

EXTERNAL FORCE INVESTIGATIVE TEAM'S (EFIT'S) THIRD Quarterly Report

February 17, 2022 – April 22, 2022

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Introduction

1. Please accept this third quarterly report of the External Force Investigative Team (“EFIT”).¹

Executive Summary

1. On February 26, 2021, the United States District Court for the District of New Mexico (the “Court”) granted a joint motion filed by the United States Department of Justice (“DOJ”) and the City of Albuquerque (“City”) with the concurrence of the Independent Monitor (“IM”) by entering a Stipulated Order Establishing an External Force Investigation Team (“Stipulated Order”) in the case *United States v. City of Albuquerque*, No. CIV. 14-1024 JB\SMV. (Doc. 720) (See Ex. A). The purpose of the joint motion was to stay a contempt of court proceeding. The Stipulated Order established the External Force Investigation Team (“EFIT”) and its attendant mandate. On May 2, 2021, a preliminary contract was signed between DLG, Accounting and Advisory Services (“DLG, LLC”) and Albuquerque Police Department (“APD”). On June 23, 2021, the full contract was signed by DLG, LLC and the City, enabling EFIT to commence full operations on July 16, 2021.
2. On March 21, 2022, the Court granted a joint motion filed by DOJ and the City with the concurrence of the IM by entering an Amended Stipulated Order Establishing an External Force Investigation Team (“Amended Stipulated Order”) (Doc. 906) (See Ex. B). The Amended Stipulated Order modifies and supersedes the Stipulated Order previously entered by the Court (Doc. 720).

¹ While the Stipulated Order Establishing EFIT (Doc. 720), and its attendant mandate *did not require* EFIT to file quarterly reports, in the interest of transparency, the EFIT Executive Team decided to prepare and file quarterly reports. In addition, for the sake of the timing and completeness of this report, the data contained herein covers February 17, 2022, to April 22, 2022, inclusive. EFIT will file its next quarterly report on August 16, 2022.

3. The Amended Stipulated Order restates many of the Original Stipulated Order's requirements and supplements them in two ways. First, the Amended Stipulated Order requires the City to modify its existing contract to allow EFIT to investigate all use-of-force incidents occurring between January 1, 2020, through July 16, 2021, that APD did not investigate, in full or in part ("Backlog Force Cases"), in violation of the Court Approved Settlement Agreement ("CASA") (Doc. 465-1). Second, the Amended Stipulated Order extends by 24 months, from May 2022 through May 2024, the period during which the City shall continue to engage EFIT to assist IAFD to investigate new Level 2 and Level 3 use-of-force incidents ("New Force Cases").
4. In April 2022, the EFIT Executive Team was informed that the City of Albuquerque extended and funded EFIT's contract up to, and including, June 30, 2022. While the contracts related to the Amended Stipulated Order are presented to City Council for ratification. To date, the City has not filed a Notice with the Court regarding the status of funding to effectuate the Amended EFIT Stipulated Order.

5. Pursuant to the relevant documents, EFIT is on call 24/7 and must respond to all call outs within one hour of notification. All Use of Force (“UOF”) investigations must be completed within 60 days with an additional 30-day supervisory review period for a total of 90 days from start to finish. Pursuant to the Amended Stipulated Order, EFIT must conduct joint investigations with APD Internal Affairs Force Division (“IAFD”) of all Level 2 and Level 3 UOF incidents – this includes all Tactical Deployments where UOF is utilized. EFIT must also assist APD with training concerning the UOF. The EFIT Executive Team worked with APD IAFD to establish a detailed IA Investigative Process Narrative² that governs the response protocols to any Level 2 and 3 UOF cases.³ These documents are the basis for EFIT to evaluate IAFD.
6. As of this report, 21 out of the 229 (9.17%) of the UOF investigations closed by EFIT/IAFD were found to be not within the APD UOF policies (this is a decrease from the 10.63% reported in the previous quarterly report). Most significantly, 102 out of the 229 (44.54%) of the UOF investigations closed by EFIT/IAFD were found to be out of compliance when evaluated against the Process Narrative utilized to assess investigations (this is an increase from 34.4% reported in the previous quarterly report). This development must be an obvious concern for IAFD.
7. EFIT’s next quarterly report, which is to be filed with the Court on August 16, 2022, will continue to contain an analysis of these issues based on the findings of both APD UOF compliance and case investigative compliance.

² As required by Paragraph 14 of the Stipulated Order (Doc. 720 at 5), the Process Narrative was filed with the Court on July 12, 2021 (Doc. 839).

³ A revised Process Narrative was filed on September 27, 2021 (Doc. 862).

8. While this quarterly report addresses EFIT's qualitative findings up to and including, May 16, 2022, our statistical findings are as of April 22, 2022. However, the report provides a comprehensive review of EFIT's experience as EFIT approaches its one-year anniversary.
9. As of April 22, 2022, EFIT and IAFD responded to and/or opened investigations on 367⁴ UOF incidents to include 11 Officer Involved Shootings ("OIS") and made 3 referrals to the Multi-Agency Task Force ("MATF")⁵ for potential criminal violations. EFIT/IAFD completed 229 investigations within the 90-day time period outlined in the Amended Stipulated Order⁶. EFIT assumed 10 UOF investigations pursuant to Paragraph 23(b) of the Amended Stipulated Order as those investigations became close to violating the stipulated timelines.⁷
10. EFIT noted several major accomplishments in this reporting period, which are detailed below. (See Paras. 31-61 below).
11. EFIT also noted several major concerns in this reporting period, which can be classified into two major categories of supervision and sustainability. Both are detailed below. (See Paras. 62-93 below).

⁴ Two UOF investigations were transferred to the Internal Affairs Professional Standards Division ("IAPS") for both UOF and misconduct investigations. Other than responding to the scene, these investigations are not included in EFIT's statistics.

⁵ The MATF is an investigatory task force composed of different law enforcement agencies and prosecuting offices as established by a Memorandum of Agreement. The purpose of the MATF is to conduct criminal investigations related to critical incidents involving OISs, uses of force where criminal allegations are made, and in-custody deaths (APD SOP 1-67).

⁶ Two of the closed cases involved an Officer who was involved in both cases and severely injured during the second of the two cases, an OIS. These cases were reported to all parties and the Federal District Court (Doc. 864) and were closed in 122 and 184 days and are not included in the statistical findings related to length of investigation or days to close the investigation.

⁷ EFIT assumed no cases during this recording reporting period.

12. It is EFIT's intention that this report will provide a better understanding of the successes, recommendations and the failures of APD, particularly IAFD. It is EFIT's goal to teach, mentor and professionalize IAFD so that when the assignment is completed, EFIT leaves the City with a sustainable division that investigates UOF incidents in a timely and professional manner.⁸
13. Pursuant to the Amended Stipulated Order the City drafted a contract for EFIT to establish a secondary team ("EFIT 2") to investigate and address the 667 backlog cases. While the EFIT 2 contract is pending approval with the City, the EFIT Executive Team has been diligently interviewing and securing the personnel and prepared the methodology by which the EFIT Backlog team will address the backlog cases pursuant to various paragraphs of the Amended Stipulated Order (Doc. 906). (Paras. 94-99 below).

EFIT's Mandate

14. The Stipulated Order established the EFIT and its mandate. Currently, EFIT's contract will expire on May 3, 2022. After much work, EFIT understands, based on discussions with the City and to comply with the Amended Stipulated Order that this contract is extended and funded up to and including June 30, 2022. The full contract was presented to the City Council by way of a Letter of Introduction on April 29, 2022. The EFIT 1 and EFIT 2 contracts were voted on by the City Council on May 16, 2022 and extended EFIT's engagements up to, and including, May 2024.

⁸ For extensive background information on the EFIT Executive and Investigatory Teams please see EFIT's First Quarterly Report dated October 16, 2021 (Doc. 873).

15. As stated previously, EFIT derives its authority and jurisdiction from the Stipulated Order (Doc. 720) superseded by the Amended Stipulated Order (Doc. 906), Process Narratives (July 12, 2021, revised September 8, 2021) filed with the Court on July 16, 2021 (Doc. 839) and September 27, 2021 (Doc. 862), respectively (Exs. C & D).
16. Pursuant to the relevant documents, EFIT and IAFD are on call 24/7 and must respond within one hour of notification. EFIT and IAFD conduct joint investigations. All UOF investigations must be completed within 60 days and a 30-day supervisory review period for a total of 90 days from start to finish. Provisions are in place if an extension of these timelines is needed for extenuating circumstances, such as an inability to interview an Officer sustaining serious injuries due to an OIS.⁹

⁹ On October 20, 2021, a Notice was filed with the Court (Doc. 864) due to an OIS delaying the completion of two 60-day investigations.

17. The Amended Stipulated Order (Doc. 906 at Para. 12), and the Stipulated Order before it (Doc. 720 at Para. 12), establishes the staffing levels for the APD IAFD. As of August 28, 2021, IAFD met with the staffing requirement that IAFD must be staffed with 25 Detectives/Investigators.¹⁰ Currently IAFD¹¹ has 14 civilian Investigators¹² and 13 Detectives, however in recent discussions with IAFD Commanders it revealed that by the end of August 2022, IAFD may lose several of the most experienced personnel due to retirements, promotions, Officers requesting back to field divisions and specialized field units. Chief Medina authorized the staffing of IAFD to be increased to 31 personnel in anticipation of the expected loss.
18. While these staffing levels must be maintained under the Amended Stipulated Court Order (Doc. 906 at Para. 12), EFIT continues to express concern that these numbers tend to fluctuate and retention of both sworn and civilian personnel is a constant concern as IAFD moves extremely close to falling below required staffing levels.
19. Specifically, EFIT continues to express concern regarding the retention of Investigators and Detectives in IAFD. Mr. Neier and Mr. Hurlock met several times with APD's Executives and counsel for the City regarding this issue. (See Paras. 85-93 below).

¹⁰ For the purpose of this report, the term "Detective" equates to sworn APD personnel and "Investigator" is used for civilians conducting UOF investigations.

¹¹ As of May 2, 2022.

¹² Training of IAFD takes approximately 3 to 4 weeks for sworn personnel to over 2 months for civilians resulting in operational effectiveness (currently 5 are in training). It should be noted that sustainability of staffing is one of the main concerns of EFIT and will continue to be addressed in future reports to the Court.

20. APD's Remedial Action Plan (Doc. 899) for IAFD was filed with the Court on February 15, 2022, and the parties' joint status report on EFIT filed with the Court on February 16, 2022, (Doc. 901) recognizing that EFIT is contributing to improvements in the IAFD process and recommending an extension of EFIT. Ultimately, the goal is for EFIT to return responsibility back to APD for UOF investigations.
21. As stated previously, the EFIT Executive Team worked to establish a detailed Process Narrative that governs the response protocols to Level 2 and 3 UOF cases. EFIT continues to review this document to ensure that it is serving the interests of the assignment and has made modifications, as necessary. Any modification is reviewed by the City Attorney's Office, DOJ and the IM. A revised Process Narrative was filed with the Court on September 27, 2021, (Doc. 862) and serves as the working procedure that IAFD/EFIT follows and the basis for EFIT to evaluate IAFD.
22. Once filed, the Process Narrative was disseminated to all IAFD Detectives/Investigators and EFIT Investigators. In addition, the EFIT Executive Team conducted a class as to how the Detectives/Investigators would be evaluated by EFIT. The entire IAFD attended the class. This document establishes specific timelines and procedures to be followed for every Level 2 and Level 3 UOF investigation.

23. Cases that are fully investigated by IAFD/EFIT are reviewed by the EFIT Team Supervisor, then forwarded to the IAFD Sergeant¹³ for their review. The IAFD Sergeant determines if the force is within APD policy, then forwards for an IAFD Command¹⁴ review. It is after the Command level review that the EFIT Executive Team reviews the UOF determination and recommends closing a case when appropriate.
24. Provisions were written into the Amended Stipulated Order should EFIT need to assume full responsibility of an investigation or disagree with IAFD's investigative findings. In this third reporting period EFIT has not assumed any UOF investigations pursuant to Paragraph 23(b) of the Amended Stipulated Order.
25. As stated previously and reported in our Second Quarterly Report (Doc. 900), on January 10, 2022, EFIT assumed responsibility pursuant to Paragraphs 23(b) and 24 of the Stipulated Order (Doc. 720) to finish a UOF investigation. Specifically, EFIT was informed that an IAFD Detective experienced an equipment malfunction and lost the evaluative narrative. Given past poor communications issues and because the investigation was in serious jeopardy of becoming time-barred, EFIT assumed the investigation. This case was completed by EFIT, went through the Supervisor and Command review, and was closed in 87 days on February 6, 2022. EFIT continues to recommend increased supervision going forward to prevent these issues from occurring in the future.

¹³ As of May 2, 2022, IAFD Supervisory Staff includes - 1 Lieutenant and 1 Acting Lieutenant, 4 Sergeants and 2 Acting Sergeants

¹⁴ As of May 2, 2022, IAFD Command Staff includes - 1 Acting Commander, 2 Deputy Commanders and 2 Acting Deputy Commanders.

26. Finally, the Process Narrative also outlines the process IAFD and EFIT need to take if a UOF might subject an APD Officer to criminal liability. (Doc. 862 at Para. 18.) EFIT/IAFD made one referral involving two Officers to the MATF on March 29, 2022, due to the type of force utilized. While MATF will investigate for criminal liability IAFD/EFIT will continue the UOF investigation and IAFD will review the case for any misconduct by the Officers.
27. Closed UOF cases are presented to the Force Review Board (“FRB”).¹⁵ All Level 3 cases, tactical deployments, OIS, and 10 % of Level 2 cases are presented at FRB. Initially, EFIT had no role in the FRB process other than as an observer. However, as the cases that EFIT jointly investigated with IAFD are now at the FRB level. Mr. Neier and Mr. Hurlock believed that EFIT should have a more active role in the FRB. To that end, Mr. Neier and Mr. Hurlock met with APD, DOJ and the IM team to discuss the parameters for such participation to occur.
28. As a result, all parties agreed that EFIT may take a more active role in presentations made to the FRB. For those cases where EFIT assumed responsibility for the investigation, Mr. Neier or Mr. Hurlock will make the full presentation to the FRB. As no cases which EFIT assumed were selected for presentation to the FRB, Messrs. Neier and Hurlock have not made any such presentations as of the date of this report, but have addressed questions that arose at the FRB for those cases where EFIT has worked with IAFD to close.

¹⁵ FRB - It is the policy of the Albuquerque Police Department (Department) *to conduct timely, comprehensive, and reliable reviews of (a) Level 2 and Level 3 use of force investigations to ensure the findings are supported by a preponderance of the evidence, and (b) tactical activations in order to analyze and critique specialized response protocols (APD SOP 2-58).*

29. Moreover, for all FRB proceedings at least one member of the EFIT Executive Team always attends the meetings. In addition, EFIT Team Supervisors now also attend FRB proceedings. As of this report, 37 UOF investigations where EFIT/IAFD conducted a joint investigation were presented to the FRB (28 Level 3 UOF and 9 Level 2 UOF).
30. Mr. Hurlock and Mr. Neier continue to meet once a week with Associate Monitors Phil Coyne and William Toms, the IMT's subject matter experts on force. In addition, Mr. Bone (EFIT) and Mr. Necelis (IMT) have also joined these meetings. While technical assistance is required under the Amended Stipulated Order, these meetings are extremely helpful for any contemplated process changes. This relationship between EFIT and the IMT is set forth more fully in Paragraph 27 of the Amended Stipulated Order.

Accomplishments To Date

31. The EFIT Executive Team is pleased to report that, pursuant to the established protocols¹⁶ (See Ex. E) to begin to transition IAFD Detective/Investigators to conduct interviews without EFIT's direct supervision, Nine IAFD personnel are progressing through the Phases of the system that will ultimately lead to an IAFD Detective/Investigators conducting UOF investigations without direct supervision of EFIT.
32. Again, once a Detective/Investigator is identified by an EFIT Investigator, Supervisor or Executive Team Member, as attaining the requisite capabilities to conduct interviews without EFIT's direct supervision, the EFIT Executive Team will make a determination that the IAFD Detective/Investigator may conduct interviews and the following process will be followed:

¹⁶ These protocols were distributed to APD, IMT and DOJ and comments were incorporated into the final process.

33. The EFIT Administrator and/or Deputy Administrator will notify APD Superintendent of Reform (“Superintendent”), IAFD Division Commander and Deputy Chief(s) (within the chain of command), along with the IMT and DOJ of the IAFD Detective/Investigator deemed qualified to commence the transition process and will document this decision.
34. The Lead Supervisor will arrange a meeting with the IAFD Detective/Investigator and IAFD Supervisor, to inform them of the decision, review the phased approach and document the meeting.
35. The Lead Supervisor will inform the EFIT Supervisors who in turn will notify the EFIT Teams of the IAFD Detective/Investigator in the transition process.
36. If at any time during a transition phase the EFIT Executive Team believes that the IAFD Detective/Investigator needs to remain in the phase longer, or remedial action is required, the reasons will be documented and provided to the Superintendent, Deputy Chief(s) and IAFD Commander. Examples of remedial action include, but are not limited to, coaching by EFIT staff, the Detective/Investigator remaining in a phase for an extended period of time and such other actions as determined by EFIT.
37. The EFIT Lead Supervisor will meet with the IAFD Detectives/Investigators and their Supervisor to discuss performance prior to advancing from each phase:

Phase 1 (10 Interviews)

- a. The IAFD Detective/Investigator will provide the EFIT Investigator (case agent) no later than 24 hours with a written interview outline and arrange a meeting with the EFIT Investigator to discuss the interview.
- b. The EFIT Investigator will meet with the IAFD Detective/Investigator at least 12 hours before the interview to discuss the impending interview.

- c. After the interview and before the end of the current shift, the IAFD Detective/Investigator will upload the recording of the interview to Evidence.com and attach the interview link to the case in IAPro.
- d. Within 24-hours after the recorded interview is uploaded to Evidence.com, the EFIT Investigator will review the recorded interview and provide a written critique to the IAFD Detective/Investigator through the EFIT chain of command.
- e. This process will remain in place for a minimum of 10 interviews and until the EFIT Executive Team agrees that the IAFD Detective/Investigator can advance to phase 2.
- f. Should the EFIT Executive Team deem that a second interview be necessary, an EFIT Investigator shall be involved in the interview.

Phase 2 (10 Interviews)

- a. The IAFD Detective/Investigator will provide the EFIT Investigator (case agent) with a written interview outline no later than 24 hours before an interview.
- b. After the interview and before the end of the current shift, the IAFD Detective/Investigator will upload the recording of the interview to Evidence.com and attach the interview link to the case in IAPro.
- c. Within 24-hours after the recorded interview is uploaded to Evidence.com, the EFIT Investigator will review the recorded interview and provide a written critique to the IAFD Detective/Investigator and the EFIT chain of command.
- d. This process will remain in place for a minimum of 10 interviews and until the EFIT Executive Team agrees that the IAFD Detective/Investigator is prepared to advance to phase 3.

- e. Should the EFIT Executive Team deem that a second interview be necessary, an EFIT Investigator shall be involved in the interview.

Phase 3 (2 Interviews)

- a. The IAFD Detective/Investigator will prepare a written interview outline and upload it into IPro before the interview.
- b. The IAFD Detective/Investigator will notify the EFIT Investigator at least 24 hours prior to the scheduled interview.
- c. After the interview and before the end of the current shift, the IAFD Detective/Investigator will upload the recording of the interview to Evidence.com and attach the interview link to the case in IPro.
- d. EFIT will review the interview as part of the normal course of continuing to provide investigative guidance on the use of force investigation.

Phase 4 (On Scene 3 Responses)

- a. The EFIT Executive Team will confirm that the cases the Detective/Investigator are assigned to are 95% compliant with the Process Narrative. This along with the results of the prior phases will be a determining factor that the Detective/Investigator and are ready to enter Phase 4.
- b. IAFD on-call Supervisor will be contacted by the EFIT On-Call Supervisor of the need to respond to a Level 2 or Level 3 UOF. Except for an OIS¹⁷, the IAFD Detective/Investigator will respond without the direct oversight of EFIT and comply with all provisions of the Process Narrative.

¹⁷ EFIT will continue to respond to an OIS until further notice.

- c. The EFIT On-Call Supervisor will assign the case to an EFIT Investigator who will review Blue Team and the OBRD of the IAFD Detective/Investigator within 24 hours of the Blue Team entry. The EFIT Investigator will prepare a critique to be forwarded through the chain of command to the EFIT Executive Team.
 - d. Upon successful completion of three UOF responses, the EFIT Executive Team will communicate to the IAFD Commander that the IAFD Detective/Investigator can conduct UOF Investigations (other than an OIS) without direct EFIT supervision.
 - e. EFIT will continue to track the case through the Weekly Case Status meetings and if no concerns are raised, the case will be reviewed by the EFIT Executive Team prior to the UOF Investigation closed by IAFD.
38. As of the reporting date for this report, the EFIT Executive Team identified nine Detective(s)/Investigator(s) from IAFD that advanced into the Interview Transition Process. 5 IAFD Detective/Investigators are currently in Phase 1 and 4 IAFD Detective/Investigator are currently in Phase 2.
39. As of this report, the aforementioned Detectives/Investigators have completed 74 interviews in Phase 1 and 6 interviews in Phase 2. EFIT's overall evaluation of these interviews has been very positive to date. The members of IAFD admitted into this process are complying with the Interview Transition Policy and EFIT Investigators report a positive interaction.

40. The EFIT Executive Team continues to meet with all Division Field Commanders and many of the specialized unit Commanders, to explain the EFIT process, its qualifications and what their Officers could expect upon EFIT responding to UOF incidents. Additionally, it was important for Commanders to freely communicate concerns they are experiencing with the UOF investigative process. The EFIT Executive Team continues field visits and various Division briefings concerning EFIT, specifically any changes or modifications to the Process Narrative and relevant protocols.
41. As of the writing of this report, and the one-year anniversary of the establishment of EFIT (May 2021), EFIT is pleased to share that it accomplished several changes to the IAFD investigatory process and established a certain level of professionalism within the IAFD team. While certain of IAFD's accomplishments were reported in the first two EFIT Quarterly Reports filed with the Court, (Docs. 873, 900), it is important to reflect on the on-going process. The EFIT Executive Team addressed a number of significant issues facing APD. Indeed, the current Process Narrative and associated protocols were revised on more than one occasion as the result of issues and violations of the original version. Any proposed changes are circulated to APD legal, DOJ and the IM. Comments are received and when appropriate incorporated into the Narrative and/or discussed with the relevant entities.
42. When EFIT began, IAFD was conducting interviews somewhat haphazardly in random locations. Detectives were asking leading questions and did not allow witnesses to state what happened by using open-ended questions. Essential critical listening skills were not present. There were interruptions of interviewees during their statements.

43. EFIT stressed the avoidance of leading questions, and the Detectives/Investigators mostly adhere to this standard with minor exceptions that are addressed directly with the IAFD Detectives/Investigators. EFIT will continue to identify Detectives/Investigators that are eligible to enter the Interview Transition Process,
44. IAFD Detectives/Investigators and the Officers under UOF investigations are now dressed appropriately and professionally. Investigative reports are improving with each EFIT review and IAFD is now presented with high quality reports for the Supervisory, Command and FRB review.
45. EFIT believed that it was imperative that the tone and tenor – in accordance with the seriousness of these investigations – was established at the outset. That professionalism continues to develop as EFIT moves forward.
46. Additionally, EFIT recommended a procedural change and Special Order be issued regarding SOD Tactical Activations where the APD SOD Tactical Commander requests assistance from an outside law enforcement agency and the assisting agency utilizes force. A meeting was held with the APD, DOJ, and the IMT, and a Special Order was approved.
47. EFIT constantly monitors the UOF investigation case assignments to ensure that work is distributed evenly within IAFD. This issue is crucial to ensuring that the applicable timelines are met. This issue becomes particularly acute as assignments are made between Officers and civilian Investigators. EFIT made a number of recommendations that facilitated this process that were accepted by IAFD regarding callouts and case distribution. When EFIT observes that this process was not followed, any concerns are communicated to IAFD Command to be discussed and/or rectified.

48. Indeed, EFIT also worked closely with APD on many issues including, but not limited to, call outs. It is only through this collaborative approach that EFIT can fulfill its Court ordered mandate and eventually return the IAFD investigatory function back to the Department.
49. In addition, the EFIT Executive Team continues to meet weekly with APD, DOJ, the IM and other City officials. These meetings enhance the level of communication between these parties. EFIT firmly believes that communication is essential to fulfilling its Court ordered mandate.
50. Mr. Neier and Mr. Hurlock attended the January 31, 2022, meeting of the Civilian Police Oversight Agency (“CPOA”) in an effort to make representatives of EFIT’s Executive Team available to the Agency.
51. On March 30, 2022, Messrs. Neier and Hurlock met with Rachel Biggs (Healthcare for the Homeless) and Maxwell Kaufman (Disability Rights, New Mexico) of the Mental Health Response Advisory Committee (“MHRAC”) along with DOJ to discuss the work that EFIT has undertaken. Again, the EFIT Executive Team believes that transparency with all concerned groups is essential for EFIT to fulfill its Court ordered mandate.
52. On April 12, 2022, Messrs. Neier and Hurlock met with Peter Cubra and Lawrence Kronen, counsel for the McClendon subclass *amici*. Again, Messrs. Neier and Hurlock briefed the attorneys on the work that EFIT has undertaken and relevant issues in an effort to provide as much transparency as possible in the process.

53. In the first Quarterly Report the EFIT Executive Team reported that APD Officers remained on scene for extended periods of time. While EFIT appreciates Officer safety, once a scene is secured, EFIT recommended, and APD instituted, a new practice where nonessential Officers – including those Officers that did not use or witness the force event are now cleared and sent back on patrol. This issue was addressed with Field Commanders. Once on the scene EFIT/IAFD are briefed by a field supervisor, if EFIT/IAFD observe Officers not involved in the UOF or is a witness to the UOF the supervisor is instructed to have to Officer(s) return to service. EFIT/IAFD are fully clearing these UOF scenes on an average of 54 minutes.

54. As of this report, EFIT/IAFD responded to, and are investigating, a total of 367 UOF incidents. These investigations are completed on an average of 54.31 days.¹⁸ In addition, 229 UOF investigations were closed, averaging a total of 88.01¹⁹ days for closure. While this currently meets the applicable timelines under the relevant documents, it will need to be addressed going forward to lower this number. Supervisor reviews still average 22.87 days however, EFIT observed slight improvement from February 1, 2022, through April 22, 2022²⁰. The average supervisor review during this time period is now 17.41 days. Of the UOF cases closed (229), 21 UOF cases were out of APD Policy (9.17%) and 102 of the 229 investigations (44.54%) failed to comply with the Process Narrative. These levels remain extremely high and EFIT repeatedly meets with APD to address them.²¹
55. During this reporting period APD experienced 5 OIS incidents. EFIT identified numerous issues regarding these cases. Specifically, during this most recent quarter, EFIT observed and/or discovered numerous issues with the way IAFD is handling OIS investigations

¹⁸ IAFD Detective/Investigators are assigned varying numbers of active UOF investigations. This is an issue that EFIT has raised numerous times. In addition, EFIT recently has been made aware that certain IAFD Supervisors may be requesting Detectives/Investigators to “sit on” completed investigations so not to make others in IAFD “make look bad.” This conduct is inexcusable if EFIT is to complete its Court ordered mandate.

¹⁹ Two of the closed cases involved an Officer who was involved in both cases and was severely injured during the second case, an OIS case. These two cases were reported to all parties and the Federal District Court (Doc. 864) and were closed in 122 and 184 days and are not included in the statistical findings related to length of investigation or days to close the investigation.

²⁰ After a directive from A/Deputy Superintendent Cottrell that Supervisory reviews are to be completed within 15 days; IAFD Supervisors are working toward this requirement.

²¹ It is important to note that two investigations were assumed by APD’s IAPS. One investigation was completed in 124 days and the second 93 days. These are not to be included in those investigations total pursuant to the Court ordered mandate for EFIT/IAFD.

56. March 14-15, 2022, Mr. Neier, along with representatives of APD, the City Attorney's Office, IMT and DOJ participated in a meeting with Mr. Thor Morrison of Aegis Solutions LLC ("Aegis"). Aegis is developing an Internal Affairs Training program for IAFD pursuant to a contract signed on February 11, 2022, pursuant to the express requirements of the Stipulated Order²² Par. 33 (Doc. 720). Subsequent meetings were also held during the week of April 11, 2022 (Aegis site visit), and the EFIT Executive Team will provide any addition assistance as requested.
57. EFIT and IAFD continue to conduct a weekly case status meeting and track cases at all intervals. These meetings identify concerns regarding investigative obstacles, case prioritization and allocation of resources. The concerns are addressed with Detectives/Investigators and supervisors immediately and if necessary, with IAFD Command at the conclusion of the meeting.
58. EFIT Investigators and Supervisors continue to oversee all cases to include review of onsite work, interviews and reporting. EFIT is constantly evaluating IAFD Detectives, Investigators, Supervisors and the IAFD Division. To that end, EFIT is conducting weekly meetings with APD Command Staff, Field Commands and many of the Specialized Units.
59. EFIT continues to utilize the evaluation rubric (previously approved by the IM and DOJ). This is a valuable tool to evaluate IAFD and relevant personnel pursuant to the Amended Stipulated Order Para. 34. EFIT implemented this process for *each* investigation conducted by IAFD and EFIT commencing September 7, 2021.

²² As of March 21, 2022, Amended Stipulated Order.

60. The rubric was updated as of December 1, 2021. While it continues to contain approximately forty-five areas where IAFD personnel are evaluated, and closely tracks the Process Narrative, there are now eight enumerated categories where an individual must pass or be considered failing. The EFIT Executive Team added another category that will automatically take a case out of compliance as a result of IAFD's failure to address systemic issues, such as the lack of an investigative plan or failing to collect available evidence.
61. A Detective/Investigator must still attain a 95% proficiency rating for two consecutive terms before they are deemed proficient to conduct interviews outside of the presence of an EFIT Investigator.

Concerns To Date

62. The most troubling concerns of EFIT continue to be with the IAFD supervisors and the sustainability of IAFD's recruitment:

Supervision

63. EFIT has serious concerns with the manner in which IAFD first line supervisors are handling daily supervision of the Detectives/Investigators in the Division. EFIT believes that this is clearly a first line supervisory issue that, if left uncorrected, will continue to render investigations out of compliance with the Process Narrative (Doc. 862).

64. EFIT observed improvement when the IAFD Detective(s)/Investigator(s) respond to the scene of a UOF when conducting a thorough investigation and are now finally collecting the proper documentation. However, a nationally accepted standard investigative technique and requirement of the Process Narrative (Doc. 862, Par. 33) is that within three business days of the UOF, the IAFD Supervisor and IAFD Detective/Investigator along with EFITs input²³, must develop an Investigative Plan.
65. *The case agent and the immediate supervisor will meet to discuss and **draft the investigative plan** (with **input from the EFIT investigator**) within three business days of the case assignment. The investigative plan is **designed to create benchmarks** throughout the investigative process to ensure cases are completed within timelines, to **keep supervisors informed**, and to **identify any issues as early in the investigation as possible**. This includes the reviewing evidence, scheduling, preparing and conducting interviews, along with case analysis and write-up. An **integral part of the investigative plan is to involve the immediate supervisor earlier in the investigative process to allow for closer supervision and collaboration between the supervisor and the detective.**"²⁴ (emphasis added).*
66. These investigative plans are not only best practices throughout the country, they insure proper first line supervision of Detectives/Investigators, enabling the supervisors to know the case and status, and guiding the Detectives/Investigators through the UOF investigations along with immediate problem solving. An added benefit to the first line supervisor is that, once the case is presented for review, they already know the case and can conduct their review in an expedient manner.

²³ IAFD viewed the Investigative Plan as merely a "to do list" and has ignored EFIT's repeated suggestions.

²⁴ Process Narrative (Doc. 862).

67. IAFD Supervisors should proactively meet weekly with Detectives/Investigators under their command to review and update the investigative plans and to ensure these investigations are completed as expeditiously as possible and are not consistently at the end of the 60-day timeline. The Supervisors reluctantly agreed to do this and implementation has been slow (See Paras. 69 c below).
68. After months of the EFIT Executive Team offering assistance to IAFD to address consistent violations of the Process Narrative without response, on March 17, 2022, Mr. Neier and Mr. Hurlock provided training to all IAFD Supervisors and IAFD Command Staff as to how to compile a sufficient investigative plan. (Exhibit XX).
69. Approximately a month after providing the investigative plan training, 29 current UOF investigative plans were reviewed by the EFIT Executive Team:
- a. 13.79 % - Were not filed in IAPro;
 - b. 37.93% - Investigative plan was deemed insufficient by EFIT; and
 - c. 62.06 % - Failure to conduct follow-up weekly meetings and/or failure to update Investigative Plans in IAPro.²⁵
70. The aforementioned concerns, will undoubtedly take the UOF investigations (no matter what the outcome of APD policy decisions) out of compliance with the Process Narrative. This will have the attendant consequence of prolonging EFIT's tenure to fulfill its Court ordered mandate. These findings were discussed with IAFD Command.

²⁵ This totals more than 100% as certain of the deficiencies were in multiple categories.

71. As discussed, over the last 9-10 months, supervision at all levels is severely lacking. Indeed, supervisors, at all levels, must take responsibility for compliance. IAFD is making strides with the daily mentoring of EFIT at the Detective/Investigator levels. However, IAFD Command must focus on all levels of supervision to ensure that the IAFD reaches a 95% compliance level as required by the Amended Stipulated Order. At this point, a great deal must be done if IAFD is to ever attain this goal. (See Report *Infra.*)
72. Until recently, during this quarter IAFD Command ignored EFIT's recommendations on how staffing of high level UOF investigations (OIS and/or cases that have the potential of criminality and/or egregious misconduct) must be conducted. EFIT's concerns range from IAFD assigning inexperienced Detectives/Investigators, not following through with EFIT reporting recommendations,²⁶ missing deadlines set by IAFD Command and/or EFIT, assigning Detective/Investigators who are scheduled to resign or go on leave.²⁷ These staffing decisions seriously hamper IAFD's ability to ensure thorough and timely investigations.

²⁶ “[R]eview of reporting by IAFD Detective(s)/Investigator(s) are both substantive and grammatical, expecting that our comments are incorporated into the final product. Evidently the report did not incorporate many of the changes outlined by EFIT. As a result, the FRB has been provided, what EFIT believes is a substandard unprofessional document and review.” Memorandum issued by Mr. Neier on April 4, 2022.

²⁷ To address these concerns, EFIT overstaffed OIS investigations and the EFIT Executive Team has direct involvement.

73. In addition, the EFIT Executive Team noted several instances where EFIT Investigators provided guidance and expertise to IAFD regarding OIS investigations, and such guidance was completely ignored by IAFD personnel. On one such OIS investigation, the EFIT Executive Team assigned two seasoned EFIT Investigator with extensive homicide and OIS experience. At the same time, the EFIT Executive Team suggested that IAFD Command reassign the IAFD Supervisor for lack of supervision and the Investigator with no OIS experience, stating that “she had to learn some time.” EFIT Executive Team then suggested that a second IAFD investigator be assigned with her in an observation capacity, this suggestion was also ignored. IAFD Command ultimately reassigned the supervision of the UOF investigation. As a result, EFIT essentially assumed primary interview responsibilities for this investigation. Moreover, considerable time was unnecessarily expended as the Investigator missed several deadlines and submitted extra material *after* the report was issued late.

74. EFIT now documents delivery of all materials to the IAFD Detective/Investigator and their supervisor to ensure the guidance is understood and that corrections are made to IAFD reports, or discussions held with the IAFD Detective/Investigator (as to their reasoning why they believe the modifications should not be made). Notifications are also now routed through to IAPro to the Detective/Investigator to ensure consistency and that timelines are consistent. Through an agreement between EFIT and IAFD.

75. While EFIT is limited in directing IAFD, EFIT reserves the right under the Stipulated Order, (Doc. 720 Para. 23.b), and now the Amended Stipulated Order (Doc. 904, Para. 22.b) to complete investigations and supervisory/command review if *“believes that deficiencies in the tactics or work product of IAFD personnel assigned to the investigation is likely to prevent the investigation from being completed within the deadlines provided for in the CASA, APD policy, and the CBA.”*

76. It should be noted that EFIT is not advocating speed at the expense of a thorough and complete investigation. However, EFIT believes that it is possible to have a thorough and complete investigation in a timely manner. When EFIT provides direct guidance during a UOF investigation the total completion time is averaging 88.01 days. EFIT believes that with proper supervision by IAFD these investigation and review timelines will decrease. EFIT is concerned that the timely completion of investigations will cease upon transfer back to IAFD for the reasons articulated thus far throughout this report.

Albuquerque Police Officers Association

77. EFIT reported on the prior actions of the APOA where the union’s representatives interrupted interviews in clear contravention of Collective Bargaining Agreement (“CBA”). Since EFIT’s inception and after the initial meetings with the APOA, EFIT is not experiencing the number of issues originally observed. However, on occasion these issues unfortunately occur with representatives interrupting interviews or acting in an unprofessional manner.

78. When such conduct was identified, Mr. Neier and Mr. Hurlock immediately requested a meeting, and met with, counsel for the APOA to rectify the situation. In addition, the EFIT Executive Team requested that the Employee Representation Admonition form (standard employee representative observer form that IAFD must use when conducting interviews) become an official document of APD. On April 12, 2022, APD advised EFIT that this form was renamed “Sworn Employee Representative Admonition Form” and is now an official APD document (PD 1142) (See Ex. F). The EFIT Executive Team will continue to monitor the APOA involvement in interviews and immediately discuss any issue with APOA counsel reserving all rights afforded to under the relevant documents to rectify the situation, if not satisfied with the outcome.
79. EFIT was informed that the APOA recently filed an injunction with the City of Albuquerque Labor Relations Management Board concerning an OIS investigation. The APOA’s application was heard on Monday, May 16, 2022. If successful, APOA’s application would have seriously impacted the timetables set forth in the relevant documents regarding UOF Investigations. However, the City’s Legal Department successfully defeated the APOA’s application and the application was denied in its totality. (See Ex. H).

City Legal

80. EFIT identified certain issues regarding the City and its legal department. These issues include but are not limited to: the ability to secure the contracts and funding for the continuation of EFIT’s current contract and the EFIT backlog team; issuing opinion letters regarding the interpretation of certain labor agreements; and clarification of the legal protocols concerning OIS events.

81. On March 21, 2022, the United States District Judge James O. Browning signed the Amended Stipulated Order that included a Statement of Work (“SOW”) for the backlog cases (Doc. 906). Mr. Neier and Mr. Hurlock reviewed and approved final contract revisions for the extension of EFIT 1 and the establishment of EFIT 2 (“Backlog Team”) matters. City legal advised Mr. Neier on March 31, 2022, that the final contracts were currently under review by the ABQ Fiscal Department and EFIT should quickly receive the contracts for execution. However, on April 5, 2022, Messrs. Neier and Hurlock and DOJ were informed that these contracts could not be approved without the full City Council’s vote.
82. Since the EFIT contract expires on May 1, 2022, City Legal proposed a two month “stop gap” appropriation that does not require City Council approval, with the intention of introducing a Letter of Introduction and EFIT 1 and EFIT 2 (backlog) contracts. Mr. Neier signed the “stop gap” contract on April 14, 2022, however, in the interest of full disclosure, EFIT has received a fully executed contract as of this report.
83. EFIT and DOJ was informed on April 15, 2022, that both the full EFIT 1 contract and EFIT 2 (backlog investigations) contracts were approved by the Mayor’s Office and Letters of Introduction were filed with the City Council on or about April 29, 2022, with the City Council to take final action on May 16, 2022.
84. The Letters of Introduction were filed with the City Council on April 29, 2022 (EC-22-76 and EC-22-77), with the expectation of final action by City Council on May 16, 2022.

Sustainability

85. Sustainability of trained IAFD Detectives/Investigators (apart from violations of the Process Narrative) continue to be one of the EFIT Executive Team's main concern related to the eventual transfer of responsibility from EFIT to APD for conducting full investigations of Level 2 and Level 3 UOFs as individual IAFD Detectives/Investigators and Supervisors meet the qualifications identified in Paragraph 34 of the Amended Stipulated Order. (Doc. 906).
86. The APOA contract enables sworn personnel to "bid" based in part with seniority to various Divisions. EFIT witnessed the lack of sworn personnel wanting to transfer into IAFD requiring APD to assign the bottom of the bid list²⁸ to IAFD to comply with the staffing levels of the Amended Stipulated Order.
87. At present little is done to keep sworn personnel in IAFD. This is especially so when promotions, requests for transfer of senior sworn personnel occur and a bid is announced. The loss of these trained personnel can be devastating. It is anticipated that by August 2022, approximately 40% of the sworn personnel that are in the transition process will no longer be assigned to IAFD.
88. With EFIT's concern, APD is committed to over staffing the civilians in IAFD, bringing the Division to a level of 31 from the current numbers. We commend APD in that regard however a well-functioning Internal Affairs Division needs both sworn and civilian personnel.

²⁸ Certain Officers have less than one year of active duty with APD, once transferred to IAFD they are afforded "Detective" status.

89. While the City has made changes regarding incentives for IAFD personnel, EFIT believes more needs to be done. While EFIT anticipated that this would be addressed further during the recent collective bargaining agreement negotiation process, minimal changes were made in this regard in the contract signed by the City and the APOA on December 30, 2021, by providing the same incentive pay as field Officers receive for staying within the same area command as those staying in IAFD or IAPS. Pursuant to section 3.1.10 of the APOA contract *“An officer will receive \$1,300.00 for each year served for the entire year in the same Area Command or the IA Division, up to and capped at four years of continuous service or \$5,200.00 per year.”* As mentioned prior, we commend Chief Medina in providing this incentive to the civilian Investigators, however more incentives are needed to make IAFD a sought-after Division at APD with an environment that has motivated teams and provides the best equipment, training, and promotional opportunities to Officers.
90. The EFIT Administrator and Deputy Administrator met with APD Legal Counsel Carlos Pacheco and APD Executives numerous times to discuss EFIT’s concerns. While the APOA contract clearly governs and incentivizes sworn members of IAFD, we have made recommendations regarding civilians. These range from providing them with the same incentive pay as the sworn Officers (discussed in above),²⁹ addressing the disparate on-call pay provided to Detectives and not Investigators (8 hours are provided to Detectives for every week on call), providing official APD professional clothing that will identify themselves not only to APD Officers but the public at large, vehicles and equipment.

²⁹ Chief Medina informed the EFIT Executive Team that this was approved by the City.

91. Additionally, a recommendation both civilian Investigators and Detectives be required to reimburse the City for training costs if they choose to leave IAFD within a proscribed period of time to be determined. The training and mentoring are a substantial cost via EFIT, and other external sources paid by the City.
92. The five new civilian Investigators that APD hired are continuing their onboarding and started responding to on-scene UOF incidents the end of April 29, 2022.
93. While IAFD is responding as required by the Amended Stipulated Order (within one hour), namely, within 42.43 minutes, its average response time is longer than EFIT's average response time, 28.17 minutes.³⁰ It is also longer than the previous the new civilian training time of 30.55 minutes. The assigned IAFD Detective/Investigator is required to pick up trainees on their way to a callout. This difference in time is due to the lack of assigned vehicles for trainees as a potential cause for this newfound delay. This has the attendant consequence of increasing the amount of time an Officer who utilized force must remain on scene.

³⁰ It is important to note that, at this point, EFIT does not commence the on-scene investigation until IAFD arrives. However, EFIT is evaluating changes to this process going forward.

Amended Stipulated Order and Backlog Force Cases (“EFIT 2”)

94. As previously noted, the Amended Stipulated Order restates many of the Original Stipulated Order’s requirements and supplements them in two ways. First, the Amended Stipulated Order requires the City to modify its existing contract to allow EFIT to investigate the Backlog Force Cases, namely, all use-of-force incidents occurring between January 1, 2020, through July 16, 2021, that APD did not investigate, in full or in part, in violation of the CASA, (Doc. 465-1). Exhibit 1: Scope of Work to Remedy the Backlog Force Cases (“SOW”) to the Amended Stipulated Order (Doc. 906, Ex. 1 at 1-2, Para. 6) provides:

95. *“The EFIT Administrator shall, within one month of the entry of the Amended Stipulated Order, provide the City, DOJ, and the Independent Monitor with a written plan for how it will accomplish the requirements of the Order. The plan shall describe, at a minimum, the methodology that the EFIT Backlog Team will use in investigating the Backlog Force Cases and how the EFIT Backlog Team will prioritize its investigations of the force incidents included in the Backlog Force Cases. The City, DOJ, and the Independent Monitor shall provide any comments or suggestions on the written plan to the EFIT Administrator within two weeks of receiving it. The EFIT Administrator shall work in good faith to address the concerns and suggestions provided by the City, DOJ, and the Independent Monitor.”*

96. With assistance from APD's Accountability Bureau, the EFIT Executive Team obtained an Excel spreadsheet containing the data of all the Backlog Force Cases identified in the Amended Stipulated Order (Doc. 906). Additionally, the EFIT Executive Team worked with members of the Accountability Bureau and agreed that APD will develop a dashboard that is similar to the current IAFD case tracking and management dashboard, stratifying the data readability that will be distributed to APD, DOJ and the IMT when reporting on the Backlog Force Case investigations. This dashboard will be developed by June 1, 2022, by APD's new Data Analytics Division and tested by the EFIT Executive Team prior to use.
97. The EFIT Executive Team conducted a number of meetings with APD's Accountability Bureau, including the Compliance and Oversight Division and the newly created Data Analytics Division who will also assist calculating normative thresholds for UOF to identify the Officer(s) who utilize UOF over the expected incident rate and are thus considered High Incident Officers.
98. On April 18, 2022, a draft methodology was sent to the APD, IMT and DOJ for comment and a final Backlog Force Case Investigations Methodology was finalized on April 27, 2022 (Ex. G).
99. The EFIT Executive Team conducted interviews for the Backlog Force Case Investigations Team ("EFIT 2")³¹ and are currently awaiting for the City to execute and fund the contract to start the onboarding process and commence the investigations of 667 Backlog Force

³¹ Two teams of one supervisor and three Investigators along with the EFIT Executive and Support Teams.

Cases.³²

Upcoming Dates

100. On August 16, 2022, EFIT will file its fourth Quarterly Report with the Court.

101. Once again, we thank the Court for the opportunity to submit this report. I, and my team, are available should the Court have any questions or need any additional information concerning EFIT or its attendant mandate.

Respectfully submitted,

Darryl S. Neier

Darryl S. Neier

Encls.

³² Not including the 12 cases investigated by IAFD which EFIT-2 will review pursuant to the Amended Stipulated Order.

EXHIBIT

A

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

FEB 26 2021

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

MITCHELL R. ELFERS
CLERK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE CITY OF ALBUQUERQUE,

No. CIV. 14-1025 JB\SMV

Defendant,

vs.

THE ALBUQUERQUE POLICE
OFFICERS' ASSOCIATION,

Intervenor.

**STIPULATED ORDER ESTABLISHING AN
EXTERNAL FORCE INVESTIGATION TEAM**

This matter comes before the Court on the Joint Motion of Plaintiff United States of America and Defendant City of Albuquerque (collectively, the Parties), with the concurrence of the Independent Monitor, for entry of this Stipulated Order, which requires the City to establish, on a temporary basis, an External Force Investigation Team (EFIT) to assist the Albuquerque Police Department (APD) in conducting investigations of Level 2 and Level 3 uses of force by APD officers, while also assisting APD with improving the quality of its own Internal Affairs (IA) force investigations. This Stipulated Order also requires the City to improve APD's IA processes, increase the number APD IA force investigators, and provide additional training to APD's IA force investigators. The Parties intend the measures in this Stipulated Order to ensure high-quality, timely investigations of Level 2 and Level 3 force incidents, and to address the investigative deficiencies in APD's IA force investigations identified in the Independent

RSD
2/10/21

Monitor's Twelfth Report, Doc. 652. The Court approves this Stipulated Order and enters it as an Order of the Court.

A. Establishment of the External Force Investigation Team

1. The City shall establish an EFIT to guide and direct IA force personnel, and when necessary, conduct investigations of Level 2 and Level 3 uses of force; provide written assessments of IA investigations carried out by IA force personnel; and provide written feedback on IA force personnel's work product. *See* Doc. 465-1 ¶ 48 (defining Level 2 and Level 3 uses of force).
2. For the purposes of this Order, "IA force personnel" includes IA force investigators and supervisors, other than IA Commanding Officers; "investigations of Level 2 and Level 3 uses of force" include both investigations and the review of investigations by supervisors; and "Independent Monitor" may include members of the Independent Monitoring Team.
3. EFIT shall be overseen by an Administrator. The City shall empower the EFIT Administrator to hire and retain the staff necessary to fulfill the requirements of this Order. It is anticipated that the EFIT Administrator will hire and retain a number of Investigators, as well as administrative support staff and Supervisors, as necessary to fulfill the duties under the EFIT Administrator's contract with the City. The EFIT Administrator shall ensure that a sufficient number of EFIT Investigators to meet the requirements of Paragraph 17 of this Order are physically present in Albuquerque and able to respond to the scene of Level 2 and Level 3 uses of force.
4. The EFIT Administrator shall have experience and expertise in investigating law enforcement misconduct, the constitutional standards for police officers' use of force, and systems reform litigation. The EFIT Supervisors and Investigators shall have experience

and expertise in investigating law enforcement misconduct and the constitutional

standards for police officers' use of force. Neither the EFIT Administrator, Supervisors, nor Investigators shall have any current or previous employment relationship or contract for services with APD or the City.

5. The City shall contract with the EFIT Administrator and fund the operations of EFIT in accordance with its Public Purchases Ordinance, specifically, ROA 1994, § 5-5-20(U) (exempting “[c]ontracts and expenditures in connection with court or administrative proceedings, including, but not limited to, experts, mediators, interpreters, translators, court reporters, process servers, witness fees, and printing and duplicating of materials for filing” from competitive requirements of the article), or any other appropriate provision of the Public Purchases Ordinance.
6. The City shall widely publish a request for letters of interest for the EFIT Administrator no later than March 1, 2021. ^(S) ^{ACB} _{2/26/21}
7. The City shall accept input from the United States Department of Justice (DOJ) as the City solicits EFIT Administrator candidates and on the candidate that the City ultimately selects. DOJ shall provide input within two (2) weeks of receiving information about the candidates, unless otherwise agreed by the City and DOJ.
8. The contract between the EFIT Administrator and the City shall include all standard terms for City contracts.
9. Within two weeks of the EFIT Administrator's selection, the City and DOJ shall file a notice with the Court to inform the Court of the Administrator's identity and professional background.

10. The City shall enter into a contract with an EFIT Administrator no later than May 3, 2021.

11. Within one month of the EFIT Administrator's selection, the City and the EFIT Administrator shall establish protocols for how APD IA and EFIT will coordinate on investigations of Level 2 and Level 3 uses of force. At a minimum, the protocols will specify procedures for coordinating the work of IA force personnel and EFIT personnel; and how APD IA will transmit investigative files to EFIT. The protocols will specify that EFIT shall not assist APD IA with investigations of Level 2 and Level 3 uses of force for which the investigatory deadlines established by the Court-Approved Settlement Agreement (CASA), APD policy, and the Collective Bargaining Agreement between the City and the Albuquerque Police Officers' Association (CBA) have expired at the time that EFIT begins providing services. The protocols shall be submitted to DOJ and the Independent Monitor for review and comment pursuant to the procedures of Paragraphs 147 and 148 of the CASA. Doc. 465-1 at 49-50.

B. Staffing of IA Force Investigators; Technical Assistance

12. The City shall ensure that APD maintains at least twenty-five (25) force investigators assigned to IA, unless and until APD can demonstrate by an internal staffing analysis that fewer investigators are necessary to timely investigate all Level 2 and Level 3 uses of force.

13. The Independent Monitor has provided and will continue to provide extensive technical to the City regarding IA processes, including the period before an EFIT administrator is selected.

14. Based on the technical assistance set forth in Paragraph 13, within two months of the

entry of this Order, the City will submit a proposed written IA investigative process to DOJ and the Independent Monitor. DOJ and the Independent Monitor will have 14 days to submit proposed revisions to the written IA investigative process. The City will have seven days to agree to or reject any proposed revisions. After the City, DOJ, and the Independent Monitor reach agreement on the proposed written IA investigative process, the written IA investigative process shall be filed with the Court. If the City, DOJ, and the Independent Monitor cannot reach an agreement on the proposed written IA investigative process, the City or DOJ may submit the matter to the Court for resolution.

15. After APD implements the written IA investigative process, the Independent Monitor will spend an additional week providing intensive technical assistance, in addition to the extensive technical assistance provided to date.

16. The City shall endeavor to negotiate longer investigative deadlines with the recognized exclusive representatives of relevant bargaining agreements. Nothing in this order requires the City to violate the Labor Management Relations Ordinance or any collective bargaining agreement.

C. Investigations of Level 2 and Level 3 Uses of Force

17. From the date the EFIT contractor begins services and subject to EFIT staffing levels, APD and EFIT will both deploy investigators to the scene for every Level 2 and Level 3 use of force, unless APD deploys an APD IA investigator who has satisfied the requirements of Paragraph 35.

18. APD IA investigators shall act as the lead on-scene investigators for all Level 2 and Level 3 uses of force and shall be primarily responsible for conducting the on-scene

requirements of CASA Paragraphs 69(a), (b), (c), (d), and (e) (Doc. 465-1 at 27),

including but not limited to:

- a. respond to the scene and consult with the on-scene supervisor to ensure that all personnel and subject(s) of use of force have been examined for injuries, that the use of force has been classified according to APD's classification procedures, that subject(s) have been interviewed for complaints of pain after advising the subject(s) of his or her rights, and that all officers and/or subject(s) have received medical attention, if applicable;
- b. ensure that all evidence to establish material facts related to the use of force, including but not limited to audio and video recordings, photographs, and other documentation of injuries or the absence of injuries is collected;
- c. ensure that a canvass for, and interview of, witnesses is conducted. In addition, witnesses should be encouraged to provide and sign a written statement in their own words;
- d. ensure, consistent with applicable law, that all officers witnessing a Level 2 or Level 3 use of force by another officer provide a use of force narrative of the facts leading to the use of force;
- e. provide a written admonishment to involved and witness officer(s) to the use of force that they are not to speak about the force incident with anyone until they are interviewed by [an] . . . investigator . . .

19. The City shall transmit all documents, evidence, and investigative notes created or obtained by the on-scene investigator(s) to EFIT within 72 hours of the use of force, and

on an ongoing basis as additional evidence is provided. EFIT will acknowledge receiving all forwarded investigative documents, evidence, and notes.

20. IA force personnel and EFIT personnel shall jointly conduct investigations of all Level 2 and Level 3 uses of force, subject to the exception in Paragraph 23. IA force personnel and EFIT personnel shall jointly investigate and review all Level 2 and Level 3 uses of force in a manner that is consistent with the requirements of the CASA, APD policy, and the CBA.
21. EFIT shall have full, direct, and timely access to APD staff, employees, facilities, documents, data, and evidence to the extent necessary to fulfill the requirements of this Order. EFIT shall coordinate with APD and its legal counsel to access personnel, facilities, and documents in a reasonable manner. Should APD or its legal counsel decline to provide EFIT with access to documents or data based on privilege, APD shall inform EFIT, DOJ, and the Independent Monitor that it is withholding documents or data on this basis, and shall provide EFIT, DOJ, and the Independent Monitor with a log describing the documents or data and the basis of the privilege.
22. For each use of force investigation, EFIT shall evaluate the quality of IA force personnel's investigations and immediately notify APD and APD's legal counsel of any deficiencies or misconduct by IA force personnel related to their investigations. APD shall promptly address these deficiencies or misconduct through corrective action or discipline, consistent with the CASA, APD policy, and the CBA.
23. EFIT shall be authorized to complete investigations and supervisory reviews of investigations of Level 2 and Level 3 uses of force without the involvement of IA force personnel if either of the following conditions are met:

- a. EFIT or APD has alleged that the IA force personnel assigned to the investigation has committed misconduct in the course of the investigation, and EFIT believes that the IA force personnel's continued participation in the investigation is likely to undermine the integrity of the investigation; or
 - b. EFIT or APD believes that deficiencies in the tactics or work product of the IA force personnel assigned to the investigation is likely to prevent the investigation from being completed within the deadlines provided for in the CASA, APD policy, and the CBA.
24. EFIT shall provide written notice to DOJ, APD, and the Independent Monitor when EFIT exercises its authority under Paragraph 23 to complete investigations of Level 2 and Level 3 uses of force without the involvement of IA force personnel. EFIT's notice shall explain in writing the grounds for its actions. If DOJ or the City believes that EFIT's actions were improper, they will seek to resolve the matter with EFIT and the other party. If DOJ, APD, and EFIT cannot reach a resolution, DOJ or the City may bring the matter before the Court for resolution.
25. APD and EFIT shall identify all misconduct that occurred during the course of each use of force incident and provide information about all misconduct that it identifies to APD, for the purposes of screening, assigning an internal affairs number, and tracking by APD IA. IA force personnel and EFIT personnel shall complete the investigation of all misconduct related to the use of force, and APD IA shall complete the investigation of all misconduct not related to the use of force.
26. EFIT shall complete its investigations within 60 days of receiving on-scene investigation materials from APD. At the conclusion of each investigation, IA force personnel and

EFIT personnel shall prepare a joint investigative report, consistent with the requirements of the CASA and APD policy. In the report, IA force personnel and EFIT personnel shall recommend a determination of whether each use of force complied with APD policy and state and federal law. For any use of force for which the investigation determines that an officer violated APD policy or state or federal law, IA force personnel and EFIT shall recommend appropriate corrective and/or disciplinary action, consistent with the CASA and APD policy.

27. An IA Commanding Officer shall review each investigative report and recommendation, and state in writing whether he or she concurs with the report and recommendation's findings of whether the use of force complied with policy; the recommended disposition of any misconduct allegations; and any recommended corrective and/or disciplinary action. The IA Commanding Officer shall explain any concurrence or non-concurrence in writing. Any recommended discipline resulting from an investigation will be reviewed by APD's executive staff consistent with APD policy.

D. Role of the Independent Monitor with Regard to EFIT

28. The Independent Monitor shall assist APD, DOJ, and the EFIT Administrator as the EFIT is established by, at a minimum:

- a. orienting EFIT regarding CASA requirements and relevant CASA compliance deficiencies by APD;
- b. providing technical assistance to EFIT regarding the Independent Monitor's compliance assessment methodology; expectations regarding EFIT's processes, work product, and records production; and other relevant matters, as the EFIT Administrator and the Independent Monitor deem appropriate; and

c. conducting informal assessments of force investigations completed with EFIT's involvement, particularly in the early stages of EFIT's implementation, to ensure that investigations completed with EFIT's involvement comply with CASA requirements regarding the quality of force investigations. The Independent Monitor shall convey the outcome of these informal assessments to the EFIT Administrator, APD, and DOJ.

29. The City recognizes that the requirements of Paragraph 28 of this Order are beyond the scope of the Independent Monitor's duties under the CASA and the City's annual budgets for the Independent Monitor's services under the CASA. The City shall therefore enter into separate compensation agreements with the Independent Monitor for the provision of the services required by Paragraph 28 of this Order, as described in Paragraph 334 of the CASA.

30. The Independent Monitor shall conduct formal compliance assessments of force investigations completed with EFIT's involvement as it would investigations completed by APD. Except for the requirements of Paragraph 28 of this Order, this Order is not intended to, and does not, alter the responsibilities or authority of the Independent Monitor under the CASA.

E. Remedial Action Plan

31. Within five months of the start date of the contract with EFIT, the City shall draft a remedial action plan for IA force investigations and submit it to DOJ, the Independent Monitor, and the EFIT Administrator. The plan will identify concrete actions that the City and EFIT will take to improve the quality and timeliness of investigations of Level 2 and Level 3 uses of force by IA. The Independent Monitor may recommend changes or

approve the plan consistent with the requirements of Paragraph 147 of the CASA. After the Independent Monitor approves of the plan, the City shall file it with the Court. If either the City, DOJ, or both disagree with the Monitor's recommendations, such party or parties may file the plan with the Court and move for its approval.

32. After filing a joint remedial action plan or after the Court approves the plan, and until the plan has been fully implemented, the City shall file brief reports to the Court, due every three months from the date the remedial action plan was filed, to inform the Court of progress in implementing the plan, any barriers to implementation that it has faced, and any modifications to the plan that may be necessary. The City's quarterly reports will include, at a minimum:

- a. a summary of the City's progress regarding the implementation of the written IA investigative process required by Paragraph 14, including a summary of the intensive technical assistance provided by the Independent Monitor;
- b. a summary of written evaluations by EFIT of the quality of IA force investigators' investigations during the previous quarter;
- c. a summary of written feedback by EFIT of IA force investigators' work product during the previous quarter;
- d. any formal training that IA force investigators received during the previous quarter;
- e. the number of force investigators assigned to IA and, if APD has not yet retained 25 force investigators, the steps that APD will take in the next quarter to achieve full staffing;

- f. the number of investigations or reviews of investigations that EFIT completed without the involvement of IA force personnel, pursuant to Paragraph 23;
- g. the number of IA force investigators conducting investigations independent of the EFIT, pursuant to Paragraph 35; and
- h. for Level 2 and Level 3 force investigations:
 - i. the number of investigations initiated during the previous quarter;
 - ii. the number of investigations completed during the previous quarter;
 - iii. the average and mean number of days from initiation to completion for the investigations completed during the previous quarter;
 - iv. the number of investigations during the previous quarter that were completed within the deadlines required by the CASA, APD policy, and the CBA; and
 - v. the number of investigations during the previous quarter that were not completed within the deadlines required by the CASA, APD policy, and the CBA.

F. Training of IA Force Personnel

33. Subject to extensions necessary due to COVID-19-related restrictions and availability, and subject to the approval of the proposed contractor by the by the Monitoring Team and DOJ, within three months of the entry of this Order, APD shall identify and hire a contractor to who shall, in concert with APD's Academy, develop and provide training to IA force personnel on conducting high-quality and timely force investigations. This training shall be developed, approved, and provided consistent with APD policy and the CASA, and shall incorporate problem-solving, experiential adult-learning principles.

This training shall be subject to review and approval by the Independent Monitor and DOJ.

G. Returning Responsibility for Full Investigations of Level 2 and Level 3 Uses of Force to APD

34. An IA Commanding Officer and EFIT shall prepare written evaluations of each investigator and supervisor who are assigned as IA force personnel on a quarterly basis. These evaluations shall be considered confidential consistent with City Personnel Rules and Regulations and state law, but shall be provided to the Monitor and DOJ upon request and shall be kept confidential pursuant to the requirements of Paragraph 326 of the CASA. These evaluations shall include, at a minimum:

- a. a description of the nature and extent of all training provided to the IA force investigator or supervisor during the previous quarter;
- b. a summary of written assessments by EFIT of the quality of the IA force investigator's or supervisor's investigations;
- c. a summary of written feedback by EFIT on the IA force investigator's or supervisor's work product;
- d. a description of any allegations that the IA force investigator or supervisor committed misconduct related to their investigations during the previous quarter, including how the allegation was ultimately resolved;
- e. the number of the IA force investigator's or supervisor's investigations from the previous quarter in which the IA force investigator or supervisor failed to satisfy CASA requirements for investigations, compared to the number of investigations that the IA force investigator or supervisor conducted during the previous quarter;

f. an evaluation of the IA force investigator's or supervisor's overall performance;

and

g. any actions that will be taken during the following quarter to improve the IA force investigator's or supervisor's performance.

35. APD may transfer responsibility for conducting full investigations of Level 2 and Level 3 uses of force from EFIT to IA force personnel only after a quarterly evaluation demonstrates:

a. that the IA force investigator or supervisor has received training on all aspects of Level 2 and Level 3 force investigations;

b. that the IA force investigator or supervisor has regularly conducted high-quality investigations for at least two months, as demonstrated by EFIT's written assessments of the investigations;

c. that the IA force investigator or supervisor regularly produces high-quality work product, as demonstrated by EFIT's written feedback;

d. that the IA force investigator or supervisor has not committed misconduct during the course of investigations; and

e. that 95% of the IA force investigator's or supervisor's investigations from the previous quarter satisfied all CASA requirements for investigations.

36. APD shall notify the EFIT Administrator in writing two weeks before APD intends to transfer sole responsibility for conducting full investigations of Level 2 and Level 3 uses of force from EFIT to an IA force investigator or supervisor. The EFIT Administrator shall promptly notify the City, APD, DOJ, and the Independent Monitor in writing if the EFIT Administrator determines that the IA force investigator or supervisor does not meet

the qualifications identified in Paragraph 35 of this Order. The City, APD, DOJ, the

Independent Monitor, and the EFIT Administrator shall confer about any disagreements between APD and the EFIT Administrator regarding the qualifications of any IA force investigator or supervisor to take responsibility for conducting full investigations of Level 2 and Level 3 uses of force. The City and DOJ shall seek to resolve any such disagreements. If the City and DOJ are unable to resolve such disagreements, they may bring the matter before the Court for resolution.

37. The City and DOJ anticipate that APD will take responsibility for conducting full investigations of Level 2 and Level 3 uses of force over time as individual IA force investigators and supervisors meet the qualifications identified in Paragraph 35.
38. The City will endeavor to ensure that the responsibility for conducting full investigations of Level 2 and Level 3 uses of force returns entirely to APD within nine (9) months of EFIT beginning to provide services. Within six (6) months of the EFIT beginning to provide services, the Parties will evaluate the progress of APD, to include considering whether the EFIT is contributing to improvements in the progress of APD to meet the requirements of the CASA. Based on this evaluation, the Parties will file a status report with the Court within seven (7) months of the EFIT beginning to provide services, indicating whether the services of the EFIT should extend beyond nine (9) months.
39. The City and DOJ agree to jointly ask the Court to terminate this Order once there are a sufficient number of IA force personnel who have met the qualifications identified in Paragraph 35 to complete all full investigations of Level 2 and Level 3 uses of force within the timelines required by the CASA, APD policy, and the CBA.

40. Notwithstanding Paragraph 39 of this Order, if the Independent Monitor, after conducting the informal assessments required by Paragraph 28(c) of this Order, or the formal assessments required by the CASA, determines that EFIT regularly fails to conduct investigations consistent with CASA requirements and APD policy, the City, with the concurrence of DOJ, may seek to terminate its contract with EFIT, and the Parties may seek to modify this Order accordingly.

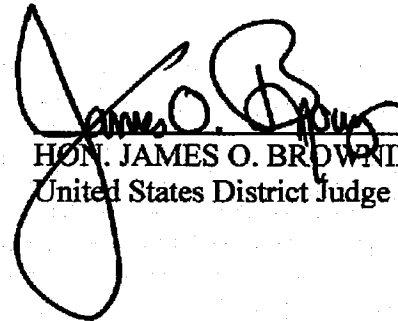
41. If the City and DOJ are unable to reach agreement about asking the Court to terminate this Order, either Party may seek to terminate this Order. In the case of termination sought by the City, prior to filing a motion to terminate, the City agrees to notify DOJ in writing when the City has determined that there are grounds for termination of this Order. Thereafter, the City and DOJ shall promptly confer about the City's assertions. If, after a reasonable period of consultation and the completion of any audit or evaluation that DOJ and/or the Independent Monitor may wish to undertake, the City and DOJ cannot resolve any disagreements, the City may file a motion to terminate this Order. If the City moves for termination of this Order, DOJ will have 60 days after the receipt of the City's motion to object to the motion. If DOJ does not object, the Court may grant the City's motion. If DOJ objects, the Court will hold a hearing on the motion, and the burden shall be on the City to demonstrate that it has fully complied with this Order and that the grounds for termination of this Order are supported by a preponderance of the evidence.

The Court recognizes and approves of the measures in the Stipulated Order as good faith efforts by the Parties to address investigative deficiencies in APD's force investigations, as identified by the Independent Monitor in his Twelfth Report, and therefore approves this Stipulated Order as an Order of the Court.

THEREFORE,

IT IS ORDERED that the Parties' Joint Motion for Entry of Stipulated Order Establishing an External Force Investigation Team is approved, and the Stipulated Order is hereby entered as an Order of the Court.

IT IS FURTHER ORDERED that that the Court will retain jurisdiction to enforce the provisions of the Order.



HON. JAMES O. BROWNING
United States District Judge

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EXHIBIT

B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE CITY OF ALBUQUERQUE,

No. CIV. 14-1025 JB\SMV

Defendant,

vs.

THE ALBUQUERQUE POLICE
OFFICERS' ASSOCIATION,

Intervenor.

**AMENDED STIPULATED ORDER ESTABLISHING
AN EXTERNAL FORCE INVESTIGATION TEAM**

This matter comes before the Court on the Joint Motion of Plaintiff United States of America and Defendant City of Albuquerque (collectively, the Parties), with the concurrence of the Independent Monitor, for entry of this Amended Stipulated Order, which modifies and supersedes the Stipulated Order Establishing an External Force Investigation Team that this Court entered on February 26, 2021 (Original Order). Doc. 720. The Original Order required the City to establish, on a temporary basis, an External Force Investigation Team (EFIT) to assist the Albuquerque Police Department (APD) in conducting investigations of Level 2 and Level 3 uses of force by APD officers and improve the quality of force investigations conducted by APD's

Internal Affairs Force Division (IAFD). The Original Order also required the City to improve APD's internal affairs processes, maintain an increased number of IAFD investigators, and provide additional training to IAFD investigators.

This Amended Order restates many of the Original Order's requirements and supplements them in two ways. First, this Amended Order requires the City to modify its existing contract with DLG, Accounting and Advisory Services (DLG) to enable EFIT to investigate all use-of-force incidents occurring between January 1, 2020, through July 16, 2021, that APD did not investigate, in full or in part (Backlog Force Cases), in violation of the Court Approved Settlement Agreement (CASA), Doc. 465-1. Second, this Amended Order extends by 24 months, from May 2022 through May 2024, the period during which the City shall continue to enable EFIT to assist IAFD in investigating new Level 2 and Level 3 use-of-force incidents (New Force Cases).

The Parties intend the measures in this Amended Order to ensure high-quality, timely investigations of New Force Cases, to minimize and correct deficiencies in IAFD investigations as identified in the Independent Monitor's Twelfth and Thirteenth Reports, Docs. 652 and 782, and to address APD's failure to investigate the Backlog Force Cases as identified in the Independent Monitor's Fourteenth Report, Doc. 872. The Court approves this Amended Stipulated Order and enters it as an Order of the Court.

A. Definitions

1. For the purposes of this Amended Order,

- a. “IAFD” means APD’s Internal Affairs Force Division;
- b. “IAFD personnel” includes IAFD investigators and supervisors, other than IAFD Commanding Officers;
- c. “investigations of New Force Cases” include both investigations and the review of investigations by supervisors of Level 2 and Level 3 use-of-force incidents that occur after July 16, 2021;
- d. “investigations of the Backlog Force Cases” means investigations of all use-of-force incidents that occurred between January 1, 2020, through July 16, 2021, and that IAFD failed to investigate, in whole or in part, as required by the CASA, a set that includes, but may not be limited to, 143 Level 3 uses of force, 470 Level 2 uses of force, 42 Level 1 uses of force, and 12 uses of force that IAFD subsequently investigated;¹ and
- e. “Independent Monitor” may include members of the Independent Monitoring Team.

B. Establish an External Force Investigation Team

2. The City shall establish and maintain EFIT to guide and direct IAFD personnel, and when necessary, conduct investigations of New Force Cases; assess investigations carried out by IAFD personnel; provide written feedback on

¹ The City provided DOJ and the Independent Monitor with this accounting of 667 cases. Doc. 872 at 4. If EFIT identifies other uninvestigated force cases that occurred during the relevant period or finds a different number of force cases in a particular category, those cases will be considered Backlog Force Cases.

IAFD personnel's work product; and complete investigations of the Backlog Force Cases.

3. EFIT shall be overseen by an Administrator. The City shall empower the EFIT Administrator to hire and retain the staff necessary to fulfill the requirements of this Amended Order. The EFIT Administrator shall ensure that a sufficient number of EFIT investigators to meet the requirements of Paragraph 16 of this Amended Order are physically present in Albuquerque and able to respond to the scene of Level 2 and Level 3 uses of force. The EFIT Administrator shall also ensure that a sufficient number of EFIT investigators and supervisors are hired and retained exclusively to investigate the Backlog Force Cases, as required by Paragraphs 7–9 of this Amended Order.
4. The EFIT Administrator shall have experience and expertise in investigating law enforcement misconduct, the constitutional standards for police officers' use of force, and systems reform litigation. EFIT supervisors and investigators shall have experience and expertise in investigating law enforcement actions and the constitutional standards governing use of force. The EFIT Administrator, supervisors, and investigators shall have no current or previous employment relationship or contract for services with APD or the City when they join EFIT. The Parties agree that the City selected a qualified candidate, DLG, to be the EFIT Administrator and that the EFIT Administrator has, to date, selected qualified supervisors and investigators in compliance with the Original Order's

requirements. Doc. 720, ¶¶ 4, 6–7; *see also* Doc. 873, ¶¶ 12–35 (EFIT personnel’s qualifications). If DLG ceases to be the EFIT Administrator before the termination of this Amended Order pursuant to Paragraphs 39 or 41, the City shall reconstitute EFIT pursuant to the process and subject to the requirements laid out in the Original Order. *See* Doc. 720, ¶¶ 3–10.

5. The City shall contract with the EFIT Administrator and fund the operations of EFIT in accordance with its Public Purchases Ordinance, specifically, ROA 1994, § 5-5-20(U) (exempting “[c]ontracts and expenditures in connection with court or administrative proceedings, including, but not limited to, experts, mediators, interpreters, translators, court reporters, process servers, witness fees, and printing and duplicating of materials for filing” from competitive requirements of the article), or any other appropriate provision of the Public Purchases Ordinance. The contract between the EFIT Administrator and the City shall include all standard terms for City contracts. In compliance with the Original Order, the City finalized a contract with DLG, on June 23, 2021, which enabled DLG to commence operations as the EFIT Administrator on July 16, 2021. Doc. 873, ¶ 2; *see* Doc. 782, ¶¶ 2, 5 and Exhibit D. Subject to the terms of Paragraphs 39–41, the City shall modify the EFIT Administrator contract as necessary to enable EFIT to provide the additional services identified in this Amended Order.

6. The City and the EFIT Administrator shall establish and maintain protocols that require APD and EFIT to coordinate on investigations of new Level 2 and Level 3 uses of force. The protocols shall, at a minimum, specify how IAFD personnel and EFIT personnel will coordinate their work, and direct APD to transmit investigative files to EFIT. The protocols shall be submitted to DOJ and the Independent Monitor for review and comment pursuant to the procedures of Paragraphs 147 and 148 of the CASA. Doc. 465-1 at 49–50. The protocols shall not preclude EFIT from investigating the Backlog Force Cases.

C. Investigate and Report on the Backlog Force Cases

7. The City shall enable the EFIT Administrator to establish a Backlog Team to complete investigations of the Backlog Force Cases in accordance with the Scope of Work (SOW) attached to this Amended Order as Exhibit 1. The Parties shall jointly file a notice with the Court when the EFIT Backlog Team is fully constituted and commences operations.
8. When the Backlog Team completes an investigation, the EFIT Administrator shall submit the case materials, including narratives and recommendations, to IAFD for final closure. Upon receiving a completed backlog case from EFIT, IAFD shall close the case by performing the administrative steps outlined in the revised IAFD process narrative, Doc. 862-1, ¶¶ 59–63.
9. The Force Review Board (FRB) shall review completed EFIT Backlog Team investigations pursuant to the process identified in SOW, ¶ 20. Consistent with

the CASA, Doc. 465-1, ¶ 78(b), any Backlog Team investigation reviewed by the FRB shall be presented by the EFIT Administrator or Deputy Administrator.

10. Within 30 days after EFIT completes an investigation pursuant to the SOW, APD shall respond in writing to the recommendations, if any, made by the EFIT Administrator and/or the EFIT Executive Team in that investigation pursuant to the SOW.

11. Within 90 days after EFIT completes investigation of all Backlog Force Cases, the City shall provide a written report to the EFIT Executive Team, DOJ, and the Independent Monitor, which includes, at a minimum:

- a. the City's response to the EFIT Administrator's summary report, required by the SOW, ¶ 25, which identifies significant findings in individual cases, trends among all cases, root causes of the backlog, recommendations, and potential solutions to ensure against future IAFD investigations failing to be completed within timelines imposed by the CASA;
- b. the number of APD officers who were involved in a use-of-force event between January 1, 2020, through July 16, 2021, which did not comply with APD policy or the law;
- c. the number of use-of-force incidents occurring between January 1, 2020, through July 16, 2021, that did not comply with APD policy or the law;
- d. the EFIT recommendations made pursuant to the SOW that APD adopted or will adopt, and APD's plan for implementing them; and

- e. the EFIT recommendations made pursuant to the SOW that APD rejected or will reject, and the rationales for APD's decisions to reject each recommendation.

D. Maintain Increased Staffing of IAFD; Technical Assistance

- 12. The City shall ensure that APD maintains at least twenty-five (25) force investigators assigned to IAFD, unless and until APD can demonstrate by an internal staffing analysis that fewer investigators are necessary to timely investigate all Level 2 and Level 3 uses of force.
- 13. As required by the Original Order, Doc. 720, ¶ 14, the City filed a written process narrative for IAFD investigations with the Court on July 16, 2021. Doc. 839-1. The City filed a revised process narrative on September 27, 2021. Doc. 862-1. Any further revisions to the IAFD process narrative shall be subject to the agreement of the City, DOJ, and the Independent Monitor. If the City, DOJ, and the Independent Monitor cannot agree on a proposed revision, the City or DOJ may submit the matter to the Court for resolution.
- 14. As required by the Original Order, Doc. 720, ¶ 15, the Parties agree that the Independent Monitor provided APD with intensive technical assistance as to implementing the IAFD process narrative required by Paragraph 13 of this Amended Order.
- 15. The City shall endeavor to negotiate longer investigative deadlines with the recognized exclusive representatives of relevant bargaining agreements. Nothing

in this Amended Order requires the City to violate the Labor Management Relations Ordinance or any collective bargaining agreement.

E. Investigate New Level 2 and Level 3 Uses of Force

16. EFIT commenced operations on July 16, 2021. Doc. 873, ¶ 2. Since then, APD and EFIT have deployed investigators to the scene of every Level 2 and Level 3 use of force, as required by the Original Order. Doc. 720, ¶ 17. The EFIT and APD shall both continue to deploy investigators to the scene of these New Force Cases, unless APD deploys an IAFD investigator who has satisfied the requirements of Paragraph 34 of this Amended Order.

17. IAFD personnel shall act as the lead on-scene investigators for all New Force Cases and shall be primarily responsible for conducting the on-scene requirements of CASA Paragraphs 69(a), (b), (c), (d), and (e), Doc. 465-1 at 27, including but not limited to:

- a. respond to the scene and consult with the on-scene supervisor to ensure that all personnel and subject(s) of use of force have been examined for injuries, that the use of force has been classified according to APD's classification procedures, that subject(s) have been interviewed for complaints of pain after advising the subject(s) of his or her rights, and that all officers and/or subject(s) have received medical attention, if applicable;

- b. ensure that all evidence to establish material facts related to the use of force, including but not limited to audio and video recordings, photographs, and other documentation of injuries or the absence of injuries is collected;
 - c. ensure that a canvass for, and interview of, witnesses is conducted. In addition, witnesses should be encouraged to provide and sign a written statement in their own words;
 - d. ensure, consistent with applicable law, that all officers witnessing a Level 2 or Level 3 use of force by another officer provide a use of force narrative of the facts leading to the use of force;
 - e. provide a written admonishment to involved and witness officer(s) to the use of force that they are not to speak about the force incident with anyone until they are interviewed by [an] . . . investigator
18. The City shall transmit all documents, evidence, and investigative notes created or obtained by the on-scene investigator(s) to EFIT within 72 hours of the use of force, and on an ongoing basis as additional evidence is obtained. EFIT will acknowledge receiving all forwarded investigative documents, evidence, and notes.
19. Except as provided by Paragraph 23 of this Amended Order, IAFD personnel and EFIT personnel shall jointly investigate and review all new Level 2 and Level

3 uses of force in a manner that is consistent with the requirements of the CASA, APD policy, and the CBA.

20. EFIT shall have full, direct, and timely access to APD staff, employees, facilities, documents, data, and evidence to the extent necessary to fulfill the requirements of this Amended Order. EFIT shall coordinate with APD and APD's legal counsel to access personnel, facilities, and documents in a reasonable manner. If APD or APD's legal counsel decline to provide EFIT with access to documents or data based on privilege, APD shall inform EFIT, DOJ, and the Independent Monitor that it is withholding documents or data on this basis, and shall provide EFIT, DOJ, and the Independent Monitor with a log describing the documents or data and the basis of the privilege.

21. For each use of force investigation, EFIT shall evaluate the quality of IAFD personnel's work product and immediately notify APD and APD's legal counsel of any deficiencies or misconduct by IAFD personnel related to their investigations. APD shall promptly address these deficiencies or misconduct through corrective action or discipline, consistent with the CASA, APD policy, and the CBA.

22. EFIT shall be authorized to complete investigations and supervisory reviews of investigations of New Force Cases without the involvement of IAFD personnel if either of the following conditions are met:

- a. EFIT or APD has alleged that IAFD personnel assigned to the investigation has committed misconduct in the course of the investigation, and EFIT believes that IAFD personnel's continued participation in the investigation is likely to undermine the integrity of the investigation; or
 - b. EFIT or APD believes that deficiencies in the tactics or work product of IAFD personnel assigned to the investigation is likely to prevent the investigation from being completed within the deadlines provided for in the CASA, APD policy, and the CBA.
23. The EFIT Administrator shall provide written notice to DOJ, APD, and the Independent Monitor when EFIT exercises the authority under Paragraph 22 to complete investigations of New Force Cases without the involvement of IAFD personnel. The notice shall explain in writing the grounds for the EFIT Administrator's actions. If DOJ or the City believes that the EFIT Administrator's actions were improper, they will seek to resolve the matter with EFIT and the other party. If DOJ, the City, and EFIT cannot reach a resolution, DOJ or the City may bring the matter before the Court for resolution.
24. IAFD and EFIT shall identify all misconduct that occurred during the course of each New Force Case investigation. IAFD and EFIT investigators shall provide information about all misconduct they identify to APD for screening, assigning an internal affairs number, and tracking by APD Internal Affairs. IAFD and EFIT investigators shall complete the investigation of all misconduct related to

the use of force, and APD Internal Affairs Professional Standards shall complete the investigation of all misconduct not related to the use of force.

25. EFIT shall complete its investigations of New Force Cases within 60 days of receiving on-scene investigation materials from APD. At the end of each investigation, IAFD and EFIT personnel shall prepare a joint investigative report, consistent with the requirements of the CASA and APD policy. The report shall include a recommended determination of whether each use of force complied with APD policy and state and federal law. When IAFD personnel recommend that an officer violated APD policy or state or federal law, they shall recommend appropriate corrective and/or disciplinary action, consistent with the CASA and APD policy.

26. An IAFD Commanding Officer shall review each investigative report and recommendation to determine whether they concur with the report and the recommended finding for each use of force; the recommended disposition of any misconduct allegations; and any recommended corrective and/or disciplinary action. The IAFD Commanding Officer shall explain any concurrence or non-concurrence in writing. Any recommended discipline resulting from an investigation will be reviewed by APD's executive staff consistent with APD policy.

F. Role of the Independent Monitor with Regard to EFIT

27. The Independent Monitor shall continue to assist APD, DOJ, and the EFIT

Administrator by, at a minimum:

- a. orienting EFIT personnel regarding CASA requirements and relevant CASA compliance deficiencies by APD;
- b. providing technical assistance to EFIT regarding the Independent Monitor's compliance assessment methodology; expectations regarding EFIT's processes, work product, and records production; and other relevant matters, as the EFIT Administrator and the Independent Monitor deem appropriate; and
- c. conducting informal assessments of the Backlog Force Case investigations and the New Force Case investigations completed with EFIT's involvement, particularly in the early stages of EFIT's implementation, to ensure that investigations completed with EFIT's involvement comply with CASA requirements regarding the quality of force investigations. The Independent Monitor shall convey the outcome of these informal assessments to the EFIT Administrator, APD, and DOJ.

28. The City recognizes that the requirements of Paragraph 27 of this Amended Order are beyond the scope of the Independent Monitor's duties under the CASA and the City's annual budgets for the Independent Monitor's services under the CASA. The City filed an unopposed motion to provide additional

compensation to the Independent Monitor for the additional services required by Paragraph 27 of this Amended Order, which the Court granted. Doc. 837 (Motion); Doc. 845 (Order).

29. The Independent Monitor shall conduct formal compliance assessments of force investigations completed with EFIT's involvement as it would investigations completed by APD. Except for the requirements of Paragraph 27, this Amended Order is not intended to, and does not, alter the responsibilities or authority of the Independent Monitor under the CASA.

G. Remedial Action Plan for New IAFD Investigations

30. The City submitted a remedial action plan for IAFD investigations to DOJ, the Independent Monitor, and the EFIT Administrator on December 14, 2021. Doc. 720, ¶ 31. The plan must identify concrete actions to improve the quality and timeliness of IAFD's investigations of new Level 2 and Level 3 uses of force. The Independent Monitor may recommend changes or approve the plan consistent with the requirements of Paragraph 147 of the CASA. After the Independent Monitor approves of the plan, the City shall file it with the Court. If either the City, DOJ, or both disagree with the Monitor's recommendations, such party or parties may file the plan with the Court and move for its approval.

31. After filing a joint remedial action plan or after the Court approves the plan, and until the plan has been fully implemented, the City shall file brief reports to the Court, due every three months from the date the remedial action plan is filed, to

inform the Court of progress in implementing the plan, any barriers to implementation that it has faced, and any modifications to the plan that may be necessary. The City's quarterly reports shall, at a minimum:

- a. summarize the City's progress on implementing the IAFD process narrative required by Paragraph 13, including a summary of the technical assistance provided by the Independent Monitor;
- b. summarize EFIT's written evaluations of the quality of investigations conducted by IAFD investigators during the previous quarter;
- c. summarize EFIT's written feedback on the work product of IAFD investigators' during the previous quarter;
- d. identify any formal training that IAFD investigators received during the previous quarter;
- e. identify the number of force investigators assigned to IAFD and, if APD has not yet retained 25 IAFD investigators, the steps that APD will take in the next quarter to achieve full staffing;
- f. identify the number of investigations or reviews of investigations that EFIT completed without the involvement of IAFD personnel, pursuant to Paragraph 22;
- g. identify the number of IAFD investigators conducting investigations independent of the EFIT, pursuant to Paragraph 35; and

- h. for investigations of Level 2 and Level 3 use-of-force incidents that occurred after July 16, 2021, identify:
 - i. the number of investigations initiated during the previous quarter;
 - ii. the number of investigations completed during the previous quarter;
 - iii. the average and mean number of days from initiation to completion for the investigations completed during the previous quarter;
 - iv. the number of investigations during the previous quarter that were completed within the deadlines required by the CASA, APD policy, and the CBA; and
 - v. the number of investigations during the previous quarter that were not completed within the deadlines required by the CASA, APD policy, and the CBA.

H. Train IAFD Personnel

32. Subject to extensions necessary due to COVID-19-related restrictions and availability, and subject to the approval of the proposed contractor by the Independent Monitor and DOJ, within three months of the entry of this Amended Order, APD shall identify and hire a contractor who shall, in concert with APD's Academy, develop and provide training to IAFD personnel on conducting high-quality and timely force investigations. This training shall be

developed, approved, and provided consistent with APD policy and the CASA, and shall incorporate problem-solving, experiential adult-learning principles.

I. Returning Responsibility for Full Investigations of New Level 2 and Level 3

Uses of Force to APD

33. An IAFD Commanding Officer, with input from the EFIT evaluations prepared pursuant to the process narrative, shall prepare written evaluations of each investigator and supervisor who are assigned as IAFD personnel on a quarterly basis. These evaluations shall be considered confidential consistent with City Personnel Rules and Regulations and state law, but shall be provided to the Independent Monitor and DOJ upon request and shall be kept confidential pursuant to the requirements of Paragraph 326 of the CASA. These evaluations shall, at a minimum:

- a. describe the nature and extent of all training provided to the IAFD investigator or supervisor during the previous quarter;
- b. summarize EFIT's written assessments of the quality of the IAFD investigator's or supervisor's investigations;
- c. summarize EFIT's written feedback on the IAFD investigator's or supervisor's work product;
- d. describe any misconduct allegations against the IAFD investigator or supervisor related to their investigations during the previous quarter, including how the allegation was ultimately resolved;

- e. compare the number of the IAFD investigator's or supervisor's investigations from the previous quarter that failed to satisfy CASA requirements for investigations with the number of investigations that the IAFD investigator or supervisor conducted during the previous quarter;
 - f. evaluate the IAFD investigator's or supervisor's overall performance; and
 - g. identify any actions that will be taken during the following quarter to improve the IAFD investigator's or supervisor's performance.
34. APD may transfer responsibility for conducting full investigations of Level 2 and Level 3 uses of force from EFIT to IAFD personnel only after a quarterly evaluation demonstrates:
- a. that the IAFD investigator or supervisor has received training on all aspects of Level 2 and Level 3 force investigations;
 - b. that the IAFD investigator or supervisor has regularly conducted high-quality investigations for at least two months, as demonstrated by EFIT's written assessments;
 - c. that the IAFD investigator or supervisor regularly produces high-quality work product, as demonstrated by EFIT's written feedback;
 - d. that the IAFD investigator or supervisor has not committed misconduct during the course of investigations; and
 - e. that 95% of the IAFD investigator's or supervisor's investigations from the previous quarter satisfied all CASA requirements for investigations.

35. APD shall notify the EFIT Administrator in writing two weeks before APD intends to transfer sole responsibility for conducting full investigations of Level 2 and Level 3 uses of force from EFIT to an IAFD investigator or supervisor. The EFIT Administrator shall promptly notify the City, APD, DOJ, and the Independent Monitor in writing if the EFIT Administrator determines that the IAFD investigator or supervisor does not meet the qualifications identified in Paragraph 34 of this Amended Order. The City, APD, DOJ, the Independent Monitor, and the EFIT Administrator shall confer about any disagreements between APD and the EFIT Administrator regarding the qualifications of any IAFD investigator or supervisor to take responsibility for conducting full investigations of Level 2 and Level 3 uses of force. The City and DOJ shall seek to resolve any such disagreements. If the City and DOJ are unable to resolve such disagreements, they may bring the matter before the Court for resolution.

36. The City and DOJ anticipate that APD will take responsibility for conducting full investigations of Level 2 and Level 3 uses of force over time as individual IAFD investigators and supervisors meet the qualifications identified in Paragraph 34.

37. The City will endeavor to ensure that the responsibility for conducting full investigations of Level 2 and Level 3 uses of force returns entirely to APD within 24 months of that date this Amended Order is entered as a Court order. The Parties shall evaluate APD's progress every six (6) months, including whether

EFIT is contributing to improvements in APD's progress on complying the CASA. After conducting two evaluations, the City, in consultation with DOJ, will file a status report with the Court indicating whether the services of the EFIT should extend beyond 24 months.

38. The City and DOJ agree to jointly ask the Court to terminate this Amended Order once there are a sufficient number of IAFD personnel who have met the qualifications identified in Paragraph 34 to complete investigations of all new Level 2 and Level 3 uses of force within the timelines required by the CASA, APD policy, and the CBA, provided that the EFIT Backlog Team has completed investigations of the Backlog Force Cases pursuant to the Scope of Work attached to this Amended Order as Exhibit 1.

39. Notwithstanding Paragraph 38 of this Amended Order, if the Independent Monitor, after conducting the informal assessments required by Paragraph 27(c), or the formal assessments required by Paragraph 29 and the CASA, determines that EFIT regularly fails to conduct investigations consistent with CASA requirements and APD policy, the City, with the concurrence of DOJ, may seek to terminate its contract with the EFIT Administrator, and the Parties may seek to modify this Amended Order accordingly.

40. If the City and DOJ are unable to reach agreement about asking the Court to terminate this Amended Order, either Party may seek to terminate this Amended Order. However, before the City may file a motion to terminate this Amended

Order, the City shall notify DOJ in writing of the grounds for the motion. Thereafter, the City and DOJ shall promptly confer about the City's assertions. If, after a reasonable period of consultation and the completion of any audit or evaluation that DOJ and/or the Independent Monitor may wish to undertake, the City and DOJ cannot resolve any disagreements, the City may file a motion to terminate this Amended Order. If the City moves to terminate this Amended Order, DOJ will have 60 days after the receipt of the City's motion to file objections. If DOJ does not object, the Court may grant the City's motion. If DOJ objects, the Court will hold a hearing on the motion, and the burden shall be on the City to demonstrate that it has fully complied with this Amended Order and that the grounds for termination of this Amended Order are supported by a preponderance of the evidence.

The Court recognizes and approves of the measures in this Amended Order as good faith efforts by the Parties to address deficiencies in IAFD's investigations, as identified by the Independent Monitor in his Twelfth, Thirteenth, and Fourteenth Reports, and therefore approves this Amended Order as an Order of the Court.

THEREFORE,

IT IS ORDERED that the Parties' Joint Motion for Entry of this Amended Stipulated Order Establishing an External Force Investigation Team is approved, and the Amended Stipulated Order is hereby entered as an Order of the Court.

IT IS FURTHER ORDERED that the Court will retain jurisdiction to enforce the provisions of the Order.

HON. JAMES O. BROWNING
United States District Judge

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United States Attorney
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Assistant United States Attorney
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Exhibit 1: Scope of Work to Remedy the Backlog Force Cases

The City of Albuquerque (City) shall modify its existing contract with DLG Consulting and Advisory Services (DLG), to enable the External Force Investigation Team (EFIT) to investigate all use-of-force incidents that the Albuquerque Police Department (APD) Internal Affairs Force Division (IAFD) did not investigate, in whole or in part, from January 1, 2020, through July 16, 2021 (Backlog Force Cases),² in violation of the Court Approved Settlement Agreement (CASA), Doc. 465-1 of the Court's docket. The EFIT shall investigate the Backlog Force Cases pursuant to this Scope of Work (SOW).

A. Establishing the EFIT Backlog Team

1. Pursuant to DLG's modified contract with the City, the EFIT Administrator will create an EFIT Backlog Team, which shall consist of additional staff hired and retained by the EFIT Administrator to fulfill the requirements of the Amended Stipulated Order and this SOW. It is anticipated that the EFIT Administrator will hire and retain at least six (6) additional investigators and two (2) additional supervisors to investigate, evaluate, identify appropriate corrective action, if any, that APD shall formally adjudicate, and report back on the Backlog Force Cases in accord with this SOW.

2. The EFIT Administrator will ensure that EFIT Backlog Team members have experience and expertise in investigating law enforcement actions and constitutional standards governing use of force. Members of the EFIT Backlog Team shall have no current or previous employment relationship or contract for services with APD or the City.

3. The EFIT Executive Team, which currently consists of Darryl Neier, William Hurlock and Darriell Bone, shall have discretion to determine whether and to what extent EFIT Backlog Team members will provide services in Albuquerque or from remote locations.

4. As soon as practicable after the Amended Stipulated Order is entered by the United States District Court for the District of New Mexico (Court) as an Order, and a contract is signed with the City, the EFIT Backlog Team will be fully constituted and begin investigating the Backlog Force Cases. The EFIT Administrator will advise the City and DOJ of the date on which the EFIT Backlog Team is fully constituted and operating so that the Parties can notify the Court.

² EFIT was not involved in and is not in any way responsible for APD's backlogs.

5. The EFIT Backlog Team shall be sufficiently staffed and shall complete the tasks outlined in this SOW within 24 months of the date the Amended Stipulated Order is entered as a Court order and a contract is signed with the City.

6. The EFIT Administrator shall, within one month of the entry of the Amended Stipulated Order, provide the City, DOJ, and the Independent Monitor with a written plan for how it will accomplish the requirements of the Order. The plan shall describe, at a minimum, the methodology that the EFIT Backlog Team will use in investigating the Backlog Force Cases and how the EFIT Backlog Team will prioritize its investigations of the force incidents included in the Backlog Force Cases. The City, DOJ, and the Independent Monitor shall provide any comments or suggestions on the written plan to the EFIT Administrator within two weeks of receiving it. The EFIT Administrator shall work in good faith to address the concerns and suggestions provided by the City, DOJ, and the Independent Monitor.

B. Investigation Protocol for Backlog Force Cases

7. Within two (2) days of the date the City and DOJ file a joint motion to amend the EFIT Stipulated Order, Doc. 720, IAFD shall provide to the EFIT Executive Team access through IPro/BlueTeam for all documents in its possession for each of the Backlog Force Cases, whether final or in draft form, including but not limited to: the IAFD case files, officers' use-of-force narrative forms, on-scene recorded verbal statements, on-body recording device (OBRD) recordings, the names of all involved officers, witness officers, and civilian witnesses, any recorded written or verbal witness statements, crime scene specialist photographs, responding supervisors' on-scene checklists, any related Internal Affairs Request (IAR) or Multi-Agency Task Force (MATF) referrals, all supervisory on-scene investigation forms, IAFD Evaluative Data forms, any entries in Blue Team or IPro, and any other evidence of the force incidents.

8. The EFIT Executive Team shall exercise its discretion in deciding how to assign the Backlog Force Cases to the EFIT Backlog Team investigators and supervisors, while first prioritizing Level 3 force investigations involving use of lethal force and then prioritizing cases from 2020. EFIT will have discretion to expand the scope of a use-of-force investigation as necessary to reach reliable conclusions.

9. For each use-of-force incident, the EFIT Backlog Team investigators shall develop an appropriate investigative plan with input from their respective supervisors, using as guidance the revised IAFD process narrative, Doc. 862-1, ¶¶ 31–40. An appropriate investigative plan will vary depending on the use-of-force incident and the available evidence. However, unless variance is granted by the EFIT Executive Team,

an appropriate investigative plan will include, but is not limited to, the following minimum requirements:

- a. Evaluating APD's on-scene investigation, if any, using as guidance the revised IAFD process narrative, Doc. 862-1, ¶¶ 1–30, however, the plan shall incorporate the IAFD process narrative as it relates to potential criminal conduct, *id.*, ¶ 17;
- b. Reviewing available documentary evidence, including but not limited to use-of-force narratives, OBRD recordings, and recorded witness statements; and
- c. Conducting appropriate interviews of involved officers, witness officers, and, if necessary, civilian witnesses. The EFIT will have discretion to decide whether interviews will be conducted in person or remotely, by Zoom.

10. EFIT Backlog Team investigators will prepare a narrative report for each case that, at a minimum, identifies the data reviewed, evaluates the use-of-force incident, and recommends a finding for whether each application of force complied with APD policy. Investigators will identify training, equipment, or policy concerns arising from the use-of-force incident. Investigators will also identify other substantial APD policy violations related to the use of force that they become aware of during an investigation.

11. When policy violations are found, investigators will identify appropriate corrective action, which may include but is not limited to: training, counseling for involved or witness officers, equipment modifications, changes to policies or protocols, or reassignment of involved officers. While EFIT may make recommendations, it is APD's responsibility to review the recommendations and make the final determination for such actions.

12. EFIT Backlog Team investigators will submit completed investigations, including narrative reports, case materials, and recommendations to their supervisors for further review.

13. EFIT Backlog Team supervisors will review each completed investigation for accuracy and completeness, using as guidance the revised IAFD process narrative, Doc. 862-1, ¶¶ 41–50. The supervisor will discuss with the investigator, at a minimum, the incident, data, and recommended findings, and determine whether any revisions or additional investigation is needed. If revisions or additional investigation is needed, the

supervisor will return the case to the investigator with an appropriate plan of action and a deadline to resubmit the completed investigation.

14. EFIT Backlog Team supervisors will prepare a supervisory narrative that confirms whether each application of force complied with APD's use-of-force policy and identifies other substantial violations of APD policy. The supervisors will also approve, modify, or disapprove any corrective action recommended by the investigator.

15. EFIT Backlog Team supervisors will submit the completed investigation and supervisory narratives to the EFIT Executive Team for final review and comment.

16. The EFIT Executive Team will review the completed investigation and supervisory narratives to determine if they are thorough, objective, and complete, or if any revisions or additional investigation is needed, using as guidance the revised IAFD process narrative, Doc. 862-1, ¶¶ 51–58. If revisions or additional investigation is needed, the Executive Team will return the case to the supervisor with an appropriate plan of action and a deadline to resubmit the completed investigation.

17. The EFIT Executive Team will finalize the investigation of a backlog force case by identifying whether each application of force complied with APD's use-of-force policy, identifying other substantial violations of APD policy arising from the conduct under investigation, and identifying training, equipment, or policy concerns arising from the use-of-force incident.

18. When policy violations are found, the EFIT Executive Team's final review will identify appropriate corrective action, which may include but is not limited to: training, counseling for involved or witness officers, equipment modifications, changes to policies or protocols, or reassignment of involved officers. The completed investigation will also identify what, if any, discipline may have been warranted had the City and APD met their obligation to investigate the force incident within timelines imposed by the CASA and APD policy. The EFIT Executive Team shall provide this information to APD. While EFIT may make recommendations, it will be APD's responsibility to review the recommendations and make the final determination for such actions. Any corrective actions derived out of the EFIT investigation are at the sole discretion of APD.

C. Closing Backlog Force Cases

19. Upon finalizing an investigation, the EFIT Administrator will submit all case materials, including narratives and recommendations, to IAFD for closure pursuant to

the administrative steps outlined in the revised IAFD process narrative, Doc. 862-1, ¶¶ 59–63.

20. Consistent with the CASA ¶ 78(b), the EFIT Administrator or Deputy Administrator will present to the Force Review Board (FRB) completed investigations that involve (a) an application of lethal force, and (b) an application of non-lethal force that EFIT identifies as not complying with APD’s use-of-force policy. The EFIT Administrator or Deputy Administrator also will present a general status report on the Backlog Force Cases to the FRB on a monthly basis, including any emerging themes or issues, data about the type of force being used and whether it complies with APD policy, and specific examples of any officers whose conduct is indicating a concerning pattern or anything else problematic that EFIT is identifying.

D. Ongoing Reviews and Reports

21. Backlog Team investigators and their supervisors will meet at regular intervals, to be determined by the EFIT Executive Team, to discuss the status of ongoing investigations, revise investigative plans as necessary, and resolve any impediments to timely completing investigations.

22. The EFIT Executive Team will meet with the Backlog Team supervisors and investigators at regular intervals, to be determined by the EFIT Administrator, to discuss the status of ongoing investigations, address concerns, and ensure that the Backlog Force Cases will be completely investigated within 24 months.

23. The EFIT Executive Team will provide weekly written reports to DOJ, the City, IAFD, and the Independent Monitor that, at a minimum, contain status updates on the Backlog Force Cases, including cases assigned and completed, significant findings, and corrective actions.

24. The EFIT Administrator will file quarterly reports with the Court that provide status updates on the Backlog Force Cases, including cases assigned and completed, significant findings, recommended corrective actions, and analyses provided to the FRB.

25. Within 30 days of investigating all Backlog Force Cases, the EFIT Administrator shall provide the City and DOJ with a summary report identifying significant findings in individual cases, trends among all cases, root causes of the backlog, recommended corrective actions, and potential solutions to ensure against future IAFD investigations failing to be completed within timelines imposed by the CASA. The City and DOJ will

have two weeks to review and provide comments on the summary report. The EFIT Administrator will have two weeks to consider the comments and revise the draft summary report. Within 60 days of investigating all Backlog Force Cases, the EFIT Administrator will file a final summary report with the Court.

EXHIBIT

C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE CITY OF ALBUQUERQUE,

No. CIV. 14-1025 JB\SMV

Defendant,

v.

THE ALBUQUERQUE POLICE
OFFICERS' ASSOCIATION,

Intervenor.

**NOTICE OF AGREED "ALBUQUERQUE POLICE DEPARTMENT
INTERNAL AFFAIRS FORCE DIVISION CURRENT PROCESS"**

COMES NOW, the City of Albuquerque, and hereby files the attached "Albuquerque Police Department Internal Affairs Force Division Current Processes, July 12, 2021." Exhibit 1.

Paragraph 14 of the Court's February 26, 2021, *Stipulated Order Establishing an External Force Investigation Team*, Document 720, (hereafter, *Stipulated Order*) requires the City to "submit a proposed written IA investigative process to the United States and Independent Monitor" within two months of entry of the Order. The City submitted the proposed investigative process to the Independent Monitor and United States on April 26, 2021, and thus complied with the Court's deadline Paragraph 14. Thereafter, the United States and Monitor considered the proposed investigative process, recommended revisions, and the City considered the recommendations and revised the process, as required by Paragraph 14.

Paragraph 14 of the *Stipulated Order* provides that “[a]fter the City, DOJ, and the Independent Monitor reach agreement on the proposed written IA investigative process, the written IA investigative process shall be filed with the Court.” Doc. 720 at 5. The Independent Monitor, United States, and City have now agreed on the attached *Albuquerque Police Department Internal Affairs Force Division Current Process*. Exhibit 1. The City therefore files it with the Court as required by Paragraph 14 of the *Stipulated Order*.

Respectfully submitted this 16th day of July, 2021.

Defendant CITY OF ALBUQUERQUE:

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CERTIFICATE OF SERVICE

I hereby certify that on July 16, 2021, I filed the foregoing pleading electronically through the CM/ECF system which caused all parties or counsel and the Independent Monitor to be served by electronic means as more fully reflected on the Notice of Electronic Filing.

Lindsay Van Meter
Lindsay Van Meter
Managing Assistant City Attorney
City of Albuquerque



ALBUQUERQUE POLICE DEPARTMENT
INTERNAL AFFAIRS FORCE DIVISION CURRENT PROCESSES

July 12, 2021

The purpose of this document is to outline the current investigative process at IAFD to investigate Use of Force cases. This document is intended to fulfill the requirements of Paragraph 14 of the February 26, 2021, Stipulated Order in *United States v. City of Albuquerque*, 14-cv-1025. This document reflects the current investigative process at IAFD. The remedial action plan created pursuant to paragraph 31 of the Stipulated Order will supersede this investigative process.

INTERNAL AFFAIRS FORCE DIVISION CURRENT PROCESSES

ON-SCENE AND ADMINISTRATIVE - USE of FORCE

1. Use of force occurs.
2. The supervisor of the officer(s) that used force will respond to the scene. If the direct supervisor is unavailable or is either involved or a witness to the use of force, another supervisor will respond.
3. The supervisor will issue a direct order that the officers on-scene not to speak about the use of force. This happens either by radio transmission while the supervisor is en route to the call, or once arrived on-scene.
4. The supervisor will visually inspect involved officers and the individual(s) in which force was used (will be referred to as "individual" throughout this document) and shall assess independently for any visible injuries, and where necessary:
 - a. Request Emergency Medical Services ("EMS") if there are visible injuries or a complaint of injury, if not done so already by the officers.
 - i. When the responding supervisor asks the individual about injuries, he/she will first administer Miranda warning to the individual before asking any questions.
 1. If the individual invokes his/her rights, questions will not be asked.
 - ii. If the individual is injured or complains of injury, he/she will either be treated at the scene, refuse treatment, or be transported to the hospital by either Albuquerque Police Department ("APD") personnel or by EMS.
 1. If transported to the hospital by APD, the transporting officer will record the starting and ending mileage via the Emergency Communication Center ("ECC"), also known as dispatch.
 - iii. If an employee(s) is injured, he/she will either be treated at the scene, refuse treatment, or be transported to the hospital by AP personnel or EMS.
 1. Supervisors will also contact MedCor for reporting and further directions for employee injury.
5. The responding supervisor will contact the officers and identify all officers who were involved or witnessed the use of force.
 - a. Involved officers are those who participated, ordered, or authorized the use(s) of force.
 - b. Witness officers are those who were on-scene, and either eye witnessed the use of force, directly heard statements made by the individual(s) and/or officer(s) involved during the events leading up to the use of force, during the use of force, or after the use of force, or otherwise could provide material details for the use of force investigation. Additional witness officers may have to be identified later in the investigation as more evidence and information is available. For example, if there is a Noise Flash Diversionary Device ("NFDD") deployed during a tactical activation and that use of the NFDD is in question, the case agent will identify witness officers to address the inconsistency.
6. The responding supervisor will make a reasonable effort to identify all civilian witnesses. If civilian witnesses have to leave the scene, the responding supervisor will obtain contact information and encourage a written statement. The responding supervisor may obtain a verbal statement if the witness is willing to do so.

7. The responding supervisor or officers on-scene will request a Crime Scene Specialist (“CSS”) to process the scene. This includes taking photographs of the scene, involved officers, the individual(s), and all visible injury(s) of any parties involved in the use of force.
8. The responding supervisor will classify the use of force by talking separately with the involved officers and watching the involved officers’ On-Body Recording Device (“OBRD”) of the use of force. If needed, he/she will watch the witness officers’ OBRD to classify properly.
 - a. If the use of force is classified as a level one, the use of force investigation will remain with the officer’s chain of command. If the use of force is classified as a level two or three, the supervisor will request from ECC the Internal Affairs Force Division (“IAFD”) on-call supervisor telephone number and call the IAFD on-call supervisor.
9. The responding supervisor will report via telephone to the IAFD on-call supervisor the classification of the use of force and all known details about the incident. The IAFD on-call supervisor will ask specific questions of the responding supervisor such as: if they have started their canvass to ensure all material witnesses do not leave the scene before APD can request their written statement, whether they have ordered the officers not to discuss the actions leading up to the arrest and/or use of force in this incident, or if there were any injuries to either the individual or officers that require medical treatment and if medical treatment has been requested.
10. The IAFD on-call supervisor will determine which detective responds to the scene. IAFD will maintain a roster of three detectives on-call each week. The IAFD on-call supervisor bases their decision on the complexity of the case to avoid overloading any one detective with complex cases such as Special Operations Division (“SOD”) uses of force during a tactical activation, Officer Involved Shooting (“OIS”), or in-custody deaths involving force.
 - a. IAFD on-call supervisors will respond with the IAFD on-call detective when there is a level two or three use of force involving a tactical activation, OIS, or in-custody death that involves force.
11. The IAFD on-call supervisor will call the IAFD on-call detective, advise him/her of the location of the use of force and any details collected during the initial call between the responding and IAFD on-call supervisor.
12. The IAFD on-call supervisor will then notify the on-call External Force Investigation Team (“EFIT”) supervisor who will assign an EFIT on-call investigator to respond with IAFD to the location of the use of force.
13. The IAFD on-call detective and EFIT on-call investigator will respond to the scene within one hour of the call.
14. While waiting for the IAFD on-call detective, the responding supervisor will ensure that officers begin their use of force paperwork. If the individual is going to be arrested, the responding supervisor will ensure that booking documents are prepared.
15. Once the IAFD on-call detective and EFIT on-call investigator (“IAFD team”) are on-scene, they will verify that the following either has been completed by the responding supervisor and officers or if they need to complete it themselves:
 - Identify involved officers.
 - Identify witness officers.
 - Identify the individual in which force was used.
 - Identify civilian witnesses. If any civilian witnesses are on-scene, interview witnesses and encourage a written statement. If a formal witness statement is required due to

circumstances surrounding the event, the IAFD/EFIT team will request civilian witnesses respond to and provide the statement at an appropriate location.

- Determine if the individual is injured by physically checking or asking the individual if they are injured. Request medical attention, if necessary. Conduct a thorough interview with the Individual in which force was used. Administer Miranda warning prior to the interview.
 - If the individual invokes his/her rights, no questions will be asked.
 - If the individual is unable to be interviewed at that time, the IAFD detective will collect as much personal contact information as possible and will conduct the interview at a later date.
 - This does not preclude the interview of an individual under the influence of drugs, alcohol or impairment in any manner.
 - Ensure all involved and witness officers sign written admonishments and collect same for the investigative file. Verify the initial classification of use of force.
 - Ensure a CSS has processed the scene and taken photographs of the scene, officers, and individual(s).
 - Canvass the area for all other evidence including but not limited to unidentified civilian witnesses, camera footage in the vicinity, etc.
 - Verify and collect the responding supervisor on-scene checklist.
16. If, at any point during the on-scene investigation, the IAFD on-call team identifies potential misconduct, the IAFD detective will initiate a misconduct investigation by entering an Internal Affairs Request (“IAR”) through Blue Team within 24-hours. Note: this can occur at any point during the investigation. (See *MISCONDUCT*).
17. If, at any point the level two or level three use of force is identified as potentially criminal, the IAFD Commander and EFIT Administrator will be notified both telephonically and via email and provided a synopsis of the case. Upon review, if the IAFD Commander concurs with the assessment, the IAFD commander will refer to the Multi-Agency Task Force (“MATF”) through the MATF commander via email. This can occur at any point during the investigation.
- a. Any potentially criminal referral will have a corresponding misconduct IAR for the misconduct administrative investigation. (See *MISCONDUCT*).
18. The involved or witnessing officers will complete their use of force narrative by end of shift. Responding supervisors will review and approve officer narratives for accuracy, detail, and completion. Narrative forms will be submitted via email to the IAFD on-call team by the end of shift.
19. Responding supervisor will complete the Supervisory On-Scene Investigation form. This is turned in by the end of shift and emailed to the on-call IAFD detective.
20. On-scene follow-up may be required by the IAFD detective based on the need for material evidence collection such as camera footage not available at the time of the call-out.
21. The IAFD on-call detective will begin the Evaluative Data form. This is an inventory of all of the evidence collected for the case. As soon as practicable, but no later than 24-hours of the call-out, the IAFD detective will enter the use of force in Blue Team. In the case of a technology or server failure, the IAFD on-call detective will send an email to the Chief of Police, attaching the Evaluative Data Form in the email, which will serve as the 24-hour notice. The IAFD on-call detective will include the email in the case file for proof of 24-hour notification. The entry includes basic information about the use of force case which is sent to the Chief of Police for the 24-hour notification required for every level

- two and level three use of force. This entry is also sent to the IAFD administrative staff and the IAFD chain of command to include the Superintendent.
22. The IAFD team will meet with the IAFD immediate supervisor the next business day following the call-out to brief them regarding the use of force. This includes reviewing the reported use of force portion of OBRD together.
 23. The IAFD on-call detective will upload his/her OBRD the next business day and prior to meeting with their supervisor.
 24. The IAFD administrative staff shall receive the initial Blue Team entry from the IAFD detective. IAFD administrative staff request photographs taken by the CSS from the Scientific Evidence Division (SED)-photo lab through Blue Team. The SED uploads the photographs in Blue Team and sends it back to the IAFD administrative staff.
 25. The IAFD administrative staff accepts the case from Blue Team into IAPro. Blue Team feeds into IAPro and IAPro feeds into the data warehouse.
 - a. The IAFD administrative staff will assign a file number (or force number) to the use of force in IAPro. There are multiple entry types allowed in IAPro and Blue Team. Many of these entry types may be involved in one case and are linked together in IAPro. For example, vehicle pursuits can result in a use of force, misconduct, and a job well done; therefore, all four will be linked in IAPro. Also, the K-9 Unit enters all deployments into Blue Team. It should be noted that all K-9 deployments do not result in a K-9 bite. When there is a K-9 bite, the linked data will include a K-9 deployment entry and a use of force entry.

Below are examples of entry types:

Civilian Police Complaints (CPC) = CPC2021-000000

Force Internal Investigations (FII)/IAFD investigated misconduct = FII2021-000000

K9 Utilization = K92021-000000

Force = F2021-000000

Award Nominations = AN2021-000000

Vehicle Crashes = VC2021-000000

Internal Investigations (IAPS misconduct) = I2021-000000

Non-Force = NF2021-000000

26. The case will remain in IAPro until assigned to a case agent. Cases agent assignments shall be made expeditiously.
27. Once the case is assigned, the administrative staff will send the case to the case agent in both IAPro and Blue Team. The case agent will receive the case in both platforms as Blue Team houses use of force injury and applications data. The remainder of the case is in IAPro. The case agent will organize cases in IAPro using sub-folders such as, IAFD interviews, extensions, admonishments, and OBRD.
28. The case agent will cooperatively work with the EFIT investigator assigned. IA force personnel and EFIT personnel shall jointly conduct investigations of all Level 2 and Level 3 uses of force, subject to the exception in Paragraph 23 of the stipulated agreement Doc. 702. IA force personnel and EFIT personnel shall jointly investigate and review all Level 2 and Level 3 uses of force in a manner that is consistent with the requirements of the CASA, APD policy, and the CBA.
29. Within 72 hours of the use of force call-out and on an ongoing basis, the case agent will provide EFIT all evidence collected, and EFIT will acknowledge receipt of all evidence.

CASE AGENT – USE of FORCE

30. The case agent and EFIT Investigator will review all collected evidence. This includes reports, OBRD, civilian witness statements, etc. The amount of time spent on evidence review varies by the volume of evidence for each case, specifically OBRD footage.
31. If, at any point during the investigation, the IAFD detective and/or EFIT investigator identifies potential misconduct, the IAFD detective or EFIT investigator will initiate a misconduct investigation by entering an IAR through Blue Team as soon as practicable but no later than 24-hours. (*See MISCONDUCT*).
32. The case agent and the immediate supervisor will meet to discuss and draft the investigative plan (with input from the EFIT investigator) within three business days of the case assignment. The investigative plan is designed to create benchmarks throughout the investigative process to ensure cases are completed within timelines, to keep supervisors informed, and to identify any issues as early in the investigation as possible. This includes the reviewing evidence, scheduling, preparing and conducting interviews, along with case analysis and write-up. An integral part of the investigative plan is to involve the immediate supervisor earlier in the investigative process to allow for closer supervision and collaboration between the supervisor and the detective.
 - a. An important part of the investigative plan is developing interview questions based on policy, potential policy violation(s), and the evidence of the case.
 - b. Once approved by the immediate supervisor the investigative plan will be uploaded into IAPro.
 - c. It is imperative that this investigative plan be updated and approved by the immediate supervisor as investigative steps are completed.
 - d. The immediate supervisor will set fifteen-day, thirty-day, and sixty-day case timelines for the case agents and will be tracked as tasks on the IAPro dashboard and are viewable by the supervisor. These dates also trigger meetings between the case agent and the immediate supervisor, along with EFIT, to review the case progression. Depending on the capabilities of the detective and the complexity of the case, the immediate supervisor can increase the number or frequency of these meetings.
 - e. The EFIT Lead Supervisor will have at a minimum, weekly meetings with all case agents and EFIT investigators to discuss the status of ongoing Level 2 and Level 3 investigations to ensure that all timelines will be met.
33. The case agent, with guidance and participation of the EFIT investigator will conduct interviews with involved and witness officers. During those interviews, the IAFD interview script will be read into the record, which includes introductory, breaks off record, and conclusory language. In the event a break is taken during the interview, the case agent will record the date and time and the reason for taking the break. Once back on record, the date and time will be stated again. The date and time of the conclusion of the interview will also be stated for the record.
34. The case agent will complete the Investigative Data form, which includes data necessary for CASA requirements.
35. The case agent will complete the Evaluative Narrative form, which includes the overall investigation in chronological order, including the analysis of each use of force.

36. The case agent will upload all evidence into IAPro to include all forms and links. At this time, the case agent will also make any necessary updates in Blue Team as all of the applications of force and injuries are captured in that system.
37. The case agent will submit the case to the immediate supervisor for review in IAPro.
38. Pursuant to the stipulated Order Doc. 702 par. 23. EFIT shall be authorized to complete investigations and supervisory reviews of investigations of Level 2 and Level 3 use of force without the involvement of IAFD if EFIT or APD has alleged that the IAFD personnel assigned to the investigation has committed misconduct during the course of the investigation, and it is likely to undermine the investigation; or if EFIT or APD believes that deficiencies in the tactics or work product of IAFD is likely to prevent the investigation for being completed within proscribed deadlines.
39. The EFIT Administrator, through the Lead Supervisor, will be immediately notified of such situations described. The EFIT Administrator will immediately, upon said briefing, notify the IAFD Commander.

SERGEANT/LIEUTENANT

40. The immediate supervisor will receive the case via IAPro. If there is a force and a misconduct case, they may not be received at the same time.
41. The immediate supervisor will meet with the case agent to discuss, draft, and approve the investigative plan and any subsequent revisions. (*See Case Agent – USE of Force section, #31*).
42. If the immediate supervisor finds additional misconduct, the misconduct will be reported via an IAR through Blue Team. (*See MISCONDUCT*).
43. The immediate supervisor will review the case agent's investigation for accuracy, completeness, and based on the investigation, determine the findings. This includes watching OBRD videos.
44. In addition to the investigative plan meetings, the immediate supervisor will meet with the case agent to discuss any questions he/she may have regarding the case.
45. If there are any revisions or corrections that need to be made to either the case, to include the Blue Team entry, the immediate supervisor will return the case to the case agent via IAPro.
46. Depending on the kind of corrections needed, the immediate supervisor will assign the case agent a deadline in which to make those changes and re-submit the case to the immediate supervisor through IAPro.
47. The immediate supervisor will complete the IAFD Chain of Command Review Form. This document includes findings, additional follow-up documentation if needed, and coaching elements for the case agent to aid future investigations.
48. The immediate supervisor will upload the IAFD Chain of Command Review into IAPro and review Blue Team for accuracy.
49. The immediate supervisor will route the case to an IAFD commanding officer via IAPro.

DEPUTY COMMANDER OR COMMANDER

50. The deputy commander or commander will receive the case in IAPro.
51. The deputy commander or commander will review bookmarked OBRD videos.
52. The deputy commander or commander will review the case to ensure that the findings are supported by the preponderance of the evidence.
53. The deputy commander or commander will route the case back through the chain of command for revisions via IAPro if necessary.

54. Depending on the kind of corrections needed, the deputy commander/commander will assign a deadline in which to make those changes and re-submit the case to the deputy commander/commander through IPro.
55. The deputy commander or commander may provide additional feedback for future performance of IAFD staff either in person or via email.
56. Once the case is reviewed by the deputy commander or commander, he/she will determine if the case is thorough, objective, and complete, the deputy commander or commander will complete the IAFD Commander Force Review form.
57. The deputy commander or commander will route the case to the administrative staff via IPro advising it is closed and if the use of force case is in or out of policy.

ADMINISTRATIVE STAFF

58. The IAFD administrative staff will receive the completed case from the deputy commander or commander in IPro.
59. The IAFD administrative staff will review the file to make sure that all necessary documents are there. They do not review the contents of the documents.
60. The IAFD administrative staff will use the date the use of force case was submitted by the deputy commander or commander as the case closed date.
61. The IAFD administrative staff will close the case in IPro.
62. Once cases are closed via the IAFD administrative staff, each level two and three use of force is housed in the data warehouse. As of May 2021, the FRB staff has a dashboard which includes closed use of force cases within a selected date range and available for selection for FRB presentation. (*See SOP 2-58, Force Review Board and City Ordinance 9-4-1-4C3 Civilian Police Oversight Agency*).

MISCONDUCT

63. Both Internal Affairs (IA) divisions use IPro for misconduct cases, and each misconduct case is linked to the corresponding force case in IPro.
 - a. Once the IAR is submitted to the Internal Affairs Professional Standards (IAPS) Division, IAPS will intake the IAR and will determine if IAFD will investigate the misconduct.
 - i. If IAPS determines that IAFD will investigate the misconduct, the IAR will result in a Force Internal Investigation or "FII," which means the misconduct investigation timeline starts on that date.
 1. IAPS will submit the FII to IAFD for the case target letter(s), assignment, and completion.
 2. In most instances, the FII will return back to the original IAFD investigator unless the case needs reassignment.
 3. IAFD will complete an IAR when an initial policy violation is identified.
 - a. As additional policy violations are identified, additional policy violations will be added to the original FII after conferring with their immediate supervisor, not to exceed 24-hours.
 - b. Regardless of who investigates the misconduct, that portion will be bifurcated from the force investigation and documented in the case to separate the force investigation from the misconduct investigation.

64. The misconduct case will follow the same investigative steps as a use of force investigation. Each case will be reviewed by the IAFD chain of command. The only difference is the misconduct interviews will involve compelled statements.
65. For sustained violations, after the IAFD commanding officer completes his/her review and approval of the misconduct case, the deputy commander/commander will complete a Disciplinary Action Packet (DAP) which includes recommended disciplinary action. The IAFD deputy commander/commander sends the DAP via email to the IAPS Investigative Manager to review. The purpose of this review is to ensure IAFD includes IAPS in the misconduct process to ensure both divisions are providing similar work product.
66. Once IAPS completes and returns their portion of the DAP, the IAFD deputy commander/commander will forward the case in IAPro to the IAFD administrative staff for the thirty-day chain of command review.
67. The Deputy Chief of Police or Superintendent will make the final decision if the level of discipline is thirty-nine hours or below.
 - i. If the level of discipline of is forty hours or over, the Chief of Police or Superintendent will make the final decision.
68. Once the final decision is documented, the misconduct case will be returned to the IAFD administrative staff to close out the case. *(See SOP 3-46 Discipline System)*.

EXHIBIT

D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE CITY OF ALBUQUERQUE,

No. CIV. 14-1025 JB\SMV

Defendant,

v.

THE ALBUQUERQUE POLICE
OFFICERS' ASSOCIATION,

Intervenor.

**NOTICE OF AGREED "ALBUQUERQUE POLICE DEPARTMENT
INTERNAL AFFAIRS FORCE DIVISION CURRENT PROCESS
Revised – September 8, 2021**

COMES NOW Defendant City of Albuquerque and hereby files the attached
"Albuquerque Police Department Internal Affairs Force Division Current Processes, Revised –
September 8, 2021" (Revised Process Narrative). Exhibit 1.

On July 16, 2021, the City filed a Notice of Agreed "Albuquerque Police Department
Internal Affairs Force Division Current Process," which was attached as its Exhibit 1 a Process
Narrative dated July 12, 2021. *See* Doc. 839-1. By filing that Process Narrative, the City
complied with Paragraph 14 of the Court's February 26, 2021 *Stipulated Order Establishing an
External Force Investigation Team* (Stipulated Order), Doc. 720, which required the City to
"submit a proposed written IA investigative process to the United States and Independent
Monitor" within two months of entry of the Order and "[a]fter the City, DOJ, and the

Independent Monitor reach agreement on the proposed written IA investigative process, the written IA investigative process shall be filed with the Court.” Doc. 720 at 5.

After the IA Force Division (IAFD) and External Force Investigation Team (EFIT) began operations under the Process Narrative, Doc. 839-1, they identified a material disparity between the Process Narrative and applicable use of force policy regarding use of force reporting, namely, whether written statements should be required in all circumstances as stated in the Process Narrative, or whether recorded verbal statements could be permitted as allowed by policy. The Revised Process Narrative permits using recorded verbal statements under limited circumstances with supervisory approval. *See* Exhibit 1 at Paragraph 14.

The Revised Process Narrative also includes a process pursuant to which IAFD and EFIT may resolve on scene disagreements about the proper classification of the level of force to be investigated. *See* Exhibit 1 at Paragraph 16. This process was not included in the original Process Narrative.

The Revised Process Narrative attached as Exhibit 1 hereto, which was prepared by the City was reviewed and approved by the United States and the Independent Monitor as required by Paragraph 14 of the Stipulated Order. The Independent Monitor, the United States, and the City have agreed on the attached Revised Process Narrative, which the City now files with the Court as required by Paragraph 14 of the Stipulated Order. Counsel for the Albuquerque Police Officers’ Association was contacted regarding the attached Revised Process Narrative and approves to form.

Respectfully submitted this 27th day of September, 2021.

Defendant CITY OF ALBUQUERQUE:

ESTEBAN AGUILAR, CITY ATTORNEY

Carlos F. Pacheco

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CERTIFICATE OF SERVICE

I hereby certify that on September 27, 2021, I filed the foregoing pleading electronically through the CM/ECF system which caused all parties or counsel and the Independent Monitor to be served by electronic means as more fully reflected on the Notice of Electronic Filing.

Carlos F. Pacheco

Carlos F. Pacheco

Senior Managing City Attorney

City of Albuquerque



ALBUQUERQUE POLICE DEPARTMENT
INTERNAL AFFAIRS FORCE DIVISION CURRENT PROCESSES

Revised - September 8, 2021

The purpose of this document is to outline the current investigative process at IAFD to investigate Use of Force cases. This document is intended to fulfill the requirements of Paragraph 14 of the February 26, 2021, Stipulated Order in *United States v. City of Albuquerque*, 14-cv-1025. This document reflects the current investigative process at IAFD. The remedial action plan created pursuant to paragraph 31 of the Stipulated Order will supersede this investigative process.

INTERNAL AFFAIRS FORCE DIVISION CURRENT PROCESSES

ON-SCENE AND ADMINISTRATIVE - USE of FORCE

1. Use of force occurs.
2. The supervisor of the officer(s) that used force will respond to the scene. If the direct supervisor is unavailable or is either involved or a witness to the use of force, another supervisor will respond.
3. The supervisor will issue a direct order that the officers on-scene not to speak about the use of force. This happens either by radio transmission while the supervisor is en route to the call, or once arrived on-scene.
4. The supervisor will visually inspect involved officers and the individual(s) in which force was used (will be referred to as "individual" throughout this document) and shall assess independently for any visible injuries, and where necessary:
 - a. Request Emergency Medical Services ("EMS") if there are visible injuries or a complaint of injury, if not done so already by the officers.
 - i. When the responding supervisor asks the individual about injuries, he/she will first administer Miranda warning to the individual before asking any questions.
 1. If the individual invokes his/her rights, questions will not be asked.
 - ii. If the individual is injured or complains of injury, he/she will either be treated at the scene, refuse treatment, or be transported to the hospital by either Albuquerque Police Department ("APD") personnel or by EMS.
 1. If transported to the hospital by APD, the transporting officer will record the starting and ending mileage via the Emergency Communication Center ("ECC"), also known as dispatch.
 - iii. If an employee(s) is injured, he/she will either be treated at the scene, refuse treatment, or be transported to the hospital by AP personnel or EMS.
 1. Supervisors will also contact MedCor for reporting and further directions for employee injury.
5. The responding supervisor will contact the officers and identify all officers who were involved or witnessed the use of force.
 - a. Involved officers are those who participated, ordered, or authorized the use(s) of force.
 - b. Witness officers are those who were on-scene, and either eye witnessed the use of force, directly heard statements made by the individual(s) and/or officer(s) involved during the events leading up to the use of force, during the use of force, or after the use of force, or otherwise could provide material details for the use of force investigation. Additional witness officers may have to be identified later in the investigation as more evidence and information is available. For example, if there is a Noise Flash Diversionary Device ("NFDD") deployed during a tactical activation and that use of the NFDD is in question, the case agent will identify witness officers to address the inconsistency.
6. The responding supervisor will make a reasonable effort to identify all civilian witnesses. If civilian witnesses have to leave the scene, the responding supervisor will obtain contact information and encourage a written statement. The responding supervisor may obtain a verbal statement if the witness is willing to do so.

7. The responding supervisor or officers on-scene will request a Crime Scene Specialist (“CSS”) to process the scene. This includes taking photographs of the scene, involved officers, the individual(s), and all visible injury(s) of any parties involved in the use of force.
8. The responding supervisor will classify the use of force by talking separately with the involved officers and watching the involved officers’ On-Body Recording Device (“OBRD”) of the use of force. If needed, he/she will watch the witness officers’ OBRD to classify properly.
 - a. If the use of force is classified as a level one, the use of force investigation will remain with the officer’s chain of command. If the use of force is classified as a level two or three, the supervisor will request from ECC the Internal Affairs Force Division (“IAFD”) on-call supervisor telephone number and call the IAFD on-call supervisor.
9. The responding supervisor will report via telephone to the IAFD on-call supervisor the classification of the use of force and all known details about the incident. The IAFD on-call supervisor will ask specific questions of the responding supervisor such as: if they have started their canvass to ensure all material witnesses do not leave the scene before APD can request their written statement, whether they have ordered the officers not to discuss the actions leading up to the arrest and/or use of force in this incident, or if there were any injuries to either the individual or officers that require medical treatment and if medical treatment has been requested.
10. The IAFD on-call supervisor will determine which detective responds to the scene. IAFD will maintain a roster of three detectives on-call each week. The IAFD on-call supervisor bases their decision on the complexity of the case to avoid overloading any one detective with complex cases such as Special Operations Division (“SOD”) uses of force during a tactical activation, Officer Involved Shooting (“OIS”), or in-custody deaths involving force.
 - a. IAFD on-call supervisors will respond with the IAFD on-call detective when there is a level two or three use of force involving a tactical activation, OIS, or in-custody death that involves force.
11. The IAFD on-call supervisor will call the IAFD on-call detective, advise him/her of the location of the use of force and any details collected during the initial call between the responding and IAFD on-call supervisor.
12. The IAFD on-call supervisor will then notify the on-call External Force Investigation Team (“EFIT”) supervisor who will assign an EFIT on-call investigator to respond with IAFD to the location of the use of force.
13. The IAFD on-call detective and EFIT on-call investigator will respond to the scene within one hour of the call.
14. While waiting for the IAFD on-call detective, the responding supervisor will ensure that officers begin their use of force paperwork. On a very limited basis when IAFD and EFIT responded to UOF calls and when taking a written statement might not be feasible because of ongoing criminal conduct, the need to respond to other criminal conduct, or for officer safety reasons, and with written authorization of an IAFD Lieutenant or higher with the agreement by the EFIT Lead Supervisor or higher, a verbal statement can be recorded in lieu of the written use of force narrative. If the individual is going to be arrested, the responding supervisor will ensure that booking documents are prepared.
15. Once the IAFD on-call detective and EFIT on-call investigator (“IAFD team”) are on-scene, they will verify that the following either has been completed by the responding supervisor and officers or if they need to complete it themselves:
 - Identify involved officers.

- Identify witness officers.
 - Identify the individual in which force was used.
 - Identify civilian witnesses. If any civilian witnesses are on-scene, interview witnesses and encourage a written statement. If a formal witness statement is required due to circumstances surrounding the event, the IAFD/EFIT team will request civilian witnesses respond to and provide the statement at an appropriate location.
 - Determine if the individual is injured by physically checking or asking the individual if they are injured. Request medical attention, if necessary. Conduct a thorough interview with the Individual in which force was used. Administer Miranda warning prior to the interview.
 - If the individual invokes his/her rights, no questions will be asked.
 - If the individual is unable to be interviewed at that time, the IAFD detective will collect as much personal contact information as possible and will conduct the interview at a later date.
 - This does not preclude the interview of an individual under the influence of drugs, alcohol or impairment in any manner.
 - Ensure all involved and witness officers sign written admonishments and collect same for the investigative file. Verify the initial classification of use of force.
 - Ensure a CSS has processed the scene and taken photographs of the scene, officers, and individual(s).
 - Canvass the area for all other evidence including but not limited to unidentified civilian witnesses, camera footage in the vicinity, etc.
 - Verify and collect the responding supervisor on-scene checklist.
16. If, at any point during the on-scene investigation, the level of force cannot be agreed upon by the assigned IAFD Detective and EFIT Investigator, the on-call IAFD Supervisor will respond to the scene to assist in properly classifying the level of force. For any level 2 or level 3 use of force call-out, that is classified on scene as a level 1 use of force, the classification will be reviewed (within 24-hours) by the EFIT Lead Supervisor to determine whether the UOF was properly classified.
17. If, at any point during the on-scene investigation, the IAFD on-call team identifies potential misconduct, the IAFD detective will initiate a misconduct investigation by entering an Internal Affairs Request ("IAR") through Blue Team within 24-hours. Note: this can occur at any point during the investigation. (See *MISCONDUCT*).
18. If, at any point the level two or level three use of force is identified as potentially criminal, the IAFD Commander and EFIT Administrator will be notified both telephonically and via email and provided a synopsis of the case. Upon review, if the IAFD Commander concurs with the assessment, the IAFD commander will refer to the Multi-Agency Task Force ("MATF") through the MATF commander via email. This can occur at any point during the investigation.
- a. Any potentially criminal referral will have a corresponding misconduct IAR for the misconduct administrative investigation. (See *MISCONDUCT*).
19. The involved or witnessing officers will complete their use of force narrative by end of shift. Responding supervisors will review and approve officer narratives for accuracy, detail, and completion. Narrative forms will be submitted via email to the IAFD on-call team by the end of shift.

20. Responding supervisor will complete the Supervisory On-Scene Investigation form. This is turned in by the end of shift and emailed to the on-call IAFD detective.
21. On-scene follow-up may be required by the IAFD detective based on the need for material evidence collection such as camera footage not available at the time of the call-out.
22. The IAFD on-call detective will begin the Evaluative Data form. This is an inventory of all of the evidence collected for the case. As soon as practicable, but no later than 24-hours of the call-out, the IAFD detective will enter the use of force in Blue Team. In the case of a technology or server failure, the IAFD on-call detective will send an email to the Chief of Police, attaching the Evaluative Data Form in the email, which will serve as the 24-hour notice. The IAFD on-call detective will include the email in the case file for proof of 24-hour notification. The entry includes basic information about the use of force case which is sent to the Chief of Police for the 24-hour notification required for every level two and level three use of force. This entry is also sent to the IAFD administrative staff and the IAFD chain of command to include the Superintendent.
23. The IAFD team will meet with the IAFD immediate supervisor the next business day following the call-out to brief them regarding the use of force. This includes reviewing the reported use of force portion of OBRD together.
24. The IAFD on-call detective will upload his/her OBRD the next business day and prior to meeting with their supervisor.
25. The IAFD administrative staff shall receive the initial Blue Team entry from the IAFD detective. IAFD administrative staff request photographs taken by the CSS from the Scientific Evidence Division (SED)-photo lab through Blue Team. The SED uploads the photographs in Blue Team and sends it back to the IAFD administrative staff.
26. The IAFD administrative staff accepts the case from Blue Team into IAPro. Blue Team feeds into IAPro and IAPro feeds into the data warehouse.
 - a. The IAFD administrative staff will assign a file number (or force number) to the use of force in IAPro. There are multiple entry types allowed in IAPro and Blue Team. Many of these entry types may be involved in one case and are linked together in IAPro. For example, vehicle pursuits can result in a use of force, misconduct, and a job well done; therefore, all four will be linked in IAPro. Also, the K-9 Unit enters all deployments into Blue Team. It should be noted that all K-9 deployments do not result in a K-9 bite. When there is a K-9 bite, the linked data will include a K-9 deployment entry and a use of force entry.

Below are examples of entry types:

Civilian Police Complaints (CPC) = CPC2021-000000

Force Internal Investigations (FI)/IAFD investigated misconduct = FI2021-000000

K9 Utilization = K92021-000000

Force = F2021-000000

Award Nominations = AN2021-000000

Vehicle Crashes = VC2021-000000

Internal Investigations (IAPS misconduct) = I2021-000000

Non-Force = NF2021-000000

27. The case will remain in IAPro until assigned to a case agent. Cases agent assignments shall be made expeditiously.

28. Once the case is assigned, the administrative staff will send the case to the case agent in both IAPro and Blue Team. The case agent will receive the case in both platforms as Blue Team houses use of force injury and applications data. The remainder of the case is in IAPro. The case agent will organize cases in IAPro using sub-folders such as, IAFD interviews, extensions, admonishments, and OBRD.
29. The case agent will cooperatively work with the EFIT investigator assigned. IA force personnel and EFIT personnel shall jointly conduct investigations of all Level 2 and Level 3 uses of force, subject to the exception in Paragraph 23 of the stipulated agreement Doc. 702. IA force personnel and EFIT personnel shall jointly investigate and review all Level 2 and Level 3 uses of force in a manner that is consistent with the requirements of the CASA, APD policy, and the CBA.
30. Within 72 hours of the use of force call-out and on an ongoing basis, the case agent will provide EFIT all evidence collected, and EFIT will acknowledge receipt of all evidence.

CASE AGENT – USE of FORCE

31. The case agent and EFIT Investigator will review all collected evidence. This includes reports, OBRD, civilian witness statements, etc. The amount of time spent on evidence review varies by the volume of evidence for each case, specifically OBRD footage.
32. If, at any point during the investigation, the IAFD detective and/or EFIT investigator identifies potential misconduct, the IAFD detective or EFIT investigator will initiate a misconduct investigation by entering an IAR through Blue Team as soon as practicable but no later than 24-hours. (*See MISCONDUCT*).
33. The case agent and the immediate supervisor will meet to discuss and draft the investigative plan (with input from the EFIT investigator) within three business days of the case assignment. The investigative plan is designed to create benchmarks throughout the investigative process to ensure cases are completed within timelines, to keep supervisors informed, and to identify any issues as early in the investigation as possible. This includes the reviewing evidence, scheduling, preparing and conducting interviews, along with case analysis and write-up. An integral part of the investigative plan is to involve the immediate supervisor earlier in the investigative process to allow for closer supervision and collaboration between the supervisor and the detective.
 - a. An important part of the investigative plan is developing interview questions based on policy, potential policy violation(s), and the evidence of the case.
 - b. Once approved by the immediate supervisor the investigative plan will be uploaded into IAPro.
 - c. It is imperative that this investigative plan be updated and approved by the immediate supervisor as investigative steps are completed.
 - d. The immediate supervisor will set fifteen-day, thirty-day, and sixty-day case timelines for the case agents and will be tracked as tasks on the IAPro dashboard and are viewable by the supervisor. These dates also trigger meetings between the case agent and the immediate supervisor, along with EFIT, to review the case progression. Depending on the capabilities of the detective and the complexity of the case, the immediate supervisor can increase the number or frequency of these meetings.
 - e. The EFIT Lead Supervisor will have at a minimum, weekly meetings with all case agents and EFIT investigators, and IAFD supervisor, to discuss the status of ongoing Level 2 and Level 3 investigations to ensure that all timelines will be met.

34. The case agent, with guidance and participation of the EFIT investigator will conduct interviews with involved and witness officers. During those interviews, the IAFD interview script will be read into the record, which includes introductory, breaks off record, and conclusory language. In the event a break is taken during the interview, the case agent will record the date and time and the reason for taking the break. Once back on record, the date and time will be stated again. The date and time of the conclusion of the interview will also be stated for the record.
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36. The case agent will complete the Evaluative Narrative form, which includes the overall investigation in chronological order, including the analysis of each use of force.
37. The case agent will upload all evidence into IAPro to include all forms and links. At this time, the case agent will also make any necessary updates in Blue Team as all of the applications of force and injuries are captured in that system.
38. The case agent will submit the case to the immediate supervisor for review in IAPro.
39. Pursuant to the stipulated Order Doc. 702 par. 23. EFIT shall be authorized to complete investigations and supervisory reviews of investigations of Level 2 and Level 3 use of force without the involvement of IAFD if EFIT or APD has alleged that the IAFD personnel assigned to the investigation has committed misconduct during the course of the investigation, and it is likely to undermine the investigation; or if EFIT or APD believes that deficiencies in the tactics or work product of IAFD is likely to prevent the investigation for being completed within proscribed deadlines.
40. The EFIT Administrator, through the Lead Supervisor, will be immediately notified of such situations described. The EFIT Administrator will immediately, upon said briefing, notify the IAFD Commander.

SERGEANT/LIEUTENANT

41. The immediate supervisor will receive the case via IAPro. If there is a force and a misconduct case, they may not be received at the same time.
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56. The deputy commander or commander may provide additional feedback for future performance of IAFD staff either in person or via email.
57. Once the case is reviewed by the deputy commander or commander, he/she will determine if the case is thorough, objective, and complete, the deputy commander or commander will complete the IAFD Commander Force Review form.
58. The deputy commander or commander will route the case to the administrative staff via IAPro advising it is closed and if the use of force case is in or out of policy.

ADMINISTRATIVE STAFF

59. The IAFD administrative staff will receive the completed case from the deputy commander or commander in IAPro.
60. The IAFD administrative staff will review the file to make sure that all necessary documents are there. They do not review the contents of the documents.
61. The IAFD administrative staff will use the date the use of force case was submitted by the deputy commander or commander as the case closed date.
62. The IAFD administrative staff will close the case in IAPro.
63. Once cases are closed via the IAFD administrative staff, each level two and three use of force is housed in the data warehouse. As of May 2021, the FRB staff has a dashboard which includes closed use of force cases within a selected date range and available for selection for FRB presentation. (See SOP 2-58, Force Review Board and City Ordinance 9-4-1-4C3 Civilian Police Oversight Agency).

MISCONDUCT

64. Both Internal Affairs (IA) divisions use IAPro for misconduct cases, and each misconduct case is linked to the corresponding force case in IAPro.
 - a. Once the IAR is submitted to the Internal Affairs Professional Standards (IAPS) Division, IAPS will intake the IAR and will determine if IAFD will investigate the misconduct.
 - i. If IAPS determines that IAFD will investigate the misconduct, the IAR will result in a Force Internal Investigation or "FI," which means the misconduct investigation timeline starts on that date.
 1. IAPS will submit the FI to IAFD for the case target letter(s), assignment, and completion.

2. In most instances, the FII will return back to the original IAFD investigator unless the case needs reassignment.
3. IAFD will complete an IAR when an initial policy violation is identified.
 - a. As additional policy violations are identified, additional policy violations will be added to the original FII after conferring with their immediate supervisor, not to exceed 24-hours.
 - b. Regardless of who investigates the misconduct, that portion will be bifurcated from the force investigation and documented in the case to separate the force investigation from the misconduct investigation.
65. The misconduct case will follow the same investigative steps as a use of force investigation. Each case will be reviewed by the IAFD chain of command. The only difference is the misconduct interviews will involve compelled statements.
66. For sustained violations, after the IAFD commanding officer completes his/her review and approval of the misconduct case, the deputy commander/commander will complete a Disciplinary Action Packet (DAP) which includes recommended disciplinary action. The IAFD deputy commander/commander sends the DAP via email to the IAPS Investigative Manager to review. The purpose of this review is to ensure IAFD includes IAPS in the misconduct process to ensure both divisions are providing similar work product.
67. Once IAPS completes and returns their portion of the DAP, the IAFD deputy commander/commander will forward the case in IAPro to the IAFD administrative staff for the thirty-day chain of command review.
68. The Deputy Chief of Police or Superintendent will make the final decision if the level of discipline is thirty-nine hours or below.
 - i. If the level of discipline of is forty hours or over, the Chief of Police or Superintendent will make the final decision.
69. Once the final decision is documented, the misconduct case will be returned to the IAFD administrative staff to close out the case. *(See SOP 3-46 Discipline System).*

EXHIBIT

E



TO: United States Department of Justice
Independent Monitor – Dr. James Ginger
Acting Superintendent Eric Garcia - Albuquerque Police Department
Deputy Chief Cori Lowe - Albuquerque Police Department
Acting Deputy Chief Zak Cottrell- Albuquerque Police Department
Acting Commander Richard Evans - Albuquerque Police Department
Acting Deputy Commander Adam Anaya - Albuquerque Police Department

FROM: EFIT Administrator Darryl S. Neier *DSN*
RE: Interview Transition Back To IAFD
DATE: January 20, 2022

While this is a subjective determination, once an IAFD Detective/Investigator is identified by EFIT as attaining the requisite capabilities to conduct interviews without EFIT's direct supervision, the EFIT Executive Team will review the recommendation. Only the EFIT Administrator or in his absence the Deputy Administrator will make a final determination that the IAFD Detective/Investigator may conduct interviews without direct supervision, and the following process must be followed:

1. The EFIT Administrator and/or Deputy Administrator will notify the APD Superintendent, Deputy Chief, IAFD Division Commander, the IMT and DOJ of the IAFD Detective/Investigator deemed qualified to commence the transition process and will document this decision.
2. The EFIT Lead Supervisor will arrange a meeting with the IAFD Detective/Investigator and IAFD Supervisor, to inform them of the decision, review the phased approach and document the meeting.
3. The Lead Supervisor will inform the EFIT Supervisors who in turn will notify the EFIT Teams of the IAFD Detective/Investigator in the transition process.
4. If at any time during a transition phase the EFIT Executive Team believes that the IAFD Detective/Investigator needs to remain in a phase longer, or remedial action is required, the reasons will be documented and provided to the Superintendent, Deputy Chief, IAFD Commander. Examples of remedial action include, but are not limited to, coaching by EFIT staff, the Detective/Investigator remaining in a phase for an extended period of time and such other actions as determined by EFIT.
5. The EFIT Lead Supervisor will meet with the IAFD Detectives/Investigators and their Supervisor to discuss performance prior to advancing from each phase.

Phase 1

1. The IAFD Detective/Investigator will provide the EFIT Investigator (case agent) no later than 24 hours prior to the interview with a written interview outline and arrange a meeting with the EFIT Investigator to discuss the interview.
2. The EFIT Investigator will meet with the IAFD Detective/Investigator at least 12 hours before the interview to discuss the impending interview.
3. After the interview and before the end of the current shift, the IAFD Detective/Investigator will upload the recording of the interview to Evidence.com and attach the interview link to the case in IAPro.



4. Within 24-hours [after the recorded interview is uploaded to Evidence.com] the EFIT Investigator will review the recorded interview and provide a written critique to the IAFD Detective/Investigator through the EFIT chain of command.
5. This process will remain in place for a minimum of 10 interviews and until the EFIT Executive Team agrees that the IAFD Detective/Investigator can advance to phase 2.
6. Should the EFIT Executive Team deem that a second interview be necessary, an EFIT investigator shall be involved in the interview.

Phase 2

1. The IAFD Detective/Investigator will provide the EFIT Investigator (case agent) with a written interview outline no later than 24 hours before an interview.
2. After the interview and before the end of the current shift, the IAFD Detective/Investigator will upload the recording of the interview to Evidence.com and attach the interview link to the case in IAPro.
3. Within 24-hours [after the recorded interview is uploaded to Evidence.com,] the EFIT Investigator will review the recorded interview and provide a written critique to the IAFD Detective/Investigator and the EFIT chain of command.
4. This process will remain in place for a minimum of 10 interviews and until the EFIT Executive Team agrees that the IAFD Detective/Investigator is prepared to advance to phase 3.
5. Should the EFIT Executive Team deem that a second interview be necessary, an EFIT investigator shall be involved in the interview.


Phase 3

1. The IAFD Detective/Investigator will prepare a written interview outline and upload it into IAPro before the interview.
2. The IAFD Detective/Investigator will notify the EFIT Investigator at least 24 hours prior to the scheduled interview.
3. After the interview and before the end of the current shift, the IAFD Detective/Investigator will upload the recording of the interview to Evidence.com and attach the interview link to the case in IAPro.
4. EFIT will review the interview as part of the normal course of continuing to provide investigative guidance on the use of force investigation.

EXHIBIT

F

Memorandum

	To:	From:
	Subject: Employee Representative Admonition IAFD# 2021-	

You have been selected by _____ and have voluntarily agreed to act as employee representative during the course of this official Internal Affairs Force Investigation. Your participation in this process is defined in the City of Albuquerque Police Officers Collective Bargaining Agreement Section 20:1.11.

As the employee representative, you are to participate in this interview as a representative only. At no time shall you interrupt the interview in any manner, including but not limited to: engaging in any form of verbal or non-verbal communication, making distracting noises, or hindering the flow or direction of the interview with the exception of objecting to a question, or you may ask for a question to be repeated or restated for clarification purposes.

At the conclusion of this interview, the employee or representative will be given a reasonable amount of time to make any additional comments and/or provide any case and fact specific information deemed necessary. You are further ordered not to discuss this investigation with anyone other than the Principal or the assigned investigators.

Failure to comply with the orders contained in this admonition shall result in your immediate removal from the interview room. If a representative is removed, the officer may be allowed up to 2 hours to obtain another representative before the interview is conducted.

The assigned investigators are:

I acknowledge that I have read and understand this memorandum.

Signature and Man Number

Date

EXHIBIT

G

DLG Consulting & Advisory Services, LLC
Methodology for Albuquerque Police Department
Use of Force – Backlog Investigations

Darryl S. Neier, EFIT Administrator
April 27, 2022

DSN

Background

On March 21, 2022, the United States District Court for the District of New Mexico (the “Court”) granted a joint motion filed by the United States Department of Justice (“DOJ”) and the City of Albuquerque (“City”), with the concurrence of the Independent Monitor (“IM”), by entering an Amended Stipulated Order Establishing an External Force Investigation Team (“Amended Stipulated Order”) in the case *United States v. City of Albuquerque*, No. CIV. 14-1025 JB\SMV (Doc. 906). The Amended Stipulated Order modifies and supersedes the Stipulated Order Establishing an External Force Investigation Team that the Court entered on February 26, 2021 (Doc. 720).

The Original Stipulated Order required the City to establish, on a temporary basis, an External Force Investigation Team (“EFIT”) to assist the Albuquerque Police Department (“APD”) in conducting investigations of Level 2 and Level 3 uses of force by APD officers and improve the quality of force investigations conducted by APD’s Internal Affairs Force Division (“IAFD”). The Original Stipulated Order also required the City to improve APD’s internal affairs processes, maintain an increased number of IAFD investigators and provide additional training to IAFD investigators.

The Amended Stipulated Order restates many of the Original Order’s requirements and supplements them in two ways. First, the Amended Stipulated Order requires the City to modify its existing contract to allow EFIT to investigate all use-of-force incidents occurring between January 1, 2020, through July 16, 2021, that APD did not investigate, in full or in part (“Backlog Force Cases”), in violation of the Court Approved Settlement Agreement (“CASA”), Doc. 465-1. Second, the Amended Stipulated Order extends by 24 months, from May 2022 through May 2024, the period during which the City shall continue to engage EFIT to assist IAFD to investigate new Level 2 and Level 3 use-of-force incidents (“New Force Cases”).

Exhibit 1: Scope of Work to Remedy the Backlog Force Cases (“SOW”) to the Amended Stipulated Order (Doc. 906, Ex. 1 at 1-2, Para. 6) provides:

“The EFIT Administrator shall, within one month of the entry of the Amended Stipulated Order, provide the City, DOJ, and the Independent Monitor with a written plan for how it will accomplish the requirements of the Order. The plan shall describe, at a minimum, the methodology that the EFIT Backlog Team will use in investigating the Backlog Force Cases and how the EFIT Backlog Team will prioritize its investigations of the force incidents included in the Backlog Force Cases. The City, DOJ, and the Independent Monitor shall provide any comments or suggestions on the written plan to the EFIT Administrator within two weeks of receiving it. The EFIT Administrator shall work in good faith to address the concerns and suggestions provided by the City, DOJ, and the Independent Monitor.”

Based on the data received from APD pursuant to the Amended Stipulated Order, the EFIT Executive Team (“EET”) determined that between January 19, 2020, and July 14, 2021, a total 655 cases (2,537 UOF incidents) were not investigated by APD. In addition, of those, 12 UOF cases were either completed and/or were in the review process for a total of 667 cases¹. In order to comply with the Amended Stipulated Order (Doc. 906), the EFIT Administrator has identified/interviewed, and anticipates hiring six investigators and two supervisors who are highly experienced professionals to work with the three members of the current EET to makeup the EFIT 2 “Backlog” Team.

EFIT and APD agreed to utilize three categories of cases for reporting, tracking and statistical purposes. The categories are: Inactive, Active, and Completed.² Currently, all backlog cases had the status changed in IAPro to now reflect a status of Inactive. Additionally, data was provided indicating the status of involved Officer(s) with APD (e.g., dates of hire and, if applicable, dates of separation).

The methodology, once approved, along with the SOW (attached), will guide EFIT’s process of investigating the Backlog Force Cases.

Methodology

This methodology statement, along with the SOW will guide the assignment of the backlog cases to the EFIT 2 Investigators for investigation and reporting.

With assistance from APD’s Accountability Bureau, the EET obtained an Excel spreadsheet containing the data of all the Backlog Force Cases identified in the Amended Stipulated Order (Doc. 906). Additionally, the EET worked with members of the Accountability Bureau and agreed that APD will develop a dashboard that is similar to the current IAFD case tracking and management dashboard, stratifying the data readability that will be distributed to APD, DOJ and the IMT when reporting on the Backlog Force Case investigations. This dashboard will be developed by June 1, 2022, by APD’s new Data Analytics Division and tested by the EET prior to use.

The EET conducted a number of meetings with APD’s Accountability Bureau, including the Compliance and Oversight Division and the newly created Data Analytics Division who will also assist calculating normative thresholds for UOF to identify the Officer(s) who utilize UOF over the expected incident rate and are thus considered High Incident Officers.

¹ Three Backlog Force Cases have already been presented to the Force Review Board (“FRB”).

² Inactive – unassigned backlog case; Active – a UOF investigation assigned for an investigation; Completed – a Backlog Force Case that has been closed by the EET.

The early intervention thresholds currently used by APD compare all Officers assigned to an area command shift to a threshold calculated for all Officers assigned to the shift. The Performance Evaluation and Management System Section (“PEMS”) analysts found that shift was a better predictor of force for patrol officers than area command assignments. The threshold is set to identify the top 10% of officers who use force relative to the number of calls for service. Additionally, this model will be applied to specialized units to identify thresholds for those units compared to all other Officers in the unit.

Once the data is reviewed by the EET, the EET will use the expected incident rate of the involved Officer(s) to find those that significantly deviate from expectation, who will be labeled a "High-Incident Officer."

The EET will assign Backlog Force Cases according to the following prioritization levels –

1. Officer Involved Shootings (regardless of the backlog year)³
2. High-Incident Officer (regardless of the backlog year)⁴
3. Ad-Hoc (regardless of the backlog year)⁵
4. K-9 apprehension(s) and bite(s) other than a Tactical Activation
5. Tactical Activation and any associated UOF
6. Applications⁶ of an ECW
7. Level 3 UOF
8. Level 2 UOF
9. UOF of Officer(s) who separated from APD (except if the force is in the prioritization levels 1-5)⁷

Once the Backlog Team completes investigations of the Backlog Force Cases in prioritization tiers 1, 2, and 3 the EET will assign the Backlog Force Cases in tiers 4-9 within tiers 4-9, EFIT will prioritize force events occurring in 2020⁸, then assign force events occurring in 2021.

³ 4 OIS (2020) and 3 OIS (2021).

⁴ The EET will assign all Backlog Force Cases involving a High-Incident Officer to one Backlog Team Investigator who will review all the associated Backlog Force Cases involving the officer to determine if a pattern or practice arises and issue a consolidated report with the findings for all of that officers’ Backlog Force Cases.

⁵ At the discretion of EFIT.

⁶ According to the CASA (Doc. 465, Para. 12) “*ECW application means the contact and delivery of an electrical impulse to a subject with an Electronic Control Weapon.*”

⁷ If the separated officer was involved in a UOF with other Officer(s) still employed by APD, the case will be investigated at a higher prioritization tier.

⁸ SOW, Para. 8.

Once the EET assigns case(s) to a Backlog Team Investigator the case will be deemed active in IAPro. The Backlog Team Investigator will follow the SOW:

Para. 9 – “For each use-of-force incident, the EFIT Backlog Team investigators shall develop an appropriate investigative plan with input from their respective supervisors, using as guidance the revised IAFD process narrative, Doc. 862-1, ¶¶ 31–40. An appropriate investigative plan will vary depending on the use-of-force incident and the available evidence. However, unless variance is granted by the EFIT Executive Team, an appropriate investigative plan will include, but is not limited to, the following minimum requirements:

- a. *Evaluating APD’s on-scene investigation, if any, using as guidance the revised IAFD process narrative, Doc. 862-1, ¶¶ 1–30, however, the plan shall incorporate the IAFD process narrative as it relates to potential criminal conduct, id., ¶ 17*
- b. *Reviewing available documentary evidence, including but not limited to, use-of-force narratives, OBRD recordings⁹, and recorded witness statements; and*
- c. *Conducting appropriate interviews of involved officers, witness officers, and, if necessary, civilian witnesses. The EFIT will have discretion to decide whether interviews will be conducted in person or remotely, by Zoom.”*

Para. 10 – “EFIT Backlog Team investigators will prepare a narrative report¹⁰ for each case that, at a minimum, identifies the data reviewed, evaluates the use-of-force incident, and recommends a finding for whether each application of force complied with APD policy. Investigators will identify training, equipment, or policy concerns arising from the use-of-force incident. Investigators will also identify other substantial APD policy violations related to the use of force that they become aware of during an investigation.”

The EET is aware that 12 Backlog Force Cases were investigated by IAFD and are in some process of review with three of the cases already presented to the FRB. For these cases, EFIT Backlog Team Supervisors will conduct an “over the top review”. Once completed, these cases will be reviewed by a member(s) of the EET for a determination of completeness and closeout. If the investigation is deemed to be insufficient, the EET will reassign the case for a full investigation by a Backlog Team Investigator.

Upon completion of a Backlog Force Case investigation, a supervisory review process as outlined in the SOW (Paras. 11-16) will be followed along with the EET reporting and close out requirements (Paras. 17 – 20). Finally, on an ongoing basis, the EET will prepare all the required reporting as outlined in the SOW (Paras. 23-25).

⁹ The OBRD review will follow the Individual from Pre-force, the Force Incident, Post-force, Transportation and any other OBRDs determined germane to the UOF investigation.

¹⁰ This narrative report will be the same format already utilized when EFIT assumes an investigation from IAFD.

EXHIBIT

H

**THE CITY OF ALBUQUERQUE
LABOR-MANAGEMENT RELATIONS BOARD**

IN THE MATTER OF PROHIBITED PRACTICE:

**ALBUQUERQUE POLICE OFFICERS'
ASSOCIATION,**

Petitioner,

v.

LB-22-21

CITY OF ALBUQUERQUE,

Respondent.

**CITY'S RESPONSE TO PETITION FOR TEMPORARY RESTRAINING
ORDER AND PRELIMINARY INJUNCTIVE RELIEF**

COMES NOW the City of Albuquerque and submits its Response to Petitioner's Petition for Temporary Restraining Order and Preliminary Injunctive Relief.

The Petition should be denied because the Board does not have the authority to issue injunctive relief. But even if the Board had the power to entertain this request, which the City respectfully maintains it cannot, Petitioner's request is not only premature but fails to establish the necessary requirements to warrant such extreme relief. For each of these the reasons, as further explained below, the Board should dismiss the Petition and deny APOA's request for a temporary restraining order or injunctive relief.

I. BACKGROUND

On April 12, 2022 Officers Jerry Arnold and Damian Lujan were involved in what the Albuquerque Police Department ("APD") would refer to as an officer-involved shooting. As with *any* display or use of force ("UOF") by *any* officer, APD conducts a routine review of the incident is done to ensure that the officers were justified in using force and complied with APD's standard operating procedures ("SOP"). If the review reveals any potential SOP violation, the APD has an

obligation and duty – under its own policies and a settlement agreement entered with the United States Department of Justice (“DOJ”) -- to investigate further. This process is the same every time, Indeed, the Collective Bargaining Agreement between the City and Petitioner provides for a formulaic process to ensure fairness to the officers subject to these investigations, and APD follows that process when conducting its investigations

For this particular UOF, APD identified potential violations after reviewing the video footage of the incident. As a result, it issued notices of investigations, or “Target Letters,” to Officers Arnold and Lujan. Both notices stated that “[i]t is alleged that you used deadly force against an individual without probable cause to believe an individual poses a significant threat of death or serious physical injury to you or anyone else. Additionally, it is alleged that you did not record a law enforcement encounter.” The Target Letters went on to say that “SOP section 2.52.6.C.2 and 2.8.5.C.1 have been identified as a possible issues of concern in regard to the investigation. Additional SOP sections and City Rules & Regulations may be identified as a result of the investigation.” See April 22, 2022 Target Letters, attached hereto as Exhibit A. The letters indicated that civilian investigator Andrea Guido had been assigned to conduct the investigation. See id.

After APD issued these Target Letters, APOA complained that the letters contained improper language. In response, APD issued new letters that identified the SOPs at issue, without additional description. See May 2, 2022 Target Letters, attached hereto as Exhibit B. The next day, APOA filed this Petition, seeking to halt the investigation. In its Petition, APOA argues that the language of the April 22 Target Letters demonstrates that APD has prejudged the outcome of the investigations. See Petition at 2. APOA also claims that it has additional, unidentified evidence of

bias. See id. APOA asks the Board to enjoin the City from investigating the officers' use of force. *See id.* at 1.

II. ARGUMENT

The Board should deny APOA's Petition. As a threshold matter, the Board does not have the power to enjoin the City's investigation. Moreover, the question regarding the fairness of the investigation is not ripe for review. But to the extent the Board decides to consider APOA's request, it should still be denied because APOA has failed to establish that such an extreme measure is needed.

A. COA Ordinance § 3-2-12 Does Not Grant the Board Power to Issue Injunctive Relief.

The Board cannot grant APOA's request for either a temporary restraining order or preliminary injunctive relief because it lacks the authority to issue such relief.

“[A]n administrative agency may not exercise authority beyond the powers that have been granted to it.” Leonard v. Payday Prof'l/Bio-Cal Comp., 2008-NMCA-034, ¶ 11, 179 P.3d 1245. Here, the Board's authority stems from the City of Albuquerque Labor Management Relations Ordinance, COA Ordinance, § 3-2-1, et seq. (“LMRO”). And that ordinance does not grant the Board authority to enter injunctive relief. The only powers granted to the Board are identified in Section 3-2-12(B), which provides that “If the Board determines that a party has committed a violation of § [3-2-10](#), the appropriate District Court may, if requested ... [i]ssue an order restraining and enjoining such violation.” This provision only grants the Board the authority to make findings. See id. And this provision cannot be interpreted to grant the Board the authority to issue restraining orders or injunctions. When an ordinance provides that injunctive relief must be obtained through a district court, it does not extend such power to an administrative agency. See Leonard, 2008-NMCA-034 at ¶ 13. (“[T]he fact that director must seek injunctive relief

through the district court under Section 52–1–62 suggests that the WCA in its entirety lacks equitable powers; otherwise, there would be no need to seek an injunction through the district court.”). Because this LMRO provision specifically states that injunctive relief must be sought through the district court, the Board, in its entirety, lacks authority to issue that relief.

Perhaps recognizing that the LMRO grants no authority to enter restraining orders or injunctions, APOA may argue that the Board derives such authority from the New Mexico Public Employee Bargaining Act (“PEBA”). But the PEBA does not grant the Board additional powers beyond the LMRO. Pursuant to PEBA, the City is permitted to create a local board and enact municipal legislation to govern this local board, so long as the local ordinance “allows for the determination of, and remedies for, an action that would constitute a prohibited practice under the Public Employee Bargaining Act and contains impasse resolution procedures equivalent to those set forth in § 10-7E-18 NMSA 1978.” §10-7e-10 NMSA 1978. In accordance with this provision, the legislative body of the City of Albuquerque, the City Council, enacted the governing authority, the LMRO, which gives this local board its powers. On May 22, 2021, the PELRB reviewed the City’s LMRO in its entirety including provision § 3-2-12 as written, and issued an Order determining that the City’s LMRO provided the same or greater rights mandated for public employees under PEBA as prescribed in § 10-7E-10 (B). See PELRB Order, attached hereto as **Exhibit C**. The PELRB’s approval of the City’s LMRO by the Public Employee Labor Relations (“PELRB”) establishes that the local ordinance governs the scope the Board’s authority to administer appropriate relief. Id. Accordingly, the City’s LMRO does not grant it power to issue injunctive relief.

B. The Issue of Fairness is Not Ripe for Decision.

APOA's request is also premature. There is no indication that the APOA has complied with the grievance or internal appeal process outlined in the parties CBA. Section 21.1.2 of the Parties' CBA requires that complaints about actions that do not result in loss of pay or seniority or a written reprimand must be made through the affected officer's chain of command. APOA has not shown that this process was attempted or completed. Accordingly, this matter is not ripe for the Board to consider.

C. Petitioner Does Not Point to Any Evidence to Support its Request for Injunctive Relief.

Even if the Board did have authority to grant injunctive relief, and even if the question were ripe for review, APOA has not established that such extreme measure is warranted here.

To obtain a TRO, a movant must show that "(1) the [movant] will suffer irreparable injury unless the injunction is granted; (2) the threatened injury outweighs any damage the injunction might cause the [adversary]; (3) issuance of the injunction will not be adverse to the public's interest; and (4) there is a substantial likelihood [movant] will prevail on the merits." *LaBalbo v. Hymes*, 1993-NMCA-010, ¶ 11, 850 P.2d 1017. APOA has not come close to establishing any of these elements.

First, APOA has not shown that it will suffer irreparable injury if APD proceeds with its investigation. An irreparable injury is one that cannot later be cured after the fact. See State Highway and Transportation Dep't v. City of Sunland Park, 2000-NMCA-044, ¶ 19, 3 P.3d 128. In other words, injunctions are necessary when there is no way to "unscramble the eggs" or "put the toothpaste back in the tube." As an example, an injunction might be necessary when one party's action would destroy someone else's property. But here, APOA cannot genuinely claim that any injury – to the extent there is any -- cannot be cured. Ms. Guido has not yet interviewed the target

officers, so there has not yet been a chance for any bias to be exhibited, and therefore, it is premature to say that her work product is biased. Moreover, the officers will have the right to appeal if any discipline is imposed. APOA, therefore, cannot claim that it will suffer irreparable injury if the investigation continues. Indeed, the fairness of an investigation typically is part of the justifiable cause or even due process analysis applied after the employer's actions are complete. See In re. Enterprise Wire Co. 46 LA 359, 1966. This matter is still at its inception and APD has not made any determinations as to whether the affected officers violated policy, let alone taken any action based on such a determination. Therefore, the question of whether the investigation was done fairly as part of whether APD had justifiable cause to act based on the investigation is not ripe for this Board to consider.

Second, APOA cannot claim that the claimed injury outweighs the potential harm to the City or that an injunction is in the public interest. The City will suffer significant harm if Board attempts to stop its investigation. An injunction of that nature creates the risk that APD will be unable to complete its investigation within the 120-day deadline established under the CBA, and thus that it will be unable to impose discipline even if the officers' use of force was out of policy. It also creates the risk that the APD will be unable to complete its investigation within the 90-day deadline imposed by the agreement with DOJ – i.e., the Court-Approved Settlement Agreement (“CASA”). If that happens, APD could be found out of compliance on certain requirements under the CASA. Such a finding could extend the time that APD is subject to the terms of the CASA and impose continued costs on the City. This result, and any result that might put the City's ability to impose appropriate discipline, is certainly not in the public interest.

Third, APOA has failed to establish that it is likely to prevail on the merits. Other than relying on unfounded conjecture of supposed bias and unfairness on behalf of the City, APOA

utterly fails to demonstrate how any process or person involved in this investigation is unfair or biased. APOA has no evidence to support the contention that Ms. Andrea Guido, the civilian investigator assigned to this investigation, is biased or has made any pre-determinations about the incident. Indeed, APOA has given the Board no reason to suspect Ms. Guido would base her findings on anything other than the facts and evidence available to her in the course of her investigation. And in fact Ms. Guido has not yet made any determinations about the incident. See Affidavit of Andrea Guido, attached hereto as **Exhibit D**. APOA also fails to account for the fact that Ms. Guido's investigation will be supervised by Sgt. Joshua Brown. APOA has not even attempted to allege that Sgt. Brown is biased against either of the officers or is not capable of conducting an impartial investigation. And Sgt. Brown, like Ms. Guido, affirms that he possesses no bias in this matter. See Affidavit of Joshua Brown, attached hereto, as **Exhibit E**. APOA likewise does not seem to account for the fact that Ms. Guido's investigation will be reviewed by at least six members of her chain of command and the Police Reform Bureau, and APOA has not attempted to argue that any of those individuals are biased against the officers or have prejudged the outcome.

APOA instead argues that the language of the April 22 Target Letters demonstrates bias. See Petition at 2. But it does not. The letters recited the language of the applicable SOPs at issue. The mere recitation of that language does not demonstrate bias against the officers. Moreover, the notices complied with the CBA. Section 20.1.5 of the CBA requires the City inform officers who are the target of an investigation of the specific SOPs alleged to be violated and with sufficient information to apprise the officer of the allegations. See CBA §20.1.5, attached hereto in relevant parts as **Exhibit G**. The April 22 Target Letters identified the date of the incident in question along with the specific SOP alleged to have been violated. See **Exhibit A**. These notices followed the

same form of target letters issued in all investigations. In fact, the same format has been used on hundreds of occasions over at least the last two years, none of which the APOA objected to until now. See Previously Issued Letters, attached hereto as **Exhibit H**. These letters, therefore, do not demonstrate bias.

APOA otherwise claims that it has “been advised that IAFD does not intend to conduct a fair investigation of these officers.” Petition at 2. APOA gives no hint as to what actual information it has, and thus provides no basis to conclude that the investigation will be tainted by bias. APOA should not be able to rely on an unsupported claim to stop APD’s investigation into an officer-involved shooting that resulted in the death of an Albuquerque citizen. In sum, APOA’s Petition provides no grounds for the Board to issue either an injunction or a temporary restraining order, and thus its request should be denied.

D. The Union’s Request Is an Attempt to Interfere with Both the Parties’ CBA and APD’s Obligations Under the CASA.

The Petition should also be denied because APOA is using its request to bypass both the CBA and the CASA.

The parties duly negotiated and entered into a CBA under the City’s LMRO, and they have done so for many years. The most recent CBA became effective on January 1, 2022. In § 20.1.5, the parties agreed that if APD decides to investigate a particular incident, it will provide written notice the target officer(s). That written notice “shall ... inform [the officer] of the nature of the investigation and provide[.]...all specific SOP section numbers known at the time before any interview commences.” Further, APD shall disclose sufficient information to reasonably apprise the target officer of the allegations against them. As explained above, this is exactly what APD did in this situation, in the same way it has done for all such investigations since this CBA became effective and for years prior. The APOA approved of this process through negotiation, but is now

contesting it based wholly on speculation and rumors. This amounts to interference with the procedures the parties have agreed to. Moreover, nothing in the CBA gives APOA the right to dictate which investigator will be assigned or to force APD to enlist a third party. Essentially, APOA is attempting to enlist the Board in disrupting a duly negotiated process should be denied because it is not supported by the facts and the CBA.

Similarly, APOA is attempting to use this proceeding to circumvent the CASA. As APOA is well aware, the City and APD are subject to specific requirements under the CASA. Paragraphs 184 and 191, in particular, requires APD to internally conduct such investigations, and to do so within 90 days. By asking the Board to halt the investigation, , the APOA is putting the City at risk of failing to meet these requirements. These factors create additional reasons why the Board should not entertain APOA's request.

III. CONCLUSION

For all the reasons stated above, this Board should deny APOA's Petition for Temporary Restraining Order and Preliminary Injunctive Relief.

Respectfully submitted,

CITY OF ALBUQUERQUE

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CERTIFICATE OF SERVICE

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