

# MEMORANDUM

To: Mayor Richard J. Berry

From: Scott T. Greenwood, Special Counsel

Date: October 31, 2014

Re: Settlement Agreement Between the United States and the City of Albuquerque

You have asked me for a brief summary of the Settlement Agreement between the Department of Justice and the City of Albuquerque for you to share with the people of Albuquerque. You have read and analyzed the Settlement Agreement, participated in negotiations, and been briefed throughout the process, but the people of Albuquerque will learn about the Settlement Agreement for the first time today.

The Settlement Agreement is the result of hundreds of hours of arms' length negotiations between the City and DOJ teams. It is specific to this City and this police department, and has been strengthened immeasurably by the immersion in the process of Chief Eden and Assistant Chief Huntsman. Every term of the Agreement has been crafted with the goal for the City and APD to have the ability to achieve it, train it, and measure it.

The Agreements adopts as its guiding principles

1. protection of our community and our officers,
2. promoting constitutional and effective policing, and
3. delivering high-level, quality police services.

The Agreement also reflects and leverages APD's previous aggressive adoption of

1. on-body recording systems.
2. universal CIT initiative, and
3. elimination of the ROP team.

## **Use of Force – at the heart of this Agreement**

Use of force by APD officers is at the heart of the Settlement Agreement. It provides for certain types of force to be considered "serious" and therefore subject to enhanced reporting and investigation requirements. These include:

1. all uses of lethal force,
2. critical firearms discharges,

3. force resulting in serious injury,
4. three or more applications of an electronic control weapon or baton,
5. use of force against restrained subjects, and
6. in-custody deaths.

### **Changes to TASER (ECW) Policies**

1. a three-cycle, fifteen-second total ECW limit,
2. discontinuation of ECW use solely as a compliance technique,
3. download and analysis of ECW records

### **Uniform Weapons Policy**

1. Institution of a uniform weapons policy (already adopted by Chief's Eden's special order).

### **Use of Force Reporting:**

The Agreement codifies what APD already does prior to this Agreement— require all APD to report a use of force by any APD personnel, including oneself, to a supervisor for investigation. Chief Eden and APD have already instituted a use of force written narrative requirement consistent with IA Pro, its early intervention and internal affairs system. Under the Agreement, all uses of force will have preliminary reports reported through the chain of command within twenty four hours.

### **Force Investigations:**

The Agreement significantly strengthens the Department's ability to conduct use of force investigations. It does so in two ways.

1. First-line supervisors — sergeants — will now be required to respond to the scene, investigate, and submit reports of all uses of force reported to them through their chain of command, significantly increasing their responsibilities and accountability.
2. All serious uses of force will now be investigated by the Internal Affairs Bureau. Sergeants or other supervisors who respond to the scene and determine that a serious use of force has occurred will be responsible for notifying IAB. All use of force investigations, whether by first-line supervisors or by IAB, ultimately will be reviewed by each level of the chain of command, and commanders will have responsibility for ensuring compliance.

### **Force Review Board:**

APD has chosen to establish a Force Review Board, and the Agreement reflects that. Under the direction of Assistant Chief Huntsman, and including high-level command from across the agency, the

FRB will review all force investigations.

### **Additional Use of Force Training:**

1. All APD officers will receive 40 hours of use of force training within the first year of implementation, and 24 hours each year thereafter.
2. Supervisors who investigate uses of force will be required to have initial and in-service training on conducting force investigations and related items.

### **CIT Training:**

The Agreement requires the creation of a Mental Health Response Advisory Committee to work with APD on developing responses to situations involving people in crisis. It also heavily leverages the existing CIT (Crisis Intervention Training) program instituted by Chief Eden and APD. It requires APD to continue to

1. provide 40 hours of CIT to all field officers and to provide dispatch personnel 20 hours of behavioral health training.
2. crisis intervention certified responders and CIU will undergo 8 hours of in-service training biannually.

It also provides that certified responders and CIU personnel shall take the lead on interacting with subjects in distress, where appropriate.

### **Specialized Tactical Units**

The Agreement reflects APD's current designation of the SWAT, bomb, and canine units as specialized tactical units. It explicitly states that the Repeat Offender Project, soon to be disbanded, is not a tactical unit.

The most significant requirements for this section include a review and analysis of all tactical operations, and establishment of clear command and control protocols.

### **Policies and Training Review Committee**

The Agreement requires APD to develop a policy review committee. Most significantly, it requires the adoption of any policy change needed by the Agreement within one year, and submission for approval of any policies, orders, procedures, and directives related to the Agreement to the monitor and DOJ for review and approval.

### **Training on Revised Policies, Procedures, and Practices:**

The Agreement requires that all officers be trained on its content within two months. It also requires

that all training specified in the Agreement must be provided within 18 months.

### **Field Training Officer Program:**

The Agreement extends the existing FTO program to 16 weeks vs the current 12 week post-academy, and requires new FTOs and Area Sergeant Coordinators to receive 40 hours of initial training, as well as annual in-service training.

### **Misconduct Complaint Investigations**

The Agreement contemplates two different types of complaint processes as follows:

1. one through APD, and
2. one through the newly established Civilian Police Oversight Agency.

The City will be obligated to make complaint forms readily accessible. The Agreement also allows solicitation of commendations through forms and its websites, as well. Officers will carry complaint forms, and will be required to notify supervisors when an individual indicates that he/she would like to make a complaint.

The Agreement also requires the City to:

1. take anonymous complaints, and
2. all complaints regardless of the timeframe,

The Agreement recognizes that the expanded complaint procedures may not result in either disciplinary or other corrective actions. IAB and the CPOA will maintain data on all complaints and their resolution.

The Agreement's training requirements for this section include 24 hours for APD personnel, and 40 hours for CPOA investigators, with 8 hours of annual in-service training.

### **Staffing, Management, and Supervision**

#### **Staffing study:**

To determine the appropriate staffing levels for personnel implementing the Agreement and providing services to the community, the Agreement requires a staffing assessment and resource study within one year, with the parties to assess and develop a staffing plan.

#### **Supervisors' duties:**

First-line supervisors investigate all uses of force reported to them and are responsible for the direct supervision of field officers under their command. The Agreement codifies current APD practice that commanders and lieutenants are responsible for supervising all personnel under their control.

The Agreement requires all sergeants to receive initial training of 40 hours in supervision, management, leadership, and command accountability prior to assuming supervisory roles, and all sworn supervisors to receive 32 hours of in-service training.

### **Early Intervention System:**

Prior to the Agreement, APD was already engaged in the process of implementing IA Pro Blue as its primary human resource management and Early Intervention System. The Agreement requires APD to implement an EIS within 9 months, to set thresholds for behaviors and factors that will trigger scrutiny for possible corrective or other intervention.

### **On-Body Recording Systems:**

Although APD was already one of the first in the country to implement large-scale on-body recording systems for officers, the Agreement is the first in the country to require their use by a police department. The Agreement requires APD to assess and revise its current policies and procedures to assure officer use consistent with the policy and limitations of the equipment in use, provide uniform training on the use of OBRS, and conduct tests of OBRS equipment to ensure that it is in operational order. The Agreement recognizes the current assessment of APD's OBRS program by UNM, and accordingly commits the parties to consultation on any possible changes within a year.

### **Recruiting, Selection, and Promotions**

The Agreement recognizes current APD hiring and recruitment practices and largely does not alter them. It requires the Department to engage in broad recruitment efforts throughout the community.

The Agreement requires that promotions to the ranks of Sergeant and Lieutenant shall be through multiple methods of evaluation. This is a radical change from current policy for promotions that relies heavily on test taking ability rather than a holistic evaluation of demonstrated leadership ability.

### **Community Engagement and Oversight**

The Agreement commits APD to a high level of engagement with the community it serves. These are the main components.

#### **Community and Problem-Oriented Policing:**

The Agreement commits APD to provide community and problem-oriented policing, and requires all APD personnel to receive 16 hours of initial training within one year in these areas. The staffing assessment referred to above will also inform the parties as we develop a staffing plan for this area.

#### **Community Meetings:**

The Agreement commits APD to semi-annual community-wide briefings in each area command, officer attendance at other community meetings, and publication of audits under the

Agreement and crime statistics.

### **Community Policing Councils:**

The Agreement commits the City to the CPCs established by Mayor Berry.

### **Civilian Police Oversight Agency:**

The Agreement commits the City to a unitary Civilian Police Oversight Agency, with a board of citizens and professionally trained investigators reporting to an Executive Director. The CPOA will investigate civilian complaints, assess policies, and make recommendations. It will also report semi-annually to City Council statistics on complaints, serious force incidents, officer-involved shootings, and proposed policy changes. A new Police Oversight Board was implemented by the City Council and signed into law by Mayor Berry prior to the signing of this Settlement Agreement.

## **Implementation and Compliance Assessment**

### **Monitor:**

The parties are committed to jointly selecting an independent Monitor or monitoring team. The Agreement reflects the parties' careful work at delineating the responsibilities and role of the monitor. The Agreement explicitly states that the Monitor does not have operational authority over APD or the powers of any City official. Among the Monitor's tools for assessing implementation of the Agreement will be compliance reviews and audits, outcome assessments, and review of use of force investigations post-closure. The Monitor is required to develop a monitoring plan and assessment tools for approval by the parties within three months after selection.

### **Comprehensive Reassessment:**

This is one of the more innovative provisions of the Agreement. In order to reach compliance early and stay that way, the Monitor and the parties will conduct a comprehensive reassessment of all provisions of the Agreement, outcomes, and implementation at the two and a half year mark. This is designed to achieve a process for early termination of the Agreement and full compliance.

### **Monitor Reports:**

For the first two years, the Monitor will issue compliance reports every four months. Thereafter, he or she will issue them semi-annually.

### **Monthly Meetings of the Parties and Counsel**

The Agreement commits to a robust continuing engagement between the parties, and accordingly, the parties, their counsel, and the Monitor will meet at least monthly.

### **APD Implementation Unit:**

The responsibility for implementing this Agreement falls directly on APD's leadership, and it is critical

to have personnel with the specific duties for achieving the shared goals of the Agreement, bringing the Department into compliance, and keeping it there. The Agreement recognizes the Chief's and Assistant Chief's commitment and leadership, and accordingly requires the establishment of an implementation unit staffed at the Chief's discretion.

### **Modification of the Agreement:**

The parties can stipulate to changes in the Agreement.

### **Length of the Agreement and Termination:**

The minimum timeframe for implementation is four years. If the City is not in compliance at four years, the Agreement will continue for two additional years. At that point, the only extension would be under an exceptional circumstances standard. The parties have agreed to seek termination at the four year point, provided that the City has reached and been in full and effective compliance for the two years preceding. This is a substantial commitment for the parties that ensures that we continue to move together in partnership with our DOJ counterparts.

The Settlement Agreement expressly provides that it is not an admission of liability. This is a negotiated resolution to allegations, not an adjudication on the merits.

### **Compliance**

Compliance with the Agreement will be evaluated by the monitor in periodic compliance audits and by APD's compliance and implementation unit. Within three months of being chosen by the parties, the monitor will develop a monitoring plan that includes specific outcome and compliance measures, which will be adopted by Agreement of the parties. This is specifically in order to avoid a monitor moving the goalpost. We defined compliance in a very straightforward way: "Compliance with a material requirement of this Agreement requires that the City has: (a) incorporated the requirement into policy; (b) trained all relevant personnel as necessary to fulfill their responsibilities pursuant to the requirement; and (c) that the requirement is being carried out in actual practice." "Sustained compliance" necessary for early termination means compliance with all material terms of the Agreement or sustained and continued improvement in constitutional policing.

### **Accelerated Implementation**

The Agreement does provide for two key items that can lead to an accelerated implementation and exit from the Agreement:

1. modification by the parties of monitoring on items that have been fulfilled, and
2. a comprehensive reassessment of the entire process at the two and a half year mark.

If the City is in compliance at the two or two and half year mark, and then remains in compliance for two years, the parties agree to seek termination of the Agreement.

### **Monitor Selection**

The Agreement provides for the prompt publication of a request for information to solicit applications to serve as monitor. In the event that the parties cannot agree on a monitor or team, the Court would choose a monitor from three selections proposed by each party.

## **Cost Projection**

Implementing a modern-era policing Agreement with the Department of Justice is an expensive proposition, and so we accordingly were as precise as possible throughout our negotiations so that the Agreement's terms are clearly understood by both parties, the monitor, the Court, APD personnel, and members of the public. We took great pains to ensure that the parties and not the monitor would be the default decision makers in construing the requirements of the Agreement, as well as in determining best practices and in eliminating monitoring requirements for terms that had been fulfilled and making changes to the Agreement. While it is impossible to be certain of implementation costs — and the DOJ does not, as a policy matter, negotiate caps — the experience of other cities is relevant and provides us some guidance.

Cost Categories can generally be estimated as follows;

### **Internal legal support**

The City's legal costs for overseeing implementation of the Agreement is really twofold — both internal and external. The Police Department currently has an assistant city attorney assigned as the Department's internal legal advisor, while others in the City Attorney's office serve as litigation counsel in individual cases involving APD personnel. Those costs will continue. It may be necessary to add an additional assistant city attorney participating as necessary, as well as support personnel costs for providing information required by the Agreement. Much of the cost burden for support personnel for this function will largely rest with APD and not the City Attorney's office. The City will continue the use outside legal counsel for technical and strategic guidance during the implementation of the Agreement, with costs at a lower level than during the negotiation phase.

### **Monitoring**

The costs of monitoring implementation of the Agreement are relatively easy to project, based upon the Agreement's requirements, schedule for implementation, and experience of other cities in the process. The City of Portland, Oregon projects that its first year costs for monitoring will be approximately \$240,000; it has not drawn a significant amount of interest due to the relatively limited reach of the Agreement. The City of Seattle projected approximately \$880,000 in first year monitoring costs; in year two, that budget increased to \$1.2 million. In New Orleans, the monitor team selected by the Court after the parties failed to reach Agreement has a four year budget range of \$7.9 to \$8.9 million. The Albuquerque Agreement is much more similar to Seattle's than to any other jurisdiction. Albuquerque's monitoring cost will likely be approximately \$1 million per year over a four year term; due to the Agreement's requirement of more frequent reports in the initial two years and then comprehensive reassessment of implementation at the two and a half year mark, monitoring costs should be higher in that initial period than in the remainder of the Agreement.

### **APD Implementation**



The cost of implementation by the Police Department is the most significant, and variable, component of the process. In the first two years, particularly, the Department will train all personnel to the Agreement's requirements. Since the Agreement adds significant new training for all officers, and additional training for force investigations by APD sergeants and its IAB, personnel costs will be partially dependent on the Department's ability to provide training during officers' usual duty hours. For comparison purposes, the Seattle Police Department incurred approximately \$4 million in costs associated with the first year of implementation. The City of Seattle also incurred approximately \$500,000 in costs associated with setting up and running the community engagement portion of its Agreement with the DOJ.

Albuquerque is likely to incur \$4 to \$6 million in costs in the first year due to a very ambitious schedule for both providing training and achieving compliance within the two to two and a half year marks.

### **Conclusion**

This Settlement Agreement is both ambitious and achievable. It will serve as the foundation to protect our community and our officers, promote fully constitutional and effective policing, and deliver high-quality police services. The reforms in the Settlement Agreement are consistent with national best practices. The high level of collaboration between the City and Department of Justice, which will continue throughout the lifespan of the Agreement, has led to a robust Settlement Agreement which the community can embrace as we begin the implementation process, and can serve as the new national benchmark.