

MEMORANDUM OF UNDERSTANDING BETWEEN THE CALIFORNIA DEPARTMENT OF JUSTICE AND THE CITY AND COUNTY OF SAN FRANCISCO, ACTING THROUGH THE MAYOR'S OFFICE AND SAN FRANCISCO POLICE DEPARTMENT

This Memorandum of Understanding ("MOU") is made as of February 5, 2018, in San Francisco, California, by and between the City and County of San Francisco ("the City") acting through the Mayor's Office and the San Francisco Police Department ("SFPD") and the California Department of Justice ("Cal DOJ"), collectively referred herein as "the Parties." The Parties enter into this MOU for the sole purpose of evaluating and reporting on SFPD's implementation of the 272 US DOJ recommendations following the United States Department of Justice ("US DOJ") Office of Community Oriented Policing Services ("COPS Office") collaborative reform process.

RECITALS

1. In the spring of 2016, the Mayor's Office and the SFPD invited the US DOJ to partner with SFPD to provide technical assistance on a wide range of issues that affect SFPD's relationship with the community.
2. In response to the invitation, on or about April 29, 2016, the US DOJ's COPS Office entered into a Memorandum of Agreement (MOA) with the Mayor's Office and the SFPD. The COPS Office agreed to conduct a review of the SFPD to analyze policies, practices, training, tactics and systems of accountability and offer recommendations to enhance the relationship between SFPD and the community.
3. In the MOA, SFPD affirmed its willingness to implement the COPS Office's recommendations that would be based on professional standards, best practices, research, Collaborative Reform Initiative standards, the President's Task Force on 21st Century Policing, local circumstances, and the US DOJ priorities.
4. In October 2016, with the assistance of consultant, Hillard Heintze, the COPS Office completed its review of the SFPD and issued a public report (US DOJ Report). The US DOJ Report identified various areas for recommended improvement, including, but not limited to, use of force, bias, community policing, accountability, and recruitment, hiring, and personnel practices. The US DOJ Report included 272 recommendations to help SFPD improve its policies and practices, build community trust and implement industry best practices.
5. As part of the reform process, US DOJ arranged for Hillard Heintze to provide technical assistance to SFPD to help guide the SFPD in implementing the recommended reforms. US DOJ further tasked Hilliard Heintze with evaluating the SFPD's progress and providing status reports to the SFPD and the public.
6. On September 15, 2017, the US DOJ announced significant changes to the COPS Office Collaborative Reform Initiative for Technical Assistance that changed the direction in which the COPS Office would provide technical assistance and support to local law enforcement agencies. The US DOJ also informed the Mayor's Office and the SFPD that it was terminating the MOA and partnership and that it would no longer assist in the evaluation of SFPD's progress and implementation of the reforms.
7. Notwithstanding the US DOJ's decision, the Mayor's Office and the SFPD are committed to implementing the reforms recommended in the US DOJ Report and have requested the Cal DOJ to

enter into this MOU for the sole purpose of evaluating and reporting on SFPD's implementation of the US DOJ Report's recommendations.

8. The overall goal is to implement reforms that increase public trust through improvements in policing practices, transparency, professionalism, and accountability, while taking into account national standards, best practices, current and emerging research, and community expectations.
9. Under the terms and conditions of this MOU, the Cal DOJ is not exercising its authority under California Civil Code, section 52.3, subdivision (b). Cal DOJ agrees that this MOU is a collaborative effort and is not a pattern or practice investigation.

THEREFOR, THE PARTIES MUTUALLY AGREED:

1. Reforms and Review

- a. The Mayor's Office and SFPD will implement all 272 recommendations set forth in the US DOJ Report pursuant to a timetable and work plan referenced in Section 2, subdivision (b) below.
- b. Cal DOJ will serve as the independent third party reviewer of SFPD's implementation of the US DOJ Report recommendations and issue periodic reports to the public. Cal DOJ will work with the Consultant as set forth in Section 2, subparagraphs (a) - (f) below on SFPD's implementation of the recommendations in the US DOJ Report. Cal DOJ will report on the SFPD's progress in effectively and timely implementing those reforms. The Parties agree the standard of review for Cal DOJ's evaluation of the SFPD's implementation of the recommendations in the US DOJ Report is substantial compliance. Copies of the reports will, upon issuance, be provided to the SFPD, the Mayor's Office, and the Police Commission
- c. In serving as the independent third party reviewer reporting agency, the Cal DOJ will in no manner supplant the roles and responsibilities of the Mayor's Office; SFPD, including its Chief of Police; Police Commission; or City boards, commissions, or officials.
- d. Under this MOU, it is imperative that the Cal DOJ have access to highly confidential and sensitive information. The information disclosed under this MOU is "official information" under California Code of Evidence, section 1040 and disclosure to Cal DOJ under this MOU shall not constitute waiver of the privilege as provided for under California Government Code, section 6254.5, subdivision (e). The Parties also agree that the Cal DOJ's input resulting from its review of the SFPD's implementation prior to Cal DOJ's public report shall also be subject to the aforementioned provisions and will in addition be treated by the Parties as drafts and recommendations of the Cal DOJ. These privileges will allow and foster the type of open and frank discussion between the Parties that will ensure the effective implementation of the 272 recommendations in the US DOJ Report. Nothing in this provision is intended to preclude the Cal DOJ from issuing periodic public reports as provided in Section 2, subparagraph (f) below and consistent with the confidentiality and privilege concerns set forth in this subparagraph.

2. Consultant

- a. In accordance with City laws and policies, SFPD will select and hire an independent third party consultant (Consultant) who is mutually agreeable to the Cal DOJ and who will assist the Cal DOJ with its role under this MOU. SFPD shall seek input from Cal DOJ in the creation of the

Consultant's scope of work that is mutually agreeable to all Parties. The duties of the Consultant shall include, but are not limited to:

1. Assisting the Cal DOJ (in consultation with the Mayor's Office and SFPD) as it evaluates and reports on the implementation of the reforms, including the development and review of any necessary plans, policies or procedures;
 2. Assisting the Cal DOJ in providing SFPD technical advice, excluding legal advice, as appropriate; and
 3. Preparing and submitting independent reports to the Parties assessing the implementation by the Mayor's Office and the SFPD of the reforms.
- b. Within 30 days of the date of the execution of the Consultant's contract, SFPD and Cal DOJ will develop a mutually agreeable work plan that sets forth the following:
1. Timetables and deadlines for the implementation of the various reforms based on the Parties' prioritization of the 272 recommendations; and
 2. The general process by which the Consultant and Cal DOJ will evaluate whether the SFPD is in substantial compliance with the US DOJ Report recommendations. Methods of evaluation may include, but are not limited to, reviews, audits, interviews, observations, and document review.
- c. The Mayor's Office and SFPD agree to cooperate with the Cal DOJ and the Consultant as they report on the implementation of the reforms, and, except to the extent prohibited by law, will provide the Cal DOJ and the Consultant with access to relevant information. The parties agree Cal DOJ will have the same access to information as SFPD provided to US DOJ pursuant to the COPS MOA, including, but not limited to, the following:
1. Interviews, on a confidential basis or otherwise, with any sworn and unsworn employees of the SFPD or Mayor's Office, and assistance with interviews of personnel in other City departments and County agencies. SFPD shall provide suitable facilities and arrange for such interviews to be conducted under conditions satisfactory to the Cal DOJ and Consultant;
 2. Compilation of statistics, reports, and any other information that may be directly related to the matters that are governed by the MOU; and
 3. Access to SFPD records, files, and papers maintained to the extent that such access is directly related to the matters governed by the MOU and not prohibited by law.
- d. The SFPD and a Police Commission representative will participate in regular status meetings with Cal DOJ and/or the Consultant.
- e. The Mayor's Office and SFPD agree that the SFPD will submit each plan, policy or procedure that the SFPD develops or implements under the US DOJ Report to Cal DOJ for its review. Cal DOJ will timely review said plans, policies, and/or procedures and will provide its recommendations, comments, or edits to SFPD within 45 calendar days. If Cal DOJ does not provide a response within 45 days, SFPD need not wait to implement the proposed plans, policies, and/or procedures.
- f. Working with the Consultant, Cal DOJ will issue periodic public reports regarding the status of SFPD's implementation of the reforms governed by this MOU, including whether the Cal DOJ has determined that a particular reform has substantially complied with the recommendation.

- g. Upon written notice to the other Party, any Party has the right to initiate a meet and confer process regarding the performance of the Consultant retained pursuant to this MOU. Upon receipt of such notice, all Parties agree to meet and confer within 30 days to discuss in good faith the reason for concern and steps to remedy. If the reasons for concern are not resolved, Cal DOJ may request that the SFPD find an alternative Consultant to fulfill the role and responsibilities set forth in Section 2 of the MOU.

3. Applicable Costs to the City

SFPD will pay for all costs for the services of the Consultants, including those services provided to Cal DOJ. There is no cost to SFPD for Cal DOJ's services.

4. Open-Lines of Communication

- a. The Parties agree to work collaboratively and in good faith in executing their responsibilities under this MOU.
- b. SFPD agrees to assign a primary point of contact for the Cal DOJ within SFPD's Command Staff for the duration of this MOU.

5. Term of MOU

- a. This MOU shall be effective upon its execution of all Parties and shall continue for 36 months; provided Section 3 survives the term of this MOU.
- b. If any Party wishes to terminate the MOU prior to its expiration, it shall initiate a meet and confer process regarding the Party's concerns upon written notice to the other parties. Upon receipt of such notice, all Parties agree to meet within 30 days to discuss the reason for concern and steps to remedy. If the Parties are unable to reach a mutually agreeable resolution, any Party may terminate the MOU with no fewer than 15 days notice by providing notice of same in writing.

6. Severability

If any one or more of the words, phrases, sentences, clauses or sections contained in this MOU is deemed invalid, then it shall not affect the enforceability of the remaining portions of this MOU or any part thereof, all of which are inserted conditionally on their being valid in law, and, in the event that any one or more of the words, phrases, sentences, clauses, or sections contained in this MOU shall be declared invalid, this MOU shall be construed as if such invalid word or words, phrase or phrases, sentence or sentences, clause or clauses, or section or sections had not been inserted.

7. Waiver

Cal DOJ reserves the right to exercise the powers vested in the Attorney General by the California Constitution and state statutory law. The Mayor's Office and SFPD agree to waive any claim for breach or default of this MOU that might arise from the Attorney General's exercise of such authority.

8. Entire Agreement

This MOU contains the entire agreement of the Parties with respect to the subject matter of this MOU, and supersedes all prior negotiations, agreements, and understandings with respect thereto. This MOU may only be amended in a written document executed by the Parties.

9. Signing Authority

By signing this MOU, the persons executing this MOU represent that they have the capacity and authority to execute this MOU as the representatives of their respective agency, and to bind their respective agency to the terms of this MOU.

10. Counterparts and Facsimile Signatures

- a. This MOU and any and all other documents or instruments referred to herein may be executed with counterpart signatures, all of which taken together shall constitute an original without the necessity of all Parties signing each documents.
- b. This MOU may also be executed by signatures to facsimile or electronic transmittal documents in lieu of an original or machine generated or copied document.

Xavier Becerra, Attorney General of the State of California

Dated: 2/5/18

By: Angela Sierra
Angela Sierra
Senior Assistant Attorney General

City of San Francisco

Dated: 2/05/18

William Scott
William Scott
Chief of Police

Dated: 2/5/18

Mark E. Farrell
Mark E. Farrell
Mayor

Dated: 2/5/18

Alicia
Approved as to Form
Alicia Cabrera
Deputy City Attorney