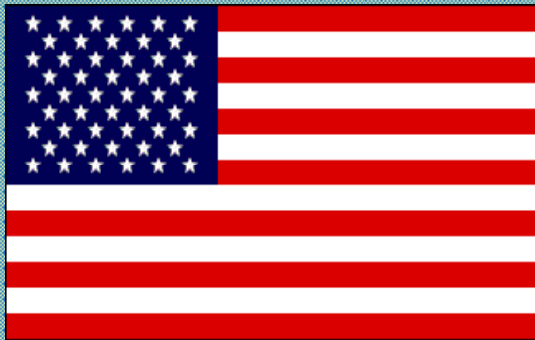


Final Report of the Independent Monitor for the Metropolitan Police Department



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Executive Summary

This is the Final Report of the Office of the Independent Monitor (“OIM”), which we have issued publicly on the seventh anniversary of the Memorandum of Agreement (“MOA”) among the District of Columbia (the “City”), the Metropolitan Police Department for the District of Columbia (“MPD”), and the United States Department of Justice (“DOJ”), which was signed 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 required 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. In addition to this Final Report, the OIM issued twenty-three quarterly reports and two special reports during our six years of monitoring the City’s and MPD’s progress in implementing the broad reforms embodied in the MOA.

On April 1, 2008, the OIM recommended that the MOA be terminated early in light of our assessment that the City and MPD achieved substantial compliance with more than 80% of the MOA’s 126 substantive provisions. On April 7, 2008, DOJ approved our recommendation, and both the MOA and our independent monitoring of the City and MPD ended.

The OIM congratulates the City, MPD, and DOJ on the successful conclusion of this monitoring program. As stated in our letter recommending termination of the MOA, we believe the constructive and cooperative relationship between and among MPD, the City, DOJ, and the OIM -- as well as the tremendous progress of the parties in implementing the substantive requirements of the MOA -- should serve as a model for law enforcement agencies across the United States that are serious about improving their use of force-related policies, procedures, and practices.

Below we discuss two of the significant areas with respect to which MPD successfully completed implementation of the reforms required under the MOA in order to qualify for early termination of the MOA -- the completion of Use of Force Incident Reports (“UFIRs”) and the implementation of a program for specialized mission units (“SMUs”).

Use of Force Incident Reports

MPD's internal audit and monitoring unit, the Office of Risk Management ("ORM"), performed regular audits of officers' compliance with the use of force reporting requirements established by the MOA and MPD policy. ORM found that MPD achieved significant improvements in its completion of UFIRs documenting even low-level use of force incidents, such as the use of hand controls. Indeed, ORM's audit of UFIR completion rates during the first quarter of 2007 found that MPD members completed UFIRs for 39 of 43 incidents indicating that a reportable level of force had been used -- a compliance rate of 91%. ORM's audit of UFIR completion rates for the second and third quarters of 2007 found compliance rates of approximately 89% and 86%, respectively.

In light of ORM's findings regarding UFIR completion rates during the first three quarters of 2007, it appears that MPD's emphasis on use of force reporting and ORM's auditing in this area had a discernible impact. Accordingly, we exercised the discretion granted to the OIM by the parties and found that MPD achieved substantial compliance with the MOA's requirements related to the completion of UFIRs, even though MPD's UFIR completion rates did not exceed the objective 95% threshold generally necessary to establish substantial compliance. The OIM's exercise of discretion in this area is based on the following factors:

(1) MPD's focused attention and proactive efforts -- including development of a standard operating procedure ("SOP") related to UFIRs and regular audits by ORM -- to improve the rate at which MPD officers report use of force incidents; (2) MPD's demonstration of a sustained UFIR completion rate between 86% and 91%, which is quite high, even if below the 95% threshold; and (3) the fact that incidents for which UFIRs should have been completed, but were not, almost always relate to uses of relatively low-level force, such as hand controls in connection with a non-submissive handcuffing.

Specialized Mission Units

MPD made remarkable progress implementing the standards and requirements of the MOA and SMU General Order during the first three months of this year and ultimately was successful in achieving substantial compliance with all of the MOA's SMU-related provisions.

We found that each of MPD's twelve SMUs applied appropriate pre-screening mechanisms for all of the officers assigned to the SMUs, including verification of weapons certifications and a review of whether

any SMU member had been involved in an unjustified use of force. We found no officers assigned to an SMU who had a record of using excessive or otherwise inappropriate force. We also found that, based on the current SMU rosters and organizational charts, each of the SMUs had an appropriate supervisory “span of control” over the members assigned to the unit.

We also found that MPD prepared an appropriate training program designed specifically for SMU members. Finally, our review of enforcement action records found that SMU supervisors were performing a heightened level of review of SMU-involved enforcement actions, including, but not limited to, deployments that result in an arrest. ORM developed an audit plan for bi-annual review of SMUs, which we reviewed and found appropriately covered all of the MOA’s requirements related to SMUs.

MPD’s Continuing Reporting Requirements

Despite the early termination of the MOA, the City and MPD are required to submit bi-monthly reports directly to DOJ concerning their progress in implementing reforms related to certain provisions of the MOA with which they did not achieve substantial compliance prior to the general termination of the MOA. These areas are:

- Paragraphs 91 and 94 concerning community outreach and citizen complaints.
- Paragraphs 107 through 117 relating to the development of the electronic Personnel Performance Management System.
- Paragraph 121 concerning the field training officer program.

Conclusion

Early termination of the MOA is a major achievement for the City and MPD. The parties made enormous progress implementing the broad reforms required under the MOA, and those efforts have had a measurable impact on the way in which MPD uses force at the street level. In the seven years since the parties executed the MOA, MPD has become a much more sophisticated police agency in terms of training its officers in the proper use of force, investigating and reviewing use of force incidents and allegations of misconduct, and reaching out to citizens and members of the public based on sound principles of community policing. We believe that the City’s and MPD’s success in implementing the MOA’s

reforms, which are now embedded in the Department's internal policies and practices, stands as a model for municipalities and police departments across the country.

The City and MPD are prepared and deserve to be relieved of outside monitoring. We found that MPD now has an internal audit and monitoring unit that is staffed and led by committed professionals who are devoted to providing MPD with reliable information about compliance with its policies and the law. We believe that MPD's continuing commitment to providing this internal quality assurance and quality control function with the necessary resources to conduct effective internal audits and reviews will be central to ensuring that termination of the MOA will not result in retreat from the important advances achieved by MPD over the past seven years.

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Introduction

This is the Final Report of the Office of the Independent Monitor (“OIM”), which we have issued publicly on the seventh anniversary of the Memorandum of Agreement (“MOA”) among the District of Columbia (the “City”), the Metropolitan Police Department for the District of Columbia (“MPD”), and the United States Department of Justice (“DOJ”), which was signed 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 required 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. In addition to this Final Report, the OIM issued twenty-three quarterly reports and two special reports during our six years of monitoring the City’s and MPD’s progress in implementing the broad reforms embodied in the MOA.

On April 1, 2008, the OIM recommended that the MOA be terminated early in light of our assessment that the City and MPD achieved substantial compliance with more than 80% of the MOA’s 126 substantive provisions. On April 7, 2008, DOJ approved our recommendation, and both the MOA and our independent monitoring of the City and MPD ended.

The OIM congratulates the City, MPD, and DOJ on the successful conclusion of this monitoring program. As stated in our letter recommending termination of the MOA, we believe the constructive and cooperative relationship between and among MPD, the City, DOJ, and the OIM -- as well as the tremendous progress of the parties in implementing the substantive requirements of the MOA -- should serve as a model for law enforcement agencies across the United States that are serious about improving their use of force-related policies, procedures, and practices.

Compliance Assessment

On April 7, 2008, DOJ approved the OIM's recommendation that, pursuant to Joint Modification No. 4 to the June 13, 2001 Memorandum of Agreement (the "Fourth Modification"), the MOA be terminated effective March 31, 2008 and that the OIM's monitoring of MPD's and the City's compliance with the MOA also end. As a result, this is the OIM's final report. In this Final Report, we provide a comprehensive, final assessment of MPD's and the City's compliance with each of the MOA's substantive provisions as of the termination of the MOA.¹ The general format of this Final Report, as described below, is the same as that of our quarterly reports.

This report first provides a general overview of MPD's and the City's status in achieving substantial compliance with the substantive provisions of the MOA, including a discussion regarding the Fourth Modification and the termination of the MOA. In each of the remaining sections of this report, we summarize the requirements imposed by each substantive paragraph of the MOA ("Requirements"). We then provide our assessment of MPD's or the City's status in achieving compliance with those requirements ("Status and Assessment"). Next, for each of the areas of the MOA, we present our final conclusions on whether MPD and the City, as of the termination of the MOA, were in substantial compliance with the requirements of the MOA, as defined by the objective standards agreed to by the parties ("Substantial Compliance Evaluation"). Finally, as in all of our previous quarterly reports, where appropriate, we include recommendations for MPD and the City designed to assist the parties in their ongoing efforts to improve and refine their procedures and practices consistent with the goals underlying the various reforms embodied by the MOA ("Recommendations").²

¹ For ease of reference, we have attached a matrix containing the requirements and objective substantial compliance standards for each of the MOA's substantive provisions at Appendix E to this report.

² Paragraph 166 of the MOA required 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.

I. Overview of the City's and MPD's Compliance with the MOA

A. The Fourth Modification

Paragraph 182 of the MOA provided that:

[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.

The MOA did not, however, define “substantial compliance.” The parties agreed that, while MPD’s and the City’s compliance with the substantive provisions of the MOA would be measured, where feasible, based on objective standards (generally requiring at least 95% compliance), the evaluation of MPD’s and the City’s achievement of substantial compliance also would include a subjective component involving assessments made by the OIM (or DOJ, where DOJ review and approval were required) and supported with appropriate analysis and explanation.

The MOA, which the parties executed on June 13, 2001, was in effect for nearly seven years. The MOA’s reforms have had a measurable, positive impact on MPD’s use of force at the street level. In our Eighteenth Quarterly Report, we found that, with respect to the core areas of concern -- namely, weapon discharges, bite incidents resulting from canine deployments, use of force training, and documentation and investigation of use of force incidents -- which led former Chief of Police Charles H. Ramsey to invite DOJ to review all aspects of MPD’s use of force, MPD has substantially transformed itself for the better since the late 1990s.³

Despite the City’s and MPD’s significant progress in implementing many of the MOA’s central reforms and the observable impact those reforms have had on MPD’s use of force program, through the end of last year they still had not achieved substantial compliance with a range of important provisions of the MOA. Throughout last year, the parties and the OIM discussed strategies for permitting the City and MPD to

³ OIM Eighteenth Quarterly Report at 8-18.

concentrate on those areas of the MOA where significant progress still needed to be made in order to achieve substantial compliance and satisfy the terms of the MOA so that our monitoring would no longer be necessary. Meanwhile, during that time, MPD continued to devote significant time and resources to developing the Office of Risk Management (“ORM”), which was created in late 2005, as a viable internal audit and compliance group. As we emphasized in our quarterly reports, the internal monitoring and quality control function performed by ORM will be critical to MPD’s ability to sustain the reforms the Department implemented pursuant to the MOA, even after MPD is no longer subject to independent monitoring.⁴ Thus, by late 2007, the parties were in a position to agree to a framework for achieving the resolution of the MOA and concluding our independent, outside monitoring of the Department.

On December 7, 2007, DOJ, the City, and MPD executed the Fourth Modification, which was designed to accomplish the twin goals of permitting MPD to concentrate on specific areas for improvement and facilitating the termination of outside monitoring.⁵ The Fourth Modification also established and defined the terms under which the MOA would terminate.

First, the Fourth Modification provided that, “[i]n order to focus attention on resolving the MOA provisions not yet in compliance, the parties have resolved to terminate those provisions of the MOA with which the OIM finds MPD and the City have achieved substantial compliance for two years or more”⁶ The Fourth Modification also provided the OIM with the “discretion to identify for possible termination additional provisions with which MPD has achieved substantial compliance, but for less than eight quarters.”⁷ Although the Fourth Modification required that the parties agree to the termination of any such provisions recommended by the OIM, the parties were to give the

⁴ OIM Twenty-third Quarterly Report at 10.

⁵ The Fourth Modification is included with this Final Report at Appendix B.

⁶ Fourth Modification at Section I.E. *See also* Fourth Modification at Section II.A (providing for the immediate termination of all MOA provisions identified by the OIM as those with which MPD and the City had substantially complied for two years).

⁷ *Id.* at Section II.B.

OIM's discretion to propose additional provisions for termination "substantial deference."⁸

Second, the Fourth Modification established a "bright line" termination date of June 13, 2008 for the entire MOA, including the termination of monitoring by the OIM.⁹ Under the Fourth Modification, the City and MPD also could achieve early termination of the MOA and the monitoring program if they reached substantial compliance with 80% of the MOA's 126 substantive provisions by March 31, 2008.¹⁰

B. Termination of Certain MOA Provisions Under the Fourth Modification

On December 14, 2007, the OIM provided the parties with a letter that identified (1) the MOA provisions with which MPD and the City achieved and maintained substantial compliance for at least two years and, therefore, that were terminated immediately upon execution of the Fourth Modification and (2) those MOA provisions with which MPD achieved and maintained substantial compliance for less than two years but that the OIM nevertheless recommended be terminated.¹¹ The parties agreed to adopt the OIM's recommendations,¹² and, as of the end of 2007, the MOA provisions set forth below were terminated and no longer subject to monitoring.

⁸ *Id.*

⁹ The Fourth Modification, however, required that MPD and the City continue to provide DOJ with bi-monthly reports, for up to six months, if they had not achieved substantial compliance with certain enumerated MOA provisions by the bright line termination date. Fourth Modification at Section II.G. These provisions are discussed in detail below.

¹⁰ *Id.* at Section II.C.

¹¹ Letter from Michael R. Bromwich to Shanetta Y. Cutlar, Cathy L. Lanier, and Philip K. Eure regarding "Termination of MOA Provisions Pursuant to Joint Modification No. 4" (December 14, 2007), attached hereto at Appendix C.

¹² See E-mail from Ellen Efros to the parties regarding "OIM Letter re termination of MOA provisions" (December 18, 2007); E-mail from Michael R. Bromwich to the parties regarding "OIM Letter re termination of MOA provisions" (December 26, 2007); and Letter from Tammie M. Gregg to Michael R. Bromwich (January 4, 2008).

**MOA Provisions Terminated Last Year
Under the Fourth Modification**

MOA Paragraphs	Description
37 – 40	Use of force policy
41 - 43	Use of firearms policy
45 - 46	Canine policies and procedures
47 - 50	Oleoresin capsicum spray policy
51 - 52	Implementation schedule
54	USAO notification of deadly and serious use of force incidents
57 - 58, 60 - 61, 64	Allocation of responsibility for use of force and misconduct investigations; USAO consultation
62 – 63	Force Investigation Team investigations
65, 66, 68, 74, 78, 100, 101, 103	Non-FIT use of force and misconduct investigations ¹³
67	Use of Force Review Board
72 - 73	Allocation of administrative complaint and misconduct investigations
79 - 82, 99, 102, 104	Requirements related to misconduct investigations
95 - 97	Office of Police Complaints offices, investigator training, and investigations manual
119	Semi-annual use of force curriculum reviews
126, 127, 133, 140, 142	Use of force and firearms training
128	Diversity training
130 - 131	Use of force training techniques
132	Role Play and Range 2000 training
136 - 137	Training instructor certification
138 - 139	Training instructor supervision
141, 143	Firearms training
144	Consultation with weapons manufacturer
145 - 148	Canine unit training
161	Selection of an independent monitor
192	Posting of MOA on MPD Web site

¹³ The requirements of MOA paragraph 66 primarily related to unit commander review of chain of command investigations of low-level use of force investigations, an area in which we found MPD consistently maintained substantial compliance. MOA paragraph 66 also contained a requirement concerning the notification of FIT and the USAO of evidence of criminal wrongdoing by officers, with respect to which we previously had not found MPD to be in substantial compliance, and our monitoring continued into this year. However, because coordination between MPD and the USAO was an area addressed more specifically by the requirements of MOA paragraphs 69 through 71, we recommended that MOA paragraph 66 be terminated.

Thus, by the end of 2007, a total of 67 of the 126 substantive provisions of the MOA were terminated pursuant to the Fourth Modification. As of the end of twenty-third quarter, the City and MPD also were in substantial compliance with another 10 MOA provisions that had not been terminated.¹⁴ Therefore, the City and MPD began 2008 in substantial compliance with 77 -- or 61% -- of the MOA's substantive provisions.

C. Early Termination of the MOA

In order to achieve the 80% substantial compliance threshold necessary for early termination under the Fourth Modification, the City and MPD needed to come into substantial compliance with an additional 24 MOA provisions -- for a total of 101 provisions.¹⁵ As of January 2008, the significant areas in which MPD still needed to make significant additional progress in order to achieve substantial compliance with the standards and requirements set forth under the MOA, included:

- The process for receiving complaints about officer conduct from members of the public and providing the public with proper notice of community outreach meetings in all of the City's patrol service areas ("PSAs") (MOA paragraphs 87 through 92 and 94).
- Developing and implementing the computerized Personnel Performance Management System ("PPMS") (MOA paragraphs 107 through 117).
- Implementing the enhanced field training officer ("FTO") program (MOA paragraph 121).

¹⁴ The MOA contained several requirements related to the City's and MPD's cooperation with the OIM, including (1) providing the OIM with unrestricted access to facilities, documentation, and personnel; (2) the appointment of a compliance coordinator responsible for facilitating implementation of the MOA's reforms; and (3) the submission of quarterly status reports to DOJ and the OIM concerning the parties' progress in achieving compliance with each of the MOA's requirements. As discussed in the OIM's quarterly reports, we found that MPD and the City were in substantial compliance with each of these provisions for more than two years. However, because these provisions were necessary to support MPD's and the City's ongoing compliance efforts as well as the OIM's monitoring program, they were not terminated until the conclusion of our monitoring.

¹⁵ Fourth Modification at Section II.D.

- Implementing revised policies related to the operations of specialized mission units (“SMUs”), such as the Mobile Force Unit and Warrant Squad (MOA paragraphs 150 through 158).

During the first three months of 2008, MPD, under the leadership of Chief Cathy L. Lanier, devoted enormous resources and energy to the successful implementation of the reforms across most of the remaining areas of the MOA. On April 1, 2008, the OIM notified the parties to the MOA that we had determined that “MPD and the City have achieved substantial compliance with 80% of the 126 provisions of the MOA” and that MPD “currently has processes and procedures in place to address shortfalls in compliance with the remaining MOA provisions.”¹⁶ We, therefore, recommended that the MOA be terminated as of the end of March 2008, subject to the limited continuing reporting required under the Fourth Modification and described below. On April 7, 2008, DOJ approved our recommendation for the termination of the MOA.

We found that, during the first quarter of 2008, MPD successfully completed implementation of steps necessary to achieve substantial compliance with 26 additional provisions of the MOA, which meant that the City and MPD achieved substantial compliance with a total of 103 of the 126 substantive paragraphs of the MOA -- exceeding the Fourth Modification’s 80% substantial compliance threshold for early termination of the MOA. The specific MOA requirements that MPD satisfied earlier this year in order to meet the early termination threshold are reflected in the chart below.

¹⁶ Letter from Michael R. Bromwich to Shanetta Y. Cutlar, Cathy L. Lanier, and Philip K. Eure regarding “Early Termination of MOA Provisions Pursuant to Joint Modification No. 4” (April 1, 2008), attached hereto at Appendix D.

MOA Provisions Satisfied During the First Quarter of 2008

MOA Paragraphs	Description
53	Use of Force Incident Report ("UFIR") completion and quality
55	Entry of historical UFIRs into the Personnel Performance Management System ("PPMS")
75 - 77	Tracking of civil claims and off-duty misconduct
83	Chain of command investigations manual
85	Memorandum of Understanding between MPD and the Office of Police Complaints
87 - 90, 92	Citizen complaints and community outreach
120	Office of General Counsel review of training lesson plans
123	Curriculum Development Specialist audit of training
134	Metropolitan Police Academy staff assessment
150 - 158	Specialized mission units
159	Limitations on work hours
176	Retention of training records

Our recommendation for early termination also was supported by the fact that MPD has in place a robust internal auditing and monitoring program created in October 2005 and now operating as ORM. ORM is capable both of assessing MPD personnel's compliance with MOA's reforms, which are now embedded in the Department's policies and procedures, and of supporting MPD's ongoing efforts to achieve compliance with the remaining provisions of the MOA. The OIM worked closely with ORM to help it develop and formalize internal audit plans and procedures. As reflected in our quarterly reports, we found that ORM is staffed and led by committed professionals who are devoted to providing MPD with a reliable and effective internal quality control and audit program. In the April 1, 2008 letter recommending early termination of the MOA, we stated that "MPD's continuing commitment to provide ORM with the necessary resources to conduct internal audits and reviews is one of the strongest signs that there will be no backsliding by MPD as a result of the termination of the MOA."

Early termination of the MOA is a major achievement made possible by the extraordinary level of commitment and cooperation between DOJ, MPD, and the City. This sincere commitment to the principles of appropriate use of force, professionalism, accountability, and community policing are hallmarks of the reforms implemented by MPD since former Chief of Police Charles H. Ramsey, in an

unprecedented step, invited DOJ to “review all aspects” of MPD’s use of force in 1999.¹⁷

As detailed in this Final Report, as well as in the OIM’s twenty-three quarterly reports and two special reports published since June 2002, MPD’s MOA-related reforms transformed the way in which the Department, among other things, employs force, trains its officers, investigates use of force incidents and allegations of misconduct, and conducts outreach initiatives with the community. While our recommendation that the MOA be terminated early was possible because of the extraordinary progress MPD made in recent months under the leadership of Chief Lanier in completing implementation of many of the MOA’s reforms, the foundations for this achievement rest in nearly seven years’ worth of dedicated hard work by MPD and City personnel, as well as by the leadership provided by former Chief Ramsey and Chief Lanier.

D. Continuing Reporting Requirements

The Fourth Modification provided that, notwithstanding the early termination of the MOA, MPD shall have ongoing reporting requirements with respect to certain provisions of the MOA if the Department had not achieved substantial compliance with those provisions by the time of termination.¹⁸ Accordingly, although the remainder of the MOA has been terminated, MPD is required under the Fourth Modification to submit bi-monthly reports, beginning on June 13, 2008, directly to DOJ concerning its progress in achieving substantial compliance with the following provisions of the MOA:

- Paragraphs 91 and 94 concerning community outreach and citizen complaints.
- Paragraphs 107 through 117 relating to PPMS.
- Paragraph 121 concerning the FTO program.

¹⁷ MOA ¶ 1.

¹⁸ Fourth Modification, Section II.G. These provisions related to the entry of historical UFIRs into PPMS (MOA paragraph 55), MPD’s citizen complaint and community outreach program (MOA paragraphs 87 through 92 and 94), implementation of PPMS (MOA paragraphs 107 through 117), the FTO program (MOA paragraph 121), and the Department’s SMUs (MOA paragraphs 150 through 158).

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

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

1. Requirements

MPD was 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 was a keystone of the MOA. On May 16, 2005,

consistent with the requirements of paragraph 52 of the MOA,¹⁹ MPD requested DOJ approval of a revision to the Use of Force General Order relating to shooting at or from moving vehicles. 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, 2005.²⁰

b. Use of Force Training

The lecture component of MPD's in-service firearms training -- which covers topics including the use of force continuum and reporting of use of force incidents -- was MPD's primary vehicle for implementation of the Department's general use of force policy. As discussed in Section II.B.2 below, we consistently found that the quality of, and the rate at which MPD officers attended, MPD's semi-annual firearms re-certification and training program were very high.

In addition to the firearms re-certification and training program, MPD's use of force curriculum included lesson plans in areas such as close quarter combat, ground fighting, handcuffing, krav/maga,²¹ and officer street survival, which were covered during MPD's mandatory, general in-service training. Accordingly, full implementation of the DOJ-approved Use of Force General Order under paragraphs 37 through 40 of the MOA also required very high attendance rates for the general in-service training program.

During the twentieth quarter, we reviewed MPD's in-service training attendance for the 2006 training cycle. We found significant improvements in both the overall attendance rate for MPD's primary in-service training program and the Metropolitan Police Academy's

¹⁹ Paragraph 52 of the MOA required 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."

²⁰ OIM Fifteenth Quarterly Report at 8. On March 30, 2007, MPD submitted to DOJ a change to the Use of Force Investigations General Order that was intended to resolve an inconsistency that had been identified by an outside reviewer between that general order and the Use of Force Review Board General Order. On April 16, 2007, DOJ responded that it had no suggested revisions to the change in the Use of Force Investigations General Order. E-mail from Elizabeth Welsh regarding "Use of Force Investigations GO and UFRB GO Conflict (CALEA, MOA 37-40, 67)" (April 16, 2007).

²¹ Krav/maga involves training in hand-to-hand self-defense techniques.

(“MPA’s”)²² system for tracking individual officer compliance with the Department’s in-service training requirements.²³

For the 2006 training cycle, MPD reported that only two officers ultimately failed to complete the general in-service training program or the in-service training program for detectives, which was a compliance rate well in excess of 95%. The cases of the two delinquent officers were referred to the Internal Affairs Branch (“IAD”)²⁴ for investigation and possible disciplinary action. Although MPD’s system for tracking in-service training attendance still is cumbersome and in need of further refinement, MPA’s system for identifying individual officers who fail to attend in-service training in order to assign them to remedial training, or, if that fails, to refer them for corrective action, improved dramatically.²⁵ This accomplishment, in combination with the consistently high attendance rates for MPD’s firearms training and re-certification, reflects that MPD implemented an effective program for training its officers in the Department’s revised use of force-related policies and curriculum.

3. Substantial Compliance Evaluation

MPD achieved substantial compliance with the requirements of paragraphs 37 through 40 of the MOA.

²² During the twenty-second quarter, MPD changed the name of its Institute of Police Science to the Metropolitan Police Academy.

²³ OIM Twentieth Quarterly Report at 16.

²⁴ Because the acronym for the Internal Affairs Bureau (“IAB”), formerly known as the Office of Professional Responsibility (“OPR”), would be the same as that for the Internal Affairs Branch, for purposes of this report and in order to avoid confusion, we used the acronym IAD when referring to the Internal Affairs Branch.

²⁵ Officials at the rank of lieutenant and above are required to complete a 32-hour in-service training program that is separate from the general in-service training program for officers, sergeants, and detectives. According to an MPA report dated March 27, 2006, approximately 72% of lieutenants and above satisfied their in-service training requirement. Although this is below the exceptional attendance rate MPD achieved for its general in-service training program, we noted that the lieutenant and above training tended to focus on issues other than use of force and that these officials are required to complete semi-annual firearms training and re-certification, which covers the use of force policies and the use of force continuum.

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;
- 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 it was 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 required the Mayor to submit to the Council of 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 City, 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.

We consistently found MPD's in-service firearms training and pistol re-certification programs were consistent with the MOA and conducted by knowledgeable and professional instructors.²⁶ Our recent monitoring found that MPD's in-service firearms training program continued to fairly, accurately, and properly summarize the principles of the Handling of Service Weapons General Order. MPD's firearms instructors continued to display exceptional command of the subject matter, and they exhibited a commitment to training MPD officers to use force properly and effectively.²⁷

During the thirteenth quarter, we found that MPD officers attended both firearms re-qualification phases in 2004 at a very high rate -- over 99%.²⁸ Earlier this year, we reviewed MPD officer attendance at firearms re-qualification during the 2006 cycle. Our review of MPD's records found that, in 2006, 11 MPD officers failed to appear for mandatory pistol re-certification. MPD relieved all 11 of these officers of their weapons, brought them in for remedial training and qualification, and referred each of them for corrective action.²⁹ Our review of the 2006 firearms re-qualification cycle reinforced our previous finding that MPD effectively implemented the Handling of Service Weapons General Order.

²⁶ OIM Fourteenth Quarterly Report at 9.

²⁷ OIM Eighteenth Quarterly Report at 28-29.

²⁸ OIM Thirteenth Quarterly Report at 14.

²⁹ OIM Twentieth Quarterly Report at 23.

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

On June 4, 2002, the Council of the District of Columbia approved an amendment, entitled the “Off-Duty Service Pistol Authorization Amendment Act of 2002,” that permitted 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 did not require that the Carrying Service Firearms While Off-Duty in the District of Columbia Special Order be approved by DOJ. As discussed above, in September 2005 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 achieved substantial compliance with the requirements of MOA paragraphs 41 through 43 relating to the use of firearms policy.

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

1. Requirements

The MOA required 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;³⁰
- Ensures that suspects are advised through a loud and clear announcement that a canine will be deployed, that the suspect 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, 2003.³¹ 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."³²

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 delayed making revisions to its Canine Operations Manual pending the completion and

³⁰ The MOA was clear that the approving supervisor cannot serve as the canine handler in the deployment. MOA ¶ 45.

³¹ OIM Fifth Quarterly Report at 10-11.

³² OIM Twelfth Quarterly Report at 12.

approval of the Canine Teams General Order in order to ensure that the manual and the general order were consistent. With the approval of the Canine Teams General Order during the first quarter of 2005, MPD finalized revisions to the manual and submitted it to DOJ on June 30, 2005. On September 27, 2005, DOJ approved the Canine Operations Manual.³³

b. Canine “Bite” Incidents

Police practices experts over time have taken the position that a bite-to-apprehension ratio of less than 30% is generally acceptable.³⁴ DOJ pointed out that many effectively run canine programs have a bite-to-apprehension ratio of no more than 10%.³⁵ DOJ, however, shared the view of our police practices experts that a bite-to-apprehension ratio of up to 20% was acceptable for MPD.

As discussed in our quarterly reports, we periodically compared apprehensions involving an MPD canine unit with investigations of incidents during which an MPD canine made contact with a suspect. Our reviews found that MPD consistently maintained a bite-to-apprehension ratio below 20% during each of the periods we reviewed, beginning with the third quarter of 2001 and continuing through the end of 2006.³⁶

For example, during the twenty-first quarter, we reviewed all canine deployments and bite incidents during calendar year 2006. We identified a total of 61 apprehensions involving a canine unit and confirmed that only 7 of those apprehensions involved a bite. Therefore, the bite ratio that we calculated for 2006 was 11.5%.³⁷ This bite ratio

³³ OIM Fourteenth Quarterly Report at 16.

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.”) 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. OIM Fourth Quarterly Report at 14-16.

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

³⁶ See OIM Fourth Quarterly Report at 14-16; OIM Eighth Quarterly Report at 12; OIM Tenth Quarterly Report at 15; OIM Twelfth Quarterly Report at 14-15; OIM Fifteenth Quarterly Report at 20; and OIM Twenty-first Quarterly Report at 23.

³⁷ OIM Twenty-first Quarterly Report at 23.

was quite acceptable and the lowest we observed during our reviews of MPD's canine program.

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.³⁸ 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 approval.³⁹ Accordingly, we found that MPD achieved substantial compliance with the MOA's provisions relating to supervisor authorization for canine deployments.⁴⁰

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.⁴¹ Paragraph 45 of the MOA and the Canine Teams General Order required that canine handlers seek deployment authorization from non-Canine Unit supervisors only if the handler first was unable to contact a Canine Unit supervisor.⁴² Since then, we periodically revisited this area to evaluate whether canine deployments were being approved by Canine Unit supervisors consistent with MPD policy.

Our most recent review of supervisor authorizations of canine unit deployments was during the seventeenth quarter.⁴³ MPD reported that a Canine Unit supervisor who had been absent due to illness returned in November 2005. The availability of another Canine Unit supervisor appeared to have had an effect on decreasing the rate at which non-Canine Unit supervisors were responsible for authorizing the

³⁸ OIM Eighth Quarterly Report at 10-11.

³⁹ OIM Tenth Quarterly Report at 13.

⁴⁰ *Id.* at 15-16.

⁴¹ *Id.* at 13.

⁴² MOA ¶ 45; GO-RAR-606.1, § V.B.1.

⁴³ OIM Seventeenth Quarterly Report at 26-27.

deployment of canine units. In January and February 2006, only 23% and 17%, respectively, of canine deployments were authorized by non-Canine Unit supervisors. Moreover, we found that, during the months of November 2005 through February 2006, 97% of the canine unit deployments authorized by non-Canine Unit supervisors occurred when no Canine Unit supervisor was on duty. In light of our findings during the seventeenth quarter, we affirmed our assessment that MPD achieved substantial compliance with the MOA requirements related to the authorization of canine deployments.

3. Substantial Compliance Evaluation

MPD achieved substantial compliance with MOA paragraphs 45 and 46, which related to canine policies and procedures.

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

1. Requirements

The MOA required 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

- 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. During the eleventh quarter, we found that MPD achieved substantial compliance with MOA paragraphs 47 through 50 relating to OC Spray Policy.⁴⁴ Our review during the fifteenth quarter of 49 MPD internal investigations regarding incidents involving the use of OC spray between January and November 2005 confirmed our substantial compliance finding.⁴⁵

Last year, we identified two internal use of force investigations involving the use of OC spray in which chain of command investigators failed to take any steps to determine the amount of OC spray that had been used during the incidents.⁴⁶ Paragraph 50 of the MOA limited officers to the use of only two one-second bursts of the spray, unless exceptional circumstances required otherwise.⁴⁷ In our Eleventh Quarterly Report, we recommended that “MPD investigators should be trained to collect the OC spray canister used in the incident and to weigh the canister to determine the quantity of agent used during the incident.”

We discussed this issue with MPD, and MPD reported that its Use of Force Review Board (“UFRB”) also raised a similar concern.⁴⁸ While neither the MOA nor MPD policy specifically required internal investigators to weigh OC spray canisters following an incident involving deployment of the agent, it is necessary for investigators to determine -- by weighing canisters or by some other means -- whether officers

⁴⁴ OIM Eleventh Quarterly Report at 22.

⁴⁵ OIM Fifteenth Quarterly Report at 25-26.

⁴⁶ OIM Twenty-first Quarterly Report at 28.

⁴⁷ OIM Eleventh Quarterly Report at 22.

⁴⁸ Memorandum of Agreement Quarterly Progress Report, dated October 12, 2007 (“MPD October 2007 Progress Report”) at 2.

complied with the MOA and MPD policy concerning the quantity of OC spray that may acceptably be used to subdue a suspect.

During the twenty-third quarter, we monitored a meeting of the UFRB during which the Board addressed the issue of developing a methodology for internal use of force investigators to evaluate officers' compliance with MPD's policy regarding the quantity of OC spray that may be used against a suspect. The Board issued a recommendation that use of force investigators routinely recover and weigh OC spray canisters to evaluate whether the quantity of agent dispensed during a use of force incident was consistent with the limitations established by MPD policy. As of the termination of the MOA, MPD was considering additional specific steps that should be implemented -- including, for example, issuing new or completely re-filled canisters to all officers and requiring logs to be completed each time an officer uses an OC spray canister -- to facilitate the accuracy of these measurements.

3. Substantial Compliance Evaluation

MPD achieved substantial compliance with MOA paragraphs 47 through 50, which related to OC Spray Policy.

4. Recommendations

MPD should adopt the UFRB's recommendation that its use of force investigators be instructed to take appropriate steps to determine the quantity of agent used during incidents involving the use of OC spray. MPD also should consider policy changes that would assist investigators in determining the quantity of OC spray used, such as requiring officers to have full canisters when deployed or to maintain logs recording the quantity of agent that has been dispensed from each canister used by officers.

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

As discussed above, MPD 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 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 was not required under the MOA. MPD obtained DOJ approval prior to implementing any revisions or changes to these central use of force-related policies, as was required by paragraph 52 of the MOA. Accordingly, MPD substantially complied with MOA paragraphs 51 and

52 which 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 required MPD to develop a Use of Force Reporting Policy and a Use of Force Incident Report (“UFIR”). The MOA mandated 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 the Force Investigation Team (“FIT”) in every instance involving deadly force,⁴⁹ the serious use of force,⁵⁰ or any use of force potentially reflecting criminal conduct by an officer;⁵¹

⁴⁹ “Deadly force” was 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.”

⁵⁰ “Serious use of force” was 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

- 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.⁵²

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.

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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."

⁵¹ "Use of force indicating potential criminal conduct by an officer" was defined in paragraph 35 of the MOA to include "strikes, blows, kicks or other similar uses of force against a handcuffed subject."

⁵² MPD January 2003 Progress Report at 9.

2. Status and Assessment

a. Use of Force Incident Report

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 proposed a revised and simplified UFIR and submitted the proposed revisions to DOJ on November 20, 2002. On March 19, 2003, DOJ gave MPD detailed written comments regarding the proposed UFIR. MPD incorporated DOJ's comments and returned the revised UFIR to DOJ on December 10, 2003. On February 27, 2004, DOJ forwarded additional comments regarding the revised UFIR, to which MPD submitted a written response on April 9, 2004.⁵³

On September 24, 2004, DOJ provided MPD with its initial written response to MPD's April 9, 2004 submission regarding the revised and updated UFIR. DOJ 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.⁵⁴ 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.⁵⁵ 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 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 added the language DOJ suggested, as well as clarified that civilian employees and reserve officers also are subject to UFIR completion

⁵³ OIM Seventeenth Quarterly Report at 34.

⁵⁴ *Id.* DOJ, however, 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).

⁵⁵ OIM Seventeenth Quarterly Report at 34.

requirements, and submitted the revised UFIR Special Order for DOJ approval on December 29, 2005.⁵⁶

Although DOJ approved the UFIR Special Order on March 2, 2006, it also returned several additional comments including a request that MPD incorporate into the special order language from MPD's December 28, 2005 teletype clarifying the circumstances under which a UFIR must be completed.⁵⁷ MPD incorporated the requested language and submitted a revised version of the UFIR Special Order to DOJ on March 31, 2006. MPD also notified DOJ that it would publish the current version of the special order and work with DOJ to make any necessary revisions through the general order changes process. On May 25, 2006, DOJ reiterated its final approval of the UFIR Special Order.⁵⁸ MPD reported that the revised UFIR is available to all MPD officers and can be completed by using PPMS.⁵⁹

In 2006, the Internal Affairs Bureau ("IAB")⁶⁰ also developed a standard operating procedure ("SOP") for UFIR/RIF Quality Control and Case Tracking, which, although not required under the MOA, is intended to address some of the deficiencies in UFIR completion identified by the OIM and ORM.⁶¹ MPD reported that the "purpose of the SOP is to standardize the UFIR review process, to ensure quality and completeness of all reports prepared by MPD members, and to proactively monitor Department organizational elements to ensure compliance with use of force reporting requirements."⁶² MPD provided DOJ and the OIM with a

⁵⁶ *Id.*

⁵⁷ The December 28, 2005 teletype was issued in response to the OIM's findings related to the underreporting of uses of force and emphasized, in particular, MPD's reporting requirements related to the use of hand controls in effecting the arrest of a suspect who resists handcuffing.

⁵⁸ E-mail from Elizabeth Welsh to Matthew Klein and Linda Nischan (May 25, 2006).

⁵⁹ OIM Twentieth Quarterly Report at 39.

⁶⁰ Pursuant to MPD's reorganization, effective September 23, 2007, the Office of Professional Responsibility was renamed the Internal Affairs Bureau.

⁶¹ OIM Twentieth Quarterly Report at 19.

⁶² *Id.*

copy of this SOP on September 29, 2006, and DOJ returned comments on the SOP on December 28, 2006.⁶³

(1) UFIR Completion

Section VI.1 of MPD's Use of Force General Order, GO-RAR-901.07, requires that a 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 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.⁶⁴ The vast majority of cases in which officers used force, but failed to complete a UFIR as required, appeared 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 were clear that they must be reported as use of force incidents and that a UFIR must be completed to document the incident.⁶⁵

⁶³ *Id.*

⁶⁴ OIM Thirteenth Quarterly Report at 9.

⁶⁵ The completion of high quality UFIRs under all circumstances required by MPD policy and the MOA also was relevant to MPD's development of PPMS. Paragraph 55 of the MOA required that "[d]ata captured on [UFIRs] shall be

MPD acknowledged that the underreporting of use of force incidents reflected by our findings was unacceptable. On December 28, 2005, MPD distributed a teletype within the Department clarifying the policy regarding reporting uses of force and emphasizing, in particular, the reporting requirements related to the use of hand controls in effecting the arrest of a suspect who resists handcuffing.⁶⁶

Employing the same general methodology that the OIM used to analyze MPD's UFIR completion rates during the last quarter of 2004, ORM performed regular audits of officers' compliance with the use of force reporting requirements established by the MOA and MPD policy. As reflected in the chart below, ORM found that MPD achieved significant improvements in its completion of UFIRs documenting even low-level use of force incidents, such as the use of hand controls.⁶⁷ Indeed, ORM's audit of UFIR completion rates during the first quarter of 2007 found that MPD members completed UFIRs for 39 of 43 incidents indicating that a reportable level of force had been used -- a compliance rate of 91%.⁶⁸ ORM's audit of UFIR completion rates for the second and third quarters of 2007 found compliance rates of approximately 89% and 86%, respectively.⁶⁹

Footnote continued from previous page

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 that is input into the system, including information from UFIRs.

⁶⁶ OIM Fifteenth Quarterly Report at 12.

⁶⁷ Office of Risk Management Report No. 07-093, "Use of Force Reporting Compliance Audit, 2nd Quarter 2007" (September 27, 2007), at 2.

⁶⁸ Quality Assurance Unit Report No. 07-41, "Use of Force Reporting Compliance Audit, 1st Quarter 2007" (June 1, 2007), at 2.

⁶⁹ Office of Risk Management Report No. 07-093, "Use of Force Reporting Compliance Audit, 2nd Quarter 2007" (September 27, 2007), at 2; Office of Risk Management Report No. 08-AUD-011, "Use of Force Reporting Compliance Audit, 3rd Quarter 2007" (January 18, 2008), at 1.

Information Reviewed by ORM	Time Period Covered	UFIR Completion Rate for Low-Level Uses of Force
PD-313 Arrestee Injury/Illness Reports	Calendar Year 2005	24%
PD-313 Arrestee Injury/Illness Reports	First Quarter 2006	36%
PD-42 Officer Injury Reports	Second Quarter 2006	75%
PD-251 Incident-Based Event Reports, PD-163 Arrest/Prosecution Reports, PD-313 Arrestee Injury/Illness Reports, and PD-42 Officer Injury Reports	First Quarter 2007	91%
PD-313 Arrestee Injury/Illness Reports, PD-42 Officer Injury Reports	Second Quarter 2007	89%
PD-313 Arrestee Injury/Illness Reports, PD-42 Officer Injury Reports	Third Quarter 2007	86%

Last year, MPD reported that the total number of UFIRs completed that identified the type of force used as “other” -- indicating use of low-level force to effect the handcuffing of a resisting suspect and not involving the use of a weapon -- had increased dramatically since the Department clarified its policy that UFIRs must be completed to document such incidents. According to ORM, in 2005 there were only 184 documented use of force incidents in this category. In 2006, there were 850 UFIRs completed to document low-level use of force incidents -- a more than 450% increase in the number of reported use of force incidents.⁷⁰ MPD reported that, through the first two quarters of 2007, its officers had reported 440 use of force incidents classified as “other,” which was roughly proportional to and consistent with the number of such incidents (850) reported during calendar year 2006.⁷¹

In light of ORM’s findings regarding UFIR completion rates during the first three quarters of 2007, it appeared that MPD’s emphasis on use of force reporting as well as ORM’s auditing in this area had a discernible impact.⁷² Accordingly, we exercised the discretion granted to the OIM by the parties and found that MPD achieved substantial compliance with

⁷⁰ Quality Assurance Unit Report No. 07-41, “Use of Force Reporting Compliance Audit, 1st Quarter 2007” (June 1, 2007), at 2.

⁷¹ OIM Twenty-first Quarterly Report at 15.

⁷² MPD’s emphasis on documenting even low-level use of force incidents also had an effect on the quality of other types of reports completed by MPD officers. For example, we found that officers included greater detail in Arrestee Injury/Illness Reports (PD-313s) about the nature of a suspect’s injuries and whether such injuries existed before the individual’s arrest.

the MOA's requirements related to the completion of UFIRs, even though MPD's UFIR completion rates had not exceeded the objective 94% threshold generally necessary to establish substantial compliance. The OIM's exercise of discretion in this area was based on the following factors: (1) MPD's focused attention and proactive efforts -- including development of an SOP and regular audits by the ORM -- to improve the rate at which MPD officers report use of force incidents; (2) MPD's demonstration of a sustained UFIR completion rate between 86% and 91%, which was quite high even if below the 95% threshold; and (3) the fact that incidents for which UFIRs should have been completed, but were not, almost always relate to uses of relatively low-level force, such as hand controls in connection with a non-submissive handcuffing.

MPD's dramatic and sustained improvement in the rates at which officers report uses of force is extremely important. The UFIR was 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 would be unable to identify and address problems involving uses of force and to identify the serious potential consequences should such uses of force go unrecognized and unaddressed by the Department.

(2) 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 earlier reports, we included a 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.⁷³

At the end of last year, we reviewed 110 UFIRs completed during the first half of 2007 in order to evaluate the quality of information captured in the reports. We found that the narrative description included in the vast majority of these UFIRs was adequate to effectively convey the nature of the incident, the type of force used, and the officer's justification for using force. However, we found that 64 of these 110 UFIRs -- 58% -- were missing required information. By far the most common deficiency we identified in the completeness of these UFIRs was the absence of supervisor signatures. MPD explained that many of the UFIRs that were missing supervisor signatures had been submitted

⁷³ See, e.g., OIM Eleventh Quarterly Report at 29.

electronically by officers, which may account for the supervisors' failure to sign them. If the appropriate signatures had been included on the UFIRs we reviewed, we would have found 105 of these 110 UFIRs to have been complete.

ORM's audit of UFIR completion rates during the third quarter of 2007 also focused on whether the UFIRs that were submitted by officers included all relevant information, including a signature indicating that a supervisor had reviewed the UFIR. ORM's review of 29 UFIRs submitted during this period found that each UFIR contained sufficient narrative describing the incident that was consistent with other reports describing the occurrence. ORM also found that, while 2 of these UFIRs did not contain the watch commander's signature, both had been signed by a line supervisor. One other UFIR had been signed by the watch commander, but not the line supervisor. Thus, while 3 of the 29 UFIRs did not contain all required signatures, all of them reflect that some level of supervisory review had taken place.

(3) 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" ⁷⁴ MPD asserted that, because the MOA did not include the pointing of a weapon within its definition of "use of force," reporting such incidents through the UFIR was not appropriate and caused substantial concern within the ranks of MPD officers. DOJ maintained 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 developed a Reportable Incident Form ("RIF") that is intended to replace the UFIR as the mechanism for tracking "pointing" incidents.

On November 2, 2005, DOJ approved the revised RIF and RIF Special Order. MPD, however, 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. On March 2, 2006, DOJ provided its final approval of the RIF Special Order. Prior to its publication, MPD made some minor typographical and copy edits to the

⁷⁴ MOA ¶ 53.

special order. MPD forwarded the final version of the RIF Special Order to DOJ on March 31, 2006. MPD also notified DOJ that it would publish that version of the RIF Special Order and work with DOJ to make any additional revisions through the general order changes process. On May 25, 2006, DOJ reiterated its approval of the RIF Special Order, and the RIF is available to and can be completed by all MPD members on PPMS.⁷⁵ MPD reported that its UFIR/RIF Quality Control and Case Tracking SOP also establishes procedures for tracking RIFs and ensuring their completeness.⁷⁶

(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 related to certain major operations involving MPD's specialized mission units during which multiple officers point their service weapons. MPD believed that the UFIR requirement as it related to such incidents may give rise to delays that adversely affect operational efficiency because it required multiple officers to take 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.

MPD reported that it 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 Unit General Order.
- The SMU is operating as a team at the time of the pointing incident.

⁷⁵ MPD April 2007 Progress Report at 18.

⁷⁶ *Id.*

- 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.⁷⁷

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.⁷⁸ 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.⁷⁹ 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 Mission Unit General Order. On June 30, 2006, MPD submitted the revised SMUAAR to DOJ for approval. On December 1, 2006, DOJ granted approval of the revised SMUAAR and returned additional comments regarding the Specialized Mission Unit General Order.⁸⁰ On March 30, 2007, MPD submitted a revised Specialized Mission Unit General Order to DOJ with additional changes, to which DOJ provided comments on June 21, 2007.⁸¹

⁷⁷ MPD April 2007 Progress Report at 19.

⁷⁸ Letter from Tammie M. Gregg to Captain Matthew Klein (March 30, 2004).

⁷⁹ E-mail from Maureen O'Connell to Tammie Gregg, Lisa Graybill, and Sarah Gerhart (March 31, 2004).

⁸⁰ Letter from Tammie M. Gregg to Inspector Matthew Klein (December 1, 2006).

⁸¹ MPD October 2007 Progress Report at 19.

MPD responded to DOJ's comments on September 18, 2007, and DOJ approved the Specialized Mission Unit General Order on September 24, 2007. However, because the general order contained internal references to materials that had not yet been published by MPD, the Department proposed alternative language to include in the general order that was submitted to DOJ for review. On November 1, 2007, DOJ provided its final approval of the Specialized Mission Unit General Order, which MPD distributed internally on November 13, 2007.⁸²

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. During the seventeenth quarter, in addition to our regular review of the United States Attorney Notification Log, we interviewed the Chief of the Major Crimes Section of the USAO about MPD's performance in promptly notifying his office of deadly or serious use of force incidents. The Chief of the Major Crimes Section surveyed the prosecutors in his section and found a very high level of satisfaction -- between 90% and 100% -- with the timeliness of notice the USAO received from MPD regarding such incidents.⁸³ Our reviews found that MPD consistently made timely notifications to the USAO within 24 hours of a deadly or serious use of force incident.⁸⁴

3. Substantial Compliance Evaluation

MPD achieved substantial compliance with MOA paragraph 53 related to use of force reporting and the UFIR. Moreover, DOJ approved the RIF Special Order related to tracking firearms pointing incidents as well as the revised SMUAAR.

MPD achieved 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 achieved substantial compliance with paragraph 55 of the MOA, which required that all data captured in the UFIRs be entered into

⁸² MPD January 2008 Progress Report at 19.

⁸³ OIM Seventeenth Quarterly Report at 41.

⁸⁴ MOA ¶ 54.

MPD's PPMS.⁸⁵ The Fourth Modification clarified that MPD can satisfy this requirement by entering two years of historical UFIRs into PPMS.⁸⁶ Last quarter, MPD reported that FIT had audited the last two years of hard copy UFIRs in order to identify those which still must be entered into PPMS. As a result of that audit, MPD identified a total of 527 UFIRs -- 480 from 2006 and 47 from 2007 -- to be entered into PPMS.⁸⁷ We reviewed MPD's entry of these historical UFIRs into PPMS by selecting samples of UFIRs based on the FIT and chain of command use of force investigations we reviewed from 2006 and 2007. We found that UFIRs related to more than 95% of the cases we selected, in fact, had been entered into PPMS.

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 addressed use of force investigations took 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 created 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 was 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.⁸⁸

MPD is required to notify and consult with the USAO -- and vice versa -- in each instance in which there is an incident involving deadly

⁸⁵ MPD achieved substantial compliance with paragraph 55's requirement that all hard copies of completed UFIRs be centrally maintained. Paragraph 55 of the MOA stated that hard copies of the UFIRs shall be maintained centrally by IAB. IAB maintains the UFIRs at FIT's offices, which was satisfactory under the MOA.

⁸⁶ Fourth Modification at Section II.E.1.

⁸⁷ MPD January 2008 Progress Report at 4.

⁸⁸ Consistent with this approach, the MOA required 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 ¶ 63.

force, a serious use of force, or any other use of force suggesting potential criminal misconduct by an officer. All such investigations are handled by FIT rather than by any other unit of MPD. Even while a criminal investigation is pending, the MOA required FIT's investigation of an 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.⁸⁹

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 required 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.⁹⁰

The MOA contained 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.

⁸⁹ This deferral of the interview of subject officers was 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).

⁹⁰ In such cases, the reasons for failing to observe the ninety-day requirement must be documented.

(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 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.⁹¹

(3) Use of Force Review Board

Subject to approval by DOJ, MPD was 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;⁹²
- 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, to recommend further training where appropriate, and to direct MPD district supervisors to take non-disciplinary action to encourage officers to modify their behavior;

⁹¹ 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.

⁹² 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 units. 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 reviewed all FIT I and FIT II use of force investigations completed between January 1, 2004 and September 30, 2007.⁹³ The results of this analysis confirmed our consistent findings that FIT generally performed thorough and high quality investigations.⁹⁴

For example, last year we completed a survey of all FIT I and FIT II investigations completed during the first three quarters of 2007. We found that the quality and timeliness of these investigations was exceptionally good. Based on our review of these investigations, which is discussed below, we found that MPD achieved substantial compliance with MOA paragraphs 62 and 63 regarding investigations performed by FIT.⁹⁵

⁹³ 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 ¶ 15. FIT II investigations are of other serious uses of force, including for example uses of force resulting in hospitalization and canine bites.

⁹⁴ OIM Eleventh Quarterly Report at 35-37.

⁹⁵ OIM Twenty-second Quarterly Report at 47-48.

Through the first nine months of 2007, FIT I closed 23 investigations, 21 of which involved serious uses of force including 18 cases involving the discharging of a firearm. One of the remaining cases involved an “in-custody death” in which no force had been used by an MPD officer, and the other was returned by the UFRB to IAB based on the Board’s determination that no force actually had been used. In these cases, the UFRB identified 4 instances in which the force used was not justified, including two accidental or negligent weapon discharges, one case in which an officer fired at a moving vehicle, and one case in which a vehicle pursuit resulted in a fatality.

We found that all (100%) of these 23 FIT I investigations were both complete and sufficient.⁹⁶ None of these investigations exceeded the mandated 90-day window for completion of the investigation without including documented special circumstances justifying additional time. In fact, all of the FIT I investigations closed between March 1, 2007 and September 30, 2007 were completed within 90 days.

During the first three quarters of 2007, FIT II closed 33 investigations involving the use of hand controls, canines, ASPs, and OC spray. These investigations also included 5 general allegations of excessive force and 2 incidents involving the pointing of a firearm. Two of these investigations resulted in findings that the force used was not justified, including an improper strip search and an improper takedown of a suspect involving the use of an ASP.

The quality of these 33 FIT II investigations was on par with the FIT I investigations closed during the same period. We found that 32 of the 33 investigations -- 97% -- were complete, and all (100%) of the investigations were sufficient. We rated one investigation incomplete, but sufficient, because investigators in that case failed to address inconsistencies between witnesses.⁹⁷ As with the FIT I investigations, none of the FIT II investigations from the first nine months of 2007 exceeded the 90-day timeline for completion of MPD’s internal use of

⁹⁶ 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. They rated an investigation “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.

⁹⁷ See MOA ¶ 81.g.

force investigations without containing documented special circumstances justifying any delay. Indeed, since the end of March 2007, all FIT II investigations were completed within 90 days and required no extensions due to special circumstances.

Including both FIT I and FIT II cases, FIT closed a total of 56 investigations through the first three quarters of 2007. All but one of these investigations were complete -- a completeness rating of 98%. All of these investigations (100%) were sufficient and complied with the MOA's requirements regarding timeliness. Accordingly, we found that MPD achieved substantial compliance with the MOA's requirements relating to investigations performed by FIT.⁹⁸

Finally, last year we reported that, although FIT generally performed well in investigating all apparent misconduct, as was required under the MOA, FIT investigators were not routinely preparing findings with respect to potential misconduct not related to a use of force. MPD relied on the UFRB to identify these non-use of force issues in the FIT investigations and to issue findings with respect to them. During the twentieth quarter, we advised MPD that this system of relying on the UFRB to issue findings -- as opposed to reviewing recommended findings developed by FIT investigators -- with respect to potential misconduct unrelated to the use of force created the potential that the UFRB inadvertently would overlook a non-use of force issue and fail to issue a finding. MPD agreed with this observation, and FIT investigators now are instructed not only to investigate all potential misconduct but also to issue recommended findings.⁹⁹ These findings, along with the FIT investigators findings with respect to use of force-related issues, are reviewed by the UFRB.

(3) Other Use of Force Investigations

Beginning with our Sixth Quarterly Report, we reported on statistical samples of chain of command and IAD use of force and misconduct investigations. The results generated by our reviews of these investigations are summarized in Section III.B.2.b(1) below.

⁹⁸ OIM Twenty-third Quarterly Report at 40-41.

⁹⁹ OIM Twentieth Quarterly Report at 53-54.

(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 mid-2005, 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 rotated 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.¹⁰⁰ In our Eleventh Quarterly Report, we reported several specific deficiencies in the UFRB's performance.¹⁰¹ 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.¹⁰²

In June 2005, 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 implemented with respect to the UFRB include:

- Reorganization of the UFRB's membership. MPD reorganized the UFRB to provide for more direct involvement by command staff at the Assistant Chief level. The chairperson 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 chairperson. 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 MPA. 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.

¹⁰⁰ OIM Tenth Quarterly Report at 33-34.

¹⁰¹ OIM Eleventh Quarterly Report at 38-39.

¹⁰² OIM Twelfth Quarterly Report at 33.

- Established schedule for UFRB meetings. MPD established a monthly schedule for UFRB meetings. 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 chairperson.
- Decision point analysis. We 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 assigned a full-time UFRB administrative support officer whose duties include, among other things, preparing agendas for review by the UFRB chairperson; 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.¹⁰³

We since monitored several meetings of the UFRB, and we found that the performance of the UFRB has improved remarkably as a result of the implementation of the above reforms. In particular, we observed that the UFRB was 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 under review had become much more comprehensive and methodical than those in previous UFRB sessions. The organization and focus imposed by implementation of the decision point analysis process resulted in more

¹⁰³ Letter from Maureen O'Connell to Tammie Gregg regarding "MOA Paragraph 67: Use of Force Review Board" (June 30, 2005).

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.

As a result of the Department-wide reorganization that took effect on September 23, 2007, the composition of the UFRB changed. The UFRB now has a new chairperson, although it retained the same administrative support officer.¹⁰⁴ As discussed in our previous reports, we found that the former chairperson of the UFRB was extremely effective in ensuring the participation of each of the members of the Board. Based on the UFRB meeting we monitored last quarter, it appeared that the current chairperson will continue to lead the UFRB in performing comprehensive and detailed reviews of use of force incidents that have been the Board's hallmark for more than two years.

We also reviewed documentation maintained by the UFRB administrative support officer reflecting communications between the Board and MPD's district commands, Disciplinary Review Division ("DRD"), and MPA in cases in which the Board found that there had been an unjustified use of force, a policy violation, or a training opportunity. We found that the UFRB administrative support officer maintained very thorough records of the Board's determinations and did an effective job of following up with the district commands and other units to ensure that the Board's findings and recommendations were addressed and that actions taken in response to those findings and recommendations were documented. We concluded that MPD achieved substantial compliance with the MOA's provisions related to the UFRB.¹⁰⁵

In an effort to formalize the changes MPD made to the UFRB and its operations, on March 6, 2007, MPD submitted to DOJ a revised Use of Force Review Board General Order incorporating recent reforms of the Board's composition and operations. On April 10, 2007, DOJ responded to the revised general order. At DOJ's suggestion, last year we reviewed

¹⁰⁴ MPD originally advised us that there would be a change of the administrative officer assigned to support the UFRB following the reorganization. MPD decided, however, to allow the UFRB administrator to remain in his position. As discussed in our previous quarterly reports, this officer did 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 UFRB's deliberations. See OIM Twenty-second Quarterly Report at 51.

¹⁰⁵ OIM Fifteenth Quarterly Report at 44.

the revised Use of Force Review Board General Order.¹⁰⁶ On May 15, 2007, we provided MPD with comments to the draft revised general order, which concerned clarifying ORM's role in auditing the UFRB process and the need for procedures requiring the UFRB to confirm that its recommendations for corrective action or remedial training have been acted upon.¹⁰⁷

c. Substantial Compliance Evaluation

MPD achieved substantial compliance with MOA paragraph 57 related to the development and implementation of a plan for allocation of responsibility for MPD investigations of uses of force.

Paragraphs 58 and 60 of the MOA related 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. MPD achieved substantial compliance with MOA paragraphs 58 and 60.¹⁰⁸

MPD achieved substantial compliance with the provisions of MOA paragraph 61 related 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 found that MPD achieved substantial compliance with MOA paragraph 61's requirement that FIT forward policy and training recommendations to the proper authority.

MPD achieved substantial compliance with MOA paragraphs 62 and 63's requirements related to the timeliness and quality of FIT investigations.

MPD achieved 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. MPD also achieved substantial compliance with MOA paragraph 64's requirement that investigations

¹⁰⁶ Letter from Tammie M. Gregg to Insp. Matthew Klein regarding "Use of Force Review Board General Order, Para 67" (April 10, 2007).

¹⁰⁷ E-mail from Tommy Beaudreau to Maureen O'Connell regarding "MPD: UFRB GO Comments" (May 15, 2007).

¹⁰⁸ Paragraph 59 of the MOA does not impose any substantive requirements on MPD or the City.

directed by MPD's Chief of Police or his designee be removed from a particular district's chain of command and reassigned either to FIT or another district.¹⁰⁹

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

MPD achieved substantial compliance with MOA paragraph 67, which related to the UFRB's review of use of force investigations.

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

a. Requirements

The MOA established 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
 - 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

¹⁰⁹ See OIM Seventeenth Quarterly Report at 54.

- Allegations of all uses of physical violence -- including but not limited to strikes, blows, and kicks -- that are engaged in for a punitive purpose or that are directed against a subject who is not offering resistance.¹¹⁰

With respect to allegations in the above categories that are criminal, MPD's IAB 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.¹¹¹ In addition to criminal allegations, the MOA required 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 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 established procedures that must be followed in the conduct of such investigations. These procedures for MPD internal investigations required 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;

¹¹⁰ 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.

¹¹¹ The MOA made 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 ¶ 71.

- 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 set forth a series of milestones for the implementation of this overhauled system for conducting misconduct investigations. These included the following:

- MPD must develop a plan (subject to approval by DOJ) under which IAB 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 IAB;¹¹²
- 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;¹¹³
- 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;

¹¹² See paragraph 72 of the MOA for a list of the misconduct allegations covered by this provision.

¹¹³ In cases where the allegations are referred to the USAO, the ninety days is measured from the date of the declination.

- 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 set forth a series of requirements for evaluating and resolving allegations of misconduct against MPD officers. These included 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;¹¹⁴ 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.”¹¹⁵ 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. 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

We reviewed seventeen statistical samples of use of force and misconduct investigations performed by MPD’s IAD and the district

¹¹⁴ The MOA made clear that there should be no presumption that an officer’s statement is entitled to greater weight than the statement of a civilian. MOA ¶ 99.

¹¹⁵ 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.

chains of command. These samples captured a total of 1,515 non-FIT use of force and misconduct investigations opened between the effective date of the MOA, June 13, 2001, and March 31, 2007.¹¹⁶ The results of our reviews were first presented in the OIM's Sixth Quarterly Report.¹¹⁷

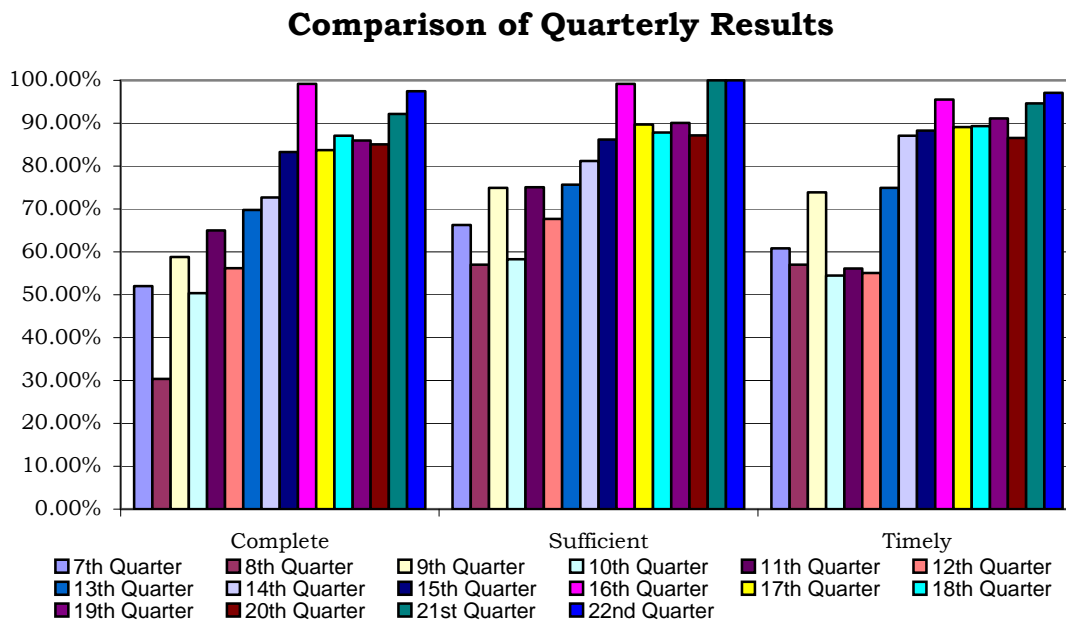
The statistical sampling methodology we used in selecting the investigation files to be reviewed each quarter was developed by the OIM, in consultation with MPD and DOJ. The OIM, working closely with our statistical analysis experts at PricewaterhouseCoopers LLP, developed standardized review procedures that allowed us to efficiently review MPD investigation files and to report their findings in a consistent manner. Each of our samples was drawn proportionately from all of MPD's districts, and each sample was comprised of investigations opened at least 90 days prior to the beginning of the reporting period to ensure that MPD had the maximum time authorized under the MOA, absent special circumstances, to complete the investigation.¹¹⁸

In recent years, MPD took several steps to improve the quality and timeliness of its internal investigations, including revising and distributing investigation templates and issuing Department-wide guidance requiring documentation of special circumstances justifying delays in the completion of investigations. As reflected in the chart below, these changes resulted in steady improvement in the quality and timeliness of MPD's non-FIT use of force and misconduct investigations.

¹¹⁶ Our first sample, which covered investigations opened from June 13, 2001 through March 31, 2003, included 244 investigations. Our quarterly samples typically included between 78 and 80 investigations, with at least 10 drawn from each district. These population sizes were calibrated to generate statistically reliable data with respect to these types of MPD investigations as a whole.

¹¹⁷ OIM Sixth Quarterly Report at 25-30.

¹¹⁸ For reasons explained in our previous reports, starting with the nineteenth quarter, we excluded court no-show cases from the samples of misconduct and non-FIT use of force investigations. *See, e.g.*, OIM Twenty-first Quarterly Report at 57-58. During our January 12, 2007 monthly meeting with representatives from DOJ, MPD, and OPC, we suggested that the parties consider whether it would be appropriate to exempt court no-show cases from certain of the MOA's requirements generally applicable to MPD's internal investigations of misconduct allegations.



In light of the sustained timeliness¹¹⁹, completeness, and sufficiency¹²⁰ results in excess of the substantial compliance threshold that we observed in these cases during the twenty-first and twenty-second quarters, and the consistency we observed in the quality of MPD's non-FIT use of force and misconduct investigations for more than a year, we found that MPD achieved and maintained substantial compliance with most of the MOA's provisions related to its IAD and chain of command internal investigations.¹²¹

(2) 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.

¹¹⁹ MOA paragraphs 65 and 74 required that MPD complete these investigations within 90 days, absent documented special circumstances justifying additional time to close the investigation.

¹²⁰ The definitions of "complete" and "sufficient" are provided at note 97 above.

¹²¹ See OIM Twenty-second Quarterly Report at 62. The exception was paragraph 83 of the MOA, which required development and DOJ approval of a manual related to MPD misconduct investigations. MPD's Chain of Command Misconduct Investigations Manual received final approval from DOJ on March 11, 2008.

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.”¹²² 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.

On May 9, 2006, MPD provided DOJ with a copy of a Serious Misconduct Investigations General Order Change, which MPD had inadvertently published on April 27, 2006 prior to obtaining DOJ approval of the change.¹²³ DOJ approved the Serious Misconduct Investigations General Order Change on July 17, 2006.¹²⁴

(3) 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 required 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

¹²² Letter from Tammie M. Gregg to Inspector Joshua A. Ederheimer (January 31, 2003).

¹²³ E-mail from Linda Nischan to Tammie Gregg, Elizabeth Welsh, and Beth Hansher (May 9, 2006).

¹²⁴ E-mail from Elizabeth Welsh to Linda Nischan, Tammie Gregg, and Beth Hansher (July 17, 2006).

General Order and Chain of Command Investigations Manual on June 29, 2004.¹²⁵

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, 2004.¹²⁶

After reviewing DOJ's comments and revising the Chain of Command Misconduct Investigations Manual and the investigative templates for well over a year, MPD submitted a revised draft of the manual to DOJ on June 30, 2006. DOJ provided further comments to the manual on November 2, 2006. On September 24, 2007, MPD submitted a revised version of the manual to DOJ.¹²⁷ DOJ provided its final approval of the manual on March 11, 2008.¹²⁸

(4) 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. After substantial delay, MPD submitted the revised general order to DOJ for approval on June 30, 2006. DOJ returned comments on the general order on November 2, 2006. On September 24, 2007, MPD submitted a revised version of the general order to DOJ.¹²⁹ After another round of comments in March

¹²⁵ OIM Twentieth Quarterly Report at 73.

¹²⁶ *Id.*

¹²⁷ MPD January 2008 Progress Report at 9.

¹²⁸ Letter from Tammie M. Gregg to Inspector Matthew Klein regarding "Chain of Command Misconduct Investigations Manual and General Order, MOA ¶ 83" (March 11, 2008).

¹²⁹ MPD January 2008 Progress Report at 9.

2008, DOJ provided its final approval of the Chain of Command Misconduct Investigations General Order on March 19, 2008.¹³⁰

(5) Communications Between MPD and the USAO

MOA paragraph 69 required MPD to notify the USAO immediately, but in no case later than the next business day, of allegations of criminal misconduct involving an MPD officer.¹³¹ MOA paragraphs 70 and 71 required MPD to consult with the USAO concerning pending allegations of criminal misconduct against MPD officers and to prohibit internal investigators from taking compelled statements from officers subject to such investigations until receiving a written declination of criminal misconduct charges from the USAO.¹³²

Last year, we conducted a comprehensive review of MPD's compliance with MOA paragraphs 69 through 71. First, we reviewed the OIM's databases related to 147 FIT investigations and 633 non-FIT use of force and misconduct investigations closed between October 2005 and September 2007 to identify any cases in which MPD internal investigators obtained an inappropriate compelled statement from a subject officer. We identified no instances in any of these 780 cases in which a statement was taken from a subject officer. These findings were consistent with the information we received during an interview of the chief of the USAO's Major Crimes Section, who told us that cases in which MPD internal investigators had taken an inappropriate compelled statement from a subject officer were extremely rare.

We also monitored the coordination between MPD and the USAO in connection with pending investigations of potential criminal misconduct by an MPD officer. Such cases fall into three general categories: (1) serious use of force incidents that are routinely reviewed by the USAO, (2) allegations of serious misconduct involving corruption or other crimes investigated by the USAO's Public Corruption and Major Crimes Units, and (3) allegations of domestic violence and sexual assaults investigated by the USAO's Domestic Violence and Sexual Assault Unit.

¹³⁰ Letter from Tammie M. Gregg to Inspector Matthew Klein regarding "Chain of Command Misconduct Investigations Manual and General Order, MOA ¶ 83" (March 19, 2008).

¹³¹ MOA ¶ 69.

¹³² MOA ¶¶ 70 and 71.

Finally, we attended meetings between representatives from MPD and prosecutors from the USAO during which they discussed cases from all three of these categories. MPD provided us with spreadsheets used to track the status of every case involving potential criminal misconduct charges against an MPD officer that was under review by the USAO. During these meetings, which generally occur every month, prosecutors and representatives from IAB discuss the status of each of the cases reflected on the spreadsheets to determine whether the USAO requires any supporting evidence or information from MPD -- such as photographs or forensic science reports -- in order to complete its review and whether charges against a subject officer are likely. We found the discussions during these meetings to be detailed and comprehensive. Prosecutors involved in reviewing cases involving potential criminal misconduct by MPD officers told us that they were quite satisfied with the level of coordination and cooperation between their office and the IAB, including the timeliness of MPD's notifications of incidents involving potential criminal misconduct.¹³³

In light of the foregoing, we found that MPD achieved substantial compliance with MOA paragraphs 69 through 71, which governed communications between MPD and the USAO.

(6) Corporation Counsel Notification to IAB of Civil Claims

Paragraph 75 of the MOA required that "[t]he Corporation Counsel's Office shall notify IAB whenever a person files a civil claim against the City alleging misconduct by an officer or other employee of MPD."¹³⁴ 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.¹³⁵

¹³³ OIM Twenty-third Quarterly Report at 54-55.

¹³⁴ 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."

¹³⁵ OIM Eighteenth Quarterly Report at 78.

After the second quarter of 2005, we monitored and reported on the various attempts by MPD's Office of General Counsel ("OGC") and IAB and by the City's Office of the Attorney General ("OAG") and DCORM to establish a reliable system for tracking claims or civil actions against MPD officers and for notifying OGC of such claims or actions.¹³⁶ On March 21, 2008, MPD issued a formal Civil Lawsuits and Claims Tracking SOP that was designed to "outline the process to be followed for obtaining information concerning lawsuits and civil claims filed against MPD members, entering information into PPMS, and assigning, monitoring, investigating and closing cases in PPMS."¹³⁷

The Civil Lawsuits and Claims Tracking SOP is a substantial improvement over the informal and sometimes *ad hoc* systems MPD used in the past to track civil claims involving MPD officers. We reviewed the SOP as well as various spreadsheets generated through PPMS that IAB uses to track information received by MPD from the OAG and DCORM. We found that the systems in place under the SOP were generally reliable, although, because they were new and not well established, IAB personnel had to spend a significant amount of time investigating and confirming information received from the City. MPD tasked the head of ORM with reviewing and analyzing claims data to detect trends in suits filed against MPD officer and with making training or other recommendations to the Department in light of these trends. For example, based on its review of claims data earlier this year, ORM observed that a large proportion of civil claims involving MPD officers related to traffic accidents and collisions and that, therefore, additional emphasis on driver training and safety may be warranted. Overall, we found that MPD achieved substantial compliance with paragraph 75's requirements related to the tracking of civil claims.

(7) Officer Reporting of Arrests and Misconduct

Paragraph 76 of the MOA required 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

¹³⁶ See OIM Twelfth Quarterly Report at 45-46; OIM Fourteenth Quarterly Report at 53; OIM Nineteenth Quarterly Report at 72; OIM Twenty-third Quarterly Report at 56-57.

¹³⁷ Civil Lawsuits and Claims Tracking Standard Operating Procedure, No. 2008.1, at 1.

suit regarding off-duty conduct that alleges physical violence, racial bias, dishonesty, or fraud by the officer.

Last year, we held a series of discussions with ORM regarding the development of an audit program to monitor MPD's compliance with the self-reporting requirements of MOA paragraph 76 on a continuing and regular basis. We recommended that MPD implement the following measures to ensure that officers comply with the self-reporting requirements of MPD policy and the MOA:

- MPD should emphasize the Department's self-reporting requirements during in-service training, including, in particular, the requirements related to officers' off-duty conduct.
- MPD should perform criminal history checks of all officers on at least an annual basis.
- ORM should perform regular audits of the civil claims notification process described above.
- MPD's internal misconduct investigators and ORM should routinely evaluate whether subject officers complied with the Department's self-reporting requirements in cases where the officer's on-duty or off-duty conduct may have given rise to civil claims.¹³⁸

The Fourth Modification incorporated all of the above recommendations as the new standards applicable under MOA paragraph 76.¹³⁹ During the first three months of this year, MPD took several steps to satisfy the requirements of MOA paragraph 76, as amended by the Fourth Modification.

First, on February 29, 2008, MPD issued a directive requiring all MPD units to provide daily roll call training during the month of March 2008 that reviewed MPD's policies related to the self-reporting of misconduct.¹⁴⁰ The roll call training program included a summary of the

¹³⁸ OIM Twenty-second Quarterly Report at 67-68.

¹³⁹ Fourth Modification at Section II.E.2.

¹⁴⁰ Memorandum from Victor V. Brito regarding "Daily Roll Call Training for March 2008" (February 29, 2008).

Department's self-reporting requirements as well as a presentation of scenarios designed to illustrate application of the policy to real-life situations. We monitored the roll call training sessions delivered to units in the Sixth District and found that the discussion was interactive and correctly reflected MPD policy. Similar training also was incorporated into MPD's Recruit Officer Training Program for 2008. Moreover, MPD reviewed all of the 36 arrests of MPD officers that occurred in 2007. In each case, MPD was notified of the officer's arrest within 24 hours either by the officer directly or, much more commonly, by the arresting jurisdiction after the officer's identity had been established.

Second, MPD developed a program to complete criminal history background checks by the end of 2007 for all of its officers. We reviewed MPD's background check protocol and found that it was consistent with the searches performed by police agencies in other jurisdictions. MPD completed background checks for approximately 1,000 members by the end of March 2008. As of March 15, 2008, these background checks had produced 7 unresolved "hits" on MPD officers that were referred to IAB for tracking and investigation.

Third, as discussed above, ORM has been involved in developing and monitoring MPD's systems for tracking civil claims against MPD officers pursuant to the Civil Lawsuits and Claims Tracking SOP implemented in March 2008.

Finally, on March 18, 2008, MPD issued a teletype directive notifying "investigative officials of the requirement to document self-reported incidents . . . and incidents reported by other members . . . in their final investigative reports and investigation check sheet."¹⁴¹ This teletype was accompanied by a revised internal investigations Check Sheet and Disposition Sheet that included fields requiring investigators to confirm whether, where applicable, subject officers self-reported or the incident was reported by another member.

We found that these measures, implemented by MPD in response to discussions with OIM and the Fourth Modification's amendment of the requirements of MOA paragraph 76, were sufficient to bring MPD into substantial compliance with this MOA provision.

¹⁴¹ TT-03-065-08 entitled "Reporting of Misconduct to be Documented in Investigations."

c. Substantial Compliance Evaluation

MPD achieved substantial compliance with MOA paragraphs 68 and 78, which required that IAB 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.

We found MPD achieved substantial compliance with MOA paragraphs 69 through 71, which related to communications between MPD and the USAO concerning the investigation of misconduct allegations.

MPD achieved substantial compliance with the requirements in MOA paragraphs 72, 73, and 79 that IAB 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.

MPD achieved substantial compliance with MOA paragraphs 65, 74, and 103, which required 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.

We found that the City and MPD achieved substantial compliance with MOA paragraph 75, which required the City's Office of Corporation Counsel (now the Office of the Attorney General) to notify IAB of civil claims against the City alleging misconduct by an MPD officer or employee.

MPD achieved substantial compliance with MOA paragraphs 76 and 77, as amended by the Fourth Modification.

MPD achieved substantial compliance with MOA paragraph 80, which required that MPD prohibit any officer who has a potential conflict of interest from participating in the conduct or review of that investigation.

Paragraphs 81.a through 81.g of the MOA established substantive requirements for MPD internal investigations. MPD's misconduct investigations substantially complied with the requirements of paragraph 81 of the MOA.

MPD's internal investigations also substantially complied with MOA paragraph 82's requirements that investigators adequately address the conduct of each officer involved in an incident and adequately address all apparent misconduct.

MPD obtained DOJ approval for its Chain of Command Misconduct Investigations Manual and revised Chain of Command Investigation Templates, and, therefore, we found that it achieved substantial compliance with MOA paragraph 83.

MPD did not achieve substantial compliance with MOA paragraph 84, which established training requirements for MPD use of force and misconduct investigators. MPD did not obtain DOJ approval for all of the lesson plans referred to in paragraph 84.

MPD achieved substantial compliance with MOA paragraph 98's requirement that misconduct investigation findings be based upon a preponderance of the evidence standard. We found that virtually all of MPD's completed internal investigations reviewed over the past two years applied the preponderance of the evidence standard.

MPD achieved substantial 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 achieved 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."

MPD achieved substantial compliance with MOA paragraph 102's requirements that each misconduct investigation include 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.

MPD achieved substantial compliance with the MOA's requirements related to unit commander review of chain of command investigations found at paragraphs 66 and 104.

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

A. Requirements

This section of the MOA addressed the procedures designed to help members of the public aggrieved by the actions of MPD officers lodge complaints concerning officer conduct. It related to MPD's role in facilitating the filing of such complaints and also to MPD's responsibility to coordinate with the Office of Police Complaints ("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 required 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;¹⁴²
- 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;

¹⁴² District of Columbia Law 12-208.

- 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.¹⁴³

The MOA also set 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

¹⁴³ The program must include at least the following elements: one open meeting per quarter in each of the PSAs for the first year of the MOA and one meeting in each PSA 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.

- Ensuring that responsibility for receiving all complaints filed directly with MPD belongs to MPD's IAB, 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.¹⁴⁴

¹⁴⁴ OIM Twentieth Quarterly Report at 84-85.

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

Paragraph 94 of the MOA and Section III.B.7 of the revised MOU required that IAB notify OPC within 24 hours or the next business day 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.¹⁴⁵ The revised MOU also required 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.¹⁴⁶

Last year, we reported on MPD's compliance with the requirements of MOA paragraph 94 and MOU Section III.B.7. We found that MPD had not routinely notified OPC on a daily basis of complaints falling within the categories described under Section III.B.7, which are complaints over which MPD and OPC share jurisdiction. Moreover, MPD did not have an adequate system in place even to identify cases about which OPC should be notified.¹⁴⁷ We also reviewed MPD's quarterly reports to OPC, which are required under Section III.B.9 of the MOU. We found MPD's draft quarterly reports required significant improvement in order to meet the requirements of the MOU.¹⁴⁸

In late 2006, MPD assigned a new officer to head the Department's OPC Liaison Unit ("OPCLU").¹⁴⁹ We interviewed representatives from OPC regarding the quality of communication and coordination between their agency and MPD. OPC reported that it was satisfied with the performance of the OPCLU and the quality of information contained in the quarterly reports submitted by MPD to OPC pursuant to the MOU.¹⁵⁰

¹⁴⁵ MOA ¶ 94; MOU at Section III.B.7. The MOU requires IAB 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 required, and the revised MOU requires, IAB to provide notice to OPC "[w]ithin 24 hours, or the next business day."

¹⁴⁶ MOU at Section III.B.9.

¹⁴⁷ OIM Seventeenth Quarterly Report at 78.

¹⁴⁸ *Id.*

¹⁴⁹ MPD January 2007 Progress Report at 27.

¹⁵⁰ OIM Twenty-third Quarterly Report at 65.

Although MPD does not notify OPC of certain types of allegations -- involving harassment; use of unnecessary or excessive force; use of insulting, demeaning, or humiliating language; or discriminatory treatment -- within 24 hours, OPC generally was satisfied with the timeliness of the notifications it received from MPD concerning complaints potentially within the agency's jurisdiction.

In response to a request from MPD, on March 26, 2008, DOJ relieved MPD of MOA paragraph 94's requirement that it notify OPC within 24 hours or the next business day of certain types of citizen complaints over which OPC may have jurisdiction.¹⁵¹ In agreeing to remove the 24-hour notification requirement, DOJ explained that "MPD has effectuated the goals of the requirement" by creating a permanent liaison to OPC whose responsibility it is to address any issues in the notification system between MPD and OPC. DOJ also noted that "both MPD and OPC acknowledge that through improved communication and coordination channels, there has been steady improvement in the timeliness of MPD's provision" of information to OPC concerning citizen complaints.¹⁵²

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 of OPC's written request.¹⁵³ During the seventeenth quarter, OPC reported that 9 of the 64 document request responses it received from MPD were timely, which is a compliance rate of approximately 14%.¹⁵⁴ That rate was similar to the low rates we observed in prior quarters.¹⁵⁵ Moreover, as discussed below, it took until the last quarter of 2006 for MPD and OPC to resolve the substantial backlog of OPC document requests for which MPD had yet to provide any response.

During the fourteenth quarter, we monitored MPD's systems for tracking and responding to requests for information submitted by OPC. We reported that MPD did not have a centralized system for logging and

¹⁵¹ Letter from Tammie M. Gregg to Inspector Matthew Klein regarding "24 Hour Notification Requirement of MOA Paragraph 94" (March 28, 2008).

¹⁵² *Id.* at 2.

¹⁵³ MOU at Section III.D.3.

¹⁵⁴ OIM Seventeenth Quarterly Report at 78-79.

¹⁵⁵ *See, e.g.*, OIM Fourteenth Quarterly Report at 65-66.

tracking OPC document requests or any means by which to identify the number of requests that are outstanding. We also found that, although MPD often receives duplicative requests from OPC, the Department had no database containing information previously provided to OPC.¹⁵⁶ During the fifteenth quarter, MPD reported that, in response to these concerns, it had 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.¹⁵⁷

Last year, we met with OPC to discuss MPD’s failure to produce documents in response to the agency’s requests in a timely manner. OPC’s internal tracking log of document requests to MPD indicated a substantial backlog of unfilled requests stretching back many months. We met with the then OPC liaison, who had been in the position since January 2006. We learned that the OPC liaison had discontinued use of the IQ system to track OPC document requests and had returned to a paper-based system that did not include a procedure for tracking the status of each request.¹⁵⁸ The OPC liaison also told us that her efforts to obtain information responsive to OPC requests were hampered by several factors, including her inability to access certain internal information systems, the lack of a designated point person in each of the districts responsible for gathering documents to be produced to the OPC, and insufficient sharing of information between MPD and OPC regarding pending requests.

During the last quarter of 2006, MPD appointed a new head of the OPCLU, who was successful in working with units in MPD’s districts and with OPC to eliminate the substantial backlog of outstanding OPC document requests that had grown over time.¹⁵⁹ MPD reported that the OPCLU streamlined the process of responding to OPC document requests by implementing an automated system by which OPC requests now are made electronically via an e-mail account devoted specifically to receive such requests. The OPCLU now reviews each request received from OPC

¹⁵⁶ *Id.* at 66.

¹⁵⁷ OIM Fifteenth Quarterly Report at 70.

¹⁵⁸ MPD reported that it learned, as a result of an ORM audit in March 2006, that the OPC liaison had stopped using the IQ system. MPD also reported that the OPC liaison was not authorized to discontinue use of the IQ system and that she had been instructed to immediately resume using the IQ system to track OPC requests. OIM Sixteenth Quarterly Report at 75.

¹⁵⁹ MPD January 2007 Progress Report at 27.

and then forwards the request via e-mail to the appropriate point of contact in each of the Department's districts or units. This new system eliminated the cumbersome paper-based process that existed previously and that resulted in a substantial backlog of unfulfilled requests.¹⁶⁰

Over the past year, MPD devoted significant attention to this area. MPD appointed a new OPCLU, eliminated the backlog of OPC document requests, and implemented a new electronic system for receiving and responding to OPC's document requests. We reviewed the OPCLU's electronic document request tracking system, which appeared to be both efficient and effective.¹⁶¹ The new system is designed to enable the OPCLU to gather information in response to OPC document requests within the timetable provided under the MOU; it is a substantial improvement over MPD's historical paper-based system for receiving, tracking, and responding to OPC requests. During our recent monthly meetings of the parties to the MOA, OPC consistently expressed satisfaction with the current system by which MPD responds to requests for information from OPC.

**c. Cooperation with OPC Officer
Appearance Requests and Mediation**

The MOU requires MPD to facilitate the process of ensuring that officers appear as requested for OPC proceedings, such as interviews, mediation sessions, complaint examination conferences, and hearings.¹⁶² The MOU also provides that the rescheduling of officers appearances for OPC proceedings will be allowed under defined limited circumstances.¹⁶³ When an officer fails to appear for an OPC proceeding, OPC may provide notice of the failure to appear to MPD and, "[u]pon receipt of such notice, MPD will cause appropriate disciplinary action to be instituted against the officer, and will notify OPC of the action or discipline undertaken" ¹⁶⁴

¹⁶⁰ *Id.*

¹⁶¹ OIM Twentieth Quarterly Report at 88.

¹⁶² MOU ¶¶ III.I.3.

¹⁶³ *Id.* ¶ III.J.1-2.

¹⁶⁴ *Id.* ¶ III.J.5. Also, the District of Columbia Code provides that, if an officer fails to cooperate in good faith with an OPC mediation, "[t]he Police Chief shall cause appropriate disciplinary action to be instituted against the police officer for such

In 2006, we reported that, in 2005, OPC issued 19 memoranda, entitled “Notification of Officer Failure to Cooperate,” to MPD requesting that MPD initiate disciplinary action against officers for failing to cooperate with OPC investigations or mediations of citizen complaints. We requested information from MPD regarding all 19 of these notifications to determine what, if any, actions were taken in response. MPD was unable to locate any records related to 2 of the 19 notifications. MPD performed its own misconduct investigations with respect to the remaining 17 notifications. The outcomes of those 17 investigations were as follows: 7 sustained, 7 exonerated, 2 insufficient facts, and 1 unfounded. MPD took disciplinary action in only 5 of the 7 cases in which it determined that an officer failed to cooperate with an OPC proceeding. In other words, we found that an OPC Notification of Officer Failure to Cooperate resulted in disciplinary action against the subject officer in 26% of the cases referred to MPD in 2005.¹⁶⁵

On December 19, 2006, OPC sent former Chief Ramsey a letter expressing “concern that the Metropolitan Police Department (MPD) has failed or refused to take disciplinary action against officers in an alarmingly high proportion -- 92% -- of cases where the Office of Police Complaints (OPC) found that officers had not cooperated with OPC’s investigation or mediation of police misconduct complaints.”¹⁶⁶ OPC requested that MPD take corrective action, including disciplinary action against officers that OPC determined had failed to cooperate fully with OPC’s investigation, adjudication, or mediation of a complaint.¹⁶⁷

The issue of officer cooperation with OPC investigations was discussed during the OIM’s March 5, 2007 monthly meeting with the parties to the MOA. It appeared that the primary objection that certain officers had raised with respect to the OPC investigative process concerned the OPC-prepared narrative written statements that are to be signed by officers. These officers were concerned that the written statement prepared by OPC investigators for their signature did not

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a violation and shall notify the Executive Director [of OPC] of the outcome of such action.” D.C. Code § 5-1110(k).

¹⁶⁵ OIM Eighteenth Quarterly Report at 93.

¹⁶⁶ Letter from Philip K. Eure to Charles H. Ramsey, entitled “Failure to Cooperate by MPD Officers” (December 19, 2006). OPC’s 92% figure is based on MPD’s response to 38 failure to cooperate notices issued by OPC to MPD during 2006.

¹⁶⁷ *Id.*

constitute a verbatim record of the officer's statement, even though OPC's procedure is to permit the officer to review and revise the statement prior to signing it.

After a series of discussions with OPC, Chief Cathy L. Lanier, on April 11, 2007, issued a Department-wide teletype clarifying for MPD officers OPC's procedures for taking statements and making clear that OPC's procedures are "reasonable."¹⁶⁸ To reassure MPD members of the reasonableness of OPC process for taking statements from officers, the teletype described the process as follows:

- Together with the officer, the OPC investigator types and confirms the accuracy of each sentence of the statement;
- The officer can add, subtract, or modify the statement until it is worded the way they want;
- After the statement is completed, officers can again review it and make further changes until they are satisfied;
- The OPC statement form clearly states that the narrative *is not, nor is it intended to be, [a] complete verbatim record of the questions asked and the answers provided during the interview.*¹⁶⁹

Finally, the teletype stated that "OPC has demonstrated a good-faith effort to process complaints against our members in a fair manner, but we must meet our obligation to cooperate as well."¹⁷⁰ During our April 12, 2007 monthly meeting of the parties to the MOA and in recent discussions with the OIM, representatives from OPC indicated that they were quite satisfied with the teletype issued by Chief Lanier and considered the issue of cooperation with respect to the taking of officer statements resolved.¹⁷¹

¹⁶⁸ Teletype No. TT 04-035-07 (April 5, 2007) at 3.

¹⁶⁹ *Id.* (emphasis in original).

¹⁷⁰ *Id.*

¹⁷¹ OIM Twenty-third Quarterly Report at 70.

2. Public Information and Outreach (MOA ¶¶ 87-92, 94)

On January 31, 2003, DOJ approved the communications plan developed by MPD's Office of Corporate Communications. MPD's Web site contains information concerning the citizen complaint process, including instructions on how to file a complaint with both IAB and OPC, as well as downloadable complaint forms.¹⁷²

On February 10, 2005, DOJ approved the Processing Citizen Complaints 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 submitted the revised Processing Citizen Complaints General Order to DOJ for approval on May 16, 2006, and DOJ approved the general order on August 29, 2006.¹⁷³ However, prior to issuing the approved general order, MPD found that changes to the general order that had been requested by OPC were not incorporated into the version of the general order approved by DOJ. MPD reported that it provided OPC with a copy of the revised Processing Citizen Complaints General Order for its review in June 2007 and that it was working to resolve OPC's comments to the general order.¹⁷⁴ MPD returned the revised Processing Citizen Complaints General Order to DOJ on January 10, 2008, but it did not obtain approval for the General Order prior to the termination of the MOA.

As detailed in our quarterly reports, MPD has not yet achieved substantial compliance with the MOA's requirements related to community outreach. Recent monitoring by the OIM and ORM found that MPD continues to fall short in achieving compliance with the various specific community outreach requirements of the MOA, including (1) the carrying of citizen complaint information and forms in patrol cars, (2) the distribution of citizen complaint outreach information and forms to public libraries, and (3) the promotion of community meetings through the distribution of advertisements to specified public areas such as schools, libraries, grocery stores, and community centers.¹⁷⁵

¹⁷² http://mpdc.dc.gov/serv/citizencomplaints/file_complaint.shtm.

¹⁷³ OIM Eighteenth Quarterly Report at 94.

¹⁷⁴ MPD October 2007 Progress Report at 1.

¹⁷⁵ See OIM Twenty-second Quarterly Report at 81-88.

While our monitoring focused on MPD's compliance with the specific community outreach-related requirements that were set forth in MOA paragraphs 87 through 92 and 94, MPD expressed its concern that (1) not all of the technical requirements of the MOA reflected the most efficient or best practices in this area and (2) it implemented a number of measures, not specifically provided for under the MOA, that have been effective in promoting the MOA's community outreach goals. Last year, the parties agreed "to re-align the current substantial compliance measures to reflect other equivalent steps MPD has taken to achieve the results intended by the original provisions."¹⁷⁶ The Fourth Modification, therefore, provided, specifically as to these provisions, that "MPD will identify in writing the steps it routinely takes to satisfy these requirements and will thereafter be evaluated against those criteria by the OIM."¹⁷⁷

On January 12, 2008, MPD provided DOJ and OIM with the first of two letters identifying MPD's community outreach efforts in accordance with the Fourth Modification.¹⁷⁸ This letter identified "steps routinely taken by MPD to promote community policing, to ensure our members respect the civil rights of our community members, and to provide information to our community members about a wide range of MPD issues, including the process for filing citizen complaints." The measures outlined in this letter included the following:

- Operation FREE. MPD reported that Operation FREE stands for "Focused Redeployment Enhancement Effort," which involves placing personnel at MPD's MPA in the community four times annually in order to expose recruits to community interaction before graduation from the MPA.
- Operation Full Stride. MPD reported that Operation Full Stride began in October 2007 and involves approximately 200 officers assigned to go door-to-door and person-to-person to interact with citizens in their PSAs and distribute officer contact information in order to build relationships and establish familiarity.

¹⁷⁶ Fourth Modification at Section II.E.3.

¹⁷⁷ *Id.*

¹⁷⁸ Letter from Maureen O'Connell to Tammie Gregg and Michael Bromwich regarding "MOA Modification 4, Community Outreach Provisions" (January 12, 2008).

- MPD Listservs. Each of the MPD districts operates a listserv through which messages and bulletins are distributed to community members who have subscribed to the listserv. MPD reported that, as of January 2008, the listservs together had approximately 4,691 subscribers.
- PSA Meetings. As described in detail in our previous quarterly reports, MPD holds regular community outreach meetings in each of its PSAs.¹⁷⁹
- Special Liaison Unit and New MPD Policy on MPD Interactions with Transgender People. MPD reported that it consolidated and centralized the Department's four special community liaison units into one unit under the Executive Office of the Chief of Police.¹⁸⁰ MPD also recently issued General Order PCA 501.02, "Handling Interactions with Transgender Individuals," which is intended to ensure that MPD officers treat transgender people with fairness, dignity, and respect.
- Other Measures. MPD reported that it has taken various other measures to provide information to and improve communication with the public, including ensuring that all MPD facilities properly display posters and have available OPC and MPD complaint forms; providing all patrol officers with business cards containing their contact information, including badge numbers; and distributing cellular telephone numbers for watch commanders and PSA lieutenants to the public.

At the request of OIM, on March 6, 2008, MPD provided DOJ and the OIM with a second letter specifically identifying the steps MPD takes to disseminate information to the public concerning the citizen complaint process.¹⁸¹ In this letter, MPD outlined the following steps that the City and it have taken to disseminate information about the citizen complaint process.

¹⁷⁹ See, e.g., OIM Twenty-second Quarterly Report at 86-88.

¹⁸⁰ The four special liaison units are the Gay and Lesbian Liaison Unit ("GLLU"), the Latino Liaison Unit ("LLU"), the Asian Liaison Unit ("ALU"), and the Deaf and Hard of Hearing Unit ("DHHU").

¹⁸¹ Letter from Maureen O'Connell to Tammie Gregg and Michael Bromwich regarding "MOA Modification 4, Supplemental Community Outreach Provisions" (March 6, 2008).

- MPD Web site. The Department's Web site provides an overview of the police complaints process, allows members of the public to download an MPD citizen complaint form, and provides a link to the OPC Web site.
- MPD Listservs. During the week of March 10, 2008, MPD distributed a message concerning the complaints process to all listserv subscribers. MPD provided us with a copy of the message that was disseminated through its listservs.
- MPD hotline and e-mail. MPD established a toll-free hotline and e-mail account through which members of the public can submit citizen complaints, including anonymous complaints.¹⁸²
- PSA meetings. As discussed above, each of the PSAs must hold monthly community outreach meetings, and among the issues to be regularly addressed at these meetings is the citizen complaints process.
- MPD facilities and libraries. Under the MOA, MPD must distribute citizen complaints materials to all of its district headquarters and substations as well as to public libraries. Our monitoring earlier this year found that such materials were prominently displayed and available at these public facilities.
- Operation Full Stride. As described above, Operation Full Stride is intended by MPD to foster close personal interactions between MPD officers and members of the community. MPD reported that it intends in the future to provide officers participating in Operation Full Stride with "palm cards" that include information about the complaints and commendation process.
- Office of Police Complaints. OPC is an independent agency of the City government that provides members of the public with an alternate venue for lodging complaints against MPD officers. MPD reports that OPC received approximately 440 complaints from members of the public in 2007.

¹⁸² MPD's complaints hotline number is 1-800-298-4006, and the e-mail account is citizen.complaints@dc.gov.

Earlier this year, we reviewed MPD's community outreach and citizen complaints program in light of the measures described in its January 12, 2008 and March 6, 2008 letters. We found that MPD has a robust program for community outreach that addressed the goals underlying these provisions of the MOA. One area of particular note that we observed in recent months was the significant improvement in the attitude and "customer service" provided by desk officers and other personnel in MPD's district stations and substations. We found that MPD officers over the past year were remarkably proactive in greeting people entering these facilities and in offering assistance, which reflects very well on the Department and is a central component in building effective community outreach and relations.

The only element of MPD's community outreach program with respect to which -- despite significant efforts by MPD -- we continued to find deficiencies related to the public advertisement of community outreach meetings.¹⁸³ MPD required each district to identify 10 locations, covering all PSAs in that district, at which standardized posters advertising its community outreach meetings would be posted. Earlier this year, we monitored these designated locations in PSAs in the Fifth, Sixth, and Seventh Districts at a time when a community outreach meeting was scheduled for each of the PSAs. We identified three locations, which were designated by MPD as advertisement sites, that did not have posters notifying the public of the community outreach meeting schedule. We reported these findings to MPD, and ORM performed a follow-up review at these locations. MPD believes that members of the public may have removed the posters from certain locations and is considering alternatives to those postings.

3. Receipt of Complaints by OPC (MOA ¶¶ 93-95)

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. Last quarter, we reviewed OPC's records related to its hotline auditing program during the period January through November 2007. OPC continues to digitally record all calls placed over the OPC hotline, including calls returned by OPC staff to potential complainants in response to messages left by members of the public at times outside of OPC's hours of operation. Each month, an OPC supervisor audits all of these calls and records the results of the

¹⁸³ MOA ¶ 91.

audit on a spreadsheet. These spreadsheets capture data including the time of the call, the OPC staff member who responded to the call, an assessment of whether the OPC staff member was courteous and responded to the caller appropriately, and the supervisor's notes regarding each call. The only periods for which OPC was not able to provide hotline audit data were occasions when OPC experienced technical malfunctions with its recording software.¹⁸⁴

Although OPC maintained and audited a hotline in substantial compliance with MOA paragraph 93's requirements, OPC's hotline remained a relatively minor avenue for the agency's receipt of complaints from the public. During the period January 1, 2007 through November 30, 2007, OPC received 410 complaints from the public. Only 17 -- or 4.1% -- of these complaints originated over the hotline.

OPC's offices currently are located at 1400 I Street, N.W., Suite 700, Washington, DC 20005. We visited OPC's offices on several occasions and found that the agency's space is well suited to the agency's mission.¹⁸⁵ OPC appears to have ample appropriate space in which to receive and conduct interviews of complainants, hold mediation sessions between officers and complainants, and work on investigations of complaints lodged with the agency. Moreover, OPC's current offices are accessible by Metro and much easier to locate than its previous offices.¹⁸⁶

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

Beginning with our Eighth Quarterly Report, we reported findings concerning the quality and timeliness of OPC's investigations of citizen complaints alleging misconduct on the part of MPD officers.¹⁸⁷

Most recently, during the twenty-first quarter, we reviewed a sixth sample of OPC investigations. We changed the methodology by which we selected the cases for our review to make our OPC sample similar to the samples we drew each quarter of MPD's internal investigations. Rather

¹⁸⁴ OIM Twenty-third Quarterly Report at 73-74.

¹⁸⁵ See MOA ¶¶ 86, 95.

¹⁸⁶ OIM Sixteenth Quarterly Report at 83.

¹⁸⁷ See OIM Twenty-third Quarterly Report at 74-77 for a summary of each of our periodic reviews of OPC investigations.

than select only cases closed during a defined time period, we adjusted our methodology so that we selected a sample of 30 OPC cases opened between July 1, 2006 and September 30, 2006. The reason for the change was to allow us to evaluate the timeliness of OPC's current investigations -- i.e., whether the investigations opened during this time period were completed within the 135-day window .

We found, generally, that OPC's investigations continued to be thorough and complete.¹⁸⁸ We found that 89.7% of the investigations we reviewed during the twenty-first quarter were complete and that 96.6% were sufficient. The most significant deficiency we found in OPC's investigations related to timeliness. Only 60.0% of the investigations we selected from the period July 1, 2006 through September 30, 2006 either had been completed within the required 135-day window or contained documented special circumstances justifying the delay in closing the investigations.

Earlier this year, we reviewed MPD's progress in clearing the backlog of complaints submitted to OPC. Between June 6, 2007 and December 31, 2007, OPC completed 180 investigations. The average time it took to complete the investigations closed during this period was 244 days, which was an improvement over the 289-day average for the completion of investigations during the previous period we reviewed, August 16, 2006 through June 5, 2007.¹⁸⁹ Although OPC had not yet come close to bringing its average time for completing investigations within the 135-day window required under the MOA, it continued to make progress in clearing its backlog of cases and completing investigations more promptly.

C. Substantial Compliance Evaluation

We found that the City and MPD achieved substantial compliance with MOA paragraph 85, which required the development of a plan delineating the roles and responsibilities of OPC and MPD. For the reasons described above, the cooperation and information flow between MPD and OPC under the revised MOU was quite good for over a year.

The OIM found that the City did not appear to be in substantial compliance with MOA paragraph 86, which required the City to provide OPC with sufficient qualified staff, funds, and resources to perform its

¹⁸⁸ OIM Twenty-first Quarterly Report at 92.

¹⁸⁹ OIM Twenty-third Quarterly Report at 77.

functions under the MOA and District of Columbia law. Although it made substantial progress, OPC continued to have a backlog of investigations that it was working to resolve, and there was room for improvement in the timeliness of its current investigations. The completeness and sufficiency of the investigations finished by OPC remained quite good, although we found that there also was room for improvement in the completeness of these investigations.

We found that MPD achieved substantial compliance with MOA paragraphs 87 through 90, and 92, which related to citizen complaints and its community outreach program. Pursuant to the Fourth Modification, the parties agreed to re-align the MOA's requirements in this area based on the initiatives MPD developed to promote the goals of these provisions of the MOA. We reviewed MPD's community outreach and citizen complaints programs in light of these re-aligned requirements and found that -- with the exception of the advertisement of community outreach meetings required under MOA paragraph 91, where there are still deficiencies -- MPD established a robust community outreach program that satisfied the goals of the MOA.

We found that the City achieved substantial compliance with MOA paragraph 93, which required the establishment of a citizen complaint hotline operated by OPC and audited through a tape recording procedure.

MPD did not achieve substantial compliance with MOA paragraph 94 because it did not obtain DOJ approval for the Processing Citizen Complaints General Order before the termination of the MOA.

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

The City achieved substantial compliance with MOA paragraph 96, which related to the training of OPC investigators.

We found that the City achieved substantial compliance with MOA paragraph 97, which required OPC to develop and obtain DOJ approval of an investigations manual.

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

A. Requirements

The MOA, as modified by Joint Modification No. 1, required that, by the week of November 17, 2002, subject to approval by DOJ, MPD must revise and update its policy governing officer discipline.¹⁹⁰ Specifically, the policy must:

- Prescribe when non-disciplinary action is appropriate;
- 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. 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 Fraternal Order of Police (“FOP”) in working collaboratively to resolve their differences and to identify issues for collective bargaining.”¹⁹¹ 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

¹⁹⁰ MPD’s disciplinary policy is General Order 1202.1 (Disciplinary Procedures and Processes).

¹⁹¹ Letter from Tammie Gregg to Captain Matthew Klein regarding “Disciplinary General Order” (August 25, 2003).

and corrective action’ as required by MOA paragraph 105.”¹⁹² 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.¹⁹³ 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, 2005.¹⁹⁴ MPD submitted the draft Disciplinary Process General Order to DOJ on December 29, 2005.¹⁹⁵ DOJ provided MPD with comments to the draft general order on March 1, 2006, and MPD returned a revised draft general order to DOJ on March 23, 2006. During the seventeenth quarter, MPD reported that it advised DOJ that it would publish the current version of the Disciplinary Process General Order and work with DOJ to make any necessary revisions to the general order through the general order revisions process.¹⁹⁶ On October 17, 2006, DOJ provided its latest round of comments on the Disciplinary Process General Order.

On March 30, 2007, MPD submitted to DOJ a revised Disciplinary Process General Order as well as a draft IAB Tracking of Disciplinary Action SOP intended to provide greater detail regarding MPD’s process for establishing a centralized system for documenting and tracking discipline in accordance with paragraph 105 of the MOA. DOJ returned comments on July 16, 2007. On January 9, 2008, MPD submitted another revised draft of the Disciplinary Process General Order to DOJ.

The final outstanding issue concerning the Disciplinary Process General Order related to the time period for which an individual officer’s disciplinary history must be maintained in PPMS.¹⁹⁷ Ultimately, MPD and DOJ resolved this issue as a matter of interpretation of the relevant

¹⁹² *Id.*

¹⁹³ Letter from Maureen O’Connell to Tammie Gregg regarding “MOA Paragraph 105, Disciplinary Process” (July 29, 2004).

¹⁹⁴ MPD April 2007 Progress Report at 13.

¹⁹⁵ *Id.* at 14.

¹⁹⁶ *Id.*

¹⁹⁷ See MOA ¶ 113.

provisions of the MOA, and DOJ found that the Disciplinary Process General Order and MPD's plan for the retention of records related to individual officers' disciplinary histories effectuated the spirit of the relevant provisions of the MOA without the need for such records to be maintained in PPMS for a period of five years.¹⁹⁸ Accordingly, on March 26, 2008, DOJ provided its final approval of the Disciplinary Process General Order.¹⁹⁹

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.²⁰⁰ 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.

Although MPD established the UFRB as a body for the review of investigations involving uses of force, prior to the fourteenth quarter we 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.²⁰¹ 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

¹⁹⁸ Letter from Shanetta Y. Cutlar to Cathy L. Lanier regarding "Requested Modification to a Requirement of MOA Paragraph 113" (March 26, 2008).

¹⁹⁹ *Id.*

²⁰⁰ OIM Ninth Quarterly Report at 50-55.

²⁰¹ MOA ¶ 67.

administered. Finally, we also found MPD lacked a centralized and formal system for tracking discipline and remedial training.²⁰²

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 DRD 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 MPA for remedial training.²⁰³

In sum, we found that MPD's disciplinary and remedial training tracking systems improved significantly; however, deficiencies remained. 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, DRD, MPA, Human Resources (for Time and Attendance Court Information System records), and the officer's unit of assignment, where personnel files are maintained. Accordingly, we concluded at that time that MPD had not established a centralized system for documenting and tracking all forms of disciplinary and corrective action, as required under paragraph 105 of the MOA.²⁰⁴

Last year, we reviewed all 36 UFRB determinations from 2006 that required either disciplinary action or remedial action in order to assess whether MPD in fact implemented the Board's findings. We found that MPD either had taken disciplinary action or had required the subject officers to participate in remedial training in all 36 of these cases. We also found that the DRD maintained an accurate and complete centralized record for each of these cases. This was a significant achievement for MPD and a marked improvement over the disciplinary process that we had observed in past quarters.²⁰⁵

One area in which there remains significant room for improvement is the entry of disciplinary information into PPMS. In only one of these 36 cases from 2006 did we find that MPD had entered the final

²⁰² *Id.* ¶ 105.

²⁰³ OIM Thirteenth Quarterly Report at 76-78.

²⁰⁴ *Id.* at 78.

²⁰⁵ OIM Twenty-first Quarterly Report at 98.

disposition of the use of force investigation and review into PPMS. If PPMS is to fulfill its intended function as an early warning system enabling MPD supervisors to identify potentially at-risk officers, it is critical that current, accurate, and complete disciplinary information be entered into the system.

C. Substantial Compliance Evaluation

MPD did not achieve substantial compliance with MOA paragraph 105 regarding disciplinary and non-disciplinary actions. Although MPD's now appears to have a centralized repository for all corrective actions and it obtained final DOJ approval for the Disciplinary Process General Order, we did not have the opportunity to monitor MPD's compliance with the newly-approved general order prior to the termination of the MOA.

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

A. Requirements

Under the MOA, MPD was 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 specified the information that must be captured to ensure that PPMS achieves these objectives. This information included 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 required 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 required 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, IAB 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, 2005.²⁰⁶

In 2004, MPD suffered a significant setback with respect to the development of PPMS.²⁰⁷ By teleconference on March 8, 2004, MPD

²⁰⁶ Joint Modification No. 2 to June 13, 2001 Memorandum of Agreement (September 30, 2003).

²⁰⁷ OIM Eighth Quarterly Report at 54-55.

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 budgetary allocation in fiscal year 2005 to re-pay the loan.²⁰⁸ 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 2004.²⁰⁹

On March 1, 2005, DOJ, MPD, and the City executed Joint Modification No. 3 to the MOA (the "Third Modification"), which established a new timeline for PPMS development and relieved MPD from breach status in this area of the MOA. The Third Modification was the product of substantial effort by MPD, including by former Chief Ramsey personally, the City, DOJ, and the PPMS vendor, IBM/Motorola.

In 2006, MPD completed its Department-wide rollout of PPMS. The Third Modification established August 31, 2006 as the deadline for the complete rollout of PPMS. MPD, however, obtained a 30-day extension to that deadline by invoking paragraph 10 of the Third Modification regarding vendor failure. MPD went "live" Department-wide with Phase I of PPMS on September 12, 2006.²¹⁰ Last year, MPD reported that it had installed PPMS on mobile laptop computers deployed to 132 officers in the field.²¹¹

Due to deficiencies detected during a review of PPMS in January 2006, DOJ required that it have the opportunity to perform additional Beta testing of PPMS prior to the Department-wide rollout of the Phase I

²⁰⁸ Letter from Captain Matthew Klein to Chief Shanetta Cutlar (March 15, 2004).

²⁰⁹ 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).

²¹⁰ OIM Eighteenth Quarterly Report at 112. "Phase I" refers to the deployment of a version of PPMS that is designed to contain all of the functionality required under the MOA. During the second phase of PPMS development and deployment, MPD intends to introduce additional functionality to PPMS that addresses requirements developed internally by MPD that are not related to the MOA.

²¹¹ MPD April 2007 Progress Report at 40.

system.²¹² However, DOJ did not have the opportunity to perform additional Beta testing prior to the completion of the Phase I PPMS rollout last year.

MPD provided the OIM with a full demonstration of PPMS's functionality during the eighteenth quarter. PPMS appears to be a well-designed and relatively user-friendly application with enormous potential. We found that there was not sufficient historical data entered in PPMS to permit the system to be used as an "early warning" management tool capable of identifying officers who are "at risk" due to their individual use of force records. We also found that PPMS was unable to perform the range of searches and associations required under the MOA. We reported that MPD was working with the PPMS development vendor to create "standard" reports tied to information relevant under the MOA. We also identified a non-technical issue that might have an impact on the effectiveness of PPMS. We found that MPD had not assigned a single supervisor to be responsible for monitoring the information contained in and notices generated by PPMS concerning each MPD officer. Instead, PPMS forwarded information about an individual officer to all supervisors in the officer's unit. Unless a specific supervisor is assigned responsibility for each officer, there is a risk that reports and notices generated by PPMS will be overlooked or disregarded without necessary action being taken.²¹³

Last year, MPD procured reporting software, known as Intelligov, that it expects will be a user-friendly reporting tool allowing MPD to generate standard reports as well as to perform *ad hoc* queries in the PPMS database.²¹⁴ MPD continued to work with its vendor to develop a reporting tool to enable PPMS to perform the full range of analyses required under the MOA.²¹⁵

Unfortunately, MPD experienced complications with respect to PPMS that delayed the ongoing development and implementation of the system. First, the PPMS vendor was delayed in delivering certain Phase II system enhancements until September 15, 2007. Second, and more significantly, PPMS suffered a critical system failure that forced MPD to shut down two critical components of PPMS, the Supervisory

²¹² OIM Seventeenth Quarterly Report at 100-01

²¹³ OIM Eighteenth Quarterly Report at 113.

²¹⁴ MPD April 2007 Progress Report at 40.

²¹⁵ MPD July 2007 Progress Report at 12.

Support Program (“SSP”) and Personnel modules.²¹⁶ Although the PPMS vendor developed a software patch to address the errors that led to the system failure, which was installed in October 2007, similar system failures occurred with the patch and MPD was again forced to shut down the SSP and Personnel modules last fall.²¹⁷ MPD reported that the PPMS vendor expected to provide fixes for the SSP earlier this year.²¹⁸

Finally, MPD submitted a draft of its PPMS General Order to DOJ on June 30, 2006. MPD found that additional changes to the general order were necessary to ensure that it is consistent with the PPMS SOP document and, therefore, submitted revised versions of the PPMS General Order and SOP to DOJ for approval on November 14, 2006.²¹⁹ On March 30, 2007, MPD notified DOJ that MPD planned to publish the general order and SOP prior to receiving DOJ’s approval in order to provide its members with guidance regarding PPMS procedures and the SSP requirements. MPD published the general order and SOP on April 11, 2007. However, MPD also notified DOJ that it remains committed to obtaining DOJ approval for both documents and will issue revisions as necessary.²²⁰

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 provided DOJ with another update regarding its efforts to revise the PES.²²¹

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

²¹⁶ E-mail from Maureen O’Connell regarding “MOA 106-117: PPMS Errors, SSP and Personnel Modules” (August 21, 2007).

²¹⁷ MPD January 2008 Progress Report at 12.

²¹⁸ *Id.*

²¹⁹ *Id.* at 13.

²²⁰ MPD October 2007 Progress Report at 14.

²²¹ OIM Nineteenth Quarterly Report at 108.

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.²²²

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. DOJ provided additional comments on March 2, 2006. MPD's March 31, 2006 response included all revised materials related to the PES except for the revised general order, which MPD submitted to DOJ on April 3, 2006.

On August 17, 2006, DOJ approved MPD's Performance Management System Sergeant Performance Standards and Performance Standards Conversion Table as well as the revised Performance Management System for Sworn Members General Order. DOJ also offered approval of MPD's Job Performance Form pending the inclusion of one additional comment.²²³

On September 29, 2006, MPD submitted revisions to the Performance Management Program ("PMP"), the evaluation system used for sworn members the rank of lieutenant and above, and to Form 62-E which is used for performance evaluations of sworn officers and to describe job-related behavior. MPD also provided DOJ with a copy of a letter from former Chief Ramsey to the Director of the District of Columbia Office of Personnel ("DCOP") requesting that DCOP adopt DOJ's requested revisions to the PMP.²²⁴ MPD reported that, because it intended to adopt all of DOJ's recommendations, it would be using the

²²² *Id.*

²²³ Letter from Tammie M. Gregg to Inspector Matthew Klein (August 17, 2006).

²²⁴ Letter from Charles H. Ramsey, Chief of Police, to Lisa R. Martin, Director of D.C. Office of Personnel (September 26, 2006).

enhanced PES for evaluation of sworn members during fiscal year 2007, which began on October 1, 2006.²²⁵ DOJ returned comments regarding the PMP and the revised Form 62-E on November 14, 2006.²²⁶ On June 28, 2007, MPD submitted examples of its updated PMP performance plan and performance evaluation form for DOJ's review and approval.²²⁷ DOJ provided its final approval of MPD's performance evaluation program on July 31, 2007.²²⁸

Last fall, we received a large volume of data from MPD related to its 2006 performance evaluation cycle. This data, obtained from MPD's Office of Human Resource Management ("OHRM"), listed 3,031 officers in MPD's Performance Management System ("PMS") for sworn members at the rank of sergeant and below. This spreadsheet reflected that 82 officers did not receive evaluations in 2006. MPD's explanation for the reason most (52) of these officers failed to receive evaluations was that they were assigned to details away from their normal units and, therefore, it may not have been clear which supervisors were responsible for the officers' formal evaluations.²²⁹

OHRM's data related to its PMP evaluation system for lieutenants and above reflected that, of the 248 members included in PMP, three (two lieutenants and one captain) did not receive evaluations in 2006. MPD provided no explanation as to why these members were not evaluated.

More troubling, however, was that, according to OHRM, MPD had a total of 3,628 sworn members in 2006. Therefore, it appeared that 349 officers were not included in PMS or PMP at all. These 349 members, combined with the 82 officers reflected in PMS and PMP as having not received evaluations, resulted in a total of 431 officers -- or 12% of MPD's sworn members -- who may not have been evaluated during the 2006

²²⁵ MPD January 2007 Progress Report at 15.

²²⁶ Letter from Tammie M. Gregg to Inspector Matthew Klein (November 14, 2006).

²²⁷ MPD January 2008 Progress Report at 13.

²²⁸ *Id.*

²²⁹ Other explanations given for MPD's failure to evaluate certain officers were that they were on extended sick leave (2), on military leave (3), probationary officers (13), working full time for the FOP and therefore not subject to evaluation by MPD (4), subject to an order not to have contact with members of the public (4), on administrative leave (3), and on limited duty (1). In individual cases, these explanations may constitute legitimate reasons for exempting certain officers from the evaluation process.

cycle. MPD reported that it believed that most of these officers received evaluations, but, due to confusion among units or supervisors, the evaluations were not forwarded to OHRM.

Earlier this year, we reviewed similar data provided by OHRM relating to the 2007 PMS and PMP performance evaluation cycles. In general, we found the performance evaluation data for 2007 to be more complete than the 2006 data. For example, with respect to the PMS evaluation system for members at the rank of sergeant and below, MPD provided us with performance evaluation data for 3,269 members, which was very close to the 3,327 members reflected on MPD's roster as of December 31, 2007.²³⁰ We found that only 28 (or 0.8%) of these officers had not received a performance rating during 2007. The data raised some questions about the evaluation process, however. For example, 1,899 officers (approximately 58%) received an "exceeds expectations" rating, 459 officers (approximately 14%) received a "meets expectations" rating, and only 1 officer (0.1%) received a "does not meet expectations rating." The lack of critical ratings in a police agency the size of MPD struck us as extremely unrealistic and raised concerns about the standards applied in connection with these evaluations. However, we were unable to explore this issue in greater detail prior to the termination of the MOA.

C. Substantial Compliance Evaluation

With the exception of MOA paragraphs 114.a and 114.b, which related to the issuance of an RFP for PPMS development and the selection of a contractor for the project, we found that MPD and the City did not achieve substantial compliance with the PPMS development and implementation requirements of paragraphs 107 through 117 of the MOA.²³¹ Although MPD completed the rollout of Phase I of PPMS to the entire Department last year, PPMS has not been established as a functioning system with the full range of capabilities required under the MOA. This is an area with respect to which MPD has continuing reporting obligations despite termination of the MOA.

²³⁰ We did not attempt to perform a detailed reconciliation of the officers appearing on the MPD's roster as of December 31, 2007 with those for whom we received evaluation data from OHRM. There may be various legitimate explanations for the differences in these two figures, including recent hires or promotions from probationary patrol officer status.

²³¹ Paragraph 106 of the MOA contained no substantive provisions.

We also found that MPD did not achieve substantial compliance with MOA paragraph 118 concerning its PES.

D. Recommendations

We recommend that MPD continue working to develop PPMS so that its potential as a central performance-related recordkeeping and early warning system is realized. We also recommend that MPD review its performance evaluation rating system to ensure that appropriate and sufficiently rigorous standards are applied in evaluating the performance and conduct of MPD officers.

VII. Training (MOA ¶¶ 119-148)

A. Requirements

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

1. Management Oversight

Regarding management oversight of training, MPD is required to centrally coordinate the review of all use of force training to ensure quality assurance, consistency, and compliance with applicable law.²³² MPD's Director of Training is responsible for overseeing the full scope of MPD's training program as it related to the terms of the MOA, including:

- 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;

²³² To ensure compliance with applicable law, training materials are to be reviewed by MPD's General Counsel or some other appropriate legal advisor. MOA ¶ 120.

- Developing a protocol, subject to DOJ approval, to enhance its existing Field Training program;²³³ 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 prescribed 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:

- 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.

²³³ The protocol is required to address specific aspects of the Field Training program, which were set forth in paragraph 121 of the MOA.

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

3. Instructors

The MOA established 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 required 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 required 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 required 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 what was at that time 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.²³⁴

In the fall of 2005, in addition to approving MPD's Canine Operations Manual as discussed above, DOJ approved the Canine Lesson Plan and Training Curriculum.²³⁵ MPD obtained DOJ approval for all policies and training materials related to the Department's canine program.

2. Curriculum and Lesson Plans

The MOA provided for DOJ review and approval of all force-related training material, including curriculum and lesson plans.²³⁶ 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 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 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. On August 1, 2006, MPD received approval of its Simmunitions Training Lesson Plan, which was the last of these 13

²³⁴ OIM Thirteenth Quarterly Report at 88.

²³⁵ Letter from Tammie M. Gregg to Inspector Matthew Klein (September 27, 2005).

²³⁶ MOA ¶ 122.

lesson plans to receive DOJ approval. We monitored simmunitions training and found that MPD properly implemented the lesson plan.²³⁷

As reflected in the chart below, MPD's entire use of force curriculum was approved by DOJ.

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	Approved by DOJ 08-01-06
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 MPA also developed 16 lesson plans to address the requirements of MOA paragraphs 84, 98, and 129. Paragraphs 84 and 98 established 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 established training requirements for all MPD supervisors -- officers with the rank of sergeant and above. On October 17, 2006, DOJ approved MPD's Use of Force Incident Report Form lesson plan.²³⁸ MPD obtained DOJ approval of 15 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.

²³⁷ OIM Eighteenth Quarterly Report at 120.

²³⁸ MPD April 2007 Progress Report at 37.

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 Preponderance of Evidence lesson plan
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	Approved by DOJ 10-17-06
Use of Force Review Board	Approved by DOJ 09-30-04
Verbal Judo Re-certification	Approved by DOJ 11-25-02

The final element of this curriculum yet to receive DOJ approval is MPD's Chain of Command Investigations Using the Preponderance of Evidence Standard lesson plan. On March 27, 2008, MPD submitted the revised lesson plan and supporting material to DOJ for approval. However, this lesson plan had not been approved prior to the termination of the MOA.²³⁹

On December 27, 2007, MPD issued its most recent Semi-Annual Use of Force Curriculum Review prepared by MPA's CDS. Earlier this year, we reviewed this document in connection with our survey of MPD's compliance with the MOA's requirements related to training oversight and management. This review included the results of the CDS's quality

²³⁹ Despite the fact that the Chain of Command Investigations Using the Preponderance of Evidence Standard lesson plan has not received DOJ approval, as discussed above we found that MPD's internal investigators consistently and appropriately applied the preponderance of evidence standard in their investigations.

assurance audit of MPD's force-related training program, as required by MOA paragraph 123. We found that the CDS's audit was thorough and satisfied the MOA's requirement that the CDS perform as a quality assurance officer responsible for ensuring that MPD's force-related training is current, effective, and consistent.

Finally, since the eleventh quarter, we periodically reviewed MPD's compliance with MOA paragraph 120's requirement that MPD's OGC review all training materials and lesson plans.²⁴⁰ At the beginning of this year, the primary issue remaining in this area was implementation of a centralized tracking system that records revisions to each lesson plan as well as whether OGC review was necessary and, if so, when the review was performed. Last year, as a form of technical assistance, we provided MPD with a spreadsheet containing the information we were able to develop regarding OGC's reviews of the use of force-related lesson plans as well as identifying fields in which information appeared to be missing.²⁴¹ To address these issues, MPA drafted an internal division order outlining the procedures for obtaining and tracking OGC approval of changes to the Department's use of force-related lesson plans.²⁴² On December 27, 2007, MPD issued and provided us its Semi-Annual Use of Force Curriculum Review which contained summary documentation of exchanges between OGC and MPA.

We reviewed the Lesson Plan Tracking Spreadsheet maintained by MPA as well as correspondence between the OGC and MPA. We found that MPD implemented an adequate system to ensure that OGC reviews substantive amendments to all force-related lesson plans and to track and record such changes and their approval. Accordingly, we found that MPD achieved substantial compliance with MOA paragraph 120.

3. Instructors

MPD submitted a draft of its Enhanced Field Training Officer Program Protocol to DOJ on December 6, 2002.²⁴³ Although DOJ provided comments to the draft Protocol on September 30, 2003, MPD experienced significant delays revising the Protocol in response to DOJ's

²⁴⁰ OIM Eleventh Quarterly Report at 93-94; OIM Fourteenth Quarterly Report at 91-92; OIM Eighteenth Quarterly Report at 122.

²⁴¹ OIM Twentieth Quarterly Report at 123.

²⁴² MPD January 2008 Progress Report at 14.

²⁴³ MOA ¶ 121.f.

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.²⁴⁴

During the seventh quarter, the OIM performed a detailed review of MPD's FTO program. We found that significant improvement in the FTO program was necessary, including completion of the Enhanced Field Training Officer Program Protocol and establishment and application of formal selection criteria for FTOs.²⁴⁵ 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 officers ("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 would be inconsistent with the substantive requirements of paragraph 135 of the MOA.²⁴⁶ 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.²⁴⁷

During the tenth quarter, we met with MPD's Assistant Chief of Human Services and with representatives from MPA 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 MPA identified several steps intended to improve coordination between

²⁴⁴ OIM Fourteenth Quarterly Report at 92.

²⁴⁵ OIM Seventh Quarterly Report at 50-51.

²⁴⁶ Paragraph 135 of the MOA required 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."

²⁴⁷ OIM Ninth Quarterly Report at 64.

MPA 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 had not implemented a comprehensive plan for the selection of FTOs.²⁴⁸ MPD reported that MPA 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 MPA on June 28, 2005.²⁴⁹

We again reviewed the status of MPD's implementation of its revised FTO program during the fourteenth quarter. We found that MPD made progress 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. We found, however, that MPD still had not developed formal criteria for the selection of FTOs as required by paragraphs 121.f and 135 of the MOA and still had not yet implemented a comprehensive, specialized training program for FTOs.²⁵⁰

Our review of the FTO program in early 2006 found that (1) MPD had made no progress in developing and applying formal criteria for the selection of FTOs, (2) officers who had not received the required FTO training nevertheless were training PPOs, and (3) PPOs generally were not being paired with FTOs who maintained the same schedules as the PPOs. As a result, PPOs were not being trained and monitored by the same qualified FTOs on a daily basis.²⁵¹

Also, ORM performed a spot check of the FTO program and issued a report, dated March 8, 2006, that contained findings similar to ours.²⁵² MPD responded to ORM's report by issuing a teletype on March 10, 2006 which directed, among other things, that recruit officers will have the

²⁴⁸ OIM Twelfth Quarterly Report at 82.

²⁴⁹ MPD July 2005 Progress Report at 35.

²⁵⁰ OIM Fourteenth Quarterly Report at 93-94.

²⁵¹ OIM Fifteenth Quarterly Report at 108.

²⁵² QAU Spot Check of Field Training Officer (FTO) Program (March 8, 2006).

same days off as their training officers and that recruit officers will be partnered with FTOs or MPOs. During our April 3, 2006 monthly meeting with DOJ, MPD, and the City, former Chief Ramsey indicated that MPD would focus attention on remedying the deficiencies in the FTO program and that the Department was considering consolidating MPO and FTO functions to ensure that qualified personnel are responsible for the training of PPOs.²⁵³

During the seventeenth quarter, we (1) monitored an FTO orientation and training session, (2) interviewed four MPD captains assigned to be district FTO coordinators, and (3) interviewed the MPD sergeant responsible for overseeing the PPO review board charged with assessing the effectiveness of the FTO program and its impact on PPO training and retention decisions.

We found that the training and orientation for FTOs was comprehensive and that the instructor's delivery of the training program was quite effective. The instructor displayed a thorough understanding of MPD's revised FTO program, and the FTOs in training demonstrated the importance of field training in the development of new recruits.

Based on our discussions with the captains responsible for coordinating the FTO program in their respective districts, however, it was clear that MPD had not implemented the FTO program as prescribed in the Enhanced Field Training Officer Program Protocol. None of the districts we reviewed had a formal FTO selection process, and the process that was in place varied among districts. None of the districts had developed a standardized set of criteria or performance measures to consider in evaluating the qualifications of FTO candidates. Finally, none of the districts we reviewed had established a recordkeeping system consistent with the requirements of the Enhanced Field Training Officer Program Protocol for each of the PPOs enrolled in the FTO program.²⁵⁴

In 2006, MPD began working on the draft FTO General Order, which was submitted for DOJ approval on November 7, 2006.²⁵⁵ DOJ provided comments to the draft general order on November 15, 2006. MPD submitted a revised FTO General Order on March 6, 2007.²⁵⁶ In

²⁵³ OIM Fifteenth Quarterly Report at 108.

²⁵⁴ OIM Seventeenth Quarterly Report at 93-94.

²⁵⁵ MPD April 2007 Progress Report at 38.

²⁵⁶ *Id.*

addition, on March 6, 2007, MPD submitted a response to DOJ's November 2006 comments regarding the FTO program. DOJ returned its latest round of comments related to the FTO program on June 21, 2007, and MPD submitted the revised general order to DOJ on November 19, 2007.²⁵⁷ Finally, on January 23, 2007, MPD submitted to DOJ a draft MPA Division Order regarding selection criteria for MPA instructors, in accordance with paragraph 135 of the MOA.²⁵⁸ DOJ returned comments on May 1, 2007. On September 10, 2007, MPD provided DOJ with its revised instructor selection criteria.²⁵⁹ After the exchange of another round of comments and revisions in January 2008, on January 24, 2008, DOJ provided its final approval of the revised FTO General Order.²⁶⁰

As reflected by this long history of our observations of MPD's efforts to implement an effective FTO program, this was a major area of emphasis for our monitoring for several years. Earlier this year, MPD concentrated a substantial amount of time and energy on bringing the FTO program into substantial compliance with the MOA. We performed a comprehensive review of the FTO program and found that MPD made significant strides toward implementing a program that comports with the MOA as well as the Department's FTO policy. However, as described below, we identified certain areas in which further improvement is necessary.

We met with the designated field training program coordinator in each of MPD's seven districts in order to discuss the application of FTO selection criteria to the certified FTOs in each district as well as the process for pairing FTOs and PPOs. We also reviewed the FTO certification file for each FTO and found that, in every case, the application and qualification checklist had been signed by both the FTO applicant and the District Commander. Finally, we reviewed documentation related to the pairings of FTOs and PPOs as well as daily observation reports prepared by FTOs in each of the districts beginning January 1, 2008.

²⁵⁷ MPD January 2008 Progress Report at 14.

²⁵⁸ E-mail from Maureen O'Connell to DOJ and OIM personnel regarding "MOA 135: MPA Instructor Selection Criteria" (January 23, 2007).

²⁵⁹ MPD January 2008 Progress Report at 17.

²⁶⁰ E-mail from Tammie Gregg to Maureen O'Connell regarding "MOA 121f and 135: FTO Selection Criteria" (January 24, 2008).

Overall, we found that the districts were very effective in reviewing FTO applicants and ensuring that only qualified officers are certified as FTOs, including by maintaining records documenting that disciplinary history checks had been performed by IAB for all officers qualified as FTOs. All of the districts maintain a roster of qualified FTOs, and the Fourth District was exemplary in maintaining a review log documenting periodic checks confirming that each FTO continued to satisfy the criteria for FTO certification. However, we did identify a weakness in the documentation maintained in five of the seven districts in that nothing in the FTO application records reflected the specific actions taken by the FTO Coordinator to verify or explain the qualifications of an applicant where there were apparent inconsistencies in the application form. Finally, each district was able to produce a memorandum documenting the pairing of FTOs with individual PPOs assigned to the district.

Our review of the FTO Daily Observation logs identified some deficiencies in the supervision of PPOs in certain districts. We found 100% compliance in the First, Second, Third, Fourth, and Fifth Districts with the requirement that PPOs be supervised by certified FTOs. However, in the Sixth and Seventh Districts, we identified several instances in which a PPO was permitted to work with a non-certified officer, usually due to the absence of the FTO formally assigned to the PPO. We shared these findings, as well as a list of best practices that we observed were being used in some districts and that should be made standard in all of MPD's districts.²⁶¹

C. Substantial Compliance Evaluation

MPD substantially complied with MOA paragraph 119, which required 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 substantially complied with MOA paragraph 120, which required MPD's OGC to review all MPD training materials.

²⁶¹ The best practices included: (1) the Third District's practice of ensuring that an alternate qualified FTO is available during shifts worked by PPOs in case the assigned FTO is absent, (2) the Fourth District's periodic review log described above, and (3) the First District's requirement that the watch commander immediately notify the field training program coordinator immediately of any adverse action taken with respect to a certified FTO.

MPD substantially complied with MOA paragraphs 121.a, 121.e, 121.g, and 123, which related 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.

MPD achieved substantial compliance with MOA paragraphs 121.b and 122, which related to the development and implementation of a use of force training curriculum. MPD obtained DOJ approval of all of its 13 use of force-related lesson plans.

For the reasons described above, MPD did not achieve substantial compliance with MOA paragraphs 121.c and 121.f, which established standards related to MPD's FTO program. This is an area in which MPD has continuing reporting obligations despite the termination of the MOA.

MPD did not achieve substantial compliance with MOA paragraphs 84, 121.d, and 129, which related to the development and implementation of all in-service training and roll call curricula, including training programs for MPD supervisors and investigators. MPD did not obtain DOJ approval for 1 of its 16 in-service training lesson plans, not including use of force-related lesson plans.

MPD did not achieve substantial compliance with the requirements of MOA paragraphs 124 and 125, which related to the maintenance of MPD's lessons plans, training records, and other training materials. As of the termination of the MOA, MPD still was working to develop a centralized repository and tracking system for these materials.

MPD achieved substantial compliance with MOA paragraphs 126 and 127, which related to MPD's use of force training curriculum. MPD obtained DOJ approval for all elements of its use of force training curriculum.

MPD achieved substantial compliance with MOA paragraph 128, which related to 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.

MPD achieved substantial compliance with MOA paragraphs 130 and 131, which required 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.

MPD achieved substantial compliance with the requirements related to Role Play and the Range 2000 course contained in MOA paragraphs 132.a through 132.c.

MPD achieved substantial compliance with MOA paragraph 133, which required distribution and explanation of the terms of the MOA to all MPD officers and employees and timely updates to in-service training.

MPD achieved substantial compliance with MOA paragraph 134, which related to MPA's staff assessment. MPD obtained DOJ approval of its MPA staff assessment on March 28, 2008.²⁶²

MPD did not achieve substantial compliance with MOA paragraph 135, which required the development and implementation of eligibility and selection criteria for all academy, field training, and formal training (other than roll call) positions. MPD did not receive DOJ approval for this item prior to the termination of the MOA.

MPD achieved substantial compliance with MOA paragraphs 136 and 137, which related to the establishment of an instructor training and certification program.

MPD achieved substantial compliance with MOA paragraphs 138 and 139, which required 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.

MPD achieved substantial compliance with MOA paragraphs 140 and 142, which related to officer completion of firearms training and re-certification.

MPD achieved substantial compliance with MOA paragraphs 141 and 143 regarding firearms instructors and the presentation of firearms instruction.

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

²⁶² Letter from Tammie M. Gregg to Inspector Matthew Klein regarding "Metropolitan Police Academy ("MPA") Staffing Assessment, MOA ¶ 134" (March 28, 2008).

MPD achieved substantial compliance with MOA paragraphs 145 and 148, which required 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 approved the Canine Operations Manual, and MPD achieved substantial compliance with MOA paragraph 147.

MPD achieved substantial compliance with MOA paragraph 146, which required that 100% of its canines be "professionally bred" and certified in the Handler-Controlled Alert Methodology.

D. Recommendations

We encourage MPD to adopt generally the best practices that certain districts employ in connection with the FTO program and that we highlighted for MPD as a form of technical assistance.

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

A. Requirements

The MOA recognized 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 established 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 required 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. MPD, however, requested and received leave to delay implementation of the approved policy to allow time for outstanding issues related to the Specialized Mission Unit After-Action Report to be resolved. MPD revised the Specialized Mission Unit General Order in order to ensure consistency with other MPD directives and to clarify certain definitions. MPD submitted the revised Specialized Mission Unit General Order to DOJ for approval on June 30, 2006. DOJ provided comments to the revised general order on December 1, 2006. MPD submitted a revised Specialized Mission Unit General Order to DOJ on March 30, 2007, and DOJ returned further comments on June 21, 2007. On September 18, 2007, MPD re-submitted the general order with additional revisions, and, on September 24, 2007, DOJ approved the general order. However, a few days later, on September 27, 2007, MPD contacted DOJ about issues with the language of the approved general order and suggested alternative language. DOJ provided its final approval of the Specialized Mission Unit General Order on November 13,

2007, and the general order was issued to the Department on November 13, 2007.²⁶³

As discussed in our quarterly reports, periodically over the past several years we reviewed the status of MPD's SMU program.²⁶⁴ Following DOJ's approval of MPD's Specialized Mission Unit General Order on November 1, 2007, our substantive monitoring with respect to SMUs resumed. Last year, we provided MPD with a monitoring workplan detailing the information that we intended to review in connection with our monitoring of MPD's SMU program. ORM combined this workplan with an SMU compliance checklist that it developed and provided the checklist to the districts to assist them in preparing SMU compliance packages for our review.

At the end of 2007, we reviewed the SMU compliance packages forwarded by the seven districts to ORM. The quality of information submitted by the districts varied significantly, and we recommended that ORM provide more guidance to the districts regarding the information required by the MOA's provisions related to the qualification, training, and supervision of SMU members. We also provided ORM with comments regarding specific deficiencies in the compliance packages submitted by each of the districts. MPD reported that it was developing templates for the districts and SMUs to use in documenting their compliance with the MOA and the Specialized Mission Units General Order.²⁶⁵

MPD made remarkable progress implementing the standards and requirements of the MOA and SMU General Order during the first three months of this year and, ultimately, was successful in achieving substantial compliance with all of the MOA's SMU-related provisions.

MPD has a total of 12 SMUs: the Emergency Response Team ("ERT"); the Gun Recovery Unit ("GRU"); the Narcotics Strike Force; the Warrant Squad; the Washington Area Vehicle Enforcement Unit ("WAVE"); and the seven district SMUs. Notably, MPD disbanded the Mobile Force Unit on September 30, 2007.²⁶⁶ The Mobile Force Unit

²⁶³ MPD January 2008 Progress Report at 19.

²⁶⁴ See, e.g., OIM Twelfth Quarterly Report at 87-89; OIM Nineteenth Quarterly Report at 128; OIM Twenty-third Quarterly Report at 109.

²⁶⁵ MPD January 2008 Progress Report at 19.

²⁶⁶ Teletype number TT 09-085-07.

originally was formed in 1999 as part of a summer crime fighting initiative and was composed of volunteer police officers assigned together on an *ad hoc* basis to work overtime shifts in areas of the city that had been identified as “hot spots” for criminal activity or disorder.²⁶⁷ In November 1999, the Mobile Force Unit was established as a year-round SMU. The MOA’s provisions related to advance notice to supervisors of officers participating in SMUs and the supervision of officers temporarily assigned to SMUs were designed to address issues related to the qualification and supervision of officers who volunteered for temporary duty with the Mobile Force Unit.²⁶⁸

We reviewed a variety of documentation related to MPD’s current SMUs, all of which are now permanent units composed of assigned members rather than temporary volunteers. This documentation included SMU organizational charts, records of enforcement activities, training records for SMU members, SMU member qualification and certification checklists, and SMU member disciplinary histories and performance evaluations.

We found that each of the SMUs had applied appropriate pre-screening mechanisms for all of the officers assigned to the SMUs, including verification of weapons certifications and a review of whether each SMU member had been involved in an unjustified use of force.²⁶⁹ MPD prepared a pre-assignment checklist used by SMU commanders to screen and evaluate each of the current SMU members. MPD also developed an Annual Member Certification Sheet to be used each year to verify that SMU members continue to meet the qualifications under the policy for officers assigned to SMUs. These checklists are essential to documenting the qualification and selection process for SMU members.²⁷⁰ We found no officers assigned to an SMU who had a record of using excessive or otherwise inappropriate force.²⁷¹ We also found that, based on the current SMU rosters and organizational charts, each of the SMUs had an appropriate supervisory “span of control” over the

²⁶⁷ Letter from Chief of Police Cathy L. Lanier to Michael Bromwich regarding “MOA Paragraphs 152, 155 and the Mobile Force” (March 25, 2008) at 1.

²⁶⁸ MOA ¶¶ 152 and 155. Letter from Chief of Police Cathy L. Lanier to Michael Bromwich regarding “MOA Paragraphs 152, 155 and the Mobile Force” (March 25, 2008) at 1.

²⁶⁹ MOA ¶ 151.

²⁷⁰ MOA ¶ 152.

²⁷¹ MOA ¶ 153.

members assigned to the unit.²⁷² The requirement under MOA paragraph 155 that supervisors in SMU members' regular units be instructed that their supervisory responsibilities continue even when an officer volunteers for an SMU assignment was addressed by the abolition of the Mobile Force Unit and the practice of assigning officers temporarily to that SMU.

We also found that MPD prepared an appropriate training program designed specifically for SMU members.²⁷³ This training was first delivered on March 14, 2008. Because the training program is relatively new, the SMU members who participated in this first round of training did not do so as part of a "pre-screening" process. However, MPD reported that it intends to conduct the training four times a year and for potential new members to participate in the training in advance of their assignment to an SMU. Finally, our review of enforcement action records found that SMU supervisors were performing a heightened level of review of SMU-involved enforcement actions, including, but not limited to, deployments that result in an arrest. ORM developed an audit plan for bi-annual review of SMUs, which we reviewed and found appropriately covered all of the MOA's requirements related to SMUs.²⁷⁴

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 advised MPD that the draft Limitations on Work Hours General Order satisfied the requirements of paragraph 159 of the MOA. MPD published this general order on January 6, 2005.

²⁷² One potential exception was the First District SMU, which had one lieutenant and one sergeant assigned to supervise 14 officers. MPD advised us, however, that a second sergeant was scheduled to be assigned to the unit in the near future.

²⁷³ MOA ¶ 156.

²⁷⁴ MOA ¶¶ 157 and 158.

On May 10, 2005, 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, 2005.²⁷⁵

During the fifteenth quarter, we met with a representative from IAB to discuss MPD's systems for tracking individual officers' compliance with the limitations on the hours they are permitted to work. MPD did not then have a centralized system for monitoring whether officers were 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, MPD did not have a system in place to monitor compliance with these limitations until mid-2006.²⁷⁶

During the eighteenth quarter, ORM completed audits of compliance with the Limitations on Work Hours General Order.²⁷⁷ In 2006, we provided ORM with recommendations for expanding the scope of its audit program in this area to provide MPD and us with additional data about officers' compliance with the policy's restrictions regarding secondary employment and work hours.²⁷⁸ MPD reports that ORM's most recent audits in this area, completed on June 21, 2007 and August 24, 2007, found 100% compliance with the Limitations on Work Hours General Order.²⁷⁹ We recommended that ORM review the time records for MPD members employed by the five or six businesses that are the most significant employers of off-duty officers.

On January 10, 2008, ORM issued its audit report regarding compliance with the limitations on work hour requirements during the third quarter of 2007.²⁸⁰ ORM reviewed secondary employment records

²⁷⁵ OIM Fourteenth Quarterly Report at 100.

²⁷⁶ OIM Fifteenth Quarterly Report at 107.

²⁷⁷ E-mail from Maureen O'Connell to DOJ and OIM personnel (September 29, 2006).

²⁷⁸ OIM Twentieth Quarterly Report at 134.

²⁷⁹ MPD January 2008 Progress Report at 19.

²⁸⁰ Office of Risk Management Limitations on Work Hours Audit, 3rd Quarter 2007, Report No. 08-AUD-008 (January 10, 2008).

for a sample of 67 officers who had self-reported participating in outside employment. ORM also reviewed payroll records maintained by outside employers for seven MPD officers who reported working 24 or more hours of outside employment during a pay period. ORM identified one officer who may have violated the work hours limitation, and three others who potentially violated provisions of the separate Outside Employment General Order. All four of the cases were referred to IAB for further investigation. In light of these findings and the quality of ORM's program for auditing compliance in this area, we found that MPD achieved substantial compliance with the work hours limitations requirements of MOA paragraph 159.

C. Substantial Compliance Evaluation

For the reasons discussed above, MPD achieved substantial compliance with MOA paragraphs 150 through 158, which related to SMUs.

MPD also achieved substantial 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.

D. Recommendations

We recommend that, in addition to the sampling-based audit methodology that it currently employs, ORM periodically review the time records for MPD members employed by the five or six businesses that are the most significant employers of off-duty officers in order to evaluate officers' compliance with the outside employment self-reporting requirement.

IX. Public Information (MOA ¶ 160)

A. Requirements

The MOA required MPD to prepare quarterly reports, to be issued publicly, that included 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 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.²⁸¹

During the eleventh quarter, which covered the last three months of 2004, 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, Statistics as of September 30, 2003; and (6) MPD Less Lethal Use of Force Statistics 2003, Statistics as of February 2003.²⁸²

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

²⁸¹ OIM Fourth Quarterly Report at 76-77.

²⁸² OIM Eleventh Quarterly Report at 104.

presentation of some of the information contained in the reports was difficult to follow.²⁸³

On June 29, 2005, MPD circulated use of force statistics for the first quarter of 2005.²⁸⁴ We reviewed this report and found that it was a significant improvement over the reports posted reflecting 2004 statistics. However, we found minor statistical errors in the latest report, and MPD still was 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.²⁸⁵

MPD expanded the duties of the UFRB administrative support officer to include tracking the Department's use of force statistics and preparing quarterly use of force reports. During the fifteenth quarter, the UFRB administrative support officer performed an audit of the 2005 use of force statistics reported by MPD, which identified some discrepancies in information reported by the Department.²⁸⁶ As a result, MPD removed its two 2005 reports from its Web site.

We met with MPD several times in 2006 to discuss improvements in the reporting of use of force statistics. MPD was very responsive to our recommendations regarding revisions to the content and presentation of its use of force statistics. For example, although MPD's revised report containing use of force statistics for 2005 generally appeared to satisfy the requirements of MOA paragraph 160, we advised MPD that we had additional suggestions for improving the presentation and user-friendliness of future quarterly reports of its use of force statistics.

On March 29, 2007, MPD published its quarterly report on use of force statistics that included use of force data for calendar year 2006. During the twenty-first quarter, we reviewed these statistics and found that the report still did not contain the necessary information relating to allegations of excessive force.²⁸⁷ In particular, we found that MPD did

²⁸³ OIM Twelfth Quarterly Report at 91.

²⁸⁴ E-mail from Maureen O'Connell re "MOA 160: Quarterly Use of Force Statistics, Q1 2005" (June 29, 2005).

²⁸⁵ OIM Fourteenth Quarterly Report at 102.

²⁸⁶ OIM Fifteenth Quarterly Report at 110.

²⁸⁷ OIM Twenty-first Quarterly Report at 129,

not apply clear and consistent criteria in identifying and classifying excessive force allegations.

In January 2008, MPD arrived at a definition of excessive force to be applied for purposes of reporting use of force statistics. MPD attempted to apply this definition retroactively to use of force incidents and complaints from 2007, which proved difficult because the information contained in underlying incident reports frequently was not sufficient to allow for meaningful retroactive application of the new excessive force definition. On March 25, 2008, MPD provided us with data reflecting application of the excessive force definition to incidents occurring between January 1, 2008 and March 20, 2008 -- after the new definition of excessive force came into effect. However, we did not have sufficient time to perform a thorough review of this data prior to the termination of the MOA.

C. Substantial Compliance Evaluation

MPD did not achieve 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 required 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 included:

- 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 were 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 reported previously, MPD provided us with full and unrestricted access to MPD staff, facilities, and documents. Among other groups, MPD's CMT, IAD, FIT, MPA, and IAB deserve particular recognition. We never had a problem with MPD or any of its personnel in this regard.

3. MPD Quarterly MOA Progress Reports

Although it would have been helpful in the preparation of this Final Report, MPD did not publish an MOA Progress Report for the first quarter of 2008 after the termination of the MOA in April 2008. Generally, the OIM found MPD's MOA Progress Reports to be well written, well organized, and extremely useful to the preparation of our quarterly reports.

C. Substantial Compliance Evaluation

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

MPD achieved substantial compliance with MOA paragraphs 173 and 174, which required the assignment of a compliance coordinator who had primary responsibility for preparing MPD's quarterly progress reports. MPD's CMT was 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 were maintained; and assisting MPD personnel in their compliance tasks.

MPD and the City achieved substantial compliance with MOA paragraph 175, which required the submission of quarterly progress reports to the OIM.

The City and MPD achieved substantial compliance with the provision of MOA paragraph 176, which required 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 were willing and generally able to produce for the OIM all material we requested in connection with our monitoring activity. We found that MPD also achieved substantial compliance with paragraph 176's requirement that it maintain officer training records during an officer's employment and for three years thereafter -- generally MPD maintains such records for even longer than three years.

The City and MPD achieved substantial compliance with MOA paragraph 192, which required the MOA to be posted on the parties' Web sites.

Conclusion

Early termination of the MOA is a major achievement for the City and MPD. The parties made enormous progress implementing the broad reforms required under the MOA, and those efforts have had a measurable impact on the way in which MPD uses force at the street level. In the seven years since the parties executed the MOA, MPD has become a much more sophisticated police agency in terms of training its officers in the proper use of force, investigating and reviewing use of force incidents and allegations of misconduct, and reaching out to citizens and members of the public based on sound principles of community policing. We believe that the City's and MPD's success in implementing the MOA's reforms, which are now embedded in the Department's internal policies and practices, stands as a model for municipalities and police departments across the country.

The City and MPD are prepared and deserve to be relieved of outside monitoring. We found that MPD now has an internal audit and monitoring unit that is staffed and led by committed professionals who are devoted to providing MPD with reliable information about compliance with its policies and the law. We believe that MPD's continuing commitment to providing this internal quality assurance and quality control function with the necessary resources to conduct effective internal audits and reviews will be central to ensuring that termination of the MOA will not result in retreat from the important advances achieved by MPD over the past seven years.



Michael R. Bromwich
Independent Monitor

June 13, 2008

Fried, Frank, Harris, Shriver & Jacobson LLP

Principal Contributors

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Ann Marie Doherty
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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
DCOP	District of Columbia Office of Personnel
DCORM	District of Columbia Office of Risk Management
DOJ	Department of Justice
DRD	Disciplinary Review Division
ERT	Emergency Response Team
FIT	Force Investigation Team
FOP	Fraternal Order of Police
FTO	field training officer
GRU	Gun Recovery Unit
IAB	Internal Affairs Bureau (formerly the Office of Professional Responsibility, or OPR)
IAD ¹	Internal Affairs Branch (formerly the Internal Affairs Division, Police Misconduct Section; also formerly the Office of Internal Affairs, or OIA)
IPS	Institute of Police Science (<i>see</i> MPA below)
IQ	Intranet Quorum
MOA	Memorandum of Agreement among the District of Columbia, MPD, and DOJ
MOU	Memorandum of Understanding between MPD and OPC

¹ Because the acronym for the Internal Affairs Bureau (“IAB”), formerly known as the Office of Professional Responsibility (“OPR”), would be the same as that for the Internal Affairs Branch, for purposes of this report and in order to avoid confusion, we used the acronym IAD when referring to the Internal Affairs Branch.

MPA	Metropolitan Police Academy (formerly the Institute of Police Science, or IPS)
MPD	Metropolitan Police Department
MPO	master patrol officer
OAG	Office of the Attorney General
OC	oleoresin capsicum
OCCR	Office of Citizen Complaint Review (<i>see</i> OPC below)
OGC	Office of General Counsel
OHRM	Office of Human Resource Management
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)
OPCLU	OPC Liaison Unit
OPR	Office of Professional Responsibility (<i>see</i> IAB above)
ORM	Office of Risk Management (formerly the Quality Assurance Unit, or QAU)
PCB	Police Complaints Board (formerly the Citizen Complaint Review Board, or CCRB)
PES	Performance Evaluation System
PMP	Performance Management Program
PMS	Performance Management System
PPMS	Personnel Performance Management System
PPO	probationary patrol officer
PSA	patrol service area
QAU	Quality Assurance Unit (<i>see</i> ORM above)
RFP	Request for Proposal
RIF	Reportable Incident Form
ROC	Regional Operations Command
SMU	specialized mission unit
SMUAAR	Specialized Mission Unit After-Action Report

SOP	standard operating procedure
SSP	Supervisory Support Program
UFIR	Use of Force Incident Report
UFRB	Use of Force Review Board
USAO	United States Attorney's Office
WAVE	Washington Area Vehicle Enforcement Unit

**JOINT MODIFICATION NO. 4 TO THE
June 13, 2001
MEMORANDUM OF AGREEMENT**

**Between the United States Department of Justice
and**

**The District of Columbia and
The Metropolitan Police Department**

Joint Amendment to the Memorandum of Agreement
Between the United States Department of Justice
and the District of Columbia and
the Metropolitan Police Department

I. INTRODUCTION

- A. On June 13, 2001, the parties resolved the Department of Justice's investigation of an alleged pattern or practice of excessive force throughout the Metropolitan Police Department ("MPD"), commenced pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141, through a Memorandum of Agreement ("MOA"), which was the result of a cooperative effort demonstrating a commitment to constitutional policing on the part of the Department of Justice ("DOJ"); the District of Columbia (the "City"); and the MPD.
- B. MOA paragraph 182 indicates that the MOA would terminate five years from its effective date if MPD and the City maintained substantial compliance with each of the provisions of the MOA for at least two years.
- C. The City and MPD have worked diligently to implement the provisions of the MOA. This progress has been reflected in Quarterly Reports issued by the Office of the Independent Monitor ("OIM").
- D. The OIM's 22nd Quarterly Report found that MPD and the City have reached substantial compliance for eight or more quarters with 52 of the MOA's 126 substantive requirements.
- E. In order to focus attention on resolving the MOA provisions not yet in compliance, the parties have resolved to terminate those provisions of the MOA with which the OIM finds MPD and the City have achieved substantial compliance for two years or more, and to the additional modifications described below.

II. Amended Provision

Pursuant to MOA paragraph 194, which allows the parties to modify the MOA in writing, the parties hereby agree to modify the termination provision of MOA paragraph 182, as follows:

The parties have agreed to take the following steps:

- A. The parties hereby recognize that the OIM has identified all provisions in which MPD and the City have maintained at

least two years of substantial compliance. The parties agree that termination with regard to the identified paragraphs will be effective immediately and will allow MPD, the City and the OIM to focus resources on the MOA paragraphs on which MPD and the City have yet to reach substantial compliance.

- B. The parties hereby agree that OIM has discretion to identify for possible termination additional provisions with which MPD has achieved substantial compliance, but for less than eight quarters. The OIM may recommend that such specific provisions be terminated if, in the OIM's opinion, MPD has demonstrated that the goals of the provisions have been achieved and will be sustained. After the OIM makes a recommendation to terminate a provision under this paragraph, the parties shall explain in writing whether they agree with the recommendation that such provision should be terminated. If the parties are unable to agree after good-faith negotiations, the provision will not be terminated, but instead will be subject to the termination requirements of Section II.C. The exercise of discretion by the OIM will be given substantial deference.
- C. Bright Line Termination Date - Any provisions not terminated by paragraphs II.A, II.B or II.D shall terminate on June 13, 2008.
- D. "Early Out Provision" - Provisions not terminated by paragraphs II.A or II.B above may terminate prior to June 13, 2008 (i.e., either on December 31, 2007 or March 31, 2008) if, by these dates, the OIM determines, in its discretion, that MPD and the City have reached substantial compliance with 80 percent of the 126 substantive provisions (even if not for eight quarters), and that MPD and the City have sufficient processes and procedures in place to identify and to address compliance shortfalls in the remaining paragraphs. In this event, the OIM would notify the parties that it is planning to exercise its discretion. Paragraph E is expressly excluded from this provision.

After the OIM gives this notice to the parties, the parties will determine whether they agree that OIM should excise those provisions. If the parties are unable to agree after good-faith negotiations, the provision(s) will not be terminated, but instead will be subject to the termination requirements of Section II.C. The exercise of discretion by the OIM will be given substantial deference.

E. The parties also agree to modify the existing measurement of compliance with MOA paragraphs 55, 76, 87-92, 94, 107-117 as follows:

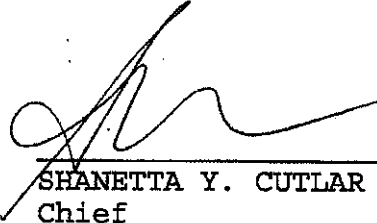
1. Paragraph 55 (entry of historical Use of Force Incident Reports into the Personnel Performance Management System ("PPMS")). In satisfaction of this provision, MPD agrees to enter two years of historical data required by this paragraph into the PPMS.
2. Paragraph 76 (reporting requirements related to civil complaints). In lieu of the existing requirements, MPD agrees to:
 - i. Emphasize MPD's self-reporting requirements to its members during in-service training, including in particular the requirements related to officers' conduct while off-duty.
 - ii. Perform criminal history checks of all members at least annually.
 - iii. QAU (now ORM) will regularly audit the civil claims notification process between the Office of the Attorney General, MPD's General Counsel's office, and Office of Professional Responsibility ("OPR" and now IAB).
 - iv. When an officers' conduct is subject to an internal investigation by the chain of command, OPR (IAB) or FIT and the conduct appears to have given rise to civil claims, investigators and QAU (ORM) auditors will confirm whether the officer has complied with the self-reporting requirements.
3. Paragraphs 87-92, 94 (citizen complaints and community outreach). In these areas, the parties have agreed to re-align the current substantial compliance measures to reflect other equivalent steps MPD has taken to achieve the results intended by the original provisions. Upon execution of this modification, MPD will identify in writing the steps it routinely takes to satisfy these requirements and will thereafter be evaluated against those criteria by the OIM.
4. Paragraphs 107-117 (PPMS). See Requirements identified in Sections II.F and II.G.

- F. Paragraphs 107-117 (PPMS) of the MOA shall terminate six months after the DOJ conducts a successful test of the PPMS, if, at that time, the DOJ follow-up audit and survey of users (the specific tool to be jointly negotiated by the parties at the time the system is tested) determines that MPD has achieved compliance with the requisite provisions.
- G. Sustained Compliance - Notwithstanding the Brightline Termination Date of June 13, 2008, the parties agree that, with regard to the provisions listed below, if, in the judgment of the OIM, MPD and the City have not reached substantial compliance by June 13, 2008, MPD and the City will continue to submit bi-monthly reports to DOJ for six months following June 13, 2008. If DOJ determines, based upon its review of MPD ORM issued Reports, that MPD and the City have not reached substantial compliance by December 13, 2008 with these paragraphs, the MOA will be reopened with regard to these paragraphs. Prior to such event, if, at any time, DOJ has concerns respecting MPD's compliance with these paragraphs, DOJ agrees first to consult with MPD in good faith in an effort to remedy identified problems. The paragraphs are: paragraph 55 (entry of historical Use of Force Incident Reports into PPMS); paragraphs 87-92, 94 (citizen complaints and community outreach); paragraphs 107-117 (PPMS provisions); paragraph 121 (Field Training Officer program); paragraphs 150-158 (Specialized Mission Units).

III. Authorization

The signatories below represent by their signatures that they are authorized to enter into this modification and are signing on behalf of their parties and the original signatories to the MOA.

FOR THE UNITED STATES:

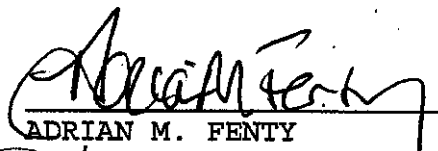


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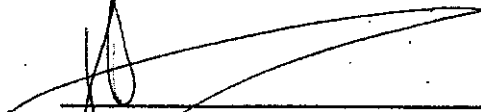
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COLUMBIA, AND ITS OFFICES,
AGENCIES, AND DEPARTMENTS



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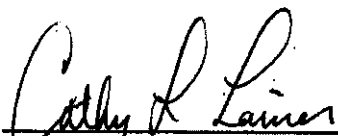
Mayor of the District of Columbia



PETER NICKLES

General Counsel

District of Columbia



CATHY L. LANIER

Chief of Police

District of Columbia

Metropolitan Police

Department



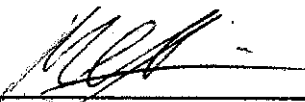
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December 14, 2007

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**Re: Termination of MOA Provisions Pursuant to Joint Modification
No. 4**

Dear DOJ, MPD, and OPC:

As you know, on December 7, 2007, the parties to the Memorandum of Agreement ("MOA") executed Joint Modification No. 4 of the MOA (the "Modification"). The Modification establishes a framework for the winding down of the terms of the MOA and our monitoring. The Modification is a major achievement and is a reflection of the sustained effort and significant progress that the Metropolitan Police Department ("MPD") and the District of Columbia (the "City") have made toward satisfying the broad and rigorous standards embodied by the MOA.

Pursuant to Section II.A. of the Modification, those provisions of the MOA with which MPD and the City have substantially complied for at least two years terminated immediately upon execution of the Modification. This letter identifies those provisions with which MPD and the City have maintained at least two years of substantial compliance and, therefore, under the terms of the Modification no longer will be subject to monitoring by the Office of the Independent Monitor ("OIM").

Under Section II.B., the Modification also provides that the "OIM has discretion to identify for possible termination additional provisions with which MPD

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has achieved substantial compliance, but for less than eight quarters.” Such provisions may qualify for termination if, in the OIM’s opinion, “MPD has demonstrated that the goals of the provisions have been achieved and will be sustained.” While the parties must agree to the termination of any such paragraphs recommended by the OIM, the Modification provides that the “exercise of discretion by the OIM will be given substantial deference.” Accordingly, this letter also identifies the MOA provisions with which MPD and the City have achieved substantial compliance, maintained it for a period of less than two years, but which the OIM nevertheless recommends be terminated pursuant to the Modification.

I. MOA Provisions Immediately Terminated Under Section II.A

MOA Paragraphs	Description
41 – 43	Use of firearms policy
45 – 46	Canine policies and procedures
47 - 50	Oleoresin capsicum spray policy
51- 52	Implementation schedule
54	USAO notification of deadly and serious use of force incidents
57 – 58, 60 – 61, 64	Allocation of responsibility for use of force and misconduct investigations; USAO consultation
67	Use of Force Review Board
72 – 73	Allocation of administrative complaint and misconduct investigations
79 – 82, 99, 102, 104	Requirements related to misconduct investigations
95 – 97	OPC offices, investigator training, and investigations manual
119	Semi-annual use of force curriculum reviews
128	Diversity training
130 – 131	Use of force training techniques
132	Role play and Range 2000 training
136 – 137	Training instructor certification
141, 143	Firearms training
144	Consultation with weapon manufacturer
145 – 148	Canine unit training
161	Selection of an independent monitor
192	Posting of MOA on MPD website

The following provisions of the MOA contain requirements related to MPD’s and the City’s cooperation with the OIM, including (i) providing the OIM with unrestricted access to facilities, documentation, and personnel, (ii) the appointment of a compliance coordinator responsible for facilitating implementation of the MOA’s reforms, and (iii) the submission of quarterly status reports to DOJ and the OIM

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concerning the parties' progress in achieving compliance with each of the MOA's requirements. As discussed in the OIM's quarterly reports, we have found MPD and the City to be in substantial compliance with each of these provisions for more than two years. However, because these provisions are necessary to support MPD's and the City's ongoing compliance efforts as well as the OIM's monitoring program, we believe that they should not terminate until the conclusion of our monitoring.

MOA Paragraphs	Description
167	OIM access to facilities, documents, and personnel.
173 – 174	Assignment of a compliance coordinator
175	Quarterly progress reports filed with DOJ and OIM

II. MOA Provisions Recommended as Eligible for Discretionary Termination Under Section II.B.

The OIM recommends that the following provisions of the MOA – with which MPD and the City have substantially complied, but for periods less than two years – be terminated because the parties have demonstrated that the goals of these provisions have been achieved and that compliance will be sustained.

- **Use of Force Policy, MOA ¶¶ 37 – 40**

MPD originally obtained Department of Justice (“DOJ”) approval of its Use of Force General Order on September 17, 2002. MPD later revised the Use of Force General Order, which DOJ reviewed and approved on November 10, 2005. As reflected in the OIM's quarterly reports, we have found that MPD has effectively implemented its revised general use of force policy. MPD has demonstrated consistently high attendance rates for its mandatory firearms re-qualification program, which is the primary training platform concerning MPD's use of force policies and the use of force continuum. Moreover, we have found that MPD has achieved high attendance rates for its general in-service training program, which also includes force-related training.

- **FIT Investigations, MOA ¶¶ 62 – 63**

DOJ approved MPD's Force Investigations Team Organizational Plan and Operations Manual on December 31, 2003. The OIM has consistently found that MPD's Force Investigations Team (“FIT”) performs thorough, high quality investigations of incidents involving the use of deadly or serious force, including all firearms discharges and canine bites. Our recent survey of FIT investigations

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completed during the first nine months of 2007 found that 97% of those investigations were both complete and sufficient and that all of the investigations were timely.¹

- **Non-FIT Use of Force and Misconduct Investigations, MOA §§ 65, 66, 68, 74, 78, 100, 101, 103**

Investigations of incidents involving lower-level uses of force as well as allegations of officer misconduct are performed by the chain of command in MPD's seven districts and by the Department's Internal Affairs Branch. As discussed in the OIM's quarterly reports, MPD has placed significant emphasis over the past several years on improving the quality and timeliness of these investigations, including by developing and distributing investigative templates and by issuing internal guidance regarding the timeliness of investigations. Our reviews of statistical samples of these investigations have found a high level of completeness, sufficiency, and timeliness in these investigations for at least the past two years, including the two most recent quarters in which we found that the quality and timeliness of these investigations exceeded the applicable substantial compliance thresholds.

- **Use of Force and Firearms Training, MOA §§ 126, 127, 133, 140, 142**

These provisions relate to the development and implementation of MPD's use of force-related training curriculum, firearms-specific training, and training related to the terms of the MOA. MPD has obtained DOJ approval of all of the lesson plans related to its use of force training curriculum, including the Department's pistol qualification program. Moreover, as discussed above, MPD has demonstrated high attendance rates for both its firearms re-qualification and general in-service training programs.

- **Training Instructor Supervision, MOA §§ 138 – 139**

These provisions require MPD to exercise adequate management supervision over its training instructors to ensure that the Department's training is consistent with MPD policy, the law, and proper police practices. As reflected in our quarterly reports, we have consistently found that MPD's training instructors are both professional and

¹ The OIM rates an MPD internal investigation as "complete" if the investigator performed all of the substantive investigative steps and included all of the documentation required by the MOA, MPD's policies, and generally accepted police practices. An investigation is rated "sufficient" if the analysis and evidence reflected in the investigative file is adequate to support a reasonable and defensible conclusion, even in cases where certain investigative steps may not have been completed.

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knowledgeable and that they provide effective classroom instruction based on current and approved lesson plans.

III. Conclusion

As reflected by the Modification and this letter identifying a wide range of MOA provisions that are eligible for termination, MPD and the City have made significant progress in implementing the reforms required under the MOA. The OIM supports the parties' agreement, as reflected by the Modification, to terminate certain provisions of the MOA in order to permit MPD and the City to focus resources and effort on the several important areas with which they have not yet achieved substantial compliance. We request that the parties advise us by Monday, December 24, 2007, if they disagree with any of the provisions identified for termination under Section II.A. or with any of our recommendations for termination under Section II.B. of the Modification.

Please let me know if you have any questions about the above information and recommendations.

Very truly yours,

A handwritten signature in black ink that reads "Michael R. Bromwich" followed by a stylized flourish or set of initials.

Michael R. Bromwich

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April 1, 2008

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Chief of Police
Metropolitan Police Department
300 Indiana Avenue, N.W.
Washington, DC 20001

Philip K. Eure
Office of Police Complaints
1400 I Street, N.W.
Suite 700
Washington, DC 20005

Re: Early Termination of the MOA Pursuant to Joint Modification No. 4

Dear Ms. Cutlar, Chief Lanier, and Mr. Eure:

On December 7, 2007, the parties to the Memorandum of Agreement ("MOA") executed Joint Modification No. 4 of the MOA (the "Modification"), which among other things provides for the potential early termination of the MOA if the Metropolitan Police Department ("MPD") and the District of Columbia (the "City") satisfy certain specified benchmarks. This letter is to advise the parties to the MOA that the Office of the Independent Monitor ("OIM") has determined that MPD and the City have achieved substantial compliance with 80% of the 126 substantive provisions of the MOA and currently has processes and procedures in place to address shortfalls in compliance with the remaining MOA provisions. Therefore, the OIM recommends that the MOA be terminated, subject to the limited continuing reporting required under the Modification and discussed below.

Early termination of the MOA is a major achievement made possible by the extraordinary level of commitment and cooperation between DOJ, MPD and the City. This

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sincere commitment to the principles of appropriate use of force, professionalism, accountability, and community policing have been hallmarks of the reforms implemented in MPD since former Chief of Police Charles H. Ramsey, in an unprecedented step, invited DOJ to “review all aspects” of MPD’s use of force in 1999.¹

As detailed in the OIM’s twenty-five reports (twenty-three quarterly reports and two special reports) published since June 2002, MPD’s MOA-related reforms have transformed the way in which the Department employs force, trains its officers, investigates use of force incidents and allegations of misconduct, and conducts outreach initiatives with the community, among other things. While our recommendation that the MOA be terminated early is possible because of the extraordinary progress MPD has made in recent months under the leadership of Chief Cathy L. Lanier in completing implementation of many of the MOA’s reforms, the foundations for this achievement rest in nearly seven years’ worth of dedicated hard work by MPD and City personnel, as well as the leadership provided by former Chief Ramsey and Chief Lanier.

I. Early Termination

On December 14, 2007, the OIM recommended that, pursuant to the Modification, 67 of the MOA’s 126 substantive paragraphs be terminated based on MPD’s and the City’s demonstrated substantial compliance with those requirements.² As of December 31, 2007, MPD and the City also were in substantial compliance with an additional 10 provisions of the MOA but that were not, for various reasons, recommended for termination. Therefore, by the end of last year, MPD and the City had substantially complied with a total of 77 -- or 61% -- of the MOA’s substantive provisions.

Under the “Early Out Provision” of Section II.D. of the Modification, the OIM is authorized to recommend the termination of all of the remaining provisions of the MOA if the OIM determines, in its discretion, that (1) “MPD and the City have reached substantial compliance with 80% of the 126 substantive provisions” and (2) the “MPD and the City have sufficient processes and procedures in place to identify and to address compliance shortfalls” with respect to any requirements for which substantial compliance was not achieved.

Therefore, in order to qualify for early termination of the MOA under the Modification, it was necessary for MPD and the City to demonstrate substantial compliance

¹ MOA ¶ 1.

² The parties accepted the OIM’s recommendations, and those 67 provisions of the MOA were terminated effective January 4, 2008.

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with an additional 24 substantive provisions of the MOA -- for a total of 101 of 126 provisions -- as well as demonstrate the capability to continue compliance efforts without being subject to outside monitoring.

Over the past three months, MPD has successfully completed implementation of the reforms required under the following 26 provisions of the MOA.

MOA Paragraphs	Description
53	Use of Force Incident Report ("UFIR") completion and quality
55	Entry of historical UFIRs into the Personnel Performance Management System ("PPMS")
75 – 77	Tracking of civil claims and off-duty misconduct
83	Chain of command investigations manual
85	Memorandum of Understanding between MPD and the Office of Police Complaints
87 – 90, 92	Citizen complaints and community outreach
120	Office of the General Counsel review of training lesson plans
123	Curriculum Development Specialist audit of training
134	Metropolitan Police Academy staff assessment
150 – 158	Specialized Mission Units
159	Limitations on work hours
176	Retention of training records

This progress is sufficient to satisfy the 80% substantial compliance threshold for early termination of the MOA under the Modification.

We also find that MPD has in place a robust internal auditing and monitoring program created in October 2005 and now operating as the Office of Risk Management ("ORM"). We have found that ORM is capable both of assessing MPD personnel's compliance with MOA's reforms, which are now embedded in the Department's policies and procedures, and supporting MPD's ongoing efforts to achieve compliance with the remaining provisions of the MOA. The OIM has worked closely with the ORM to help it develop and formalize its internal audit plans and procedures. As reflected in our quarterly reports, we have found that the ORM is staffed and led by committed professionals who are devoted to providing MPD with a reliable and effective internal quality control and audit program. We believe that MPD's continuing commitment to provide ORM with the necessary resources to conduct internal audits and reviews is one of the strongest signs that there will be no backsliding by MPD as a result of the termination of the MOA.

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II. MPD's Continuing Reporting Requirements

Section II.G. of the Modification provides that, notwithstanding the early termination of the MOA, MPD shall have ongoing reporting requirements with respect to certain provisions of the MOA if the Department has not achieved substantial compliance with those provisions by the time of termination. Accordingly, although we recommend that the remainder of the MOA be terminated, MPD and the City are required under the Modification to submit bi-monthly reports directly to DOJ concerning their progress in achieving substantial compliance with the following provisions of the MOA:

- Paragraphs 91 and 94 concerning community outreach and citizen complaints.
- Paragraphs 107 through 117 related to PPMS.
- Paragraph 121 concerning the Field Training Officer program.

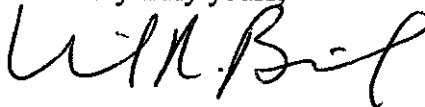
Among other things, the final report of the OIM will provide a detailed description of the current status of MPD's and the City's progress in implementing the requirements of these provisions as well as the remaining steps necessary to achieve substantial compliance with them.

III. Conclusion

The OIM congratulates the parties in achieving substantial compliance with over 80% of the broad and rigorous standards established under the MOA. We believe that the constructive and cooperative relationship between and among MPD, the City, DOJ and the OIM -- as well as the tremendous progress of the parties in implementing the substantive requirements of the MOA -- should serve as a model for law enforcement agencies across the United States that are serious about improving their use of force-related policies, procedures, and practices.

We request that the parties notify us by Monday, April 7, 2008, whether they approve of the recommendation for early termination reflected in this letter. Please let us know if you have any questions about the above information and recommendations.

Very truly yours,



Michael R. Bromwich

MOA SUBSTANTIAL COMPLIANCE MATRIX

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
	I. INTRODUCTION			
1	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.	NA	NA	NA
2	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.	NA	NA	NA

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
3	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.		<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	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.	NA	NA	NA
5	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.	NA	NA	NA
6	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.	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

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
	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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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.
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 ≥95% of cases involving alleged malfunction of weapon. 2. MPD properly and completely documents weapon malfunctions and reasons for malfunction in ≥95% of cases. 3. Weapons taken out of service are properly disposed of in ≥95% of cases of incurable malfunctions. 4. If the malfunction was officer-induced, proper remedial or disciplinary action was taken in ≥95% of cases. 5. Weapon taken out of service and armorer notified in ≥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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
	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
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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
	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.
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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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.
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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
	III. INCIDENT DOCUMENTATION, INVESTIGATION, AND REVIEW			
	A. Use of Force Reporting Policy and Use of Force Incident Report			
53	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.	<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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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 ≥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 ≥95% level of accuracy and completeness. 2. Hard copies of ≥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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
58	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.	<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	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.	NA	NA	NA
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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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.
62	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.	<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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
63	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.	1. Sufficient training and staffing to accomplish FIT's responsibilities under the MOA.	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.	1. Review FIT investigations. 2. Review FIT training materials and sessions. 3. Review FIT policies and manuals. 4. Review personnel needs assessment.
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.	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.	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.	1. Review samples of chain of command investigations. 2. Review all FIT investigations. 3. Review MPD investigations policies and general orders.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
65	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.	<ol style="list-style-type: none"> Chain of command investigations completed within 90 days, absent documented special circumstances. 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"> ≥90% of chain of command investigations completed within 90 days of use of force or contain documented special circumstances justifying the delay. ≥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"> Review samples of chain of command investigations.
66	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.	<ol style="list-style-type: none"> Completed chain of command investigations forwarded to Unit Commanders. Unit Commanders review chain of command investigations for completeness and adequacy of the evidence. Unit Commanders order additional investigation where necessary. Unit Commanders forward completed investigations to FIT. Unit Commanders suspend investigations indicating criminal wrongdoing and refer such cases to FIT and USAO. 	<ol style="list-style-type: none"> ≥95% of chain of command cases processed in accordance with this paragraph. FIT and USAO notified of ≥95% of chain of command cases involving potential criminal wrongdoing. 	<ol style="list-style-type: none"> Review samples of chain of command investigations. Review USAO logs. Review UFRB docket and dispositions.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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 ≥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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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 $\geq 95\%$ 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. $\geq 95\%$ of specified cases are investigated by OPR rather than chain of command.	1. Review samples of misconduct investigations.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
	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;			

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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:	1. MPD investigations shall involve, at a minimum, the items specified in ¶¶ 81(a)-(g).	1. ≥95% of misconduct investigations follow procedures specified in ¶¶ 81(a)-(g).	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.
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.			

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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 ≥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.
83	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.	1. Development and distribution of manual, approved by DOJ, regarding conduct of misconduct investigations including <ul style="list-style-type: none"> • Timelines • Investigative templates • Guidance re witness interviews • Guidance re investigative reports 	1. Development and distribution of DOJ approved misconduct investigations manual. 2. In-service training that appropriately and completely trains MPD personnel regarding the Misconduct Investigations Manual.	1. Review misconduct investigations manual, including related templates. 2. Monitor investigator training.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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 investigators.</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>

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
	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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
	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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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:	1. Establishment of a Community Outreach and Public Information program for each MPD District with all of the requirements set forth in ¶¶ 91a-b.	1. Establishment of a Community Outreach and Public Information program for each MPD District with all of the requirements set forth in ¶¶ 91a-b.	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.
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.	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.	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.	1. Open public meetings include presentations and information on MPD and MPD operations to enhance interaction between officers and community members.	1. ≥95% of semi-annual public meetings in each of the patrol service areas include information re MPD and MPD operations.	Same as ¶ 91.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
	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.
93	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. The 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.	<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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
94	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.	<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	The City shall continue to locate OCCR offices separate from any building occupied by other MPD personnel.	<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.
	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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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.	1. Within 90 days, development of a manual regarding the conduct of OCCR complaint investigations that includes the items described in ¶ 97.	1. Timely development of a DOJ approved manual regarding OCCR complaint investigations including all of the items described in ¶ 97	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.	1. Development of policy and training implementing the “preponderance of the evidence” standard applicable to MPD misconduct investigations.	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.	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.
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.	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.	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.	1. Review samples of misconduct investigations.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
100	MPD shall resolve each allegation in a misconduct investigation by making one of the following dispositions:	1. MPD resolves each allegation of misconduct by making one of the dispositions defined in ¶¶ 100a-d.	1. ≥95% of misconduct investigations resolved with a disposition of unfounded, sustained, insufficient facts, or exonerated.	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.			
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.	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.	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.	1. Review sample of misconduct investigations. 2. Interviews with citizen complainants.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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"> At the conclusion of each misconduct investigation, the responsible individual shall prepare a report that shall be included in the investigation file. 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"> ≥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"> 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"> 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"> ≥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"> Review sample of misconduct investigations.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
104	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.	<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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
	V. DISCIPLINE AND NON-DISCIPLINARY ACTIONS			
105	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>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. 	<p>1. Review disciplinary policies and procedures.</p> <p>2. Review sample of misconduct investigations.</p> <p>3. Review MPD disciplinary records.</p> <p>4. Review officer personnel files, including district level records.</p> <p>5. Interviews of citizen complainants.</p>

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
	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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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.
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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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.
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.	1. Review personnel files. 2. Review outside employment database. 3. Review PAMS database. 4. Review military personnel databases.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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.
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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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.
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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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.
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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
112	The protocol for using PPMS shall include the following provisions and elements:			
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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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.
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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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>	<ol style="list-style-type: none"> 1. Protocol requires that PPMS information be taken into account for: <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. 2. In connection with the above employment actions, supervisors and managers shall document in writing their consideration of: <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. Establishment and implementation of a protocol requiring that PPMS information be taken into account for: <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. 2. Establishment and implementation of a protocol requiring supervisors and managers to document in writing consideration of <ul style="list-style-type: none"> • any sustained criminal or administrative investigation, and • adverse judicial finding or significant monetary settlement. 3. In ≥95% of the above employment actions, supervisors and managers document in writing consideration of <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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
j	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.	<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	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.	<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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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:			

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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).
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.	1. Once PPMS is implemented, development of modifications as needed. 2. All proposed modifications reviewed and approved by DOJ before implementation.	1. 100% of all proposed modifications are submitted to DOJ for review and approval prior to implementation.	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.	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.	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.	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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
	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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
	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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
				certification training. 10. Participate in ride-alongs with FTOs. 11. Review evaluations of probationary officers. 12. Interview probationary officers.
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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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;			

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
129	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.	<ol style="list-style-type: none"> 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. 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. Annual supervisory training. 	<ol style="list-style-type: none"> ≥95% of active MPD supervisors attend sergeants annual sergeants and above training incorporating the requirements of ¶¶ 127-29. ≥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"> Review sergeants and above training curricula and lessons plans. Monitor sergeants and above training sessions. Review sample of training records.
130	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.	<ol style="list-style-type: none"> Training engage students in dialogue re "real life" experiences involving use of force, applicable law and MPD policy. 	<ol style="list-style-type: none"> Training engage students in dialogue re "real life" experiences involving use of force, applicable law and MPD policy. 	<ol style="list-style-type: none"> Review use of force training curricula and lesson plans. Monitor use of force training sessions, including new recruit training.
131	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.	<ol style="list-style-type: none"> Efficient use of training time to eliminate "down time." 	<ol style="list-style-type: none"> Efficient use of training time to eliminate "down time." 	<ol style="list-style-type: none"> Review use of force training curricula and lesson plans. Monitor use of force training sessions.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
132	Role Play and Range 2000 Courses			
a	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.	<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	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.	<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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
c	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.	1. Add simulations to comport with training needs assessment and deficiencies identified in use of force investigations.	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.	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.
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.	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.	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.	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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
	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"> 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. Develop plan for addressing training instructor needs. 	<ol style="list-style-type: none"> Timely assessment regarding sufficiency of training staff, instructor training, and standards for the evaluation of instructors. Development of a plan for addressing training instructor needs. 	<ol style="list-style-type: none"> Review training/instructor assessment and plan.
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"> Within 90 days, develop and implement formal eligibility and selection criteria for Academy, Field Training, and formal training (other than roll call) positions. 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"> 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. DOJ approval of eligibility and selection criteria for Academy, Field Training, and formal training instructors. Implementation of DOJ approved eligibility and selection criteria for instructors. ≥95% of instructors meet DOJ-approved eligibility and selection criteria. 	<ol style="list-style-type: none"> Review training instructor eligibility requirements and selection criteria. Review position announcements. Monitor instructor training.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
136	MPD shall develop an instructor certification program by which the competency of the instructors is certified.	1. Development of instructor certification program.	1. Development of an instructor certification program.	1. Review of instructor certification program. 2. Review individual instructor qualifications and certifications.
137	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.	<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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
138	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.	<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	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.	<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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
	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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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.	<ol style="list-style-type: none"> 1. MPD review and integration of all firearms training into training curriculum with logical presentation, optimal fire safety, and user responsibility. 	<ol style="list-style-type: none"> 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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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"> Existence of adequate pre-screening mechanisms for officers, including: <ol style="list-style-type: none"> methods for confirming that qualification in firearms and service weapons certification is current; determining adequacy of training and history of reasonable uses of force; and fitness for patrol duty and fitness for specific objectives of special mission unit. 	<ol style="list-style-type: none"> ≥95% of Specialized Mission Unit officers currently qualified in firearms and service weapons certification; documentary evidence that checks on qualification have been made. ≥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. ≥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"> Review records of Specialized Mission Units. Review personnel files, disciplinary history and training records of officers assigned to Specialized Mission Units. Review position announcements. 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"> Existence of continuing process for screening officers interested in joining Special Mission Units. 	<ol style="list-style-type: none"> MPD maintains continuous application and screening process for SMUs. 	<ol style="list-style-type: none"> Review Specialized Mission Unit personnel files 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"> 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"> 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"> Review SMU records. Review MPD personnel records. Review Internal MPD communications re officers volunteering for SMUs.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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.	<ol style="list-style-type: none"> 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. 	<ol style="list-style-type: none"> 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. 	<ol style="list-style-type: none"> 1. Review of lessons plans and other training materials. 2. Monitor SMU training sessions. 3. Review training records of SMU officers.
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"> 1. Continued monitoring all SMU activities, including enforcement actions, uses of force, complaints 	<ol style="list-style-type: none"> 1. MPD has active monitoring program that includes monitoring of SMU activities. 2. 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"> 1. Review OPR records reflecting internal reviews and audits of SMU programs and units. 2. Review of FIT investigations. 3. Review of misconduct investigations.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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"> 1. Maintaining system of prompt (24-hour) notification of SMU supervisors for complaints against SMU officers. 2. Special tracking of activities of all officers in SMU units <ul style="list-style-type: none"> • enforcement actions • complaints • misconduct investigations 3. 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"> 1. MPD maintains system in which supervisors notified of complaints against SMU members within 24 hours in ≥95% of cases. 2. 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. 3. Investigation of SMU members follows MPD rules for use of force and misconduct investigations in ≥95% of investigations. 	<ol style="list-style-type: none"> 1. Review specific documents and materials documenting such notifications maintained by SMU supervisors and in other MPD record systems. 2. Review monitoring and auditing program as well as special tracking for SMU officers. 3. Review FIT investigations. 4. Review chain of command use of force investigations. 5. 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"> 1. Development of plan to limit officer hours during 24-hour and 7-day periods to avoid officer fatigue. 	<ol style="list-style-type: none"> 1. Development of work limitation plan. 2. MPD has initiated procedures to ensure plan is being followed. 3. MPD periodically audits to ensure procedures are being followed. 	<ol style="list-style-type: none"> 1. Review MPD plan. 2. Monitor implementation of MPD plan. 3. Periodic review of internal MPD checks to ensure plan is being followed 4. Review daily work details.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
	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 werbsite.
	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

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
	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

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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.			

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
180	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.			
	D. Implementation, Termination, and Enforcement			
181	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.			

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
182	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.			
183	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.			
184	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.			
185	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.			

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
186	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.			
187	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.			
188	In connection with the Federal Court Action, MPD and the City agree as follows:			
a	The City and MPD shall stipulate to subject matter and in personal jurisdiction and to venue.			
b	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.			
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.			

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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.			

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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			

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
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