

## **AGREEMENT**

Noting the general principle that voluntary agreements are to be encouraged, particularly agreements between governmental entities, and noting the continued cooperative relationship between the U.S. Department of Justice, Civil Rights Division, the U.S. Attorney's Office for the Southern District of New York (collectively, "DOJ"), the City of Yonkers ("City"), and City of Yonkers Police Department ("YPD"), and having considered the terms of the measures set forth herein, the DOJ, City and YPD (collectively the "Parties") agree to the following terms and conditions:

### **I. INTRODUCTION**

#### **A. Background**

1. In August 2007, DOJ initiated an investigation of an alleged pattern or practice of excessive force and discriminatory policing by YPD under the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 ("Section 14141"), and the Omnibus Crime Control and Safe Streets Act of 1968 (the "Safe Streets Act"), 42 U.S.C. § 3789d.
2. The investigation, conducted with the assistance of two police practices consultants, included tours of YPD's facilities, ride alongs with YPD officers, interviews with YPD and City officials, YPD command staff, supervisors, and police officers, and extensive document review. In June 2009, DOJ sent the City a letter providing detailed technical assistance regarding YPD practices and policies in the areas of use of force, citizen complaints, investigations, supervisory oversight, and training. Subsequent to sending this letter, DOJ conducted further investigation of YPD. YPD and the City cooperated with DOJ in the course of the investigation.
3. Following DOJ's provision of technical assistance, the City and YPD completed substantial revisions of YPD's policies and procedures. YPD presented these policies to DOJ for review and consultation. YPD has engaged in a number of other voluntary initiatives to improve its practices, including but not limited to, the provision of name tags to its officers, the initial implementation of an early warning system, revised use of force reporting requirements, enhanced training opportunities and numerous community policing initiatives. YPD believes it has made substantial progress to ensure that it engages in constitutional police practices. All Parties recognize the beneficial potential of those initiatives.
4. City and YPD officials have met with DOJ officials to facilitate the City's cooperation with DOJ's investigation and craft an Agreement acknowledging the YPD's initiatives and addressing the Parties' concerns. The Agreement is the result of a cooperative effort that evinces a commitment to constitutional policing on the part of the Parties.

**B. General Provisions**

5. DOJ conducted this investigation under Section 14141 and the Safe Streets Act to address an alleged pattern or practice of use of excessive force and improper stop and search practices by YPD officers that deprive persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States. The City and YPD deny these allegations.
6. This Agreement is intended to fully resolve the claims of the United States regarding YPD's alleged use of excessive force and improper stop and search practices, unconstitutional police practices, and any other violations of Section 14141 or the Safe Streets Act. The Parties have agreed to enter into this Agreement jointly for the purpose of avoiding any adversarial proceedings and to partner in support of vigorous and constitutional law enforcement. Moreover, joint entry of this Agreement is in the public interest because it avoids the diversion of federal and City resources to adversarial actions by the Parties.
7. Nothing in this Agreement is intended to alter the lawful authority of YPD to use reasonable and necessary force, effect arrests and file charges, conduct searches or make seizures, apply its managerial discretion, or otherwise fulfill its law enforcement obligations in a manner consistent with the requirements of the Constitution and laws of the United States, the State of New York, and the City. Matters not addressed in this Agreement remain within the managerial authority of YPD and the City, subject to the provisions of applicable law.
8. Nothing in this Agreement shall or is intended to: (a) alter or impair the existing collective bargaining agreements between the City or YPD and the Patrolmen's Benevolent Association, the Captains, Lieutenants and Sergeant's Association, Teamsters Local 456 (detention officers), SEIU local 704 (public safety dispatchers and support staff), AFCME council 66 (support staff) or any other collective bargaining agreements covering any YPD employees (individually or collectively referred to as the "CBAs"); or (b) impair the collective bargaining rights of employees under State and local law. Nothing in this Agreement shall or is intended to amend or supersede any provision of State or local law or the CBAs.
9. The City agrees to promptly notify DOJ if any term of this Agreement becomes subject to a collective bargaining dispute and to consult with DOJ in a timely manner regarding the position the City takes in any collective bargaining dispute connected with this Agreement. In the event that a court, administrative tribunal, or arbitrator of competent jurisdiction renders or declares the implementation of any provision or term of this Agreement in violation of any CBA, or assesses any damages or remedy against the City, then the City and YPD shall have no further obligation to implement such provision.

10. This Agreement shall constitute the entire integrated agreement of the Parties. No prior drafts or prior or contemporaneous communications, oral or written, will be relevant or admissible for purposes of determining the meaning of any provisions herein in any litigation or any other proceeding.
11. This Agreement is binding upon the Parties, 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 City and YPD for their conduct or the conduct of YPD officers; accordingly, it does not alter legal standards governing any such claims, including those under New York law. This Agreement does not authorize, nor will it be construed to authorize, access to any City, YPD, or DOJ documents, except as expressly provided by this Agreement. Nothing in this Agreement constitutes a finding by DOJ, the United States or any court.

**C. Definitions and Abbreviations**

12. The term “arrest” means a seizure of the person of greater scope or duration than an investigatory stop, detention or frisk. An arrest is lawful when supported by probable cause.
13. The term “CBAs” shall mean the collective bargaining agreements for the public employee unions included in paragraph 8, above.
14. The term “City” means the City of Yonkers, a New York municipal corporation, including its agents, officers and employees.
15. The term “complaint” means any complaint by a member of the public regarding YPD services, policy or procedure, claims for damages (which allege officer misconduct) or officer misconduct and any allegation of possible misconduct made by a YPD officer.
16. The term “complainant” means any person who files a complaint against an officer or YPD.
17. The term “Court” means the United States District Court for the Southern District of New York (designated for White Plains Courthouse, subject to the Court’s internal assignment rules).
18. The term “critical firearm discharge” means a discharge of a firearm by a YPD officer, including accidental discharges and discharges at persons where no one is struck, with the exception of range and training discharges and discharges at animals.

19. The term “critical use of force” means: (1) all uses of force that create a substantial risk of death, serious disfigurement, disability or impairment of the functioning of any body part or organ; (2) all critical firearm discharges; (3) all uses of force resulting in significant injury, including a broken bone or an injury requiring contemporaneous hospital admission; (4) all intentional head, neck, and throat strikes; (5) intentional neck holds; (6) all uses of force resulting in a loss of consciousness; (7) all other uses of force apparently resulting in death; (8) all canine apprehensions that result in canine bite or visible injury to a suspect; (9) more than two applications of an Electronic Control Device (“ECD”) on an individual during a single interaction, regardless of the mode or duration of the application, and whether the applications are by the same or different officers, or ECD application for longer than 15 seconds, whether continuous or consecutive; and (10) any intentional strike, blow, kick, ECD application, or similar use of force against a fully handcuffed subject.
20. The term “deadly force” means any use of physical force which under the circumstances is readily capable of causing death or serious physical injury, including a critical firearm discharge.
21. The term “de minimus force” means physical interaction meant to separate, guide or control without use of control techniques that are intended to cause pain or injury.
22. The term “discipline” means a written reprimand, suspension, demotion or dismissal.
23. The term “DOJ” means the United States Department of Justice and its agents and employees, including the United States Attorney’s Office for the Southern District of New York.
24. The term “Effective Date” shall be January 2, 2017. Except where otherwise noted, all requirements of this Agreement shall be in place as of this Agreement’s Effective Date.
25. The term “exigent circumstances” means emergencies in which a reasonable person would believe that imminent bodily harm to a person or persons or the immediate destruction of evidence of a crime is likely.
26. The term “force” means any physical coercion other than ordinary handcuffing or de minimus force. The term “force” does not mean physical interaction related to separating, guiding, or controlling, unless the officer uses control techniques that are intended to cause pain or injury.
27. The term “FTO” means field training officer.
28. The term “IAD” means the Internal Affairs Division of YPD.

29. The term “implement” or “implementation” means the development or putting into place of a policy or procedure.
30. The term “investigatory stop” or “investigatory detention” means a temporary restraint for reasons other than vehicular traffic enforcement where the subject of the stop or detention is not free to leave. An investigatory stop or detention is lawful when supported by reasonable suspicion that a person has been, is, or is about to be engaged in criminal activity or violation of law, and narrowly tailored in scope and duration to the reasons supporting the seizure. An investigatory stop or detention may be a pedestrian, vehicle, or bicycle stop for reasons other than traffic enforcement.
31. The term “neck hold” refers to one of the following types of intentional holds: (1) bar-arm control hold; a hold that inhibits breathing by compression of the airway in the neck; (2) carotid restraint hold; a hold that inhibits blood flow by compression of the blood vessel in the neck; (3) a lateral vascular neck constraint; or (4) a hold with a knee or other object to the back of a prone subject’s neck.
32. The term “non-disciplinary corrective action” refers to action other than discipline taken by a YPD supervisor to enable or encourage an officer to modify or improve his or her performance.
33. The term “police officer” or “officer” means a sworn officer of the YPD, as defined in Section 1.20(34)(d) of the New York State Criminal Procedure Law.
34. The term “policy” means written regulations or directives, describing the duties, functions, and obligations of YPD officers and/or employees, and providing direction in how to fulfill those duties, functions, or obligations.
35. The term “probable cause” means reasonably trustworthy facts and circumstances that, within the totality of the circumstances, lead an officer to reasonably believe that an individual has committed or is committing a crime or violation of law.
36. The term “reasonable suspicion” means the quantum of knowledge to induce an ordinary prudent and cautious person under the totality of the circumstances to reasonably suspect that criminal activity or a violation of law has been or is about to be committed.
37. The term “substantial compliance” means that YPD has achieved material compliance with a given provision of this Agreement, except for minor or occasional aberrational violations. Material compliance with a substantive provision (sections II through XI) requires that: (1) YPD has developed and implemented a policy incorporating the requirement; (2) that officers have

been trained on the policy; and (3) that officers are complying with the requirement in actual practice.

38. The term “supervisor” means a sworn officer of the YPD, as defined in Section 1.20(34)(d) of the New York State Criminal Procedure Law at the rank of Sergeant or above (or anyone acting in those capacities).
39. The term “YPD” means the Yonkers Police Department, its agents and its employees (both sworn and unsworn).

## **II. POLICIES GENERALLY**

40. YPD will ensure that each substantive requirement of this Agreement is incorporated fully into YPD policy. YPD shall provide DOJ with a copy of all of its policies, procedures, and protocols implementing Sections III through XI of this Agreement within 120 days of the Effective Date of this Agreement, and shall throughout the term of this Agreement provide DOJ with a copy of any new or revised policies implementing the requirements of Sections III through XI this Agreement within 60 days of implementation. If DOJ determines that any such policy, procedure, or protocol violates a requirement of this Agreement, it shall give written notice of the specific violation within 30 days of receipt and promptly confer with YPD in good faith. In the event any policy or procedure or other obligation of the YPD under this Agreement is the subject of a union grievance proceeding under a CBA or applicable law, the YPD shall give notice to DOJ and the timelines for YPD compliance under this Agreement shall be extended for 180 days while the grievance is processed. Additional timeline extensions will be considered on a case-by-case basis.
41. YPD will review each policy 180 days after it is implemented, and annually thereafter, to ensure that the policy or procedure remains consistent with the Agreement.
42. YPD will ensure that every officer and employee has ready access to current versions of all policies that apply to the officer’s or employee’s position.

## **III. USE-OF-FORCE POLICIES/PRACTICES**

43. The City shall maintain use-of-force policies that:
  - a. define terms clearly;
  - b. define “force” as that term is defined in this Agreement;
  - c. incorporate a use-of-force process that relates the force options available to officers to the types of conduct by individuals that would justify the use of such force, and that teaches uses of other measures where appropriate, such as disengagement, area containment,

surveillance, waiting out a subject, summoning reinforcements or calling in specialized units and that requires the use of a verbal warning before the use of force, when possible;

- d. require officers to use only the force that is reasonable in light of the resistance encountered and to de-escalate force immediately as resistance decreases;
- e. require that, to the extent consistent with the safety of the officer and the public, individuals should be allowed to submit to arrest before force is used;
- f. provide that the use of unreasonable force may subject officers to discipline, possible criminal prosecution, and/or civil liability;
- g. recommend that available less lethal alternatives be used by patrol officers; and
- h. explicitly prohibit the use of intentional neck holds except where deadly force is authorized;
- i. explicitly prohibit intentional head strikes with a hard object except where deadly force is authorized; and
- j. explicitly prohibit force to overcome passive resistance or against a person in handcuffs, except to the extent necessary to handcuff and transport a person, or in exigent circumstances.

#### **IV. EVALUATION, DOCUMENTATION, AND REVIEW OF USES OF FORCE**

- 44. YPD will implement a single, uniform reporting system pursuant to a Use-of-Force Reporting policy that incorporates the requirements of this Agreement. YPD will modify the YPD-91 Use-of-Force Report form to incorporate the requirements of this Agreement. The use of de minimus force alone is not subject to the reporting requirements of this Agreement.
- 45. YPD will continue to require that all uses of force be documented in writing. Each YPD officer involved in a use-of-force incident shall separately complete a use-of-force report documenting the officer's own observations and actions. The use-of-force report will describe the resistance encountered, the force used by the officer, and whether the subject on whom force is used was restrained at the time force was used. YPD shall ensure that YPD officers complete and submit all use-of-force reports before the end of the shift during which the force occurred, absent extraordinary circumstances.

Officers shall notify their immediate supervisors following all uses of force (excluding de minimus force) or upon the receipt of an allegation of

excessive force. Upon such notification, the immediate supervisor of the involved officer(s) shall employ best efforts to gather evidence as necessary to support a complete and reliable force review consistent with the level of force involved. If the immediate supervisor is unavailable, another uninvolved, available patrol supervisor shall respond to the scene to gather the evidence as described above.

IAD will be notified and shall respond to the scene of all critical uses of force to the extent practicable and shall be responsible for conducting the administrative critical use of force review of the incident. In the case of a critical use-of-force investigation, IAD shall employ best efforts to ensure that the subject of force and all officers who were involved in the incident or were on the scene when it occurred provide a statement regarding the critical use-of-force incident. Officers shall not be permitted to see one another's reports or statements prior to submission of their own statement. In other cases, as provided above, the supervisor shall conduct such investigation as appropriate under the circumstances.

46. The reviewing supervisor (or IAD in the case of a critical use-of-force investigation) shall, while taking into consideration the views of chain of command, independently assess and articulate his or her basis for justification or non-justification, and evaluate whether each use of force is consistent with YPD policy, whether it raises any officer safety concerns, and shall explain the basis for the supervisor's determinations. Any officer or supervisor who used force during the incident or whose conduct led to an injury or who authorized conduct leading to the use of force or allegations of unreasonable force will not be eligible to review the incident.
47. All critical use-of-force reviews shall include:
  - a. interviews of all available witnesses to the critical use of force;
  - b. subject to applicable authority, recorded (audio or video) interviews of all YPD officers that witnessed or were involved in the force incident or the police actions immediately preceding it;
  - c. recorded (audio or video) interviews of all available non-YPD witnesses regarding the critical use of force, unless the interviewee specifically requests not to be recorded via a signed declination form;
  - d. separate statements from all officers on the scene of the incident. Officers shall not be permitted to see one another's written reports or statements prior to submission of their own statements;
  - e. collection of all relevant evidence, including photographs of any injuries and the collection of audio or video recordings and any



medical records documenting bodily injury to the officers and subjects (subject to receipt of any appropriate HIPPA release); and

- f. a report documenting IAD's collection of evidence and evaluation of the incident based upon that evidence, including whether: (1) the force used was objectively reasonable; (2) officer(s) actions were otherwise consistent with YPD policy; and (3) the incident raises any policy, tactical, training, or equipment concerns
- 48. The use-of-force review shall be kept separate from any criminal investigation of the incident after any statements are taken that are compelled within the meaning of *Garrity v. New Jersey*, 385 U.S. 493 (1967). Where there is an apparent potential for criminal prosecution, YPD shall not compel statements that receive protection under *Garrity* without first consulting with the prosecuting agency.
  - 49. The Parties agree that it is improper for YPD personnel conducting use-of-force reviews to ask officers or other witnesses leading questions that improperly suggest legal justifications for officers' conduct when such questions are contrary to appropriate law enforcement techniques. In each critical use-of-force review, YPD shall consider all relevant evidence including circumstantial, direct and physical evidence, as appropriate, and make credibility determinations, if feasible, and make all reasonable efforts to resolve material inconsistencies between witness statements. In determining whether force was consistent with YPD policy, YPD shall apply a "preponderance of the evidence" standard.
  - 50. For each use-of-force incident, the chain of command will timely evaluate each use-of-force review conducted by a supervisor and identify any deficiencies.

## **V. STOPS, SEARCHES AND ARRESTS**

### **A. Investigatory Stops and Detentions**

- 51. YPD investigatory stops, searches, and arrests shall be conducted in accordance with the following requirements:
  - a. YPD officers shall conduct investigatory stops or detentions only where the officer has reasonable suspicion, as defined in this Agreement.
  - b. YPD officers shall use sufficiently descriptive, specific and clear language to document the legal basis for each investigatory stop, detention and search.

- c. YPD officers shall not use or rely on information known to be materially false or incorrect in effectuating an investigatory stop or detention.
- d. YPD officers shall not use race, color, ethnicity, national origin, religion, gender, disability, sexual orientation, or gender identity as a factor, to any extent or degree, in establishing reasonable suspicion or probable cause, determining whether to conduct a search, seeking a warrant to conduct a search or making an arrest, except as part of a suspect description in an ongoing investigation.

**B. Searches**

- 52. Where an officer seeks to conduct a warrantless search based on consent, the officer shall affirmatively inform the subject of his or her right to refuse and to revoke consent at any time.

**C. Arrests**

- 53. YPD officers shall only arrest an individual where the officer has probable cause. The Parties understand probable cause to be the same as reasonable cause under the New York Criminal Procedure Law section 140.10.
- 54. An officer shall notify the immediate supervisor when the officer used force when effectuating an arrest for obstructing or resisting an officer, disorderly conduct, obstruction of governmental administration, or similar charges.
- 55. YPD officers shall complete all arrest reports within 24 hours of the arrest, absent exceptional circumstances. YPD supervisors shall review each arrest report of officers under their command and shall memorialize their review in the Records Management System before the end of the supervisors' shifts in which the report is received absent exceptional circumstances. Supervisors shall review reports and forms for inconsistent information, lack of articulation of the legal basis and probable cause for the action, indicia that the information in the reports or forms is not authentic or correct, or violation of YPD policy.
- 56. A command-level official shall review, in writing, all completed supervisory reports of arrests that are unsupported by probable cause and take appropriate action, which may include referring the incident to IAD for investigation if appropriate.

**D. Stop and Search Data Collection and Review**

- 57. Within one year of the Effective Date, YPD shall develop a system to collect data on all investigatory stops and searches, except stops purely for traffic enforcement, whether or not they result in an arrest or issuance of a citation. This system shall allow for summarization of data and searches

and shall be integrated into the Risk Management System. YPD's stop and search data collection system shall require officers to document the following:

- a. the officer's name and badge number;
  - b. date and time of the stop;
  - c. location of the stop, including whether the location is in a YMHA public housing unit;
  - d. duration of the stop;
  - e. subject's apparent race, ethnicity, gender and age;
  - f. if a vehicle stop, the presence and number of any passengers and the apparent race/ethnicity, gender, and age of each passenger;
  - g. if a non-vehicle stop (e.g., pedestrian or bicycle), the number of individuals stopped and apparent race/ethnicity, gender, and age of each person;
  - h. reason for the stop, including a description of the facts creating reasonable suspicion;
  - i. if a vehicle stop, whether the driver or any passenger was required to exit the vehicle, and reason;
  - j. whether any individual was asked to consent to a search and whether such consent was given;
  - k. whether a pat-and-frisk or other search was performed on any individual, including a description of the applicable facts justifying the pat-and-frisk or other search;
  - l. whether a probable cause search was performed on any individual, including a brief description of the facts creating probable cause;
  - m. whether any weapon, contraband or evidence was seized from any individual, and nature of the weapon, contraband or evidence; and
  - n. disposition of the stop, including whether a citation was issued or an arrest made to any individual.
58. Officers shall submit documentation of investigatory stops and any searches, including a complete and accurate inventory of all property or evidence seized, to their supervisors by the end of the shift in which the police action occurred.

59. The immediate supervisor shall take appropriate action to address all violations or deficiencies in investigatory stops, including recommending non-disciplinary corrective action for the involved officer, and/or referring the incident for administrative or criminal investigation.
60. YPD shall develop a protocol for comprehensive analysis, on at least an annual basis, of the stop and search data collected. This protocol will be part of YPD's data collection system.
61. YPD shall ensure that all databases containing individual specific data comply fully with federal and state privacy standards governing personal identifying information. YPD shall develop a process to restrict database access to authorized, identified users who are accessing the information for a specific and identified purpose.

**E. First Amendment Right to Observe and Record Officer Conduct**

62. Unless one of the conditions in paragraphs 63 or 64 is met, YPD may not limit actions by onlookers or bystanders to witness, observe, record, and/or comment on officer conduct, including stops, detentions, searches, arrests, or uses of force, by camera, video recorder, cell phone recorder, or other means.
63. YPD may limit individuals observing stops, detentions, arrests and other incidents from coming within 20 feet of the incident/location of police activity.
64. Nothing herein shall restrict or limit the right of officers to take appropriate law enforcement action against a bystander if a bystander's presence would jeopardize the safety of the officer, the suspect, or others in the vicinity; the bystander violates the law; or the bystander incites others to violate the law.
65. In the absence of exigent circumstances, officers shall not seize or otherwise coerce production of recorded sounds or images without consent or obtaining a warrant. Under no circumstances shall officers destroy such recordings, or order an individual to destroy such recordings. Where an officer has a reasonable belief that an individual has captured a recording of critical evidence related to a crime, the officer may call a supervisor to the scene to secure such evidence by consent or for no more than twelve hours while a legal subpoena, search warrant, or other valid order is obtained. The supervisor must provide the individual with a receipt for the recording and explain specifically how the individual can reclaim it.

## **VI. MISCONDUCT COMPLAINT PROCESS**

### **A. Public Information**

66. YPD agrees to continue implementing a program to inform persons that they may file complaints regarding the performance of any officer and to continue making available a complaint form on the YPD's Internal Affairs page of YPD's website. YPD shall continue to make complaint forms, directions on submitting complaints, and informational materials publically available at government properties.
67. Within 90 days of the Effective Date of this Agreement, YPD shall permanently post in a public space at YPD headquarters a placard describing how to file a misconduct complaint and include the relevant phone numbers and email addresses. Where and when practicable, YPD shall require officers to carry informational brochures and complaint forms in full size patrol vehicles at all times while on duty. Officers shall not discourage any person from making a complaint.

### **B. Means of Filing and Tracking of Complaints**

68. YPD agrees to maintain clear complaint acceptance and complaint resolution policies and procedures. YPD shall ensure that all officers are trained in acceptance of complaints. Training on the complaint acceptance policy and procedure will be a part of in-services training to all officers.
69. YPD shall accept misconduct complaints in writing, in person or by mail, telephone (or relay call), facsimile, electronic mail, or drop box. YPD employees shall accept complaints and promptly deliver them to a supervisor or IAD. YPD shall resolve each complaint in writing.
70. Within 180 days of the Effective Date of this Agreement, YPD agrees to institute a centralized numbering and tracking system for all complaints. Upon receipt of a complaint, YPD will assign each complaint a unique identifier, which YPD will provide to the complainant. YPD will track each complaint in a database that includes the name of the subject officer(s), if known; the name of the complainant; and each allegation of the complaint. YPD agrees to refer copies of allegations of misconduct against YPD to YPD's IAD within one business day of receipt of a complaint.
71. YPD shall take corrective action against an officer found to have discouraged any person from making a complaint or failing to provide complaint materials or information upon reasonable request.

### **C. Investigation of Complaints**

72. YPD agrees to investigate every complaint to the extent necessary to reliably resolve each allegation in the complaint. YPD shall explicitly

prohibit from investigating an incident any officer involved in that incident, who authorized the conduct that led to the reported incident or complaint, or who was on the scene at the time of the incident leading to the allegation of misconduct.

73. IAD shall retain and investigate all complaints alleging: use of unreasonable force; searches in violation of YPD policy; inappropriate sexual conduct (excluding sexual harassment complaints which are addressed by separate policies); failure to investigate a citizen's allegations of police misconduct; failure to provide medical treatment; unlawful police action; and allegations of discriminatory policing or bias. For all other types of complaints, IAD shall determine whether the investigation will be assigned to the chain-of-command, or retained and investigated by IAD.
74. Chain-of-command investigations will be conducted by the supervisor of the subject officers or another appropriate supervisor within the same command.
75. YPD shall complete all investigations of officer misconduct within forty-five (45) days of the earlier of YPD's receipt of a complaint or YPD's discovery of alleged officer misconduct, unless the IAD Commander extends that deadline in writing at the written request of the assigned investigator prior to the due date. The IAD Commander may permit an extension of time of no more than thirty (30) days per extension, and shall not permit more than two extensions. The IAD Commander shall record, as part of the investigative file for the incident, his or her basis for granting or denying the request for extension.
76. YPD shall apply a preponderance of the evidence standard to the evaluation of all allegations contained in a complaint or other misconduct discovered during the course of investigating a complaint. Nothing herein shall change the burden of proof in criminal actions.
77. All personnel conducting misconduct investigations, including field supervisors, shall receive complaint investigation training.
78. IAD and chain of command investigators assigned to the investigation of complaints shall interview all witnesses to the incident who are capable of being identified through the exercise of reasonably diligent investigation. All interviews of non-YPD employees by IAD regarding the incident shall be recorded (audio or video), unless the interviewee specifically requests not to be recorded. If an interviewee requests not to be recorded, YPD shall request a written declination of recording executed by the interviewee, and may proceed with the interview. The assigned investigators shall ensure that all officer witnesses provide a report regarding the incident. Officers shall not be permitted to see one another's reports prior to submission of their own reports. For all allegations involving injury to a person, the assigned investigator shall make best efforts to obtain contemporaneous

photographs or videotapes of all injuries at the earliest practicable opportunity. YPD shall prohibit group interviews.

79. In each misconduct investigation, YPD shall consider all relevant evidence including circumstantial, direct and physical evidence, as appropriate, and make credibility determinations, if feasible.
80. During a misconduct investigation, YPD will continue to investigate all relevant police activity, including each use of force (i.e., not just the type of force complained about) and any searches or seizures that occurred during the incident.
81. The misconduct-investigation policy shall require that YPD reach a separate investigative finding for each allegation. Each allegation in an investigation shall be resolved by making one of the following investigative findings:
  - a. "Unfounded," where the investigation determines, by a preponderance of the evidence, that the alleged act did not occur;
  - b. "Substantiated," where the investigation determines, by a preponderance of the evidence, that an accused person committed all or part of the alleged acts of misconduct;
  - c. "Unsubstantiated," where the investigation determines by a preponderance of the evidence, that there is insufficient information to prove or disprove the allegations; and
  - d. "Exonerated," where the investigation determines, by a preponderance of the evidence that the alleged act did occur but was justified, legal and did not violate YPD policies, procedures, or training.
82. Within two weeks of completion of the IAD's review of the investigative file, the Deputy Chief in command of the personnel at issue shall, in writing, either accept or reject the recommended findings, or return the investigative report for further IAD investigation. The report will then be referred to the Commissioner for final review and approval. YPD shall keep all non-anonymous complainants informed periodically regarding the status of the complaint investigation. Within one week of the completion of the investigation, YPD shall notify, in writing, all non-anonymous complainants of the investigation's outcome at their last known address by first class mail.
83. Subject to the protection against self-incrimination in criminal proceedings for statements compelled under *Garrity v. New Jersey*, 383 U.S. 493 (1967), but without withholding non-compelled statements or compelled statements that may be used in a criminal proceeding against a person other than the compelled witness, YPD shall make a written referral of all allegations of criminal misconduct to the district attorney or other appropriate agency for

review, pursuant to that prosecutor's own prosecutorial discretion, promptly after allegations of criminal conduct are reported to IAD or are uncovered by the assigned investigator. YPD shall ensure the referral of all allegations of criminal conduct by YPD employees to the appropriate criminal prosecutor promptly upon YPD's discovery that the conduct is criminal. The misconduct-investigation policy shall continue to require the completion of an administrative investigation, irrespective of the initiation or outcome of criminal proceedings, with appropriate coordination with prosecutors and criminal investigators.

#### **D. Review of Misconduct Investigations**

- 84. YPD's unit commanders shall evaluate each misconduct investigation that occurred within their chain of command that identifies a need for additional training.
- 85. IAD shall track and evaluate chain-of-command investigations to ensure timely and thorough completion of investigations.
- 86. Within fifteen (15) days of completion of the misconduct investigation by a chain-of-command investigator, the IAD commander, or his or her designee shall review the misconduct investigation report and its sufficiency under the requirements of this Agreement. Within three (3) weeks after the IAD commander has completed its review of the investigation, the Police Commissioner or his or her designee, shall, in writing, either approve the investigation, or return the investigative report for further IAD investigation or analysis, and shall set forth in the investigative file his or her basis for doing so.

### **VII. DISCIPLINE**

- 87. YPD shall ensure its disciplinary protocol provides that violations of the policies and practices adopted in accordance with Sections II through XI of this Agreement are penalized, fairly and consistently, subject to applicable laws and the CBAs.

### **VIII. MANAGEMENT AND SUPERVISION**

#### **A. Risk Management System**

- 88. In accord with the schedules provided in this Agreement, and to the extent not inconsistent with the CBAs, YPD shall continue to develop and implement an early intervention system, i.e., a risk management system, to include a computerized relational database for maintaining, integrating, and retrieving information necessary for compliance with this Agreement. Under no circumstances shall the data or information contained in the risk management system be used to discipline YPD members. YPD will regularly use this data to identify and respond to trends, including but not



limited to potentially problematic incidents, officers, units, shifts, weapons, training, or tactics.

89. To the extent not inconsistent with the CBAs, the risk management system shall collect and record the following information for each officer:
- a. all uses of force;
  - b. the number of canisters of chemical spray used by officers (except in training);
  - c. all discharges of conductive energy devices (except in training);
  - d. all injuries to individuals while in custody, including in-custody deaths;
  - e. all instances in which force is used and a subject is charged with "resisting arrest," "assault of a police officer," "disorderly conduct," "obstruction of governmental administration," or similar charges;
  - f. all firearm discharges, both on- and off-duty, including unintentional discharges, but excluding discharges in planned training exercises or hunting;
  - g. all complaints received by YPD (and their dispositions);
  - h. all criminal proceedings initiated, as well as all civil or administrative claims (including charges of domestic violence) filed with, and all civil lawsuits served upon, the City and its officers, or agents, resulting from YPD operations or the actions of YPD officers;
  - i. all unexcused absences, lateness, all foot pursuits, motor vehicle accidents, use of unauthorized sick time, and attendance at training;
  - j. all discipline and non-disciplinary corrective action taken against officers; and
  - k. all positive personnel reviews, commendations, awards, citizen letters of recognition, etc.
90. To the extent not inconsistent with the CBAs, the risk management system shall include, for the incidents included in the database, appropriate identifying information for each involved officer (e.g., name, badge number, shift and supervisor) and, as applicable, the civilian(s) directly involved in the incident (e.g., race, ethnicity or national origin, if available).

91. Within one year of the Effective Date of this Agreement, to the extent not inconsistent with the CBAs and applicable laws, YPD shall prepare a protocol, subject to YPD's managerial discretion, for using the risk management system.
92. To the extent not inconsistent with the CBAs and applicable laws, the risk management system protocols shall include the following provisions and elements:
  - a. Data storage, retrieval, reporting, and analysis, including trend/pattern identification; supervisory use; intervention; and quality assurance.
  - b. Analysis of at least the following data: (i) number of incidents for each data category by individual officer and by all officers in a unit; (ii) average level of activity for each data category by individual officer and by all officers in a unit; and (iii) identification of patterns of activity for each data category by individual officer, by supervisor, and by all officers in a unit.
  - c. Supervisors shall review the risk management system records of all officers transferred to their sections and units and shall review risk management system data related to officers assigned to them on a periodic basis.
  - d. Individualized intervention for officers, supervisors and for units based on appropriate activity and pattern assessment of the information contained in the risk management system. Intervention options may include, for example, counseling, training, and increased/individualized supervision.
  - e. Documentation of interventions, including, counseling, training, external referrals, and documentation of completion of intervention and evaluation of intervention effectiveness.
  - f. The protocol will require regular reviews, at no less than quarterly intervals, by appropriate managers of all relevant risk management system information to evaluate officer performance citywide, and to evaluate and make appropriate comparisons regarding the performance of YPD units in order to identify any significant patterns or series of incidents.
93. The risk management system shall be managed and administered by a designated unit. This unit shall conduct review of the risk management system as necessary, but no less than quarterly, to ensure the accuracy and completeness of data and that use, is conducted in accordance with the requirements of this Agreement.

94. YPD shall maintain all personally identifiable information about an officer included in the risk management system during the officer's employment with YPD for at least five years. Information for aggregate statistical analysis will be maintained indefinitely in the risk management system, YPD shall enter information into the risk management system in a timely, accurate, and complete manner, and maintain the data in a secure and confidential manner, subject to the confidentiality provisions of state law and current collective bargaining agreements.
- a. YPD shall either purchase the risk management system off-the shelf (or customize the system, if necessary to meet the requirements of this Agreement), or YPD may develop and implement its own risk management system, which may include IA Pro.
  - b. Within two years of the Effective Date of this Agreement, the risk management system will be operational and fully implemented.
95. Prior to implementation of the new risk management system, YPD may continue to use existing databases and resources, including IA Pro, and will use these databases and resources to better enable YPD to identify and respond to patterns of conduct by YPD officers or groups of officers.

**B. Amendments to Risk Management System**

96. The parties may enter into amendments to this Agreement to address any objections raised under any CBA to the operation and implementation of the Risk Management System under Section VIII of this Agreement.

**IX. COMMUNITY POLICING**

99. YPD shall continue to maintain and build community relationships and engage constructively with the community to ensure collaborative problem-solving efforts and to increase community confidence in the Department. YPD shall maintain its mission statement that reflects its commitment to community-oriented policing.
100. YPD shall continue to support community groups and shall continue to meet regularly with the communities they serve. Within 180 days of the Effective Date, YPD shall develop a survey to measure officer outreach to a cross-section of community members in each precinct, with an emphasis on community partnerships and problem-solving strategies that build mutual respect and trusting relationships with community stakeholders. YPD shall revise its "Mutual Courtesy and Respect Campaign," to better emphasize and promote professionalism and appropriate restraint by officers, even where officers are verbally criticized.
101. Within 280 days of the Effective Date, YPD shall implement the annual survey designed to measure the effectiveness of its community partnerships

and problem-solving strategies. YPD shall issue a publically available annual report, including the survey findings within each precinct, identifying problems and recommendations for improvement. This report shall summarize any responsive problem-solving and community policing activities YPD has implemented.

102. As appropriate, and subject to its managerial discretion, YPD shall incorporate the activities it takes in response to the annual survey into its operations and accountability system.

## **X. TRAINING**

103. YPD shall ensure that its use-of-force and stop and search training complies with applicable laws, this Agreement, and YPD policy. Such training shall include in-service training, patrol division roll call protocols and other means of communicating relevant changes in policies and procedures. Within 18 months of the Effective Date, and annually thereafter, YPD shall provide a minimum of 32 hours of in-service training each year to each member of the YPD holding the rank of police officer or detective first, second or third grade. This training requirement does not apply to a YPD member of the rank of Sergeant or above.
104. Within one year of the Effective Date and annually thereafter, the YPD shall provide at least 32 hours of supervisory training to all officers at the rank of Sergeant or above. Supervisor training shall include: training on use-of-force and stop and search, how to conduct use of force and misconduct investigations, including collecting evidence, properly assessing a "preponderance of the evidence" burden of proof, and the factors to consider when evaluating complainant or witness credibility. Supervisor training shall also include reviewing arrest and other officer reports, effective officer supervision, and use of YPD's risk management system.
105. Within one year of the Effective Date, YPD will ensure that its field training program for recruit academy graduates comports with YPD's written training plan and this Agreement. YPD's field training program shall immediately follow academy training.
106. YPD's policies and procedures on field training shall delineate the criteria and methodology for selecting Field Training officers ("FTOs") and Field Training supervisors. YPD shall permit only qualified officers to serve as FTOs and Field Training supervisors. YPD shall establish formal eligibility criteria for FTOs and Field Training supervisors based on their performance evaluations, previous superior performance as police officers, and complaint and disciplinary histories. FTO appointments will be subject to review for reappointment at the Training Division Commander's discretion. District commanders will also have discretion, upon consultation with the Training Academy staff, to remove a field training officer from the FTO program.

107. Within one year of the Effective Date, YPD shall create a mechanism for recruits to provide confidential feedback regarding the quality of their field training.

## **XI. REVIEW, REPORTING, AND IMPLEMENTATION**

### **A. Review By DOJ**

108. The DOJ may review the City and YPD's implementation of this Agreement and may utilize consultants to assist these efforts. The cost of any review or consultants will be borne by DOJ.
109. To review and report on YPD's implementation of this Agreement, the DOJ and its consultants may, at DOJ's sole discretion, conduct compliance reviews to ensure that YPD has implemented and continues to implement all measures required by this Agreement. DOJ will provide reasonable notice of at least 15 business days to YPD prior to conducting any on-site compliance reviews or interviews of City personnel.
110. In reviewing the implementation of this Agreement, DOJ and any consultant shall maintain regular contact with the Commissioner and the City's Law Department.
111. DOJ and any consultants shall have reasonable access to all YPD employees as reasonably necessary. An attorney or representative from the City's Law Department may be present during interviews of City personnel. DOJ will cooperate with YPD to access people and facilities in a responsible manner that ensures advance notice and minimizes interference with daily operations.
112. DOJ and any consultants shall have reasonable access to all YPD documents—including, but not limited to: criminal investigation files and arrest reports, warrants, and warrant applications, whether or not contained in open criminal investigation files, that DOJ reasonably deems necessary to review compliance with this Agreement, except any documents protected by the attorney-client privilege or sealed/confidential pursuant to law. Should the City or YPD decline to provide DOJ and any consultants with access to a document based on attorney-client privilege or sealed/confidential pursuant to law, the City shall provide DOJ with a privilege log describing the document and the basis for the asserted privilege. DOJ shall have the right to contest the City's assertions of privilege.
113. DOJ will provide the City and YPD with reasonable notice of a request for copies of documents. Upon such request, the City and YPD shall provide DOJ with copies (electronic, where readily available) of any documents subject to review under this Agreement.

114. All non-public information provided to DOJ or its consultants, whether by the City or YPD, in connection with this investigation and the implementation of this Agreement, shall be maintained in a confidential manner, subject to requirements of law. Other than as expressly provided in this Agreement, this Agreement shall not be deemed a waiver of any privilege or right that the City or YPD may assert, including those recognized at common law or created by statute, rule or regulation, against any other person or entity with respect to the disclosure of any document. DOJ shall not provide information or documents obtained through its review to any third parties, including but not limited to those with claims against YPD or the City.

**B. Reports**

115. DOJ, directly or through any consultant, may produce written, public reports detailing its assessment of the City's and YPD's compliance with this Agreement. These reports will be written with due regard for the privacy interests of individual officers, the City, and YPD. At least fifteen (15) business days before filing a report or publically producing such a report, DOJ will provide a copy of the draft report to the City and YPD for comment. YPD and the City shall submit any comments about the report to DOJ within eight business days of receiving the draft report. DOJ will consider these comments and make any changes DOJ deems appropriate before issuing the report.

**XII. IMPLEMENTATION, MODIFICATION, AND TERMINATION**

116. In consideration for YPD's and the City's performance of the obligations of this Agreement, the United States releases any claim under Section 14141 or the Safe Streets Act for any act or omission prior to the Effective Date of this Agreement.
117. YPD shall continue implementation of all provisions of this Agreement that involve the continuation of current YPD policies, procedures, and practices. The remaining provisions shall be implemented either by the specified implementation date or, for those provisions that have no specified implementation date, as soon as is reasonably practicable and no later than 365 days after this Agreement's Effective Date.
118. The City, YPD, and DOJ may jointly stipulate to make changes, modifications, and amendments to this Agreement. Any such changes shall be in writing and signed by all Parties.
119. The Parties agree to defend the provisions of this Agreement. The Parties shall promptly notify each other of any court or administrative challenge to this Agreement of which the Party is aware. Subject to the provisions of paragraph 9, in the event any provision of this Agreement is challenged in

any court or administrative tribunal, the Parties shall seek removal of the action to the Court.

120. It is the Parties' understanding that the provisions in this Agreement neither conflict with nor are intended to conflict with the provisions of any existing collective bargaining agreements. If YPD or the City contends that it cannot comply with a provision of this Agreement because of an existing collective bargaining agreement, or other provision of New York State law governing public employees, it shall provide to the United States all supporting documentation, analysis, or opinion regarding the perceived conflict and seek a resolution in good faith that is consistent with the provisions of this Agreement. If the Parties disagree regarding the requirements of the language of this Agreement, either party may apply to the Court to specifically enforce the Agreement.
121. The Parties envision that YPD can achieve substantial compliance with all the requirements of this Agreement within two years of its Effective Date. The Parties may agree to terminate this Agreement after this date, provided that YPD has been in substantial compliance with this Agreement for 12 months. The Parties may agree to terminate portions of this Agreement where the Parties agree that: (1) YPD is in substantial compliance with those provisions; (2) that terminating the Agreement as to those provisions will not compromise sustained implementation of the Agreement in its entirety; (3) YPD retains a good-faith commitment to implementation of this Agreement and to constitutional policing. Where there is a disagreement about whether compliance with any provision has been met, the burden shall be on YPD to demonstrate compliance.
122. If after two years, the Parties disagree whether the City has been in substantial compliance, either Party may seek to terminate this Agreement. In the case of termination sought by the City, the City agrees to notify DOJ in writing when the City has determined that it is in substantial compliance with this Agreement and that such compliance has been maintained for no less than 12 months. Thereafter, the Parties shall promptly confer as to the status of compliance. If, after a reasonable period of consultation and the completion of any audit or evaluation that DOJ may wish to undertake, including on-site observations, document review, or interviews with the City and YPD's personnel, but not longer than 120 days, the Parties cannot resolve any compliance issues, the City may file an application with the Court to terminate this Agreement. If the City moves for termination of this Agreement, DOJ will have 60 days after the receipt of the City's application to object with sufficient and detailed reasons why the Agreement should not be terminated in whole or in part. If DOJ does not object, the Court may declare the Agreement terminated in whole or relevant part. If DOJ does make an objection, the Court shall hold a hearing on the City's application and the sufficiency of the objections to determine whether the Agreement or any part thereof should be terminated.

123. This Agreement is contractual in nature. The United States may seek an order of specific performance of the provisions of this Agreement in Court if it determines that the City and/or YPD have failed to comply with any provision of this Agreement. The United States agrees to give specific notice of alleged noncompliance and meet and confer with counsel for the City and YPD during a 45-day period before instituting any enforcement proceedings. Nothing in this Agreement is intended to authorize or permit a court to modify or change any provision of this Agreement without the mutual assent of the parties. The parties agree that any relief sought under this Agreement shall be limited to specific performance.



FOR THE UNITED STATES:

PREET BHARARA  
United States Attorney  
Southern District of New York

By:

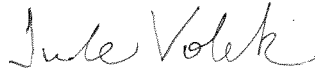
  
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FOR THE CITY OF YONKERS:

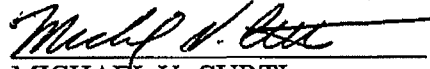
Dated: November 14, 2016

A handwritten signature in black ink, appearing to read "Mike Spano", written over a horizontal line.

MIKE SPANO  
Mayor, City of Yonkers

APPROVED AS TO FORM:

November 14, 2016

A handwritten signature in black ink, appearing to read "Michael V. Curti", written over a horizontal line.

MICHAEL V. CURTI  
Corporation Counsel, City of Yonkers