substantial compliance for at least two years. [Emphasis added.]

The MOA does not, however, define “substantial compliance.” Throughout 2004, the OIM facilitated and participated in discussions among DOJ, MPD, and the City regarding the development of specific standards for measuring “substantial compliance” with each of the substantive provisions of the MOA. The parties agreed that, while MPD’s compliance with the substantive provisions of the MOA will be measured, where feasible, based on objective standards (generally requiring at least 95% compliance), the evaluation of MPD’s achievement of substantial compliance also will include a subjective component involving assessments made by the OIM (or DOJ, where DOJ review and approval are required) and supported with appropriate analysis and explanation. For ease of reference, a matrix of the objective substantial compliance standards is included at Appendix C of this report.

We have determined that, between the issuance of our Ninth Quarterly Report and this quarter, MPD and the City have achieved substantial compliance with several central components of the MOA, including:

- Implementation of policies related to the use of firearms, including the training of officers in the use of firearms.
- All facets of the canine program, including training of handlers and canines, and implementation of policies based on the principles of the Handler-Controlled Alert Methodology.
- Implementation of policies related to the proper use of OC spray.
- Certain of MPD’s internal investigations related to the use of force and allegations of officer misconduct.
- Review of use of force incidents by the Use of Force Review Board (“UFRB”).

We are continuing to monitor these areas to evaluate whether MPD has maintained substantial compliance, as it is required to do for a period of two years under paragraph 182 of the MOA.

There are a number of important areas, however, in which MPD still must make progress in order to achieve substantial compliance with the standards and requirements set forth under the MOA. In many of these areas, MPD has made significant strides toward substantial compliance, but work remains to be done in all of them.

- Implementation through training of DOJ-approved general use of force policies.
- Reporting of use of force incidents, particularly lower-level uses of force involving hand controls.
- Performance of timely and high quality internal investigations of lower-level uses of force and allegations of misconduct, although MPD has made very significant progress with these investigations in recent quarters.
- Receipt of complaints about officer conduct from members of the public.
- Holding and advertising regularly community outreach meeting in all of the City's patrol service areas ("PSAs").
- Establishing a centralized system for documenting and tracking all forms of disciplinary and corrective action.
- Development and implementation of PPMS.
- Implementation of the enhanced Performance Evaluation System ("PES").
- Implementation of revised lesson plans related to use of force training, although this is nearly complete.
- Implementation of the enhanced Field Training Officer program.
- Implementation of revised policies related to the operations of specialized mission units ("SMUs"), such as the Mobile Force Unit and Warrant Squad.

With respect to each of these areas, because MPD has not yet reached the substantial compliance threshold, the two-year period for which the Department must maintain substantial compliance in order to satisfy paragraph 182 of the MOA has not even begun to run.

B. The Quality Assurance Unit

In recent quarters, our monitoring has identified deficiencies in MPD's performance in meeting the requirements of the MOA as well as its own policies of which MPD command staff appeared unaware. Examples include our findings related to the underreporting of use of force incidents and the absence of a system for tracking the status of requests for documentation received from OPC.² We also have had several discussions with MPD and DOJ regarding the need for MPD to establish an internal audit and monitoring function to effectively detect failures to comply with the MOA and Department policy and to perpetuate substantial compliance with the reforms MPD has implemented after expiration of the MOA.

Over the past several quarters, MPD has designed and staffed a Department-wide internal inspections and audit function. MPD states that the purpose of the restructured QAU is "to develop a structured, consistent process to regularly assess Department operations, as well as compliance with Department policy and procedures."³ MPD reports that the QAU currently is focusing its attention on MOA compliance in order to address concerns raised by the OIM and DOJ, including for example the underreporting of use of force incidents. The QAU began its monitoring on October 1, 2005.⁴ Also, for the past several quarters, the QAU has collaborated with the OIM to perform a Department wide audit of MPD's compliance with MOA and MPD policy requirements related to the receipt of citizen complaints. The results of this audit are discussed in greater detail in Section IV.B.2 of this report.

MPD's establishment this quarter of a functional internal audit and monitoring capabilities is a significant and positive step toward institutionalizing MPD's commitment to make permanent the reforms implemented in accordance with the MOA. MPD has requested the OIM's technical assistance with respect to development by the QAU of systems and techniques for monitoring compliance with the MOA and MPD policies, and we will provide such assistance pursuant to paragraph 166 of the MOA. We also will monitor the QAU's effectiveness in auditing and

² See, e.g., OIM Thirteenth Quarterly Report at 8-11; OIM Fourteenth Quarterly Report at 65-66.

³ Memorandum of Agreement Progress Report, dated January 13, 2006 ("MPD January 2006 Progress Report"), at 7.

⁴ *Id.* at 7-8

assessing MPD's compliance with the full range of the MOA's requirements as well as with MPD's policies and procedures.

C. Recommendations

We recommend that the MPD closely evaluate the effectiveness of the QAU in order to ensure that it is adequately staffed and has sufficient other resources to provide effective and timely assessments regarding MPD's compliance with the MOA and with its internal policies and procedures. We also encourage MPD to continue to take advantage of our technical assistance in developing techniques and methodologies for the QAU to use in achieving its mission.

II. General Use of Force Policy Requirements (MOA ¶¶ 36-52)

A. General Use of Force Policy (MOA ¶¶ 36-40)

1. Requirements

MPD is required to complete the development of an overall Use of Force Policy. The policy must comply with applicable law and be consistent with current standards in the policing profession. In particular, the Use of Force Policy must include provisions that:

- Define and describe the different types of force and the circumstances under which the use of each type of force is appropriate;
- Encourage officers to use advisements, warnings, and verbal persuasion when appropriate and in general seek the goal of de-escalation;
- Prohibit officers from unholstering, drawing, or exhibiting a firearm unless the officer reasonably believes that a situation may develop such that the use of deadly force would be authorized;
- Establish that officers must, wherever feasible, identify themselves as police officers and issue a warning before discharging a firearm;
- Require that, immediately following the use of force, officers must examine persons who have been subjected to the use of force and obtain medical care for them, if necessary; and

- Provide specific advice to officers that the use of excessive force will subject them to MPD disciplinary action and potential civil liability and criminal prosecution.

2. Status and Assessment

a. Policy Development

On September 17, 2002, DOJ approved MPD’s revised Use of Force General Order, which is a keystone of the MOA. MPD had originally committed to begin implementing the revised Use of Force General Order during the week of October 6, 2002, with intensive training to follow immediately thereafter. We found that MPD’s initial effort to roll out the Use of Force General Order was not as effective as it could have been due to poor coordination in the training of officers in MPD’s new use of force policy.⁵ MPD, however, acted quickly to remedy the deficiencies in its initial training efforts related to implementation of the Use of Force General Order, including, in particular, by creating and conducting a special “sergeants and above” training program for supervisors. We found that the “sergeants and above” training program played a significant role in remedying some of MPD’s prior implementation failures.⁶

On May 16, 2005, consistent with the requirements of paragraph 52 of the MOA,⁷ MPD requested DOJ approval of a revision to the Use of Force General Order relating to shooting at or from moving vehicles.⁸ On August 11, 2005, DOJ responded to MPD’s request by suggesting alternative language for the proposed revision; and, on October 27, 2005, MPD submitted a revised version of the general order that incorporated DOJ’s suggestions. DOJ provided its final approval of the revised Use of Force General Order on November 1, 2005, and MPD published the revised order on November 10, 2005.⁹

⁵ OIM Third Quarterly Report at 4.

⁶ OIM Fourth Quarterly Report at 5.

⁷ Paragraph 52 of the MOA requires that, “[i]n the event MPD revises any of the policies, procedures, or forms referenced in this section during the term of this agreement, it shall obtain approval from DOJ prior to implementation of the revised policy or form.”

⁸ MPD January 2006 Progress Report at 10.

⁹ *Id.*

b. In-Service Use of Force Training

Although the attendance rate for MPD's semi-annual firearms re-certification program, which includes training regarding the Department's use of force policies and the use of force continuum, was very high -- over 99% -- in 2004, MPD's use of force training curriculum is broader than just the firearms re-certification program. As discussed in Section VII.B.2 below, MPD's use of force curriculum includes lesson plans and in-service training in areas such as close quarter combat, ground fighting, handcuffing, krav/maga,¹⁰ and officer street survival. In our Thirteenth Quarterly Report, we reported that MPD's attendance rate for all three of its general in-service training programs was only approximately 75%.¹¹

Accordingly, although in 2004 over 99% of MPD officers attended the firearms re-certification and training program -- which is MPD's primary training program regarding use of force policy and the use of force continuum -- attendance rates for the general in-service training program lagged behind the levels necessary for substantial compliance.

Even more troubling was our finding that MPD lacked a system for tracking in-service training attendance and ensuring that individual officers who initially fail to attend training are identified.¹² MPD was unable to provide us with statistics regarding in-service training attendance and to readily identify individual officers who have failed to fulfill their continuing training obligations. Only by having systems in place that will enable MPD to track the rate at which officers are attending in-service training and to identify those officers who fail to attend training will MPD likely be able to improve its current in-service training attendance rate.

During our July 11, 2005 monthly meeting with representatives from DOJ, MPD, and the City, the Commander of the Institute of Police Science ("IPS") advised us that IPS intends to adopt the same systems used to track officers' firearms re-certification -- which we have found to be complete and very precise -- to track attendance at in-service training. Now that MPD has had a period of time in which to implement a tracking system for in-service training, in the coming quarter we will evaluate

¹⁰ Krav/maga involves training in hand-to-hand self-defense techniques.

¹¹ OIM Thirteenth Quarterly Report at 7.

¹² *Id.* at 7-8.

MPD's progress in improving its systems for tracking in-service training attendance.

c. Use of Force Reporting

Section VI.1 of MPD's Use of Force General Order, GO-RAR-901.07, requires that a Use of Force Incident Report ("UFIR") (PD Form 901-e) be completed "in all of the following situations:"

- a. all Use of Force incidents (except Cooperative or Contact Controls, e.g., mere presence, verbal commands, submissive handcuffing, unless there has been a resulting injury or the subject complains of pain following the use of Cooperative or Contact Controls);
- b. any time when an officer is in receipt of an allegation of excessive force; or
- c. whenever a member draws and points a firearm at or in the direction of another person.

As we reported in our Thirteenth Quarterly Report, our careful analysis of underlying incident reports -- *i.e.*, Incident-Based Event Reports (PD Form 251), Arrest/Prosecution Reports (PD Form 163), and Arrestee Injury/Illness Reports (PD Form 313) -- and comparison of those reports to completed UFIRs found that, during the period October 2004 through December 2004, MPD officers complied with the Department's use of force incident reporting requirements in only 16% of the incidents requiring completion of a UFIR.¹³

Our review of underlying incident forms found that MPD officers frequently complete UFIRs in cases where the form of force used was OC spray or the ASP. We did not identify any "serious" uses of force -- involving, for instance, discharge of a firearm or a canine bite -- during this period in which a UFIR was not completed.¹⁴ The vast majority of

¹³ *Id.* at 9.

¹⁴ Paragraph 33 of the MOA defines "serious use of force" as lethal and non-lethal actions by MPD officers including: (1) firearm discharges; (2) uses of force resulting in a broken bone or an injury requiring hospitalization; (3) head strikes with an impact weapon; (4) uses of force resulting in a loss of consciousness or substantial risk of death, serious disfigurement, disability, or impairment; (5) uses of force resulting in death; and (6) canine bites.

cases in which officers used force, but failed to complete a UFIR as required, appears to have involved hands-on physical force by an officer to subdue and handcuff a suspect. Although such uses of force often are relatively minor, MPD policy and the MOA are clear that they must be reported as use of force incidents and that a UFIR must be completed to document the incident.¹⁵

Last quarter, we monitored MPD's firearms training, which includes instruction regarding MPD's use of force policy and the use of force continuum, to evaluate the guidance officers receive regarding the circumstances under which a UFIR must be completed.¹⁶ We found that one of the slides used by the instructor during his discussion of MPD's use of force reporting requirements incorrectly states that "Incidents to be Reported: All Use of Force incidents *except for* Any time an officer is in receipt of an allegation of excessive use of force, or whenever a member draws and points a firearm at or in the direction of another person." (Emphasis added.)¹⁷ In fact, this guidance contradicts the policy's requirements and conflicts with a more accurate description of MPD's use of force reporting policy provided in the immediately preceding PowerPoint slide.¹⁸

MPD acknowledged that the underreporting of use of force incidents reflected by our findings is unacceptable. Last quarter, OPR formed a working group to review and address the issues related to the underreporting of use of force incidents.¹⁹ This quarter, MPD prepared a draft teletype for distribution within the Department that clarified MPD's

¹⁵ The completion of high quality UFIRs under all circumstances required by MPD policy and the MOA also is relevant to MPD's development of PPMS. Paragraph 55 of the MOA requires that "[d]ata captured on [UFIRs] shall be entered into MPD's Personnel Performance Management System (PPMS)." The usefulness and effectiveness of PPMS will be directly related to the quality and reliability of the information inputted into the system, including information from UFIRs.

¹⁶ OIM Fourteenth Quarterly Report at 8-10.

¹⁷ As described above, Section VI.1 of MPD's Use of Force General Order requires a UFIR to be completed "any time when an officer is in receipt of an allegation of excessive force" and "whenever a member draws and points a firearm at or in the direction of another person."

¹⁸ MPD reports that it has revised the PowerPoint slide containing the error described above and that the corrected slide is included with the Semi-Annual Use of Force Curriculum Review issued by MPD on December 30, 2005.

¹⁹ MPD January 2006 Progress Report at 20.

policy regarding the reporting of uses of force and emphasized, in particular, the reporting requirements related to the use of hand controls in effecting the arrest of a suspect who resists handcuffing. Both OIM and DOJ reviewed and commented on the draft teletype before it was issued by MPD on December 28, 2005.²⁰ MPD reports that, since the issuance of the teletype, it also has been running a series of articles in MPD's internal newsletter, "The Dispatch," that summarize the use of force reporting requirements detailed in the teletype. Moreover, MPD intends to revise the Use of Force General Order to clarify the circumstances under which a use of force must be reported.²¹

Finally, as discussed below, MPD also is working with DOJ to simplify the UFIR form to decrease the paperwork burden on officers and encourage the completion of the form even in cases involving relatively minor uses of force.

3. Substantial Compliance Evaluation

The substantial compliance standards under MOA paragraphs 37 through 40 require that at least 95% of officers receive training in MPD's use of force policies. Our review with respect to the attendance rates related to MPD's in-service use of force training has found that, in 2004, approximately 73% of officers required to attend MPD's week-long in-service training actually completed the training. As discussed below, however, attendance rates for firearms re-qualification, which includes training regarding MPD's use of force policies and the use of force continuum, exceeded 99% in 2004. We also have found that MPD lacks an effective system for tracking in-service training attendance and identifying individual officers who have failed to attend in-service training.²² Accordingly, MPD is not in substantial compliance with the requirements of paragraphs 37 through 40 of the MOA.

MPD and the City have satisfied some of the central requirements of MOA paragraphs 37 through 40 relating to the development and implementation of a general use of force policy. MPD has developed, and obtained DOJ approval for, a revised Use of Force General Order that

²⁰ *Id.*

²¹ *Id.*

²² In the coming quarter, we intend to review data regarding use of force-related training attendance in 2005 as well as evaluate MPD's implementation of systems to track in-service training attendance and hold accountable officers who fail to attend in-service training.

includes the provisions required by the MOA.²³ We also have found that MPD has effectively distributed the Use of Force General Order and that MPD's in-service firearms training program properly and effectively implements the use of force policies.

In our Thirteenth Quarterly Report, the OIM reported its finding that MPD officers are severely underreporting use of force incidents, particularly in cases in which officers use hands-on force to subdue and handcuff a suspect. MPD has taken significant steps to remedy this problem, including issuing a teletype this quarter to clarify the circumstances under which officers must report use of force incidents. We will be monitoring MPD's progress in the area of use of force reporting in the coming quarters.

4. Recommendations

MOA paragraphs 37 through 40, regarding MPD's general use of force policy, are in many respects the core provisions of the MOA. Four years after the MOA was signed in June 2001, MPD still has not achieved substantial compliance with two of the key components in implementing its revised use of force policies -- training officers in the new use of force policies and establishing a system for the reporting of use of force incidents, as required under the Use of Force General Order. We recommend that MPD continue to devote significant attention in the coming quarters to addressing these deficiencies and to developing its own auditing systems for identifying areas in which implementation of the revised use of force policies is not complete.

B. Use of Firearms Policy (MOA ¶¶ 41-43)

1. Requirements

MPD is required to complete its development of a Use of Firearms Policy. The policy must comply with applicable law and be consistent with current standards in the law enforcement field. In particular, the Use of Firearms Policy must:

- Prohibit officers from possessing or using unauthorized ammunition and require officers to obtain service ammunition through official MPD channels;

²³ As discussed above, this quarter DOJ approved MPD's requested revision to the Use of Force General Order relating to shooting at or from moving vehicles.

- Specify the number of rounds that officers are authorized to carry;
- Establish a single, uniform reporting system for all firearms discharges;
- Require that, when a weapon is reported to have malfunctioned during an officer's attempt to fire, it promptly be taken out of service and an MPD armorer evaluate the functioning of the weapon;
- Require that MPD document in writing the cause of a weapon's malfunction -- *i.e.*, whether an inherent malfunction, a malfunction due to poor maintenance, or a malfunction caused by the officer's use of the weapon; and
- Provide that the possession or use of unauthorized firearms or ammunition may subject officers to disciplinary action.

In addition to these specific requirements relating to the Use of Firearms Policy, the MOA requires the Mayor to submit to the Council for the District of Columbia a request to permit MPD's Chief of Police to determine the policy for MPD officers to carry firearms when they are off duty while in the District of Columbia, including any appropriate restrictions applicable to situations in which an officer's performance may be impaired.

2. Status and Assessment

a. Handling of Service Weapons General Order and Firearms Re-qualification

On August 19, 2002, DOJ approved MPD's Handling of Service Weapons General Order, which MPD distributed in early October 2002. Consistent with paragraph 52 of the MOA, on August 17, 2005, MPD submitted a request to DOJ to revise the Handling of Service Weapons General Order to clarify the types of firearms that are authorized to be carried by off-duty officers and to clarify the requirements for weapons qualification for officers on limited duty or sick leave. DOJ approved MPD's request on August 31, 2005, and the revised order was published on September 15, 2005.²⁴

²⁴ OIM Fourteenth Quarterly Report at 12-13.

With the exception of the issue discussed above related to guidance regarding MPD's use of force reporting requirements, we have consistently found MPD's in-service firearms training and pistol re-certification programs to be consistent with the MOA and conducted by knowledgeable and professional instructors.²⁵ MPD's in-service firearms training fairly, accurately, and properly summarizes the principles of the Handling of Service Weapons General Order.

During the thirteenth quarter, we found that MPD officers attended both firearms re-qualification phases in 2004 at a very high rate -- over 99%.²⁶ These figures reinforce our findings that MPD has effectively implemented the Handling of Service Weapons General Order.

b. Carrying Service Firearms While Off-Duty in the District of Columbia Special Order

On June 4, 2002, the District of Columbia City Council approved an amendment, entitled the "Off-Duty Service Pistol Authorization Amendment Act of 2002," that permits MPD's Chief of Police to designate his own policy as to when off-duty officers are required to carry their service pistols in the City. This measure was signed into law and became effective on October 1, 2002.

On April 1, 2004, MPD issued a special order entitled Carrying Service Firearms While Off-Duty in the District of Columbia. MPD circulated this special order to DOJ and the OIM on April 5, 2004. On June 10, 2004, DOJ provided MPD with several recommendations concerning the special order as a form of technical assistance. The MOA does not require that the Carrying Service Firearms While Off-Duty in the District of Columbia Special Order be approved by DOJ. As discussed above, last quarter DOJ approved MPD's requested revisions to the Handling of Service Weapons General Order related to the types of firearms that off-duty officers are authorized to carry.

3. Substantial Compliance Evaluation

MPD and the City are currently in substantial compliance with the requirements of MOA paragraphs 41 through 43 relating to the use of firearms policy. MPD has developed and obtained DOJ approval of a

²⁵ See, e.g., OIM Eleventh Quarterly Report at 87-89.

²⁶ OIM Thirteenth Quarterly Report at 14.

Handling of Service Weapons General Order that includes the provisions required by the MOA and has issued a special order governing Carrying Service Firearms While Off-Duty in the District of Columbia. MPD's firearms training and re-qualification attendance rates were above 95% in 2004; accordingly, we find that MPD has effectively implemented the Handling of Service Weapons General Order.²⁷ We also find that MPD has effectively distributed the Handling of Service Weapons General Order and that MPD's in-service training program properly and effectively implements the use of firearms policy.

Finally, we are aware of no incidents in which a failure to fire or a weapon discharge is alleged to be the result of a weapon malfunction.²⁸ Accordingly, we find that MPD currently is in substantial compliance with MOA paragraph 43's requirements regarding the treatment of weapons that are reported to have malfunctioned.

C. Canine Policies and Procedures (MOA ¶¶ 44-46)

1. Requirements

The MOA requires MPD to develop a Canine Teams Policy that:

- Limits the high-risk deployment of canines -- off-leash deployments, use during searches, and other situations where there is a significant risk of a canine biting a suspect -- to cases where the suspect is either wanted for a serious felony or is wanted for a misdemeanor and is reasonably suspected to be armed;
- Requires supervisory approval for all canine deployments -- either a Canine Unit supervisor or a field supervisor;²⁹
- Ensures that suspects are advised through a loud and clear announcement that a canine will be deployed, that the suspect

²⁷ Although, as discussed above, MPD's attendance rate for the general in-service training program is well below 95%, the use of force-related issues covered by certain lesson plans in the general in-service training program are not related to the use of firearms.

²⁸ OIM Eleventh Quarterly Report at 11.

²⁹ The MOA makes clear that the approving supervisor cannot serve as the canine handler in the deployment. MOA at ¶ 45.

should surrender, and that the suspect should remain still when approached by a canine; and

- Ensures that, in all circumstances where a canine is permitted to bite or apprehend a suspect,
 - The handler calls the canine off as soon as the canine can be safely released, and
 - MPD ensures that any individual bitten by a canine receives immediate and appropriate medical treatment.

2. Status and Assessment

a. Canine Policy and Manual

MPD first received DOJ approval of the Canine Teams General Order on September 17, 2002, and MPD issued the general order on October 7, 2002. In response to deficiencies identified internally and by the OIM, MPD submitted a revised Canine Teams General Order to DOJ on June 4, 2003.³⁰ On November 22, 2004, DOJ approved MPD's revised Canine Teams General Order. However, while it was preparing to distribute the approved general order, MPD determined that the order's definition of "tactical use of a canine" should be clarified to encompass instances of on-lead tracking of suspects. On December 6, 2004, MPD submitted a revised draft Canine Teams General Order to DOJ that included revised definitions of the terms "tactical use of canine" and "non-tactical use of canine."³¹

On February 17, 2005, DOJ provided MPD with its final approval of the Canine Teams General Order. MPD published the revised Canine Teams General Order on February 18, 2005. MPD had delayed making revisions to its Canine Operations Manual pending the completion and approval of the Canine Teams General Order in order to ensure that the manual and the general order were consistent. With the approval during the first quarter of 2005 of the Canine Teams General Order, MPD finalized revisions to the manual and submitted it to DOJ on June 30,

³⁰ OIM Fifth Quarterly Report at 10-11.

³¹ OIM Twelfth Quarterly Report at 12.

2005. On September 27, 2005, DOJ approved the Canine Operations Manual.³²

b. Canine “Bite” Incidents

In our Fourth Quarterly Report, we observed that 17 of the 110 apprehensions involving a canine unit from the third quarter of 2001 through the end of the first quarter of 2003 included a bite or other significant contact with a canine. We reported that this 15.5% bite-to-apprehension ratio was consistent with the ratios experienced in other major city police departments.³³ Police practices experts have indicated that a bite-to-apprehension ratio of less than 30% is generally acceptable.³⁴ DOJ has pointed out that many effectively run canine programs have a bite-to-apprehension ratio of no more than 10%.³⁵ DOJ, however, shares the view of our police practices experts that a bite-to-apprehension ratio of up to 20% is acceptable for MPD.

In 2003, there were 88 apprehensions recorded involving a canine unit, 16 of which involved a bite to the suspect or other significant contact with a canine. We found that this bite-to-apprehension ratio of 18% in calendar year 2003 was within the range that our police practices experts believe to be acceptable.³⁶ Although our review of the 13 completed FIT investigations related to these bite incidents found that the uses of force were generally consistent with the requirements of the MOA and with MPD policy, we identified several points of concern that we recommended MPD address through the training of canines and handlers. Specifically, we recommended that MPD’s canine in-service training program emphasize (1) the importance of accurate and complete canine deployment reports; (2) close handler control over canines during confrontations with suspects; and (3) reasonable efforts to obtain a

³² OIM Fourteenth Quarterly Report at 16.

³³ OIM Fourth Quarterly Report at 14-16. As discussed in our Fourth Quarterly Report, since canine programs and the environments in which those programs are run vary from city to city, we do not mean to suggest that there is a single “appropriate” national bite-to-apprehension ratio.

³⁴ See, e.g., *Kerr v. City of West Palm Beach*, 875 F.2d 1546 (11th Cir. 1989) (“These experts indicated that less than thirty percent of apprehensions should, on average, result in a bite.”).

³⁵ Letter from William R. Yeomans to Charles H. Ramsey (June 13, 2001).

³⁶ OIM Eighth Quarterly Report at 12.

suspect's compliance -- including consideration that a suspect may not understand English -- prior to the release of a canine.³⁷

During the tenth quarter, we again reviewed canine-involved apprehensions.³⁸ We found that, from January 1, 2004 through August 31, 2004, MPD's canine units were involved in 37 apprehensions, 7 of which included a bite to the suspect or other significant contact with a canine. This 19% bite-to-apprehension ratio is within the range our police practices experts consider acceptable, although it is at the high end of the range. Four of these bites occurred during on-lead tracks, while 3 occurred when the canine had been released and was off-lead.

During the twelfth quarter, we closely reviewed all FIT investigations of uses of force by canine units completed during calendar years 2003 and 2004. FIT completed 16 investigations into uses of force involving canines in 2003 and 11 such investigations in 2004. We reviewed these investigations to determine, among other things: the reported offense that served as the basis for the deployment of a canine unit, the source of approval for the canine deployment, the type of deployment, whether the canine was on- or off-lead at the time of the force incident, the subject's age, the FIT investigator's or the UFRB's determination as to whether the force applied was justified, and the nature and circumstances of the injury to the suspect.

Our overall conclusion during the twelfth quarter based upon the detailed review of the 27 canine cases from 2003 and 2004 was that MPD canine handlers do not appear to be using canines inappropriately or abusively. We reported that we have seen no evidence that MPD handlers permitted canines to "chew" on suspects or otherwise used canines to punish suspects.³⁹ On the contrary, virtually all of the bite incidents we reviewed during the twelfth quarter indicated that the canine, whether on-lead or off-lead, and the handler performed in a manner consistent with their training and with the principles of the Handler-Controlled Alert Methodology.⁴⁰

³⁷ *Id.* at 12-13.

³⁸ OIM Tenth Quarterly Report at 15.

³⁹ OIM Twelfth Quarterly Report at 14-15.

⁴⁰ The sole exception was a 2003 bite incident in which the suspect sustained a bite wound on his chest. In that case, the canine was deployed off-lead during an open seek. The canine alerted on the suspect, who attempted to comply with the handler's command that he raise his hands. The canine, which remained

This quarter, we again reviewed apprehensions in which an MPD canine unit was involved. In 2005, MPD canine units were reported as being involved in a total of 56 apprehensions, 8 of which resulted in “bites” or contact between the canine and the suspect, which is a bite-to-apprehension ratio of 14.3%. The bite-to-apprehension ratio for 2005 is quite acceptable for a police agency the size of MPD and is the lowest we have observed during our reviews of MPD’s canine program. MPD’s Canine Unit has made tremendous strides since execution of the MOA, and these bite-to-apprehension figures appear to reflect the effectiveness of MPD’s implementation of policies and training based on the Handler-Controlled Alert Methodology.

This quarter, we also reviewed incident reports related to each of the 56 apprehensions reported as involving a canine in order to determine whether a canine unit actually was involved in each of these apprehensions, as opposed to merely being present at the scene but not actually involved with the apprehension. We found only one case in which it was questionable whether the canine actually was involved in the arrest. Accordingly, we find that MPD’s bite-to-apprehension ratio in 2005 has not been distorted by the overreporting of canine involvement in apprehensions.

c. Supervisor Authorization for Canine Deployments

In our Eighth Quarterly Report, we reported that approximately 98% of a statistical sample of MPD canine deployments in 2003 were made either with appropriate supervisor approval or under “exigent circumstances” justifying deployment of a canine unit without prior supervisor authorization.⁴¹ During the tenth quarter, we found that 99.8% of the canine deployments between January 1, 2004 and August 31, 2004 either were authorized by a supervisor or made under demonstrated exigent circumstances justifying the absence of supervisor

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off-lead, appeared to have interpreted the suspect’s hand movements as a threatening gesture and reacted by biting the suspect on the chest. Although the UFRB found the force in this case to be justified, it did not appear that the handler maintained adequate control over the canine throughout the incident by, for example, placing the canine on-lead before ordering the suspect to show his hands.

⁴¹ OIM Eighth Quarterly Report at 10-11.

approval.⁴² Accordingly, we found that MPD was in substantial compliance with the MOA's provisions relating to supervisor authorization for canine deployments.⁴³

We also observed, however, that, during the months January 2004 through August 2004, nearly half of all canine deployments were authorized by non-Canine Unit supervisors.⁴⁴ Paragraph 45 of the MOA and the Canine Teams General Order require that canine handlers seek deployment authorization from non-Canine Unit supervisors only if the handler first is unable to contact a Canine Unit supervisor.⁴⁵ During the eleventh quarter, MPD's Canine Unit reported to the OIM that the issue of supervisor authorization had been addressed and that canine deployments were being approved by Canine Unit supervisors at a much higher rate in connection with recent deployments.⁴⁶

Our review during the thirteenth quarter of Canine Tactical Field Reports demonstrated that, in fact, there has been a significant reduction in the percentage of tactical canine deployments authorized by non-Canine Unit supervisors in the months since August 2004.⁴⁷ This reported reorientation toward Canine Unit supervisor deployment authorizations is reflected in the chart below, which tracks the percentage of canine deployments authorized by non-Canine Unit supervisors during the months January 2004 through March 2005.

⁴² OIM Tenth Quarterly Report at 13.

⁴³ *Id.* at 15-16.

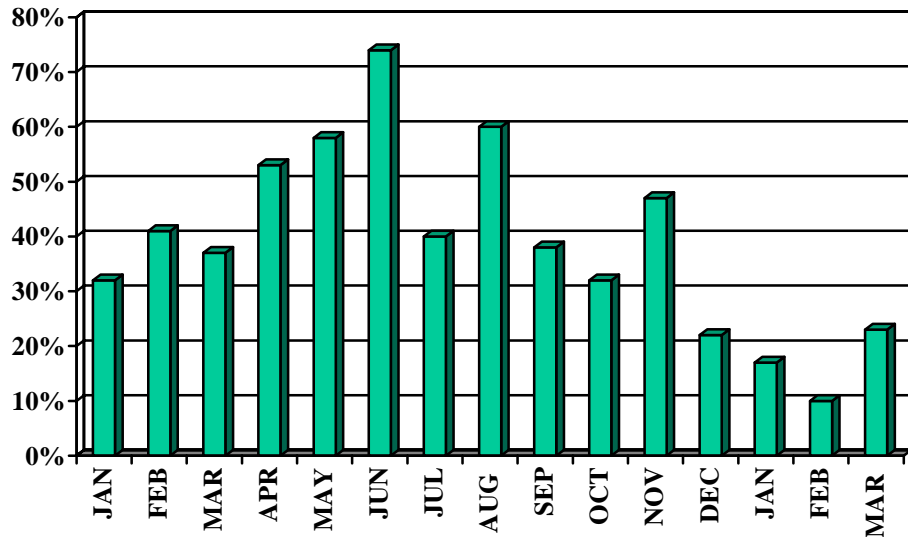
⁴⁴ *Id.* at 13.

⁴⁵ MOA at ¶ 45; GO-RAR-606.1, § V.B.1.

⁴⁶ OIM Eleventh Quarterly Report at 15.

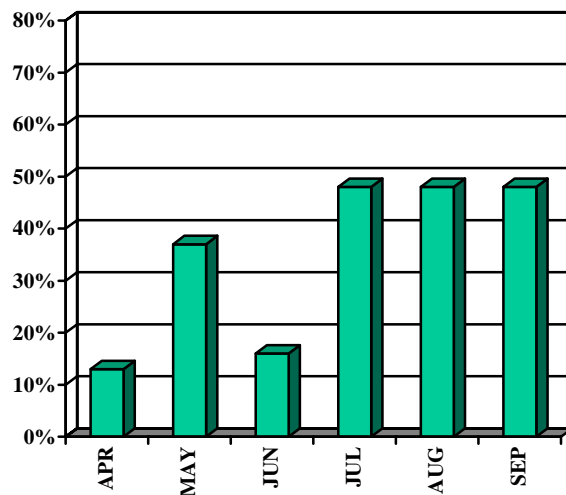
⁴⁷ OIM Thirteenth Quarterly Report at 20.

**Canine Unit Deployment Authorizations by Non-Canine Supervisors
January 2004 - March 2005**



This quarter, we again reviewed Canine Tactical Field Reports to assess the extent to which deployments of canine units were being authorized by non-Canine Unit supervisors. As reflected in the chart below, in recent months nearly half of canine deployments were authorized by non-Canine Unit supervisors.

**Canine Unit Deployment Authorizations by Non-Canine Supervisors
April 2005 - September 2005**



However, our review of the canine unit deployments between April 2005 and September 2005 found no evidence that canine handlers were

shopping for sympathetic non-Canine Unit supervisors to authorize deployments. We found that the sole cause for the recent increase in canine deployments authorized by non-Canine Unit supervisors is the current shortage of supervisors in the Canine Unit, which MPD hopes will be short-lived. Accordingly, at this time we do not change our assessment that MPD is in substantial compliance with the MOA requirements related to the authorization of canine deployments.

3. Substantial Compliance Evaluation

MPD currently is in compliance with MOA paragraphs 45 and 46 relating to canine policies and procedures. Last quarter, MPD obtained DOJ approval for the Canine Operations Manual, which was the remaining element of MPD's canine program to be finalized.

MPD is in substantial compliance with the MOA's provisions relating to supervisor authorization for canine deployments. We have found that, to a very high degree, canine deployments are supported by either prior supervisor approval or documented exigent circumstances. Although in recent months we have observed that nearly half of all canine deployments have been authorized by non-Canine Unit supervisors, it appears that this is attributable to a temporary shortage in the number of Canine Unit supervisors, which MPD anticipates correcting in the near future. We will continue to monitor whether, to a reasonable degree, canine handlers are first seeking deployment authorization from Canine Unit supervisors before seeking such authorization from a non-Canine Unit supervisor.

MPD is in substantial compliance with the MOA's requirement that canine bite incidents be consistent with the principles of the Handler-Controlled Alert Methodology upon which MPD's canine policy is premised. MPD's bite-to-apprehension ratio has remained consistently below 20% and in 2005 was 14.3%. Moreover, our detailed review during the twelfth quarter of all FIT investigations of canine bite incidents from 2003 and 2004 found that, with the possible exception of 1 of these 27 cases, the canine (whether on-lead or off-lead) and the handler performed in a manner consistent with their training and with the principles of the Handler-Controlled Alert Methodology -- a compliance rate of 96.3%.

Finally, training is a critical component in the assessment of MPD's compliance with the MOA provisions related to the canine program. As discussed in previous quarterly reports, the canine unit training sessions we have observed in the past indicate that MPD's training in this area fairly, accurately, and properly conveys the

principles and requirements of the MOA and of MPD policy.⁴⁸ Last year we monitored the final evaluation of a class of new canines that have recently been purchased by MPD, and we were impressed with the performance of the handlers and the new canines during the final certification session.⁴⁹

D. Oleoresin Capsicum Spray Policy (MOA ¶¶ 47-50)

1. Requirements

The MOA requires MPD to develop an Oleoresin Capsicum (“OC”) Spray Policy. The policy must comply with applicable law and be consistent with current standards in the policing profession. In particular, the OC Spray Policy must:

- Prohibit officers from using OC spray unless the officer has legal cause to detain the suspect, take the suspect into custody, or maintain the suspect in custody and unless the suspect is actively resisting the officer;
- Prohibit officers from using OC spray to disperse crowds or smaller groups of people, including its use to prevent property damage, unless the acts being committed endanger public safety and security;
- Prohibit the use of OC spray on children and the elderly, except in exceptional circumstances;
- Require that officers provide a verbal warning prior to the use of OC spray, unless such warning would endanger the officer or others, stating that its use is imminent unless the resistance ends; and, whenever feasible, permit a reasonable period for the warning to be heeded;
- Limit the use of OC spray to a person’s head and torso; prohibit spraying from less than three feet away (except in exceptional circumstances); and limit the spray to two, one-second bursts; and

⁴⁸ See, e.g., OIM Eleventh Quarterly Report at 89-90.

⁴⁹ OIM Thirteenth Quarterly Report at 88.

- Decontaminate persons sprayed with OC spray within twenty minutes after spraying, and transport them to a hospital for treatment if they complain of continuing adverse effects or state that they have a pre-existing medical condition that may be aggravated by the spray.

2. Status and Assessment

MPD obtained DOJ approval for its Oleoresin Capsicum Spray General Order in September 2002. MPD began distribution of the Oleoresin Capsicum Spray General Order, along with other use of force-related policies, during the week of October 6, 2002.

In our Eleventh Quarterly Report, we found that MPD is in substantial compliance with MOA paragraphs 47 through 50 relating to OC Spray Policy.⁵⁰ This quarter, we reviewed 49 MPD internal investigations regarding incidents involving the use of OC spray between January and November 2005. In none of the cases was OC spray used on an elderly person or on a child.⁵¹ We found that the officers issued appropriate warnings in 30 of these cases; and; in the 14 cases in which warnings were not issued, there were exigent circumstances justifying the failure to provide the suspect a warning that OC spray would be used.⁵² Thus, in approximately 90% of the cases we reviewed, we were able to determine that either appropriate warnings were given or exigent circumstances justified the absence of such warnings. In the remaining 5 cases, we could not determine from the documentation in the investigation files whether or not warnings had been issued. We found no cases in which we could determine that a warning should have been issued and was not.

In the 36 cases in which we were able to determine the number of OC spray bursts used by the officer, 26 involved one burst, 15 involved two bursts, 3 involved three bursts, and 2 involved four bursts.⁵³ In one of the cases involving four bursts, a suspect wielding a knife was confronted by three officers, was issued warnings, and was transported

⁵⁰ OIM Eleventh Quarterly Report at 22.

⁵¹ MOA at ¶ 48.

⁵² MOA at ¶ 49.

⁵³ The MOA requires that MPD policy permit officers to “utilize only two, one second bursts and to do so from at least 3 feet away, unless exceptional circumstances require otherwise.” MOA at ¶ 50.

to the hospital after the incident. In the other case of four bursts, the first two bursts had no effect on the suspect. In sum, none of the OC spray cases we reviewed involved deployment of the agent that was unjustified or excessive under the circumstances.

In our Sixth Quarterly Report, we recommended that MPD's in-service training program provide focused attention on the use of OC spray and, in particular, on decontamination procedures following the deployment of the agent. In 36 of the cases we reviewed, appropriate decontamination procedures were used following the use of OC spray. In 28 cases, the decontamination was performed by medics or firemen from the District of Columbia Fire Department. In 25 cases, the affected person received treatment at a hospital, and in two cases the suspect was flushed at the scene by MPD. In 11 of the cases, decontamination either was not necessary because the suspect did not come into contact with the agent or decontamination was not reported in the investigation file. In 2 cases, the suspect escaped. We found only 1 case in which decontamination likely was necessary, but we found no evidence that it was performed.

3. Substantial Compliance Evaluation

We continue to find that MPD is in substantial compliance with MOA paragraphs 47 through 50, which relate to OC Spray Policy. Although, in several cases, we were not able to determine based on the investigation reports whether the officer using OC spray complied with all of the requirements of the MOA and MPD policy, we did not identify any cases in which the use of OC spray was unjustified or excessive under the circumstances. MPD officers avoided using the spray on children and elderly persons and, to a high degree where possible, issued appropriate warnings that OC spray would be used. Also, it appears based on these reports that MPD complied with the MOA's requirements related to decontamination in all but one of the cases we reviewed, which is a 96% compliance rate.

4. Recommendations

We recommend that MPD's in-service use of force training continue to emphasize the requirements of the Department's OC Spray Policy, appropriate techniques for deployment of OC spray, and decontamination procedures.

E. Implementation Schedule (MOA ¶¶ 51-52)

As discussed above, MPD has obtained DOJ approval for its Use of Force General Order, Handling of Service Weapons General Order, Oleoresin Capsicum Spray General Order, and Canine Teams General Order. MPD also has issued a special order relating to Carrying Service Firearms While Off-Duty in the District of Columbia in accordance with paragraph 42 of the MOA, although DOJ approval of that special order is not required under the MOA. MPD has obtained DOJ approval prior to implementing any revisions or changes to these central use of force-related policies, as required by paragraph 52 of the MOA. Last quarter, consistent with the requirements of paragraph 52, MPD submitted a proposed revision to the Handling of Service Weapons General Order to DOJ for review and approval. Similarly, this quarter, MPD obtained DOJ approval for a revision to the Use of Force General Order regarding shooting at or from moving vehicles. Accordingly, MPD is in substantial compliance with MOA paragraphs 51 and 52 related to the implementation of use of force policies and procedures.

III. Incident Documentation, Investigation, and Review (MOA ¶¶ 53-84)

A. Use of Force Reporting Policy and Use of Force Incident Report (MOA ¶¶ 53-55)

1. Requirements

The MOA requires MPD to develop a Use of Force Reporting Policy and a UFIR. The MOA mandates that the reporting policy require:

- Notification of an officer's supervisor immediately following any use of force or after the lodging of any allegation of excessive use of force;
- An officer to fill out a UFIR immediately after he or she uses force, including the drawing *and* pointing of a firearm at another person or in such a person's direction;
- An officer's supervisor to respond to the scene upon receiving notification that force has been used or that an allegation of excessive force has been received;

- Immediate notification to FIT in every instance involving deadly force,⁵⁴ the serious use of force,⁵⁵ or any use of force potentially reflecting criminal conduct by an officer;⁵⁶
- Immediate notification to the United States Attorney for the District of Columbia in all such instances; and
- Recording the data captured on UFIRs into MPD's PPMS.

The precise language of the UFIR was the subject of substantial discussion and negotiation between MPD and DOJ subsequent to the execution of the MOA. As a result of this dialogue, the parties agreed upon the following language for inclusion in relevant force-related general orders:

In all uses of force requiring a Use of Force Incident Report, the member shall immediately notify his/her supervisor of the use of force, intentional or unintentional, exercised by the member, any accusation of excessive force made against the member, or immediately following the drawing of and pointing a firearm at or in the direction of another person, and shall promptly complete the Use of Force Incident Report.⁵⁷

⁵⁴ “Deadly force” is defined in paragraph 15 of the MOA as “any use of force likely to cause death or serious physical injury, including but not limited to the use of a firearm or a strike to the head with a hard object.”

⁵⁵ “Serious use of force” is defined in paragraph 33 of the MOA as “lethal and less-than-lethal actions by MPD officers including: (i) all firearm discharges by an MPD officer with the exception of range and training incidents and discharges at animals; (ii) all uses of force by an MPD officer resulting in a broken bone or an injury requiring hospitalization; (iii) all head strikes with an impact weapon; (iv) all uses of force by an MPD officer resulting in a loss of consciousness, or that create a substantial risk of death, serious disfigurement, disability or impairment of the functioning of any body part or organ; (v) all other uses of force by an MPD officer resulting in a death; and (vi) all incidents where a person receives a bite from an MPD canine.”

⁵⁶ “Use of force indicating potential criminal conduct by an officer” is defined in paragraph 35 of the MOA to include “strikes, blows, kicks or other similar uses of force against a handcuffed subject.”

⁵⁷ MPD January 2003 Progress Report at 9.

The parties also agreed upon certain language regarding the process of compelling an officer to complete a UFIR following a declination by the USAO and/or issuance of an authorized Reverse-Garrity warning. A “Reverse-Garrity” warning is a statement given to an officer, typically following a declination to prosecute issued by the USAO, requiring the officer to answer questions relating to his or her official duties but precluding the use of statements made by the officer against him in any criminal prosecution.

2. Status and Assessment

a. Use of Force Incident Report

(1) UFIR Completion

DOJ provided final approval of the UFIR on September 17, 2002, and MPD’s UFIR completion requirements went into effect in early October 2002. MPD has proposed a revised and simplified UFIR and has submitted the proposed revisions to DOJ. MPD submitted a revised and reformatted UFIR to DOJ on November 20, 2002, and MPD and DOJ have engaged in several rounds of discussions over an extended period regarding the revised UFIR since that time. On September 24, 2004, DOJ provided MPD with a written response to MPD’s April 9, 2004 submission regarding the revised and updated UFIR. MPD reports that DOJ has agreed to MPD’s proposal that officers will not be required to complete a UFIR based on receipt of a complaint of excessive force where the involved officer maintains that no force was used. Such incidents will be processed as citizen complaints rather than treated as reportable uses of force.⁵⁸ On December 1, 2004, MPD submitted for DOJ approval the final version of the revised UFIR as well as a special order outlining the procedures for completing a UFIR.⁵⁹ This submission included a draft special order outlining the procedures for completing a UFIR.

DOJ provided recommendations regarding revisions to the special order on January 26, 2005. MPD submitted a final revised UFIR

⁵⁸ MPD January 2006 Progress Report at 18. DOJ, however, has made clear its “expectation that should an officer fail to complete a UFIR, and later be found to have used force as a result of an investigation initiated by a citizen complaint, appropriate action will be taken regarding the officer’s failure to follow MPD policy.” Letter from Tammie M. Gregg to Captain Matthew Klein (September 24, 2004).

⁵⁹ MPD January 2006 Progress Report at 19.

package to DOJ on June 30, 2005. On November 2, 2005, DOJ approved the revised UFIR form and stated that the UFIR Special Order may be approved with the addition of language clarifying that officers must immediately report all use of force incidents to a supervisor. MPD reports that it added the language DOJ suggested, as well as clarified that civilian employees and reserve officers also are subject to UFIR completion requirements, and submitted the revised UFIR Special Order for DOJ approval on December 29, 2005.⁶⁰

Even prior to our analysis of underlying incident reports, discussed in Section II.A.2.c above, we have consistently observed that low UFIR completion rates were a persistent problem for MPD.⁶¹ As we reported in our Thirteenth Quarterly Report, however, our review of underlying incident reports -- including PD Form 251 (Incident-Based Event Reports), PD Form 163 (Arrest/Prosecution Reports), and PD Form 313 (Arrestee's Injury/Illness Reports) -- showed that during the months of October through December 2004, months in which MPD reported very high UFIR completion rates, MPD officers actually completed UFIRs in only approximately 16% of the cases in which a UFIR was required under the MOA and MPD's Use of Force General Order.⁶²

Most of the incidents we discovered in which a UFIR should have been completed, but was not, involved a hands-on use of force by an officer to subdue and handcuff a suspect, which are in most cases relatively minor uses of force. The widespread failure to complete UFIRs related to such incidents appeared to be the result of a widespread misunderstanding among MPD officers that the use of contact controls to subdue or handcuff a subject who is offering more than passive resistance does not trigger the requirement under MPD's Use of Force General Order that a UFIR be completed unless the subject complains of pain or injury.⁶³ MPD's policy and the MOA are clear, however, that such incidents qualify as uses of force and must be documented through the completion of a UFIR.

⁶⁰ *Id.*

⁶¹ *See, e.g.*, OIM Eleventh Quarterly Report at 25-26.

⁶² OIM Thirteenth Quarterly Report at 9.

⁶³ Hand or contact controls are pain compliance techniques, such as arm bar holds and techniques aimed at the subject's joints that do not involve the use of a weapon.

Beginning this quarter, MPD has reported a dramatic increase in the number of hand control-related use of force incidents, which likely is in response to the clarifications MPD has issued within the Department regarding the circumstances under which the use of hand controls gives rise to the requirement to complete a UFIR. MPD reported 21 hand control use of force incidents in September 2005, 29 such incidents in October 2005, and 29 such incidents in November 2005. MPD reported that UFIRs were completed in 18 of the hand control cases in September 2005 (85.7%), in 23 of the October 2005 cases (79.3%), and in 19 of the November 2005 cases (65.5%).⁶⁴ As discussed above, in December 2005, MPD issued a teletype directive further clarifying and emphasizing the circumstances under which a UFIR must be completed, including cases involving the use of hand controls.

MPD anticipates that the simplified UFIR, which was finalized this quarter, will have a positive effect on UFIR completion rates. The UFIR is a central requirement of the MOA intended to enable MPD to gather and track accurate information about the frequency and level of force employed by its officers. Without such accurate information, MPD command staff will be unable to identify and address problems with uses of force and to identify the serious potential consequences should such uses of force go unrecognized and unaddressed by the Department. We will continue monitoring MPD's efforts to implement an accurate and reliable use of force reporting program, which is one of the major areas in which significant improvement remains necessary in order for MPD to achieve substantial compliance with the requirements of the MOA.

(2) Pointing a Weapon at or in the Direction of a Person

On December 10, 2003, MPD proposed to DOJ a modification to the MOA's requirement that officers complete a UFIR "immediately following the drawing and pointing of a firearm at, or in the direction of, another person"⁶⁵ MPD believes that, because the MOA does not include the pointing of a weapon within its definition of "use of force," reporting such incidents through the UFIR is not appropriate and has

⁶⁴ These UFIR completion statistics are reported by FIT, which relies on the various district and unit commands to report use of force incidents in accordance with MPD policy. FIT does not perform any assessment of whether the reporting districts and units are counting all of the underlying incidents that should give rise to the completion of a UFIR under MPD policy.

⁶⁵ MOA at ¶ 53.

caused substantial concern within the ranks of MPD officers. DOJ maintains that, under certain circumstances, the pointing of a weapon may in fact constitute a use of force and should be reported as such.

Accordingly, MPD has developed a draft MPD Reportable Incident Form (“RIF”) that would, if DOJ accepts its use, replace the UFIR as the mechanism for tracking “pointing” incidents.⁶⁶ DOJ responded to MPD’s proposal on February 27, 2004 and raised several procedural concerns, including the need to ensure adequate supervisory review of completed RIFs. MPD responded by preparing for DOJ’s review a draft teletype directive intended to ensure that such supervisory review is comparable to the review required to be performed for completed UFIRs. On September 24, 2004, DOJ commented on MPD’s submission. On December 1, 2004, MPD responded to DOJ’s comments and replaced its draft teletype directive with a draft special order.⁶⁷ DOJ provided comments regarding the RIF to MPD on January 26, 2005, and MPD provided DOJ with the final revised RIF and RIF Special Order on June 30, 2005.⁶⁸

On November 2, 2005, DOJ approved the revised RIF and RIF Special Order. MPD, however, has revised the RIF Special Order further to clarify that armed reserve officers are subject to the RIF completion requirements. Accordingly, on December 29, 2005, MPD returned the revised RIF Special Order for review and approval.⁶⁹

(3) UFIR Quality

For several quarters through the eleventh quarter, the OIM reviewed all UFIRs in MPD’s central UFIR files, which are maintained at FIT’s offices. In our reports, we included a running chart identifying on a monthly basis the various common deficiencies we found with respect to the quality and completeness of the UFIRs returned by officers.⁷⁰

During the twelfth quarter, we performed a detailed review of 50 UFIRs filed with FIT during the period October 1, 2004 through January 31, 2005. We found that the high UFIR completion rates

⁶⁶ MPD January 2006 Progress Report at 21.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *See, e.g.,* OIM Eleventh Quarterly Report at 29.

reported by MPD in those months were misleading because virtually all of the UFIRs returned by officers during this period contained relevant data fields that were incomplete or contained no entries at all. For example, more than half of the UFIRs filed between October 1, 2004 and January 31, 2005 were missing a supervisor's signature, a requirement to ensure that the UFIR is reviewed and approved.⁷¹ Our review of UFIRs during the twelfth quarter bolstered our consistent findings over the previous several quarters that the overall quality of the UFIRs returned by MPD officers, and counted by FIT as having been completed, were quite poor.

MPD anticipates that the revised UFIR not only will contribute to the improvement of the rate at which officers complete the form but also will improve the quality of information reported relating to use of force incidents. As discussed above, the UFIR is a central component of the MOA and a critical reporting instrument intended to permit MPD to accurately track and monitor individual use of force incidents and trends in uses of force within the Department. In order to fulfill the intended purpose of the UFIR, officers must complete UFIRs fully, accurately, and on a timely basis.

(4) Specialized Mission Unit After-Action Report

On March 5, 2003, MPD sent a letter to DOJ proposing an amendment to the UFIR reporting requirement as it relates to certain incidents involving MPD's SMUs during which multiple officers point their service weapons. MPD believes that the UFIR requirement as it relates to such incidents may give rise to delays that adversely affect operational efficiency because it requires multiple officers taking time to complete separate UFIRs. As an alternative to the requirement that each officer prepare a UFIR documenting the pointing of a weapon, MPD proposed that the unit manager complete a single "After-Action Documentation Report." DOJ responded to MPD's proposal on August 25, 2003 by suggesting certain revisions to the draft After-Action Report. On December 31, 2003, MPD submitted to DOJ a revised draft "Specialized Mission Unit After-Action Report" ("SMUAAR") incorporating DOJ's comments and a revised Specialized Mission Unit General Order including policies and procedures related to the SMUAAR.

⁷¹ OIM Twelfth Quarterly Report at 24.

MPD reports that it has developed the following specific criteria as to when a pointing incident may be recorded on a SMUAAR:

- The SMU is a permanent, established unit meeting the requirements established in the Specialized Mission Units General Order.
- The SMU is operating as a team at the time of the pointing incident.
- The SMU is led by a clearly identifiable police manager, at the rank of lieutenant or above, at the time of the pointing incident.
- The SMU is on a pre-planned operation with a clear mission, such as, for example, the execution of a high risk arrest warrant.
- The SMU members are working in unison.⁷²

On March 30, 2004, DOJ provided final approval of MPD's Specialized Mission Unit General Order and outlined its remaining concerns with respect to the SMUAAR.⁷³ MPD requested a delay in the requirement that the Specialized Mission Unit General Order be implemented within 14 business days after DOJ's approval of the order. This request arose from MPD's concern that implementation of the Specialized Mission Unit General Order prior to the resolution of outstanding issues related to the SMUAAR might lead to confusion among officers in the field. Accordingly, MPD requested that implementation of both the Specialized Mission Unit General Order and the SMUAAR be required to take place within 14 business days after DOJ's approval of the SMUAAR.⁷⁴ DOJ granted MPD's request, and, on April 9, 2004, MPD responded to DOJ's concerns regarding the SMUAAR.

On September 24, 2004, DOJ provided MPD with its final comments regarding the SMUAAR, and MPD responded on December 1, 2004. On January 26, 2005, DOJ approved MPD's request that the SMUAAR be used to document incidents involving the execution of a high-risk warrant under certain criteria outlined in the Specialized

⁷² MPD January 2006 Progress Report at 23.

⁷³ Letter from Tammie M. Gregg to Captain Matthew Klein (March 30, 2004).

⁷⁴ E-mail from Maureen O'Connell to Tammie Gregg, Lisa Graybill, and Sarah Gerhart (March 31, 2004).

Mission Unit General Order.⁷⁵ MPD reports that it is still working to revise the formatting and style of the general order to ensure that it is consistent with other MPD directives.⁷⁶

b. United States Attorney Notification Log

The United States Attorney Notification Log is maintained at FIT's offices and consists of a handwritten series of entries recording the date and time of each notification made by MPD to the USAO regarding a use of force incident involving an MPD officer. We have consistently found that MPD makes timely notifications to the USAO within 24 hours of a deadly or serious use of force incident.⁷⁷

3. Substantial Compliance Evaluation

MPD is not currently in substantial compliance with MOA paragraph 53 related to use of force reporting and the UFIR. This quarter, DOJ approved the revised UFIR and MPD submitted the revised UFIR Special Order to DOJ for final approval. MPD hopes that the use of these revisions will simplify the form, improve UFIR completion rates, and improve the quality of the information included in UFIRs returned by MPD officers. MPD must devote significant attention to improving both the rate at which UFIRs are completed and the quality of information contained in the UFIRs to substantially comply with the MOA. MPD also is continuing to work with DOJ to gain approval for its proposed RIF Special Order related to tracking firearms pointing incidents and for the SMUAAR, but such approvals have not yet been granted.

MPD is in substantial compliance with the MOA's requirements, found in paragraph 54, regarding the timely notification of the USAO of deadly and serious uses of force.

MPD is not in substantial compliance with paragraph 55 of the MOA, which requires that all data captured in the UFIRs be entered into MPD's PPMS. As discussed in detail in Section VI.B of this report, PPMS remains in the developmental stages and UFIR data has not yet been incorporated into that system. MPD does appear, however, to be

⁷⁵ MPD January 2006 Progress Report at 23.

⁷⁶ *Id.*

⁷⁷ MOA at ¶ 54.

currently satisfying paragraph 55's requirement that all hard copies of completed UFIRs be centrally maintained.⁷⁸

4. Recommendations

Now that DOJ has approved the revised UFIR and that final approval of the UFIR Special Order appears likely to occur soon, we encourage MPD to promptly implement the revised and simplified UFIR as well as to devote significant attention to training and supervising officers in the proper completion of UFIRs. Only through such enhanced efforts will the rate at which MPD officers complete UFIRs rise and the percentage of UFIRs containing complete information increase to the necessary levels.

B. Investigating Use of Force and Misconduct Allegations (MOA ¶¶ 56-84)

1. Use of Force Investigations (MOA ¶¶ 56-67)

a. Requirements

(1) FIT Use of Force Investigations

The provisions of the MOA that address use of force investigations take as their point of departure the January 1999 creation of FIT as the entity within MPD charged with investigating all firearms discharges by MPD. The MOA creates a protocol for handling the investigation of use of force by MPD and the manner in which such investigations are to be coordinated. At the core of the protocol is the requirement to transfer responsibility for MPD criminal investigations involving officer use of force from MPD district violent crime units or other MPD district supervisors to FIT.⁷⁹

MPD is required to notify and consult with the USAO -- and vice versa -- in each instance in which there is an incident involving deadly force, a serious use of force, or any other use of force suggesting potential criminal misconduct by an officer. All such investigations are

⁷⁸ Paragraph 55 of the MOA states that hard copies of the UFIRs shall be maintained centrally by OPR. OPR maintains the UFIRs at FIT's offices, which is satisfactory under the MOA.

⁷⁹ Consistent with this approach, the MOA requires that MPD train and assign a sufficient number of personnel to FIT to fulfill the duties and responsibilities assigned to it by the MOA. MOA at ¶ 63.

handled by FIT rather than by any other unit of MPD. Even while the criminal investigation is pending, the MOA requires FIT's investigation of the officer's use of force to proceed in all such cases, although the compelled interview of the subject officers may be delayed in cases where the USAO has not declined prosecution.⁸⁰

FIT is required to respond to the scene of every such incident described above and to conduct all such investigations, whether the investigation results in criminal charges, administrative sanctions, or both. No officers from any unit other than FIT are permitted to participate in the investigation. The MOA requires FIT's administrative (non-criminal) use of force investigations to be completed within ninety days of a decision by the USAO not to prosecute, unless special circumstances prevent their timely completion.⁸¹

The MOA contains various requirements governing FIT's investigation process and the preparation of an investigation report by FIT. For example, the report prepared by FIT must include:

- A description of the use of force incident and other uses of force identified during the investigation;
- A summary and analysis of all relevant evidence; and
- Proposed findings, which include:
 - A determination of whether the use of force under investigation was consistent with MPD policy and training;
 - A determination of whether proper tactics were used; and
 - A determination of whether alternatives requiring lesser uses of force were reasonably available.

(2) Other Use of Force Investigations

All use of force investigations, other than those specifically assigned to FIT, may be investigated by chain of command supervisors in

⁸⁰ This deferral of the interview of subject officers is designed to avoid the risk that such compelled interviews might taint the criminal investigation. *See Garrity v. State of New Jersey*, 385 U.S. 493, 87 S. Ct. 616 (1967).

⁸¹ In such cases, the reasons for failing to observe the ninety-day requirement must be documented.

MPD districts. In the alternative, the Chief of Police or his designee may assign investigations to chain of command supervisors from another district. In the absence of special circumstances, these use of force investigations, like FIT's investigations, must be completed within ninety days and must contain all of the elements prescribed above for FIT investigation reports. Once such investigations are complete, the investigation report must be submitted to the unit commander, who must review it to ensure completeness and to ensure that its findings are supported by the evidence. The unit commander has the power to order additional investigation if necessary. Once the investigation is complete, the investigation file is forwarded to the UFRB.⁸²

(3) Use of Force Review Board

Subject to approval by DOJ, MPD is required by the MOA to develop and implement a policy to enhance the UFRB as the review body for use of force investigations. The policy developed by MPD must:

- Ensure that the UFRB conducts prompt reviews of all use of force investigations;⁸³
- Establish the membership of the UFRB;
- Establish timeliness rules for the review of investigations;
- Authorize the UFRB to recommend discipline for violations of MPD policies, recommend further training where appropriate, and authorize the UFRB to direct MPD district supervisors to take non-disciplinary action to encourage officers to modify their behavior;

⁸² In the event there is evidence of criminal misconduct, the Unit Commander must suspend the use of force investigation and notify FIT and the USAO.

⁸³ Recognizing that the UFRB might be overwhelmed by reviewing all use of force investigations, DOJ and MPD agreed to modify the MOA to require the UFRB to conduct timely reviews only of use of force investigations investigated by FIT I or FIT II. Additionally, according to DOJ, it agreed to allow non-FIT force reviews, with some exceptions, to be conducted by chain of command officers (and conclude at the Assistant Chief level) so long as FIT continues to review all non-FIT use of force incidents in an effort to identify incidents that should be referred to the UFRB.

- Require the UFRB to assign to FIT or return to the original investigating unit any incomplete or improperly conducted use of force investigations; and
- Empower the UFRB to recommend to the Chief of Police investigative standards and protocols for all use of force investigations.

In addition to these requirements, the UFRB must conduct annual reviews of all use of force investigations to identify patterns and problems in such investigations. The UFRB must issue a report summarizing the findings of its review to the Chief of Police.

b. Status and Assessment

(1) FIT Manual

DOJ approved MPD's revised Force Investigation Team Organizational Plan and Operations Manual on December 31, 2003.

(2) FIT Use of Force Investigations

The OIM reviews all preliminary and final use of force investigation reports prepared by FIT. During the eleventh quarter, we performed a statistical analysis with respect to the 42 FIT I investigations completed between January 1, 2004 and December 31, 2004.⁸⁴ The results of this analysis confirmed our consistent findings that FIT performs thorough and high quality investigations.⁸⁵ We found that 97.4% of the FIT I investigations finished in 2004 were "complete"⁸⁶ and that 100% of these investigations were "sufficient."⁸⁷

⁸⁴ FIT I investigations are investigations of uses of "deadly force," including but not limited to the use of a firearm or strike to the head with a hard object. See MOA at ¶ 15. FIT II investigations are of other serious uses of force, including for example uses of force resulting in hospitalization and canine bites.

⁸⁵ OIM Eleventh Quarterly Report at 35-37.

⁸⁶ Our police practices experts rated an investigation "complete" if it reflected the performance of all of the substantive investigative steps and contained all of the documentation required by both the MOA and by generally accepted police practices.

⁸⁷ Our police practices experts rated an investigation "sufficient" if the evidence and analysis reflected in the investigation file were adequate to support a

We identified two significant areas, however, where the FIT investigations did not meet the 95% or better objective standard for substantial compliance.⁸⁸ First, although FIT investigations are generally completed on a timely basis in a much higher percentage of cases than chain of command and Internal Affairs Division, Police Misconduct Section (“IAD”) investigations, there is room for improvement.⁸⁹ We found that 79.0% of the 2004 FIT I investigations were either completed within 90 days or contained documented special circumstances justifying a delay in completion of the investigations.⁹⁰ Second, we found that witness canvasses were conducted in only 90.3% of the cases in which, based on our reviews, it appeared that a canvass should have been performed.⁹¹

Last quarter, we found that 24 of the 25 FIT I investigations completed in 2005 were complete and that all 25 were sufficient. We found, however, that 2 of the 27 FIT II investigations completed in 2005 were neither complete nor sufficient. These two cases were rated incomplete and insufficient because the investigators in each case failed to address the officer’s failure to complete a UFIR. In both cases, there was evidence that the involved officers used a level of force that would require the completion of a UFIR -- indeed, in one of the cases, a supervisor noticed injuries to the arrestee -- and yet no UFIR was completed, in violation of MPD policy.⁹² The overall completeness and sufficiency ratings for the 52 FIT investigations completed so far in 2005 are 92.3% complete (48 of 52) and 96.2% sufficient (50 of 52).⁹³

Last quarter, we also found that the timeliness of FIT investigations has been good during calendar 2005. Twenty-four of the 25 FIT cases closed in 2005 that we reviewed were completed within 90

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reasonable and defensible conclusion, even in cases where certain investigative procedures or analysis had not been completed.

⁸⁸ OIM Eleventh Quarterly Report at 37.

⁸⁹ MPD recently changed the name of the former Office of Internal Affairs (“OIA”) to the Internal Affairs Division, Police Misconduct Section.

⁹⁰ MOA at ¶ 62.

⁹¹ *Id.* at ¶ 81.f.

⁹² Paragraph 82 of the MOA requires that investigators investigate all potential misconduct.

⁹³ OIM Fourteenth Quarterly Report at 35-36.

days from receipt of the criminal declination from the USAO, as required under paragraph 62 of the MOA.⁹⁴ We reported, however, that thoroughness of documentation related to FIT investigations that are significantly delayed while declinations from the USAO are pending could be improved by the inclusion in the file of periodic explanations of the status of cases while they are being reviewed by the USAO. We recommended that, for example, the FIT files reflect the dates of information requests from the USAO and of MPD's responses to such requests.⁹⁵

This quarter, we continued our review of all FIT cases completed in 2005. We will complete the review of 2005 FIT cases in the coming quarter and provide statistics regarding the completeness, sufficiency, and timeliness of those investigations in our next quarterly report.

(3) Other Use of Force Investigations

Beginning with our Sixth Quarterly Report, we have reported on statistical samples of chain of command and IAD use of force and misconduct investigations. This quarter, we reviewed a tenth sample of such investigations opened between April 1, 2005 and June 30, 2005. The results generated by our reviews of these investigations are summarized in Section III.B.2.b(1) below and in Appendix B.

(4) Use of Force Review Board

On January 31, 2003, DOJ approved MPD's Use of Force Review Board General Order. The UFRB is charged with reviewing use of force cases to determine whether the force used was justified and to identify training needs, equipment upgrades, or policy modifications that may be necessary. Until earlier this year, the UFRB typically met once a month and was comprised of five members of MPD's command staff -- three permanent members and two seats that rotate among commanders from the districts, with a designated chairperson. The UFRB had been supported by a staff person who was an active FIT investigator.

In our Tenth Quarterly Report, we concluded that the UFRB's meetings were not being conducted in a manner commensurate with the importance of the UFRB's function.⁹⁶ In our Eleventh Quarterly Report,

⁹⁴ *Id.* at 36.

⁹⁵ *Id.*

⁹⁶ OIM Tenth Quarterly Report at 33-34.

we reported several specific deficiencies in the UFRB's performance, including:

- Inadequate time being reserved in the UFRB members' schedules for the monthly use of force review meetings.
- Inadequate focus by the UFRB members during the deliberations due to distractions such as cell phones and portable e-mail devices.
- Lack of an organized review of the cases structured to address each of the critical decision points confronting each officer as the events developed that led to the use of force. While the UFRB's deliberations in certain cases touched upon many of the critical decision points at issue, the UFRB did so in a haphazard and random manner that failed to ensure that it thoroughly considered each of the tactical and force decisions made by each involved officer.
- Inadequate time devoted to deliberations with respect to each case. We observed that many of the UFRB's reviews lasted little more than a minute or two and constituted nothing more than a poll of the UFRB members to determine whether there was unanimous agreement with the FIT investigator's conclusion as to whether the use of force was justified.
- Lack of an organized and methodical effort by the UFRB to identify patterns and problems in uses of force, identify training issues, and prescribe recommendations to address such issues.⁹⁷

During the twelfth quarter, the OIM participated in two meetings with MPD command staff to discuss our recommendations for improving the UFRB's operations and deliberative processes. The first of these meetings included Chief Ramsey, who was receptive to our suggestions. The second meeting was with members of the CMT and the Assistant Chief heading OPR and was a more detailed discussion of specific alternatives for reforming the structure and operations of the UFRB.⁹⁸

⁹⁷ OIM Eleventh Quarterly Report at 38-39.

⁹⁸ OIM Twelfth Quarterly Report at 33.

During the thirteenth quarter, in response to the OIM's findings and technical assistance, MPD implemented a plan to restructure both the composition of the UFRB and its operations. The significant reforms MPD has implemented with respect to the UFRB include:

- Reorganization of the UFRB's membership. MPD has reorganized the UFRB to provide for more direct involvement by command staff at the Assistant Chief level. The Chair of the UFRB will be one of the three Regional Operations Command ("ROC") Assistant Chiefs, and each of the three ROC chiefs will serve rotating one-year terms as UFRB Chair. The permanent members of the UFRB will be the Commanding Officer of the Special Operations Division, the Commanding Officer of the Office of the Superintendent of Detectives, and the Commanding Officer of IPS. The two rotating members of the Board will be Commanders from one of the seven MPD districts, who will rotate after serving one-year terms.
- Established schedule for UFRB meetings. MPD has established a schedule for UFRB meetings over the next 13 months, beginning in July 2005. In order to provide more time for deliberations regarding use of force cases before the UFRB, the schedule provides for two meetings per month, rather than one. MPD's plan also establishes strict attendance requirements, and a member may be excused from a UFRB meeting only by the Chair.
- Decision point analysis. We have strongly recommended that MPD employ a focused "decision point" approach in analyzing each use of force case. This approach provides a framework for considering each point when an officer made a decision that may have affected subsequent events, as opposed to focusing solely on the final decision to use force. This decision point process allows the UFRB to conduct more intensive and comprehensive reviews of use of force incidents and to identify any flawed tactical decisions and training opportunities that arise out of the investigations.
- Administrative support for the UFRB. The OIM also recommended that MPD assign a staff member to perform significant preparation to assist the UFRB in performing decision point analyses. MPD has assigned a full-time UFRB Administrator whose duties include, among other things, preparing agendas for review by the UFRB Chair; preparing "Decision Point Matrix Analysis" summaries for each case; ensuring that relevant MPD policies, directives, and lesson plans are available to the Board members during their deliberations; preparing summaries of each Board meeting that

include the Board's findings and recommendations; and notifying subject officers of the Board's decisions.⁹⁹

Last quarter, we monitored three meetings of the UFRB. We reported that the performance of the UFRB has improved remarkably as a result of the implementation of the above reforms.¹⁰⁰

In particular, we observed that the UFRB is making very effective use of the Decision Point Matrix Analysis prepared by the staff member devoted to the UFRB. As a result, the UFRB's deliberations with respect to each of the cases before it are now much more comprehensive and methodical than those in past UFRB sessions. The organization and focus imposed by implementation of the decision point analysis process have resulted in more careful and focused discussions of each case as well as providing the UFRB with a framework to facilitate discussion about Department-wide policy and training issues. We found that the Chair of the UFRB has been very effective in ensuring the participation of each of the members of the Board. The new administrative support officer assigned to the UFRB is doing an excellent job in preparing the Board members for each meeting by creating matrices breaking down each case and by tracking the decisions and follow-up points generated during the Board's deliberations.

This quarter, we reviewed documentation maintained by the UFRB Administrator reflecting communications between the Board and district commands, DDRO, and IPS in cases in which the Board found that there was an unjustified use of force, a policy violation, or a training opportunity. We found that the UFRB Administrator is maintaining very thorough records of the Board's determinations and doing an effective job of following up with the district commands and other units to ensure that the Board's findings and recommendations are addressed and that actions taken in response to those findings and recommendations are documented. This is a very significant improvement over our observations from a year ago, and we now find that MPD is in substantial compliance with the MOA's provisions related to the UFRB.

⁹⁹ Letter from Maureen O'Connell to Tammie Gregg regarding MOA Paragraph 67: Use of Force Review Board (dated June 30, 2005).

¹⁰⁰ OIM Fourteenth Quarterly Report at 39.

c. Recommendation

We have no specific recommendations with respect to these areas this quarter.

d. Substantial Compliance Evaluation

MPD is in substantial compliance with MOA paragraph 57 relating to the development and implementation of a plan for allocation of responsibility for MPD investigations of uses of force. On December 31, 2003, DOJ approved the Force Investigation Team Organizational Plan and Operations Manual, which, for the reasons discussed below, we find that MPD has effectively implemented.

Paragraphs 58 and 60 of the MOA relate to MPD consultations with the USAO regarding investigations of deadly and serious uses of force and uses of force indicating potential criminal misconduct by an MPD officer. As discussed in Section III.A.3 above, MPD is in substantial compliance with the MOA's requirements, found in paragraph 54, regarding the timely notification of the USAO of deadly and serious uses of force. MPD also currently is in substantial compliance with MOA paragraphs 58 and 60 requiring that MPD's use of force investigators avoid taking compelled statements from subject officers until after a letter of declination is issued by the USAO.¹⁰¹

We have found that MPD currently is in substantial compliance with the provisions of MOA paragraph 61 relating to FIT responses to serious and deadly uses of force and uses of force indicating potential criminal misconduct by an officer and requiring the exclusion of investigators from involved officers' districts from such investigations. We also have found that MPD currently is in substantial compliance with MOA paragraph 61's requirement that FIT forward policy and training recommendations to the proper authority.

MPD is not yet in substantial compliance with MOA paragraphs 62 and 63, which establish requirements related to the timeliness and quality of FIT investigations. Although last quarter we found that over 95% of the FIT investigations conducted so far in 2005 were sufficient and that the vast majority of these cases was completed in a timely fashion, we are reserving our judgment as to MPD's achievement of

¹⁰¹ Paragraph 59 of the MOA does not impose any substantive requirements on MPD or the City.

substantial compliance until next quarter in order to finish our review of all FIT cases completed in 2005.

MPD is in substantial compliance with MOA paragraph 64's requirement that the chain of command be excluded from investigating serious or deadly uses of force or uses of force indicating potential criminal misconduct by an MPD officer.¹⁰²

The OIM's substantial compliance evaluations with respect to MOA paragraphs 65 and 66, which relate to chain of command investigations of uses of force, are provided below in Section III.B.2.c.

MPD is in substantial compliance with MOA paragraph 67, which relates to the UFRB's review of use of force investigations. MPD obtained DOJ approval of its Use of Force Review Board General Order and has effectively implemented broad reforms to the structure and operations of the UFRB that already have resulted in significant improvements in the Board's performance.¹⁰³

2. Investigations of Misconduct Allegations (MOA ¶¶ 68-84, 98-104)

a. Requirements

The MOA establishes a set of procedures for handling the following types of allegations of misconduct against MPD officers:

- Allegations for which an officer has been arrested or charged criminally;
- Allegations where an officer has been named as a party in a civil lawsuit
 - relating to the officer's conduct while on duty or otherwise acting in an official capacity; or

¹⁰² In the coming quarters, we will provide a substantial compliance evaluation with respect to paragraph 64's requirement that investigations directed by MPD's Chief of Police or his designee to be removed from a particular district's chain of command are reassigned either to FIT or another district.

¹⁰³ In the near future, MPD intends to submit to DOJ a revised Use of Force Review Board General Order incorporating recent reforms of the Board's composition and operations. Letter from Maureen O'Connell to Tammie Gregg regarding MOA Paragraph 67: Use of Force Review Board (dated June 30, 2005), at 4.

- relating to the officer's conduct while off duty, and otherwise not acting in an official capacity, where allegations against the officer involve physical violence, threats of physical violence, racial bias, dishonesty, or fraud;
- Allegations of unlawful discrimination;
- Allegations of unlawful searches and stops;
- Allegations of unlawful seizures;
- Allegations of retaliation or retribution against officers or other persons; and
- Allegations of all uses of physical violence -- including but not limited to strikes, blows, and kicks -- that is engaged in for a punitive purpose or that is directed against a subject who is not offering resistance.¹⁰⁴

With respect to allegations in the above categories that are criminal, MPD's OPR is required to conduct the investigation rather than chain of command supervisors in MPD's districts. In these categories of cases, MPD is required to notify the USAO within twenty-four hours of the receipt of such allegations, and MPD and the USAO are required, in the absence of extraordinary circumstances, to consult with each other following such notification.¹⁰⁵ In addition to criminal allegations, the MOA requires that MPD assign for investigation outside the chain of command allegations involving:

1. Incidents where charges made by an officer for disorderly conduct, resisting arrest, or assault on a police officer are found by a prosecutor or a judge to be without merit; and
2. Incidents where evidence has been suppressed because of a constitutional violation involving potential misconduct by an MPD officer or where a judicial officer either has made a

¹⁰⁴ The same procedures apply whatever the source of the information to MPD -- whether by self-referral from the officer, reporting by other MPD personnel, or complaint from a source outside MPD.

¹⁰⁵ The MOA makes clear that a key reason for this consultation requirement is to avoid potential complications for a criminal investigation and potential prosecution posed by administratively-compelled interviews of officers. MOA at ¶ 71.

finding of misconduct against an officer or has requested MPD to conduct an investigation into such an allegation.

In addition to establishing protocols for the assignment of such investigations, the MOA establishes procedures that must be followed in the conduct of such investigations. These procedures for MPD internal investigations require that:

- Interviews of complainants, involved officers, and material witnesses be tape-recorded or videotaped whenever the investigation involves the serious use of force or a serious physical injury;
- Complainants and other witnesses be interviewed individually rather than in groups, and at locations and times convenient for them;
- All appropriate MPD officers and supervisors be interviewed;
- All necessary evidence be collected, analyzed, and preserved; and
- Inconsistencies in statements gathered from officers and other witnesses during the investigation be identified and reported.

Furthermore, the MOA sets forth a series of milestones for the implementation of this overhauled system for conducting misconduct investigations. These include the following:

- MPD must develop a plan (subject to approval by DOJ) under which OPR would become responsible for the *criminal misconduct* allegations described in the bulleted points listed at the beginning of this section, which would include provision for sufficient personnel and adequate procedures to implement this objective;
- MPD must develop a plan (subject to approval by DOJ) to reallocate responsibility for MPD *administrative complaint investigations* from chain of command supervisors to MPD's OPR;¹⁰⁶

¹⁰⁶ See paragraph 72 of the MOA for a list of the misconduct allegations covered by this provision.

- The District of Columbia is required to provide the funds necessary to provide for the full implementation of these plans and sufficient resources for administrative complaint investigations to be completed within ninety days of the receipt of a complaint by MPD;¹⁰⁷
- MPD must develop a plan (subject to DOJ approval) to ensure that all MPD officers responsible for conducting investigations receive adequate training in a wide range of subjects;
- Within 180 days of approval of the above plan, the training of MPD officers responsible for conducting investigations must take place; and
- MPD must develop a manual (subject to DOJ approval) for conducting all MPD misconduct investigations.

The foregoing plans must be implemented fully, with all necessary positions filled, by the various deadlines set forth in Joint Modification No. 1 to the MOA, dated September 30, 2002.

In addition, the MOA sets forth a series of requirements for evaluating and resolving allegations of misconduct against MPD officers. These include establishing that a preponderance of the evidence standard should be applied in such investigations; that all relevant evidence should be considered and weighed, including the credibility of all witnesses;¹⁰⁸ and that the cases be resolved in one of several prescribed ways. Based on the investigation, the possible dispositions are “unfounded,” “sustained,” “insufficient facts,” or “exonerated.”¹⁰⁹ Misconduct investigations require the preparation of a written report, which should include a description of the alleged misconduct, summary and analysis of all relevant evidence, and proposed findings and analysis.

¹⁰⁷ In cases where the allegations are referred to the USAO, the ninety days is measured from the date of the declination.

¹⁰⁸ The MOA makes clear that there should be no presumption that an officer’s statement is entitled to greater weight than the statement of a civilian. MOA at ¶ 99.

¹⁰⁹ Although the meanings of “sustained” and “insufficient facts” are self-evident, the other dispositions may not be. “Unfounded” refers to cases in which the investigation found no facts to support the allegation; “exonerated” refers to cases where the conduct alleged in fact took place but did not violate MPD policies, procedures, or training.

Except in cases of unusual complexity, such investigations must be completed within ninety days after the allegations have been received. Each investigation should be reviewed by a unit commander to determine the existence of any underlying problems and training needs, and the unit commander shall implement any appropriate non-disciplinary actions.

b. Status and Assessment

(1) Investigation Reviews

In the fifth quarter of the OIM's monitoring, we began reviewing use of force and misconduct investigations performed by MPD's IAD and the district chains of command, and the results of our reviews were first presented in the OIM's Sixth Quarterly Report.¹¹⁰ The statistical sampling methodology we use in selecting the investigation files to be reviewed each quarter was developed by the OIM, in consultation with MPD and DOJ. The OIM, working closely with our statistical analysis experts at PricewaterhouseCoopers LLP, has developed standardized review procedures that allow us to efficiently review MPD investigation files and to report their findings in a consistent manner.

This quarter, the OIM completed its tenth statistical sample of 79 non-FIT use of force and misconduct investigations, which was drawn from investigations opened between April 1, 2005 and June 30, 2005. To date, we have reviewed a total of 957 of these investigations opened between the effective date of the MOA, June 13, 2001, and June 30, 2005.¹¹¹ Each of our ten samples has been drawn proportionately from all of MPD's districts, and each sample is comprised of investigations opened at least 90 days prior to the beginning of the reporting period to ensure that MPD has had the maximum time authorized under the MOA, absent special circumstances, to complete the investigation.

¹¹⁰ OIM Sixth Quarterly Report at 25-30.

¹¹¹ Our first sample, which covered investigations opened from June 13, 2001 through March 31, 2003, included 244 investigations. With the exceptions of this quarter's sample and the samples drawn during our eighth and thirteenth quarters of monitoring, which included either 78 or 79 investigations, each of our subsequent samples have included 80 investigations with at least 10 drawn from each district. These population sizes are large enough to generate statistically reliable data with respect to these types of MPD investigations as a whole.

Summary of Results of OIM's Reviews of the Investigations Samples

For reporting purposes, we have divided the results of the OIM's reviews of MPD's non-FIT use of force and misconduct investigations into the following four categories: (1) administration and management of the investigations, (2) conduct of the investigations, (3) unit commander review of the investigations, and (4) the overall ratings regarding the completeness and sufficiency of the investigations.¹¹² The OIM's specific findings with respect to each of these areas are discussed below.¹¹³

1. Administration and Management of the Investigations

Again this quarter, we found that over 95% of the chain of command investigations were free of the types of conflicts of interest that would cast doubt on the integrity of the investigations.¹¹⁴ We also found that 100% of the cases we reviewed this quarter were investigated by the proper MPD entity.¹¹⁵ The consistency with which MPD observes these requirements reflects favorably on the institutional integrity of MPD's system of internal investigations.

In prior quarters, we consistently found that over 95% of MPD's investigative reports for completed investigations include the MOA-mandated elements, including (1) a description of the use of force incident or misconduct alleged, (2) a summary of relevant evidence gathered, and (3) proposed findings and supporting analysis.¹¹⁶ This quarter 97.2% of the completed cases we reviewed included a report prepared by the investigator. However, this quarter, we found that only 93.0% of the cases we reviewed contained a summary of all relevant evidence gathered and only 73.5% contained proposed findings and analysis supporting the findings. Both of these figures represent significant drop-offs from last quarter, when we found 100% compliance in both of these categories.

¹¹² The definitions of "complete" and "sufficient" are provided at notes 86 and 87 above.

¹¹³ We have included at Appendix B to this report a detailed summary of the reviewers' questions and the results generated by our investigations reviews for the last seven statistical samples analyzed through this quarter.

¹¹⁴ MOA at ¶ 80.

¹¹⁵ *Id.* at ¶¶ 57, 61, 64, 68, 72, 79, 80.

¹¹⁶ *Id.* at ¶ 65.

This quarter we found that 85.7% of the cases we reviewed were completed within the 90-day window required by the MOA, which is the best completion rate we have observed in any of the samples we have reviewed over the past two years and is approaching the 90% substantial compliance threshold. The MOA specifically provides that chain of command investigations may be completed outside of the 90-day window only where there exist documented “special circumstances” justifying the delay.¹¹⁷ This quarter, 88.3% of the investigations reviewed either were completed within 90 days or contained documented special circumstances justifying the delay, which again is the highest level of compliance we have observed and represents the second quarter in a row in which MPD has demonstrated a high degree (over 85%) of timeliness with these investigations. MPD’s sustained effort to improve the timeliness of these investigations has produced significant results over the past year.

2. Conduct of the Investigations

We found again this quarter that MPD investigators generally conduct sound investigations. For example, this quarter we found that investigators employed appropriate investigative techniques, such as avoiding group interviews (100.0%)¹¹⁸ and interviewing all appropriate MPD personnel (98.7%).¹¹⁹ However, this quarter’s results (83.2%) indicate a drop-off in investigators’ documenting and addressing inconsistencies among officers and witnesses.¹²⁰ This is an area in which MPD typically performs quite well (99.0% and 100% compliance in the two prior quarters). MPD investigators appeared to address all apparent misconduct in all (100%) of the cases we reviewed this quarter.¹²¹ We found that MPD investigators avoided giving automatic preference to an officer’s statement over a citizen’s statement in 99.3% of the cases we reviewed, which is consistent with the high compliance rates we have observed in this area of the past four quarters.¹²²

¹¹⁷ MOA at ¶¶ 65, 74.

¹¹⁸ *Id.* at ¶ 81.c.

¹¹⁹ *Id.* at ¶ 81.e.

¹²⁰ *Id.* at ¶ 81.g.

¹²¹ *Id.* at ¶ 82.

¹²² *Id.* at ¶ 99.

3. Unit Commander Review of the Investigations

Our past reviews have consistently shown that MPD unit commanders review chain of command investigations to ensure both their completeness and that their findings are supported by the evidence in approximately 95% or better of the cases.¹²³ This quarter, we found that 99.2% of the finished cases we reviewed had been reviewed by a unit commander.

4. OIM Reviewers' Overall Ratings Regarding the Completeness and Sufficiency of the Investigations

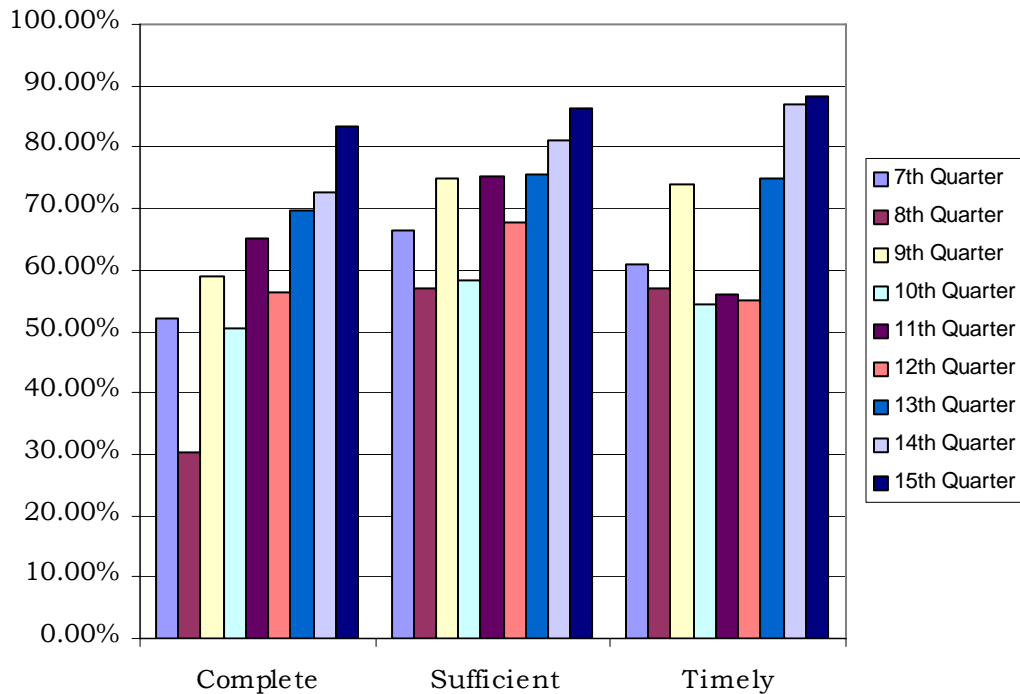
MPD has taken several steps to improve the quality and timeliness of its internal investigations, including revising and distributing investigation templates and issuing a teletype requiring documentation of special circumstances justifying delays in completion of investigations. Although there has been an understandable time lag between implementation of these measures and our observing their effects, MPD has maintained and built upon the significant improvements in the quality and organization of investigations being conducted by the IAD and the chain of command in the districts that we reported over the past two quarters. These improvements appear to be attributable to the templates MPD has developed as well as to the emphasis OPR has placed on enhancing the quality of the Department's internal investigations. MPD's concentrated effort to improve both the timeliness and the quality of these investigations has been quite effective.

We found this quarter that 83.3% of these investigations were complete, which is the first time MPD has achieved a completeness rate over 80%. Moreover, 86.2% of the investigations we reviewed were sufficient, which again is also a new high-water mark for these investigations.¹²⁴

¹²³ *Id.* at ¶ 66.

¹²⁴ As discussed in our prior reports, the completeness and sufficiency statistics we report each quarter are linked to timeliness. If an investigation is not finished in a timely manner, it almost never will be counted as complete and, in most cases, it will be insufficient as well -- almost by definition, if an investigation is still pending at the time of our review, it will not be complete or sufficient. MPD's significant improvement in the timeliness of its internal investigations, therefore, has contributed to the increase in the completeness and sufficiency of those investigations that we reviewed this quarter.

Comparison of Quarterly Results



As discussed above, the most significant barrier to MPD achieving the 95% substantial compliance threshold with respect to the sufficiency and completeness of its IAD and chain of command investigations is timeliness. This quarter, for example, 9 of the 79 (11.4%) cases we selected were still pending investigations at the time of our review. Accordingly, each of those cases was rated both incomplete and insufficient. However, the quality of the investigations that are finished in time for our review is quite good. If the pending cases are removed from the sample, the completeness and sufficiency of MPD's finished investigations this quarter are 93.3% and 96.5%, respectively.

Over the past four quarters, the completeness ratings for MPD's finished internal investigations have been 83.5%, 78.4%, 91.2%, and 85.7% and the sufficiency ratings have been 97.0%, 96.5%, 99.3%, and 94.9%. Thus, if pending cases are excluded, the sufficiency of MPD's internal investigations has been close to or above 95% for five consecutive quarters.

(2) IAD Investigations

In our Eleventh Quarterly Report, the OIM performed a statistical analysis designed to specifically assess the timeliness and quality of internal investigations performed by IAD, broken out from the larger category of non-FIT use of force and misconduct investigations, which includes both IAD and chain of command investigations. We developed these statistics by combining the results of our reviews of IAD investigations conducted during the ninth and tenth quarters in order to obtain a population size sufficient to support statistical analysis.

The results of our analysis of IAD cases in the eleventh quarter -- which involved investigations conducted by IAD between October 1, 2003 and March 31, 2004 -- reflected that the quality and timeliness of IAD's investigations performed during that period, considered in isolation from the chain of command investigations, were poor. We found that only 26.1% of IAD's investigations were completed within 90 days and only 40.2% were either completed within 90 days or contained documented special circumstances justifying in excess of 90 days for completion. We also found that only 32.7% of the IAD investigations we reviewed over those two quarters were complete and only 34.3% were sufficient.¹²⁵

This quarter we performed a similar analysis aggregating the results we observed with respect to the IAD cases we reviewed during the thirteenth, fourteenth, and fifteenth quarters. These investigations were conducted by MPD during the period October 2004 through June 2005. We found that, while the timeliness and quality of IAD investigation have improved quite significantly, the IAD investigations still lag behind the improvements we have observed in the chain of command investigations. During this period, 68.6% of the IAD cases were timely (*i.e.*, either completed within 90 days or containing documented special circumstances justifying a delay in completion of the investigation), 62.4% were complete, and 66.0% were sufficient. Excluding those investigations that remained pending at the time of our review, we found that 90.5% of IAD investigations during this period were complete and that 94.6% were sufficient.

¹²⁵ OIM Eleventh Quarterly Report at 49-50.

(3) Serious Misconduct Investigations General Order

MPD submitted its Serious Misconduct Investigations General Order to DOJ on July 23, 2002. DOJ replied with detailed comments on September 13, 2002, to which MPD responded on November 22, 2002. On January 31, 2003, DOJ responded with a small number of additional comments and commended MPD “for its efforts to revise this MPD [general order] consistent with the MOA and other applicable standards.”¹²⁶ MPD submitted a revised draft to DOJ on March 7, 2003. DOJ responded to the revised draft order on August 25, 2003. MPD responded to DOJ’s comments and submitted a further revised order on September 30, 2003. DOJ approved the Serious Misconduct General Order on December 31, 2003.

(4) Chain of Command Investigations Manual

Pursuant to paragraph 83 of the MOA, MPD submitted a draft Chain of Command Investigations Manual to DOJ on October 25, 2002. DOJ provided comments on the manual on March 26, 2003. Paragraph 83 requires that, among other things, the manual “provide investigative templates to assist investigators.” Because MPD wanted to include these investigative templates in the PPMS, final templates had to be submitted to PPMS development vendors by January 12, 2004. In order to facilitate the templates’ inclusion in the PPMS development process, DOJ agreed to provide an expedited review of the draft administrative investigative templates that MPD submitted on December 30, 2003. On January 7, 2004, DOJ provided its preliminary approval of the templates subject to MPD’s acceptance of certain suggested changes to the templates. On January 12, 2004, MPD provided the final revised templates to DOJ and the PPMS development contractor, IBM/Motorola. MPD submitted a revised draft of the Chain of Command Investigations Manual to DOJ for approval on February 26, 2004. DOJ returned comments on the Chain of Command Investigations General Order and Chain of Command Investigations Manual on June 29, 2004.¹²⁷

¹²⁶ Letter from Tammie M. Gregg to Inspector Joshua A. Ederheimer (January 31, 2003).

¹²⁷ MPD January 2006 Progress Report at 15.

In response to the recommendations contained in the OIM's April 9, 2004 memorandum entitled "Technical Assistance Related to MPD's Chain of Command Investigations," MPD revised its misconduct investigative template and created a "preliminary" misconduct investigative template. These templates were submitted for DOJ's review on June 7, 2004, and DOJ returned comments on September 24, 2004.¹²⁸

As we reported last quarter, MPD has been reviewing DOJ's comments to the Chain of Command Misconduct Investigations Manual and the investigative templates for over a year. As reported above, we have observed steady improvement in the quality and timeliness of MPD's internal investigations over recent quarters, and we encourage MPD to finalize these materials in order to maintain its momentum toward achieving substantial compliance in the area of non-FIT use of force and misconduct investigations.

(5) Chain of Command Misconduct Investigations General Order

Pursuant to paragraph 83 of the MOA, MPD submitted its draft Chain of Command Misconduct Investigations General Order to DOJ on November 1, 2002. DOJ responded with a number of substantive comments on January 31, 2003. MPD provided an updated draft of this general order to DOJ on December 31, 2003. MPD then submitted a revised version of the Chain of Command Misconduct Investigations General Order to DOJ on February 26, 2004. DOJ provided comments on the draft order on June 29, 2004, and MPD currently is reviewing those comments in conjunction with DOJ's comments regarding the Chain of Command Misconduct Investigations Manual and related investigative templates.

Similar to last quarter, MPD reports that, although it intended to submit a revised Chain of Command Misconduct Investigation Order to DOJ this quarter, it is still working to incorporate the substantial revisions suggested by OPR related to new internal guidelines for the completion of investigations and to the Department's new procedures related to demonstrating special circumstances justifying extensions for completing investigations.¹²⁹

¹²⁸ *Id.*

¹²⁹ *Id.*

(6) Corporation Counsel Notification to OPR of Civil Claims

Paragraph 75 of the MOA requires that "[t]he Corporation Counsel's Office shall notify OPR whenever a person files a civil claim against the City alleging misconduct by an officer or other employee of MPD."¹³⁰ After substantial delay in implementing this required notification procedure, on September 7, 2004 MPD's General Counsel sent a letter to the City's Deputy Attorney General and the Claims Manager of the City's Office of Risk Management ("DCORM") requesting their assistance in providing MPD with notice once a month of any claims or lawsuits filed that allege misconduct by an officer or employee of MPD.¹³¹

During the twelfth quarter, we monitored communications between MPD's Office of the General Counsel ("OGC") and OPR regarding civil complaints alleging misconduct on the part of MPD officers and employees. On a monthly basis, MPD's OGC forwards a report to OPR containing the following information referenced in the September 7, 2004 protocol: the claim or civil action number, the name of the claimant or plaintiff, the date of the incident giving rise to the allegation, a brief summary of the allegation, and the name of the MPD employee whose alleged actions gave rise to the complaint. We reported that missing from the report forwarded by MPD's OGC, however, were the date the claim or civil action was filed and the name and contact information for the City's Office of the Attorney General ("OAG") or DCORM staff member assigned to the case.¹³² Last quarter, MPD's OGC reported that this information is not included because (1) the date of the filing of a claim or civil action is not necessary to enable MPD to open a tracking file and (2) the contact point for OPR should be the OGC, not personnel in the OAG or DCORM. Nevertheless, we believe such information is relevant and likely would be useful to OGC's and OPR's efforts to monitor and track the status of civil suits or claims.¹³³

¹³⁰ We note that, on May 26, 2004, Mayor Anthony Williams signed an order renaming the "Office of Corporation Counsel for the District of Columbia" the "Office of the Attorney General for the District of Columbia."

¹³¹ MPD October 2004 Progress Report at 21.

¹³² OIM Twelfth Quarterly Report at 45.

¹³³ OIM Fourteenth Quarterly Report at 53.

Upon receipt of the report, an OPR sergeant reviews the information related to each case identified in the report to determine whether an OPR case tracking number has been assigned. If not, the case is given an OPR case number, and the matter is assigned to an OPR investigator for monitoring.¹³⁴

Last quarter, we began reviewing communications from the City's OAG and DCORM to MPD's OGC in order to evaluate the completeness of the information provided by the City to MPD pursuant to the September 7, 2004 protocol. MPD's OGC reported that it is not confident that all claim information received by DCORM is being forwarded to MPD because DCORM has not been issuing monthly reports to the OGC.¹³⁵ In the coming quarter, we will continue our monitoring in this area by evaluating DCORM's systems for tracking claims or civil actions against MPD officers and notifying OGC of such claims or actions.

(7) Officer Reporting of Arrests and Misconduct

Paragraph 76 of the MOA requires MPD officers to promptly notify MPD if (1) the officer is arrested or criminally charged for any conduct; (2) the officer is named as a party in any civil action involving his or her conduct while on duty; and (3) the officer is named as a party in any civil suit regarding off-duty conduct that alleges physical violence, racial bias, dishonesty, or fraud by the officer.

During the twelfth quarter, we reviewed the "Arrest of Sworn Members" log maintained by OPR, which reflects that 29 MPD officers were arrested in 2004, one of whom was arrested twice. The log did not indicate whether the involved officers self-reported their arrests, as required by paragraph 76 of the MOA. During interviews we conducted last quarter, OPR officials stated that officer arrests come to their attention through (1) officer self-reporting; (2) notification of officer arrests by supervisors or district commanders from the district in which the arrest occurred, if in the City; and (3) notifications from outside jurisdictions of arrests occurring in those jurisdictions. OPR also reported that the FBI also periodically (every 3 to 4 years) conducts criminal history checks on all MPD officers.¹³⁶

¹³⁴ OIM Twelfth Quarterly Report at 45-46.

¹³⁵ OIM Fourteenth Quarterly Report at 54.

¹³⁶ OIM Twelfth Quarterly Report at 46.

Last quarter, we found that OPR does not currently perform audits to evaluate compliance with the officer self-reporting requirements. Moreover, the IPS personnel we interviewed this quarter indicated that they are not aware of any in-service training that addresses the self-reporting requirement of paragraph 76 of the MOA.¹³⁷

OPR reported that historically it has received notice of civil actions related to on-duty conduct by an officer when the involved officer submits a request for legal representation. The OPR official we interviewed during the twelfth quarter could not recall OPR ever receiving a notification of a civil action against an officer concerning off-duty conduct.¹³⁸ Our monitoring with respect to officer self-reporting of civil actions under paragraph 76 of the MOA also will continue in the coming quarter.

(8) Use of Force and Misconduct Investigator Training

As discussed in Section VII.B.2 below regarding MPD's training curricula and lesson plans, MPD's lesson plan entitled "Administrative Misconduct Investigation Policy and Procedures Using the Preponderance of the Evidence Standard" is pending final DOJ approval of the Chain of Command Misconduct Investigations General Order and Chain of Command Investigations Manual.¹³⁹

c. Substantial Compliance Evaluation

MPD is not in substantial compliance with MOA paragraphs 68 and 78, which require that OPR be responsible for investigations of allegations of criminal misconduct and that MPD develop a DOJ-approved plan that allocates sufficient personnel and establishes procedures for the performance of timely misconduct investigations. DOJ approved the Serious Misconduct General Order on December 31, 2003. Although we have found that, in over 95% of the misconduct cases we have reviewed, the correct MPD entity conducted the investigation, we have found that the timeliness and quality of IAD's internal investigations are still well below the levels necessary to achieve substantial compliance.

¹³⁷ OIM Fourteenth Quarterly Report at 54-55.

¹³⁸ OIM Twelfth Quarterly Report at 46.

¹³⁹ MPD January 2006 Progress Report at 37.

We find that MPD currently is not in substantial compliance with the provisions of MOA paragraphs 66 and 69 related to the prompt notification of the USAO when chain of command investigations reveal evidence of criminal misconduct on the part of an officer. Such cases are relatively rare -- over the past six quarters we have identified only two cases involving potential criminal misconduct by an officer. In neither of these cases, however, did the unit commander notify FIT and the USAO, as required by paragraph 66 of the MOA. In the coming quarter, we will review in more detail MPD's processes for notifying the USAO of potentially criminal misconduct on the part of officers.

We find that MPD currently is in substantial compliance with the requirements in MOA paragraphs 72, 73, and 79 that OPR conduct investigations of certain categories of alleged officer misconduct and that allegations of excessive force involving the use of deadly force be assigned to FIT for investigation.¹⁴⁰ MPD has obtained DOJ approval for both the Serious Misconduct Investigations General Order and the Office of Internal Affairs Operations Manual (on March 26, 2003). Our reviews of FIT investigations and nine samples of non-FIT MPD investigations have consistently found that, in greater than 95% of cases, the appropriate MPD investigative unit conducted the investigation.

MPD is not currently in substantial compliance with MOA paragraphs 65, 74, and 103, which require that all administrative investigations of officer misconduct be completed within 90 days, absent special circumstances, and that each investigation of officer misconduct contain a final report that includes certain fundamental elements such as a description of the alleged incident, a summary and analysis of the evidence, and proposed findings. As reflected in the statistics reported above, over the past three quarters MPD has shown significant progress toward achieving the MOA's 90% timeliness threshold for non-FIT use of force and misconduct investigations. MPD is in substantial compliance with the MOA's requirement that chain of command and IAD investigations include a final report prepared by the investigator. MPD has achieved compliance rates of greater than 95% in this area.

¹⁴⁰ Paragraph 73 of the MOA also requires that OPR be assigned to investigate all incidents in which MPD receives written notice from a prosecuting agency in a criminal case where (i) a court has suppressed evidence because of a constitutional violation involving potential officer misconduct or (ii) there has been any other judicial finding of officer misconduct or judicial request for investigation into potential officer misconduct. Our review of such communications between MPD and the USAO is ongoing.

Moreover, the final investigator's reports that we reviewed have consistently included the required elements described above at a rate exceeding 95%.¹⁴¹

We reserve judgment with respect to whether the City is in substantial compliance with MOA paragraph 75, which requires the City's Office of Corporation Counsel (now the Office of the Attorney General) to notify OPR of civil claims against the City alleging misconduct by an MPD officer or employee. MPD's OGC appears to be effectively relaying the information it receives from the City to OPR. In the coming quarter, we will continue to monitor this area in order to evaluate the quality, completeness, and timeliness of the information forwarded by the City to MPD's OGC.

Our review with respect to MPD's compliance with MOA paragraphs 76 and 77 is ongoing. These provisions require MPD officers to report both when (1) an officer is arrested or accused in a civil suit of misconduct and (2) an officer observes potential misconduct by other officers. As discussed above, we are continuing to review MPD's effectiveness in implementing the self-reporting requirements related to officer arrests and civil suits, and we are exploring monitoring methodologies and information that will permit us to evaluate MPD's compliance with paragraph 77's requirements related to the reporting of observed misconduct by other officers.

MPD is in substantial compliance with MOA paragraph 80, which requires that MPD prohibit any officer who has a potential conflict of interest from participating in the conduct or review of that investigation. We have consistently found that greater than 95% of the MPD investigations we have reviewed have been free of apparent or potential conflicts of interest.

Paragraphs 81.a through 81.g of the MOA establish substantive requirements for MPD internal investigations. We find that MPD's misconduct investigations substantially comply with the requirements of paragraph 81 of the MOA. For example, MPD investigators have consistently avoided group interviews in nearly 100% of the completed

¹⁴¹ As discussed above, this quarter we observed only a 73.5% compliance rate with respect to the requirement under paragraph 65 of the MOA that MPD's investigation reports contain proposed findings supported by analysis. We will continue reviewing MPD internal investigations to determine whether this decline in MPD's performance in this area is aberrational.

cases we have reviewed in the past eight quarters. We have found that MPD investigators have consistently interviewed all appropriate MPD officers, including supervisors, in either nearly or more than 95% of the completed cases.¹⁴² This quarter, we found that investigators performed such interviews in 98.7% of the cases we reviewed. In the last eight samples we reviewed, we found that MPD investigators almost always (100.0% this quarter) interview complainants and witnesses at convenient times and sites, where practicable and appropriate. MPD investigations have been slightly less consistent with respect to the requirement that investigators address and document inconsistencies among officers and other witnesses, although over the past eight samples, we have found MPD's compliance in this area to be 100.0%, 91.6%, 100.0%, 93.1%, 93.3%, 94.7%, 99.0%, and 100.0%. This quarter, however, MPD's compliance rate in this area was only 83.2%. In light of MPD's consistently high rate of compliance in this area, we will continue reviewing MPD's internal investigations and evaluate whether the results we observed this quarter are aberrational.

MPD's completed investigations also substantially comply with MOA paragraph 82's requirements that investigators adequately address the conduct of each officer involved in the incident and adequately address all apparent misconduct. Over the previous six quarters, MPD investigations have averaged above 95% in meeting the requirements in these areas, including 100% compliance rates this quarter.¹⁴³

MPD is not in substantial compliance with MOA paragraph 83, which requires the development of a DOJ-approved manual for conducting all MPD misconduct investigations. MPD has not yet obtained DOJ's final approval for its Chain of Command Misconduct Investigations Manual or revised Chain of Command Investigation Templates.

MPD is not in substantial compliance with MOA paragraph 84, which establishes training requirements for MPD use of force and misconduct investigators. MPD has not obtained DOJ approval for all of

¹⁴² During the twelfth quarter, we found that MPD investigators interviewed all appropriate MPD officers in 89.6% of the cases we reviewed, which is a lower rate than we have observed in most quarters and appears to be aberrational.

¹⁴³ During the twelfth quarter, we found MPD's compliance with both of these requirements to have dipped below 95%, as reflected in Appendix B. MPD's compliance with the requirements of paragraph 82 of the MOA, however, was very high for the last three quarters.

the lesson plans referred to in paragraph 84, and currently there is no plan in place to ensure that all of MPD's use of force and misconduct investigators are adequately trained.

MPD has substantially complied with MOA paragraph 98's requirement that misconduct investigation findings be based upon a preponderance of the evidence standard. We have found that virtually all of MPD's completed internal investigations reviewed over the seven most recent quarters have applied the preponderance of the evidence standard.

MPD is in compliance with MOA paragraph 99's requirement that misconduct investigators avoid giving automatic preference to an officer's statement over that of another witness. MPD's compliance generally has been good in this area -- 98.0%, 94.5%, 93.4%, 97.7%, 96.8%, 98.0%, 100.0%, and 99.3%, respectively, over the seventh through fifteenth quarters, except for the tenth quarter. Although, in the tenth quarter, we found only 71.6% of the completed cases we reviewed to be free of this sort of prohibited preference for statements by officers, in light of the consistently high compliance rates we have observed in other quarters, it appears that the tenth quarter results were aberrational.

We find that MPD is not currently in substantial compliance with the requirements of MOA paragraphs 100 and 101 that all investigations of allegations of misconduct result in a disposition of either "unfounded," "sustained," "insufficient facts," or "exonerated." Over the most recent seven quarters, we have found 87.0%, 89.8%, 87.7%, 93.0%, 91.5%, 84.4%, and 90.7% compliance rates in this area. This quarter, only 56.9% of MPD's completed investigations satisfied this requirement.¹⁴⁴ Although MPD is not yet in substantial compliance with the requirement that each misconduct investigation result in one of the above four dispositions, we have found that, in over 95% of MPD's completed misconduct investigations, the basis for closing the case was for reasons other than the withdrawal of the complaint or the unavailability of the complainant, as required by paragraph 101.

MPD is currently in substantial compliance with MOA paragraph 102's requirement that each misconduct investigation include

¹⁴⁴ This quarter, we provided MPD with a description of each case from last quarter's sample that we found not to have resulted in one of the four required findings. This would seem to be a deficiency that could be corrected relatively easily through use of the investigative templates MPD has developed.

a final report containing a description of the alleged misconduct, a summary of the relevant evidence gathered during the investigation, and proposed findings and analysis supporting the findings. Over the seven most recent samples of misconduct investigations, we have found that 99.1%, 82.4%, 98.4%, 100.0%, 100.0%, 97.5%, and 97.2% of MPD's completed investigations contain a final report prepared by the investigator. In light of MPD's consistently high compliance rates over the last five quarters, it appears that the 82.4% compliance rate observed in the tenth quarter was aberrational. We also have found that the final reports, when present in the investigative files, consistently contain each of the required elements at a rate above 95%.¹⁴⁵

MPD is in substantial compliance with the MOA's requirements related to unit commander review of chain of command investigations, found at paragraphs 66 and 104. We have consistently found that unit commanders review chain of command investigations at a rate greater than 95% across our samples. Moreover, our analysis of the non-pending cases this quarter and over the past three quarters shows that over 95% of the finished cases approved by unit commanders have been rated sufficient.

Our overall evaluation is that MPD's non-FIT use of force and misconduct evaluations currently do not substantially comply with the MOA requirements in this area, although there has been significant improvement in recent quarters. This quarter we found that 88.3% of these administrative investigations were completed within the MOA-mandated 90-day window or included documented special circumstances justifying a delay in completion of the investigation, which is the highest timeliness rate we have seen in any of our samples. MPD also is making progress in the completeness and sufficiency of its internal investigations. When pending cases are excluded, the completeness and sufficiency figures are very good -- indeed, the

¹⁴⁵ As reflected in Appendix B, our case reviews performed during the eleventh quarter found significantly lower compliance rates with respect to the requirements that the investigative reports contain a summary of relevant evidence gathered and proposed findings with supporting analysis -- 76.2% and 88.6%, respectively. This quarter, we observed a compliance rate of only 73.5%. Although this decline in MPD's compliance with this provision of the MOA is significant, in light of the higher compliance rates in these areas that we observed in other quarters, including the last two quarters, we have not yet changed our finding that MPD is in substantial compliance with these requirements.

sufficiency of such MPD finished cases is above 95%, and the completeness rate of those cases is approaching that level.

d. Recommendations

We recommend that MPD continue working with DOJ to obtain approval for its Chain of Command Misconduct Investigations Manual and revised Chain of Command Investigations Templates -- in both cases, DOJ's comments have been under review at MPD for over a year. We also recommend that MPD continue to work toward improving the timeliness and quality of its chain of command investigations. Although we have observed for three quarters now that the steps MPD has taken to implement the recommendations contained in the OIM's technical assistance and to improve the investigations performed by IAD and MPD's chain of command are producing positive results, there still remains room for improvement.

IV. Receipt, Investigation, and Review of Misconduct Allegations (MOA ¶¶ 85-97)

A. Requirements

This section of the MOA addresses the procedures designed to help members of the public aggrieved by the actions of MPD officers lodge complaints concerning officer conduct. It relates to MPD's role in facilitating the filing of such complaints and also to MPD's responsibility to coordinate with OPC to ensure that the respective roles and responsibilities of MPD and OPC are clearly defined and that the agencies are working properly together.

More specifically, the MOA requires the following:

- The development of a plan, in consultation with DOJ, that defines the roles and responsibilities of -- and the relationship between -- MPD and OPC with regard to
 - Receiving, recording, investigating, and tracking complaints;
 - Conducting community outreach and education regarding making complaints against officers;
 - Exchanging information between MPD and OPC; and
 - Defining the responsibilities of the MPD official who serves on the Police Complaints Board ("PCB").

- The provision of sufficient qualified staff, funds and resources for OPC to carry out its responsibilities as defined both by the MOA and the law creating OPC;¹⁴⁶
- The development of a plan to ensure that the investigative staff of OPC is adequately trained, including training in a wide range of MPD policies and procedures;
- The development of a manual, in consultation with DOJ, for conducting OPC complaint investigations, which should include timelines and investigative templates;
- The development and implementation of an effective program to inform citizens of their right to lodge complaints against MPD officers, which must include, among other things, the distribution of complaint forms, fact sheets, informational posters, and public service announcements, in English, Spanish, and any other languages appropriate for particular areas, which describe MPD and OPC complaint processes;
- The broad availability of complaint forms and informational materials at OPC, MPD headquarters, and various other MPD locations; through the Internet; and to community groups and community centers; and
- Throughout the term of the MOA, the implementation of an extensive Community Outreach and Public Information campaign.¹⁴⁷

¹⁴⁶ District of Columbia Law 12-208.

¹⁴⁷ The program must include at least the following elements: one open meeting per quarter in each of the patrol service areas for the first year of the MOA and one meeting in each patrol service area semi-annually in subsequent years. The purpose of these meetings is to inform the public about the provisions of the MOA and the various methods of filing a complaint against an officer. At least one week before such meetings, the City shall publish notice of the meeting as follows: (i) in public areas, including libraries, schools, grocery stores, and community centers; (ii) taking into account the diversity in language and ethnicity of the area's residents; (iii) on the City and MPD Web sites; and (iv) in the primary languages spoken by the communities located in such areas. In order to enhance interaction between officers and community members in daily policing activities, the open public meetings must include presentations and information on MPD and its operations.

The MOA also sets forth various methods designed to facilitate the filing of complaints against officers. These methods include:

- Requiring officers to provide their names and identification numbers to any person who requests them;
- Requiring that MPD provide the means for citizens to file complaints by all available methods, including in person, in writing, or by telephone, facsimile, or electronic mail;
- Requiring the establishment of a hotline, operated by OPC, that will be appropriately publicized by the City and MPD and that will be audited to ensure its proper operation; and
- Ensuring that responsibility for receiving all complaints filed directly with MPD belongs to MPD's OPR, which must establish filing and tracking systems and coordinate with OPC.

B. Status and Assessment

1. Coordination and Cooperation Between MPD and OPC Generally (MOA ¶ 85)

MPD and OPC originally signed a Memorandum of Understanding ("MOU") between the two agencies on September 28, 2002. In April 2003, MPD advised the OIM that it would issue a revised MOU by June 30, 2003. MPD and OPC did not meet this deadline. On October 7, 2003, MPD and OPC submitted a revised draft MOU to DOJ. This draft did not resolve a then-outstanding issue between MPD and OPC related to the duties of the MPD member of the PCB. On December 3, 2003, DOJ advised MPD and OPC of its concern regarding the delay in finalizing the MOU. On December 31, 2003, MPD requested that DOJ proceed with its review of the draft MOU prior to the resolution of this outstanding issue. On May 3, 2004, MPD and OPC notified DOJ that the parties had agreed to the revised "MPD member recusal" section of the MOU, which was the remaining outstanding issue. On May 25, 2004, DOJ provided the parties with comments on the draft MOU.

During the third quarter of 2004, DOJ also suggested that OPC request MPD's assistance with the timely scheduling of all officer interviews, including both initial interviews and any rescheduled interviews. MPD and OPC agreed to modify the MOU further to provide for MPD taking a more active role in assisting OPC with the rescheduling of MPD officers who fail to appear for OPC interviews or other proceedings. MPD agreed to include additional language in the MOU on

this point and submitted a revised draft of the MOU to DOJ on September 24, 2004.

On December 22, 2004, DOJ provided its final approval for the revised MOU; and, on January 28, 2005, MPD and OPC signed the new MOU.¹⁴⁸

a. Complaints Filed with MPD on MPD Forms Involving OPC Subject Matter

In prior quarters, we found that MPD’s OPR had failed to notify OPC of formal complaints lodged with MPD that involve allegations that could have been filed (at the complainant’s election) with OPC.¹⁴⁹ Paragraph 94 of the MOA and Section III.B.7 of the revised MOU require that OPR notify OPC of any complaints filed with MPD that allege harassment; use of unnecessary or excessive force; use of insulting, demeaning, or humiliating language; or discriminatory treatment.¹⁵⁰ The revised MOU also requires that MPD provide OPC with quarterly reports that include, among other things, (1) a statistical summary of complaints filed with MPD that include at least one allegation that falls within OPC jurisdiction and (2) a description of the final disposition of complaints received by MPD that could have been filed with OPC.¹⁵¹

Last quarter, we began monitoring MPD’s compliance with the requirements of MOA paragraph 94 and MOU Sections III.B.7 and III.B.9, including by reviewing the quarterly reports the parties have exchanged. We will continue this review in the coming quarter and report our findings in a future quarterly report.

b. MPD Documents Requested by OPC

Under the MOU, absent “good cause” MPD must respond to an OPC document request within ten business days from the date of receipt

¹⁴⁸ MPD January 2006 Progress Report at 26.

¹⁴⁹ OIM Fifth Quarterly Report at 31.

¹⁵⁰ MOA at ¶ 94; MOU at Section III.B.7. The MOU requires OPR to notify OPC of complaints within the categories identified in paragraph 94 of the MOA as well as the additional category of complaints alleging “retaliation.” The MOA and revised MOU require OPR to provide notice to OPC “[w]ithin 24 hours, or the next business day.”

¹⁵¹ MOU at Section III.B.9.

of OPC's written request.¹⁵² Last quarter, we reviewed data reflecting a total of 192 document requests directed by OPC to MPD. MPD did not produce the requested documents within ten business days in response to 152 of the 192 requests, which is a response rate of 21% -- nearly the same as the 16% response rate we reported in the thirteenth quarter.¹⁵³

Last quarter, we also monitored MPD's systems for tracking and responding to requests for information submitted by OPC. During our interview with MPD's designated OPC liaison, we learned that MPD does not maintain a tracking log of requests made by OPC and the status of those requests. The liaison simply receives the requests from OPC and forwards them to the appropriate unit. We reported that MPD did not have a centralized system for logging and tracking OPC document requests or any means by which to identify the number of requests that are outstanding. MPD reported that it often receives duplicative requests from OPC, but the Department has no database containing information previously provided to OPC. Such a database would expedite processing duplicative requests. The MPD liaison also indicated that she is not adequately staffed to process and track all of the requests for documents MPD receives from OPC investigators.¹⁵⁴

This quarter, MPD reports that, in response to these concerns, it has begun to track OPC requests using an automated Intranet Quorum ("IQ") system, which is a system already used by MPD to track a variety of Department correspondence.¹⁵⁵ We will monitor the effectiveness of MPD's use of the IQ tracking system in the coming quarters.

2. Public Information and Outreach (MOA ¶¶ 87-91, 94)

a. Citizen Complainants

On January 31, 2003, DOJ approved the communications plan developed by MPD's Office of Corporate Communications. In our Third Quarterly Report, we reported that MPD had finalized and begun distributing community outreach materials, including flyers and posters

¹⁵² *Id.* at Section III.D.3.

¹⁵³ OIM Fourteenth Quarterly Report at 65-66.

¹⁵⁴ *Id.* at 66.

¹⁵⁵ MPD January 2006 Progress Report at 26.

explaining the citizen complaint process.¹⁵⁶ On September 8, 2004, MPD advised DOJ and the OIM that it had changed the e-mail address for citizen complaints and that MPD intended to update its citizen complaint promotional materials to reflect this change. MPD's Web site contains information concerning the citizen complaint process, including instructions on how to file a complaint with both OPR and OPC, as well as downloadable complaint forms.¹⁵⁷

On February 10, 2005, DOJ approved the Citizen Complaint General Order. The following day, however, MPD advised DOJ of several "procedural issues" related to the general order, which MPD reported it was working to resolve. MPD reports that these procedural issues have been addressed, and it is now working to ensure that the internal procedures provided in the general order are consistent with OPC's governing legislation. MPD reports that completion of the Citizen Complaint General Order was a priority during this quarter.¹⁵⁸ MPD reports that a draft of the order was shared with OPC for comment this quarter and that the draft has been submitted to MPD's Policy Program and Development Division for final review. MPD intends to submit the draft Citizen Complaint General Order to DOJ for approval in the coming quarter.¹⁵⁹

Beginning in the thirteenth quarter, the OIM and representatives from OPR discussed strategies for monitoring MPD's compliance with the MOA's requirements related to the receipt and processing of citizen complaints against officers. The OIM and OPR have collaborated in the development of a citizen complaint audit program to evaluate MPD's citizen complaints process across the districts. During the thirteenth quarter, the OIM developed three scenarios to be used by persons posing as citizens with complaints regarding police misconduct. MPD reviewed these scenarios and discussed them with its OGC.¹⁶⁰

The scenarios were designed to test specific requirements of the MOA, including the requirement that officers provide their names and

¹⁵⁶ OIM Third Quarterly Report at 43.

¹⁵⁷ http://mpdc.dc.gov/serv/citizencomplaints/file_complaint.shtm.

¹⁵⁸ MPD January 2006 Progress Report at 12.

¹⁵⁹ *Id.*

¹⁶⁰ OIM Fourteenth Quarterly Report at 67.

identification numbers upon request,¹⁶¹ the availability of materials describing the MPD and OPC complaints processes,¹⁶² the requirement that officers carry complaint forms and information in their vehicles at all times while on duty,¹⁶³ the requirement that officers advise persons of their right to make and complaint regarding officer conduct,¹⁶⁴ and the prohibition on discouraging complaints.¹⁶⁵

This quarter, MPD's QAU and the OIM completed a comprehensive audit of MPD's compliance with the MOA's requirements related to the receipt of complaints against officers from the public. The audit involved using volunteers, primarily drawn from MPD recruits, to pose as civilian members of the public seeking to lodge a complaint alleging police misconduct based on the three scenarios prepared by the OIM. The audit was performed in three phases: (1) walk-in testing was conducted at all seven MPD district headquarters, three MPD district substations, and the Special Operations Division ("SOD") headquarters for all three daily tours of duty; (2) on-street testing, involving requests that an MPD patrol officer respond to a scene under surveillance, was conducted in all seven districts for the day and evening tours of duty; and (3) telephone calls reporting incidents were placed to all seven district headquarters, three substations, and SOD headquarters for all three shifts.

The QAU took the lead in aggregating and analyzing the data collected during the audit. The results of the audit, reflected in the charts below regarding the walk-in and on-street phases of the audit, show that MPD is not in substantial compliance with any of the provisions in paragraphs 87 through 90 and 92 of the MOA related to the receipt of citizen complaints regarding officer conduct. In certain areas, such as the requirement that officers provide their names and badge numbers upon request, MPD officers performed well, in the range of 90% compliance. In other areas, MPD officers performed quite poorly, including with respect to the requirement that officers keep complaint forms and information in their patrol cars. The on-street phase of the audit revealed 0% compliance with this requirement.

¹⁶¹ MOA at ¶ 87.

¹⁶² MOA at ¶ 88.

¹⁶³ MOA at ¶ 90

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

**Phase I: Walk-In Scenario
11 Units Tested, All Shifts**

| | Day Shift Units in Compliance | Evening Shift Units in Compliance | Night Shift Units in Compliance | Total Percentage of Units in Compliance |
|-------------------------------------------------------------------|----------------------------------|--------------------------------------|------------------------------------|-----------------------------------------------|
| Officer explained the complaint process [MOA ¶ 90] | 1 | 5 | 4 | 30.3% |
| Officer provided written info re complaint process [MOA ¶¶ 88-89] | 4 | 4 | 5 | 48.5% |
| Officer provided name when asked [MOA ¶ 87] | 11 | 10 | 10 | 93.9% |
| Officer provided ID number when asked [MOA ¶ 87] | 11 | 10 | 9 | 90.1% |
| Officer did not discourage complaint [MOA ¶ 90] | 7 | 8 | 7 | 66.7% |
| Officer did not require complainant's identity [MOA ¶ 92] | 9 | 11 | 11 | 93.9% |

**Phase II: On-Street Scenario
10 Units Tested, Two Shifts**

| | Day Shift Units in Compliance | Evening Shift Units in Compliance | Total Percentage of Units in Compliance |
|-------------------------------------------------------------------|----------------------------------|--------------------------------------|-----------------------------------------------|
| Officer explained the complaint process [MOA ¶ 90] | 5 | 3 | 40.0% |
| Officer provided written info re complaint process [MOA ¶¶ 88-89] | 3 | 10 | 65.0% |
| Officer provided name and ID number when asked [MOA ¶ 87] | 9 | 9 | 90.0% |
| Complaint info in patrol car [MOA ¶ 90] | 0 | 0 | 0.0% |
| Officer did not discourage complaint [MOA ¶ 90] | 10 | 8 | 90.0% |
| Officer did not require complainant's identity [MOA ¶ 92] | 7 | 9 | 80.0% |

During the walk-in audits that we monitored, a common reaction officers had to the testers seeking to lodge a complaint was to attempt to refer the complainant to an “official,” meaning an officer of the rank of

sergeant or higher, to discuss the complaint. This response appears to be consistent with MPD's current policy, which directs desk officers to refer citizen complainants to officials. Such referrals, however, are not consistent with the requirements of the MOA and could, under certain circumstances, be construed as an attempt to discourage the citizen from making a complaint. The prevalence of this practice, as well as the poor compliance figures developed through this quarter's auditing, demonstrates that there is a need for implementation of a revised policy that is consistent with the MOA's requirements related to the receipt of citizen complaints and for training MPD officers in the MOA's requirements.

b. Community Meetings

The MOA requires that, after the first year of the MOA, MPD hold at least one community outreach and public information meeting semi-annually in each of the PSAs in the City.¹⁶⁶ The MOA also requires that, at least one week before such meetings, the City publish notice of the meeting in public areas, including "libraries, schools, grocery stores, [and] community centers,"¹⁶⁷ and on the Internet. Notices related to community outreach and public information meetings must be in the primary languages spoken in the communities located in the particular PSAs.¹⁶⁸

Over the past several quarters, we have monitored community meetings held in PSAs in MPD districts throughout the City. We have observed a range in the quality of these community meetings -- from lively sessions with broad participation by MPD officers and members of the community, to meetings that failed to take place at the times and locations advertised on MPD's community calendar Web site.¹⁶⁹

This quarter, we monitored a community meeting in PSA 308. The discussion during the meeting focused on concerns about crime, including a recent spate of robberies in the neighborhood. The MPD lieutenant who presided over the meeting led a very constructive discussion with citizens in attendance. MPD made several flyers and brochures available during the meeting, including one entitled "Filing

¹⁶⁶ MOA at ¶ 91.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ See OIM Thirteenth Quarterly Report at 67-69.

Citizen Complaints Against Metropolitan Police Officers, Frequently Asked Questions.” Generally the information contained in the flyer regarding the avenues available for filing a complaint about the conduct of an MPD officer was accurate. However, there were two areas in which the flyer was either inaccurate or out of date.

First, the flyer indicated that an officer who is the subject to a complaint “is entitled to know the name of the person filing the complaint.” This information is not consistent with the MOA, which provides that MPD “shall accept and investigate anonymous complaints.”¹⁷⁰ Second, the flyer failed to reflect that the Office of Citizen Complaint Review has changed its name to the Office of Police Complaints. The name change became effective January 1, 2005.¹⁷¹

We have suggested that MPD implement quality control measures to ensure that the information about the citizen complaint process that is conveyed during community outreach meetings is accurate and current. We also have recommended that MPD take steps to ensure that officers who make presentations during these meetings do not make statements that could be construed as discouraging members of the community from taking advantage of the citizen complaint process. In the coming quarters, we will continue to monitor MPD’s community outreach program.

3. Receipt of Complaints by OPC (MOA ¶¶ 92-95)

As noted in our Third and Fourth Quarterly Reports, on or about December 11, 2002, the OPC hotline required by paragraph 93 of the MOA became operational. We noted in our Fourth Quarterly Report that, while OPC recorded calls as required by the MOA, it had not yet developed the necessary auditing procedures to ensure “that callers are being treated with appropriate courtesy and respect, that complainants are not being discouraged from making complaints, and that all necessary information about each complaint is being obtained, although

¹⁷⁰ MOA at ¶ 92.

¹⁷¹ This quarter, OPC moved its offices to 1400 I Street, N.W, Suite 700, Washington, DC 20005. MPD’s informational materials related to citizen complaints must also be updated to reflect OPC’s current address.

OPC does check this last requirement through its general auditing of all complaints it receives.”¹⁷²

In July 2003, OPC proposed a modification to the requirement under paragraph 93 of the MOA that OPC tape record all conversations on the hotline and develop an auditing procedure that includes monthly reviews of a random sample of tape recordings.¹⁷³ In light of the infrequency with which the OPC hotline is used and the availability of viable quality control alternatives, on March 31, 2004, the OIM recommended that DOJ and the City agree to amend paragraph 93 of the MOA to replace that provision’s hotline-specific tape recording and auditing requirements with a citizen complainant survey procedure.¹⁷⁴ In addition, we suggested that DOJ and the City consider making survey-based audit procedures applicable to all complaints received by OPC from the general public, regardless of the medium through which the complaints are made.

In the fourth quarter of 2004, OPC stated that it had reconsidered its proposal to replace paragraph 93’s recording requirement with a survey-based audit procedure. OPC resumed the recording of hotline calls on January 1, 2005, stating that it had developed an auditing procedure to meet the requirements of paragraph 93 of the MOA.¹⁷⁵

Last quarter, we continued to monitor OPC’s progress in implementing its hotline recording-based audit procedure. Early in the quarter, OPC reported that, although it had installed software intended to enable the agency to record all calls placed to the hotline, OPC was experiencing technical problems that prevented the proper recording of hotline calls. By the end of last quarter, OPC reported that the technical problems with its hotline recording system had been resolved.¹⁷⁶ In the coming quarter, we will listen to recordings of hotline calls and evaluate OPC’s protocol for auditing those recordings.

¹⁷² Letter from Tammie M. Gregg to Inspector Joshua A. Ederheimer (January 31, 2003).

¹⁷³ Letter from Tammie M. Gregg to Deputy Director Thomas Sharp (August 25, 2003).

¹⁷⁴ Memorandum from Michael R. Bromwich to Philip K. Eure, Thomas Sharp, and Tammie M. Gregg regarding Office of Citizen Complaint Review’s proposed Modification of MOA ¶ 93 (March 31, 2004).

¹⁷⁵ Letter from Thomas E. Sharp to Tammie M. Gregg (December 30, 2004).

¹⁷⁶ OIM Fourteenth Quarterly Report at 70-71.

This quarter, OPC moved its offices to 1400 I Street, N.W., Suite 700, Washington, DC 20005. In the coming quarter, we will visit OPC's new offices and evaluate whether the new space is adequate in light of OPC's mission.¹⁷⁷

4. OPC Investigation of Complaints (MOA ¶¶ 86, 96-97)

In our Eighth and Eleventh Quarterly Reports, we reported our findings with respect to the review of two statistical samples of investigations performed by OPC of citizen complaints alleging misconduct on the part of MPD officers. The review we completed in the eleventh quarter found that OPC investigations were of a very high quality: 100% of the OPC investigations we reviewed that quarter were both complete and sufficient.¹⁷⁸

During the thirteenth quarter, we reviewed a third sample of 30 OPC investigations that was drawn from investigations completed between September 24, 2004 and May 3, 2005 and found the quality of OPC's investigations to be very good. We rated 95.7% of the OPC investigations we reviewed last quarter as "complete" and 100% of them as "sufficient."¹⁷⁹

During the thirteenth quarter, we also performed another review of the timeliness of OPC's investigations and found that OPC was making progress in clearing its investigations backlog. This review of the 92 investigations OPC closed between September 24, 2004 and May 3, 2005 found that OPC investigators took, on average, approximately 420 days to complete the investigations, which was a significant improvement over the timeliness results we reported in our Eleventh Quarterly Report.¹⁸⁰ We also found that the improvement in the timeliness of OPC's investigations was reinforced by the fact that the average time it took

¹⁷⁷ See MOA at ¶¶ 86, 95.

¹⁷⁸ OIM Eleventh Quarterly Report at 71.

¹⁷⁹ OIM Thirteenth Quarterly Report at 71.

¹⁸⁰ Unless documented "special circumstances" exist to justify a delay, OPC investigations must be completed within 135 days to be timely under paragraph 86 of the MOA. See Appendix C at ¶ 86. As the average time it takes for OPC to complete investigations begins to approach the 135-day requirement, we will consider in future quarters whether documented special circumstances exist to justify OPC's delay in completing those investigations falling outside of the 135-day window.

OPC to complete the 69 investigations it had closed by that point in calendar year 2005 was approximately 385 days, and that the average time it took OPC to close the 8 completed investigations that had been assigned in 2005 was approximately 38 days.¹⁸¹

This quarter, we reviewed a fourth sample of 30 OPC cases, all of which were all closed in the months of May 2005 through November 2005, and found that only 90.0% of these cases were complete, which is lower than the rate of completeness we have observed in previous samples of OPC cases. However, 96.7% of the OPC investigations we reviewed this quarter were sufficient.

OPC closed 160 cases during the months of May 2005 through November 2005. The average time it took OPC to complete these cases was 426.3 days, which reflects that OPC is still working to clear its backlog of cases. However, with respect to the 63 cases that were assigned to OPC investigators in 2005 and closed during these months, those cases were completed on average in 96.4 days, which is well within the 135-day window agreed upon by DOJ and MPD for purposes of defining timeliness of OPC investigations under paragraph 86 of the MOA.

C. Substantial Compliance Evaluation

We find that the City and MPD are not yet in substantial compliance with MOA paragraph 85, which requires the development of a plan delineating the roles and responsibilities of OPC and MPD. MPD and OPC made significant progress in this area by finalizing and signing the DOJ-approved revised MOU. Although compliance with certain areas of MOU at times has been quite good, neither MPD nor OPC has yet achieved a consistent compliance rate of 95% or better with the current provisions of the MOU regarding referral of complaints filed with OPC that fall outside OPC's jurisdiction, weekly notice to MPD of formal OPC complaints, the scheduling and attendance of MPD officers at OPC interviews, and MPD's responses to OPC document requests. We will continue monitoring MPD's and OPC's progress in implementing the revised MOU.

The OIM finds that the City does not currently appear to be in substantial compliance with MOA paragraph 86, which requires the City to provide OPC with sufficient qualified staff, funds, and resources to

¹⁸¹ OIM Thirteenth Quarterly Report at 72.

perform its functions under the MOA and District of Columbia law. Our review of the timeliness of OPC investigations this quarter, however, shows that OPC is making significant strides in clearing its backlog of cases and in completing new investigations within the 135-day window agreed to by OPC and DOJ. The quality of the investigations completed by OPC remains quite high, although we found that a significant number of OPC investigations we reviewed this quarter were not complete.

This quarter, the OIM and MPD collaborated to perform a comprehensive audit of MPD's compliance with the MOA's requirements related to the receipt of citizen complaints, including MOA paragraph 87's requirement that MPD officers to provide their names and identification numbers to any person requesting that information. Although officers provide such information at a relatively high rate, MPD has not achieved substantial compliance in this area.

This quarter, the OIM and MPD collaborated to perform a comprehensive audit of MPD's compliance with MOA paragraphs 88 through 90 and 92, which relate to MPD's program for providing the public with information on the process for filing complaints regarding the performance of MPD officers. As reflected by the data reported above, MPD is not in substantial compliance with any of these provisions.

We find that MPD currently is not in substantial compliance with MOA paragraph 91, which requires that each of MPD's PSAs hold public meetings on at least a semi-annual basis and that such meetings be advertised adequately at least a week in advance. Although many of the PSA community outreach meetings we have monitored have been excellent examples of cooperation between a law enforcement agency and the citizenry consistent with the principles of community policing, the frequency and advertisement of these meetings varies greatly by district and currently is inadequate when considered on a citywide basis.

We reserve judgment with respect to the City's compliance with MOA paragraph 93, which requires the establishment of a citizen complaint hotline operated by OPC and audited through a tape recording procedure. The City had previously established the hotline, and OPC reports that the tape recording-based audit procedure required by paragraph 93 has been implemented. We will continue our review of OPC's hotline auditing procedures in the coming quarter.

MPD is not in compliance with MOA paragraph 94, which requires the development of policies and procedures related to the handling of

citizen complaints filed with MPD. MPD has not finalized the Citizen Complaint General Order.

The City is in substantial compliance with MOA paragraph 95, which requires that OPC's offices be located separate from any building occupied by MPD personnel.

The City is in substantial compliance with MOA paragraph 96, which relates to the training of OPC investigators.

The City is in substantial compliance with MOA paragraph 97, which requires OPC to develop and obtain DOJ approval of an investigations manual. DOJ has found that OPC's revised Investigations Manual satisfies MOA paragraph 97.¹⁸²

D. Recommendations

We reiterate our recommendations from last quarter that (1) MPD devote attention to the scheduling and advertisement of the PSA community outreach meetings across MPD's districts and (2) MPD implement quality control procedures to ensure the accuracy and consistency of information regarding the citizen complaints process conveyed at these meeting. Based on the results of the auditing performed by the QAU and OIM this quarter with respect to the citizen complaints process, we strongly encourage MPD to provide in-service training to all officers regarding the requirements of the MOA and of MPD's policies in this area.

V. Discipline and Non-Disciplinary Action (MOA ¶ 105)

A. Requirements

The MOA, as modified by Joint Modification No. 1, requires that, by the week of November 17, 2002, subject to approval by DOJ, MPD must revise and update its policy governing officer discipline.¹⁸³ Specifically, the policy must:

- Prescribe when non-disciplinary action is appropriate;

¹⁸² Letter from Tammie M. Gregg to Philip K. Eure and Thomas E. Sharp (January 26, 2005).

¹⁸³ MPD disciplinary policy is General Order 1202.1 (Disciplinary Procedures and Processes).

- Prescribe when district-level discipline or corrective action is appropriate;
- Establish a formal and centralized system for documenting and tracking discipline and corrective action; and
- Develop a procedure for providing written notice to complainants regarding the most significant aspects of the handling of their complaints, including but not limited to disposition.

B. Status and Assessment

1. Disciplinary Policy

On May 19, 2003, MPD submitted its draft Disciplinary Policy to DOJ. The submission of this policy followed a lengthy delay on the part of MPD. As originally negotiated by MPD and DOJ, MPD's Disciplinary General Order was due to be completed by October 11, 2001. On September 30, 2002, as part of a major renegotiation of MOA deadlines, MPD and DOJ revised the due date of this general order to November 22, 2002. On November 22, 2002, MPD notified DOJ that it would not be able to meet the revised deadline and committed to submit the general order by December 31, 2002 -- the end of that quarter. On December 31, 2002, however, MPD notified DOJ that it would not meet that deadline either. MPD stated that the reason for this missed deadline was its desire to engage the Fraternal Order of Police ("FOP") in a dialogue regarding the draft order before it is submitted to DOJ.

On August 25, 2003, DOJ provided MPD with comments on the draft Disciplinary General Order. DOJ noted that, "[a]lthough the [general order] was not timely submitted pursuant to the renegotiated deadline contained in the parties' September 30, 2002 Joint Modification to the MOA, we appreciate and commend the efforts of MPD and the local FOP in working collaboratively to resolve their differences and to identify issues for collective bargaining."¹⁸⁴ In its August 25, 2003 letter to MPD, DOJ also noted that the draft Disciplinary General Order "does not specifically 'establish a centralized and formal system for documenting and tracking all forms of discipline and corrective action' as required by

¹⁸⁴ Letter from Tammie Gregg to Captain Matthew Klein regarding "Disciplinary General Order" (August 25, 2003).

MOA paragraph 105.”¹⁸⁵ On July 29, 2004, MPD responded to DOJ by explaining that the Disciplinary Process General Order cannot be finalized by MPD until its negotiations with the FOP over disciplinary procedures are complete.¹⁸⁶ On November 5, 2004, MPD advised DOJ that negotiations with the FOP were at an impasse and that the parties were involved in a mediation process with no definitive timeline that would permit MPD to estimate when it might be able to finalize the Disciplinary Process General Order.

The FOP ratified a new collective bargaining agreement with MPD on February 24, 2005.¹⁸⁷ On December 6, 2005, DOJ requested that MPD provide a projected deliverable date by which it would submit the Disciplinary Process General Order. On December 12 2005, MPD notified DOJ that it would provide a final draft of the general order to DOJ and the FOP no later than December 30, 2005. MPD submitted the draft general order to DOJ on December 29, 2005.¹⁸⁸

2. Disciplinary Systems and Procedures

During the ninth quarter, the OIM conducted a substantial review of MPD’s systems and procedures related to the administration and tracking of disciplinary and training recommendations flowing from the UFRB’s review of use of force cases.¹⁸⁹ The purpose of this review was to test the extent to which MPD is effective in disciplining officers found responsible for unjustified uses of force and in training officers found to be in need of remedial training to correct identified failures to properly implement MPD policy or employ sound police practices. Where officers are found to have acted outside of MPD policy, to have used unjustified levels of force, or to be in need of remedial training, it is critical that MPD’s disciplinary and training systems effectively and efficiently address these issues to conform officer conduct to the requirements of MPD policy and the MOA.

Although MPD has established the UFRB as a body for the review of investigations involving uses of force, as discussed above, in prior

¹⁸⁵ *Id.*

¹⁸⁶ Letter from Maureen O’Connell to Tammie Gregg regarding “MOA Paragraph 105, Disciplinary Process” (July 29, 2004).

¹⁸⁷ MPD January 2006 Progress Report at 14.

¹⁸⁸ *Id.*

¹⁸⁹ OIM Ninth Quarterly Report at 50-55.

quarters we had identified significant deficiencies on the part of the UFRB in fulfilling its role as a “quality control mechanism” by conducting comprehensive reviews of each use of force incident and by identifying “patterns/problems” suggesting the need for improved training or policy modifications.¹⁹⁰ Our review during the ninth quarter found that, where the UFRB recommended discipline or remedial training, MPD had inadequate internal control mechanisms in place to ensure that the recommended discipline was imposed or corrective action was administered. Finally, we also found MPD lacked a centralized and formal system for tracking discipline and remedial training.¹⁹¹

During the thirteenth quarter, we performed another comprehensive review of MPD’s disciplinary system. Specifically, we reviewed MPD’s disciplinary action taken in response to the 10 officers the UFRB found in 2004 to have been involved in unjustified use of force incidents and referred to the Department Discipline Review Office (“DDRO”) for disciplinary action. We also tracked the 6 cases from 2004 in which the UFRB identified a tactical improvement opportunity and referred the subject officer to IPS for remedial training.¹⁹²

In sum, we found that MPD’s disciplinary and remedial training tracking systems have improved significantly; however, deficiencies remain. In order to obtain a complete set of documentation related to the disciplinary and remedial training actions we reviewed, we had to access information maintained by five different entities within MPD -- FIT, DDRO, IPS, Human Resources (for TACIS records), and the officer’s unit of assignment, where personnel files are maintained. Accordingly, we concluded that MPD still has not established a centralized system for documenting and tracking all forms of disciplinary and corrective action, as required under paragraph 105 of the MOA.¹⁹³

C. Substantial Compliance Evaluation

MPD is not in substantial compliance with MOA paragraph 105 regarding disciplinary and non-disciplinary actions. MPD has not finalized the Disciplinary Process General Order. Also, although our review last quarter found that MPD’s systems for tracking

¹⁹⁰ MOA at ¶ 67.

¹⁹¹ *Id.* at ¶ 105.

¹⁹² OIM Thirteenth Quarterly Report at 76-78.

¹⁹³ *Id.* at 78.

recommendations for discipline and remedial training appear to have improved, the Department still lacks a centralized repository for all corrective actions administered with respect to its officers, as required under paragraph 105 of the MOA.

D. Recommendations

Now that the Disciplinary Process General Order has been submitted to DOJ, we encourage MPD to take all possible measures to work with DOJ to finalize the general order in the near future. We also recommend that MPD continue to work to establish a centralized system for documenting and tracking all forms of disciplinary and corrective action.

VI. Personnel Performance Management System (MOA ¶¶ 106-117)

A. Requirements

Under the MOA, MPD is committed to developing and implementing a computer database that will facilitate the management and supervision of MPD personnel. The computer database, referred to in the MOA as the Personnel Performance Management System, or PPMS, is intended to:

- Promote civil rights integrity and best professional police practices;
- Manage the risks of police misconduct;
- Evaluate and audit the performance of MPD officers, units, and groups;
- Promote accountability and proactive management; and
- Identify, manage, and control at-risk officers, conduct, and situations.

In addition to describing the objectives PPMS shall achieve, the MOA specifies the information that must be captured to ensure that PPMS achieves these objectives. This information includes the following:

- All uses of force that must be reported on MPD's UFIR forms or that are the subject of an MPD criminal or administrative investigation;

- All police canine deployments;
- All officer-involved shootings and firearms discharges, whether on or off duty, and all other lethal uses of force;
- All reviews of use of force, including all decisions on whether the use of force was within MPD policy;
- All vehicle pursuits and traffic collisions;
- All complaints regarding MPD officers, whether made to MPD or OPC;
- Chronologies and results of investigations, adjudications, and discipline relating to any of these matters;
- All commendations received by MPD about an officer's performance;
- All criminal, civil, and administrative proceedings initiated on the basis of MPD operations and the actions of MPD personnel; and
- With respect to each MPD officer, that officer's:
 - Educational history,
 - Military service and discharge status,
 - Assignment and rank history,
 - Training history,
 - All management and supervisory actions taken pursuant to review of PPMS information, and
 - All instances in which a prosecution declination or a motion to suppress was based upon concerns about the officer's credibility or on evidence of a Constitutional violation by the officer.

The MOA also requires MPD to develop, subject to DOJ approval, a "Data Input Plan" to facilitate the entry of historical data into PPMS, as well as detailed requirements for how the information -- historical and contemporary -- must be put into the system and the ways in which it

must be retrievable. Furthermore, the MOA requires MPD to develop a detailed protocol for the use of the computerized management system.

While PPMS is under development, MPD is required to utilize existing information and databases to achieve the purposes established for PPMS. In addition, OPR is charged with the responsibility of operating PPMS, as well as for developing and overseeing MPD-wide risk assessments.

Related to, but separate from, the development of PPMS, MPD is required to enhance its new Performance Evaluation System (“PES”). This enhancement must ensure that each sworn MPD employee’s performance be evaluated, at a minimum, according to certain specified criteria. These criteria include civil rights integrity and community policing; adherence to law, including civil rights laws and laws designed to protect the rights of suspects; and the performance of supervisors in identifying at-risk behavior among their subordinates.

B. Status and Assessment

1. PPMS

Under the MOA, a Request for Proposal (“RFP”) related to PPMS originally was scheduled to be issued by August 13, 2001, with a contractor to be selected by March 13, 2002, and a beta version of the system to be ready for testing by March 13, 2003. It became clear relatively early on that MPD would not be able to meet those deadlines. On September 30, 2003, DOJ and MPD agreed to Joint Modification No. 2 to the MOA, which established a revised timetable for PPMS development that provided for a beta version of PPMS to be available by June 25, 2004 and full implementation of PPMS to be complete by February 25, 2005.¹⁹⁴

Last year, MPD suffered a significant setback with respect to the development of PPMS.¹⁹⁵ By teleconference on March 8, 2004, MPD notified DOJ that a loan for PPMS development that MPD expected to receive from the City’s Office of the Chief Technology Officer would not be forthcoming until MPD could establish that it would receive a sufficient

¹⁹⁴ Joint Modification No. 2 to June 13, 2001 Memorandum of Agreement (September 30, 2003).

¹⁹⁵ OIM Eighth Quarterly Report at 54-55.

budgetary allocation in fiscal year 2005 to re-pay the loan.¹⁹⁶ Because the City's budget for fiscal year 2005 had not yet been approved and funding allocations with respect to PPMS had not yet been made, MPD was forced to suspend the PPMS development project when existing funds were exhausted as of the end of March 2004.¹⁹⁷

On March 1, 2005, DOJ, MPD, and the City executed Joint Modification No. 3 to the MOA, which establishes a new timeline for PPMS development and relieved MPD from breach status in this area of the MOA. This third modification to the MOA was the product of substantial effort by MPD, including by Chief Ramsey personally, the City, DOJ, and the PPMS vendor, IBM/Motorola. Some of the key deadlines for deliverables under the third modification are reflected in the chart below.

| MOA ¶ | Deliverable Under the MOA | Deadline |
|-------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------|
| 114.c | PPMS Protocol due to DOJ <ul style="list-style-type: none"> • Submit General Order • Submit Standard Operating Procedures | May 30, 2005 [met] August 30, 2005 [met] |
| 114.d | DOJ and OIM Beta-Testing Begins | November 3, 2005 [Beta testing in progress] |
| 114.e | PPMS computer program and hardware operational <ul style="list-style-type: none"> • Phase I PPMS rollout complete • Phase II PPMS rollout complete | January 19, 2006 August 31, 2006 |

MPD suffered an initial setback that delayed IBM/Motorola in restarting work on PPMS and caused MPD to miss the April 28, 2005 deadline for completing the Phase I Design Document, as provided under

¹⁹⁶ Letter from Captain Matthew Klein to Chief Shanetta Cutlar (March 15, 2004).

¹⁹⁷ On two previous occasions, DOJ expressed in writing its concerns relating to the possibility that MPD would experience a funding shortfall that would impact the development of PPMS. Letter from Shanetta Y. Brown Cutlar to Chief Charles Ramsey (March 26, 2003); Letter from Tammie M. Gregg to Captain Matthew Klein (August 21, 2003).

Joint Modification No. 3 to the MOA.¹⁹⁸ The delay resulting from this problem, which related to staffing issues experienced by IBM/Motorola, caused MPD to adjust some of the original early deadlines for the PPMS project. However, MPD delivered the final modules of the PPMS application on September 23, 2005.¹⁹⁹ The adjusted deadlines that resulted from the initial delay in re-starting the PPMS development project are reflected in the chart below.

| MOA ¶ | Deliverable Under the MOA | Original Deadline | Adjusted Deadline |
|-------|------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------|------------------------------------------------------------|
| 108 | Submit PPMS Data Input Plan | May 26, 2005 | June 24, 2005 [met] |
| 114.d | <ul style="list-style-type: none"> Complete PPMS Phase I Design Document Phase I PPMS Application Delivery | <p>April 28, 2005</p> <p>August 23, 2005</p> | <p>June 17, 2005 [met]</p> <p>September 23, 2005 [met]</p> |

MPD had two PPMS-related deadlines this quarter. First, MPD met the November 3, 2005 deadline for submission to DOJ of final versions of the PPMS General Order and the PPMS standard operating procedures (“SOP”). Second, MPD also was required to notify DOJ by November 3, 2005 that, among other things, PPMS was ready for Beta testing. Paragraph 114.d of the MOA requires that the following four elements of PPMS must be accomplished and ready for Beta testing by this deadline:

- (i) server hardware and operating systems installed, configured and integrated with MPD’s existing automated systems;
- (ii) necessary data base software installed and configured;
- (iii) data structures created, including interfaces to source data; and
- (iv) the use of force information system completed, including historic data.²⁰⁰

¹⁹⁸ MPD January 2006 Progress Report at 41.

¹⁹⁹ *Id.* at 41.

²⁰⁰ MOA at ¶ 114.d.

On November 3, 2005, MPD notified DOJ that three of the four elements required under paragraph 114.d of the MOA were completed and ready for Beta testing. However, by the deadline, MPD had not finalized the interfaces to the source data as required. MPD reports that it has experienced technical issues with Motorola's "data connector" (*i.e.*, the software used to load data into PPMS). On December 30, 2005, MPD notified DOJ that these interfaces would not be completed and tested until January 17, 2006.²⁰¹

Even though the interfaces to source data were not completed and ready for testing, on November 17, 2005, MPD prepared a demonstration of the PPMS software for representatives from DOJ and the OIM. We found that PPMS clearly has great potential, but there is still much work to be done in its development. Because there was not yet any connectivity to source data, we were not able to test the system's search and analytic capabilities. As Phase I of the PPMS development process -- which involves activating the system in the Third District as a pilot program -- comes on line in January 2006, we look forward to participating in further test sessions related to PPMS.

MPD also has been actively training its personnel to familiarize them with the intended functionality of the system. During this quarter, MPD held a series of educational sessions related to PPMS, one of which we attended, and prepared a Frequently Asked Questions sheet to address concerns and questions commonly raised by MPD officers about PPMS. During the training session we monitored, we observed that some officers are apprehensive about the security measures that will be established on the system to restrict access to sensitive information in PPMS and how information accumulated in PPMS will be used. MPD reports that it will continue with its communications efforts to explain PPMS to all members of the Department and to address the concerns raised by some members.²⁰²

2. Performance Evaluation System (MOA ¶ 118)

On May 2, 2003, DOJ provided comments on MPD's Enhanced Performance Evaluation System Protocol. On September 30, 2003, MPD provided DOJ with a "status report" concerning DOJ's comments, to which DOJ responded on October 6, 2003. On March 5, 2004, MPD

²⁰¹ MPD January 2006 Progress Report at 42.

²⁰² *Id.* at 43.

provided DOJ with another update regarding its efforts to revise the PES.²⁰³

On July 1, 2004, MPD submitted revised materials related to the PES for DOJ's review. On September 10, 2004, MPD requested that DOJ expedite its review of these materials in order to have the revised standards available for officer and sergeant performance evaluations during that cycle. DOJ attempted to accommodate MPD's request and, on September 24, 2004, sought additional information from MPD regarding its Performance Management Program to facilitate DOJ's review. MPD responded to DOJ's request for information on September 29, 2004. On November 29, 2004, however, MPD advised DOJ that it was necessary to issue the special order governing FY 2005 performance evaluations along with instructional materials and standards prior to receiving DOJ's comments or approval.²⁰⁴

On December 15, 2004, DOJ returned comments to MPD's July 1, 2004 submission. On June 30, 2005, MPD submitted a revised PES package to DOJ. On September 20, 2005, DOJ returned comments and approved the Performance Management System for Sworn Members General Order. On December 30, 2005, MPD submitted a response to DOJ addressing remaining comments related to the PES, which included several revisions to the Performance Management System for Sworn Members General Order. MPD reports that it is hopeful that it will have the PES implemented in time for the fiscal year 2006 performance ratings.²⁰⁵

C. Substantial Compliance Evaluation

With the exception of MOA paragraphs 114.a and 114.b, which relate to the issuance of an RFP for PPMS development and the selection of a contractor for the project, MPD and the City are plainly not in substantial compliance with the PPMS development and implementation requirements of paragraphs 107 through 117 of the MOA.²⁰⁶ Although MPD has made significant progress over the past two quarters with the development and implementation of PPMS, a significant amount of work

²⁰³ *Id.* at 10.

²⁰⁴ *Id.* at 11.

²⁰⁵ *Id.*

²⁰⁶ Paragraph 106 of the MOA contains no substantive provisions.

remains in order to establish PPMS as a functional system with the full range of capabilities required under the MOA.

During the twelfth quarter, the parties executed a third modification to the MOA establishing a revised timetable for PPMS development and implementation. After suffering an initial setback in re-starting the PPMS development project, MPD now appears to be relatively on track with the revised schedule. The OIM will continue to monitor MPD's progress in testing PPMS and meeting the deadlines established under the third modification to the MOA.

MPD is not in substantial compliance with MOA paragraph 118 concerning its PES. Although DOJ approved MPD's Performance Management System for Sworn Members General Order last quarter, MPD has suggested revisions to the general order that currently are under review by DOJ. As a result, the enhanced PES not yet been implemented.

D. Recommendations

We reiterate our recommendation that MPD continue working with DOJ to finalize the materials related to its PES as soon as possible so that the approved program is in place in time for the FY 2006 performance evaluation cycle.

VII. Training (MOA ¶¶ 119-148)

A. Requirements

The training provisions in the MOA specifically address management oversight, curriculum development, instructor training, firearms training, and canine training.

1. Management Oversight

Regarding management oversight, MPD is required to centrally coordinate the review of all use of force training to ensure quality assurance, consistency, and compliance with applicable law.²⁰⁷ MPD's Director of Training is responsible for overseeing the full scope of MPD's training program as it relates to the terms of the MOA, including:

²⁰⁷ To ensure compliance with applicable law, training materials are to be reviewed by MPD's General Counsel or some other appropriate legal advisor. MOA at ¶ 120.

- Ensuring the quality of all use of force training across MPD;
- Developing and implementing appropriate use of force training curricula;
- Selecting and training MPD trainers;
- Developing and implementing all in-service training and roll call curricula;
- Developing tools to evaluate all training;
- Developing a protocol, subject to DOJ approval, to enhance its existing Field Training program;²⁰⁸ and
- Conducting needs assessments to ensure that use of force training is tailored to the needs of the officers being trained.

In addition, MPD's Curriculum Development Specialist ("CDS") is required to review, revise, and implement, subject to DOJ approval, all use of force-related training material to ensure that the materials are consistent (as to content and format), properly to incorporate applicable law and policy into such training materials, to incorporate specific training objectives and suggestions on how most effectively to present use of force training materials, and to determine whether training aids are being used appropriately. The CDS's responsibilities also extend to reviewing, at least on a quarterly basis, all force-related training for quality assurance and consistency. More generally, MPD is required to keep its updated training materials in a central, commonly accessible file and to maintain updated and complete training records as to every MPD officer.

2. Curriculum

The MOA prescribes various features of MPD's training programs that address the content of MPD training. First, all force-related training must incorporate critical thinking and decision-making skills and must include training in cultural diversity and community policing. More specifically with respect to use of force training, MPD's use of force training must include the following elements:

²⁰⁸ The protocol is required to address specific aspects of the Field Training program, which are set forth in paragraph 121 of the MOA.

- MPD's use of force continuum;
- MPD's use of force reporting requirements;
- The Fourth Amendment and other constitutional requirements applicable to police officers; and
- Examples of use of force and ethical dilemmas, with a preference for interactive exercises for resolving them.

Training on these topics should involve concrete use of force experiences and examples, and dialogue on these issues with trainees is to be encouraged.

Supervisory and leadership training must focus not only on these elements, but also on command accountability and responsibility, interpersonal skills, theories of motivation and leadership, and techniques designed to promote proper police practices and integrity. Priority in supervisory and leadership training must be accorded to MPD's new policies on use of force, use of canines, the UFRB, and the revised policies and practices relating to administrative misconduct investigations. Supervisory and leadership training on these issues is required, with re-training to take place on an annual basis.

The training provisions of the MOA specifically address two aspects of existing MPD training -- Role Play and Range 2000 training. Training materials relating to these aspects of MPD must be reviewed to ensure their consistency with law and MPD policy. In addition to other specific requirements, the MOA requires that a standardized curriculum, lesson plans, and instructional guidelines for these aspects of MPD training be developed. MPD is required to videotape student officers during Role Play training exercises to better focus discussions during the critique portion of the course.

Finally, the MOA sets forth specific requirements regarding training with respect to aspects of the MOA itself. MPD is required to distribute copies of the MOA to all officers and employees and explain its terms. Further, as MPD adopts new policies and procedures mandated by the MOA, it must incorporate them into in-service and new recruit training.

3. Instructors

The MOA establishes various requirements relating to the training and competence of instructors. First, MPD was required to conduct an

assessment to determine the sufficiency, competence, and standards for evaluating training personnel and, on the basis of that assessment, to develop a plan for addressing training instructor needs to DOJ for its approval.

Second, subject to DOJ's approval, MPD was required to develop and implement eligibility and selection criteria for all training positions, including Academy, Field Training, and formal training. These criteria are equally applicable to existing personnel in training positions and to candidates for training positions. MPD also was required to develop an instructor certification program relating to the competency of its instructors. Further, MPD was required to create and implement a formal instructor training course and to provide regular retraining on subjects including adult learning skills, leadership, and teaching and evaluation, among others. Consistent with its focus, the MOA specifically requires MPD to ensure adequate management supervision of use of force training instructors to ensure the training they provide is consistent with MPD policy, law, and proper police practices.

4. Firearms Training

The MOA requires mandatory semi-annual firearms training and re-qualification, including the successful completion of the Range 2000 and Role Play courses. MPD must revoke the police powers of all officers who do not properly re-qualify. MPD was required to create and implement, subject to DOJ approval, a checklist containing prescribed elements that must be completed for each student officer by a firearms instructor. In addition, firearms training materials must be reviewed and integrated into an overall training curriculum. Finally, MPD must, at least every three months, consult with Glock, the manufacturer of MPD officer service weapons, to obtain the most current information on cleaning, maintenance, and other factors that may affect the proper use of the weapon.

5. Canine Training

The MOA requires MPD to develop and implement a comprehensive canine training curriculum, which includes the identification of the mission, goals, and objectives of the Canine Unit. MPD was required to have all its canines certified in the "new handler-controlled alert methodology" and to ensure that the canines are re-certified on an annual basis and receive refresher training. MPD must monitor and oversee its canine handlers to ensure they are capable of implementing the canine policies that have been adopted by MPD.

B. Status and Assessment

1. Canine Training

During the thirteenth quarter, the OIM and representatives from DOJ observed the final evaluation session for MPD's most recent Basic Patrol Dog Class. The performance of the handlers and canines was judged by outside experts, and the new instructor was rated based on the success of the new canine teams in achieving certification. We were impressed by the performance of the handlers and the new canines in all areas evaluated during this final certification session.

Subsequent to the Basic Patrol Dog certification, we monitored a Canine Unit training session that covered MPD's Canine Teams General Order and the principles of the Handler-Controlled Alert Methodology. We found that the training was well presented and made effective use of examples drawn from actual experiences of MPD canine units. The training covered in detail the key areas of MPD's canine policy including deployment authorization, Canine Unit reporting requirements, and requirements related to announcements of the presence of a canine, such as the stages at which announcements must be made and the documentation of announcements.²⁰⁹

Last quarter, in addition to approving MPD's Canine Operations Manual as discussed above, DOJ approved the Canine Lesson Plan and Training Curriculum on September 27, 2005.²¹⁰ MPD now has obtained DOJ approval for all policies and training materials related to the Department's canine program.

2. Curriculum and Lesson Plans

The MOA provides for DOJ review and approval of all force-related training material, including curriculum and lesson plans.²¹¹ MPD originally submitted eleven lesson plans comprising its use of force curriculum to DOJ on July 24, 2002. DOJ provided MPD with comments on certain of these lesson plans on November 25, 2002, and MPD submitted revised lesson plans to DOJ on March 9, 2003. DOJ provided additional comments on MPD's use of force lesson plans on

²⁰⁹ OIM Thirteenth Quarterly Report at 88.

²¹⁰ Letter from Tammie M. Gregg to Inspector Matthew Klein (September 27, 2005).

²¹¹ MOA at ¶ 122.

May 16, 2003, and MPD returned revised drafts of certain of the use of force-related lesson plans to DOJ on February 23, 2004.

Since the original submission of the lesson plans in 2002, MPD has divided the Pistol Qualification lesson plan into three separate lesson plans -- In-Service Pistol Re-Certification, Simmunitions Training, and Range 2000 -- bringing the total number of lesson plans in MPD's use of force curriculum to 13. By the beginning of this quarter, MPD had received approval for 12 of these 13 lesson plans.²¹²

The only use of force lesson plan that has not yet been approved by DOJ is the Simmunitions Training Lesson Plan. DOJ most recently returned comments to the Simmunitions Training Lesson Plan on September 27, 2005 as part of its comments to MPD's June 2005 Semi-Annual Use of Force Curriculum Review. On December 30, 2005, MPD submitted a revised version of the lesson plan to DOJ as part of its most recent Semi-Annual Use of Force Curriculum Review.²¹³

Status of MPD Use of Force Lesson Plans

| | |
|--------------------------------------|----------------------------|
| ASP Tactical Baton Training Program | Approved by DOJ 09-30-03 |
| Close Quarter Combat | Approved by DOJ 09-30-03 |
| Controlled F.O.R.C.E. | Approved by DOJ 09-30-03 |
| Ground Fighting | Approved by DOJ 09-30-03 |
| Handcuffing | Approved by DOJ 09-30-03 |
| Krav/Maga | Approved by DOJ 09-30-03 |
| OC Spray | Approved by DOJ 09-30-04 |
| Officer Street Survival | Approved by DOJ 03-24-05 |
| Pistol Qualification | |
| In-Service Pistol Re-Certification | Approved by DOJ 09-27-05 |
| Simmunitions Training | Pending DOJ as of 12-30-05 |
| Range 2000 | Approved by DOJ 08-26-05 |
| Use of Force Continuum (with Manual) | Approved by DOJ 03-24-05 |
| Verbal Judo | Approved by DOJ 09-24-04 |

MPD's IPS also has developed 16 lesson plans to address the requirements of MOA paragraphs 84, 98, and 129. Paragraphs 84 and 98 establish requirements relating to the training of MPD investigators in connection with the performance of MPD's internal use of force and misconduct investigations, and paragraph 129 establishes training

²¹² MPD January 2006 Progress Report at 36.

²¹³ *Id.*

requirements for all MPD supervisors -- officers with the rank of sergeant and above. With the approval this quarter of the canine-related lesson plans, MPD now has obtained DOJ approval of 14 of the 16 lesson plans drafted to comply with MOA paragraphs 84, 98, and 129, the status of which are summarized in the chart below.²¹⁴

Status of MPD In-Service Supervisor and Investigator Lesson Plans

| | |
|------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|
| Administrative Misconduct Investigation Policy and Procedures Using the Preponderance of Evidence Standard | Pending DOJ approval of the Chain of Command Misconduct Investigations General Order and Chain of Command Investigations Manual |
| Arrest, Custody, and Restraint Procedures | Approved by DOJ 09-30-04 |
| Bias-Related Hate Crimes | Approved by DOJ 05-16-03 |
| Canine Policies and Procedures | Approved by DOJ 09-27-05 |
| Command Accountability | Approved by DOJ 11-25-02 |
| Communication and Interpersonal Relationship Skills | Approved by DOJ 11-25-02 |
| Crime Scene Preservation | Approved by DOJ 05-16-03 |
| Cultural Diversity and Sensitivity Awareness | Approved by DOJ 02-10-05 |
| Defensive Tactics | Approved by DOJ 05-16-03 |
| Ethics, Integrity, and Professionalism | Approved by DOJ 11-25-02 |
| Interview and Interrogation | Approved by DOJ 03-24-05 |
| Theories of Motivation and Leadership | Approved by DOJ 11-25-02 |
| Use of Force and Use of Force Continuum (with Manual) | Approved by DOJ 03-24-05 |
| Use of Force Incident Report Form | Pending DOJ Approval of Revised UFIR |
| Use of Force Review Board | Approved by DOJ 09-30-04 |
| Verbal Judo Re-certification | Approved by DOJ 11-25-02 |

On December 30, 2005, MPD issued its most recent Semi-Annual Use of Force Curriculum Review prepared by the CDS at IPS.²¹⁵ We will review this latest Semi-Annual Use of Force Curriculum Review in the coming quarter.

In our Eleventh Quarterly Report, we found that MPD was not in substantial compliance with MOA paragraph 120's requirement that

²¹⁴ *Id.* at 37.

²¹⁵ *Id.* at 38.

MPD's OGC review all training materials and lesson plans.²¹⁶ Last quarter, MPD reported that, in order to address this issue, it conducted an audit to identify which of the Department's 28 MOA-related lesson plans have not been reviewed by OGC. MPD reported that it identified 9 lesson plans that required OGC review and that OGC completed its review of these lesson plans on September 30, 2005.²¹⁷ In the coming quarter, we will confirm the completeness of OGC's review of the Department's MOA-related lesson plans.

3. Instructors

MPD submitted a draft of its Enhanced Field Training Officer Program Protocol to DOJ on December 6, 2002.²¹⁸ Although DOJ provided comments to the draft Protocol on September 30, 2003, MPD has experienced significant delays revising the Protocol in response to DOJ's comments. MPD submitted its revised Enhanced Field Training Officer Program Protocol to DOJ on September 27, 2004. On December 9, 2004, DOJ approved the Enhanced Field Training Officer Program Protocol.²¹⁹

During the seventh quarter, the OIM performed a detailed review of MPD's FTO program. We found that significant improvement in the FTO program is necessary, including completion of the Enhanced Field Training Officer Program Protocol and establishment and application of formal selection criteria for FTOs.²²⁰ In particular, we found that the existing protocol being used by FTOs in the field training program to train probationary patrol officers ("PPOs") was disjointed and out of date.

At that time, we also found that MPD did not appear to have established selection criteria for FTOs as required by paragraphs 121.f and 135 of the MOA and that master patrol officer ("MPOs") designated to serve as FTOs generally are selected based on interviews conducted and controlled at the district level. Accordingly, we concluded that, without formal criteria governing the selection of FTOs, the qualifications of personnel selected to be FTOs risked significant variation by district and

²¹⁶ OIM Eleventh Quarterly Report at 93-94.

²¹⁷ OIM Fourteenth Quarterly Report at 91-92.

²¹⁸ MOA at ¶ 121.f.

²¹⁹ OIM Fourteenth Quarterly Report at 92.

²²⁰ OIM Seventh Quarterly Report at 50-51.

would be inconsistent with the substantive requirements of paragraph 135 of the MOA.²²¹ In the ninth quarter, we reported that MPD had not made any significant progress with respect to its FTO program and strongly encouraged MPD to finalize the Enhanced Field Training Officer Program Protocol and to develop and apply formal criteria for the selection of FTOs as required by paragraphs 121.f and 135 of the MOA.²²²

During the tenth quarter, we met with MPD's Assistant Chief of Human Services and with representatives from IPS to discuss various specific deficiencies in MPD's FTO program and to recommend remedies. In response to the issues discussed during the meeting, the Director of IPS identified several steps intended to improve coordination between IPS and MPD officers who currently serve as MPOs primarily responsible for the field training and supervision of PPOs pending DOJ's approval of the Enhanced Field Training Officer Program Protocol.

During the twelfth quarter, we monitored the status of MPD's implementation of the DOJ-approved Enhanced Field Training Officer Program Protocol. We found that MPD still has not implemented a comprehensive plan for the selection of FTOs.²²³ MPD reported that IPS created a one-day orientation program for adjunct FTO instructors regarding the FTO curriculum for Field Training Sergeants and Field Training Supervisors, which was held at IPS on June 28, 2005.²²⁴

Last quarter, we again reviewed the status of MPD's implementation of its revised FTO program. We have found that MPD has made significant strides in improving the evaluation process for new recruits, including implementation of daily evaluation forms that must be completed by the probationary officer's FTO or FTO supervisor and maintained in a binder that is the responsibility of the probationary officer. Although the training delivery aspect of the FTO program,

²²¹ Paragraph 135 of the MOA requires that the FTO selection criteria "address, inter alia, knowledge of MPD policies and procedures, interpersonal and communication skills, cultural and community sensitivity, teaching aptitude, performance as a law enforcement officer, with particular attention paid to allegations of excessive force and other misconduct, history, experience as a trainer, post-Academy training received, specialized knowledge, and commitment to police integrity."

²²² OIM Ninth Quarterly Report at 64.

²²³ OIM Twelfth Quarterly Report at 82.

²²⁴ MPD July 2005 Progress Report at 35.

including the evaluation process for probationary officers has improved, we found that MPD still has not developed formal criteria for the selection of FTOs as required by paragraphs 121.f and 135 of the MOA. Moreover, MPD has not yet implemented a comprehensive, specialized training program for FTOs.²²⁵

C. Substantial Compliance Evaluation

MPD is in substantial compliance with MOA paragraph 119, which requires MPD to perform semi-annual reviews of all use of force training components to ensure quality assurance, consistency, and compliance with applicable law and MPD policy.

MPD is not in substantial compliance with MOA paragraph 120, which requires MPD's OGC to review all MPD training materials. Last quarter, MPD reported that the OGC performed a review of all lesson plans not previously approved by that office. In the coming quarter, we will evaluate OGC's review of lesson plans.

MPD is not yet in substantial compliance with MOA paragraphs 121.a, 121.e, 121.g, and 123, which relate to Director of Training and CDS oversight of the quality of all use of force training, establishment of procedures for evaluating all training, and the performance of regular needs assessments related to use of force training. Although significant progress has been made, MPD has not yet completed implementation of its use of force training program.

MPD is not in substantial compliance with MOA paragraphs 121.b and 122, which relate to the development and implementation of a use of force training curriculum. Again, MPD has made significant progress but has not yet obtained DOJ approval of revisions to one of its 13 use of force-related lesson plans.

MPD is not in substantial compliance with MOA paragraphs 121.c and 121.f, which establish standards related to MPD's FTO program. DOJ has approved the Enhanced Field Training Officer Program Protocol, but it has not yet been implemented.

MPD is not in substantial compliance with MOA paragraphs 84, 98, 121.d, and 129 concerning the development and implementation of all in-service training and roll call curricula, including training programs

²²⁵ OIM Fourteenth Quarterly Report at 93-94.

for MPD supervisors and investigators. MPD has not obtained DOJ approval for 2 of its 16 in-service training lesson plans, not including use of force-related lesson plans.

MPD is not in substantial compliance with the requirements of MOA paragraphs 124 and 125, which relate to the maintenance of MPD's lessons plans, training records, and other training materials. Although, we found in the thirteenth quarter that MPD has enhanced its systems for tracking and administering remedial training, there remains room for improvement in this area.

MPD is not in substantial compliance with MOA paragraphs 126 and 127, which relate to MPD's use of force training curriculum. MPD has not yet obtained DOJ approval for all elements of its use of force training curriculum.

MPD is in substantial compliance with MOA paragraph 128 concerning the training of MPD recruits, officers, supervisors, and managers in cultural diversity and community policing by obtaining DOJ approval of its Cultural Diversity and Sensitivity Awareness Lesson Plan. We will continue to monitor MPD's cultural diversity and sensitivity in-service training to evaluate MPD's implementation of this lesson plan.

MPD is in substantial compliance with MOA paragraphs 130 and 131, which require that MPD training instructors engage students in meaningful dialogue, use "real life" experiences in use of force training, and conduct use of force training in an efficient and productive manner. For nearly two years, following a brief false start at the beginning of its revised use of force training, we have consistently found MPD's use of force instructors to be knowledgeable, professional, and engaging and to make effective use of pedagogical techniques such as using "real life" situations to illustrate principles related to the use of force.

MPD is in substantial compliance with the requirements related to role play and the Range 2000 course contained in MOA paragraphs 132.a through 132.c. In our Ninth Quarterly Report, we noted that, at the time of our monitoring during that quarter, MPD did not have the capacity to videotape the role play component of firearms and use of force in-service training, and we stated that we would revisit this area.²²⁶ We have since confirmed that MPD is now videotaping role

²²⁶ OIM Ninth Quarterly Report at 63.

play sessions in connection with its in-service use of force training at the Federal Law Enforcement Training Center.²²⁷

MPD is not in substantial compliance with MOA paragraph 133, which requires distribution and explanation of the terms of the MOA to all MPD officers and employees and timely updates to in-service training. As discussed in Section II.A.2.b above, MPD's attendance rate for in-service training in 2004 was well below the 95% threshold.

MPD is not in substantial compliance with MOA paragraphs 134 and 135, which require the development of a DOJ-approved plan for addressing the needs of training instructors and the development and implementation of eligibility and selection criteria for all academy, field training, and formal training (other than roll call) positions. MPD has not obtained DOJ approval for or implemented these required items.

MPD is in substantial compliance with MOA paragraphs 136 and 137, which relate to the establishment of an instructor training and certification program. MPD has selected the MPCTC to train MPD's police instructors. We have found the MPCTC program to be comprehensive and to satisfy the requirements of MOA paragraphs 136 and 137.

MPD is not currently in compliance with MOA paragraphs 138 and 139, which require MPD to exercise adequate management supervision over its training instructors to ensure that MPD's training is consistent with MPD policy, the law, and proper police practices and that the training is conducted in accordance with approved lesson plans. Although we have consistently found MPD's instructors to be knowledgeable and professional, MPD has not yet obtained DOJ approval for revisions to all of the use of force-related lesson plans comprising its training curriculum, and therefore MPD cannot be found to have satisfied these provisions at this time.

MPD is not in substantial compliance with MOA paragraphs 140 and 142, which relate to officer completion of firearms training and re-certification. Although, as discussed in Section II.B.2.a above, MPD's firearms re-qualification attendance rate is well above the 95% threshold, MPD has not yet obtained DOJ approval for the lesson plans related to the pistol qualification program.

²²⁷ OIM Twelfth Quarterly Report at 84.

MPD is in substantial compliance with MOA paragraphs 141 and 143 regarding firearms instructors and the presentation of firearms instruction. We have consistently found MPD's firearms instructors to be highly competent and professional.

MPD is in substantial compliance with MOA paragraph 144 regarding regular consultations with Glock representatives.

MPD is in substantial compliance with MOA paragraphs 145 and 148, which require the development and implementation of a comprehensive canine training curriculum and lesson plans, assurance that MPD handlers are capable of implementing MPD's canine policy, and certification of MPD's canine instructors. DOJ has approved the Canine Operations Manual, and MPD is in substantial compliance with MOA paragraph 147.

MPD currently is in substantial compliance with MOA paragraph 146's requirement that 100% of its canines be "professionally bred" and certified in the Handler-Controlled Alert Methodology. Moreover, we have found that MPD's canine training is consistently of a very high quality.

D. Recommendations

We reiterate our encouragement that MPD implement all of the elements of the Enhanced Field Training Officer Program Protocol as quickly as possible and begin applying formal criteria for the selection of FTOs.

VIII. Specialized Mission Units (MOA ¶¶ 149-159)

A. Requirements

The MOA recognizes that, from time to time, MPD may use both temporary and permanent specialized mission units ("SMUs") to achieve various legitimate law enforcement objectives. As to such SMUs, the MOA establishes the following requirements:

- Pre-screening procedures must be employed to ensure that only officers suited to participate in such SMUs are permitted to participate. Participating officers must
 - o be current on firearms certification and training, and

- o have a satisfactory record relating to the use of force, be adequately trained, be generally fit for service in a patrol unit, and match the needs of the SMU.
- MPD must disqualify from participation in such SMUs (i) officers against whom there have been filed numerous credible complaints for excessive use of force and (ii) officers who are otherwise known to have used questionable force frequently in the past;
- Advance notice of which officers will be participating in such SMUs must be provided to unit supervisors to permit enhanced supervision or tailoring of activities;
- MPD must establish adequate supervision and clear lines of supervision and accountability for such SMUs and must ensure that supervisory officers who volunteer for such units maintain their other supervisory responsibilities;
- Adequate specialized training (including training in relevant legal issues) must be provided to officers serving in such units; and
- All SMU participants must be closely and continually monitored. Such monitoring must encompass a review of any complaints filed against officers participating in SMU activities.

Further, the MOA requires that MPD develop a plan, subject to approval of DOJ, to limit the total number of hours that may be worked by a participating officer during any twenty-four-hour period and during any seven-day period. These limitations are designed to prevent officer fatigue.

B. Status and Assessment

1. SMU Special Requirements

On March 30, 2004, DOJ approved MPD's revised Specialized Mission Unit General Order.²²⁸ MPD, however, requested and received leave to delay implementation of the approved policy to allow time for

²²⁸ MPD January 2006 Progress Report at 12.

outstanding issues related to the Specialized Mission Unit After-Action Report to be resolved.

During the twelfth quarter, even though the Specialized Mission Unit General Order has not been implemented, we met with supervisors from several SMUs and reviewed SMU SOPs to assess MPD's current status with respect to MOA's requirements regarding pre-screening mechanisms for SMU participants;²²⁹ development of a pool of seasoned and competent officers with exemplary records and up-to-date training who are interested in participating in an SMU;²³⁰ implementation of specific tracking of enforcement actions, complaints, and misconduct investigations involving SMU members;²³¹ and provisions for specialized training.²³² In addition, we interviewed supervisors from the following citywide SMUs: Major Narcotics Strike Force, Emergency Response Team ("ERT"), and the Warrant Squad. We also interviewed the supervisor for the Fifth District's Focused Mission Unit.²³³

We found that only the ERT's SOPs contained a written description of the candidate criteria and selection process to be used in screening MPD officers for assignment to the SMU. Neither the Warrant Squad nor the Major Narcotics Strike Force has written selection criteria for members. Commanders of both units reported that candidates for assignment to the units are subjected to a screening process involving a review of past performance, including disciplinary history, and an interview. The District Commander is responsible for the selection of personnel assigned to the Fifth District's Focused Missions Unit.

None of the SMUs we reviewed maintains a special file of performance records or disciplinary actions for each member. Records of adverse disciplinary actions with respect to members of SMUs are maintained at the Department Discipline Review Office, which is the central repository for records of adverse disciplinary actions taken against any MPD officer. None of the SMUs employs special tracking of misconduct allegations directed at members of the units.

²²⁹ MOA at ¶ 150.

²³⁰ *Id.* at ¶ 152.

²³¹ *Id.* at ¶ 158.

²³² *Id.* at ¶ 156.

²³³ OIM Twelfth Quarterly Report at 87-89.

Only the ERT reported requiring members to participate in extensive special training beyond the Department-wide requirement of 40 hours of annual in-service training and annual pistol re-certification. ERT members train two days each week and a full week every six months. The Warrant Squad commander reported that officers in that unit have received training in entry and special investigative techniques from the United States Marshals Service. The Major Narcotics Strike Force has, from time to time, received special training regarding drug law enforcement operations from the Drug Enforcement Agency and the Federal Bureau of Investigation.

Our substantive monitoring with respect to SMUs will continue once implementation of the Specialized Mission Unit General Order has begun. The OIM has a pending request to MPD that we receive a list of all officers assigned to all SMUs within one week of DOJ's final approval of the Specialized Mission Unit General Order.²³⁴ This list will be useful in facilitating our further review of MPD's compliance with MOA paragraphs 149 through 158.

2. Limitation on Work Hours

On February 23, 2004, MPD submitted to DOJ a draft general order entitled Limitation on Work Hours, which is intended to address the requirement under MOA paragraph 159 that MPD limit the total number of hours an officer may work in order to prevent officer fatigue. On June 10, 2004, DOJ provided MPD with comments to this draft general order, and MPD responded later that month. DOJ returned comments to the draft general order on October 29, 2004. Despite MPD's decision not to adopt certain of DOJ's recommendations, DOJ has advised MPD that the draft Limitations on Work Hours General Order satisfies the requirements of paragraph 159 of the MOA. MPD published this general order on January 6, 2005.

On May 10, 2005, however, MPD notified DOJ of a requested change to the Limitations on Work Hours General Order related to monitoring by the Court Liaison Division of members' hours unrelated to court time. On May 18, 2005, DOJ approved MPD's requested change, and the revised order was issued to the Department on June 9, 2005.²³⁵

²³⁴ OIM Fourth Quarterly Report at 75.

²³⁵ OIM Fourteenth Quarterly Report at 100.

This quarter, we meet with a representative from OPR to discuss MPD's systems for tracking individual officers' compliance with the limitations on the hours they are permitted to work. MPD does not currently have a centralized system for monitoring whether officers are working more than the 32 off-duty hours per week permitted under the policy. Also, although secondary employers generally are provided a PD 180, entitled "Employer's Agreement to Conditions of Employment," that describes the limitations on the number of off-duty hours an officer is permitted to work, there is no obligation for outside employers to disclose to MPD hours or pay record information. Absent the establishment of an auditing system and the availability of relevant records to MPD auditors or supervisors, MPD will remain unable to assess compliance with the Limitations on Work Hours General Order.

C. Substantial Compliance Evaluation

MPD is not in substantial compliance with MOA paragraphs 149-158, which relate to SMUs. Although MPD obtained DOJ approval for its Specialized Mission Unit General Order earlier this year, the order has not yet been implemented.

MPD is not in compliance with MOA paragraph 159 regarding limitations on the total number of hours officers may work in a 24-hour period and in a 7-day week. MPD published the Limitations on Work Hours General Order during the thirteenth quarter, and it was revised last quarter. MPD, however, does not currently have a system for tracking or auditing officers' compliance with the general order's limitations on the number of off-duty hours that members are permitted to work.

D. Recommendations

We strongly encourage MPD to implement the Specialized Mission Unit General Order as soon as possible so that the OIM can begin its monitoring in this area. We also remind MPD that the OIM has a pending request to MPD that we receive a list of all officers assigned to all SMUs within one week of DOJ's final approval of the Specialized Mission Unit General Order.

IX. Public Information (MOA ¶ 160)

A. Requirements

The MOA requires MPD to prepare quarterly reports, to be issued publicly, that include statistics relating to the use of force by MPD officers. The aggregate statistics must be broken down:

- By geographic areas of the City;
- By race-ethnicity of the subject of the use of force;
- By weapon used; and
- By enforcement action taken in conjunction with the use of force.

In addition, these public reports must include information about use of force investigations that have been conducted and information regarding the disposition of excessive use of force allegations.

B. Status and Assessment

In our Fourth Quarterly Report, we found that MPD had made significant improvements with respect to the public reporting of use of force data and that the 2002 FIT Annual Report, published in April 2003, “meets almost all of the MOA’s requirements.” We suggested, however, that, in future reports, MPD should clarify the different types of non-lethal force discussed to make the statistics more understandable to the public.²³⁶

During the eleventh quarter, we reviewed MPD’s Web site for updated reports containing use of force statistics. We were able to find only the following outdated reports: (1) MPD Firearm Discharge Statistics 2003, Statistics as of February 2004; (2) MPD Less Lethal Use of Force Statistics 2003, Statistics as of March 31, 2003; (3) MPD Firearm Discharge Statistics 2003, Statistics as of March 31, 2003; (4) MPD Less Lethal Use of Force Statistics 2003, Statistics as of September 30, 2003; (5) MPD Firearm Discharge Statistics 2003,

²³⁶ OIM Fourth Quarterly Report at 76-77.

Statistics as of September 30, 2003; and (6) MPD Less Lethal Use of Force Statistics 2003, Statistics as of February 2003.²³⁷

During the twelfth quarter, MPD provided us with Use of Force Quarterly Statistics Reports for each of the quarters of 2004, which we reviewed for compliance with the requirements of paragraph 160 of the MOA. We also met with the FIT personnel responsible for compiling these statistics to discuss the reports. During our review of the reports, we identified several discrepancies in the statistics, which we shared with FIT. For example, some of the information contained in the summary sections of the reports did not correspond with data contained in the body of the reports. We also discussed with FIT our concern that the presentation of some of the information contained in the reports was difficult to follow.²³⁸

On June 29, 2005, MPD circulated use of force statistics for the first quarter of 2005.²³⁹ We reviewed this report and found that it is a significant improvement over the reports posted reflecting 2004 statistics. However, we found minor statistical errors in the latest report, and MPD still is not including a breakdown indicating the race or ethnicity of the subject of uses of force by MPD district as required by paragraph 160 of the MOA.²⁴⁰

MPD reports that the duties of the UFRB Administrator now include tracking the Department's use of force statistics and preparing quarterly use of force reports. This quarter, the UFRB Administrator performed an audit of the 2005 use of force statistics reported by MPD, which identified some discrepancies in information reported by the Department.²⁴¹ Accordingly, MPD has removed its two 2005 reports from the Department's Web site and is currently revising the statistics. MPD also is waiting until its review of the prior 2005 reports is completed before it issues additional quarterly reports related to uses of force in 2005.²⁴²

²³⁷ OIM Eleventh Quarterly Report at 104.

²³⁸ OIM Twelfth Quarterly Report at 91.

²³⁹ E-mail from Maureen O'Connell re "MOA 160: Quarterly Use of Force Statistics, Q1 2005" (dated June 29, 2005).

²⁴⁰ OIM Fourteenth Quarterly Report at 102.

²⁴¹ MPD January 2006 Progress Report at 25.

²⁴² *Id.*

C. Substantial Compliance Evaluation

MPD is not in substantial compliance with MOA paragraph 160 regarding public reporting of use of force information.

X. Monitoring, Reporting, and Implementation (MOA ¶¶ 161-193)

A. Requirements

The MOA requires MPD to designate an MPD Compliance Coordinator whose responsibility is to serve as the liaison among MPD, the Independent Monitor, and DOJ. The Compliance Coordinator's responsibilities include:

- Coordinating MPD compliance and implementation activities relating to the MOA;
- Facilitating the provision of data, documents and access to other MPD personnel for both the Independent Monitor and DOJ;
- Ensuring the proper maintenance of relevant documents and records relating to the MOA; and
- Working with the leadership of MPD to delegate compliance tasks to appropriate MPD personnel.

In addition to fulfilling these functions, the City and MPD are required to file with DOJ and the Independent Monitor a status report describing all steps taken during the reporting period designed to comply with each provision of the MOA.

B. Status and Assessment

1. Compliance Monitoring Team

Throughout the monitorship, we have been consistently impressed by -- and are grateful for -- the professionalism, efficiency, and responsiveness of MPD's CMT.

2. Full and Unrestricted Access to Staff, Facilities, and Documents

As we have reported previously, MPD continues to provide us with full and unrestricted access to MPD staff, facilities, and documents.

Among other groups, MPD's CMT, IAD, FIT, IPS, and OPR deserve particular recognition. We have never had a problem with MPD or any of its personnel in this regard.

3. MPD Quarterly MOA Progress Reports

MPD published its quarterly MOA Progress Report on January 13, 2005. The OIM appreciates MPD's timely issuance of this report, which we found to be well written, well organized, and generally informative. Once again, we found MPD's Progress Report to be extremely useful in preparing this quarterly report.

C. Substantial Compliance Evaluation

MPD and the City are in substantial compliance with MOA paragraph 167, which requires that the OIM be afforded full and unrestricted access to all MPD and City staff, facilities, and documents. We have never experienced anything less than full and complete cooperation from MPD and the City.

MPD is in substantial compliance with MOA paragraph 173, which requires the assignment of a compliance coordinator. MPD's CMT has been highly effective in coordinating MPD compliance activities in connection with the MOA; facilitating access to MPD employees and the provision to the OIM of data and documents; ensuring that documents and records related to the MOA are maintained; and assisting MPD personnel in their compliance tasks.

MPD and the City are in substantial compliance with MOA paragraph 175, which requires the submission of quarterly progress reports to the OIM. The parties' quarterly reports are timely and very useful in the preparation of the OIM's reports.

The City and MPD also are in substantial compliance with the provision of MOA paragraph 176 requiring maintenance of all records documenting compliance with the terms of the MOA and all documents required by or developed pursuant to the MOA. MPD and the City both have been willing and generally able to produce for the OIM all material we have requested in connection with our monitoring activity. We have not evaluated the second provision of the paragraph 176 requiring the maintenance of officer training records during an officer's employment and for three years thereafter. This is an area we will evaluate in the future.

Conclusion

We have now provided six quarters of comprehensive substantial compliance assessments across the entire scope of the MOA's requirements. MPD and the City continue to make progress toward substantial compliance with the MOA. The parties' achievements in areas such as the performance of the UFRB, implementation of the Handler-Controlled Alert Methodology in the Canine Unit, and investigations of allegations of police misconduct by OPC are particularly noteworthy. However, the list of areas in which MPD and the City continue to fall short of substantial compliance is quite long.

MPD's establishment this quarter of a functional internal audit and monitoring unit -- the Quality Assurance Unit within the Office of Professional Responsibility -- is an important, if somewhat overdue, development. We will monitor the QAU's performance as well as continue to provide it with technical assistance based on our experience reviewing and evaluating MPD with reference to the MOA's rigorous standards. MPD has devoted substantial energy, time, and funding resources to developing and implementing the reforms required under the MOA. The QAU's mission will be to ensure that the City's and MPD's investment in the Department's professionalism and responsiveness to the community continues to pay dividends in the future, even after the termination of the monitorship. Although establishment of an internal audit and monitoring function such as the QAU is not specifically required under the terms of the parties' agreement with DOJ, the establishment of this unit reflects the City's and MPD's commitment to institutionalizing the reforms embodied by the MOA.



Michael R. Bromwich
Independent Monitor

January 31, 2006

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Appendix A (Acronyms)

| | |
|-------|-----------------------------------------------------------------------------------------------------------|
| CCRB | Citizen Complaint Review Board (<i>see</i> PCB below) |
| CDS | Curriculum Development Specialist |
| CMT | Compliance Monitoring Team |
| DCORM | District of Columbia Office of Risk Management |
| DDRO | Department Discipline Review Office |
| DOJ | Department of Justice |
| ERT | Emergency Response Team |
| FIT | Force Investigation Team |
| FOP | Fraternal Order of Police |
| FTO | field training officer |
| IAD | Internal Affairs Division, Police Misconduct Section (formerly the Office of Internal Affairs, or OIA) |
| IPS | Institute of Police Science |
| IQ | Intranet Quorum |
| MOA | Memorandum of Agreement among the District of Columbia, MPD, and DOJ |
| MOU | Memorandum of Understanding between MPD and OPC |
| MPD | Metropolitan Police Department |
| MPO | master patrol officer |
| OAG | Office of Attorney General |
| OC | oleoresin capsicum |
| OCCR | Office of Citizen Complaint Review (<i>see</i> OPC below) |
| OGC | Office of General Counsel |
| OIA | Office of Internal Affairs (<i>see</i> IAD above) |

| | |
|--------|----------------------------------------------------------------------------------------|
| OIM | Office of the Independent Monitor |
| OPC | Office of Police Complaints (formerly the Office of Citizen Complaint Review, or OCCR) |
| OPR | Office of Professional Responsibility |
| PCB | Police Complaints Board (formerly the Citizen Complaint Review Board, or CCRB) |
| PES | Performance Evaluation System |
| PPMS | Personnel Performance Management System |
| PPO | probationary patrol officer |
| PSA | patrol service area |
| QAU | Quality Assurance Unit |
| RFP | Request for Proposal |
| RIF | Reportable Incident Form |
| ROC | Regional Operations Command |
| SMU | specialized mission unit |
| SMUAAR | Specialized Mission Unit After-Action Report |
| SOD | Special Operations Division |
| SOP | standard operating procedure |
| UFIR | Use of Force Incident Report |
| UFRB | Use of Force Review Board |
| USAO | United States Attorney's Office |

Appendix B

Summary of Results of the OIM's Review of the Investigations Samples

1. Specific questions and results related to the administration and oversight of MPD investigations are summarized below.

- *Did the proper authority investigate the allegation? [MOA ¶¶ 57, 61, 64, 68, 72, 79, 80]*

| | Quarter | | | | | | |
|------|---------|--------|--------|-------|--------|--------|--------|
| | 9th | 10th | 11th | 12th | 13th | 14th | 15th |
| YES: | 100.0% | 100.0% | 100.0% | 96.5% | 100.0% | 100.0% | 100.0% |
| NO: | 0.0% | 0.0% | 0.0% | 3.5% | 0.0% | 0.0% | 0.0% |

- *Was the supervisor/official responsible for the investigation involved in the incident? [MOA ¶ 80]*

| | Quarter | | | | | | |
|------|---------|--------|--------|-------|--------|--------|-------|
| | 9th | 10th | 11th | 12th | 13th | 14th | 15th |
| YES: | 0.0% | 0.0% | 0.0% | 10.7% | 0.0% | 0.0% | 1.2% |
| NO: | 100.0% | 100.0% | 100.0% | 89.3% | 100.0% | 100.0% | 98.8% |

- *Did the supervisor/official responsible for the investigation have an apparent or potential conflict of interest related to the misconduct investigation? [MOA ¶ 80]*

| | Quarter | | | | | | |
|------|---------|--------|--------|-------|--------|-------|-------|
| | 9th | 10th | 11th | 12th | 13th | 14th | 15th |
| YES: | 0.0% | 0.0% | 0.0% | 4.2% | 0.0% | 1.5% | 1.2% |
| NO: | 100.0% | 100.0% | 100.0% | 95.8% | 100.0% | 98.5% | 98.8% |

- *Does the file include a report prepared by the investigator? [MOA ¶¶ 62, 65, 74, 102]*

| | Quarter | | | | | | |
|------|---------|-------|-------|--------|--------|-------|-------|
| | 9th | 10th | 11th | 12th | 13th | 14th | 15th |
| YES: | 99.1% | 82.4% | 98.5% | 100.0% | 100.0% | 97.5% | 97.2% |
| NO: | 0.9% | 17.6% | 1.5% | 0.0% | 0.0% | 2.5% | 2.8% |

- Does the investigator’s report include [MOA ¶¶ 62, 65, 74, 102]:
 - A description of the use of force incident or alleged misconduct?

| | Quarter | | | | | | |
|------|---------|--------|-------|-------|-------|--------|-------|
| | 9th | 10th | 11th | 12th | 13th | 14th | 15th |
| YES: | 100.0% | 100.0% | 98.1% | 99.2% | 97.9% | 100.0% | 98.7% |
| NO: | 0.0% | 0.0% | 1.9% | 0.8% | 2.1% | 0.0% | 1.3% |

- A summary of relevant evidence gathered?

| | Quarter | | | | | | |
|------|---------|-------|-------|-------|-------|--------|-------|
| | 9th | 10th | 11th | 12th | 13th | 14th | 15th |
| YES: | 100.0% | 97.5% | 76.2% | 99.1% | 98.6% | 100.0% | 93.0% |
| NO: | 0.0% | 2.5% | 23.8% | 0.9% | 1.4% | 0.0% | 7.0% |

- Proposed findings and analysis supporting findings?

| | Quarter | | | | | | |
|------|---------|-------|-------|-------|-------|--------|-------|
| | 9th | 10th | 11th | 12th | 13th | 14th | 15th |
| YES: | 96.7% | 98.9% | 88.6% | 92.8% | 98.6% | 100.0% | 73.5% |
| NO: | 3.3% | 1.1% | 11.4% | 7.2% | 1.4% | 0.0% | 26.5% |

- If the complaint was made at a location other than OPR, was it received by OPR within 24 hours or the next business day? [MOA ¶ 94]

| | Quarter | | | | | | |
|------|---------|-------|-------|-------|-------|-------------------|-------|
| | 9th | 10th | 11th | 12th | 13th | 14th ¹ | 15th |
| YES: | 33.1% | 29.6% | 43.8% | 79.9% | 35.1% | -- | 28.8% |
| NO: | 66.9% | 70.4% | 56.2% | 20.1% | 64.9% | -- | 71.2% |

¹ This quarter, there was an insufficient number of cases involving circumstances relevant to this issue to provide a basis for the development of reportable statistics.

- *Was the investigation completed within 90 days? [MOA ¶¶ 62, 65, 74, 103]*

| | Quarter | | | | | | |
|------|---------|-------|-------|-------|-------|-------|-------|
| | 9th | 10th | 11th | 12th | 13th | 14th | 15th |
| YES: | 66.9% | 52.5% | 52.5% | 47.9% | 68.4% | 83.3% | 85.7% |
| NO: | 33.1% | 47.5% | 47.5% | 52.1% | 31.6% | 16.7% | 14.3% |

- *If not completed within 90 days, were special circumstances for the delay explained? [MOA ¶¶ 62, 65, 74]²*

| | Quarter | | | | | | |
|------|---------|-------|-------|-------|-------|------|------|
| | 9th | 10th | 11th | 12th | 13th | 14th | 15th |
| YES: | 23.1% | 8.5% | 7.7% | 17.8% | 20.0% | -- | -- |
| NO: | 76.9% | 91.5% | 92.3% | 82.2% | 80.0% | -- | -- |

2. Specific questions and results related to the conduct of MPD investigations are summarized below.

- *Were group interviews avoided? [MOA ¶ 81.c]*

| | Quarter | | | | | | |
|------|---------|--------|-------|--------|--------|--------|--------|
| | 9th | 10th | 11th | 12th | 13th | 14th | 15th |
| YES: | 100.0% | 100.0% | 98.3% | 100.0% | 100.0% | 100.0% | 100.0% |
| NO: | 0.0% | 0.0% | 1.7% | 0.0% | 0.0% | 0.0% | 0.0% |

- *Were all appropriate MPD officers, including supervisors, interviewed? [MOA ¶ 81.e]*

| | Quarter | | | | | | |
|------|---------|-------|-------|-------|-------|-------|-------|
| | 9th | 10th | 11th | 12th | 13th | 14th | 15th |
| YES: | 99.3% | 96.2% | 94.1% | 89.6% | 95.3% | 96.1% | 98.7% |
| NO: | 0.7% | 3.8% | 5.9% | 10.4% | 4.7% | 3.9% | 1.3% |

² This quarter, there was an insufficient number of cases involving circumstances relevant to this issue to provide a basis for the development of reportable statistics.

- *If practicable and appropriate, were interviews of complainants and witnesses conducted at sites and times convenient to them? [MOA ¶ 81.b]*

| | Quarter | | | | | | |
|------|---------|--------|--------|--------|-------|--------|--------|
| | 9th | 10th | 11th | 12th | 13th | 14th | 15th |
| YES: | 100.0% | 100.0% | 100.0% | 100.0% | 98.6% | 100.0% | 100.0% |
| NO: | 0.0% | 0.0% | 0.0% | 0.0% | 1.4% | 0.0% | 0.0% |

- *Were inconsistencies among officers and/or witnesses documented and addressed? [MOA ¶ 81.g]*

| | Quarter | | | | | | |
|------|---------|-------|-------|-------|-------|--------|-------|
| | 9th | 10th | 11th | 12th | 13th | 14th | 15th |
| YES: | 100.0% | 93.1% | 93.3% | 94.7% | 99.0% | 100.0% | 83.2% |
| NO: | 0.0% | 6.9% | 6.7% | 5.3% | 1.0% | 0.0% | 16.8% |

- *Was the conduct of each officer involved in the event adequately addressed for its propriety? [MOA ¶ 82]*

| | Quarter | | | | | | |
|------|---------|-------|-------|-------|--------|-------|--------|
| | 9th | 10th | 11th | 12th | 13th | 14th | 15th |
| YES: | 98.1% | 97.8% | 99.0% | 89.2% | 100.0% | 98.5% | 100.0% |
| NO: | 1.9% | 2.2% | 1.0% | 10.8% | 0.0% | 1.5% | 0.0% |

- *Was all apparent misconduct adequately addressed? [MOA ¶ 82]*

| | Quarter | | | | | | |
|------|---------|-------|-------|-------|--------|-------|--------|
| | 9th | 10th | 11th | 12th | 13th | 14th | 15th |
| YES: | 98.3% | 98.1% | 99.0% | 91.8% | 100.0% | 98.5% | 100.0% |
| NO: | 1.7% | 1.9% | 1.0% | 8.2% | 0.0% | 1.5% | 0.0% |

- *Did the investigator avoid giving automatic preference to an officer's statement over a citizen's statement? [MOA ¶ 99]*

| | Quarter | | | | | | |
|------|---------|-------|-------|-------|-------|--------|-------|
| | 9th | 10th | 11th | 12th | 13th | 14th | 15th |
| YES: | 93.4% | 71.6% | 97.7% | 96.8% | 98.0% | 100.0% | 99.3% |
| NO: | 6.6% | 28.4% | 2.3% | 3.2% | 2.0% | 0.0% | 0.7% |

- *Was the basis for closing the investigation without further investigation something other than the withdrawal of the complaint or the unavailability of the complainant? [MOA ¶ 101]*

| | Quarter | | | | | | |
|------|---------|-------|-------|-------|-------|------|--------|
| | 9th | 10th | 11th | 12th | 13th | 14th | 15th |
| YES: | 98.6% | 98.0% | 98.1% | 97.9% | 99.2% | -- | 100.0% |
| NO: | 1.4% | 2.0% | 1.9% | 2.1% | 0.8% | -- | 0.0% |

- *Were the findings based upon a preponderance of the documented evidence? [MOA ¶ 98]*

| | Quarter | | | | | | |
|------|---------|--------|--------|-------|--------|--------|-------|
| | 9th | 10th | 11th | 12th | 13th | 14th | 15th |
| YES: | 100.0% | 100.0% | 100.0% | 98.5% | 100.0% | 100.0% | 98.5% |
| NO: | 0.0% | 0.0% | 0.0% | 1.5% | 0.0% | 0.0% | 1.5% |

- *Did all allegations of misconduct addressed by the investigation result in a finding of either unfounded, sustained, insufficient facts, or exonerated? [MOA ¶ 100]*

| | Quarter | | | | | | |
|------|---------|-------|-------|-------|-------|-------|-------|
| | 9th | 10th | 11th | 12th | 13th | 14th | 15th |
| YES: | 89.8% | 87.7% | 93.0% | 91.5% | 84.4% | 90.7% | 56.9% |
| NO: | 10.2% | 12.3% | 7.0% | 8.5% | 15.6% | 9.3% | 43.1% |

3. Specific questions and results related the unit commanders' review of MPD investigations are summarized below.

- *Did the unit commander review the investigation to ensure its completeness and that the findings are supported by the evidence? [MOA ¶ 66]*

| | Quarter | | | | | | |
|------|---------|-------|--------|-------|--------|--------|-------|
| | 9th | 10th | 11th | 12th | 13th | 14th | 15th |
| YES: | 100.0% | 94.7% | 100.0% | 97.9% | 100.0% | 100.0% | 99.2% |
| NO: | 0.0% | 5.3% | 0.0% | 2.1% | 0.0% | 0.0% | 0.8% |

4. Below is a summary of the OIM reviewers' overall findings with respect to the completeness and sufficiency of MPD investigations.

- *Was the investigation complete?*

| | Quarter | | | | | | |
|------|----------------|-------------|-------------|-------------|-------------|-------------|-------------|
| | 9th | 10th | 11th | 12th | 13th | 14th | 15th |
| YES: | 58.8% | 50.4% | 65.0% | 56.2% | 69.9% | 72.7% | 83.3% |
| NO: | 41.2% | 49.6% | 35.0% | 43.8% | 30.1% | 27.3% | 16.7% |

- *Was the investigation sufficient?*

| | Quarter | | | | | | |
|------|----------------|-------------|-------------|-------------|-------------|-------------|-------------|
| | 9th | 10th | 11th | 12th | 13th | 14th | 15th |
| YES: | 74.9% | 58.3% | 75.1% | 67.6% | 75.7% | 81.2% | 86.2% |
| NO: | 25.1% | 41.7% | 24.9% | 32.4% | 24.3% | 18.8% | 13.8% |

MOA SUBSTANTIAL COMPLIANCE MATRIX

| MOA ¶ | MOA Provision | MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED | DEFINITION OF SUBSTANTIAL COMPLIANCE | DATA SOURCES |
|-------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------|--------------------------------------|--------------|
| | I. INTRODUCTION | | | |
| 1 | <p>In January 1999, District of Columbia Mayor Anthony A. Williams and Chief Charles H. Ramsey requested the Department of Justice to review all aspects of the Washington Metropolitan Police Department’s use of force. This unprecedented request indicated the City and the Chief’s commitment to minimizing the risk of excessive use of force in the Washington Metropolitan Police Department (MPD) and to promoting police integrity. Because of the unusual genesis of the investigation—at the request of the agency to be investigated—the Department of Justice agreed that, parallel with its pattern or practice investigation, it would provide MPD with technical assistance to correct identified deficiencies during the course of the investigation. The Department of Justice conducted the investigation requested by the City, and analyzed every reported use of force and citizen complaint alleging excessive use of force during the period from 1994 to through early 1999. The Department of Justice also examined MPD’s policies, practices, and procedures related to use of force.</p> | NA | NA | NA |
| 2 | <p>In addition to conducting an investigation, the Department of Justice has provided MPD with on-going technical assistance recommendations regarding its use of force policies and procedures, training, investigations, complaint handling, canine program, an early warning system. Based upon these recommendations, MPD has begun to implement necessary reforms in the manner in which it investigates, monitors, and manages use of force issues.</p> | NA | NA | NA |

| MOA ¶ | MOA Provision | MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED | DEFINITION OF SUBSTANTIAL COMPLIANCE | DATA SOURCES |
|-------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3 | <p>The Department of Justice, the District of Columbia, and the District of Columbia Metropolitan Police Department, share a mutual interest in promoting effective and respectful policing. They join together in entering this agreement in order to minimize the risk of excessive use of force, to promote the use of the best available practices and procedures for police management, and to build upon recent improvements MPD has initiated to manage use of force issues. The parties acknowledge that additional reforms may be appropriate in order to identify and to prevent discriminatory law enforcement. The parties are currently reviewing officer communications on Mobile Data Terminals to identify unlawful or otherwise inappropriate conduct. Based upon the outcome of this review, MPD agrees to implement appropriate reforms.</p> | | <ol style="list-style-type: none"> 1. Implementation of systems to monitor Mobile Data Terminal communications. 2. Preparation of regular assessments related to the monitoring of MDT communications. 3. Implementation of appropriate reforms to address unlawful or inappropriate conduct identified by monitoring MDT communications. | <ol style="list-style-type: none"> 1. Review MPD program for monitoring MDT communications. 2. Review MPD assessments related to the monitoring of MPD. 3. Review diversity and profiling training materials. 4. Review training records. 5. Review MPD policies and reforms implemented in response to unlawful or inappropriate conduct identified by the monitoring of MDT communications. |
| 4 | <p>This agreement is effectuated pursuant to the authority granted DOJ under the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. §14141) to seek declaratory or equitable relief to remedy a pattern or practice of conduct by law enforcement officers that deprive individuals of rights, privileges or immunities secured by federal law.</p> | NA | NA | NA |
| 5 | <p>Nothing in this Agreement is intended to alter the lawful authority of MPD police officers to use reasonable and necessary force, effect arrests and file charges, conduct searches or make seizures, or otherwise fulfill their law enforcement obligations to the people of the District of Columbia in a manner consistent with the requirements of the Constitution and laws of the United States and the District of Columbia.</p> | NA | NA | NA |
| 6 | <p>Nothing in this Agreement is intended to: (a) alter the existing collective bargaining agreements between the City and MPD employee bargaining units; or (b) impair the collective bargaining rights of employees in those units under law.</p> | NA | NA | NA |

| MOA ¶ | MOA Provision | MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED | DEFINITION OF SUBSTANTIAL COMPLIANCE | DATA SOURCES |
|--------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------|---------------------------------------------|---------------------|
| 7 | This Agreement constitutes the entire integrated agreement of the parties. With the exception of the latest working drafts and correspondence resulting from the technical assistance described in paragraph 2, no prior drafts or prior or contemporaneous communications, oral or written, shall be relevant or admissible for purposes of determining the meaning of any provisions herein in any litigation or any other proceeding. | NA | NA | NA |
| 8 | This Agreement is binding upon the parties hereto, by and through their officials, agents, employees, and successors. This Agreement is enforceable only by the parties. No person or entity is intended to be a third party beneficiary of the provisions of this Agreement for purposes of any civil, criminal, or administrative action, and accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Agreement. This Agreement is not intended to impair or expand the right of any person or organization to seek relief against the District Columbia for its conduct or the conduct of MPD officers. This Agreement does not constitute an admission, adjudication, or finding on the merits in any action or proceeding. This Agreement does not authorize, nor shall it be construed to authorize, access to any City or MPD documents, except as expressly provided by this Agreement, by persons or entities other than DOJ, the City, and the Independent Monitor. | NA | NA | NA |
| 9 | The term “actively resisting” means the subject is making physically evasive movements to defeat the officer’s attempt at control, including bracing, tensing, pushing, or verbally signaling an intention not to be taken into or retained in custody, provided that the intent to resist has been clearly manifested. | NA | NA | NA |
| 10 | The term “CCRB” means the Citizen Complaint Review Board. | NA | NA | NA |
| 11 | The term “City” means the City of the District of Columbia. | NA | NA | NA |

| MOA ¶ | MOA Provision | MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED | DEFINITION OF SUBSTANTIAL COMPLIANCE | DATA SOURCES |
|-------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------|--------------------------------------|--------------|
| 12 | The term “complaint” means any complaint by a member of the public regarding MPD services, policy or procedure, claims for damages (which allege officer misconduct) or officer misconduct; and any allegation of possible misconduct made by an MPD officer. All complaints shall be recorded on the complaint form described in paragraph 88. A complaint may be initiated by any of the methods set forth in paragraph 92. For purposes of this Agreement, the term “complaint” does not include any allegation of employment discrimination. | NA | NA | NA |
| 13 | The term “complainant” means any person who files a complaint against an officer or MPD. | NA | NA | NA |
| 14 | The term “consult” means an exchange of information in a timely manner between the parties intended to consider the parties’ respective positions. This exchange of information shall include, but not be limited to, preliminary investigative files, reports, statements, photographs, and radio runs, as such items become available. | NA | NA | NA |
| 15 | The term “deadly force” means any use of force likely to cause death or serious physical injury, including but not limited to the use of a firearm or a strike to the head with a hard object. | NA | NA | NA |
| 16 | The term “Department” means the Washington Metropolitan Police Department. | NA | NA | NA |
| 17 | The terms “document” and “record” include all “writings and recordings” as defined by Federal Rules of Evidence Rule 1001(1). | NA | NA | NA |
| 18 | The term “DOJ” means the United States Department of Justice and its agents and employees. | NA | NA | NA |
| 19 | The term “effective date” means the day this Agreement is signed by all the parties. | NA | NA | NA |
| 20 | The term “FIT” means the Force Investigation Team. | NA | NA | NA |
| 21 | The term “including” means “including, but not limited to.” | NA | NA | NA |
| 22 | The term “Independent Monitor” or “Monitor” as used in this document means the Monitor established by Section X of this Agreement, and all persons or entities associated by the Monitor to assist in performing the monitoring tasks. | NA | NA | NA |

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| 23 | The term “MPD” means the Chief of Police of the Department and all employees under his or her command. | NA | NA | NA |
| 24 | The term “MPD employee” means any employee under the command of the Chief of Police, including civilian employees. | NA | NA | NA |
| 25 | The term “MPD unit” means any officially designated organization of officers within MPD, including Regional Operation Centers, Districts, Divisions, Groups, Patrol Service Areas, Teams, and specialized units. | NA | NA | NA |
| 26 | The term “manager” means an MPD supervisor at the rank of lieutenant or above. | NA | NA | NA |
| 27 | The term “non-deadly force” means any use of force that is neither likely nor intended to cause death or serious physical injury. | NA | NA | NA |
| 28 | The term “non-disciplinary action” refers to action other than discipline taken by an MPD supervisor to enable or encourage an officer to modify his or her performance. It may include: oral or written counseling; training; increased field supervision for a specified time period; referral to Police/Fire Clinic; referral to the Employee Assistance Program; a change of an officer’s partner; or a reassignment or transfer. | NA | NA | NA |
| 29 | The term “OCCR” refers to the Office of Citizen Complaint Review. | NA | NA | NA |
| 30 | The term “OPR” refers to the Office of Professional Responsibility. | NA | NA | NA |
| 31 | The term “police officer” or “officer” means any law enforcement officer employed by MPD, including supervisors and managers. | NA | NA | NA |
| 32 | The term “PPMS” means Personnel Performance Management System. | NA | NA | NA |

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| 33 | The term “serious use of force” means lethal and less-than-lethal actions by MPD officers including: (i) all firearm discharges by an MPD officer with the exception of range and training incidents and discharges at animals; (ii) all uses of force by an MPD officer resulting in a broken bone or an injury requiring hospitalization; (iii) all head strikes with an impact weapon; (iv) all uses of force by an MPD officer resulting in a loss of consciousness, or that create a substantial risk of death, serious disfigurement, disability or impairment of the functioning of any body part or organ; (v) all other uses of force by an MPD officer resulting in a death; and (vi) all incidents where a person receives a bite from an MPD canine. | NA | NA | NA |
| 34 | The term “supervisor” means sergeant or above (or anyone acting in those capacities) and non-sworn personnel with oversight responsibility for other officers and managers. | NA | NA | NA |
| 35 | The term “use of force” means any physical coercion used to effect, influence or persuade an individual to comply with an order from an officer. The term shall not include unresisted handcuffing. The term “use of force indicating potential criminal conduct by an officer” shall include all strikes, blows, kicks or other similar uses of force against a handcuffed subject. | NA | NA | NA |
| | II. GENERAL USE OF FORCE POLICY REQUIREMENTS | | | |
| | A. General Use of Force Policy | | | |
| 36 | DOJ acknowledges that MPD has initiated a number of important use of force policy reforms. The provisions in this section build upon MPD’s ongoing initiatives. | NA | NA | NA |

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| 37 | MPD shall complete development of a Use of Force Policy that complies with applicable law and current professional standards. The policy shall emphasize the goal of de-escalation and shall encourage officers to use advisements, warnings, and verbal persuasion when appropriate. The policy shall advise that the use of excessive force shall subject officers to discipline and possible criminal prosecution and/or civil liability. | <ol style="list-style-type: none"> 1. Development and distribution of appropriate use of force policy. 2. Proper training on use of force policy. 3. Proper implementation of use of force policy. | <ol style="list-style-type: none"> 1. Development and DOJ approval of use of force policy. 2. Distribution of approved use of force policy to MPD officers. 3. Training fairly, accurately, and properly summarizes principles of use of force policy. 4. ≥95% of MPD officers trained in approved use of force policy. 5. Use of force by MPD officers is consistent with principles and standards contained in the use of force policy in ≥95% of cases reviewed | <ol style="list-style-type: none"> 1. DOJ approved use of force policy. 2. Monitor in-service and new recruit training. 3. Review all FIT I and FIT II investigations. 4. Review sample of chain of command and OPR use of force investigations. 5. Review UFIRs. |
| 38 | The policy shall define and describe the types of force and the circumstances under which use of such force is appropriate. The policy shall prohibit officers from unholstering, drawing, or exhibiting a firearm unless the officer reasonably believes that a situation may escalate to the point where deadly force would be authorized. | Same as ¶ 37 above. | Same as ¶ 37 above. | Same as ¶ 37 above. |
| 39 | The policy shall require officers, when feasible, to identify themselves as police officers and to issue a warning before discharging a firearm. | Same as ¶ 37 above. | Same as ¶ 37 above. | Same as ¶ 37 above. |
| 40 | The policy shall require officers, immediately following a use of force, to inspect subjects for injury resulting from the use of force, and to obtain any necessary medical care. | Same as ¶ 37 above. | Same as ¶ 37 above. | Same as ¶ 37 above. |

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| | B. Use of Firearms Policy | | | |
| 41 | MPD shall complete development of a Use of Firearms policy that complies with applicable law and current professional standards. The policy shall prohibit officers from possessing or using unauthorized firearms or ammunition and shall inform officers that any such use may subject them to disciplinary action. The policy shall establish a single, uniform reporting system for all firearms discharges. The policy shall prohibit officers from obtaining service ammunition from any source except through official MPD channels, and shall specify the number of rounds MPD authorizes its officers to carry. | <ol style="list-style-type: none"> 1. Development and distribution of appropriate use of firearms policy. 2. Proper training on use of firearms policy. 3. Proper implementation of use of firearms policy. | <ol style="list-style-type: none"> 1. Development and DOJ approval of use of firearms policy. 2. Distribution of approved use of firearms policy to MPD officers. 3. Training fairly, accurately, and properly summarizes principles of use of firearms policy. 4. ≥95% of MPD officers trained in approved use of firearms policy. 5. Use of firearms by MPD officers is consistent with principles and standards contained in the Handling of Service Weapons General Order in ≥95% of cases reviewed. | <ol style="list-style-type: none"> 1. Review FIT investigations involving use of firearms. 2. Review chain of command investigations related to dog shootings. 3. Monitor in-service and new recruit training. 4. Monitor firearms qualification and requalification records. 5. Monitor armorer's records for cases where officer claims weapon malfunction. 6. Monitor misconduct cases related to failures to qualify and requalify. 7. Monitor disciplinary actions for failures to follow requirements of Handling of Service Weapons General Order. 8. Review UFIRs. |
| 42 | Within 30 days from the effective date of this agreement, the Mayor of the District of Columbia shall submit a request to the City Council for the District of Columbia for an amendment to Section 206.1 of Title 6A of the District of Columbia Municipal Regulations. The requested amendment shall permit the Chief of Police to determine the policy concerning the off-duty carrying of firearms by MPD officers while in the District of Columbia, including, but not limited to appropriate prohibitions regarding the carrying and or use of firearms in situations where an officer's performance may be impaired. | <ol style="list-style-type: none"> 1. Submission of request for amendment permitting Chief of Police to set policy for off-duty carrying of firearms. 2. Chief of Police establishes off-duty carrying of firearms while in DC, including limitations. | <ol style="list-style-type: none"> 1. Submission of amendment request by the Mayor. 2. Development and implementation of off-duty carrying of firearms policy. 3. Training fairly, accurately, and properly summarizes principles of off-duty carrying of firearms policy. 4. Carrying and use of off-duty firearms by MPD officers is consistent with principles and standards contained in off-duty carrying of firearms policy in ≥95% of cases reviewed. | <ol style="list-style-type: none"> 1. Review training in off-duty carrying policy. 2. Review allegations of violation of off-duty carrying policy. 3. Review of disciplinary actions related to violation of off-duty carrying policy. 4. Review FIT investigations to determine whether discharges and shootings involved authorized weapons. |

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| 43 | The policy shall require that when a weapon reportedly incurably malfunctions during an officer's attempt to fire, the weapon shall be taken out of service and an MPD armorer shall evaluate the functioning of the weapon as soon as possible. The policy shall require that, following the evaluation by the armorer, MPD shall document in writing whether the weapon had an inherent malfunction and was removed from service, malfunctioned because it was poorly maintained, or if the malfunction was officer-induced and a determination of the causes. | <ol style="list-style-type: none"> 1. Weapons that incurably malfunction promptly taken out of service. 2. MPD armorer promptly evaluates weapon and documents findings. 3. MPD properly documents weapon malfunctions and removal of weapons from service. | <ol style="list-style-type: none"> 1. Armorer completes analysis within 30 days, absent document special circumstances, in $\geq 95\%$ of cases involving alleged malfunction of weapon. 2. MPD properly and completely documents weapon malfunctions and reasons for malfunction in $\geq 95\%$ of cases. 3. Weapons taken out of service are properly disposed of in $\geq 95\%$ of cases of incurable malfunctions. 4. If the malfunction was officer-induced, proper remedial or disciplinary action was taken in $\geq 95\%$ of cases. 5. Weapon taken out of service and armorer notified in $\geq 95\%$ of cases where FIT investigations finds malfunction to be the cause of a weapon discharge. | <ol style="list-style-type: none"> 1. Review armory records. 2. Interview Glock representatives. 3. Review FIT investigations. 4. Review misconduct investigations and disciplinary records relating to officer-induced firearms malfunctions. 5. Review UFRB cases. 6. Monitor new recruit and in-service firearms training. |
| | C. Canine Policies and Procedures | | | |
| 44 | DOJ acknowledges that MPD has implemented an interim canine policy via teletype and has initiated significant improvements in its canine operations, including the introduction of a new handler-controlled alert curriculum and the use of new canines. | NA | NA | NA |

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| 45 | The policy shall limit off-leash canine deployments, searches and other instances where there is otherwise a significant risk of a canine bite to a suspect, to instances in which the suspect is wanted for a serious felony or is wanted for a misdemeanor and is reasonably suspected to be armed. MPD shall continue to require canine officers to have approval from an immediate supervisor (sergeant or higher) before the canine can be deployed. If the handler is unable to contact a canine unit supervisor, approval must be sought from a field supervisor before the canine can be deployed. The approving supervisor shall not serve as a canine handler in the deployment. MPD shall continue to issue a loud and clear announcement that a canine will be deployed and advise the suspect to surrender and remain still if approached by a canine. | <ol style="list-style-type: none"> 1. Development and distribution of appropriate canine policy. 2. Proper training on canine policy. 3. Proper implementation of canine policy. | <ol style="list-style-type: none"> 1. Development and DOJ approval of canine policies. 2. Distribution of canine policy to appropriate units. 3. Training fairly, accurately, and properly summarizes principles of Canine Policy. 4. ≥95% of canine unit deployments and bite incidents are consistent with principles and standards contained in the canine policy. | <ol style="list-style-type: none"> 1. Canine policies and general orders. 2. Monitor in-service, new recruit, and canine training. 3. Review FIT I and FIT II investigations. 4. Review canine deployment reports in canine database. 5. Interview canine unit officers. |
| 46 | The policy shall also require that in all circumstances where a canine is permitted to bite or apprehend a suspect by biting, the handler shall call off the dog at the first possible moment the canine can be safely released. Whenever a canine-related injury occurs, immediate medical treatment must be sought either by rescue ambulance, transportation to an emergency room, or admission to a hospital. | Same as ¶ 45. | Same as ¶ 45. | Same as ¶ 45. |
| | D. Oleoresin Capsicum Spray Policy | | | |
| 47 | MPD shall complete development of an Oleoresin Capsicum Spray (OC Spray) policy that complies with applicable law and current professional standards. The policy shall prohibit officers from using OC Spray unless The officer has legal cause to detain, take into legal custody or to maintain in custody a subject who is, at a minimum, actively resisting The officer. The policy shall prohibit officers from using OC Spray to disperse crowds or others unless those crowds or others are committing acts of public disobedience endangering public safety and security. | <ol style="list-style-type: none"> 1. Development and distribution of appropriate OC spray policy. 2. Proper training on OC spray policy. 3. Proper implementation of OC spray policy. | <ol style="list-style-type: none"> 1. Development and DOJ approval of OC spray policy. 2. Distribution of OC spray policy. 3. Training fairly, accurately, and appropriately summarizes principles of OC spray policy. 4. ≥95% of uses of OC spray by MPD officers are consistent with principles and standards contained in the OC spray policy. | <ol style="list-style-type: none"> 1. Review OC spray policies and general orders. 2. Monitor in-service and new recruit training. 3. Review all FIT investigations. 4. Review samples of chain of command and OPR investigations. |

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| 48 | The policy shall provide that, absent exceptional circumstances, officers shall not use OC spray on children and elderly persons. The policy shall prohibit officers from using OC spray to prevent property damage except when its use meets the standard defined in paragraph 47 above. | Same as ¶ 47. | Same as ¶ 47. | Same as ¶ 47. |
| 49 | The policy shall require officers to issue a verbal warning to the subject unless a warning would endanger the officer or others. The warning shall advise the subject that OC spray shall be used unless resistance ends. The policy shall require that prior to discharging the OC spray, officers permit a reasonable period of time to allow compliance with the warning, when feasible. | Same as ¶47. | Same as ¶ 47. | Same as ¶ 47. |
| 50 | The policy shall require officers to aim OC spray only at a person’s face and upper torso. The policy shall require officers to utilize only two, one second bursts and to do so from at least 3 feet away from the subject, unless exceptional circumstances require otherwise. The policy shall require that, absent exceptional circumstances, officers shall decontaminate every sprayed subject with cool water or a decontamination solution within 20 minutes after the application of the spray. Officers shall transport sprayed subjects to the hospital for treatment when they complain of continued effects after having been contaminated, or they indicate that they have a pre-existing medical condition (e.g., asthma, emphysema, bronchitis, heart ailment, etc.) that may be aggravated by OC Spray. The policy shall prohibit officers from keeping any sprayed subject in a face down position, in order to avoid positional asphyxia. | Same as ¶ 47. | Same as ¶ 47. | Same as ¶ 47. |
| | E. Implementation Schedule | | | |
| 51 | MPD shall complete development of the policies and procedures referenced in this section within 30 days from the effective date of the agreement. In developing the final policies and procedures, MPD shall build upon the latest working drafts and correspondence exchanged between DOJ and MPD during the course of the investigation. | 1. Development and distribution of required policies and procedures. | 1. Development and DOJ approval of all required policies. 2. Distribution of all required policies. | 1. MPD policies and general orders. |

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| 52 | Prior to implementation of the policies and procedures referenced in this section, MPD shall submit them to DOJ for approval. In the event MPD revises any of the policies, procedures, or forms referenced in this section during the term of this agreement, it shall obtain approval from DOJ prior to implementation of the revised policy or form. | 1. Ensure future revisions of policies, procedures, forms are approved by DOJ. | 1. MPD obtains DOJ approval of all required policies, procedures or forms. | 1. Communications between DOJ and MPD. |

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| | III. INCIDENT DOCUMENTATION, INVESTIGATION, AND REVIEW | | | |
| | A. Use of Force Reporting Policy and Use of Force Incident Report | | | |
| 53 | <p>MPD shall complete development of a Use of Force Reporting policy and Use of Force Incident Report. The policy shall require officers to notify their supervisor immediately following any use of force or receipt of an allegation of excessive use of force and to complete a Use of Force Incident Report. Additionally, the policy shall require officers to complete a Use of Force Incident Report immediately following the drawing of and pointing of a firearm at, or in the direction of, another person. The policy shall require supervisors, upon notification of a use of force or allegation of excessive force, to respond to the scene. In every incident involving deadly force, as defined by paragraph 15, a serious use of force, as defined by paragraph 33, or any use of force indicating potential criminal conduct by an officer, as defined by paragraph 35, the supervisor shall ensure that the Force Investigation Team (FIT) is immediately notified.</p> | <ol style="list-style-type: none"> 1. Development and distribution of use of force reporting policy. 2. Development of UFIR. 3. Training on use of force reporting policy and appropriate completion of UFIR. 4. Notification of supervisors by officers 5. Supervisors report to incident scene. 6. Appropriate and timely notification of FIT. 7. Officers fill out UFIR as required by policy. | <ol style="list-style-type: none"> 1. Development and distribution of DOJ-approved use of force reporting policy. 2. Development of UFIR. 3. Training on use of force reporting policy fairly, accurately, and appropriately summarizes principles of policy and properly instructs on completion of UFIR. 4. ≥95% of officers have received training on new use of force policy. 5. Proper and timely notification of supervisors occurs in ≥95% of cases where there is use of force or allegation of use of force. 6. Supervisors as soon as possible report to incident scene in ≥95% of cases in which they are notified of use of force. 7. FIT notified within one hour in ≥95% of cases involving use of deadly or serious force or allegation of use of such force. 8. UFIRs completed for ≥95% of use of force incidents. 9. ≥95% of UFIRs contain all required information | <ol style="list-style-type: none"> 1. Review use of force policies and general orders. 2. Review UFIRs. 3. Monitor in-service and new recruit training. 4. Monitor supervisor training. 5. Review all FIT I and FIT II investigations. 6. Review samples of chain of command and OPR investigations. 7. Review all UFIRs. 8. Officer interviews regarding UFIRs completion. 9. Monitor FIT rollouts. |

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| 54 | MPD shall notify the Office of the United States Attorney for the District of Columbia (USAO) immediately, in no case later than the next business day, following a deadly use of force or a serious use of force by an MPD officer or following any use of force indicating potential criminal conduct by an officer. | 1. Prompt notification of USAO by MPD in specified categories of cases. | 1. Prompt notification (no later than next business day) in $\geq 95\%$ of cases involving deadly use of force, serious use of force, or use of force indicating potential criminal misconduct by officer. | 1. Review AUSA Notification Log. 2. Review all FIT I and FIT II investigative reports. |
| 55 | Data captured on the reports described above in paragraph 53 shall be entered into MPD's Personnel Performance Management System (PPMS). Hard copies of these reports shall be maintained centrally by the Office of Professional Responsibility. | 1. Entry of required information into PPMS. 2. Maintenance of hard copies of UFIRs at OPR. | 1. Information from UFIRs accurately entered into PPMS with $\geq 95\%$ level of accuracy and completeness. 2. Hard copies of $\geq 95\%$ of all completed UFIR reports maintained in hard copy form at OPR. | 1. Review PPMS data. 2. Review UFIRs. 3. Review FIT investigations. |
| | B. Investigating Uses of Force and Misconduct Allegations | | | |
| | 1. Use of Force Investigation | | | |
| 56 | MPD created the Force Investigation Team (FIT) to conduct fair, impartial and professional reviews of firearm discharges. The provisions in this section build upon the investigative techniques employed by FIT and expand FIT's role within MPD. | NA | NA | NA |
| 57 | Within 60 days from the effective date of this Agreement, MPD shall fully implement its plan, subject to approval of DOJ, to reallocate responsibility for MPD criminal investigations of officer use of force from District Violent Crime Unit supervisors or other District supervisors to the Force Investigation Team (FIT). The plan shall include procedures to address the rights and responsibilities of officers and supervisors in carrying out their duties, including the preparation of both preliminary investigative files and complete investigative files. | 1. Reallocation of criminal use of force investigations from Violent Crime Unit supervisors to FIT. 2. Development of procedures to address rights and responsibilities in carrying out use of force investigative responsibilities. | 1. 100% transfer of criminal investigations of MPD officers in use of force cases to FIT. 2. Development and implementation of procedures that adequately address use of force investigative responsibilities of officers and supervisors, including preparation of investigative files. 3. DOJ approval of FIT policies, procedures, and manuals. | 1. Review FIT investigations. 2. Review samples of chain of command and OPR use of force and misconduct investigations. 3. Review FIT manuals and other MPD policies and general orders relating to the investigation of uses of force. 4. Review FIT training materials. |

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| 58 | <p>MPD shall consult with the USAO regarding the investigation of an incident involving deadly force, a serious use of force, or any other force indicating potential criminal misconduct by an officer. If the USAO indicates a desire to proceed criminally based on the on-going consultations with MPD, or MPD requests criminal prosecutions in these incidents, any compelled interview of the subject officers shall be delayed, as described in paragraph 60. However, in order to ensure the collection of all relevant information, all other aspects of the investigation shall proceed. The USAO shall respond to a written request by MPD for charges, declination, or prosecutorial opinion within three business days, by either filing charges, providing a letter of declination, or indicating the USAO's intention to continue further criminal investigation.</p> | <ol style="list-style-type: none"> 1. Development and distribution of policies requiring consultation with the USAO in all investigations involving <ul style="list-style-type: none"> • use of deadly force • use of serious force • any other use of force reflecting potential criminal misconduct of an officer. 2. Development and distribution of policies regarding delay of compelled statements by officers potentially subject to prosecution. 3. Development and distribution of policies requiring continuation of other aspects of investigation. | <ol style="list-style-type: none"> 1. Development and DOJ approval of policies requiring <ul style="list-style-type: none"> • consultation with USAO • delay of compelled interviews • continuation of investigations while case pending at USAO. 2. Prescribed consultation with USAO takes place in $\geq 95\%$ of cases. 3. Delay of compelled statements takes place in 100% of cases in which USAO or MPD seeks to have case pursued criminally. 4. Aspects of investigations not related to appropriately delayed compelled statements proceed in $\geq 95\%$ of cases. | <ol style="list-style-type: none"> 1. Review MPD policies and general orders. 2. Review USAO notification log. 3. Review FIT investigations. 4. Interview AUSAs. 5. Review disciplinary records. |
| 59 | <p>In every incident involving deadly force, a serious use of force, or any use of force indicating potential criminal misconduct by an officer, the USAO shall notify and consult with the Chief of Police or the appropriate OPR official whenever possible, unless doing so would compromise the investigation, or is otherwise prohibited by law, rule, or regulation.</p> | N/A | N/A | N/A |

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| 60 | MPD and the USAO jointly acknowledge the need to continue consultation throughout the course of an investigation; and recognize the investigative process may ultimately proceed to an administrative conclusion and/or criminal charges. MPD agrees that it will not compel or order a subject officer to make a statement if the USAO has not yet issued a written criminal declination, for all incidents subject to the notice and consultation provisions described in paragraphs 58 and 59. | <ol style="list-style-type: none"> 1. Development and distribution of policies regarding investigations involving potential criminal misconduct of an officer, including provisions regarding the notification of and consultation with USAO and delay of compelled statements by officers potentially subject to prosecution. 2. Development and distribution of policies barring compelled officer statements in such criminal investigations without USAO declination. | <ol style="list-style-type: none"> 1. See ¶ 58 above. | <ol style="list-style-type: none"> 1. Review MPD policies and general orders. 2. Review USAO notification log. 3. Review FIT investigations. 4. Interview AUSAs. |
| 61 | FIT shall respond to the scene of every incident involving deadly force, a serious use of force, or any use of force indicating potential criminal misconduct by an officer. In each of these incidents, FIT shall conduct the investigation of the use of force. That investigation may result in criminal charges, administrative action or both. Investigators from the involved officers' District shall not conduct the investigation. Based upon its review of use of force incidents from throughout MPD, FIT shall forward policy and training recommendations to the Chief of Police or his designee. | <ol style="list-style-type: none"> 1. FIT response to the scene of every incident involving deadly force, a serious use of force, or use of force indicating potential criminal misconduct by an officer. 2. FIT investigation of all such incidents. 3. Investigators from involved officers' district barred from investigation. 4. FIT forwards policy and training recommendations to MPD. | <ol style="list-style-type: none"> 1. ≥95% FIT response and investigation of incidents involving deadly force, serious use of force, or use of force indicating potential criminal misconduct by an officer. 2. Investigators from involved districts properly excluded from ≥95% of FIT investigations. 3. Periodic policy and training recommendations from FIT, at least annually. 4. MPD implementation of appropriate FIT policy and training recommendations. | <ol style="list-style-type: none"> 1. Review FIT investigations. 2. Review FIT training materials re conduct of investigations involving deadly force, serious use of force, or use of force indicating potential criminal misconduct by an officer. 3. Review FIT policy and training recommendations. 4. Review MPD and IPS consideration and implementation of FIT policy and training recommendations. |

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| 62 | <p>FIT shall complete its administrative use of force investigations within 90 days from the criminal declination described in paragraph 60, absent special circumstances which must be documented, and shall continue to conduct investigations in accordance with paragraphs 81 and 82, below. At the conclusion of each use of force investigation, the investigator shall prepare a report on the investigation, which shall be made a part of the investigation file. The report shall include a description of the use of force incident and any other uses of force identified during the course of the investigation; a summary and analysis of all relevant evidence gathered during the investigation; and proposed findings and analysis supporting the findings. The proposed findings shall include the following: 1) a determination of whether the use of force is consistent [with] MPD policy and training; 2) a determination of whether proper tactics were employed; and 3) a determination whether lesser force alternatives were reasonably available.</p> | <ol style="list-style-type: none"> 1. FIT investigations complete within 90 days of declination, absent documented special circumstances. 2. FIT reports containing required documentation and information, including <ul style="list-style-type: none"> • Description of all uses of force identified during investigation • Summary and analysis of all relevant evidence • Proposed findings <ul style="list-style-type: none"> ○ Whether use of force consistent with MPD policy ○ Whether proper tactics employed; ○ Whether lesser force alternatives available. | <ol style="list-style-type: none"> 1. ≥95% of FIT investigations completed within 90 days of declination, absent documented special circumstances. 2. ≥95% of FIT reports contain required documentation and information, as specifically set forth in this paragraph. | <ol style="list-style-type: none"> 1. Review FIT investigations. |
| 63 | <p>Within 120 days from the effective date of this Agreement, MPD shall train and assign a sufficient number of personnel to FIT to fulfill the requirements of this Agreement.</p> | <ol style="list-style-type: none"> 1. Sufficient training and staffing to accomplish FIT's responsibilities under the MOA. | <ol style="list-style-type: none"> 1. ≥95% FIT response and investigation of incidents involving deadly force, a serious use of force, or use of force indicating potential criminal misconduct by an officer. 2. ≥95% of FIT investigations complete within 90 days of declination, absent documented special circumstances. 3. ≥95% of FIT reports containing required documentation and statement of proposed findings. | <ol style="list-style-type: none"> 1. Review FIT investigations. 2. Review FIT training materials and sessions. 3. Review FIT policies and manuals. 4. Review personnel needs assessment. |

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| 64 | Chain of command district supervisors may investigate all use of force incidents except for those incidents involving a serious use of force, serious physical injury, or any use of force indicating potential criminal conduct by an officer. At the discretion of the Chief of Police or designee, any incident that may be investigated by chain of command district supervisors may be assigned for investigation to FIT or to chain of command supervisors from a district other than the district in which the incident occurred. No supervisor who was involved in the incident shall be responsible for the investigation of the incident. | <ol style="list-style-type: none"> 1. Incidents involving serious uses of force, serious physical injury, or potential criminal conduct by an officer shall not be investigated by chain of command. 2. Involved supervisors shall not be responsible for investigation of incidents involving serious uses of force, serious physical injury, or potential criminal conduct by an officer. 3. Chief of Police or designee shall have the discretion to assign any investigation to FIT or to the chain of command of a district other than the district in which the incident occurred. | <ol style="list-style-type: none"> 1. ≤5% of investigations involving serious uses of force, serious physical injury, or potential criminal conduct by an officer conducted by chain of command. 2. ≤5% of investigations of incidents involving serious uses of force, serious physical injury, or potential criminal conduct by an officer participated in by supervisor involved in incident. 3. 100% of investigations directed by the Chief or designee to be removed from a district's chain of command are reassigned to FIT or another district. | <ol style="list-style-type: none"> 1. Review samples of chain of command investigations. 2. Review all FIT investigations. 3. Review MPD investigations policies and general orders. |

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| 65 | <p>Chain of command use of force investigations shall be completed within 90 days following the use of force incident, absent special circumstances which must be documented, and shall be conducted in accordance with paragraphs 81 and 82, below. At the conclusion of each use of force investigation, the investigator shall prepare a report on the investigation, which shall be made a part of the investigation file. The report shall include a description of the use of force incident and any other uses of force identified during the course of the investigation; a summary and analysis of all relevant evidence gathered during the investigation; and proposed findings and analysis supporting the proposed findings. The proposed findings shall include the following: 1) a determination of whether the use of force is consistent and MPD policy and training; 2) a determination of whether proper tactics were employed; and 3) a determination whether lesser force alternatives were reasonably available.</p> | <ol style="list-style-type: none"> 1. Chain of command investigations completed within 90 days, absent documented special circumstances. 2. Chain of Command investigation reports contain required documentation and information, including <ul style="list-style-type: none"> • Description of all uses of force identified during investigation • Summary and analysis of all relevant evidence • Proposed findings <ul style="list-style-type: none"> ○ Whether use of force consistent with MPD policy; ○ Whether proper tactics employed; ○ Whether lesser force alternatives available. | <ol style="list-style-type: none"> 1. ≥90% of chain of command investigations completed within 90 days of use of force or contain documented special circumstances justifying the delay. 2. ≥95% of chain of command investigation reports contain required documentation and statement of proposed findings, as specifically set forth in this paragraph. | <ol style="list-style-type: none"> 1. Review samples of chain of command investigations. |
| 66 | <p>Upon completion of a chain of command use of force investigation, the investigator shall forward the investigation to the Unit Commander, who shall review the investigation to ensure that it is complete and that the findings are supported by the evidence. The Unit Commander shall order additional investigation when necessary. When the Unit Commander determines the investigation is complete and the findings are supported by the evidence, the investigation file shall be forwarded to the Use of Force Review Board (UFRB). Whenever there is evidence of criminal wrongdoing, the Unit Commander shall suspend the investigation immediately and notify FIT and the USAO.</p> | <ol style="list-style-type: none"> 1. Completed chain of command investigations forwarded to Unit Commanders. 2. Unit Commanders review chain of command investigations for completeness and adequacy of the evidence. 3. Unit Commanders order additional investigation where necessary. 4. Unit Commanders forward completed investigations to FIT. 5. Unit Commanders suspend investigations indicating criminal wrongdoing and refer such cases to FIT and USAO. | <ol style="list-style-type: none"> 1. ≥95% of chain of command cases processed in accordance with this paragraph. 2. FIT and USAO notified of ≥95% of chain of command cases involving potential criminal wrongdoing. | <ol style="list-style-type: none"> 1. Review samples of chain of command investigations. 2. Review USAO logs. 3. Review UFRB docket and dispositions. |

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| 67 | <p>Within 60 days from the effective date of this Agreement, MPD shall complete the development and implementation of a policy to enhance the UFRB, subject to approval by DOJ. The policy shall require the UFRB to conduct timely reviews of all use of force investigations. The policy shall set forth the membership of the UFRB and establish timelines for UFRB review of use of force investigations. The policy shall authorize the UFRB to recommend discipline for violations of MPD’s policies and training. The policy shall authorize the UFRB to direct District supervisors to take non-disciplinary action to enable or encourage an officer to modify his or her performance . The policy shall require the UFRB to act as a quality control mechanism for all use of force investigations, with the responsibility to assign to FIT, or return to the investigating unit, all incomplete or mishandled use of force investigations. The policy shall provide the UFRB the authority and responsibility to recommend to the Chief of Police, or his designee, investigative protocols and standards for all force investigations. The policy shall require the UFRB to conduct annual reviews of all use of force cases examined to detect patterns/problems and to issue a report to the Chief of Police with findings and recommendations.</p> | <ol style="list-style-type: none"> 1. Development of UFRB policy that: <ul style="list-style-type: none"> • Requires timely reviews of all use of force investigations. • Sets forth UFRB membership and establishes timelines for reviews. • Requires UFRB to perform quality control for use of force investigations. • Requires UFRB annual reviews and reports. 2. UFRB acting in conformity with these provisions, including <ul style="list-style-type: none"> • Performing timely reviews. • Serving quality control function in use of force investigations. 3. UFRB conducts annual reviews of all use of force cases. | <ol style="list-style-type: none"> 1. Development and implementation of UFRB policy with required provisions as set forth in this paragraph. 2. UFRB reviews use of force investigations within 90 days of completion of investigations. 3. UFRB files reflect quality control function. 4. UFRB recommends meaningful investigative protocols consistent with best police practices. 5. UFRB’s annual reviews reflect meaningful effort to <ul style="list-style-type: none"> • detect patterns and problems • formulate findings and recommendations. | <ol style="list-style-type: none"> 1. Review UFRB policies and procedures. 2. Review UFRB docket and case index. 3. Review samples of UFRB dispositions. 4. Monitor UFRB hearings. 5. Review UFRB annual reports. |
| | 2. Investigations of Misconduct Allegations | | | |
| 68 | <p>The Office of Professional Responsibility shall be responsible for the investigation of allegations of criminal misconduct set forth in the categories in paragraph 72, (a) through (i) below. Within 60 days from the date of this Agreement, MPD shall develop a plan, subject to approval of DOJ, to allocate sufficient personnel and establish procedures to accomplish this new responsibility.</p> | <ol style="list-style-type: none"> 1. MPD staffing plan and procedures for OPR misconduct investigations. | <ol style="list-style-type: none"> 1. Development and implementation of staffing plan and procedures for OPR misconduct investigations. 2. OPR conducts or supervises timely investigations of allegations of criminal misconduct | <ol style="list-style-type: none"> 1. Review OPR policies and procedures. 2. Review FIT investigations. 3. Review samples of misconduct investigations. 4. Review OPR personnel needs assessment. |

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| 69 | MPD shall notify the USAO immediately, in no case later than the next business day, following the receipt or discovery of any allegations of criminal misconduct referred to in paragraphs 72 and 73. In every incident involving allegations of criminal misconduct referred to in paragraphs 72 and 73, the USAO shall notify and consult with the Chief of Police or the appropriate OPR official whenever possible, unless doing so would compromise the investigation, or is otherwise prohibited by law, rule, or regulation. | 1. Prompt notification of USAO by MPD in specified categories of cases. | 1. Prompt notification (no later than next business day) in $\geq 95\%$ of cases involving potential criminal misconduct by officer. | 1. Review USAO Notification Log 2. Review FIT investigations 3. Review samples of misconduct investigations. 4. Review OPR personnel needs assessment. |
| 70 | MPD shall consult with the USAO regarding the investigation of an incident involving allegations of criminal misconduct in the categories of matters described in paragraphs 72 and 73. If the USAO indicates a desire to proceed criminally based on the on-going consultations with MPD, or MPD requests criminal prosecutions in these incidents, any compelled interview of the subject officers shall be delayed, as described in paragraph 71. However, in order to ensure the collection of all relevant information, all other aspects of the investigation shall proceed. The USAO shall respond to a written request by MPD for charges, declination, or prosecutorial opinion within three business days, by either filing charges, providing a letter of declination, or indicating the USAO's intention to continue further criminal investigation. | 1. Development and distribution of policies requiring consultation with the USAO in all investigations involving specified allegations of criminal misconduct 2. Development and distribution of policies requiring delay of compelled statements by officers potentially subject to prosecution. 3. Development and distribution of policies requiring continuation of other aspects of investigation. | 1. Development and DOJ approval of policies requiring <ul style="list-style-type: none"> • consultation with USAO • delay of compelled interviews • continuing of investigation while case pending at USAO. 2. Prescribed consultation with USAO takes place in $>95\%$ of cases. 3. Delay of compelled statements takes place in 100% of cases in which USAO or MPD seeks to have case pursued criminally. 4. Remainder of investigation proceeds in $>95\%$ of cases in which certain compelled statements are delayed. | 1. Review MPD policies and general orders. 2. Review USAO notification log. 3. Review samples of misconduct investigations. 4. Discussions with USAO. |
| 71 | MPD and the USAO jointly acknowledge the need to continue consultation throughout the course of an investigation; and recognize the investigative process may ultimately proceed to an administrative conclusion and/or criminal charges. MPD agrees that it will not compel or order a subject officer to make a statement if the USAO has not yet issued a written criminal declination, for all incidents involving allegations of criminal misconduct in the categories of matters described in paragraphs 72 and 73. | Same as ¶ 70. | Same as ¶ 70. | Same as ¶ 70. |

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| 72 | Within 60 days from the date of this Agreement, MPD shall develop a plan, subject to approval of DOJ, to reallocate responsibility for MPD administrative complaint investigations of misconduct complaints from chain-of-command District supervisors to OPR with respect to the following: | 1. Development and approval of MPD plan re allocation of responsibility for misconduct investigations between the chain of command and OPR. | 1. Development and implementation of plan with required provisions. 2. OPR investigations opened in ≥95% of the cases described in ¶¶ 72(a)-(j). | 1. Review MPD policies and procedures defining jurisdiction over misconduct investigations. 2. Review Corporation Counsel dockets. 3. Review JSOC logs. 4. Review samples of OPR and chain of command misconduct investigations. |
| a | all referrals pursuant to paragraphs 76 and 77; | | | |
| b | all civil suits alleging any misconduct by an officer while acting in an official capacity; | | | |
| c | all civil suits against an officer for off-duty conduct (while not acting in an official capacity) that alleges physical violence, threats of physical violence, or racial bias; | | | |
| d | all criminal arrests of or filing of criminal charges against an officer; | | | |
| e | all allegations of unlawful discrimination (e.g., on the basis of race, ethnicity, gender, religion, national origin, sexual orientation, or disability), including improper ethnic remarks and gender bias, but excluding employment discrimination; | | | |
| f | all allegations of unlawful search and stops; | | | |
| g | all allegations of unlawful seizure (including false imprisonment and false arrest); | | | |
| h | any act of retaliation or retribution against an officer or person; and | | | |
| i | all allegations of strikes, blows, kicks, or other similar uses of force against a compliant subject or administered with a punitive purpose; and | | | |
| j | OPR shall assign for investigation outside of the District Chain of Command all allegations of misconduct related to the types of misconduct covered by “a” to i” of this paragraph; and | 1. OPR shall not refer misconduct referred to in 72(a)-(i) to chain of command. | 1. ≥95% of specified cases are investigated by OPR rather than chain of command. | 1. Review samples of misconduct investigations. |

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| | OPR shall assign to FIT all allegations of excessive force by an officer involving a use of deadly force, as defined in paragraph 15, a serious use of force, as defined in paragraph 33, or any use of force indicating potential criminal conduct by an officer, as defined in paragraph 35. | 1. OPR refers to FIT allegations of excessive force involving use of deadly force, use of serious force or use of force indicating criminal conduct. | 1. 100% of cases involving allegations of excessive force use of deadly force, use of serious force or use of force indicating criminal conduct are investigated by FIT. | 1. Review samples of OPR and chain of command use of force and misconduct investigations. 2. Review all FIT investigations. 3. Review UFRB dispositions. 4. Monitor UFRB hearings. |
| 73 | OPR shall also assign for administrative investigation outside of the District chain of command the following: | 1. Investigations by entity other than chain of command in cases where: a. a person is charged with resisting arrest and the prosecutor or court dismisses the charge based upon officer credibility b. MPD receives written notification that (i) evidence is suppressed for a constitutional violation, or (ii) other judicial finding of misconduct. 2. MPD makes written requests to prosecutors' offices for notification of these cases. | 1. ≥95% of specified cases assigned for investigation outside the chain of command. 2. Record maintained of MPD written requests for notice from USAO. | 1. Review samples of chain of command and OPR investigations. 2. Review MPD written requests for notice from USAO. |
| a | all incidents in which both (i) a person is charged by an officer with assault on a police officer, resisting arrest, or disorderly conduct, and (ii) the prosecutor's office notifies MPD either that it is dismissing the charge based upon officer credibility or a judge dismissed the charge based upon officer credibility; | | | |

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| b | all incidents in which MPD has received written notification from a prosecuting agency in a criminal case that there has been (i) an order suppressing evidence because of any constitutional violation involving potential misconduct by an MPD officer, or (ii) any other judicial finding of officer misconduct made in the course of a judicial proceeding or any request by a federal or District of Columbia judge or magistrate that a misconduct investigation be initiated pursuant to some information developed during a judicial proceeding before a judge or magistrate. MPD shall request that all prosecuting agencies provide them with written notification whenever the prosecuting agency has determined that any of the above has occurred. | | | |
| 74 | All administrative investigations of misconduct allegations conducted pursuant to paragraphs 72 and 73 shall be completed within 90 days from MPD receiving the complaint, or within 90 days from the criminal declination described in paragraph 71, where applicable, absent special circumstances which must be documented. At the conclusion of each such investigation, the investigator shall prepare a report on the investigation, which shall be made a part of the investigation file. The report shall include a description of the misconduct incident and any other misconduct identified during the course of the investigation; a summary and analysis of all relevant evidence gathered during the investigation; and proposed findings and analysis supporting the findings. | <ol style="list-style-type: none"> 1. OPR and chain of command investigations completed within 90 days of complaint or declination, absent documented special circumstances. 2. OPR and chain of command investigative reports contain required documentation, including <ul style="list-style-type: none"> • description of all misconduct identified during investigation • summary and analysis of all relevant evidence • proposed findings and analysis. | <ol style="list-style-type: none"> 1. ≥90% of OPR investigations complete within 90 days of declination, absent documented special circumstances. 2. ≥95% of OPR reports containing required documentation and information, as specifically set forth in this paragraph. | <ol style="list-style-type: none"> 1. Review samples of chain of command and OPR investigations. |
| 75 | The Corporation Counsel's Office shall notify OPR whenever a person files a civil claim against the City alleging misconduct by an officer or other employee of MPD. | <ol style="list-style-type: none"> 1. Corporation counsel notification of OPR of civil suits alleging MPD employee misconduct. | <ol style="list-style-type: none"> 1. ≥95% notification of OPR of civil suits alleging MPD employee misconduct. | <ol style="list-style-type: none"> 1. Review Corporation Counsel case logs. 2. Review OPR case logs. 3. Review samples of OPR and chain of command misconduct investigations. |

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| 76 | MPD shall continue to require all officers promptly to notify MPD of the following: the officer is arrested or criminally charged for any conduct; the officer is named as a party in any civil suit involving his or her conduct while on duty (or otherwise while acting in an official capacity); or the officer is named as a party in any civil suit regarding off-duty conduct (while not acting in an official capacity) that alleges any of the following: physical violence, threats of physical violence, racial bias, dishonesty, or fraud by the officer. Officers shall report this information either directly to OPR or to a supervisor who shall report the information to OPR. | 1. Development and distribution of policy requiring prompt notification by officers of specified occurrences. | 1. Development and DOJ approval of policies or general orders requiring prompt notification by officers of delineated occurrences. 2. MPD documentation of proper notifications in $\geq 95\%$ of such cases | 1. Review policies, procedures, and general orders. 2. Review internal records related to notifications from officers. 3. Review training regarding these reporting obligations. |
| 77 | MPD shall require officers to report to MPD without delay: any conduct by other officers that reasonably appears to constitute (a) an excessive use of force or improper threat of force; (b) a false arrest or filing of false charges; (c) an unlawful search or seizure; (d) unlawful discrimination; (e) an intentional failure to complete use of force reports required by MPD policies and in accordance with procedures; (f) an act of retaliation for complying with any MPD policy or procedure; or (g) an intentional provision of false information in an MPD or OCCR investigation or in any official report, log, or electronic transmittal of information. Officers shall report such alleged misconduct by fellow officers either directly to OPR or to a supervisor who shall report the information to OPR. This requirement applies to all officers, including supervisors and managers who learn of evidence of possible misconduct through their review of an officer's work. Failure to voluntarily report as described in this paragraph shall be an offense subject to discipline if sustained. | 1. Development and distribution of policy requiring prompt notification by officers of suspected officer misconduct. | 1. Development and DOJ approval of policy or general order requiring prompt notification by officers of suspected officer misconduct. 2. Distribution of policy or general order regarding reporting of suspected officer misconduct. 3. Implementation of new recruit and in-service training regarding the reporting of suspected officer misconduct. 4. Such acts of misconduct reported in $\geq 95\%$ of cases in which evidence comes to officer or supervisor's attention. | 1. Review FIT investigations. 2. Review samples of misconduct investigations. 3. Review citizen complaints and OCCR investigations. 4. Review civil suits filed against MPD officers. 5. Review new recruit and in-service training regarding these reporting obligations. 6. Review disciplinary files. |

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| 78 | The City shall in fiscal year 2002 provide all necessary funds to fully implement paragraphs 68 and 74. Misconduct investigation responsibilities shall be transitioned as positions are filled. Prior to positions being filled, investigation responsibilities shall be transitioned commensurate with available resources. Positions shall be filled and investigation responsibility transition shall be completed by December 31, 2002. | <ol style="list-style-type: none"> 1. City must provide all available funds to permit OPR to conduct all investigations of specified criminal misconduct and to complete such investigations within 90 days. 2. Transition of investigations to OPR completed by December 31, 2002. | <ol style="list-style-type: none"> 1. Transition of investigations to OPR completed by December 31, 2002 2. Devotion of resources sufficient for OPR to conduct and complete specified investigations within 90 days. 3. ≥95% of OPR investigations complete within 90 days of declination, absent documented special circumstances. | <ol style="list-style-type: none"> 1. Review OPR staffing levels. 2. Review OPR needs assessments. 3. Interviews with OPR investigators. |
| 79 | OPR shall continue to review all misconduct complaints as they are received. OPR shall determine whether a misconduct complaint meets the criteria (set forth in paragraphs 72 and 73) for being assigned for investigation outside of the District Chain of Command. | <ol style="list-style-type: none"> 1. OPR review misconduct allegations and determine whether assignment to chain of command appropriate. | <ol style="list-style-type: none"> 1. OPR review of all misconduct complaints received. 2. ≥95% of cases referred to appropriate investigative body. | <ol style="list-style-type: none"> 1. Review OPR case assignment documents. 2. Review OPR case assignment policies and procedures. 3. Review samples of misconduct investigations. |
| 80 | MPD shall prohibit any officer who has a potential conflict of interest related to a pending misconduct investigation from participating in any way in the conduct or review of that investigation. | <ol style="list-style-type: none"> 1. Development and distribution of policy prohibiting officers with a potential conflict from participating in the investigation. | <ol style="list-style-type: none"> 1. Development and DOJ approval of policy or general order prohibiting officers with a potential conflict of interest from participating in the investigation. 2. ≥95% of misconduct investigations reflect no conflicts of interest. | <ol style="list-style-type: none"> 1. Review policies, general orders, and manuals. 2. Review samples of misconduct investigations. |
| 81 | In conducting administrative misconduct investigations (whether conducted by FIT, Chain of Command, or OPR, following a criminal declination, where applicable) MPD shall, subject to and in conformance with applicable law, at a minimum: | <ol style="list-style-type: none"> 1. MPD investigations shall involve, at a minimum, the items specified in ¶¶ 81(a)-(g). | <ol style="list-style-type: none"> 1. ≥95% of misconduct investigations follow procedures specified in ¶¶ 81(a)-(g). | <ol style="list-style-type: none"> 1. Review investigative policies, general orders and manuals. 2. Review FIT investigations. 3. Review samples of OPR and chain of command misconduct investigations. 4. Interviews with citizen complainants. |

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| a | tape record or videotape interviews of complainants, involved officers, and material witnesses in investigations involving a serious use of force or serious physical injury (if a complainant or non-officer witness refuses to be tape recorded or videotaped, then MPD shall prepare a written narrative of the statement to be signed by the complainant or non-officer witness); | | | |
| b | whenever practicable and appropriate, interview complainants and witnesses at sites and times convenient for them, including at their residences or places of business; | | | |
| c | prohibit group interviews: | | | |
| d | notify the supervisors of the involved officers of the investigation, as appropriate; | | | |
| e | interview all appropriate MPD officers, including supervisors; | | | |
| f | collect, preserve, and analyze all appropriate evidence, including canvassing the scene to locate witnesses and obtaining complainant medical records, where appropriate; and | | | |
| g | identify and report in writing all inconsistencies in officer and witness interview statements gathered during the investigation. | | | |
| 82 | In conducting misconduct investigations, MPD shall continue to assess the propriety of all officer conduct during the incident in which the alleged misconduct occurred. If during the course of an investigation the investigator has reason to believe that misconduct occurred other than that alleged, the investigator also shall investigate the additional potential misconduct to its logical conclusion. | 1. Development and distribution of policy requiring that evidence of misconduct other than that alleged be investigated. | 1. Development and DOJ approval of policy requiring that evidence of misconduct other than the allegation that prompted the investigation also be investigated. 2. In $\geq 95\%$ of cases indicating evidence of unalleged misconduct, such misconduct is investigated. | 1. Review policies, general orders and manuals. 2. Review FIT investigations. 3. Review samples of misconduct investigations. 4. Review OCCR investigations. |

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| 83 | <p>Within 120 days from the effective date of this Agreement, MPD shall develop a manual, subject to approval by DOJ, for conducting all MPD misconduct investigations. The manual shall include timelines and shall provide investigative templates to assist investigators in gathering evidence, conducting witness interviews, and preparing investigative reports.</p> | <p>1. Development and distribution of manual, approved by DOJ, regarding conduct of misconduct investigations including</p> <ul style="list-style-type: none"> ● Timelines ● Investigative templates ● Guidance re witness interviews ● Guidance re investigative reports | <p>1. Development and distribution of DOJ approved misconduct investigations manual.</p> <p>2. In-service training that appropriately and completely trains MPD personnel regarding the Misconduct Investigations Manual.</p> | <p>1. Review misconduct investigations manual, including related templates.</p> <p>2. Monitor investigator training.</p> |
| 84 | <p>Within 90 days from the effective date of this Agreement, MPD shall develop a plan, subject to approval by DOJ, to ensure that all MPD investigators (whether conducting use of force investigations or misconduct investigations) receive adequate training to enable them to carry out their duties. All MPD investigators shall receive training and re-training in MPD policies and procedures, including, but not limited to, use of force and use of force reporting, canine deployment, transporting individuals in custody, restraints, arrests, report writing; investigative and interview techniques, including examining and interrogating witnesses, and collecting and preserving evidence; cultural sensitivity; ethics; integrity; and professionalism. MPD shall provide specialized training to investigators who conduct shooting investigation. The training shall occur within 180 days of the approval of the plan.</p> | <p>1. Development and distribution of a DOJ approved plan for training investigators including in the following areas:</p> <ul style="list-style-type: none"> ● use of force and use of force reporting; ● canine deployment; ● transporting individuals in custody; ● restraints, arrests; ● report writing; ● investigative and interview techniques, including examining and interrogating witnesses, and collecting and preserving evidence; ● cultural sensitivity; ● ethics; ● integrity; and ● professionalism. | <p>1. Development and distribution of a DOJ approved plan for investigator training.</p> <p>2. Development of in-service training and re-training programs focusing on use of force investigations, including in the delineated areas.</p> <p>3. Certification of attendance at investigative training on at least annual basis by $\geq 95\%$ of all MPD officers and supervisors who conduct misconduct and use of force investigations.</p> | <p>1. Review of in-service training programs and curricular materials.</p> <p>2. Review in-service training attendance records.</p> <p>3. Review investigator training records.</p> |

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| | IV. RECEIPT, INVESTIGATION, AND REVIEW OF MISCONDUCT ALLEGATIONS | | | |
| | A. Coordination and Cooperation Between MPD and OCCR | | | |
| 85 | Within 60 days from the effective date of this Agreement, the City and MPD shall develop a written plan, in timely consultation with DOJ, that clearly delineates the roles and responsibilities of OCCR and MPD regarding the receipt, investigation, and review of complaints. At minimum, the plan shall specify each agency's responsibility for receiving, recording, investigating, and tracking complaints; each agency's responsibility for conducting community outreach and education regarding complaints; how, when, and in what fashion the agencies shall exchange information, including complaint referrals and information about sustained complaints; and the role and responsibilities of MPD official serving on the Citizen Complaint Review Board (CCRB). | 1. Development of a plan, in consultation with DOJ, that delineates the roles and responsibilities of OCCR and MPD in the receipt, investigation and review of complaints. | 1. Development and implementation of a DOJ approved written policy that, at a minimum, specifies: <ul style="list-style-type: none"> • each agency's responsibility for receiving, recording, investigating and tracking complaints; • each agency's responsibility for community outreach and education; • exchange of information and referrals; • role and responsibilities of MPD officials on the CCRB. 2. Operations and activities of MPD and OCCR consistent with written plan. 3. ≥95% of cases handled consistently with allocation of roles and responsibilities specified in written plan. | 1. Review MPD policies, general orders, and manuals related to conduct of misconduct investigations. 2. Review OCCR policies and manuals related to the investigation of citizen complaints. 3. Review agreements and MOUs between MPD and OCCR. 4. Review samples of MPD misconduct investigations. 5. Review samples of OCCR investigations. |
| 86 | The City shall provide OCCR sufficient qualified staff, funds, and resources to perform the functions required by this Agreement and by District of Columbia Law 12-208 creating OCCR, including the conduct of timely, thorough, and independent investigations of alleged police misconduct; the conduct of mediation; the conduct of hearings; and the operation of a professional office. | 1. Sufficient resources to OCCR to conduct timely, thorough and independent misconduct investigations, mediation, hearings, and operation of a professional office. | 1. ≥90% OCCR investigations completed within 135 days absent documented special circumstances. 2. Development and implementation by OCCR of systems and procedures for conducting investigations, mediation, and hearings. | 1. Review OCCR policies and procedures. 2. Review samples of OCCR investigations. 3. Review OCCR docket. 4. Monitor OCCR mediation and hearings. 5. Review CCRB decisions. |

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| | B. Public Information and Outreach | | | |
| 87 | MPD shall continue to require all officers to provide their name and identification number to any person who requests it. | 1. All officers provide name and identification numbers to persons who request the information | 1. Officers provide names and identification numbers in $\geq 95\%$ of instances in which request is made. | 1. Review citizen complaints. 2. Review chain of command use of force and misconduct investigations. 3. Interviews with MPD officers. 4. Monitoring of citizen complaint process. |
| 88 | Within 90 days of this agreement, the City and MPD shall develop and implement an effective program to inform persons that they may make complaints regarding the performance of any officer. This program shall, at minimum, include the development and distribution of complaint forms, fact sheets, informational posters, and public service announcements describing both the OCCR and MPD complaint processes. The City shall make such materials available in English, Spanish, and other appropriate languages. | 1. Development and implementation of effective program to inform persons of right to make complaints regarding officer performance. 2. Program includes distribution of complaint forms, facts sheets, informational posters, and public service announcements describing OCCR and MPD complaint processes. 3. Such materials are available in English, Spanish, and other appropriate languages. | 1. Development and distribution of complaint forms, fact sheets, informational posters, and public service announcements at $\geq 95\%$ of MPD facilities, including HQs, District Stations, District substations, libraries, the MPD Web site, etc. 2. A placard (which includes the phone number of MPD's Office of Professional Responsibility) posted at each of above-listed facilities and describes the complaint process. 3. Materials available at above locations in English, Spanish, and other appropriate languages. 4. Materials of sufficient quality to inform persons of their right to make complaints against police officers and processes for doing so. 5. $\geq 95\%$ of MPD officers understand the complaint process. | 1. Review MPD and OCCR complaint forms, facts sheets, informational posters, public service announcements. 2. Visits to HQs, District facilities, District substations, libraries, and MPD Web site. 3. Monitor in-service training. 4. Interview MPD officers. 5. Discussions with MPD's public relations office. 6. Monitor community outreach meetings. |

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| 89 | Within 120 days of the effective date of this agreement, the City shall make complaint forms, and informational materials available at OCCR, MPD Headquarters, all MPD District stations and sub-stations, libraries, the internet, and upon request, to community groups and community centers. At each MPD District station and sub-station, MPD shall permanently post a placard describing the complaint process and include the phone number of MPD's Office of Professional Responsibility. | Same as ¶ 89. | Same as ¶89. | Same as ¶ 89. |
| 90 | MPD shall require all officers to carry informational brochures and complaint forms in their vehicles at all times while on duty. MPD shall require all officers to inform persons who object to an officer's conduct that persons have a right to make a complaint. MPD shall prohibit officers from discouraging any person from making a complaint. | <ol style="list-style-type: none"> 1. All officers required to carry informational brochures and complaint forms in their vehicles at all times while on duty. 2. All officers required to inform persons who object to an officer's conduct that persons have a right to make a complaint. 3. MPD prohibits officers from discouraging persons who wish to make a complaint. | <ol style="list-style-type: none"> 1. ≥95% officers carry informational brochures and complaint forms in vehicles while on duty. 2. Development and implementation of MPD policy requiring officers to inform persons who object to an officer's conduct that persons have a right to make a complaint. 3. Development and implementation of MPD policy prohibiting officers from discouraging persons who wish to make a complaint. | <ol style="list-style-type: none"> 1. Review citizen complaints. 2. Review sample of OCCR investigations. 3. Review sample of chain of command use of force and misconduct investigations. 3. Discussions with MPD officers. 4. Review policies, training curricula and lesson plans. 5. Conduct complaint process testing. 6. Interview citizen complainants. |
| 91 | For the term of this agreement, MPD shall conduct a Community Outreach and Public Information program for each MPD District. The program shall require the following: | <ol style="list-style-type: none"> 1. Establishment of a Community Outreach and Public Information program for each MPD District with all of the requirements set forth in ¶¶ 91a-b. | <ol style="list-style-type: none"> 1. Establishment of a Community Outreach and Public Information program for each MPD District with all of the requirements set forth in ¶¶ 91a-b. | <ol style="list-style-type: none"> 1. Review policies and publications related to the Community Outreach and Public Information programs in each of the MPD districts. 2. Monitor community outreach open meetings with the public. 3. Review records documenting the convening of such meetings. |

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| a | to continue at least one open meeting per quarter in each of the patrol service areas for the first year of the Agreement, and one meeting in each patrol service area semi-annually thereafter, to inform the public about the provisions of this Agreement, and the various methods of filing a complaint against an officer. At least one week before such meetings the City shall publish notice of the meeting (i) in public areas, including libraries, schools, grocery stores, community centers; (ii) taking into account the diversity in language and ethnicity of the area’s residents; (iii) on the City and MPD website; and (iv) in the primary languages spoken by the communities located in such area. | <ol style="list-style-type: none"> 1. At least one open meeting per quarter in each of the patrol service areas during the first year of the MOA. 2. At least one meeting in each patrol service area semi-annually thereafter to advise the public about the provisions of the MOA and the methods of filing a complaint. 3. Publication of notice of such meetings at least one week in advance made in the manner described by ¶ 91a. | <ol style="list-style-type: none"> 1. Semi-annual public meetings in ≥95% of the patrol service areas held. 2. ≥95% of public meetings preceded by at least one week notice and made in the manner and locations described by ¶ 91.a, including taking into account language and ethnicity of area residents. | Same as ¶ 91. |
| b | the open public meetings described above shall continue to include presentations and information on MPD and MPD operations in order to enhance interaction between officers and community members in daily policing activities. | <ol style="list-style-type: none"> 1. Open public meetings include presentations and information on MPD and MPD operations to enhance interaction between officers and community members. | <ol style="list-style-type: none"> 1. ≥95% of semi-annual public meetings in each of the patrol service areas include information re MPD and MPD operations. | Same as ¶ 91. |
| | C. Receipt of Complaints | | | |
| 92 | Within 90 days from the effective date of this Agreement, MPD shall make it possible for persons to initiate complaints with MPD in writing or verbally, in person, by mail, by telephone (or TDD), facsimile transmission, or by electronic mail. MPD shall accept and investigate anonymous complaints and complaints filed by persons other than the alleged victim of misconduct. MPD shall ask anonymous and third-party complainants for corroborating evidence. MPD shall not require that a complaint be submitted in writing or on an official complaint form to initiate an investigation. | <ol style="list-style-type: none"> 1. Within 90 days, MPD able to receive citizen complaints in writing, in person, by mail, by telephone (or TDD), by fax, or by e-mail. 2. MPD accepts and investigates anonymous complaints and complaints by persons other than the alleged victim. 3. MPD asks anonymous and third-party complainants for corroborating evidence. 4. MPD does not require complaints be in writing or on an official complaint form. | <ol style="list-style-type: none"> 1. Establishment of citizen complaint infrastructure to receive complaints in writing, in person, by mail, by telephone (or TDD), by fax, or by e-mail. 2. Development and implementation of a DOJ approved complaint policy providing that MPD accept anonymous complaints and complaints by persons other than the alleged victim; ask anonymous and third-party complainants for corroborating evidence; and not require complaints be in writing or on an official complaint form. | <ol style="list-style-type: none"> 1. Review MPD policies and procedures. 2. Conduct citizen complaint surveys. 3. Conduct citizen complaint process testing. |

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| 93 | <p>Within 120 days from the effective date of this Agreement, the City shall institute a 24-hour toll-free telephone hotline for persons to call to make a complaint regarding officer conduct. The hotline shall be operated by OCCR. They City and MPD shall publicize the hotline telephone number on informational materials and complaint forms. The City shall tape record all conversations on this hotline and shall notify all persons calling the hotline of the tape recording. The City shall develop an auditing procedure to assure that callers are being treated with appropriate courtesy and respect, that complainants are not being discouraged from making complaints, and that all necessary information about each complaint is being obtained. This procedure shall include monthly reviews of a random sample of the tape recordings.</p> | <ol style="list-style-type: none"> 1. Within 120 days, implementation of a 24-hour toll-free hotline for receipt of complaints regarding officer conduct. 2. Hotline operated by OCCR. 3. Hotline calls tape recorded and persons calling the hotline notified of tape recording. 4. Development of auditing procedure to ensure calls are handled in the manner prescribed in ¶ 93, including monthly reviews of random samplings of tape recordings. | <ol style="list-style-type: none"> 1. Implementation of citizen complaint hotline operated by OCCR. 2. ≥95% of hotline calls tape recorded and tape recording disclosed to callers. 3. Development and implementation of auditing procedure, including monthly reviews of random samplings of tape recordings. | <ol style="list-style-type: none"> 1. Conduct citizen complaint surveys. 2. Conduct hotline testing. 3. Review hotline tape recordings. 4. Review OCCR hotline auditing procedures and monthly hotline reviews. |
| 94 | <p>Within 60 days from the effective date of this Agreement, MPD's Office of Professional Responsibility (OPR) shall be responsible for receiving all complaints filed directly with MPD. MPD shall assign and record a control system number for each complaint immediately. All complaints made at MPD locations other than OPR shall be forwarded to OPR within 24 hours, or the next business day. Within 24 hours, or the next business day OPR shall notify OCCR of any complaint alleging any of the following: harassment; use of unnecessary or excessive force; use of insulting, demeaning, or humiliating language; or discriminatory treatment.</p> | <ol style="list-style-type: none"> 1. Within 60 days, OPR responsible for receiving all complaints filed directly with MPD. 2. Immediate assignment of a control system number for each complaint. 3. Complaints submitted to all MPD locations forwarded to OPR within 24 hours or by the next business day. 4. Within 24 hours or by the next business day, OPR shall notify OCCR of complaints alleging: harassment; unnecessary or excessive use of force; use of insulting, demeaning or humiliating language; and discriminatory treatment. | <ol style="list-style-type: none"> 1. Development and implementation of policies and procedures related to OPR's handling of complaints filed directly with MPD. 2. ≥95% of complaints filed with MPD immediately assigned CS number. 3. ≥95% of complaints submitted to MPD forwarded to OPR within 24 hours or by the next business day. 4. OCCR notified of ≥95% cases involving complaints involving allegations described in ¶ 94 within 24 hours or by the next business day. | <ol style="list-style-type: none"> 1. Review OPR policies and procedures. 2. Monitor OPR complaint receipt processes. 3. Review OPR and OCCR complaint files and records. 4. Review samples of misconduct investigations. 5. Conduct complaint process testing. |
| 95 | <p>The City shall continue to locate OCCR offices separate from any building occupied by other MPD personnel.</p> | <ol style="list-style-type: none"> 1. OCCR offices located separately from any building occupied by other MPD personnel.. | <ol style="list-style-type: none"> 1. OCCR offices maintained separately from buildings occupied by MPD personnel. | <ol style="list-style-type: none"> 1. Visit OCCR offices. |

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| | D. OCCR Misconduct Investigations | | | |
| 96 | Within 90 days from the effective date of this Agreement, the City shall develop and implement a plan, in timely consultation with DOJ and the Monitor, to ensure that the investigative staff of OCCR receive adequate training to enable them to carry out their duties. OCCR investigative staff shall receive training and re-training in MPD policies and procedures, including, but not limited to, use of force and use of force reporting, canine deployment, transporting individuals in custody, restraints, arrests, report writing; investigative and interview techniques, including examining and interrogating witnesses, and collecting and preserving evidence; cultural sensitivity; ethics; integrity; and professionalism. | <ol style="list-style-type: none"> 1. Within 90 days, development and implementation of a plan regarding the training of OCCR investigative staff. 2. OCCR staff shall receive training in the areas described in ¶ 96. | <ol style="list-style-type: none"> 1. Timely development and implementation of a plan regarding the training of OCCR investigative staff. 2. ≥95% of OCCR investigative staff fully trained in areas described in ¶ 96. | <ol style="list-style-type: none"> 1. Review policies, procedures and lesson plans related to training of OCCR investigators. 2. Monitor OCCR training. 3. Review personnel files of OCCR investigators. 4. Review attendance roster for OCCR training. 5. Review MOU. |
| 97 | Within 90 days from the effective date of this Agreement, the City shall develop a manual, in timely consultation with DOJ, for conducting all OCCR complaint investigations. The manual shall include timelines and provide investigative templates to assist investigators in gathering evidence, conducting witness interviews, and preparing investigative reports. | <ol style="list-style-type: none"> 1. Within 90 days, development of a manual regarding the conduct of OCCR complaint investigations that includes the items described in ¶ 97. | <ol style="list-style-type: none"> 1. Timely development of a DOJ approved manual regarding OCCR complaint investigations including all of the items described in ¶ 97 | <ol style="list-style-type: none"> 1. Review OCCR complaint investigations manual. |
| | E. Evaluating and Resolving MPD Misconduct Allegations | | | |
| 98 | MPD shall continue to make findings based on a “preponderance of the evidence” standard. Within 90 days, MPD shall develop a policy and training implementing this standard. | <ol style="list-style-type: none"> 1. Development of policy and training implementing the “preponderance of the evidence” standard applicable to MPD misconduct investigations. | <ol style="list-style-type: none"> 1. Development of DOJ approved policy implementing the “preponderance of the evidence” standard applicable to MPD misconduct investigations. 2. MPD investigators trained to use the “preponderance of the evidence” standard applicable to MPD misconduct investigations. 3. MPD investigators make findings based on “preponderance of the evidence” standard. | <ol style="list-style-type: none"> 1. Review MPD policies, procedures, and manuals related to misconduct investigations. 2. Review training curricula and lesson plans related to misconduct investigations. 3. Review of samples of MPD misconduct investigations. |

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| 99 | In each misconduct investigation, MPD shall consider all relevant evidence including circumstantial, direct and physical evidence, as appropriate, and make credibility determinations, if feasible. There shall be no automatic preference for an officer's statement over a person's statement. MPD shall make efforts to resolve inconsistent statements between witnesses. | <ol style="list-style-type: none"> 1. MPD misconduct investigations consider all relevant evidence and make credibility determinations if feasible. 2. MPD investigators do not give automatic preference to an officer's statement over a person's statement. 3. MPD investigators make efforts to resolve inconsistent statements between witnesses. | <ol style="list-style-type: none"> 1. ≥95% of misconduct investigations consider all relevant evidence and make credibility determinations if feasible. 2. ≥95% of misconduct investigations do not involve automatic preference of officer's statement over citizen's statement. 3. ≥95% of misconduct investigations demonstrate, where appropriate, effort to resolve inconsistent statements between witnesses. | <ol style="list-style-type: none"> 1. Review samples of misconduct investigations. |
| 100 | MPD shall resolve each allegation in a misconduct investigation by making one of the following dispositions: | <ol style="list-style-type: none"> 1. MPD resolves each allegation of misconduct by making one of the dispositions defined in ¶¶ 100a-d. | <ol style="list-style-type: none"> 1. ≥95% of misconduct investigations resolved with a disposition of unfounded, sustained, insufficient facts, or exonerated. | <ol style="list-style-type: none"> 1. Review samples of misconduct investigations. |
| a | "Unfounded," where the investigation determined no facts to support that the incident complained of actually occurred; | | | |
| b | "Sustained," where the person's allegation is supported by sufficient evidence to determine that the incident occurred and the actions of the officer were improper; | | | |
| c | "Insufficient Facts," where there are insufficient facts to decide whether the alleged misconduct occurred; | | | |
| d | "Exonerated," where a preponderance of the evidence shows that the alleged conduct did occur but did not violate MPD policies, procedures, or training. | | | |

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| 101 | MPD shall not close any misconduct investigation without rendering one of the dispositions identified above. [100 a. “unfounded” b. “sustained” c. “insufficient facts” d. “exonerated.”] Withdrawal of a complaint or unavailability of the complainant or the victim of the alleged misconduct to make a statement shall not be a basis for closing for an investigation without further attempt at investigation. MPD shall investigate such matters to the extent reasonably possible to determine whether or not the allegations can be resolved. | <ol style="list-style-type: none"> 1. MPD shall not close any misconduct investigation without rendering one of the dispositions identified in ¶¶ 100a-d. 2. Withdrawal of complaint or unavailability of complainant or victim shall not be a basis for closing an investigation without further reasonable attempt at investigation to determine whether allegations can be resolved. | <ol style="list-style-type: none"> 1. ≥95% of closed investigations include disposition of unfounded, sustained, insufficient facts or exonerated. 2. ≥95% of closed cases involving withdrawal of complaint or unavailability of complainant demonstrate further reasonable investigation and attempt to resolve allegations. | <ol style="list-style-type: none"> 1. Review sample of misconduct investigations. 2. Interviews with citizen complainants. |
| 102 | At the conclusion of each misconduct investigation, the individual responsible for the investigation shall prepare a report on the investigation, which shall be made a part of the investigation file. The report shall include a description of the alleged misconduct and any other misconduct issues identified during the course of the investigation; a summary and analysis of all relevant evidence gathered during the investigation; and proposed findings and analysis supporting the findings. | <ol style="list-style-type: none"> 1. At the conclusion of each misconduct investigation, the responsible individual shall prepare a report that shall be included in the investigation file. 2. The final investigation report shall contain: <ul style="list-style-type: none"> • A description of the alleged misconduct and any other misconduct issues identified during the course of the investigation; • A summary and analysis of all relevant evidence gathered during the investigation; and • Proposed findings and analysis supporting the findings. | <ol style="list-style-type: none"> 1. ≥95% of completed investigations include final report containing: <ul style="list-style-type: none"> • A description of the alleged misconduct and any other misconduct issues identified during the course of the investigation; • A summary and analysis of all relevant evidence gathered during the investigation; and • Proposed findings and analysis supporting the findings. | <ol style="list-style-type: none"> 1. Review sample of misconduct investigations. |
| 103 | MPD shall complete all misconduct investigations within 90 days after receiving the allegations unless the complexity of the case dictates otherwise, or within 90 days from a criminal declination, where applicable. | <ol style="list-style-type: none"> 1. All misconduct investigations shall be completed within 90 days after receipt of the allegations or from a criminal declination, unless complexity of the case dictates otherwise. | <ol style="list-style-type: none"> 1. ≥90% of misconduct investigations completed within 90 days after receipt of the allegations or from a criminal declination, unless file indicates complexity of case dictated otherwise. | <ol style="list-style-type: none"> 1. Review sample of misconduct investigations. |

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| 104 | <p>MPD shall require its Unit Commanders to evaluate all misconduct investigation to identify underlying problems and training needs. After such evaluations, the Unit Commander shall implement appropriate non-disciplinary actions, if any, or make a recommendation to the proper MPD entity to implement such actions. Sustained misconduct allegations will be handled pursuant to the disciplinary policy described in paragraph 105.</p> | <ol style="list-style-type: none"> 1. Unit Commanders shall evaluate all misconduct investigations to identify underlying problems and training needs. 2. After such evaluations, Unit Commanders shall implement or recommend appropriate non-disciplinary actions, if any. 3. Sustained misconduct allegations shall be handled pursuant to the disciplinary procedures described in ¶ 105. | <ol style="list-style-type: none"> 1. Development and implementation of DOJ approved policies and procedures requiring Unit Commanders to evaluate all misconduct investigations to identify underlying problems and training needs. 2. Development and implementation of DOJ approved policies and procedures requiring Unit Commanders to implement or recommend appropriate non-disciplinary actions following evaluations of misconduct investigations. 3. Development and implementation of disciplinary policies and procedures related to sustained misconduct allegations that are consistent with ¶ 105. | <ol style="list-style-type: none"> 1. Review policies and procedures related to Unit Commander evaluation of misconduct investigations. 2. Review Unit Commander evaluations of misconduct investigations. 3. Review Unit Commander directives and referrals regarding non-disciplinary actions taken in response to evaluations of misconduct investigations. 4. Discussions with Unit Commanders. 5. Review disciplinary policies and procedures. |

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| | V. DISCIPLINE AND NON-DISCIPLINARY ACTIONS | | | |
| 105 | <p>Within 120 days from the effective date of this Agreement, MPD shall revise and update its disciplinary policy, General Order 1202.1 (Disciplinary Procedures and Processes), subject to the approval of DOJ. The policy shall describe the circumstances in which non-disciplinary action is appropriate. The policy shall describe the circumstances in which District-level discipline or corrective action is appropriate. The policy shall establish a centralized and formal system for documenting and tracking all forms of discipline and corrective action, whether imposed centrally or at the District level. It shall also specify the procedure for notifying complainants in writing of the resolution, including significant dates, general allegations and the disposition.</p> | <p>1. Within 120, revise and update disciplinary policy that:</p> <ul style="list-style-type: none"> • Describes circumstances in which non-disciplinary action is appropriate. • Describes circumstances in which District-level discipline or corrective action is appropriate. • Establishes a centralized and formal system for documenting and tracking all forms of discipline and corrective action, whether imposed centrally or at District level. • Specifies the procedure for notifying complainants in writing of the resolution, including significant dates, the general allegations and the disposition. | <p>1. Development and implementation of DOJ approved revised and updated disciplinary policies and procedures that:</p> <ul style="list-style-type: none"> • Describes circumstances in which non-disciplinary action is appropriate. • Describes circumstances in which District-level discipline or corrective action is appropriate. • Establishes a centralized and formal system for documenting and tracking all forms of discipline and corrective action, whether imposed centrally or at District level. • Specifies the procedure for notifying complainants in writing of the resolution, including significant dates, the general allegations and the disposition. | <ol style="list-style-type: none"> 1. Review disciplinary policies and procedures. 2. Review sample of misconduct investigations. 3. Review MPD disciplinary records. 4. Review officer personnel files, including district level records. 5. Interviews of citizen complainants. |

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| | VI. PERSONNEL PERFORMANCE MANAGEMENT SYSTEM | | | |
| 106 | PPMS: The computerized data shall be used regularly and affirmatively by MPD to promote civil rights integrity and best professional police practices; to manage the risk of police misconduct, and potential liability thereof; and to evaluate and audit the performance of MPD officers of all ranks, and MPD units, sub-units, and shifts. It shall be used to promote accountability and proactive management and to identify, manage, and control at-risk officers, conduct, and situations. This system shall be a successor to, and not simply a modification of, MPD's existing automated systems. | | | |
| 107 | PPMS shall contain information at minimum on the following matters: | NA | NA | NA |
| a | all uses of force that are required to be reported in MPD "Use of Force Incident Report" forms or otherwise are the subject of a criminal or administrative investigation by the Department; | 1. PPMS includes information on all uses of force requiring UFIR or serving as a basis for a criminal/ administrative investigation. | 1. Uses of force requiring UFIR entered into PPMS with $\geq 95\%$ level of accuracy and completeness. 2. Uses of force subject to criminal or administrative investigation entered into PPMS with $\geq 95\%$ level of accuracy and completeness. | 1. Review UFIRs. 2. Review PAMS database. 3. Review FIT investigations. 4. Review samples of chain of command and OPR use of force and misconduct investigations. 5. Review use of force statistics 6. Review canine unit deployment database. |
| b | all instances in which a police canine is deployed to search for or find a member of the public; | 1. PPMS includes information on all canine deployments to search for a member of the public. | 1. Canine deployments to search for member of the public entered into PPMS with $\geq 95\%$ level of accuracy and completeness. | 1. Review canine unit deployment database. 2. Review UFIRs. 3. Review FIT investigations. 4. Review samples of chain of command and OPR use of force and misconduct investigations. 5. Review use of force statistics 6. Review PAMS database. |

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| c | all officer-involved shootings and firearms discharges, both on-duty and off-duty; | 1. PPMS contains information on all off-duty and on-duty shootings and firearms discharges by officers. | 1. On- and off-duty shootings and firearms discharges involving officers entered into PPMS with $\geq 95\%$ level of accuracy and completeness. | 1. Review UFIRs. 2. Review FIT investigations. 3. Review use of force statistics. 4. Review PAMS database. |
| d | all other lethal uses of force; | 1. PPMS contains information on all lethal uses of force. | 1. Lethal uses of force correctly entered into PPMS with $\geq 95\%$ level of accuracy and completeness. | 1. Review canine unit deployment database. 2. Review UFIRs. 3. Review FIT investigations. 4. Review use of force statistics. 5. Review PAMS database. |
| e | all studies, reviews, or determinations with respect to the criminal, administrative, tactical, strategic, or training implications of any use of force, including all preliminary and final decisions regarding whether a given use of force was or was not within MPD policy; | 1. PPMS contains information on all studies, reviews, or determinations with respect to criminal, administrative, tactical, strategic, or training implications of any use of force (including preliminary and final decisions regarding whether a given use of force was or was not within MPD policy). | 1. Such studies, reviews, determinations, and decisions entered into PPMS with $\geq 95\%$ level of accuracy and completeness. | 1. Review use of force statistics. 2. Review MPD studies, reviews, determinations. 3. Review data from disciplinary review board. 4. Review DDRO database. 5. Review data from Personnel Management Office, OPR, OCCR, DDRO, and chain of command databases. |
| f | all vehicle pursuits and traffic collisions; | 1. PPMS includes all vehicle pursuits and traffic collisions. | 1. Vehicle pursuits and traffic collisions entered into PPMS with $\geq 95\%$ level of accuracy and completeness. | 1. Review UFIRs and OPR files. 2. Review FIT investigations. 3. Review PAMS database. |
| g | all complaints (whether made to MPD or OCCR); | 1. PPMS includes information on all complaints made to MPD. 2. PPMS includes information on all complaints made to OCCR. | 1. Complaints made to MPD recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. 2. Complaints made to OCCR correctly recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. | 1. Review OCCR database. 2. Review OPR database. 3. Review OCCR complaint records. 4. Review PAMS database. |

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| h | with respect to the foregoing clauses (a) through (g), the results of adjudication of all investigations (whether criminal or administrative) and a chronology or other complete historical record of all tentative and final decisions or recommendations regarding discipline, including actual discipline imposed or non-disciplinary action taken; | <ol style="list-style-type: none"> 1. PPMS includes information on all results of adjudication of investigations described in (a) through (g). 2. PPMS includes a complete chronology or historical record of all tentative and final decisions or recommendations regarding discipline. 3. PPMS includes information on all actual discipline imposed or non-disciplinary action against MPD officers. | <ol style="list-style-type: none"> 1. Results of adjudication of investigations described in (a) through (g) recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. 2. Chronology or historical record of all tentative and final decisions and recommendations regarding discipline recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. 3. Actual discipline imposed or non-disciplinary action taken recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. | <ol style="list-style-type: none"> 1. Review USAO database. 2. Review DDRO database. 3. review data from disciplinary board. 4. Review OPR files. 5. Review OCCR files. 6. Review chain of command files. 7. Review Personnel files. 8. Review PAMS database. |
| i | all commendations received by MPD about officer performance; | <ol style="list-style-type: none"> 1. PPMS includes information on all commendations on officer performance. | <ol style="list-style-type: none"> 1. Commendations on officer performance entered into PPMS with $\geq 95\%$ level of accuracy and completeness. | <ol style="list-style-type: none"> 1. Review personnel files. 2. Review PAMS database. |
| j | all criminal arrests and investigations known to MPD of, and all charges against, MPD employees; | <p>PPMS includes information on all:</p> <ol style="list-style-type: none"> 1. Criminal arrests of MPD employees; 2. Investigations of MPD employees known to MPD; and 3. Charges against MPD employees. | <ol style="list-style-type: none"> 1. Criminal arrests recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. 2. Investigations known to MPD recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. 3. Charges against MPD employees recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. | <ol style="list-style-type: none"> 1. Review USAO database. 2. Review DDRO database. 3. Review OPR files. 4. Review OCCR files. 5. Review chain of command files. 6. Review personnel files. 7. Review PAMS database. |

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| k | all criminal proceedings initiated, as well as all civil or administrative claims filed with, and all civil lawsuits served upon, the City, or its officers, or agents, resulting from MPD operations or the actions of MPD personnel; | PPMS includes information on all: 1. Criminal proceedings initiated against the City, its officers, or agents resulting from MPD operations or actions of MPD personnel recorded; 2. Civil or administrative filings filed against the City, et al.; and 3. Civil lawsuits served upon the City, et al. | 1. Such criminal proceedings against the City, etc. recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. 2. Such civil or administrative filings filed against the City, et al., recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. 3. Civil lawsuits served upon the City, et al. recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. | 1. Review civil and criminal court dockets. 2. Review USAO files. 3. Review DDRO records. 4. Review OPR files. 5. Review OCCR files. 6. Review chain of command files. 7. Review PAMS database. 8. Review Corporation Counsel records. |
| l | assignment, and rank history for each officer; | PPMS includes information on: 1. Assignment of each officer; and 2. Rank history of each officer. | 1. Assignment of each officer recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. 2. Rank history for each officer recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. | 1. Review personnel files. 2. Review PAMS database. |
| m | training history; | 1. PPMS includes the training history of each officer.. | 1. Officers' training history recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. | 1. Review personnel files. 2. Review training compliance suite. 3. Review canine records. 4. Review PAMS database. |
| n | all management and supervisory actions taken pursuant to a review of PPMS information, including non-disciplinary actions; | 1. Management and supervisory actions taken pursuant to a review of PPMS information (including non-disciplinary actions) recorded in PPMS. | 1. Management and supervisory actions taken pursuant to a review of PPMS information (including non-disciplinary actions) recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. | 1. Review PPMS database. 2. Review DDRO files. 3. Review chain of command files. 4. Review PAMS database. |
| o | educational history; | 1. Educational history recorded in PPMS. | 1. Educational history recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. | 1. Review personnel files. 2. Review outside employment database. 3. Review PAMS database. |

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| p | military service and discharge status; | 1. Military service and discharge status recorded in PPMS. | 1. Military service and discharge status recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. | <ol style="list-style-type: none"> 1. Review personnel files. 2. Review outside employment database. 3. Review PAMS database. 4. Review military personnel databases. |
| q | all instances in which MPD is informed by a prosecuting authority that a declination to prosecute any crime was based in whole or in part upon concerns about the credibility of an MPD officer or that a motion to suppress was granted on the grounds of a constitutional violation by an MPD officer; and | <p>PPMS includes information on all:</p> <ol style="list-style-type: none"> 1. Instances in which MPD is informed by a prosecuting authority that a declination to prosecute any crime was based in whole or in part upon concerns about the credibility of an MPD officer; and 2. Instances in which MPD is informed by a prosecuting authority that a motion to suppress was granted on the grounds of a constitutional violation by an MPD officer. | <ol style="list-style-type: none"> 1. Instances in which MPD is informed by a prosecuting authority that a declination to prosecute any crime was based in whole or in part upon concerns about the credibility of an MPD officer recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. 2. Instances in which MPD is informed by a prosecuting authority that a motion to suppress was granted on the grounds of a constitutional violation by an MPD officer recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. | <ol style="list-style-type: none"> 1. Review USAO records. 2. Review Corporation Counsel files. 3. Review criminal case files. 4. Review personnel files. 5. Review DDRO disciplinary records. |

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| r | PPMS further shall include, for the incidents included in the database, appropriate additional information about involved officers (e.g., name and badge number), and appropriate information about the involved members of the public (including demographic information such as race, ethnicity, or national origin). Additional information on officers involved in incidents (e.g., work assignment, officer partner, field supervisor, and shift at the time of the incident) shall be determinable from PPMS. | <ol style="list-style-type: none"> 1. For incidents included in PPMS, appropriate additional information about all involved officers (including name and badge number) should be recorded in PPMS. 2. For incidents included in PPMS, appropriate information about involved members of the public (including demographic information) recorded in PPMS. 3. Every officer's work assignments, officer partners, field supervisors, and shifts recorded in PPMS. | <ol style="list-style-type: none"> 1. Appropriate additional information (e.g., name and badge number) recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. 2. Appropriate information about involved members of the public (including demographic information) recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. 3. Officers' work assignments, officer partners, field supervisors, and shifts recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. | <ol style="list-style-type: none"> 1. Review officer reports. 2. Review FIT reports. 3. Review personnel files. 4. Review PAMS database. |
| 108 | MPD shall prepare for the review and approval of DOJ, and thereafter implement, a plan for inputting historical data into PPMS (the "Data Input Plan"). The Data Input Plan shall identify the data to be included and the means for inputting such data (direct entry or otherwise), the specific fields of information to be included, the past time periods for which information is to be included, the deadlines for inputting data, and the responsibility for the input of the data. The Data Input Plan shall include historical data that are up-to-date and complete in PPMS. | <ol style="list-style-type: none"> 1. Development of appropriate Data Input Plan that identifies: <ul style="list-style-type: none"> • the data to be included, • the means for inputting the data, • the specific fields to be included, • the past time periods for which information is to be included, • the deadlines for including data, and • the responsibility for inputting data. 2. Proper training on inputting data according to Data Input Plan. 3. Proper implementation of Data Input Plan. | <ol style="list-style-type: none"> 1. Development of Data Input Plan that identifies: <ul style="list-style-type: none"> • the data to be included, • the means for inputting the data, • the specific fields to be included, • the past time periods for which information is to be included, • the deadlines for including data, and • the responsibility for inputting data. 2. Submission of plan and approval by DOJ. 3. Data entered into PPMS in accordance with Data Input Plan, including meeting deadlines for entry of data. | <ol style="list-style-type: none"> 1. Review Data Input Plan. 2. Monitor training regarding inputting data. 3. Monitor implementation of Data Input Plan. |

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| 109 | PPMS shall include relevant numerical and descriptive information about each incorporated item and incident, and scanned or electronic attachments of copies of relevant documents. PPMS shall have the capability to search and retrieve (through reports and queries) numerical counts, percentages and other statistical analyses derived from numerical information in the database, listings, descriptive information, and electronic document copies for (a) individual employees, MPD units, and groups of officers, and (b) incidents or items, and groups of incidents or items. PPMS shall have the capability to search and retrieve this information for specified time periods, based on combinations of data fields contained in PPMS (as designated by the authorized user). | <ol style="list-style-type: none"> 1. Relevant numerical and descriptive information (including attachments) about each item/incident included in PPMS. 2. PPMS must be able to run reports/queries that will search for and retrieve the listed information for specified time periods. | <ol style="list-style-type: none"> 1. All relevant numerical and descriptive information (including attachments) about each item/incident entered into PPMS with $\geq 95\%$ level of accuracy and completeness. 2. PPMS has search capability to run reports/queries that will search for and retrieve the listed information for specified time periods. | <ol style="list-style-type: none"> 1. Test queries and test requests for reports. |
| 110 | Where information about a single incident is entered in PPMS from more than one document (e.g., from a complaint form and a use of force report), PPMS shall use a common control number or other equally effective means to link the information from different sources so that the user can cross-reference the information and perform analyses. Similarly, all personally identifiable information relating to MPD officers shall contain the badge or other employee identification number of the officer to allow for linking and cross-referencing information. | <ol style="list-style-type: none"> 1. PPMS must link different documents and entries related to the incident using a common control number or other equally effective means. 2. PPMS must link all personally identifiable information relating to MPD officers using badge/ID number. | <ol style="list-style-type: none"> 1. Documents and entries related to a single incident are linked in PPMS via a mechanism such as a common control number at a level of reliability $\geq 95\%$. 2. All personally identifiable information relating to an MPD officer is linked in PPMS via the badge or ID number at a level of reliability $\geq 95\%$. | <ol style="list-style-type: none"> 1. Review PPMS database. |

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| 111 | MPD shall, within 90 days, prepare for the review and approval of DOJ, and thereafter implement, a protocol for using PPMS, including, but not limited to, supervision and auditing of the performance of specific officers, supervisors, managers, and MPD units, as well as MPD as a whole. The City shall submit for the review and approval of DOJ all proposed modifications to the protocol prior to implementing such modifications. | <ol style="list-style-type: none"> 1. Development of appropriate protocol for using PPMS. 2. Proper training on protocol for using PPMS. 3. Proper implementation of protocol for using PPMS, including distribution of protocol and training. 4. DOJ reviews and approves all proposed modifications to the protocol prior to the implementation of such modifications. | <ol style="list-style-type: none"> 1. Development and DOJ approval of PPMS protocol. 2. Protocol for using PPMS permits: <ul style="list-style-type: none"> • supervision and auditing performance of specific officers, • supervision and auditing performance of MPD units, supervisors and managers, and • supervision and auditing of MPD as a whole. 4. Implementation of PPMS, including establishment of system and training of personnel, permits: <ul style="list-style-type: none"> • supervision and auditing performance of specific officers, • supervision and auditing performance of MPD units, supervisors and managers, and • supervision and auditing of MPD as a whole. 5. City submits for DOJ approval all proposed modifications to the protocol prior to implementing such modifications. | <ol style="list-style-type: none"> 1. Review data-entry and use of PPMS. 2. Review training sessions on use of PPMS protocol. 3. Review auditing of performance of specific officers, supervisors, managers, and MPD units. 4. Review communications between DOJ and MPD. |
| 112 | The protocol for using PPMS shall include the following provisions and elements: | | | |

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| a | The protocol shall require that, on a regular basis, but no less than quarterly, managers, and supervisors review and analyze all relevant information in PPMS about officers under their supervision to detect any pattern or series of incidents that indicate that an officer, group of officers, or an MPD unit under his or her supervision may be engaging in at-risk behavior. | 1. At least quarterly, managers and supervisors review and analyze all relevant information in PPMS to detect indications that an officer, group of officers, or an MPD unit may be engaging in at-risk behavior. | 1. Establishment of a protocol requiring at least quarterly reviews and analysis by managers and supervisors of information in PPMS for indications of at-risk behavior. 2. Quarterly reviews for at risk behavior and their findings are documented. | 1. Review PPMS protocol. 2. Review reports related to quarterly reviews for at-risk behavior. |
| b | The protocol shall provide that when at-risk behavior may be occurring based on a review and analysis described in the preceding subparagraph, appropriate managers, and supervisors shall undertake a more intensive review of the officer's performance. | 1. When potential at-risk behavior is identified, appropriate managers and supervisors undertake a more intensive review of the subject officers' performance. | 1. Establishment of a protocol requiring intensive reviews of officer performance by appropriate managers and supervisors performed in all cases where potential at risk behavior is identified. 2. Intensive reviews of officer performance where potential at-risk behavior is identified and their findings are documented. | 1. Review PPMS protocol. 2. Review reports related to intensive reviews of officer performance where potential at-risk behavior is identified. |
| c | The protocol shall require that MPD and managers on a regular basis, but no less than quarterly, review and analyze relevant information in PPMS about subordinate managers and supervisors in their command regarding the subordinate's ability to manage adherence to policy and to address at-risk behavior. | 1. At least quarterly review by managers of relevant information in PPMS regarding the ability of subordinate managers and supervisors to manage adherence to MPD's policies and to address at-risk behavior. | 1. Establishment of a protocol requiring quarterly reviews and analysis of relevant information in PPMS for ≥95% of subordinate managers and supervisors. 2. Quarterly reviews of subordinate managers and supervisors and their findings are documented. | 1. Review PPMS protocol. 2. Review quarterly reviews of subordinate managers and supervisors. |
| d | The protocol shall state guidelines for numbers and types of incidents requiring a PPMS review by supervisors and managers (in addition to the regular reviews required by the preceding subparagraphs), and the frequency of these reviews. | 1. Development of guidelines for the numbers and types of incidents requiring a PPMS review by supervisors and managers and the frequency of these reviews. | 1. Establishment of a protocol stating guidelines for the number and types of incidents requiring a PPMS review by a manager or supervisor. 2. Establishment of a protocol; stating guidelines as to the frequency of PPMS reviews by managers and supervisors. | 1. Review PPMS protocol. 2. Review guidelines re PPMS reviews by managers and supervisors. |

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| e | The protocol shall state guidelines for the follow-up executive, managerial or supervisory actions (including nondisciplinary actions) to be taken based on reviews of the information in PPMS required pursuant to this protocol. | 1. Development of guidelines for the follow-up executive, managerial or supervisory actions (including nondisciplinary actions) to be taken based on reviews of information in PPMS. | 1. Establishment of a protocol stating guidelines for the follow-up executive, managerial or supervisory actions (including nondisciplinary actions) to be taken based on reviews of information in PPMS. | 1. Review PPMS protocol. 2. Review guidelines re follow-up actions to be taken by executive, managerial or supervisory personnel based on PPMS reviews. |
| f | The protocol shall require that managers and supervisors use PPMS information, among other relevant information, in determining when to undertake an audit of an MPD unit or group of officers. | 1. Managers and supervisors required to use PPMS information, in addition to other relevant information, in determining when to undertake an audit of an MPD unit or group of officers. | 1. Establishment of a protocol requiring managers and supervisors required to use PPMS information, in addition to other relevant information, in determining when to undertake an audit of an MPD unit or group of officers. 2. ≥95% of audits of MPD units or groups of officers include use of PPMS information. | 1. Review PPMS protocol. 2. Review documentation related to audits or investigations of MPD units or groups of officers. |

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| g | <p>The protocol shall require that all relevant and appropriate information in PPMS be taken into account for pay grade advancement, promotion, transfer, and special assignment, and in connection with annual personnel performance evaluations. Supervisors and managers shall be required to document in writing their consideration of any sustained criminal or administrative investigation, adverse judicial finding or significant monetary settlement, in determining when such officer is selected for special assignment, or assignment with increased pay, transfer, promotion, and in connection with annual personnel performance evaluations. For purposes of this paragraph, a special assignment shall include, but not be limited to, assignment as a training officer, assignment to any specialized unit or to OPR.</p> | <p>1. Protocol requires that PPMS information be taken into account for:</p> <ul style="list-style-type: none"> • pay grade advancement, • promotion, • transfer, • special assignment (including assignment as a training officer, to any specialized unit, or to OPR), • annual personnel performance evaluations. <p>2. In connection with the above employment actions, supervisors and managers shall document in writing their consideration of:</p> <ul style="list-style-type: none"> • any sustained criminal or administrative investigation, and • adverse judicial finding or significant monetary settlement, | <p>1. Establishment and implementation of a protocol requiring that PPMS information be taken into account for:</p> <ul style="list-style-type: none"> • pay grade advancement, • promotion, • transfer, • special assignment (including assignment as a training officer, to any specialized unit, or to OPR), • annual personnel performance evaluations. <p>2. Establishment and implementation of a protocol requiring supervisors and managers to document in writing consideration of</p> <ul style="list-style-type: none"> • any sustained criminal or administrative investigation, and • adverse judicial finding or significant monetary settlement. <p>3. In ≥95% of the above employment actions, supervisors and managers document in writing consideration of</p> <ul style="list-style-type: none"> • any sustained criminal or administrative investigation, and • adverse judicial finding or significant monetary settlement. | <ol style="list-style-type: none"> 1. Review PPMS protocol. 2. Review personnel files. 3. Review PPMS records. |

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| h | The protocol shall specify that actions taken as a result of information from PPMS shall be based on all relevant and appropriate information, and not solely on the number or percentages of incidents in any category recorded in PPMS. | 1. Protocol requires that actions taken as a result of PPMS information shall be based on all relevant and appropriate information, and not solely on the number or percentages of incidents in any category recorded in PPMS. | 1. Establishment of a protocol requiring that actions taken as a result of PPMS information shall be based on all relevant and appropriate information, and not solely on the number or percentages of incidents in any category recorded in PPMS. 2. ≥95% of employment or auditing actions that include use of PPMS information reflect consideration of all relevant and appropriate information in addition to PPMS data and avoid selective use of PPMS data. | 1. Review PPMS protocol. 2. Review personnel files. 3. Review PPMS records. |
| i | The protocol shall provide that managers' and supervisors' performance in implementing the provisions of the PPMS protocol shall be taken into account in their annual personnel performance evaluations. | 1. Protocol provides that performance of supervisors and managers in implementing PPMS protocol shall be considered in their personnel performance evaluations. | 1. Establishment of a protocol requiring that performance of supervisors and managers in implementing PPMS protocol be considered in their personnel performance evaluations. 2. Performance evaluations for ≥95% of supervisors and managers include documented consideration of their performance in implementing the PPMS protocol. | 1. Review PPMS protocol. 2. Review managers' and supervisors' personnel files. |

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| j | <p>The protocol shall provide specific procedures that provide for each MPD officer to be able to review on a regular basis all personally-identifiable data about him or herself in PPMS in order to ensure the accuracy of that data. The protocol also shall provide for procedures for correcting data errors discovered by officers in their review of the PPMS data.</p> | <ol style="list-style-type: none"> 1. Protocol provides specific procedures for officer review on a regular basis of all personally-identifiable information in PPMS to ensure accuracy of data. 2. Protocol establishes procedures for correcting data errors in PPMS discovered by officers. | <ol style="list-style-type: none"> 1. Establishment of a protocol providing: <ul style="list-style-type: none"> • Procedures for individual officers to regularly review for accuracy information in PPMS related to the individual. • Procedures for correcting data errors in PPMS identified by individual officers. 2. Officers permitted to regularly review all data related to the individual officer. 3. Requests for data changes promptly reviewed and officers receive timely notification of response to request. 4. ≥95% of sustained requests for data changes are made in PPMS. | <ol style="list-style-type: none"> 1. Review PPMS protocol. 2. Monitor requests for correction of PPMS data. |
| k | <p>The protocol shall require regular review at no less than quarterly intervals by appropriate managers of all relevant PPMS information to evaluate officer performance citywide, and to evaluate and make appropriate comparisons regarding the performance of all MPD units in order to identify any patterns or series of incidents that may indicate potential liability or other at-risk behavior. These evaluations shall include evaluating the performance over time of individual units, and comparing the performance of units with similar responsibilities.</p> | <ol style="list-style-type: none"> 1. Protocol requires at least quarterly reviews by appropriate managers of PPMS information to: <ul style="list-style-type: none"> • Evaluate officer performance citywide, and • Evaluate and make comparisons regarding the performance of all MPD units to identify indicia of potential liability or at-risk behavior. | <ol style="list-style-type: none"> 1. Establishment of a protocol requiring at least quarterly reviews by appropriate managers of PPMS information to: <ul style="list-style-type: none"> • Evaluate officer performance citywide, and • Evaluate and make comparisons regarding the performance of all MPD units to identify indicia of potential liability or at-risk behavior. 2. Quarterly reviews of PPMS data performed to evaluate the above issues. | <ol style="list-style-type: none"> 1. Review PPMS protocol. 2. Review quarterly PPMS reviews of citywide officer performance. |

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| l | The protocol shall provide for the routine and timely documentation in PPMS of actions taken as a result of such reviews of PPMS information. | 1. Protocol provides for the routine and timely documentation in PPMS of actions taken as a result of reviews of PPMS data. | 1. Establishment of a protocol requiring the routine and timely documentation in PPMS of actions taken as a result of reviews of PPMS data. 2. ≥95% of actions taken as a result of PPMS information are documented in PPMS within 10 days of the action. | 1. Review PPMS protocol. 2. Review PPMS database. |
| m | The protocol shall require that whenever an officer transfers into a new assignment, the commanding officer shall promptly cause the transferred officer's PPMS record to be reviewed by the transferred officer's watch commander or supervisor. | 1. Protocol requires commanding officers to ensure that a transferred officer's PPMS record is reviewed by his new watch commander or supervisor. | 1. Establishment of a protocol requiring commanding officers to ensure that a transferred officer's PPMS record is reviewed by his new watch commander or supervisor. 2. ≥95% of transferred officers' PPMS records are reviewed by his new watch commander or supervisor. | 1. Review PPMS protocol. 2. Review PPMS database. 3. Review personnel files. 4. Interviews of watch commanders and supervisors. |
| n | The protocol shall require that all relevant and appropriate information in PPMS shall be considered in connection with the adjudication of misconduct allegations and determinations of appropriate discipline for sustained misconduct allegations. | 1. Protocol requires all relevant and appropriate information in PPMS be considered in connection with the adjudication of misconduct allegations and determination of discipline for sustained misconduct allegations. | 1. Establishment of a protocol requiring all relevant and appropriate information in PPMS be considered in connection with the adjudication of misconduct allegations and determination of discipline for sustained misconduct allegations. 2. ≥95% misconduct investigations and disciplinary actions reflect consideration of PPMS data. | 1. Review PPMS protocol. 2. Review misconduct investigations. 3. Review disciplinary records. |

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| o | MPD shall train and thereafter hold managers, and supervisors accountable, consistent with their authority, for risk management and for use of PPMS and any other relevant data to address at-risk behavior, to deal with potential or actual police misconduct, and to implement the protocol described above. | <ol style="list-style-type: none"> 1. MPD properly trains managers and supervisors to effectively use PPMS. 2. MPD holds managers and supervisors accountable for risk management and use of PPMS to address at-risk behavior, to deal with misconduct, and to implement the PPMS protocol. | <ol style="list-style-type: none"> 1. Training fairly, accurately, and properly summarizes principles of use of PPMS. 2. ≥95% of managers and supervisors attend training regarding the use of PPMS. 3. MPD holds managers and supervisors accountable for use of PPMS and implementation of the PPMS protocol. 4. MPD holds managers and supervisors accountable for risk management of officers. 5. ≥95% of managers and supervisors complete training on risk management. | <ol style="list-style-type: none"> 1. Review PPMS training materials. 2. Review PPMS training courses. 3. Review MPD documents reflecting evaluations of managerial and supervisory performance. |
| 113 | The City shall maintain all personally identifiable information about an officer included in PPMS during the officer's employment with MPD and for at least five years thereafter (unless otherwise required by law to be maintained for a longer period). Information necessary for aggregate statistical analysis shall be maintained indefinitely in PPMS. On an ongoing basis, MPD shall enter information in PPMS in a timely, accurate, and complete manner, and maintain the data in a secure and confidential manner. | <ol style="list-style-type: none"> 1. All personally identifiable information about an officer must be included in PPMS during officer's employment with MPD and for 5 years thereafter (unless otherwise required by law). 2. Information necessary for aggregate statistical analysis must be maintained in PPMS indefinitely. 3. MPD must enter information into PPMS in a timely, accurate, and complete manner, and maintain its security and confidentiality. | <ol style="list-style-type: none"> 1. All personally identifiable information about an officer included in PPMS with a ≥95% level of completeness and accuracy. 2. Personally identifiable information is maintained for 5 years (unless otherwise required by law). 3. Information must be entered into PPMS within 10 days of its availability with a ≥95% level of accuracy and completeness. 4. Information must be kept secure and confidential. 5. Personnel records for ≥95% of MPD officers present in PPMS. | <ol style="list-style-type: none"> 1. Review PPMS data. 2. Review personnel files. 3. Review misconduct investigation files. 4. Review disciplinary files. |
| 114 | PPMS shall be developed and implemented according to the following schedule: | | | |

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| a | Within 60 days of the effective date of this Agreement, subject to approval of DOJ, MPD shall issue the Request for Proposal (RFP). | 1. Issue PPMS RFP. | 2. PPMS RFP issued. | 1. Review PPMS RFP. |
| b | Within 210 days of the issuance of the RFP, MPD shall select the contractor to create the PPMS. | 1. According to modification, select contractor by 9/16/03. | 1. Contractor timely selected. | 1. MPD correspondence regarding selection of contractor. |
| c | Within three months of the effective date of this Agreement, MPD shall submit the protocol for using PPMS required by paragraphs 111 and 112 hereof to DOJ for approval. MPD shall share drafts of this document with the DOJ and the Monitor to allow the DOJ and the Monitor to become familiar with the document as it develops and to provide informal comments on it. MPD and DOJ shall together seek to ensure that the protocol receives final approval within 30 days after it is presented for approval. | 1. Timely submission of PPMS protocol to DOJ and the OIM. | 1. Timely submission of PPMS protocol to DOJ and MPD. 2. DOJ approval of PPMS protocol. | 1. Review PPMS protocol. |
| d | Within 12 months of selecting the contractor pursuant to paragraph 114(b), the City shall have ready for testing a beta version of PPMS consisting of: (i) server hardware and operating systems installed, configured and integrated with MPD's existing automated systems; (ii) necessary data base software installed and configured; (iii) data structures created, including interfaces to source data; and (iv) the use of force information system completed, including historic data. The DOJ and the Monitor shall have the opportunity to participate in testing the beta version using use of force data and test data created specifically for purposes of checking the PPMS system. | 1. According to modification, City must have beta test version of PPMS (as described) ready on time. 2. DOJ and OIM allowed to test system. | 1. Beta test version of PPMS ready on time. 2. DOJ and OIM allowed to participate in beta testing. | 1. Monitor beta test version of PPMS. |
| e | The PPMS computer program and computer hardware shall be operational and fully implemented within 18 months of the selection of the PPMS contractor. | 1. According to modification, PPMS must be fully operational on time. | 1. PPMS made fully operational on time. | 1. Monitor PPMS development and implementation. |
| 115 | MPD shall, until such time as PPMS is implemented, and to the full extent reasonable and feasible, utilize existing databases, information and documents for all the purposes set forth herein for use of the PPMS. | 1. Use existing databases, information and documents for the purposes set forth for PPMS until PPMS implementation. | 1. Data required to be captured by PPMS provisions of MOA are being captured by existing databases, to the extent they are capable of capturing the data.. | 1. Review PAMS data. 2. Review other databases containing information that will be migrated into PPMS (Training, UPPS/TACIS, LERD, Firearms Testing, Outside Employment, Canine, FIT, DDRO, Medical Services). |

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| 116 | Following the initial implementation of PPMS, and as experience and the availability of new technology may warrant, MPD may propose to add, subtract, or modify data tables and fields, modify the list of documents scanned or electronically attached, and add, subtract, or modify standardized reports and queries. MPD shall submit all such proposals for review and approval by DOJ before implementation. | <ol style="list-style-type: none"> 1. Once PPMS is implemented, development of modifications as needed. 2. All proposed modifications reviewed and approved by DOJ before implementation. | <ol style="list-style-type: none"> 1. 100% of all proposed modifications are submitted to DOJ for review and approval prior to implementation. | <ol style="list-style-type: none"> 1. Review PPMS data tables and fields, documents, standardized reports, and queries. 2. Review proposed modifications and communications between MPD and DOJ. |
| 117 | OPR shall continue to be responsible for developing, implementing, and coordinating MPD-wide risk assessments. OPR shall be responsible for the operation of PPMS, and for ensuring that information is entered into and maintained in PPMS in accordance with this Agreement. OPR further shall provide assistance to managers and supervisors who are using PPMS to perform the tasks required hereunder and in the protocol adopted pursuant hereto, and shall be responsible for ensuring that appropriate standardized reports and queries are programmed to provide the information necessary to perform these tasks. | <ol style="list-style-type: none"> 1. OPR responsible for development, implementation, and coordination of MPD-wide risk assessments. 2. OPR responsible for timely and accurate entry of information into PPMS. 3. OPR provides necessary substantive and technical assistance to managers and supervisors. 4. OPR responsible for ensuring that standardized reports and queries elicit appropriate information. | <ol style="list-style-type: none"> 1. PPMS protocol approved by DOJ. 2. OPR training fairly, accurately, and appropriately summarizes principles of PPMS protocol. 3. OPR ensures accuracy of information input into PPMS through systematic quality control and periodic audits. 4. Information in PPMS is ≥95% accurate when compared to source document. 5. Audit and quality control tests demonstrate that PPMS generates accurate and complete information in ≥95% of cases. | <ol style="list-style-type: none"> 1. Review PPMS protocol. 2. Review OPR training materials regarding PPMS. 3. Conduct sampling to determine accuracy and completeness of data entry. 4. Review source documents for information input into PPMS. 5. Review PPMS quality control tests and audits. |

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| | A. Performance Evaluation System | | | |
| 118 | Within 6 months of the effective date of this Agreement, MPD shall prepare for the review and approval of DOJ, and thereafter implement, a plan to enhance its new Performance Evaluation System to ensure that annual personnel performance evaluations are prepared for all MPD sworn employees that accurately reflect the quality of each sworn employee's performance, including, but not limited to: | <ol style="list-style-type: none"> 1. Development and DOJ approval of appropriate plan to enhance new Performance Evaluation System. 2. Proper training on plan to enhance Performance Evaluation System. 3. Proper implementation of plan to enhance Performance Evaluation System. 4. Preparation of annual evaluations for MPD sworn employees accurately reflecting quality of employee's performance. | <ol style="list-style-type: none"> 1. Development and DOJ approval of plan to enhance new Performance Evaluation System. 2. Training fairly, accurately, and appropriately summarizes plan to enhance Performance Evaluation System to provide annual evaluations to sworn MPD employees that accurately reflect each employee's performance. 3. ≥95% of sworn MPD employees receive annual evaluations. 4. ≥95% of annual evaluations of sworn MPD employees address civil rights integrity, adherence to law, and, for supervisors, their review of at risk behavior. 5. ≥95% of annual evaluations accurately reflect the performance of sworn MPD personnel relating to civil rights integrity, adherence to law, and, for supervisors, their review of at risk behavior. | <ol style="list-style-type: none"> 1. Review plan. 2. Monitor training. 3. Audit evaluation process. 4. Review MPD personnel files. |
| a | civil rights integrity and the employee's community policing efforts; | Same as ¶118. | Same as ¶118. | Same as ¶118. |
| b | adherence to law, including but not limited to performing duties in a manner consistent with the requirements of the Fourth and Fifth Amendments to the Constitution and the Civil Rights laws of the United States; | Same as ¶118. | Same as ¶118. | Same as ¶118. |
| c | with respect to managers, and supervisors, their performance in identifying and addressing at-risk behavior in subordinates, including their supervision and review of use of force; arrests, booking, and performance bearing upon honesty and integrity. | Same as ¶118. | Same as ¶118. | Same as ¶118. |

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| | VII. TRAINING | | | |
| | A. Management Oversight | | | |
| 119 | Within 30 days of the effective date of this Agreement, MPD shall centrally coordinate and review all use of force training among training components to ensure quality assurance, consistency and compliance with applicable law and MPD policy. MPD shall conduct regular subsequent reviews at least semi-annually and produce a report of such reviews to the Monitor and DOJ. Any substantive changes to use of force training must have prior approval of the Director of Training. | <ol style="list-style-type: none"> 1. Centrally coordinated review of all use of force training components. 2. MPD semi-annual reviews of use of force training and issuance of reports to OIM and DOJ. 3. Director of Training approval of substantive changes. | <ol style="list-style-type: none"> 1. Performance of a centrally coordinated review of all use of force training components. 2. Performance of semi-annual reviews of use of force training and issuance of reports to the OIM and DOJ within a reasonable time after each review. 3. Formal approval by the Director of Training of all substantive changes to the use of force training. | <ol style="list-style-type: none"> 1. Review semi-annual use of force training review reports. 2. Review training manuals, curricula, and lessons plans. 3. Monitor training sessions. |
| 120 | MPD shall continue to have all training materials reviewed by General Counsel or other legal advisor. | <ol style="list-style-type: none"> 1. Review of all training materials by legal advisor. | <ol style="list-style-type: none"> 1. All training materials in use by MPD reviewed by legal advisor for consistency and compliance with applicable law and MPD policy. 2. Procedures implemented to provide for legal advisor's review of all new and revised training materials prior to their introduction. | <ol style="list-style-type: none"> 1. Review semi-annual use of force training review reports. 2. Review records reflecting review by MPD General Counsel or other legal advisor. 3. Interview with MPD General Counsel or other legal advisor. |

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| 121 | With respect to MPD- sponsored training, MPD Director of Training shall continue, in coordination with the Curriculum Development Specialist (CDS), and MPD Training Task Force to: | Director of Training, in coordination with the CDS and MPD Training Task force, shall be responsible for: | <ol style="list-style-type: none"> 1. Staffing of Director of Training and Curriculum Development Specialist positions and offices. 2. Procedures for the coordination between Director of Training and the CDS. 3. Policies and procedures for the office of the Director of Training setting forth, defining, and implementing the responsibilities identified in ¶¶ 121a-g. | <ol style="list-style-type: none"> 1. Review records prepared and maintained by the Director of Training and the Curriculum Development Specialist. 2. Review policies, general orders, directives or procedures re the coordination between Director of Training and the CDS and Training Task Force. 3. Review policies, general orders, directives or procedures re the operations and duties of the office of the Director of Training. 4. Review curricula, reports, evaluations, and assessments prepared and issued by the offices of the Director of Training and Curriculum Development Specialist. 5. Review files of the office of the Director of Training and the Curriculum Development Specialist. 6. Review training records of FTOs. 7. Review records of recruit training assignments. 8. Review instructor training rosters. 9. Monitor instructor certification training. 10. Participate in ride-alongs with FTOs. 11. Review evaluations of probationary officers. 12. Interview probationary officers. |

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| a | oversee and ensure the quality of all use of force training by all trainers, wherever it occurs: academy, in-service, field, roll call and the firearms range; | 1. Oversight of all use of force training. | 1. Director of Training oversight of all use of force training and trainers. | Same as ¶ 121. |
| b | develop and implement use of force training curricula; | 1. Development and implementation of use of force training curricula. | 1. Director of Training oversight and approval of the development and implementation of use of force training curricula. | Same as ¶ 121. |
| c | select and train MPD officer trainers; | 1. Selection and training of MPD officer trainers. | 1. Director of Training oversight and approval of the selection and training of MPD officers. 2. ≥95% FTOs attend training for MPD trainers. | Same as ¶ 121. |
| d | develop, implement, approve and supervise all in-service training and roll call curricula; | 1. Development, implementation, approval and supervision of all in-service and roll call curricula. | 1. Director of Training oversight, approval and supervision of the development and implementation of all in-service training and roll call curricula. | Same as ¶ 121. |
| e | establish procedures for evaluating all training (which shall include an evaluation of instructional content and the quality of instruction); | 1. Establish procedures for evaluating training and instruction. | 1. Director of Training establishment and approval of training evaluation procedures. | Same as ¶ 121. |

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| f | MPD shall continue its Field Training program. Within 120 days of the effective date of this Agreement, MPD shall develop a protocol, subject to approval by DOJ, to enhance the Field Training program. The protocol shall address the criteria and method for selecting Field Trainers, the training provided to Field Trainers to perform their duties, the length of time that probationary officers spend in the program, the assignment of probationary officers to Field Trainers, the substance of the training provided by the Field Trainers, and the evaluation of probationary officer performance by Field Trainers. | <ol style="list-style-type: none"> 1. Within 120 days, development of protocol to enhance Field Training program, including: <ul style="list-style-type: none"> • Criteria for selecting Field Trainers. • Training of Field Trainers. • Time probationary officers spend in program. • Assignment of probationary officers to Field Trainers. • Evaluation of probationary officers by Field Trainers. | <ol style="list-style-type: none"> 1. Timely development of a protocol related to the Field Training program addressing: <ul style="list-style-type: none"> • Criteria for selecting Field Trainers. • Training of Field Trainers. • Time probationary officers spend in program. • Assignment of probationary officers to Field Trainers. • Evaluation of probationary officers by Field Trainers. 2. 100% of probationary officers participate in field training program upon completion of Academy training. 3. 100% of FTOs conducting field training are certified. | Same as ¶ 121. |
| g | conduct regular needs assessments to ensure that use of force training is responsive to the knowledge, skills, and abilities of the officers being trained. | <ol style="list-style-type: none"> 1. Regular needs assessments related to use of force training. | <ol style="list-style-type: none"> 1. Director of Training oversight of regular needs assessments related to use of force training. | Same as ¶ 121. |
| 122 | The CDS shall prioritize his/her efforts to focus on use of force curriculum and instructor development. The CDS shall within 180 days of the effective date of this Agreement, review, revise, provide written approval, and implement, subject to DOJ's approval, all current force-related training material (including curricula and lesson plans), as well as subsequent changes, to ensure: | <ol style="list-style-type: none"> 1. Within 180 days, CDS review, revision and approval of all existing force-related training material, including curricula and lesson plans, to ensure: <ul style="list-style-type: none"> • Consistency in content and format. • Incorporation of current law and policy. • Clear learning objectives and suggestions to trainers. • Appropriateness of training aids. | <ol style="list-style-type: none"> 1. Timely review, revision and approval by the CDS of all force-related training material in existence at the effective date of the MOA to ensure the requirements of ¶¶ 122a-d are met. 2. Timely review, revision and approval by CDS of all changes in force-related training materials. | <ol style="list-style-type: none"> 1. Review records prepared and maintained by the CDS. 2. Review of use of force-related training material, including curricula and lesson plans. 3. Monitoring of force-related training courses. |
| a | internally consistent content and format; | | | |
| b | incorporation of current law and policy requirements; | | | |

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| c | the presence of clear, behaviorally-anchored learning objectives and suggestions for trainers of how to present material effectively; and | | | |
| d | the appropriateness of proposed training aids. | | | |
| 123 | The CDS shall regularly review, at a minimum every quarter, all force related training for quality assurance and consistency and shall regularly audit training classes. | <ol style="list-style-type: none"> 1. CDS regularly reviews, at least quarterly, all use of force related training. 2. Regular audits by the CDS of training classes. | <ol style="list-style-type: none"> 1. Preparation of quarterly reviews by the CDS of all force-related training concerning quality and consistency of training. 2. Documented regular audits by the CDS of training classes. | <ol style="list-style-type: none"> 1. Review CDS quarterly reviews of force-related training. 2. Review CDS audits and evaluations of training classes. |
| 124 | MPD shall continue to enhance its procedures to provide adequate record keeping of lesson plans and other training material such that the most current, supervisory approved training documents are maintained in a central, commonly accessible file, and are clearly dated. | <ol style="list-style-type: none"> 1. Training program record keeping improved to establish: <ul style="list-style-type: none"> • Central, commonly accessible file for lesson plans and training materials. • Training materials clearly dated. | <ol style="list-style-type: none"> 1. Establishment of a central, commonly accessible file room for lesson plans and training materials. 2. ≥95% of training materials clearly dated and readily accessible. | <ol style="list-style-type: none"> 1. Review training materials located in central file. 2. Review training materials, including lesson plans and curricula. |
| 125 | MPD shall continue to maintain training records regarding every MPD officer which reliably indicate the training received by each officer. The training records shall, at a minimum include the course, curriculum, instructor, and day and tour delivered for each officer. | <ol style="list-style-type: none"> 1. Maintenance of training records for every MPD officer, which include course, curriculum, instructor, and day and tour delivered. | <ol style="list-style-type: none"> 1. Maintenance of current and complete training records for ≥95% of MPD officers. | <ol style="list-style-type: none"> 1. Review samples of training records. 2. Periodic review of Training Management System. |
| | B. Curriculum | | | |
| 126 | The parties agree that sound critical thinking and decision making skills are critical to reducing use of excessive force and to ensuring officer safety. Accordingly, MPD shall ensure that all force-related training incorporates, in a coherent manner, critical thinking and decision making instruction, applicable law, and MPD policy. | <ol style="list-style-type: none"> 1. MPD force-related training curricula shall incorporate critical thinking and decision making instruction, applicable law and MPD policy. | <ol style="list-style-type: none"> 1. 100% of force-related training programs and curricula adequately incorporate critical thinking, decision-making instruction, applicable law and MPD policy. | <ol style="list-style-type: none"> 1. Review force-related training curricula and lesson plans. 2. Monitor training sessions. |

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| 127 | MPD shall continue to provide all MPD recruits, officers, supervisors and managers with annual training on use of force, subject to approval by DOJ. Such training shall include and address, inter alia: | <ol style="list-style-type: none"> 1. Annual training on use of force for all recruits, officers, supervisors, and managers, addressing: <ul style="list-style-type: none"> ● Use of force continuum. ● Use of force reporting requirements. ● Fourth Amendment requirements. ● Examples of use of force dilemmas and interactive exercises. | <ol style="list-style-type: none"> 1. ≥95% of active MPD personnel in each of the categories of recruits, officers, supervisors and managers attend annual training on use of force that includes and addresses the issues identified in ¶¶ 127a-d. 2. DOJ approval of annual use of force training. | <ol style="list-style-type: none"> 1. Review force-related training curricula and lesson plans. 2. Monitor training sessions. 3. Review sample of training records. |
| a | MPD’s use of force continuum; | | | |
| b | MPD’s use of force reporting requirements; | | | |
| c | the Fourth Amendment and other constitutional requirements; | | | |
| d | examples of use of force and ethical dilemmas faced by MPD officers and, where practicable given the location, type, and duration of the training, interactive exercises for resolving use of force dilemmas shall be utilized. | | | |
| 128 | MPD shall continue to provide recruits, officers, supervisors, and managers with training in cultural diversity and community policing, which shall include training on interactions with persons from different racial, ethnic, and religious groups, persons of the opposite sex, persons of different sexual orientations, and persons with disabilities. | <ol style="list-style-type: none"> 1. Training for recruits, officers, supervisors, and managers in cultural diversity and community policing. | <ol style="list-style-type: none"> 1. ≥95% of active MPD personnel in each of the categories of recruits, officers, supervisors and managers attend annual training re cultural diversity and community policing. | <ol style="list-style-type: none"> 1. Review force-related training curricula and lesson plans. 2. Monitor training sessions. 3. Review sample of training records. 4. Review training class rosters. |

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| 129 | <p>MPD shall provide all supervisors, (officers with the rank of sergeant and above) with mandatory supervisory and leadership training which, in addition to the subjects addressed in paragraphs 127 and 128, shall teach command accountability and responsibility, interpersonal relationship skills, theories of motivation and leadership, and techniques designed to promote proper police practices and integrity, including the prevention and detection of use of excessive force, throughout the supervisor’s command responsibility and which include proper supervisor/employee communication skills. MPD shall prioritize the topics covered in the initial training to focus on MPD’s new use of force policies and procedures, new Canine policies and procedures, the new Use of Force Review Board, and revised administrative and misconduct investigation policies and procedures; MPD shall provide initial training on these topics within 180 days from execution of this Agreement and thereafter shall provide supervisory training on an annual basis.</p> | <ol style="list-style-type: none"> 1. Sergeant and above training addressing: <ul style="list-style-type: none"> • Requirements of ¶¶ 127 and 128. • Command accountability and responsibility. • Interpersonal relationship skills. • Theories of motivation and leadership. • Techniques to promote proper police practices and integrity. 2. Within 180 days, initial training on: <ul style="list-style-type: none"> • New use of force policies and procedures. • New canine policies and procedures. • New Use of Force Review Board. • Revised administrative and misconduct investigation policies and procedures. 3. Annual supervisory training. | <ol style="list-style-type: none"> 1. ≥95% of active MPD supervisors attend sergeants annual sergeants and above training incorporating the requirements of ¶¶ 127-29. 2. ≥95% of active MPD supervisors attend sergeants and above initial training re new policies and procedures related to use of force, canines, UFRB, and administrative and misconduct investigations. | <ol style="list-style-type: none"> 1. Review sergeants and above training curricula and lessons plans. 2. Monitor sergeants and above training sessions. 3. Review sample of training records. |
| 130 | <p>MPD shall ensure that training instructors engage students in meaningful dialogue regarding “real-life” experiences involving use of force and applicable law and MPD policy when conducting force-related training. Training instructors shall encourage opportunities to explain MPD’s use of force policy, reporting requirements and force-related law throughout all use of force training.</p> | <ol style="list-style-type: none"> 1. Training engage students in dialogue re “real life” experiences involving use of force, applicable law and MPD policy. | <ol style="list-style-type: none"> 1. Training engage students in dialogue re “real life” experiences involving use of force, applicable law and MPD policy. | <ol style="list-style-type: none"> 1. Review use of force training curricula and lesson plans. 2. Monitor use of force training sessions, including new recruit training. |
| 131 | <p>MPD shall ensure that training time is used in an efficient and productive manner and shall take effort to eliminate “down time” of student officers during recruit and in-service training by providing a variety of use of force training activities for students awaiting required one-to-one student-teacher training.</p> | <ol style="list-style-type: none"> 1. Efficient use of training time to eliminate “down time.” | <ol style="list-style-type: none"> 1. Efficient use of training time to eliminate “down time.” | <ol style="list-style-type: none"> 1. Review use of force training curricula and lesson plans. 2. Monitor use of force training sessions. |

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| 132 | Role Play and Range 2000 Courses | | | |
| a | <p>Within 60 days of the effective date of this Agreement, MPD shall review the Role Play (formerly known as “Simmunitions”) and the Range 2000 training courses to ensure consistency with the law and MPD policy. MPD shall immediately develop a standardized curriculum, lesson plan and instructional guidelines with a list of each scenario including the title, content, lesson objectives and, for the Range 2000, the possible variations available, and shall include a checklist of items to address when critiquing students to ensure consistent application and efficient training. The curriculum, lesson plan and instructional guidelines shall be reviewed by the CDS and MPD General Counsel to ensure consistency with the law and MPD policy, and submitted to DOJ for approval.</p> | <ol style="list-style-type: none"> 1. Within 60 days, review Role Play and Range 2000 training to ensure consistency with the law and MPD policy. 2. Development of a standardized curriculum, lesson plan and instructional guidelines for Range 2000. 3. Checklist to ensure consistent application and efficient Range 2000 training. 4. CDS and General Counsel review of lesson plan and instructional guidelines to ensure consistency with law and MPD policy. | <ol style="list-style-type: none"> 1. Timely review of Role Play and Range 2000 training courses and consistency of these courses with law and MPD policy. 2. Development and implementation of a standardized curriculum, lesson plan and instructional guidelines for Range 2000 that include the items required in ¶ 132a. 3. Development and implementation of a checklist for the critiquing of students training on the Range 2000. 4. CDS and General Counsel (or legal advisor) review of Range 2000 curriculum, lesson plan and instructional guidelines. | <ol style="list-style-type: none"> 1. Review Role Play and Range 2000 curriculum, lesson plans, instructional guidelines and evaluation checklists. 2. Monitor Role Play and Range 2000 training sessions. 3. Monitor the office of the CDS. 4. Review evidence of CDS and General Counsel (or legal advisor) review. |
| b | <p>MPD shall allow sufficient time to ensure that every student officer participates in one or more Role Plays. Within 180 days of the effective date of this Agreement, MPD shall begin videotaping students in order to replay their decisions and actions during the critique portion of the courses. MPD shall have instructors challenge students to comply with applicable legal standards and MPD policy. Videotapes shall not be subject to the retention policy described in paragraph 176.</p> | <ol style="list-style-type: none"> 1. Every student officer participates in one or more role plays during training session. 2. Within 180 days, MPD shall videotape students on course and use videotapes to critique students. | <ol style="list-style-type: none"> 1. Every student officer participates in one or more Role Plays during training session. 2. Timely implementation of procedures for videotaping students participating in Role Plays and using videotapes to critique students. | <ol style="list-style-type: none"> 1. Review Role Play curriculum, lesson plans, instructional guidelines and evaluation checklists. 2. Monitor Role Play training sessions. 3. Review sample of videotapes. |
| c | <p>MPD shall add additional simulations to comport with the training needs assessment and deficiencies identified in use of force investigations, which can either be created by MPD or obtained from other local and federal law enforcement agencies.</p> | <ol style="list-style-type: none"> 1. Add simulations to comport with training needs assessment and deficiencies identified in use of force investigations. | <ol style="list-style-type: none"> 1. Review by the Director of Training and CDS of training needs assessments and results of use of force investigations. 2. Modification of simulation programs to reflect needs assessment and deficiencies identified in use of force investigations. | <ol style="list-style-type: none"> 1. Review Role Play curriculum, lesson plans, instructional guidelines and evaluation checklists. 2. Monitor Role Play training sessions. 3. Review needs assessments. 4. Review use of FIT and chain of command use of force investigations to inform training. |

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| 133 | MPD shall, within 120 days, provide copies and explain the terms of this Agreement to all MPD officers and employees in order to ensure that they understand the requirements of this Agreement and the necessity for strict compliance. After MPD has adopted new policies and procedures in compliance with this Agreement, MPD shall provide timely in-service training to MPD officers regarding the new policies and procedures and the relevant provisions of this Agreement. MPD shall incorporate training on these policies and procedures into recruit training at the Academy. | <ol style="list-style-type: none"> 1. Within 120 days, provide copies of the MOA to all MPD officers. 2. Timely in-service training regarding new policies and procedures and relevant provisions of the MOA. 3. Incorporate policies and procedures into new recruit training. | <ol style="list-style-type: none"> 1. Timely distribution of MOA and explanatory materials to ≥95% of current and new MPD officers and employees. 2. Development of in-service training program regarding policies and procedures related to the MOA. 3. ≥95% of MPD officers attend in-service training regarding policies and procedures related to the MOA. 4. Development and implementation of new recruit training program regarding policies and procedures related to the MOA. | <ol style="list-style-type: none"> 1. Conduct officer surveys and/or focus groups. 2. Monitor in service and new recruit training curricula and review lesson plans. 3. Monitor in service and new recruit training. 4. Review training class rosters. 5. Monitor videotapes, Q&A sessions and other training regarding the MOA. |
| | C. Instructors | | | |
| 134 | Within 60 days, MPD shall assess (a) whether there is sufficient staff at the Training Academy; (b) what instructor training is needed in light of the courses currently being taught and those to be taught in the future; and (c) the appropriate standards for the evaluation of instructor performance by supervisors. Based on this assessment, MPD shall develop a plan for addressing training instructor needs. MPD shall submit this assessment and development plan to DOJ for approval. | <ol style="list-style-type: none"> 1. Within 60 days, MPD assess: <ul style="list-style-type: none"> ● Sufficiency of staff at Training Academy. ● Instructor training necessary in light of current and future courses. ● Standards for evaluation of instructor performance. 2. Develop plan for addressing training instructor needs. | <ol style="list-style-type: none"> 1. Timely assessment regarding sufficiency of training staff, instructor training, and standards for the evaluation of instructors. 2. Development of a plan for addressing training instructor needs. | <ol style="list-style-type: none"> 1. Review training/instructor assessment and plan. |

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| 135 | MPD shall, within 90 days, develop and implement subject to DOJ’s approval, formal eligibility and selection criteria for all Academy, Field Training, and formal training (other than roll call) positions. These criteria shall apply to all incumbent officers in these training positions and to all candidates for these training positions, and also shall be used to monitor the performance of persons serving in these positions. The criteria shall address, inter alia, knowledge of MPD policies and procedures, interpersonal and communication skills, cultural and community sensitivity, teaching aptitude, performance as a law enforcement officer, with particular attention paid to allegations of excessive force and other misconduct; history, experience as a trainer, post-Academy training received, specialized knowledge, and commitment to police integrity. | <ol style="list-style-type: none"> 1. Within 90 days, develop and implement formal eligibility and selection criteria for Academy, Field Training, and formal training (other than roll call) positions. 2. Criteria shall address: <ul style="list-style-type: none"> • Knowledge of MPD policies and procedures • Interpersonal and communication skills. • Cultural and community sensitivity. • Teaching aptitude. • Performance as a law enforcement officer. • Attention to allegations of excessive force and other misconduct, history, experience as a trainer, post-Academy training, specialized knowledge, and commitment to police integrity. | <ol style="list-style-type: none"> 1. Timely development of formal eligibility and selection criteria for all Academy, Field Training, and formal training (other than roll call) positions, including each of the criteria listed in ¶ 135. 2. DOJ approval of eligibility and selection criteria for Academy, Field Training, and formal training instructors. 3. Implementation of DOJ approved eligibility and selection criteria for instructors. 4. ≥95% of instructors meet DOJ-approved eligibility and selection criteria. | <ol style="list-style-type: none"> 1. Review training instructor eligibility requirements and selection criteria. 2. Review position announcements. 3. Monitor instructor training. |
| 136 | MPD shall develop an instructor certification program by which the competency of the instructors is certified. | <ol style="list-style-type: none"> 1. Development of instructor certification program. | <ol style="list-style-type: none"> 1. Development of an instructor certification program. | <ol style="list-style-type: none"> 1. Review of instructor certification program. 2. Review individual instructor qualifications and certifications. |

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| 137 | <p>Within 180 days of the effective date of this Agreement, MPD shall create and implement a formal instructor training course, subject to the approval of DOJ, to ensure that all instructors receive adequate training to enable them to carry out their duties, including training in adult learning skills, leadership, teaching and evaluation, as well as training in fostering group discussions regarding use of force in “real-life” applications and the presentation of training material in a cohesive and engaging manner. MPD shall provide regular and periodic re-training on these topics. All training instructors and Field Trainers shall be required to maintain, and demonstrate on a regular bases, a high level of competence. MPD shall document all training instructors’ and Field Trainers’ proficiency and provide additional training to maintain proficiency.</p> | <ol style="list-style-type: none"> 1. Within 180 days, create a formal instructor training course. 2. Ensure instructors receive adequate training, including: <ul style="list-style-type: none"> • Adult learning skills. • Leadership. • Teaching and evaluation. • Fostering group discussions re use of force in “real life” applications. 3. Regular and periodic re-training. 4. All instructors maintain and demonstrate high level of competence. 5. Document all training instructors’ and Field Trainers’ proficiency and provide additional training. | <ol style="list-style-type: none"> 1. Timely establishment of a formal instructor training course addressing each of the areas listed in ¶ 137. 2. ≥95% instructor participation in instructor training and re-training. 3. ≥95% instructors demonstrate “high level of competence.” 4. ≥95% of instructors and Field Trainers have regular and current documented evaluations of proficiency. 5. ≥95% of instructors and Field Trainers receive regular additional training. | <ol style="list-style-type: none"> 1. Review curricula and lesson plans related to instructor training course. 2. Review instructors’ and Field Trainers’ evaluations and personnel files. 3. Monitor instructor and Field Trainer training. 4. Review training class rosters. 5. Review instructor training records. |
| 138 | <p>MPD shall ensure adequate management supervision of use of force training instructors to ensure that their training is consistent with MPD policy, the law and proper police practices.</p> | <ol style="list-style-type: none"> 1. Adequate management supervision of use of force training instructors to ensure consistency with MPD policy, the law, and proper police practices. | <ol style="list-style-type: none"> 1. Instructors and Field Trainers evaluated on training consistency with MPD policy, the law and proper police practices. 2. ≥95% in service and new recruit instructors provide training consistent with MPD policy, law and proper police practices. | <ol style="list-style-type: none"> 1. Review curricula and lesson plans related to instructor training course. 2. Review instructors’ and Field Trainers’ evaluations and personnel files. 3. Monitor instructor and Field Trainer training. 4. Review CDS semi-annual reports and course evaluation forms. |
| 139 | <p>MPD shall ensure consistent and thorough instruction of approved lesson plans. All instructors must have and use a copy of current lesson plans during classroom instruction.</p> | <ol style="list-style-type: none"> 1. Consistent and thorough instruction of approved lesson plans. 2. All instructors have and use current lesson plans. | <ol style="list-style-type: none"> 1. Approved and current lesson plans are distributed to 100% of all instructors. 2. ≥95% of training sessions use current and approved lesson plans. | <ol style="list-style-type: none"> 1. Review training curricula and lesson plans. 2. Monitor training sessions. |

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| | D. Firearms Training | | | |
| 140 | MPD shall continue to ensure that all officers, supervisors as well as line staff, complete the mandatory semi-annual re-qualification firearms training. Re-qualification shall consist of more than shooting a passing score, but shall consist of satisfactorily completing all re-qualification courses, as discussed in paragraphs 127 and 128, to include, Range 2000 and Role Play courses. MPD shall continue to revoke the police powers of those officers who fail to satisfactorily complete re-certification. MPD shall centralize administrative consequences of failure to attend re-qualification firearms training to ensure consistent application of such consequences. | <ol style="list-style-type: none"> 1. All officers, supervisors, and line staff complete mandatory semi-annual re-certification firearms training. 2. Re-certification consist of: <ul style="list-style-type: none"> • Passing shooting score. • Range 2000 and Role Play courses. 3. Revocation of police powers of officers who fail re-certification. 4. Centralize administrative consequences for failure to attend re-certification and ensure consistent application of consequences. | <ol style="list-style-type: none"> 1. ≥95% of officers, supervisors, and line staff satisfactorily complete semi-annual firearms re-certification training. 2. Re-certification program consists of all required programs, including scored shooting evaluation and participation on Range 2000 and Role Play courses. 3. 100% of officers failing re-certification have police powers revoked. 4. Implementation of a centralized recordkeeping and tracking system for firearms training and re-certification and consistent application of corrective action for failure to satisfactorily complete firearms re-certification training. | <ol style="list-style-type: none"> 1. Monitor firearms training and re-certification. 2. Monitor firearms training and re-certification recordkeeping and tracking systems. 3. Review firearms re-certification records. 4. Review officers' personnel files. |
| 141 | MPD shall ensure that firearm instructors critically observe students and provide corrective instruction regarding deficient firearm techniques and the failure to utilize safe gun handling procedures at all times. | <ol style="list-style-type: none"> 1. Firearm instructors critically observe students and provide corrective instruction. | <ol style="list-style-type: none"> 1. Firearms instructor training includes training on critical observation students and provision of corrective action. 2. Evaluation of firearms instructors' proficiency includes critical observation of students and provision of corrective instruction. 3. ≥95% firearms instructors satisfy the requirements of ¶ 141. 4. No incidents of uncorrected unsafe weapon handling during firearms training and re-certification sessions. | <ol style="list-style-type: none"> 1. Review evaluations of firearms instructors. 2. Monitor firearms instructor training. |

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| 142 | Within 60 days, MPD shall create and implement, subject to DOJ's approval, a checklist identifying evaluation criteria to determine satisfactory completion of firearms recruit and in-service training. Such checklists shall be completed for each student officer by a firearms instructor, who shall sign the checklist indicating that these criteria have been satisfactorily reviewed during training. The checklist shall include, but not be limited to, an evaluation of a student officer successful training of the following: | <ol style="list-style-type: none"> 1. Within 60 days, create and implement a checklist identifying evaluation criteria for firearms recruit and in-service training. 2. Checklist completed for each student officer. 3. Checklist shall include evaluation of following: <ul style="list-style-type: none"> • Finger off trigger unless justified and ready to fire. • Exercise sound judgment and engage in decision making skills in Range 2000 and Role Plays. • Proper firearm hold and stance. | <ol style="list-style-type: none"> 1. Timely development of checklist for evaluating satisfactory completion of recruit and in service firearms training, including areas listed in ¶¶ 142a-c. 2. Checklist completed for ≥95% of officers receiving firearms training | <ol style="list-style-type: none"> 1. Review firearms training checklist. 2. Review officer personnel files and firearms certification. 3. Monitor firearms training. |
| a | maintains finger off trigger unless justified and ready to fire; | | | |
| b | exercises sound judgment and engages in decision making skills in Range 200 and Role Plays; | | | |
| c | maintains proper hold of firearm and proper stance. | | | |
| 143 | MPD shall immediately review and integrate all firearms training into a training curriculum that ensures material is presented in a logical manner that promotes optimal fire safety and user responsibility. | 1. MPD review and integration of all firearms training into training curriculum with logical presentation, optimal fire safety, and user responsibility. | 1. Firearms training curriculum is logically presented and promotes optimal fire safety and user responsibility. | <ol style="list-style-type: none"> 1. Review firearm training curricula and lesson plans. 2. Monitor firearms training sessions. |

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| 144 | MPD shall regularly, at a minimum every 3 months, consult the manufacturer for accurate, consistent and current information regarding all Glock specific instructions and guidelines, particularly regarding cleaning, maintenance and marksmanship. MPD must establish procedures to ensure that such information is continually updated as necessary and such practices are duly documented. | <ol style="list-style-type: none"> 1. Every three months, consult with manufacturer for accurate, consistent and current information re Glock. 2. Establish procedures to ensure information is updated as necessary and practices are documented. | <ol style="list-style-type: none"> 1. Implementation of procedures to regularly obtain, at least quarterly, from the manufacturer accurate, consistent and current information on the Glock. 2. Implementation of procedures to ensure information related to the Glock is continually updated. 3. Practices related to the procedures required under paragraph 144 are adequately documented in ≥95% of cases. | <ol style="list-style-type: none"> 1. Review procedures re consultation with Glock manufacturer. 2. Review documentation related to consultations with Glock manufacturer. 3. Review records related to updated information regarding the Glock. 4. Interview Glock representatives. |
| E. Canine Training | | | | |
| 145 | MPD shall complete development and implementation of a comprehensive canine training curriculum and lesson plans which specifically identify goals, objectives and the mission of the Canine Unit, consistent with the Canine policy described in paragraphs 44-46 of this Agreement. | <ol style="list-style-type: none"> 1. Complete development and implementation of comprehensive canine curriculum and lesson plans. 2. Curriculum identifies goals, objectives and mission of Canine Unit, consistent with MOA ¶¶ 44-46. | <ol style="list-style-type: none"> 1. Development and implementation of comprehensive canine curriculum and lesson plans. 2. Curriculum identifies goals, objectives and mission of Canine Unit, consistent with MOA ¶¶ 44-46. | <ol style="list-style-type: none"> 1. Review canine training curriculum and lesson plans. 2. Monitor canine training program. |
| 146 | MPD shall continue to purchase only professionally-bred canines. MPD shall ensure that, within 180 days, all of its canines are certified in handler-controlled alert methodology. MPD shall ensure that the canines receive annual re-certification and periodic refresher training. Deviations from certification or training requirements shall result in the removal of the canine from service until such requirements are fulfilled. | <ol style="list-style-type: none"> 1. Purchase only professionally-bred canines. 2. Within 180 days, ensure all canines are certified in handler-controlled alert methodology. 3. Ensure canines receive annual re-certification and refresher training. 4. Removal of canines from service until training and certification requirements fulfilled. | <ol style="list-style-type: none"> 1. 100% of canines are professionally-bred. 2. 100% of canines are certified in handler-controlled alert methodology. 3. ≥95% canines receive annual re-certification and refresher training. 4. ≥95% canines in service have fulfilled training and certification requirements. | <ol style="list-style-type: none"> 1. Review records and certifications for individual canines. 2. Monitor canine re-certification and training. |

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| 147 | MPD shall continue to ensure that canine handlers are physically capable of implementing and maintaining the canine policy described in paragraphs 44-46 of this Agreement. Handlers should be able to maintain control of, and contact with the canine to ensure that the canine is not allowed to bite a suspect without a legal justification. | <ol style="list-style-type: none"> 1. Ensure that canine handlers are physically capable of implementing and maintaining canine policy described in MOA ¶¶ 44-46. 2. Handlers able to maintain control of and contact with canines to ensure that canine does not bite without legal justification. | <ol style="list-style-type: none"> 1. Implementation of evaluation procedures related to the physical capabilities of canine handlers. 2. ≥95% of canine handlers rated capable of implementing and maintaining canine policy described in ¶¶ 44-46. 3. ≥95% of canine handlers rated physically capable of maintaining control of and contact with canines. | <ol style="list-style-type: none"> 1. Review physical evaluations of canine handlers. |
| 148 | Within 180 days, MPD shall require that all of its in-house canine trainers are certified canine instructors. | <ol style="list-style-type: none"> 1. Within 180 days, require all in-house canine trainers are certified canine instructors. | <ol style="list-style-type: none"> 1. 100% of in-house canine instructors are certified canine instructors. | <ol style="list-style-type: none"> 1. Review certifications for in-house canine instructors. |
| VIII. SPECIALIZED MISSION UNITS | | | | |
| 149 | DOJ recognizes that MPD, in its discretion, utilizes temporary and permanent specialized mission units to achieve various law enforcement missions. The following provisions apply to any current or future specialized mission unit created during the existence of this Agreement in which officers engage in significant patrol-related activities on a routine basis including contacts, stops, frisks, and searches (the Mobile Force Unit (is an example of one such specialized mission unit).) | NA | NA | NA |

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| 150 | MPD shall continue to institute adequate pre-screening mechanisms of officers working a specialized mission unit to select and screen out officers who may be unprepared to participate in the specialized unit. The pre-screening mechanisms shall continue to include, at a minimum, the following: (a) whether the officer is current on his/her firearms certification and other service weapons training; (b) whether the officer has received adequate training and demonstrated that he or she has a history of judicious and proficient use of force; and (c) whether the officer is generally fit for patrol duty and capable of achieving the relevant objectives of the specialized unit. | <ol style="list-style-type: none"> 1. Existence of adequate pre-screening mechanisms for officers, including: <ol style="list-style-type: none"> a. methods for confirming that qualification in firearms and service weapons certification is current; b. determining adequacy of training and history of reasonable uses of force; and c. fitness for patrol duty and fitness for specific objectives of special mission unit. | <ol style="list-style-type: none"> 1. ≥95% of Specialized Mission Unit officers currently qualified in firearms and service weapons certification; documentary evidence that checks on qualification have been made. 2. ≥95% of Specialized Mission Unit officers have received adequate training and demonstrated that he or she has a history of judicious and proficient use of force; documentary evidence that checks on qualification have been made. 3. ≥95% of Specialized Mission Unit officers are generally fit for patrol duties and capable of achieving relevant objectives of the specialized unit; documentary evidence that checks on qualification have been made. | <ol style="list-style-type: none"> 1. Review records of Specialized Mission Units. 2. Review personnel files, disciplinary history and training records of officers assigned to Specialized Mission Units. 3. Review position announcements. 4. Interview supervisors and commanders of SMUs. |
| 151 | MPD shall continue to screen officers who are interested in participating in specialized mission units to develop and maintain a pool of seasoned and competent officers with exemplary records and up-to-date training. | <ol style="list-style-type: none"> 1. Existence of continuing process for screening officers interested in joining Special Mission Units. | <ol style="list-style-type: none"> 1. MPD maintains continuous application and screening process for SMUs. | <ol style="list-style-type: none"> 1. Review Specialized Mission Unit personnel files 2. Other documentation prepared and maintained by Specialized Mission Unit supervisors. |
| 152 | MPD shall continue to require sufficient advance notice of participating officers to all specialized unit leadership to identify the need for enhanced supervision or tailor patrol activities in light of the capacities of the volunteer officers. | <ol style="list-style-type: none"> 1. Sufficient advance information about officers participating in SMUs provided to unit supervisors to identify need for enhanced supervision and tailoring officer activities. | <ol style="list-style-type: none"> 1. Advance information provided for ≥95% of officers who have volunteered for SMUs that identify factors that <ul style="list-style-type: none"> • require enhanced supervision • adjustment of patrol activities | <ol style="list-style-type: none"> 1. Review SMU records. 2. Review MPD personnel records. 3. Review Internal MPD communications re officers volunteering for SMUs. |

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| 153 | MPD shall continue to disqualify for service on a specialized mission unit any officer that has frequently used questionable force or generated numerous credible complaints alleging excessive force. | 1. Disqualification of SMU officers and officer-candidates who have frequently used questionable force or generated numerous credible complaints alleging excessive force. | 1. No more than 5% of SMU officers have records that show evidence of having frequently used questionable force, or been the subject of numerous, credible excessive force complaints. | 1. Review personnel records of SMU members. 2. Review MPD documents reflecting criteria for recruiting, appointing, and discharging SMU officers. 3. Review other relevant SMU records. |
| 154 | MPD shall continue to provide sufficient number of skilled supervisors to ensure adequate supervision of officers assigned to a specialized mission unit. Additionally, MPD shall continue to readily identify in the appropriate organizational chart and all specialized mission unit material, the Command-level official responsible for overseeing specialized mission unit activities. | 1. Sufficient number of skilled supervisors assigned to SMUs to ensure adequate supervision. 2. Proper identification, in organization charts and SMU materials, of responsible Command-level officials. | 1. Maintenance of appropriate supervisor/officer ratio. 2. ≥95% of MPD organization charts and SMU materials clearly identify responsible Command-level official. | 1. Review of SMU rosters and personnel lists. 2. Review of relevant organization charts and SMU documents and materials. 3. Review personnel files of SMU supervisors. 4. Interview command staff. |
| 155 | MPD shall continue to give clear instructions to sergeants and other supervisory officers who volunteer, or are assigned to a specialized mission unit that they maintain their supervisory responsibilities while volunteering. MPD shall continue to provide clear instructions to these supervisors regarding appropriate supervision and coordination when more than one sergeant or supervisor is present. | 1. Clear instructions in effect for all sergeants and supervisory officers assigned to SMUs to maintain supervisory responsibilities. 2. Clear instructions to supervisors regarding appropriate supervision and coordination when more than one sergeant/supervisor present | 1. Written instructions disseminated to sergeants and other supervisory personnel assigned to SMUs to maintain supervisory responsibilities 2. Written instructions disseminated to sergeants and other supervisors assigned to SMUs regarding appropriate supervision and coordination among sergeants/supervisors | 1. Review written protocols extending to all SMUs. 2. Review specific protocols for individual SMUs. 3. Monitor selected SMU activities to ensure plans, procedures, and protocols are being followed. 4. Monitor SMU roll calls. 5. Review SMU operations plans. |
| 156 | MPD shall continue to provide specialized pre-service training to specialized mission unit participants to ensure compliance with current Fourth Amendment, Equal Protection law, and address the desired knowledge, skills, and abilities of the officers participating in the program. | 1. Specialized pre-service training to ensure <ul style="list-style-type: none"> • knowledge of 4th Amendment requirements • knowledge of equal protection law • specific knowledge, skills, abilities of unit members. | 1. Creation of appropriate, specified training materials. 2. Provision of high-quality specific training for SMU unit members addressing these subject areas. 3. ≥95% of SMU officers receive training in these subject areas. | 1. Review of lessons plans and other training materials. 2. Monitor SMU training sessions. 3. Review training records of SMU officers. |

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| 157 | MPD shall continue to monitor all activities of specialized mission unit participants to include, at a minimum, enforcement actions, uses of force, and complaints. | <ol style="list-style-type: none"> Continued monitoring all SMU activities, including enforcement actions, uses of force, complaints | <ol style="list-style-type: none"> MPD has active monitoring program that includes monitoring of SMU activities. MPD monitoring and auditing program includes reviews of ≥95% of SMU officers and considers enforcement actions, uses of force, and complaints generated by SMU activities. | <ol style="list-style-type: none"> Review OPR records reflecting internal reviews and audits of SMU programs and units. Review of FIT investigations. Review of misconduct investigations. |
| 158 | MPD shall continue its system of informing specialized mission unit supervisors within 24 hours of any complaint about the conduct of an officer on specialized mission unit duty. Additionally, MPD shall continue to track specifically all activities relating to officers participating in the specialized mission unit, including enforcement actions, complaints, and all misconduct investigations, to enable supervisors to determine whether particular officers should be allowed to continue to participate in the specialized mission unit duty. Investigations of specialized mission unit uses of force should be consistent with the provisions outlined in Section III(B) of this Agreement. | <ol style="list-style-type: none"> Maintaining system of prompt (24-hour) notification of SMU supervisors for complaints against SMU officers. Special tracking of activities of all officers in SMU units <ul style="list-style-type: none"> enforcement actions complaints misconduct investigations Investigation of SMU member activities follows MPD rules and procedures for investigating uses of force and allegations of misconduct | <ol style="list-style-type: none"> MPD maintains system in which supervisors notified of complaints against SMU members within 24 hours in ≥95% of cases. MPD monitoring and auditing program includes reviews of ≥95% of SMU officers and considers enforcement actions, uses of force, and complaints generated by SMU activities. Investigation of SMU members follows MPD rules for use of force and misconduct investigations in ≥95% of investigations. | <ol style="list-style-type: none"> Review specific documents and materials documenting such notifications maintained by SMU supervisors and in other MPD record systems. Review monitoring and auditing program as well as special tracking for SMU officers. Review FIT investigations. Review chain of command use of force investigations. Review misconduct investigations. |
| 159 | Within 120 days, MPD shall develop a plan, subject to the approval of DOJ, to limit the total number of hours an officer may work in any twenty-four hour period and in any seven- day period to prevent officer fatigue. The parties acknowledge that implementation of the plan may take into account limitations of current labor agreements, if any. | <ol style="list-style-type: none"> Development of plan to limit officer hours during 24-hour and 7-day periods to avoid officer fatigue. | <ol style="list-style-type: none"> Development of work limitation plan. MPD has initiated procedures to ensure plan is being followed. MPD periodically audits deployment of SMUs to ensure procedures are being followed. | <ol style="list-style-type: none"> Review MPD plan. Monitor implementation of MPD plan. Periodic review of internal MPD checks to ensure plan is being followed Review daily work details. |

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| | IX. PUBLIC INFORMATION | | | |
| 160 | MPD shall prepare quarterly public reports that include aggregate statistics of MPD use of force incidents broken down by MPD districts covering each of the geographic areas of the City, indicating the race/ethnicity of the subject of force. These aggregate numbers shall include the number of use of force incidents broken down by weapon used and enforcement actions taken in connection with the use of force. The report shall include statistical information regarding use of force investigations conducted, including the outcome. The report shall also include the total number of complaints of excessive force received, broken down by MPD Districts, and the number of complaints held exonerated, sustained, insufficient facts, and unfounded. | 1. MPD quarterly reports including information described in ¶ 160. | 1. Quarterly reports issued by MPD that include information described in ¶ 160. 2. Quarterly reports made publicly available. | 1. Review MPD quarterly reports. 2. Monitor MPD website. |
| | X. MONITORING, REPORTING, AND IMPLEMENTATION | | | |
| | A. Independent Monitoring | | | |
| 161 | Within 90 days after entry of this Agreement, the City, MPD and DOJ shall together select a Monitor who shall review and report on MPD's implementation of, and assist with MPD's compliance with, this Agreement. If the parties are unable to agree on a Monitor, each party shall submit two names of persons who have experience as a law enforcement officer, as a law enforcement practices expert or monitor, or as a Federal, state, or county prosecutor or judge along with resumes or curricula vitae and cost proposals to a third party neutral, selected with the assistance of the Federal Mediation and Conciliation Service, and the third party neutral shall appoint the Monitor from among the names of qualified persons submitted. | 1. Selection of monitor | 2. Selection of monitor completed and contract signed, March 28, 2002 | NA |

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| 162 | The Monitor shall not be retained by any current or future litigant or claimant in a claim or suit against the City, MPD, or its officers. The Monitor shall not issue statements or make findings with regard to any act or omission of the City, MPD, or their agents or representatives, except as required by the terms of this Agreement. The Monitor may testify in any case brought by any party to this Agreement regarding any matter relating to the implementation, enforcement, or dissolution of this Agreement. | NA | NA | NA |
| 163 | The Monitor, at any time, may associate such additional persons or entities as are reasonably necessary to perform the monitoring tasks specified by this Agreement. The Monitor shall notify in writing DOJ and the City if and when such additional persons or entities are selected for association by the Monitor. The notice shall identify and describe the qualifications of the person or entity to be associated and the monitoring task to be performed. | NA | NA | NA |
| 164 | The City and MPD shall bear all reasonable fees and costs of the Monitor. In selecting the Monitor, DOJ, the City and MPD recognize the importance of ensuring that the fees and costs borne by the City and MPD 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 City, MPD and DOJ and the Monitor shall attempt to resolve such dispute cooperatively. | NA | NA | NA |
| 165 | The Monitor shall 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 the Mayor, City Council, or Chief of Police. | NA | NA | NA |
| 166 | The Monitor shall offer the City and MPD technical assistance regarding compliance with this Agreement. The Monitor may not modify, amend, diminish, or expand this Agreement. | NA | NA | NA |

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| 167 | The City and MPD shall provide the Monitor with full and unrestricted access to all MPD and City staff, facilities, and documents (including databases) necessary to carry out the duties assigned to MPD by this Agreement. The Monitor’s right of access includes, but is not limited to, all documents regarding use of force data, protocols, analyses, and actions taken pursuant to the analyses. 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, other than a Court or DOJ, absent written notice to the City and either written consent by the City or a court order authorizing disclosure. | 1. Full and unrestricted access to all staff, facilities, and documents, including databases. | 1. Full and unrestricted access in response to 100% of OIM requests, except where the lack of access has been fully explained and deemed by the OIM to be acceptable | 1. History of requests and responses |
| 168 | In monitoring the implementation of this Agreement, the Monitor shall maintain regular contact with the City, MPD and DOJ. | NA | NA | NA |
| 169 | In order to monitor and report on MPD’s implementation of each substantive provision of this Agreement, the Monitor shall conduct the reviews specified in paragraphs 171 and 172 and such additional reviews as the Monitor deems appropriate. The Monitor may make recommendations to the parties regarding measures necessary to ensure full and timely implementation of this Agreement. | NA | NA | NA |
| 170 | In order to monitor and report on MPD’s implementation of this Agreement, the Monitor, among other things, shall regularly review and evaluate the quality and timeliness of: | NA | NA | NA |
| a | MPD employee use of force investigations, including investigations conducted by the Districts, UFRB , OPR, and FIT, pursuant to Section III(B). | NA | NA | NA |
| b | disciplinary and non-disciplinary actions related to officer use of force. | NA | NA | NA |
| c | use of force reports. | NA | NA | NA |
| d | analyses of data concerning use of force, pursuant to paragraphs 61 and 67; and any actions taken pursuant to paragraph 105. | NA | NA | NA |
| e | complaints and resulting investigations of excessive use of force. | NA | NA | NA |

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| | In performing its obligations under this Agreement, the Monitor shall, where appropriate, employ appropriate sampling techniques. | NA | NA | NA |
| 171 | The Monitor, inter alia, shall review and evaluate the quality and timeliness of appropriate samples of use of force and misconduct investigations, disciplinary and non-disciplinary actions, ordered as a result of a misconduct investigation; data contained in the PPMS; and appropriate samples of Use of Force Incident reports, canine search and injury reports. | NA | NA | NA |
| 172 | Subject to the limitations set forth in this paragraph, MPD shall reopen for further investigation any misconduct investigation the Monitor determines to be incomplete. The Monitor shall provide written instructions for completing the investigation. The Monitor shall exercise this authority so that any directive to reopen an investigation is given within a reasonable period following the investigation's conclusion. The Monitor may not exercise this authority concerning any misconduct investigation which has been adjudicated or otherwise disposed, and the disposition has been officially communicated to the officer who is the subject of the investigation. | 1. Requirement eliminated by modification of the MOA – see November 18, 2003 letter from Shanetta Y. Cutlar to Chief Ramsey. | | NA |
| | B. MPD Compliance Coordinator | | | |
| 173 | The parties agree that MPD shall hire and retain, or reassign a current MPD employee, for the duration of this Agreement, as an MPD Compliance Coordinator. The Compliance Coordinator shall serve as a liaison between MPD, the Monitor and DOJ, and shall assist with MPD's compliance with this Agreement. At a minimum, the Compliance Coordinator shall: (a) coordinate MPD compliance and implementation activities of this Agreement; (b) facilitate the provision of data, documents and other access to MPD employees and material to the Monitor and DOJ as needed; (c) ensure that all documents and records are maintained as provided in this Agreement; and (d) assist in assigning compliance tasks to MPD personnel, as directed by MPD Chief of Police or his designee. | 1. Assignment of an MPD Compliance coordinator with the responsibilities described in ¶ 173. | 1. Assignment of an MPD Compliance Coordinator with the responsibilities described in ¶ 173. | NA |

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| 174 | The MPD Compliance Coordinator shall take primary responsibility for collecting information to provide MPD's status reports specified in paragraph 175. | 1. MPD Compliance Coordinator responsible for collecting information included in MPD's status reports to DOJ and OIM per ¶ 175. | 1. Compliance Coordinator effective in gathering information to be included in status reports. | 1. Review MPD status reports. 2. Discussions with Compliance Coordinator. |
| | C. Reports and Records | | | |
| 175 | Between 90 and 120 days following the effective date of this Agreement, and every three months thereafter until this Agreement is terminated, MPD and the City shall file with DOJ and the Monitor a status report delineating all steps taken during the reporting period to comply with each provision of this Agreement. | 1. Quarterly status reports filed with DOJ and MPD delineating all steps taken during the reporting period to comply with each provision of this Agreement. | 1. Quarterly status reports filed with DOJ and MPD delineating all steps taken during the reporting period to comply with each provision of this Agreement. | 1. Review MPD status reports. 2. Discussions with Compliance Coordinator. |
| 176 | During the term of this Agreement, the City and MPD shall maintain all records documenting compliance with the terms of this Agreement and all documents required by or developed pursuant to this Agreement. The City and MPD shall maintain all use of force investigation files for at least ten years from the date of the incident. The City and MPD shall maintain an officer's training records during the officer's employment with MPD and for three years thereafter (unless required to be maintained for a longer period of applicable law). | 1. Maintenance of all records documenting compliance with terms of the MOA and all documents required under the MOA. 2. Maintenance of officers' training records during employment and for three years thereafter. | 1. Maintenance of all records documenting compliance with terms of the MOA and all documents required under the MOA. 2. Maintenance of training records for ≥95% of officers during employment and for three years thereafter. | 1. Review Compliance Coordinator records. 2. Review personnel and training records. |

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| 177 | DOJ shall continue to have full and unrestricted access to any City and MPD documents (including databases), staff, and facilities that are relevant to evaluate compliance with this Agreement, except any documents protected by the attorney-client privilege. Should the City or MPD decline to provide the Monitor with access to a document based on attorney-client privilege, the City shall provide the Monitor and DOJ with a log describing the document. DOJ's right of access includes, but is not limited to, all documents regarding use of force data, protocols, analyses, and actions taken pursuant to the analyses. This Agreement does not authorize, nor shall it be construed to authorize, access to any MPD documents, except as expressly provided by this Agreement, by persons or entities other than DOJ, the City, MPD, and the Monitor. DOJ shall retain any non-public information in a confidential manner and shall not disclose any non-public information to any person or entity, other than a Court or the Monitor, absent written notice to the City and either written consent by the City or a court order authorizing disclosure. | | | |
| 178 | DOJ shall review documents and information provided by MPD and the Monitor and shall provide its analysis and comments to the City, MPD and the Monitor at appropriate times and in an appropriate manner, consistent with the purpose of this Agreement to promote cooperative efforts. | | | |
| 179 | The Monitor shall issue quarterly public reports detailing the City's and MPD's compliance with and implementation of this Agreement. The Monitor may issue reports more frequently if the Monitor determines it appropriate to do so. These reports shall not include information specifically identifying any individual officer. Before issuing a report, the Monitor shall provide a draft to the parties for review to determine if any factual errors have been made, and shall consider the Parties' responses and then promptly issue the report. | | | |

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| 180 | <p>The Monitor may testify in any action brought to enforce this Agreement regarding any matter relating to the implementation or enforcement of the Agreement. The Monitor shall not testify in any other litigation or proceeding with regard to any act or omission of the City, MPD, or any of their agents, representatives, or employees related to this Agreement or regarding any matter or subject that the Monitor may have received knowledge of as a result of his or her performance under this Agreement. Unless such conflict is waived by the parties, the Monitor shall not accept employment or provide consulting services that would present a conflict of interest with the Monitor's responsibilities under this Agreement, including being retained (on a paid or unpaid basis) by any current or future litigant or claimant, or such litigant's or claimant's attorney, in connection with a claim or suit against the City or its departments, officers, agents or employees. The Monitor is not a state or local agency, or an agent thereof, and accordingly the records maintained by the Monitor shall not be deemed public records. 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.</p> | | | |
| | D. Implementation, Termination, and Enforcement | | | |
| 181 | <p>This Agreement shall become effective upon signature by all Parties. The City and MPD shall implement immediately all provisions of this Agreement which involve the continuation of current Department policies, procedures, and practices. Within 180 days of the effective date of this Agreement, unless otherwise specified, the City and MPD shall implement the provisions of this Agreement.</p> | | | |

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| 182 | <p>The Agreement shall terminate five years after the effective date of the Agreement if the parties agree that MPD and the City have substantially complied with each of the provisions of this Agreement and maintained substantial compliance for at least two years. The burden shall be on the City and MPD to demonstrate that it has substantially complied with each of the 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.</p> | | | |
| 183 | <p>The Parties agree to defend the provisions of this Agreement. The Parties shall notify each other of any court or administrative challenge to this Agreement.</p> | | | |
| 184 | <p>This Agreement is enforceable through specific performance in Federal Court. Failure by any party to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of its right to enforce other deadlines and provisions of this Agreement.</p> | | | |

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| 185 | <p>In the event MPD or the City fail to fulfill any obligation under this Agreement, DOJ shall, prior to initiating any court proceeding to remedy such failure, give written notice of the failure to MPD and the City. MPD and the City shall have 30 days from receipt of such notice to cure the failure. At the end of the 30-day period, in the event DOJ determines that the failure has not been cured, DOJ may, without further notice to MPD or the City, file an action in the United States District Court for the District of Columbia (the “Federal Court Action”) against MPD and the City for breach of contract and any other appropriate causes of action and may seek specific performance and any other appropriate form of relief.</p> | | | |
| 186 | <p>In any matter requiring its approval under this Agreement, DOJ shall not unreasonably withhold any such approval. DOJ shall respond in a complete and timely manner to any submission submitted by the City or MPD for approval, and shall fully outline any bases for disapproval, together with an indication of the changes required in order for approval to be given. DOJ shall provide its approval or disapproval of all matters in writing. All communications regarding approvals required by this Agreement shall take place in such a manner so as not to interfere with or delay compliance with any obligation contained in the Agreement.</p> | | | |
| 187 | <p>In addition to any other notice it may provide, DOJ shall send copies of any correspondence containing a notice of a failure to approve any submission by the City or the MPD, or a notice of a failure to fulfill obligations under this Agreement to MPD’s General Counsel.</p> | | | |
| 188 | <p>In connection with the Federal Court Action, MPD and the City agree as follows:</p> | | | |
| a | <p>The City and MPD shall stipulate to subject matter and in personal jurisdiction and to venue.</p> | | | |
| b | <p>The City and MPD agree that service by hand delivery of the summons, complaint, and any other documents required to be filed in connection with the initiation of the Federal Court Action upon the Corporation Counsel of the City shall be deemed good and sufficient service upon the City and MPD.</p> | | | |

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| c | The City and MPD hereby waive the right to file, and agree not to file or otherwise assert, any motion to dismiss (except for failure to state a claim), to stay or otherwise defer, a Federal Court Action alleging a failure to fulfill any obligation under this Agreement. | | | |
| d | The City and MPD agree to a trial of the Federal Court Action alleging a failure to fulfill any obligation under this Agreement commencing (a) 120 days after service of the summons and complaint as set forth above, or (b) the Court's earliest availability, whichever is later. The parties agree that discovery in the Federal Court Action alleging a failure to fulfill any obligation under this Agreement may begin within 15 days after service of the summons and complaint. The parties agree to submit all discovery requests and to schedule all depositions within 75 days after the service of the summons and complaint. | | | |
| 189 | In the event, the Court finds that the City or MPD has engaged in a material breach of the Agreement, the parties hereby stipulate that they shall move jointly for the Court to enter the Agreement and any modifications pursuant to paragraph 194, as an order of the court and to retain jurisdiction over the Agreement to resolve any and all disputes arising out of the Agreement. | | | |
| 190 | Nothing in this Agreement shall preclude DOJ, after complying with paragraph 185 (provision of notice and an opportunity to cure), from filing an action under the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. Section 14141) alleging a pattern or practice of excessive force in addition to or in lieu of the Federal Court Action described above. In the event that any such action is filed, the City and MPD hereby waive, agree not to assert, any defense to that action based on statute of limitations, laches, estoppel or any objection relating to the timeliness of the filing of such action. Nothing in this Agreement shall preclude DOJ from filing an action under the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. Section 14141) alleging a pattern or practice of unlawful conduct other than excessive force. Nothing in this Agreement shall preclude DOJ from filing an action under any other provision of law. | | | |

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| 191 | Nothing in this Agreement shall be construed to require an expenditure, obligation, or contract in violation of the Anti-Deficiency Act, 31 U.S.C. §1341 et seq. The District's obligations shall be subject to the availability of appropriated funds (including funds obtained from grants and contracts) as follows: | | | |
| a | To the extent made necessary by lack of funds, beginning for fiscal year 2002, the district may obtain deferral of compliance with an obligation of this Agreement until its next annual budget cycle if, as soon as the District knows or should know of the possibility of the event, it provides in writing to DOJ a statement which shows the following: | | | |
| i | that it included in its annual budget act as adopted by the Council of the District of Columbia and submitted to the President for transmission to the Congress pursuant to section 446 of the D.C. Self-Government and Governmental Reorganization Act, D.C. Code §47-304 (1997), sufficient money to carry out such objective; | | | |
| ii | that it made diligent efforts to obtain Congressional enactment of that part of the budget act; | | | |
| iii | that it made diligent efforts to identify and utilize grant and contract funds available to the City from federal and private funding sources to meet obligations under this Agreement (DOJ will assist the City to identify potential Department of Justice grants, or other funding sources, for which MPD may be eligible to apply and will provide MPD with appropriate technical assistance regarding any related application process); | | | |
| iv | that it expressly identified in the annual fiscal year adopted budget prepared for Congressional use such obligation (not necessarily to include reference to this Agreement as such) together with the amount of money tied to performing such obligation; and | | | |

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| v | that Congress acted expressly to eliminate such amount of money or to reduce it below the level necessary to perform the obligation, or that Congress made an across the board reduction in the appropriation of MPD, OCCR, or any other agency with specific obligations under this Agreement as shown in the Council's budget act without expressly saving such obligation and the across the board reduction, as applied proportionately to the amount of money shown in the adopted budget for such obligation left an insufficient amount to carry out that obligation. | | | |
| b | The Mayor and MPD shall make diligent efforts to safeguard all appropriated funds available to meet obligations under this Agreement from re-programming. | | | |
| | E. Compliance | | | |
| 192 | This Agreement is a public document and shall be posted on the websites of the City or MPD and of the Special Litigation Section of the Civil Rights Division of DOJ. | 1. MOA posted on MPD's Web site. | 1. MOA posted on MPD's Web site. | 1. MPD Web site. |
| 193 | The City and MPD agree that they shall not retaliate against any person because that person has filed or may file a complaint, provided information or assistance, or participated in any other manner in an investigation or proceeding relating to this Agreement. | | | |
| | F. Modifications | | | |
| 194 | The Parties may jointly agree, in writing, to modify this Agreement. | NA | NA | NA |