

## AGREEMENT

This Agreement is between the Civil Rights Division and the United States Attorney's Office for the Southern District of New York of the Department of Justice (collectively "DOJ"), and the Beacon, New York, Police Department ("BPD"), to resolve the DOJ's current investigation of the BPD, pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141.

### **I. SUBSTANTIVE PROVISIONS**

#### **General Use of Force**

1. The BPD will consolidate its use of force policies to ensure that policies are readily identifiable and accessible to BPD officers.
2. The BPD will revise its use of force policies to describe in appropriate detail the relevant legal standards. This description shall include not only references to applicable law, but a description of what the law provides. This revision shall include a clear definition of both lethal and less-than-lethal force, consistent with constitutional law and generally accepted police practices.
3. The BPD will revise its use of force policy to emphasize verbal de-escalation techniques.
4. The BPD will specifically prohibit the use of the carotid hold absent exigent circumstances.

#### **Firearms and Other Weapons**

5. The BPD will revise its system of accountability for firearm ammunition. This system should specifically limit the type of ammunition allowed and mandate the exact amount of ammunition officers must carry (rather than just a minimum or maximum). This paragraph shall apply to all firearms, including shotguns.
6. The BPD will revise its system of accountability for the use of personally-owned handguns as secondary weapons, including controls on the types of ammunition that can be used, and the exact amount of ammunition that officers must carry (rather than just a minimum or maximum).
7. The BPD agrees to conduct use of force training for all officers. This training shall employ an adequate use of force continuum or matrix which includes

a progression of various examples of suspect resistance and corresponding appropriate use of force responses by the

The continuum or matrix shall also include an emphasis on officer presence and de-escalation techniques (particularly when dealing with persons with mental illness and/or under the influence of drugs). This continuum or matrix should include the actual types of force authorized by the BPD, including canines and OC spray. The continuum or matrix shall have the force and effect of an order. The BPD will revise its use of force policy to include a cross-reference to the use of force continuum or matrix taught in the training. The parties acknowledge that the continuum or matrix does not require a rigid exhaustion of lower levels of force or initiation of a lower level of force if the circumstances do not justify or necessitate such a lower level of force response.

8. The BPD will revise its policies and procedures to identify standard issue impact weapons and ensure that all BPD officers are properly trained to carry and use such weapons. These standard issue impact weapons shall be specified on the use of force continuum or matrix. The BPD will prohibit the use of all other impact weapons.
9. The BPD will revise its OC spray policies to ensure that OC spray is appropriately used and that all uses are reported. This revision should include a standard that, barring exceptional circumstances, authorizes OC deployment only in cases where verbal commands have failed to bring about the suspect's compliance, and the suspect has indicated his or her intention to actively resist, or is actively resisting arrest. Prior to deploying OC spray, unless a warning would endanger the officer or others, officers should verbally warn the suspect that OC spray will be used unless resistance ends, and should permit a reasonable period of time to allow the subject to comply with the warning. The policy should set forth the limited circumstances under which spray can be used on a restrained subject, and provide for a careful review of the circumstances surrounding such deployments, if they occur. The policy should further include decontamination procedures. As a part of the use of force continuum or matrix, the BPD's use of force reporting form should specifically include OC spray as a force category. The BPD should require all officers to carry OC spray, and should adequately train officers on the use of OC spray consistent with the continuum or matrix.

## **Canines**

10. The BPD will revise its canine policy to a "find and bark" canine practice.
11. The BPD will make the specific canine requirements established by the Office of Public Safety (or current appropriate authority) an addendum to its canine policy.
12. The BPD will revise its canine policy to: (1) include the specific announcement(s) required prior to releasing a canine for a building search; (2) require that the announcement (where feasible) be given on each level of a multi-level structure; and (3) require the allotment of a reasonable time for any suspect present to voluntarily surrender before releasing the canine.
13. The BPD shall clarify its canine policy to provide that a canine handler, including the supervisory canine officer, may not authorize deployment of his or her own canine, absent exigent circumstances. When circumstances make it impractical for the canine supervisor to obtain prior approval before deploying the canine, he or she must notify his or her supervisor of the deployment as soon as practicable thereafter. The canine policy should also require that, absent exigent circumstances, canine handlers maintain visual observation of unleashed canines during building searches. The canine policy should further provide guidance on the appropriate use of canines to conduct narcotics searches.

## **Use of Force Reporting**

14. The BPD will revise its policies requiring the review and/or investigation of all uses of force beyond unresisted handcuffing to be consistent as to the requirements for investigation and review of uses of force. This revision should include specific criteria for when Internal Affairs should investigate selective uses of force, (e.g., those resulting in serious injuries), versus when the chain of command should conduct the investigation.
15. The BPD will revise its use of force reporting form to specifically require a description of the actions that prompted the use of force. These use of force reporting form descriptions should reference the use of force continuum or matrix. The BPD will require the officer who

used the force to complete the form before going off duty, absent exigent circumstances.

16. The BPD will revise its use of force policy to hold supervisors accountable for ensuring the documentation of all uses of force, provide that the chain of command review the use of force information, and require that supervisors sign the reporting form.
17. The BPD will revise its use of force policy to include guidelines for supervisors to make command notifications, respond to the scene, gather evidence, and attend to medical needs.
18. The BPD will revise its standard operating procedures for the investigation of firearm discharges and other uses of lethal force to ensure procedures are consistent with each other.

#### **Vehicle Pursuits and Roadblocks**

19. The BPD will revise its vehicle pursuit/roadblock policy to clarify the circumstances in which pursuits should be authorized, and the responsibilities of BPD supervisors. This revision should: (1) include an affirmative statement of the circumstances in which an officer may engage in a vehicle pursuit; (2) clarify that a supervisor should take command and be responsible for continuance or discontinuance of pursuits; (3) require that supervisors review officer conduct following each pursuit; (4) provide guidance for interjurisdictional pursuits; and (5) require that the involved officers and supervisor make written reports, and detail what these reports should contain.

#### **Complaints**

20. The BPD will implement a formal, structured, and consistent system for handling complaints from members of the public. This system should include a standard complaint form that requires the name of the officer investigating the complaint and names of those interviewed. These complaint forms should be readily accessible at police headquarters and other public facilities. The BPD will revise its policy to state affirmatively that all BPD personnel have a responsibility to accept all complaints, including anonymous or confidential complaints and complaints filed in forms other than the standard complaint form, such as telephone, email, TDD, etc., and that officers charged with

investigating complaints will thoroughly investigate, to the extent possible, all complaints. The BPD will develop a brochure to explain to citizens their right to file a complaint, and how their complaint will be processed. The BPD will discontinue suggesting that the complainant propose a solution to the complaint.

21. The BPD will develop a policy that requires complaints of allegedly serious misconduct that potentially implicate criminal liability be referred outside the BPD for investigation and appropriate action. This policy should delineate which complaints will be internally reviewed and which will be referred outside for potential criminal investigation. The BPD Police Chief shall make the final referral decision and memorialize in writing his/her decision to refer or not to refer serious matters for outside investigation. The policy should also clarify the rights of officers involved in the complaints.
22. The BPD will implement a formal, structured, and consistent policy regarding the investigation, by appropriately trained supervisors, of complaints. This policy should require that the Police Chief be promptly notified of complaints, and that this notification occur no later than 24 hours after a complaint alleging excessive use of force or a violation of constitutional rights. The BPD will specifically outline the investigative process in policy and designate a supervisory officer to investigate and resolve complaints.
23. The BPD will provide appropriate training to all officers responsible for the intake or investigation of complaints against officers, both formal and informal. This training should include: (1) investigative, interviewing, and interrogation techniques; (2) the identification of misconduct not specifically identified in the complaint; (3) ethics; (4) integrity; (5) professionalism; (6) witness credibility; and (6) burdens of proof.
24. The BPD will revise its complaint investigation policy to require: (1) an interview of the complainant and all witnesses (citizen and police); (2) the collection and analysis of forensic and other evidence; (3) that officers produce all statements, reports, and notes; (4) the recording of all interviews; (5) guidelines for when to take Garrity statements; (6) adequate Miranda warnings; and (7) an early assessment of the complaint to determine whether to proceed with an internal investigation or refer

the complaint to the District Attorney or other outside agency.

25. The BPD will require that officers report violations of law or regulations by other BPD officers.
26. The BPD will develop an adequate protocol for the adjudication and resolution of complaints. This protocol should include a preponderance of the evidence level of proof. The investigating officer should present a report with a summary of the investigation, an assessment of the alleged misconduct, and a recommended finding to the Police Chief. The complainee officer's supervisor should review this report and recommend any appropriate response or intervention. Any modification by the Police Chief to the supervising officer's recommendation should be in writing and included as part of the investigative file.
27. To help identify possible areas of improvement, the BPD will expand its potential complaint adjudication findings to include whether there was: (1) compliance with policy; (2) additional misconduct; (3) other incidents of misconduct by the same officer or similar instances of similar misconduct by other officers; (4) the need to use different tactics; (5) the need for additional training; (6) counseling or other non-disciplinary corrective measures; and (7) the need to revise policies, training, tactics, or equipment.
28. The BPD will revise its policy to require a clear resolution to all complaints, with written notification to all relevant parties by the Police Chief that includes names of involved parties, complaint control number, date, resolution, and if sustained, whether remedial action will be taken.
29. The BPD will create a policy development committee and, where appropriate, seek input from the community on new policies.

### **Risk Assessment and Management**

30. BPD command staff will examine and review officer conduct on a regular basis as a proactive measure to minimize and detect misconduct, and to identify training and policy issues. Supervisors should routinely review arrests, stops and searches that do not result in arrest, uses of force, and a random sampling of traffic citations for the presence of probable cause and reasonable suspicion as applicable.

Supervisors should indicate their review and approval by signing the applicable reports.

31. The BPD will maintain its system of collecting data concerning uses of force, citizen complaints, arrests and charges, searches and seizures, all investigations and complaints, training, history, discipline and other corrective actions, service calls, training, awards and commendations, sick leave, and lawsuits. The BPD will expand this data collection to include specifically non-sustained complaints and supervisory reviews.
32. The BPD will revise its policy to include automatic supervisor reviews of officers' data at least every quarter. The supervisor's review should include all arrests, uses of force, searches and seizures, complaints, calls for service, sick leave, counseling reports, discipline, civil lawsuits, commendations, and "no complaints" for a sufficient and specified historical period. The BPD should identify criteria that requires additional review by supervisors.

### **Training**

33. The BPD will develop an adequate field training program for new BPD officers. This program should include recruitment, selection criteria, and training requirements for field training officers. The BPD will develop procedures for evaluating and removing field training officers where appropriate.
34. The BPD will revise its in-service training to include de-escalation techniques, dealing with the mentally ill and those under the influence of alcohol, and searches and seizures. All instructors should be certified, trained, and qualified in their subject matter.

## **II. ENFORCEMENT**

35. This Agreement shall become effective upon signature by all the signatories below (i.e., DOJ and BPD representatives). The BPD shall implement immediately all provisions of this Agreement which involve the continuation of current BPD policies, procedures, and practices. Within 90 days of the effective date of this Agreement, unless otherwise specified, the BPD shall implement the other outstanding provisions of this Agreement, except the training requirements. The BPD shall implement and conduct all

training requirements, unless otherwise specified, within 180 days of the effective date.

36. The DOJ and its attorneys, expert consultants, and agents shall have reasonable access to the BPD's facilities, records, documents, and employees upon reasonable notice to the City of Beacon for purposes of ascertaining compliance with this Agreement. Such access shall continue until this Agreement is terminated.
37. DOJ shall treat all non-public documents, including staff records, obtained in the course of the investigation as confidential and shall not release any such documents to any person, including complainants or their counsel, representatives or agents. DOJ agrees that disclosure of such documents shall be limited to employees, agents, consultants or experts of the DOJ. DOJ agrees to consult with counsel for the City prior to any release of any records and other non-public documents obtained in the course of the investigation.
38. DOJ shall adhere to the requirements of Federal law governing disclosure of confidential information by a government agency, department or employee, including the Privacy Act, 5 U.S.C. § 552a and the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. In the event of a request for materials pursuant to FOIA, the United States agrees to assert all applicable exemptions in protecting materials in this matter. Documents and information which are confidential and protected from disclosure under State law will also be protected from disclosure under FOIA. See, e.g., 5 U.S.C. § 552(b)(3) and (7).
39. The parties envision that this Agreement will terminate within two years, but termination of this Agreement shall occur only when the parties agree that the BPD has "Maintained Substantial Compliance" with all provisions of this Agreement. For purposes of this Agreement, "Substantial Compliance" means the BPD has performed the material terms of this Agreement. Materiality shall be determined by reference to the overall objectives of this Agreement. "Maintained Substantial Compliance" means the BPD has maintained Substantial Compliance with the provision for 18 months. The burden shall be on the BPD to demonstrate that the BPD has Maintained Substantial Compliance with each of the provisions of this Agreement. Individual paragraphs of this Agreement shall terminate prior to the full termination of this Agreement if the

parties agree that the BPD has Maintained Substantial Compliance for the individual paragraph; the DOJ will no longer monitor or assess that paragraph, and the BPD will be deemed to have met the terms of this Agreement as to that paragraph.

40. If any unforeseen circumstance occurs that causes a failure to timely fulfill any requirements of this Agreement, the BPD shall notify the DOJ in writing within 20 calendar days of the time that the BPD becomes aware of the unforeseen circumstance and its impact on the BPD's ability to perform under the Agreement. The notice shall describe the cause of the failure to perform and the measures taken to prevent or minimize the failure. The BPD will implement all reasonable measures to avoid or minimize any such failure.
41. In the event the BPD fails to fulfill any obligation under this Agreement, the DOJ must, prior to initiating any court proceedings to remedy such failure to fulfill any obligation under this Agreement, give the BPD, through the City Attorney, written notice of the failure. The BPD will have 60 days from receipt of such notice to cure the failure. At the end of the 60-day period, in the event the DOJ perceives that the failure has not been cured, the DOJ may, without further notice to the BPD, file a civil action for breach of contract or any other appropriate causes of action and may seek specific performance or any other appropriate form of relief. This paragraph only limits the DOJ's ability to enforce this Agreement. Nothing in this paragraph shall preclude the DOJ from filing an action under the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141, alleging a pattern or practice of excessive force in addition to or in lieu of the federal court action described in this paragraph.
42. Upon the termination of this Agreement, if the BPD has Maintained Substantial Compliance with each provision of this Agreement, (see paragraph 39), the DOJ will close its current investigation of the BPD.
43. Prior to the termination of this Agreement, and excepting the procedure in paragraph 39, the DOJ will not initiate a 42 U.S.C. § 14141 action against the BPD based on the DOJ's current investigation. The term "current investigation" means the investigation the DOJ notified the BPD of on August 5, 2004, and is limited to the subjects described in the DOJ's technical assistance letters dated June 21, 2005, and November 14, 2008. Therefore, nothing in this Agreement

shall preclude the DOJ from conducting an investigation or filing an action under 42 U.S.C. § 14141 regarding a pattern or practice of unconstitutional conduct that occurred: (1) at any time and is outside the subjects described in the DOJ's technical assistance letters dated June 21, 2005, and November 14, 2008; or (2) after January 2008, regardless of subject. In the event that the DOJ files any such action, or any action under paragraph 39, the BPD hereby waives, and agrees not to assert, any defense to that action based on any statute of limitations, laches, estoppel or any objection relating to the timeliness of the filing of such action. Nothing in this Agreement shall preclude the DOJ from filing an action under any other provision of law.

- 44. The BPD will 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 concerning this Agreement. Nothing in this provision or Agreement, however, should be construed as creating any cause of action for any such person other than causes of action that exist under current law.
- 45. The BPD and DOJ may modify this Agreement only in a jointly signed written document that refers to this Agreement.

PREET BHARARA  
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Southern District of New York

By:

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DATE

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DATE

FOR THE BPD:

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Glenn Scofield  
Chief, Beacon Police Department

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DATE

AGREED AS TO LEGAL FORM AND CORRECTNESS:

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Nicholas Ward-Willis, Esq.  
Keane & Beane, P.C.  
Attorneys for the City of Beacon

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DATE