



OAKLAND POLICE COMMISSION

SPECIAL MEETING AGENDA

March 31, 2022

5:30 PM

The purpose of the Oakland Police Commission is to oversee the Oakland Police Department to ensure its policies, practices, and customs conform to national standards of constitutional policing, and to oversee the Office of the Inspector General, led by the civilian Office of Inspector General for the Department, as well as the Community Police Review Agency (CPRA), led by the Executive Director of the Agency, which Agency investigates police misconduct and recommends discipline.

Pursuant to California Government Code Section 54953(e), members of the Police Commission, as well as the Commission's Counsel and Community Police Review Agency staff, will participate via phone/video conference, and no physical teleconference locations are required.



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PUBLIC PARTICIPATION

The Oakland Police Commission encourages public participation in the online board meetings. The public may observe and/or participate in this meeting in several ways.

OBSERVE:

- To observe, the public may view the televised video conference by viewing KTOP channel 10 on Xfinity (Comcast) or ATT Channel 99 and locating City of Oakland KTOP – Channel 10
- To observe the meeting by video conference, please click on this link: <https://us02web.zoom.us/j/89611162663> at the noticed meeting time. Instructions on how to join a meeting by video conference are available at: <https://support.zoom.us/hc/en-us/articles/201362193>, which is a webpage entitled “Joining a Meeting”
- To listen to the meeting by phone, please call the numbers below at the noticed meeting time: Dial (for higher quality, dial a number based on your current location):

+1 669 900 9128 or +1 346 248 7799 or +1 253 215 8782 or +1 312 626 6799 or +1 646 558 8656 or +1 301 715 8592
Webinar ID: 896 1116 2663

After calling any of these phone numbers, if you are asked for a participant ID or code, press #. Instructions on how to join a meeting by phone are available at: <https://support.zoom.us/hc/en-us/articles/201362663>, which is a webpage entitled “Joining a Meeting By Phone.”

PROVIDE PUBLIC COMMENT: There are three ways to make public comment within the time allotted for public comment on an eligible Agenda item.

- Comment in advance. To send your comment directly to the Commission and staff BEFORE the meeting starts, please send your comment, along with your full name and agenda item number you are commenting on, to radwan@oaklandca.gov. Please note that e-Comment **submissions close at 4:30 pm**. All submitted public comment will be provided to the Commissioners prior to the meeting.
- By Video Conference. To comment by Zoom video conference, click the “Raise Your Hand” button to request to speak when Public Comment is being taken on an eligible agenda item at the beginning of the meeting. You will then be unmuted, during your turn, and allowed to participate in public comment. After the allotted time, you will then be re-muted. Instructions on how to “Raise Your Hand” are available at: <https://support.zoom.us/hc/en-us/articles/205566129>, which is a webpage entitled “Raise Hand In Webinar.”
- By Phone. To comment by phone, please call on one of the above listed phone numbers. You will be prompted to “Raise Your Hand” by pressing STAR-NINE (“*9”) to request to speak when Public Comment is being taken on an eligible agenda item at the beginning of the meeting. Once it is your turn, you will be unmuted and allowed to make your comment. After the allotted time, you will be re-muted. Instructions of how to raise your hand by phone are available at: <https://support.zoom.us/hc/en-us/articles/201362663>, which is a webpage entitled “Joining a Meeting by Phone.”

If you have any questions about these protocols, please e-mail radwan@oaklandca.gov.



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I. Call to Order, Welcome, Roll Call and Determination of Quorum

Chair Tyfahra Milele

Roll Call: Chair Tyfahra Milele; Vice Chair Marsha Peterson; Commissioner Henry Gage, III; Commissioner Brenda Harbin-Forte; Commissioner Rudolph Howell; Commissioner Regina Jackson, Commissioner David Jordan; Alternate Commissioner Jesse Hsieh

II. Closed Session item

The Police Commission will take Public Comment on the Closed Session items.

THE OAKLAND POLICE COMMISSION WILL ADJOURN TO CLOSED SESSION AND WILL REPORT ON ANY FINAL DECISIONS DURING THE POLICE COMMISSION'S OPEN SESSION MEETING AGENDA.

PUBLIC EMPLOYEE APPOINTMENT/EMPLOYMENT (Government Code Section 54597(b))

Title: Interim Executive Director, Community Police Review Agency

III. Call to Order and Re-Determination of Quorum

Chair Tyfahra Milele

Roll Call: Chair Tyfahra Milele; Vice Chair Marsha Peterson; Commissioner Henry Gage, III; Commissioner Brenda Harbin-Forte; Commissioner Rudolph Howell; Commissioner Regina Jackson, Commissioner David Jordan; Alternate Commissioner Jesse Hsieh

IV. Open Forum Part 1 (2 minutes per speaker, 15 minutes total)

After ascertaining how many members of the public wish to speak, Chair Tyfahra Milele will invite the public to speak on any items not on the agenda but may be of interest to the public, and that are within the subject matter jurisdiction of the Commission. Comments on specific agenda items will not be heard during Open Forum but must be reserved until the agenda item is called. The Chair has the right to reduce speaking time to 1 minute if the number of speakers would cause this Open Forum to extend beyond 15 minutes. Any speakers not able to address the Commission during this Open Forum will be given priority to speak during Open Forum Part 2, at the end of the agenda.

V. Consider and Decide Whether to Adopt Revised Resolution Calling for Reform of Government Code Section 3304

The Commission will consider a proclamation that calls for reforms to the state law known as “POBAR” (California Government Code Section 3304. *This item was previously discussed at the 2.10.2022 meeting. (Attachment 5)*

- a. Discussion
- b. Public Comment
- c. Action, if any

VI. Consider Adopting Resolution and Approving Accompanying Letter Endorsing Assembly Bill 2557

The Commission will consider endorsing Assembly Bill 2557, in advance of a Public Safety Committee hearing in the State Assembly on Tuesday, April 5, 2022. *This is a new item. (Attachment 6)*

- a. Discussion
- b. Public Comment
- c. Action, if any

VII. Consider Approval of Revised Policy for Risk Management (DGO R-01)

The Commission will review and consider whether to modify and/or approve the Police Department’s Risk Management policy. (DGO R-01). *This item was previously discussed at the 3.24.2022 meeting. (Attachment 7).*

- a. Discussion
- b. Public Comment
- c. Action, if any

VIII. Approve Engagement Agreement with Law Firm of Garcia Hernandez Sawhney, LLP As Independent Counsel

After selecting Garcia Hernandez Sawhney, LLP as the winning bid to a Request for Qualifications, the Commission will consider approving the Engagement Agreement with the law firm of Garcia Hernandez Sawhney, LLP. *This is new item. (Attachment 8).*

IX. Open Forum Part 2 (2 minutes per speaker)

Chair Tyfahra Milele will invite public speakers to speak on items that were not on the agenda, and that are within the subject matter jurisdiction of the Commission, with priority given to speakers who were unable to address the Commission during Open Forum at the beginning of the meeting. Speakers who made comments during Open Forum Part 1 will not be permitted to make comments during this Open Forum. Comments previously made during public comment on agenda items may not be repeated during this Open Forum. The Chair has the right to reduce speaking time to 1 minute for reasons the Chair will state on the record. *This is a recurring item.*

X. Adjournment

NOTICE: In compliance with the Americans with Disabilities Act, for those requiring special assistance to access the videoconference meeting, to access written documents being discussed at the Discipline Committee meeting, or to otherwise participate at Commission meetings, please contact the Police Commission's Chief of Staff, Rania Adwan, at radwan@oaklandca.gov for assistance. Notification at least 48 hours before the meeting will enable the Police Commission to make reasonable arrangements to ensure accessibility to the meeting and to provide any required accommodations, auxiliary aids or services.

OAKLAND POLICE COMMISSION PROCLAMATION

RESOLUTION NO. 22-04

RESOLUTION CALLING FOR REFORM OF GOVERNMENT CODE SECTION 3304, A CALIFORNIA STATE LAW LIMITING THE CITY OF OAKLAND'S AUTHORITY TO DISCIPLINE POLICE OFFICERS

WHEREAS, in 2016 and again in 2020, the residents of Oakland voted by overwhelming majorities to vest new oversight authorities in the Oakland Police Commission by revising the City's founding document, the City's Charter, to fundamentally reconstitute Department decision-making about Department policies and officer discipline;

WHEREAS, the Police Commission oversees its own, independent investigatory entity the Community Police Review Agency ("CPRA"), which serves as a vital reform entity to render independent investigatory findings and recommend levels of discipline with respect to alleged violations of the law and/or Department policy by sworn officers of the Department;

WHEREAS, the Police Commission is vested with independent policymaking authority to create new Department policies and approve, modify, or reject policies the Department proposes to adopt, all of which directly influence the on-duty conduct of sworn officers out in the field;

WHEREAS, the Police Commission directly oversees the work of the Oakland Police Department Chief, the Director of the CPRA, and the independent Inspector General who helms the Office of the Inspector General, and along with them continues to support and work alongside the Oakland Police Department to reform several aspects of the discipline of sworn officers;

WHEREAS, the Police Department remains under a Court enforced monitoring program, whose monitoring team reiterates that a core criterion of final resolution is the transformation of Department culture, of which reformed police discipline constitutes a major factor;

WHEREAS, in exercising its powers and duties under the Charter, the Police Commission has closed session access to individual cases of sworn officer discipline, the individual details of which it cannot publicly disclose or describe, per California State Penal Code Section 832.7 and 832.8, as codified into the City's own municipal code at OMC § 2.45.045;

WHEREAS, based upon on the Police Commission's closed session access to several cases going through the investigatory and disciplinary process, in the aggregate, sworn officer disciplinary outcomes would improve and better reflect the needs of the Department and the residents of the City of Oakland if the State of California revisited and reformed the current constraints on officer discipline codified in Section 3304 of the Government Code;

WHEREAS, Section 3304 of the Government Code is known as the “Public Safety Officers Procedural Bill of Rights Act” abbreviated as “POBRA” or “POBAR.” Section 3304(d) requires that any discipline of a sworn officer be finalized “within one year of the public agency’s discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct,” unless one of a handful of narrowly construed exceptions applies;

WHEREAS, state courts that have interpreted Section 3304 have ruled on a number of occasions that the fundamental purpose of the law is “to ensure that an officer will not be faced with the uncertainty of a lingering investigation,” despite several other important policy considerations that are at stake when a city is limited from disciplining its own officers;

WHEREAS, this state law requirement imposes an arbitrary one-year *shot clock* that has an unnecessary effect on every California city’s capacity to carry out wide ranging complex investigations into alleged police officer misconduct. The effect of this rule is more profound where a City like Oakland vests power in a civilian oversight entity with additional authority to deliberate on the proper findings and levels of discipline;

WHEREAS, the enforcement mechanism for any Department violation of 3304(d)’s requirement mandates that a City in California must entirely forego any police discipline arising from an investigation that takes more than a calendar year and does not fit into one of the narrow exemptions to the one year rule codified in Section 3304 of the Government Code;

WHEREAS, the introduction of robust civilian oversight reforms to the police department disciplinary process add new investigatory and disciplinary checks that further render this one-year rule impractical for effective administration of police discipline, but these very reforms ultimately bolster the integrity of police investigations and enhance the legitimacy and community trust in our cities’ police departments if the state law is updated to accommodate them;

WHEREAS, the current exemptions to the one-year rule fails to adequately reflect all of the reasons for which a sworn officer investigation and all follow up discipline may take longer than a calendar year from the date a person authorized to initiate an investigation discovers the alleged misconduct;

WHEREAS, Section 3304(g), which constrains Cities in California from reopening closed cases, also requires reconsideration. By its plain language, this subsection of the Government Code mandates that new evidence must materialize and be “discovered,” all without an investigation, before a closed police officer disciplinary case can be reopened. Any evidence that “could [] have been reasonably discovered” during the investigation cannot serve as the basis to reopen a closed case. Moreover, before an investigation can be lawfully reopened, the new evidence must be “significant” and “likely to affect the outcome of the investigation.”

WHEREAS, state law that mandates a City of California must forego police discipline if an investigation and final decision about discipline cannot be completed after one year is inappropriate;

WHEREAS, none of the current exemptions in Government Code Section 3304 afford civilian oversight entities like Oakland’s extra time to convene a discipline committee and make appropriately deliberative decisions if there is a dispute that requires resolution;

WHEREAS, the State of California owes its residents a far more nuanced and balanced approach to transforming police discipline both in the City of Oakland and more broadly across every City in the State;

RESOLVED: that the Police Commission adopts and endorses the foregoing recitals as true and correct and hereby incorporates them into this resolution; and be it

FURTHER RESOLVED: that the Police Commission calls for the Legislature of the State of California to consider a one year extension of the current timeline codified in Section 3304(d), from one year to two years; and be it;

FURTHER RESOLVED: that the Police Commission calls for the Legislature of the State of California to consider a one year tolling provision after an investigation is initially completed for a civilian oversight entity to deliberate about findings and levels of discipline, for example where the Oakland Police Commission must convene a discipline committee to resolve any disagreements between the CPRA and the Chief of Police (Oakland City Charter Section 604(g)(2)); and be it:

FURTHER RESOLVED: that the Police Commission calls for the Legislature of the State of California to reconsider all of the current exemptions in Section 3304(d), as well as the current limitation on reopening closed cases codified in Section 3304(g), to ensure this law reflects the modern realities of civilian oversight of city police departments across the state.

ON MARCH 31, 2022, AT A MEETING OF THE OAKLAND POLICE COMMISSION IN OAKLAND, CALIFORNIA

PASSED BY THE FOLLOWING VOTE:

AYES –

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____

RANIA ADWAN
Chief of Staff
Oakland Police Commission
City of Oakland, California



Police Commission
City of Oakland

AGENDA REPORT

TO: Police Commissioners

FROM: Rania Adwan
Chief of Staff, Oakland
Police Commission

SUBJECT: State Legislation That Impacts Police Discipline in the City of Oakland

DATE: March 25, 2022

RECOMMENDATION

Staff Recommends The Commission Consider Endorsing AB 2557, Introduced by Assembly Member Mia Bonta on February 17, 2022 to Reform the California Penal Code Provisions that Govern Confidentiality of Police Discipline Records.

EXECUTIVE SUMMARY

This bill would require publication of certain “records and information obtained” from police personnel records that are otherwise mandatorily confidential, per Penal Code Section 832.7 and 832.8, if those records and information are “obtained” for “the purpose of civilian oversight of peace officers.”

The specific language the bill would insert into the state penal code would require public disclosure of records once they are “obtained . . . for the purpose of civilian oversight of peace officers,” which is new legislative language not previously included in prior Senate Bills that sought to achieve the same or a similar goal, including Senate Bill 1019 (Introduced by Senator Romero in 2007) and Senate Bill 1286¹ (Introduced by Senator Mark Leno in 2016).

BACKGROUND / LEGISLATIVE HISTORY

In *Copley Press v. Superior Court* (County of San Diego) (2006) 39 Cal. 4th 1272: The Supreme Court held that the confidentiality of peace officer records extends to an administrative proceeding where the officer is appealing disciplinary action. The Supreme Court also ruled that the language in Penal Code Section 832.7 established a “general condition of confidentiality.”

Based on this Supreme Court precedent, a California Court of Appeal ruled that the City of Berkeley Police Review Commission was required to keep its investigative files confidential and not disclose them to, or discuss them in, public. (*Berkeley Police Ass’n v. City of Berkeley* (2008) 167 Cal.App.4th 385, 388.)

At a Police Commission meeting in February of 2022, the Commission formally considered a resolution to propose changes to the state laws on the books that limit the statutory period to administer police discipline for alleged office misconduct from the moment someone at the

¹ https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1286

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Department authorized to investigate the misconduct discovers it. As its first target for changes to state law that implicate the Police Commission's oversight authority over sworn officers in Oakland, Commissioners specifically called out Section 832.7 as an important priority item for changing police misconduct investigations across the state of California.

ANALYSIS AND POLICY ALTERNATIVES

Staff should track changes to this state bill through [leginfo](#)² to evaluate amendments, if any, that are introduced to revise Assemblymember Bonta's bill as it makes its way through the Committee hearing process. In particular, staff should track the language that requires publicity of certain records "obtained . . . for the purpose of civilian oversight of peace officers."

FISCAL IMPACT

The endorsement of a state bill comes with no cost.

PUBLIC OUTREACH / INTEREST

Members of the public have argued that "oversight without transparency undermines the credibility of oversight boards, no matter how diligent or representative of the community." Those members of the public would like to see the Commission's oversight work in closed sessions available to the public, which would represent a return to the status quo before the California Supreme Court issued its 2006 decision (which predated the Police Commission and its formation of Discipline Committees). Specifically, the Commission has reviewed advocacy materials that state: "[a]lthough many civilian law enforcement agencies operated openly for decades prior to 2006, since *Copley* was issued, they are now sworn to secrecy in police discipline cases; the public cannot know the complaint allegations, the identity of the accused officers, and the rationale for the findings reached."

SUSTAINABLE OPPORTUNITIES

Economic: There are no formal economic opportunities associated with this report.

Environmental: There are no formal environmental opportunities associated with this report. Race &

Equity: Equity is an essential principle driving constitutional policing and civilian oversight of the Oakland Police Department.

ACTION REQUESTED OF THE COMMISSION

Staff Recommends That the Commission Endorses AB 2557 in its current form and track amendments that are made, if any.

Respectfully submitted,

² https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB2557

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Rania Adwan
Chief of Staff, Oakland Police Commission
In consultation with Counsel, Conor Kennedy

OAKLAND POLICE COMMISSION RESOLUTION

RESOLUTION NO. _____

RESOLUTION IN SUPPORT OF CALIFORNIA STATE ASSEMBLY BILL 2557 (BONTA) THAT ENHANCES PUBLIC TRANSPARENCY AROUND THE WORK OF CIVILIAN POLICE OVERSIGHT AGENCIES IN THE STATE OF CALIFORNIA

WHEREAS, in *Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272, the California Supreme Court decided that certain records and information obtained from civilian law enforcement oversight agencies will be treated as if they were confidential personnel records held by police departments; and

WHEREAS as these records are considered confidential, agencies have been required to withhold almost all such records involving investigations of officer misconduct; and;

WHEREAS, the *Copley Press* decision prevents the public from learning the extent of any discipline, but for some minimal exceptions, that may have been imposed as a result of misconduct; and

WHEREAS, prior to 2006, civilian law enforcement oversight agencies operated with more transparency than was reflected in the rules set in place by the *Copley Press* decision; and

WHEREAS, AB 2557 will allow civilian law enforcement agencies to operate transparently as they did prior to 2006; now, therefore be it

WHEREAS, a direct legislative repeal of the *Copley Press* decision by the state legislature is an appropriate step to improve the state's approach to transparency around police oversight; therefore be it

RESOLVED: that the Police Commission hereby endorses AB 2557 and urges the California State Legislature and Governor Gavin Newsom to support its enactment into law.

ON MARCH 31, 2022, AT A MEETING OF THE OAKLAND POLICE COMMISSION IN OAKLAND, CALIFORNIA

PASSED BY THE FOLLOWING VOTE:

AYES –

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____

RANIA ADWAN
Chief of Staff
Oakland Police Commission
City of Oakland, California

DRAFT

OAKLAND POLICE COMMISSION RESOLUTION

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AYES –

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____

RANIA ADWAN
Chief of Staff
Oakland Police Commission
City of Oakland, California

DRAFT

[Organizational Letterhead or Logo]

<MONTH DAY, 2022>

The Honorable Reginald Byron Jones-
Sawyer, Sr.
California State Assembly
1021 O St, Suite 5210
Sacramento, CA 94249-0018

Subject: SUPPORT – AB 2557 (Bonta)

Dear Chairman Jones-Sawyer,

On behalf of <ORGANIZATION NAME>, we write in support of AB 2557 (Mia Bonta), a bill that allows civilian law enforcement oversight agencies to conduct their investigations into police misconduct with much needed transparency.

----- INSERT A PARAGRAPH ABOUT YOUR ORGANIZATION, WHO YOU REPRESENT, WHERE YOU ARE LOCATED, AND WHAT YOU DO -----

Civilian oversight agencies operate as a needed check on law enforcement. At least 25 California municipalities, including most of our largest cities, have established civilian law enforcement oversight boards to provide necessary public oversight of policing activities in the community.

Unfortunately, because of a 2006 California Supreme Court decision, *Copley Press, Inc. v. Superior Court*, (2006) 39 Cal.4th 1272, these agencies have been required to withhold from the public, most if not all, records of investigations of law enforcement misconduct. This is because the court in *Copley Press Inc. v. Superior Court* held that records and information obtained from records of civilian law enforcement oversight agencies are confidential personnel records, and cannot be disclosed under the California Public Records Act.

Prior to that decision, civilian law enforcement oversight agencies, many of which have been around for decades, operated with greater transparency. For example, the Oakland Police Commission, conducted public hearings and released investigative reports of complaints against police officers. This 16 year-old ruling from the California Supreme Court has caused the work of California civilian oversight boards to be unnecessarily constrained by confidentiality requirements that are antithetical to the public work those boards are mandated to undertake.

The civil unrest in the wake of the callous murder of George Floyd at the hands of former Minneapolis Police Officer Derek Chauvin, and numerous other similar atrocities committed by law enforcement highlight the urgent need for the public to have access to these misconduct

[Organizational Letterhead or Logo]

investigations. The public has come to scrutinize community policing activities with the manifest realization that the historic and systemic abuses of police authority disproportionately fall on minority and at-risk communities. As a glaring statistic evidencing this point, Black and Latinx individuals make up a combined 25% of the United States population but comprise over 75% of the victims of fatal police shootings in the past 5 years. These include the recent killings of Sean Monterrosa by the Vallejo Police Department and of Erik Salgado by the California Highway Patrol. It is more important, now than ever, that decisions concerning community policing occur in the full light of day so that our communities can understand precisely the scope of the systemic problem of abusive police tactics and what our local governments can do to best eliminate those abuses.

AB 2557 allows civilian oversight agencies to once again operate in the light of day by legislatively repealing the *Copley Press, Inc.* decision. By passing AB 2557, not only will California show its commitment to current civilian oversight agencies but will also encourage other jurisdictions to create civilian oversight agencies to ensure that law enforcement in California is truly working for all people.

For these reasons, [Organization Name] supports AB 2557 (Bonta). Please contact us at <PHONE NUMBER & EMAIL> if you have questions about our position.

Sincerely,

<SIGNATURE>

<NAME> <TITLE/ROLE>

<ORGANIZATION NAME>



DEPARTMENTAL GENERAL ORDER

R-01: RISK MANAGEMENT

Effective Date: DD MMM YY

Coordinator: Bureau of Risk Management

COMMAND INTENT

Understanding, assessing, and managing risk – to officers, the Department, and the City of Oakland – is critically important. The Department’s Bureau of Risk Management conducts data-based assessments of risk behavior, helps the Department mitigate risk by developing interventions and other strategies for individual officers, and promotes policies and procedures to reduce risk in the Department.

While the Bureau of Risk Management is primarily focused on risk related to the operating responsibilities of its staff and their actions on duty, the Department also recognizes that other areas of risk (such as the impacts of off-duty conduct¹, discrimination and harassment in the workplace², or threats to member wellness³) can also impact the organization.

A. OVERVIEW OF RISK MANAGEMENT AND DEFINITIONS**A - 1. Defining Risk**

With regard to the practice of law enforcement, risk refers to the potential for damage, injury, inability to achieve objectives, or other negative occurrences. These negative occurrences adversely impact the community, the Department, and its members individually. The failure to address risk may result in lawsuits and legal claims, injuries to police officers or community members, property damage, damage to the Department’s reputation, harm to officers’ law enforcement careers, and the erosion of trust between the Department and the community it serves.

A - 2. Risk Management

Risk Management is a comprehensive, proactive approach to the reduction of risks associated with organizational operations. While it is impossible to eliminate all risk, a comprehensive risk management program, along with planned outcomes, allow an organization to fulfill its mission and build a culture where risk management is engrained at every level of the organization. Risk management involves recognizing, prioritizing, and mitigating risks. Some common risk mitigation strategies include a clear vision from leadership, data collection/analysis, training, supervisory review, and accountability measures.

A - 3. Role of the Bureau of Risk Management

The goal of the Bureau of Risk Management (BRM) is to identify and manage risk through analysis of individual and organizational activity, and includes employee

¹ See for example [DGO D-18](#), *Member Personal Social Media*

² See for example [DGO D-20](#), *Equal Employment Opportunity, Anti-Discrimination, and Non-Harassment Policy*

³ See for example [DGO B-17](#), *Critical Incident Stress Management Program*

conduct, citizen contacts, use of force, pursuits, traffic collisions, training, command and supervisory direction, and personnel decisions.

The BRM analyzes levels of risk, develops focused and specific risk management interventions, and provides training throughout the Department to ensure that all members understand and implement the overall risk management strategy of the Department. The BRM is integral in maintaining a culture of risk awareness and risk management throughout the different levels and units of the organization. It includes the Office of Inspector General, the Training Division and the Internal Affairs Division.

Within the Office of Inspector General, there are four Units dedicated to risk management: the Risk Analysis Unit (RAU), the Personnel Assessment System (PAS) Unit⁴, the Risk Impact Unit (RIU), and the Audit Unit⁵. While the Training Division⁶ and Internal Affairs Division⁷ also fall under the BRM, their roles and responsibilities are clearly defined within other policies. The co-location of all these Divisions and Units allow for a coordinated approach to risk management. The Bureau of Risk Management is also the overall reviewer of all risk data via the VISION risk management system.

B. CONSTITUENT PARTS OF THE DEPARTMENT'S RISK MANAGEMENT SYSTEM

B - 1. Risk Management as Organization-Wide Responsibility

The Department's risk management strategy depends on an overall understanding that every member of the organization has the responsibility to identify, respond to, and mitigate risk when possible, without fear of retaliation. This is consistent with the requirements that all members take steps to intervene if they observe another member using excessive force (as set forth in [DGO K-3](#)) and report any offenses in violation of Departmental policy (as required by the [Manual of Rules](#), Reporting Violations-Failure to Report Misconduct When Required, 314.48-1).

B - 2. Role of Supervisors and Commanders/Managers in Risk Management

Supervisors play a key role in risk management by being a primary identifier of behavior or actions that could increase risk to their subordinates. It is incumbent on supervisors to constantly identify risk, manage it at their level whenever appropriate, and provide training to their subordinates on ways to appropriately manage acceptable risk and avoid unacceptable risk.

⁴ Reference [DGO D-17](#), *Personnel Assessment System*

⁵ Reference [DGO N-12](#), *Departmental Audits and Inspections*, and [Training Bulletin V-P](#), *Guidelines for Audits and Inspection*.

⁶ Reference [DGO B-20](#), *Departmental Training Program*

⁷ Reference [IAD P&P 21-01](#), *IAD General Operating Procedures*, as well as Training Bulletins [V-T Discipline Policy](#), [V-T \(Appendix\) Discipline Matrix](#), [V-T.01 Internal Investigation Manual](#), [V-T.02 Investigation Appendices](#), [V-T.03 Reporting Misconduct](#), and [V-T.04 Due Process Hearings](#)

Commanders and Managers also play an important role in risk management by setting the expectations for their respective commands on proper risk management, as well as by acting as conduits for information coming from larger risk management entities and processes (e.g. the BRM or Risk Management Meetings).

B - 3. Personnel Assessment Systems (PAS) - Early Warning System

The Department's early warning system, known as PAS (Personnel Assessment System), is a pro-active, non-disciplinary, early identification and intervention program designed to identify and positively influence conduct, correct performance – related problems, and recognize exemplary performance⁸. PAS oversees assessment, evaluation, and management of risk by officers, establishing performance standards and providing the requirement for supervisors, commanders, and managers to review their subordinate's performance as it relates to these standards. PAS allows for peer group threshold comparisons for review of outliers, with subsequent review and potential follow-up action. The Department's use of PAS as part of its overall risk management strategy is key in its risk management processes.

PAS contributes to the Department's ability to better maintain supervisory and managerial accountability, ensure consistent high-quality performance standards vertically and laterally in the organization and ensure policy compliance throughout the organization. (Reference [DGO D-17](#), *Personnel Assessment System*).

B - 4. Risk Analysis Unit

The Risk Analysis Unit (RAU), overseen by the Department's Data Manager, is responsible for analyzing key areas of risk such as the PAS dimensions, stop and enforcement data (to include whether disparities exist in outcomes or practices), and other police data that is recorded by the Department. This analysis includes assessment of department trends, drilldowns to individual-level concerns, and drillups to review the impact of supervisory and command decisions on risk. The RAU is also responsible for analysis, preparation of documents and discussion points for Risk Management Meetings, and creation and evaluation of various risk management thresholds and measurements used by the Department in other areas of risk management. The Risk Analysis Unit shall at minimum be staffed by a Data Manager and an Administrative Analyst, though this does not preclude the Department from adding staff to the unit.

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The Risk Impact Unit (RIU) tracks data including, but not necessarily limited to, uses of force, collisions, and pursuits; and supports the use of force and pursuit board processes. The RIU identifies areas in need of improvement through data collection and analysis and training needs assessments, and makes recommendations for organizational improvements. The RIU also works in concert with the Bureau of

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Field Operations Administration Unit, Internal Affairs Division, the RAU, and other areas of the Department to ensure that data collected is disseminated to Executive Command and other interested parties through spreadsheets or reports. The RIU shall at minimum be staffed by a supervisor and two support staff members, though this does not preclude the Department from adding staff to the unit.

B - 6. Risk Management Meetings

The Department's Risk Management Meetings (RMMs) provide data and command insight to analyze, assess, and mitigate risk, from the level of the Area/Division through the Bureau and to the Department as a whole. This includes recommendations and reviews of officers who are identified for supervisory monitoring and intervention. RMMs are held at the Division/Area level, Bureau level, and Citywide level.

C. RISK ANALYSIS UNIT (RAU)

C - 1. RAU Leadership and Authority

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C - 2. RAU Responsibilities

The responsibilities of the RAU include, but are not limited to, the following:

- Assisting with preparations for Citywide, Bureau, and Area/Division RMM;⁹
- Consulting with the Audit Unit on trends for possible audits;
- Consulting with Area/Division commanders and executive staff on risk identification techniques and areas of concern;
- Creating reports and analyses which track risk indicators, and which can be used for RMM preparation (see C-3);
- Conducting assessments of department trends, drilldowns to individual-level concerns, and drillups to review the impact of supervisory and command decisions on risk;
- Facilitating the Bureau and Citywide RMM;
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- Developing and setting peer group comparison and methodology in concert with the PAS Administration Unit (PAU);¹⁰



⁹ NSA 41, VII.B.5

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- Developing and defining specific criteria, utilizing PAS data, for determining whether members may be engaging in at-risk behavior.¹¹

C - 3. RAU Documentation Creation Responsibilities

The documents produced by the RAU include, but are not limited to, the following:

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- *Risk Analysis Supplemental Analysis Report* – Quarterly. Additional charts, graphs, in-depth review, squad comparisons, and other analysis, including trend lines or other visual representations of data (e.g., sparklines) where appropriate, as directed by the RAU manager to provide context and analysis for upcoming topics of conversation at the Bureau and Citywide RMM;
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- Written responses to Public Records Act requests as needed.

D. AREA/DIVISION RISK MANAGEMENT MEETINGS

D - 1. Area/Division RMM Frequency

The following Divisions and Areas (Bureau of Field Operations geographical area, under the command of a Captain of Police) shall hold a RMM at least quarterly:

- All Bureau of Field Operations Patrol Areas
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¹¹ NSA 41, VII.B.5

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D - 2. Topics of Review in Area/Division RMM

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- Individual members who may be drivers of Area/Division trends identified in the RAU monthly report, supplemental analysis, or by the Area/Division Commanders;
- Top 5 Area/Division individual members for:
 - a. Non-dispatch stops
 - b. Complaint allegations and cases
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- Review of monitoring/intervention status and strategies for any individual members of the Area/Division on PAS monitoring/intervention;
- Identification of larger trends, analysis, and audit assignments (for Area/Division Commanders or Supervisors) regarding areas identified by RAU, relevant employee performance information concerning personnel under that command, supervision and leadership, and individual risk management, and ongoing or future risk management strategies to address both individual and overall risk trends.

D - 3. Description of Analyses Used During / as a Result of RMM Meetings

Different types of analyses shall be warranted depending on the data and the issues observed during review in an Area/Division RMM. These analyses shall include, but are not limited to, the following:

- **Drilldowns:** A drilldown is a review that focuses on changes in data to determine which specific groups or individuals are impacting the changes. Drilldowns are useful to understand whether specific actions or events involving OPD members were consistent with Department priorities, expectations, and best practices, and help supervisors and commanders determine if intervention is required to change behavior or actions. Drilldowns may be completed using the Department's data systems such as Vision, Risk Management Dashboards, and other reporting tools.

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- **Drillups:** A drillup is a way to “zoom out” from the data to examine the larger context, determining whether larger patterns or systemic issues exist that require more than individual interventions. Drillups may also be useful in detecting policy or training deficiencies, or larger issues with supervision or command that have an impact on more than one individual.
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E. BUREAU RISK MANAGEMENT MEETINGS

E - 1. RMM Scheduling

At the direction of the Assistant Chief of Police or their respective Bureau Deputy Chief, the following Bureaus may hold RMM following the RMM of their constituent Areas/Divisions¹⁷:

- **Bureau of Field Operations I and II:** Includes discussion of all Patrol Areas
- **Bureau of Investigations:** Includes Violent Crime Operations Center, Criminal Investigation Division, and Ceasefire Division

If these Bureaus do not hold a Bureau RMM for a period exceeding six (6) months, the respective Bureau Deputy Chief shall write a memorandum documenting the reason(s) why the Bureau meeting was not held. This memorandum shall be addressed to the Chief of Police with information copies to the City Administrator and the Chair of the Oakland Police Commission. This shall be limited solely to the Bureau meetings.

Other Bureaus may hold RMM at the direction of their Bureau Deputy Chief / Director or the Chief or Assistant Chief of Police.

E - 2. Topics of Review in Bureau RMM

Bureau RMM shall include, but are not limited to, discussion and analyses of the following issues:

- Review of Bureau trends by Area in stops, force, complaints, pursuits, and collisions;
- Analyses conducted and outcomes of each Area/Division RMM held that quarter for Areas/Divisions under the respective Bureau;
- Results of specific drilldown or equivalent analyses into individual Bureau members during Area/Division RMM;

¹⁷ Note that Area/Division RMMs are required at least quarterly; reference Section D-1.

- Risk management strategies for any areas that, after analysis, were deemed at risk during Area/Division RMM or preparation for Bureau RMM. These may include strategies for individual members;
- A list of Bureau individual member outliers in comparison to their peer groups as guided in the PAS process;
- Any additional risk management issues deemed relevant by the Command staff in the Bureau under review.

E - 3. RMM Preparation

Primary preparation for the Bureau RMM is completed at the Area/Division RMM, which shall be held prior to the Bureau RMM. Data used in preparation for Bureau RMM shall include, but is not limited to, information in the *Risk Analysis Monthly* and *Risk Analysis Supplemental Analysis* reports as well as any other data generated by the RAU or other units as is deemed necessary for the meetings. Additionally, Bureau command officers may use PAS data, the Department Risk Management Dashboards, stop data, and other data found in the Department's VISION program or other databases.

E - 4. Bureau RMM Format

At the Bureau RMM, each Area/Division Commanding Officer (typically a Captain of Police or equivalent) shall provide a brief presentation (see section **E-5**). Following each presentation, members of the Executive Command Staff present may ask questions or provide comment as necessary. Additionally, follow-up of deliverable tasks from prior Bureau RMM will be presented as necessary.

E - 5. Bureau RMM Presentations

The Area/Division Commanding Officer's presentation at the Bureau RMM is designed to allow the commanding officer to:

- **summarize** the detailed discussions and analyses conducted at the Area/Division RMM and during preparation for the Bureau RMM;
- **describe** the most relevant and pertinent areas of concern;
- **show their work** regarding the analyses, audits, drilldowns, drillups, or other forms of review of the data;
- **detail** whether trends existed or if outlier individuals were identified;
- **identify** solutions and risk management efforts for issues discovered; and
- **forward** larger systemic issues for consideration at the Citywide RMM.

A sample outline and meeting presentation plan is available as *Appendix R-01.1*.

E - 6. Bureau RMM Deliverable Tasks

Any deliverable tasks arising from the Bureau RMM shall be approved and tracked by the RAU.

F. CITYWIDE RISK MANAGEMENT MEETINGS

F - 1. Frequency

The Department shall hold a Citywide RMM at least quarterly.

F - 2. Topics of Review in Citywide RMM

Citywide RMM shall include, but is not limited to, discussion and analysis of the following issues:

- Report from the PAS Unit supervisor or commander on overarching trends observed in the PAS process and any individual or supervisory issues that may be better addressed by the Department as a whole;
- Discussion of any members who are on PAS monitoring and have had more than one extension or have been on monitoring more than once, to include an assessment of any supervisory concerns;
- Review of Citywide trends in stops, force, complaints, pursuits, and collisions;
- Review of select data trends that the RAU has identified as an indicator of risk or an indicator of positive progress;
- Highlights of Bureau RMM discussions that may help with risk management Citywide;
- A list of Citywide individual members who are outliers in any risk-related PAS dimension, with discussion and analysis (including any supervisory concerns) as necessary;
- Information from the Quarterly and Yearly Internal Investigation Outcomes by Race report created by the RAU, as well as information regarding any identified internal racial disparities in the IAD, Training, or hiring processes;
- Discussion of any events or occurrences of activity related to significant risks or significant risk management efforts.

F - 3. Citywide RMM Format

At the Citywide RMM, the RAU shall provide a presentation of Citywide trends and each Bureau Chief may provide a brief presentation of the highlights from the Bureau and/or Area/Division RMM that have implications for Citywide risk management. Following each presentation, members of the Executive Command Staff present may ask questions or provide comment as necessary.

F - 4. Citywide RMM Deliverable Tasks

Any deliverables arising from the Citywide RMM shall be approved and tracked by the RAU.

F - 5. Cancellation or Postponement of any RMM

If Area/Division (Section D-1) or Citywide (Section F-1) required RMM are cancelled or significantly postponed (i.e., such that the requirement for quarterly meetings is not fulfilled) for any reason, the reason for said cancellation or postponement shall be written in a memorandum by the respective Commanding Officer (for Area/Division meetings) or the Deputy Director of the BRM (for Citywide meetings). This memorandum shall detail at least:

- The reason for the cancellation or postponement, and
- The date for the next meeting or a replacement meeting.

This memorandum shall be addressed to the Chief of Police with an information copy to the City Administrator and the Chair of the Police Commission.

By order of

LeRonne L. Armstrong
Chief of Police

Date signed:



DEPARTMENTAL GENERAL ORDER

R-01: RISK MANAGEMENT

Effective Date: DD MMM YY

Coordinator: Bureau of Risk Management

COMMAND INTENT

Understanding, assessing, and managing risk – to officers, the Department, and the City of Oakland – is critically important. The Department’s Bureau of Risk Management conducts data-based assessments of risk behavior, helps the Department mitigate risk by developing interventions and other strategies for individual officers, and promotes policies and procedures to reduce risk in the Department.

While the Bureau of Risk Management is primarily focused on risk related to the operating responsibilities of its staff and their actions on duty, the Department also recognizes that other areas of risk (such as the impacts of off-duty conduct¹, discrimination and harassment in the workplace², or threats to member wellness³) can also impact the organization.

A. OVERVIEW OF RISK MANAGEMENT AND DEFINITIONS

A - 1. Defining Risk

With regard to the practice of law enforcement, risk refers to the potential for damage, injury, inability to achieve objectives, or other negative occurrences. These negative occurrences adversely impact the community, the Department, and its members individually. The failure to address risk may result in lawsuits and legal claims, injuries to police officers or community members, property damage, damage to the Department’s reputation, harm to officers’ law enforcement careers, and the erosion of trust between the Department and the community it serves.

A - 2. Risk Management

Risk Management is a comprehensive, proactive approach to the reduction of risks associated with organizational operations. While it is impossible to eliminate all risk, a comprehensive risk management program, along with planned outcomes, allow an organization to fulfill its mission and build a culture where risk management is engrained at every level of the organization. Risk management involves recognizing, prioritizing, and mitigating risks. Some common risk mitigation strategies include a clear vision from leadership, data collection/analysis, training, supervisory review, and accountability measures.

A - 3. Role of the Bureau of Risk Management

The goal of the Bureau of Risk Management (BRM) is to identify and manage risk through analysis of individual and organizational activity, and includes employee

¹ See for example DGO D-18, *Member Personal Social Media*

² See for example DGO D-20, *Equal Employment Opportunity, Anti-Discrimination, and Non-Harassment Policy*

³ See for example DGO B-17, *Critical Incident Stress Management Program*

Commented [TJ1]: SFPD also has their Equal Employment Opportunity Unit (EEO) within this Bureau. Ensure all employees are afforded equality in the workplace, SF links to DGO 11.07. We can link to D-20, Anti Discrimination, here.

Commented [TJ2R1]: Much of this does not lie within BRM here at OPD but instead is under BOS - added 2nd paragraph in the Command intent to address these issues and reference to other policy areas.

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conduct, citizen contacts, use of force, pursuits, traffic collisions, training, command and supervisory direction, and personnel decisions.

The BRM analyzes levels of risk, develops focused and specific risk management interventions, and provides training throughout the Department to ensure that all members understand and implement the overall risk management strategy of the Department. The BRM is integral in maintaining a culture of risk awareness and risk management throughout the different levels and units of the organization. It includes the Office of Inspector General, the Training Division and the Internal Affairs Division.

Within the Office of Inspector General, there are four Units dedicated to risk management: the Risk Analysis Unit (RAU), the Personnel Assessment System (PAS) Unit⁴, the Risk Impact Unit (RIU), and the Audit Unit⁵. While the Training Division⁶ and Internal Affairs Division⁷ also fall under the BRM, their roles and responsibilities are clearly defined within other policies. The co-location of all these Divisions and Units allow for a coordinated approach to risk management. The Bureau of Risk Management is also the overall reviewer of all risk data via the VISION risk management system.

B. CONSTITUENT PARTS OF THE DEPARTMENT'S RISK MANAGEMENT SYSTEM

B - 1. Risk Management as Organization-Wide Responsibility

The Department's risk management strategy depends on an overall understanding that every member of the organization has the responsibility to identify, respond to, and mitigate risk when possible, without fear of retaliation. This is consistent with the requirements that all members take steps to intervene if they observe another member using excessive force (as set forth in DGO K-3) and report any offenses in violation of Departmental policy (as required by the Manual of Rules, Reporting Violations-Failure to Report Misconduct When Required, 314.48-1).

B - 2. Role of Supervisors and Commanders/Managers in Risk Management

Supervisors play a key role in risk management by being a primary identifier of behavior or actions that could increase risk to their subordinates. It is incumbent on supervisors to constantly identify risk, manage it at their level whenever appropriate, and provide training to their subordinates on ways to appropriately manage acceptable risk and avoid unacceptable risk.

⁴ Reference DGO D-17, *Personnel Assessment System*

⁵ Reference DGO N-12, *Departmental Audits and Inspections*, and Training Bulletin V-P, *Guidelines for Audits and Inspection*.

⁶ Reference DGO B-20, *Departmental Training Program*

⁷ Reference IAD P&P 21-01, IAD General Operating Procedures, as well as Training Bulletins V-T *Discipline Policy*, V-T (Appendix) *Discipline Matrix*, V-T.01 *Internal Investigation Manual*, V-T.02 *Investigation Appendices*, V-T.03 *Reporting Misconduct*, and V-T.04 *Due Process Hearings*.

Commented [TJ3]: Flesh out IAD's roles here?

Commented [TJ4R3]: Likely need to circle back with SME Tinnetta Thompson here on her suggestions. JT

Commented [TJ5R3]: Beneficial to explain what these other units do – for transparency for members and community. JT – likely link to other policies etc. here.

Commented [TJ6R3]: Appreciated the call for transparency on constituent units of the BRM here, but also recognized constraint of keeping this policy focused on RMM and this specific process for NSA Task compliance.

Proposed compromise is links in the footnotes – all links go to OPD's public documents site which updates in real time any time we update PowerDMS.

Commented [TJ7]: SME Thompson noted about getting staff input (through Unions) about making sure that resources are available for staff. This is addressed a bit here, along with other areas that the Department addresses these issues (such as EAP and through personnel structures mentioned in the Command Intent).

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Commanders and Managers also play an important role in risk management by setting the expectations for their respective commands on proper risk management, as well as by acting as conduits for information coming from larger risk management entities and processes (e.g. the BRM or Risk Management Meetings).

B - 3. Personnel Assessment Systems (PAS) - Early Warning System

The Department's early warning system, known as PAS (Personnel Assessment System), is a pro-active, non-disciplinary, early identification and intervention program designed to identify and positively influence conduct, correct performance – related problems, and recognize exemplary performance⁸. PAS oversees assessment, evaluation, and management of risk by officers, establishing performance standards and providing the requirement for supervisors, commanders, and managers to review their subordinate's performance as it relates to these standards. PAS allows for peer group threshold comparisons for review of outliers, with subsequent review and potential follow-up action. The Department's use of PAS as part of its overall risk management strategy is key in its risk management processes.

PAS contributes to the Department's ability to better maintain supervisory and managerial accountability, ensure consistent high-quality performance standards vertically and laterally in the organization and ensure policy compliance throughout the organization. (Reference [DGO D-17](#), *Personnel Assessment System*).

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Commented [TJ8]: SME Thompson noted several reports that are generated by risk management staff at SFPD. While OPD does not have the same amount of administrative staff time, we do create reports and use spreadsheets to keep track of this information. This could mainly be under the purview of the RIU; I've added this line to reflect that.

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- Any additional risk management issues deemed relevant by the Command staff in the Bureau under review.

E - 3. RMM Preparation

Primary preparation for the Bureau RMM is completed at the Area/Division RMM, which shall be held prior to the Bureau RMM. Data used in preparation for Bureau RMM shall include, but is not limited to, information in the *Risk Analysis Monthly* and *Risk Analysis Supplemental Analysis* reports as well as any other data generated by the RAU or other units as is deemed necessary for the meetings. Additionally, Bureau command officers may use PAS data, the Department Risk Management Dashboards, stop data, and other data found in the Department's VISION program or other databases.

E - 4. Bureau RMM Format

At the Bureau RMM, each Area/Division Commanding Officer (typically a Captain of Police or equivalent) shall provide a brief presentation (see section E-5). Following each presentation, members of the Executive Command Staff present may ask questions or provide comment as necessary. Additionally, follow-up of deliverable tasks from prior Bureau RMM will be presented as necessary.

E - 5. Bureau RMM Presentations

The Area/Division Commanding Officer's presentation at the Bureau RMM is designed to allow the commanding officer to:

- **summarize** the detailed discussions and analyses conducted at the Area/Division RMM and during preparation for the Bureau RMM;
- **describe** the most relevant and pertinent areas of concern;
- **show their work** regarding the analyses, audits, drilldowns, drillups, or other forms of review of the data;
- **detail** whether trends existed or if outlier individuals were identified;
- **identify** solutions and risk management efforts for issues discovered; and
- **forward** larger systemic issues for consideration at the Citywide RMM.

A sample outline and meeting presentation plan is available as *Appendix R-01.1*.

E - 6. Bureau RMM Deliverable Tasks

DEPARTMENTAL GENERAL ORDER R-01
OAKLAND POLICE DEPARTMENT

Effective Date
DD MMM YY

Any deliverable tasks arising from the Bureau RMM shall be approved and tracked by the RAU.

F. CITYWIDE RISK MANAGEMENT MEETINGS

F - 1. Frequency

The Department shall hold a Citywide RMM at least quarterly.

F - 2. Topics of Review in Citywide RMM

Citywide RMM shall include, but is not limited to, discussion and analysis of the following issues:

- Report from the PAS Unit supervisor or commander on overarching trends observed in the PAS process and any individual or supervisory issues that may be better addressed by the Department as a whole;
- Discussion of any members who are on PAS monitoring and have had more than one extension or have been on monitoring more than once, to include an assessment of any supervisory concerns;
- Review of Citywide trends in stops, force, complaints, pursuits, and collisions;
- Review of select data trends that the RAU has identified as an indicator of risk or an indicator of positive progress;
- Highlights of Bureau RMM discussions that may help with risk management Citywide;
- A list of Citywide individual members who are outliers in any risk-related PAS dimension, with discussion and analysis (including any supervisory concerns) as necessary;
- Information from the Quarterly and Yearly Internal Investigation Outcomes by Race report created by the RAU, as well as information regarding any identified internal racial disparities in the IAD, Training, or hiring processes;
- Discussion of any events or occurrences of activity related to significant risks or significant risk management efforts.

F - 3. Citywide RMM Format

At the Citywide RMM, the RAU shall provide a presentation of Citywide trends and each Bureau Chief may provide a brief presentation of the highlights from the Bureau and/or Area/Division RMM that have implications for Citywide risk management. Following each presentation, members of the Executive Command Staff present may ask questions or provide comment as necessary.

F - 4. Citywide RMM Deliverable Tasks

Any deliverables arising from the Citywide RMM shall be approved and tracked by the RAU.

DEPARTMENTAL GENERAL ORDER R-01
OAKLAND POLICE DEPARTMENT

Effective Date
DD MMM YY

F - 5. Cancellation or Postponement of any RMM

If Area/Division (Section D-1) or Citywide (Section F-1) required RMM are cancelled or significantly postponed (i.e., such that the requirement for quarterly meetings is not fulfilled) for any reason, the reason for said cancellation or postponement shall be written in a memorandum by the respective Commanding Officer (for Area/Division meetings) or the Deputy Director of the BRM (for Citywide meetings). This memorandum shall detail at least:

- The reason for the cancellation or postponement, and
- The date for the next meeting or a replacement meeting.

This memorandum shall be addressed to the Chief of Police with an information copy to the City Administrator and the Chair of the Police Commission.

By order of

LeRonne L. Armstrong
Chief of Police

Date signed:

DRAFT

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**PROFESSIONAL SERVICE AGREEMENT
BETWEEN THE CITY OF OAKLAND
AND
GARCIA HERNANDEZ SAWHNEY**

RECITALS

WHEREAS, the Oakland City Charter authorizes the Oakland Police Commission to retain independent legal counsel;

WHEREAS, The Oakland Police Commission conducted a Request for Qualifications in 2021, after which it selected Garcia Hernandez Sawhney, LLP as its legal counsel;

NOW, THEREFORE, the Parties to this Agreement covenant as follows:

AGREEMENT PROVISIONS1. Parties and Effective Date

This Professional Service Agreement (“Agreement” or “Contract”) is made by and between the CITY OF OAKLAND, a municipal corporation (“City”) and GARCIA HERNANDEZ SAWHNEY (“Counsel”) (collectively the “Parties”) and shall be effective on the date the Agreement is executed by all Parties (“Effective Date”).

2. Scope of Services

Counsel agrees to perform the services specified in **Schedule A, Scope of Services** attached to this Agreement and incorporated herein by reference. A Scope of Services/Retention Agreement is required for each matter and must be approved by the Oakland Police Commission. The Scope of Service Agreement(s) for each matter must include a written work plan and a "not to exceed amount." The Scope of Service Agreement(s) for each matter cannot be modified without the written approval of the Police Commission.

3. Time of Performance

This agreement is for two fiscal years, beginning July 1, 2021 through June 30, 2023.

4. Compensation and Method of Payment

Counsel will be paid for performance in an amount based on actual costs but that will be "capped" so as not to exceed the amount agreed upon per the Scope of Services/Retention Agreement. The maximum that will be charged for the entire scope of service per matter will not exceed the capped amount, even if Counsel's actual costs per matter exceed the capped amount. Counsel will be paid after approval of a monthly billing invoice for each matter. The invoice shall include the billing amount, total hours invoiced, total hours per day invoiced, hourly billing rate and the description of services rendered. Counsel will be responsible for all expenses incurred in performing services, which must be approved in advance and included in Attachment 1, Scope of Services Agreement. Any travel that

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requires an overnight stay or airline transportation must be pre- approved. If an overnight stay is necessary, the City has the right to approve the accommodations, and reimbursement for meals will be at the City's per diem rate. If airline travel is necessary, the City will reimburse at the coach rate.

5. Independent Counsel

a. Rights and Responsibilities

It is expressly agreed that in the performance of the services necessary to carry out this Agreement, Counsel shall be, and is, an independent Counsel, not an employee of the City. Counsel has and shall retain the right to exercise full control and supervision of the services, and full control over the employment, direction, compensation and discharge of all persons assisting Counsel in the performance of the services. Counsel shall be solely responsible for all matters relating to the payment of Counsel's employees, including compliance with social security, withholding and all other regulations governing such matters, and shall be solely responsible for Counsel's own acts and those of Counsel's subordinates and employees.

b. Counsel's Qualifications

Counsel represents that Counsel has the qualifications and skills necessary to perform the services under this Agreement in a competent and professional manner without the advice or direction of the City. Counsel warrants that Counsel and Counsel's employees and subcontractor are properly licensed, registered, and/or certified as may be required under any applicable federal, state and local laws, statutes, ordinances, rules and regulations relating to Counsel's performance

c. Payment of Income Taxes

Counsel is responsible for paying, when due, all income taxes, including estimated taxes, incurred as a result of the compensation paid by City to Counsel for services under this Agreement. On request, Counsel will provide City with proof of timely payment. Counsel agrees to indemnify City for any claims, costs, losses, fees, penalties, interest or damages suffered by City resulting from Counsel's failure to comply with this provision.

d. Non-Exclusive Relationship

Counsel may perform services for, and contract with, as many additional clients, persons or companies as Counsel, in Counsel's sole discretion, sees fit.

e. Tools, Materials and Equipment

Counsel will supply all tools, materials and equipment required to perform the services under this Agreement.

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f. Cooperation of the City

The City agrees to comply with all reasonable requests of Counsel necessary to the performance of Counsel's duties under this Agreement.

g. Extra Work

Counsel will do no extra work under this Agreement without first receiving prior written authorization from the Police Commission.

6. Proprietary or Confidential Information of the City

Counsel understands and agrees that, in the performance of the services under this Agreement or in contemplation thereof, Counsel may have access to private or confidential information that may be owned or controlled by the City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the City. Counsel agrees that all information disclosed by the City to Counsel shall remain in confidence and used only in performance of the Agreement. Counsel shall exercise the same standard of care to protect such information

7. Ownership of Results

Any interest of Counsel or its sub-consultants, in specifications, studies, reports, memoranda, computation documents prepared by Counsel or its sub-consultants in drawings, plans, sheets or other connection with services to be performed under this Agreement shall be assigned and transmitted to the City. However, Counsel may retain and use copies for reference and as documentation of its experience and capabilities.

8. Copyright

Counsel shall timely execute and provide to the City all necessary documents to assign to the City the copyright to works created pursuant to this Agreement.

9. Audit

Counsel shall maintain (a) a full set of accounting records in accordance with generally accepted accounting principles and procedures for all funds received under this Agreement; and (b) full and complete documentation of performance related matters such as benchmarks and deliverables associated with this Agreement.

Counsel shall (a) permit the City to have access to those records for the purpose of making an audit, examination or review of financial and performance data pertaining to this Agreement; and (b) maintain such records for four years following the last fiscal year during which the City paid an invoice to Counsel under this Agreement.

In addition to the above, Counsel agrees to comply with all audit, inspection, recordkeeping and fiscal reporting requirements incorporated by reference.

10. Agents/Brokers

Counsel warrants that Counsel has not employed or retained any subconsultant, agent, company or person other than bona fide, full-time employees of Counsel working solely for Counsel, to solicit or secure this Agreement, and that Counsel has not paid or agreed to pay any subconsultant, agent, company or persons other than bona fide employees any fee, commission, percentage, gifts or any other consideration, contingent upon or resulting from the award of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability or, in its discretion, to deduct from the agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage or gift.

11. Assignment

Counsel shall not assign or otherwise transfer any rights, duties, obligations or interest in this Agreement or arising hereunder to any person, persons, entity or entities whatsoever without the prior written consent of City and any attempt to assign or transfer without such prior written consent shall be void. Consent to any single assignment or transfer shall not constitute consent to any further assignment or transfer.

12. Publicity

Any publicity generated by Counsel for the project funded pursuant to this Agreement, during the term of this Agreement or for one year thereafter, will make reference to the contribution of the City of Oakland in making the project possible. The words "City of Oakland" will be explicitly stated in all pieces of publicity, including but not limited to flyers, press releases, posters, brochures, public service announcements, interviews and newspaper articles.

City staff will be available whenever possible at the request of Counsel to assist Counsel in generating publicity for the project funded pursuant to this Agreement. Counsel further agrees to cooperate with authorized City officials and staff in any City-generated publicity or promotional activities undertaken with respect to this project.

13. Title of Property

Title to all property, real and personal, acquired by Counsel from City funds shall vest in the name of the City of Oakland and shall be accounted for by means of a formal property records. Counsel acknowledges it is responsible for the protection, maintenance and preservation of all such property held in custody for the City during the term of the Agreement. Counsel shall, upon expiration or termination of this Agreement, deliver to the City all of the said property and documents evidencing title to same. In the case of lost or stolen items or equipment, Counsel shall immediately notify the Police Department, obtain a written police report and notify the City in accordance with the "Notice" section of this Agreement. Counsel shall provide to the City Auditor all property-related audit and other reports required under this Agreement. In the case of lost or stolen items or equipment,

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Counsel shall immediately notify the Police Department, obtain a written police report and notify the City in accordance with the "Notice" section of this Agreement. Prior to the disposition or sale of any real or personal property acquired with City funds, Counsel shall obtain approval by the City Attorney in accord with the requirements for disposal or sale of real or personal surplus property set forth in the Oakland City Charter and/or Oakland Municipal Code Title 2.04, Chapter 2.4.120. Surplus supplies and equipment- Disposal or Destruction.

14. Insurance

Unless a written waiver is obtained from the City's Risk Manager, Counsel must acquire and maintain for the duration of this Agreement, the policies of insurance identified in **Schedule Q, Insurance Requirements**, attached hereto and incorporated herein. Counsel must submit proof of insurance, which shall be attached hereto and incorporated herein.

15. Indemnification

- a. Notwithstanding any other provision of this Agreement, Counsel shall indemnify and hold harmless (and at City's request, defend) City, and each of their respective Councilmembers, officers, partners, agents, and employees (each of which persons and organizations are referred to collectively herein as "Indemnitees" or individually as "Indemnitee") from and against any and all liabilities, claims, lawsuits, losses, damages, demands, debts, liens, costs, judgments, obligations, administrative or regulatory fines or penalties, actions or causes of action, and expenses (including reasonable attorneys' fees) caused by or arising out of any:
- (i) Breach of Counsel's obligations, representations or warranties under this Agreement;
 - (ii) Act or failure to act in the course of performance by Counsel under this Agreement;
 - (iii) Negligent or willful acts or omissions in the course of performance by Counsel under this Agreement;
 - (iv) Claim for personal injury (including death) or property damage to the extent based on the strict liability or caused by any negligent act, error or omission of Counsel;
 - (v) Unauthorized use or disclosure by Counsel of Confidential Information as provided in Section 6 Proprietary of Confidential Information of the City above; and
 - (vi) Claim of infringement or alleged violation of any United States patent right or copyright, trade secret, trademark, or service mark or other proprietary or intellectual property rights of any third party.

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- b. For purposes of the preceding Subsections (i) through (vi), the term “Counsel” includes Counsel, its officers, directors, employees, representatives, agents, servants, sub-consultants and subcontractors.
- c. City shall give Counsel prompt written notice of any such claim of loss or damage and shall cooperate with Contractor, in the defense and all related settlement negotiations to the extent that cooperation does not conflict with City's interests.
- d. Notwithstanding the foregoing, City shall have the right if Contractor fails or refuses to defend City with Counsel acceptable to City to engage its own counsel for the purposes of participating in the defense. In addition, City shall have the right to withhold any payments due Counsel in the amount of anticipated defense costs plus additional reasonable amounts as security for Counsel’s obligations under this Section 15. In no event shall Counsel agree to the settlement of any claim described herein without the prior written consent of City.
- e. Counsel acknowledges and agrees that it has an immediate and independent obligation to indemnify and defend Indemnitees from any action or claim which potentially falls within this indemnification provision, which obligation shall arise at the time any action or claim is tendered to Counsel by City and continues at all times thereafter, without regard to any alleged or actual contributory negligence of any Indemnitee. Notwithstanding anything to the contrary contained herein, Counsel’s liability under this Agreement shall not apply to any action or claim arising from the sole negligence, active negligence or willful misconduct of an Indemnitee.
- f. All of Counsel’s obligations under this Section 15 are intended to apply to the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782) and shall survive the expiration or sooner termination of this Agreement.
- g. Counsel’s indemnification obligations set forth above shall not be limited by the City’s insurance requirements contained in Schedule Q hereof, nor by any other provision of this Agreement. City’s liability under this Agreement shall be limited to payment of Counsel in accord to the terms and conditions under this Agreement and shall exclude any liability whatsoever for consequential or indirect damages even if such damages are foreseeable.

16. Right to Offset Claims for Money

All claims for money due or to become due from City shall be subject to deduction or offset by City from any monies due Counsel by reason of any claim or counterclaim arising out of: a) this Agreement; b) any purchase order; or c) any other transaction with Counsel.

17. Prompt Payment Ordinance

This Contract is subject to the City’s Prompt Payment Ordinance, Title 2, Chapter 2.06 of the Oakland Municipal Code. The Ordinance requires that, unless specific exemptions

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apply, Counsel and its subcontractors shall pay undisputed invoices of their subcontractors for goods and/or services within twenty (20) business days of submission of invoices unless Counsel or its subcontractors notify the City of Oakland Liaison within the Department of Workplace and Employment Standards (“Liaison”) in writing within five (5) business days that there is a bona fide dispute between the Contractor or its subcontractor and claimant, in which case Counsel or its subcontractor may withhold the disputed amount but shall pay the undisputed amount.

Disputed payments are subject to investigation by the Liaison upon the filing of a complaint. Counsel or its subcontractors opposing payment shall provide security in the form of cash, certified check or bond to cover the disputed amount and penalty during the investigation. If Counsel or its subcontractor fails or refuses to deposit security, the City will withhold an amount sufficient to cover the claim from the next Contractor progress payment. The City, upon a determination that an undisputed invoice or payment is late, will release security deposits or withholds directly to claimants for valid claims.

Counsel and its subcontractors shall not be allowed to retain monies from subcontractor payments for goods as project retention, and are required to release subcontractor project retention in proportion to the subcontractor services rendered, for which payment is due and undisputed, within five (5) business days of payment. Counsel and its subcontractors shall be required to pass on to and pay subcontractors mobilization fees within five (5) business days of being paid such fees by the City. For the purpose of posting on the City's website, Counsel and its subcontractors, are required to file notice with the City of release of retention and payment of mobilization fees, within five (5) business days of such payment or release; and, Counsel is required to file an affidavit, under penalty of perjury, that Contractor has paid all subcontractors, within five (5) business days following receipt of payment from the City. The affidavit shall provide the names and address of all subcontractors and the amount paid to each.

If any amount due by a prime contractor or subcontractor to any claimant for goods and/or services rendered in connection with a purchase contract is not timely paid in accordance with the Prompt Payment ordinance, Counsel or subcontractor shall owe and pay to the claimant interest penalty in the amount of ten percent (10%) of the improperly withheld amount per year for every month that payment is not made, provided the claimant agrees to release the prime contractor or subcontractor from any and all further interest penalty that may be claimed or collected on the amount paid. Claimants that receive interest payments for late payment under the Prompt Payment Ordinance may not seek further interest penalties on the same late payment in law or equity.

Counsel and its subcontractors shall include the same or similar provisions as those set forth above in this section in any contract with another contractor or subcontractor that delivers goods and/or services pursuant to or in connection with this Agreement.

Prompt Payment invoice and claim forms are available at the following City of Oakland website: <https://www.oaklandca.gov/resources/prompt-payment-forms> or in the Department of Workplace and Employment Standards, 250 Frank H. Ogawa Plaza, Suite 3341, Oakland, CA 94612. Invoice and claim inquiries should be directed to Vivian

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Inman, City of Oakland Prompt Payment Liaison, 510-238-6261 or email vinman@oaklandca.gov.

18. Arizona and Arizona-Based Businesses

Conusel agrees that in accordance with City Resolution No. 82727 C.M.S., neither it nor any of its subsidiaries, affiliates or agents that provide services under this Agreement is currently headquartered in the State of Arizona, and shall not establish an Arizona business headquarters for the duration of this Agreement or until Arizona rescinds SB 1070. Contraction shall complete and submit **Schedule B-1**, Declaration of Compliance with the Arizona Resolution 82727, which shall be attached hereto and incorporated herein.

Counsel acknowledges its duty to notify the City's Department of Workplace and Employment Standards if Counsel or any of its subsidiaries, affiliates or agents subsequently relocates its headquarters to the State of Arizona. Such relocation shall be a basis for termination of this agreement.

19. Sanctuary City Contracting and Investment Ordinance

Ordinance No. 13540 C.M.S., adopted by the Oakland City Council on June 4th, 2019, prohibits the City from contracting with any person or entity that provides the United States Immigration and Customs Enforcement (ICE) services or goods for data collection or with the United States Customs and Border Protection (CBP) Customs and Border Protection (CBP), or the Department of Health and Human Services Office of Refugee Resettlement (HHS/ORR) to support immigration detention facilities. These contractors are not to be used unless the City Council makes a specific determination that no reasonable alternative exists. The Ordinance also prohibits the City from investing in any of these companies and requires the City to include notice of these prohibitions in any Requests for Proposals (RFPs), Requests for Qualifications (RFQs), and any construction or other contracting bids. The Ordinance also requires that the City provide an annual report to the Privacy Advisory Commission on its enforcement.

Counsel must complete and submit **Schedule I**, Sanctuary City Contracting and Investment Ordinance, which shall be attached hereto and incorporated herein.

20. Border Wall Ordinance

This Contract is subject to the Border Wall Ordinance, Title 2, Chapter 2.22 of the Oakland Municipal Code. The purpose of the ordinance is to mandate and direct the City Administrator - in instances where there is no significant additional cost, to be defined in regulations, or conflict with law - to refrain from entering into new or amended contracts to purchase professional, technical, scientific or financial services, goods, construction labor and materials or other services, or supplies from businesses that enter into contracts to provide such services, goods, materials or supplies to build the U.S.-Mexico border wall.

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The City is prohibited from entering into any contractual agreement for the purchase of services, goods, equipment, cyber network or cloud computing, internet, or cloud-based computer technology or services with any "BORDER WALL ENTITY" (as defined by Section 2.22.020 of the Oakland Municipal Code), individual, firm, or financial institution who provides any services, goods, equipment or information technology or cloud-based technology or services, to construction of the a wall along any part of the United States - Mexico border.

Counsel must complete and submit **Schedule W**, Border Wall Prohibition, which shall be attached hereto and incorporated herein.

21. Dispute Disclosure

Contractors are required to disclose pending disputes with the City of Oakland when submitting bids, proposals or applications for a City contract or transaction involving professional services, including contract amendments. Counsel agrees to disclose, and has disclosed, in **Schedule K**, Pending Dispute Disclosure, attached hereto and incorporated herein, any and all pending disputes with the City. Failure to disclose pending disputes prior to execution of this Agreement or any subsequent amendment shall be a basis for termination of the Agreement.

22. Termination on Notice

The City may terminate this Agreement immediately with or without cause upon giving thirty (30) calendar days' written notice to Counsel. Unless otherwise terminated as provided in this Agreement, this Agreement will terminate on **June 30, 2023**.

23. Conflict of Interest

a. Counsel

The following protections against conflict of interest will be upheld:

- i. Counsel certifies that no member of, or delegate to the Congress of the United States shall be permitted to share or take part in this Agreement or in any benefit arising therefrom.
- ii. Counsel certifies that no member, officer, or employee of the City or its designees or agents, and no other public official of the City who exercises any functions or responsibilities with respect to the programs or projects covered by this Agreement, shall have any interest, direct or indirect, in this Agreement, or in its proceeds during his/her tenure and for one year thereafter.
- iii. Counsel shall immediately notify the City of any real or possible conflict of interest between work performed for the City and for other clients served by Counsel.
- iv. Counsel warrants and represents, to the best of its present knowledge, that no public official or employee of City who has been involved in the making of this Agreement, or who is a member of a City board or commission which has been involved in the making of this Agreement, whether in an advisory or decision-

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making capacity, has or will receive a direct or indirect financial interest in this Agreement in violation of the rules contained in California Government Code Section 1090 et seq., pertaining to conflicts of interest in public contracting. Contractor shall exercise due diligence to ensure that no such official or employee will receive such an interest.

- v. Counsel further warrants and represents, to the best of its present knowledge and excepting any written disclosures as to these matters already made by Counsel to City, that (1) no public official of City who has participated in decision-making concerning this Agreement or has used his or her official position to influence decisions regarding this Agreement, has an economic interest in Counsel or this Agreement, and (2) this Agreement will not have a direct or indirect financial effect on said official, the official's spouse or dependent children, or any of the official's economic interests. For purposes of this paragraph, an official is deemed to have an "economic interest" in any (a) for-profit business entity in which the official has a direct or indirect investment worth \$2,000 or more, (b) any real property in which the official has a direct or indirect interest worth \$2,000 or more, (c) any for-profit business entity in which the official is a director, officer, partner, trustee, employee or manager, or (d) any source of income or donors of gifts to the official (including nonprofit entities) if the income or value of the gift totaled more than \$500 the previous year. Counsel agrees to promptly disclose to City in writing any information it may receive concerning any such potential conflict of interest. Counsel's attention is directed to the conflict of interest rules applicable to governmental decision-making contained in the Political Reform Act (California Government Code Section 87100 et seq.) and its implementing regulations (California Code of Regulations, Title 2, Section 18700 et seq.).
- vi. Counsel understands that in some cases Counsel or persons associated with Contractor may be deemed a "city officer" or "public official" for purposes of the conflict of interest provisions of Government Code Section 1090 and/or the Political Reform Act. Counsel further understands that, as a public officer or official, Contractor or persons associated Counsel may be disqualified from future City contracts to the extent that Counsel is involved in any aspect of the making of that future contract (including preparing plans and specifications or performing design work or feasibility studies for that contract) through its work under this Agreement.
- vii. Counsel shall incorporate or cause to be incorporated into all subcontracts for work to be performed under this Agreement a provision governing conflict of interest in substantially the same form set forth herein.

b. No Waiver

Nothing herein is intended to waive any applicable federal, state or local conflict of interest law or regulation

c. Remedies and Sanctions

In addition to the rights and remedies otherwise available to the City under this Agreement and under federal, state and local law, Counsel understands and agrees that, if the City reasonably determines that Contractor has failed to make a good faith

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effort to avoid an improper conflict of interest situation or is responsible for the conflict situation, the City may (1) suspend payments under this Agreement, (2) terminate this Agreement, and/or (3) require reimbursement by Contractor to the City of any amounts disbursed under this Agreement. In addition, the City may suspend payments or terminate this Agreement whether or not Counsel is responsible for the conflict of interest situation.

24. Non-Discrimination/Equal Employment Practices

Counsel shall not discriminate or permit discrimination against any person or group of persons in any manner prohibited by federal, state or local laws. Counsel shall complete and submit **Schedule V**, Affidavit of Non-Disciplinary or Investigatory Action, which shall be attached hereto and incorporated herein. During the performance of this Agreement, Counsel agrees as follows:

- a. Counsel and Counsel's subcontractors, if any, shall not discriminate against any employee or applicant for employment because of age, marital status, religion, gender, sexual orientation, gender identity, race, creed, color, national origin, mental or physical disability (including but not limited to Acquired-Immune Deficiency Syndrome (AIDS), and AIDS-Related Complex (ARC)), military or military veteran status, or any other legally-protected class. This nondiscrimination policy shall include, but not be limited to, the following: employment, upgrading, promotion or failure to promote, demotion or transfer, recruitment advertising, layoffs, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- b. Counsel and Counsel's subcontractors shall state in all solicitations or advertisements for employees placed by or on behalf of Contractor that all qualified applicants will receive consideration for employment without regard to age, marital status, religion, gender, sexual orientation, gender identity, race, creed, color, national origin, mental or physical disability (including by not limited to AIDS, and ARC), military or military veteran status, or any other legally-protected class.
- c. Counsel shall make its goods, services, and facilities accessible to people with disabilities and shall verify compliance with the Americans with Disabilities Act by executing **Schedule C-1, Declaration of Compliance with the Americans with Disabilities Act**, attached hereto and incorporated herein.
- d. If applicable, Counsel will send to each labor union or representative of workers with whom Counsel has a collective bargaining agreement or contract or understanding, a notice advising the labor union or workers' representative of Counsel's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

25. Local and Small Local Business Enterprise Program (L/SLBE)

The City of Oakland has adopted a Local and Small Local Business Enterprise Program (L/SLBE). The City's current L/SLBE Program guidelines may be accessed via the following link:

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https://cao-94612.s3.amazonaws.com/documents/LSLBE-Program-Guidelines_Revised.5.4.21.pdf

Counsel understands and agrees to the following:

- a. Preference Points – Preference points are awarded based on the level of local, small local and very small local business participation that is proposed by contractors during the competitive solicitation process.
- b. Maintaining Participation – As a condition of award of this Contract, Counsel must achieve and maintain the levels of local, small local or very small local business participation for which preference points were earned during the competitive solicitation process or the levels of participation agreed upon by the Parties during negotiation of this Agreement. Failure to achieve and maintain the proposed levels of participation may result in the imposition of penalties as set forth in the above-reference Local and Small Local Business Enterprise Program guidelines.
- c. If applicable, Counsel shall submit information concerning the ownership and workforce composition of Contractor’s firm as well as its subcontractors and suppliers, by completing **Schedule D, Ownership, Ethnicity, and Gender Questionnaire**, and **Schedule E, Project Consultant Team**, which shall be attached hereto and incorporated herein.

26. Living Wage Ordinance

If the contract amount of this Agreement is equal to or greater than \$25,000 annually, Counsel must comply with the Oakland Living Wage Ordinance, Title 2, Chapter 2.28 of the Oakland Municipal Code. The Living Wage Ordinance requires that nothing less than a prescribed minimum level of compensation (a living wage) be paid to, among others, employees of service contractors (consultants) of the City. **Oakland employers are also subject to the City of Oakland Minimum Wage law (see Section 26, below), and must pay employees wages and provide benefits consistent with the Minimum Wage law or Oakland Living Wage Ordinance, whichever are greater.**

The Ordinance also requires Counsel’s submission of the completed Declaration of Compliance attached hereto and incorporated herein as **Schedule N**, and, unless specific exemptions apply or a waiver is granted, Counsel must provide the following to its employees who perform services under or related to this Agreement:

- a. Minimum compensation – Said employees shall be paid an initial **hourly wage rate of \$15.30 with health benefits or \$17.56 without health benefits**. These initial rates shall be upwardly adjusted each year no later than April 1 in proportion to the increase at the immediately preceding December 31 over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor. **Effective July 1st of each year, Contractor shall pay adjusted Living Wage rates.**
- b. Health benefits – Said full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least **\$2.26** per hour. Counsel shall provide

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proof that health benefits are in effect for those employees no later than 30 days after execution of the Contract.

- c. Compensated days off – Said employees shall be entitled to twelve compensated days off per year for sick leave, vacation or personal necessity at the employee's request, and ten uncompensated days off per year for sick leave. Employees shall accrue one compensated day off per month of full time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off. Ten uncompensated days off shall be made available, as needed, for personal or immediate family illness after the employee has exhausted his or her accrued compensated days off for that year.
- d. Federal Earned Income Credit - To inform employees that he or she may be eligible for Earned Income Credit (“EIC”) and shall provide forms to apply for advance EIC payments to eligible employees. There are several websites and other sources available to assist Counsel. Web sites include but are not limited to: <http://www.irs.gov> for current guidelines as prescribed by the Internal Revenue Service.
- e. Counsel shall provide to all employees and to the Division of Contracts and Compliance, written notice of its obligation to eligible employees under the City’s Living Wage requirements. Said notice shall be posted prominently in communal areas of the work site(s) and shall include the above-referenced information.
- f. Counsel shall provide all of the above required written notices and forms in English, Spanish or other languages spoken by a significant number of employees within 30 days of each employee’s start of work under or related to this Agreement.
- g. Reporting – Counsel shall maintain a listing of the name, address, hire date, occupation classification, rate of pay and benefits for each of its employees. Contractor shall provide a copy of said list to the Division of Contracts and Compliance, on a quarterly basis, by March 31, June 30, September 30 and December 31 for the applicable compliance period. Failure to provide said list within five days of the due date will result in a penalty of five hundred dollars (\$500.00) for each day that the list remains outstanding (OMC Section 2.28.110.C). Counsel shall maintain employee payroll and related records for a period of four (4) years after expiration of the compliance period.
- h. Counsel shall require subcontractors that provide services under or related to this Agreement to comply with all of the foregoing Living Wage provisions. Counsel shall include the above-referenced provisions in its subcontracts and by signature confirms subcontractor compliance.

27. Minimum Wage Ordinance

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Oakland employers are subject to Oakland's Minimum Wage Law, Chapter 5.92 of the Oakland Municipal Code, whereby Oakland employees must be paid the City's current Minimum Wage rate. Employers must notify employees of the annually adjusted rates by each December 15th and prominently display notices at the job site. The law also requires paid sick leave for employees and payment of service charges collected for their services. Contractor agrees to provide the attestation regarding the City's Minimum Wage Law in the City's Combined Contract Schedules, by initialing, where indicated therein, which are attached hereto and incorporated herein. **This contract is also subject to Oakland's Living Wage Ordinance (see Section 25, above), and must pay employees wages and provide benefits consistent with the City's Living Wage Ordinance or the Minimum Wage Law, whichever are greater.** For further information, please visit the following website: <https://www.oaklandca.gov/topics/minimum-wage-paid-leave-service-charges>

28. Equal Benefits Ordinance

This Agreement is subject to the City's Equal Benefits Ordinance, Title 2, Chapter 2.32 of the Oakland Municipal Code ("EBO") and its implementing regulations. The purpose of the EBO is to protect and further the public, health, safety, convenience, comfort, property and general welfare by requiring that public funds be expended in a manner so as to prohibit discrimination in the provision of employee benefits by City contractors between employees with spouses and employees with domestic partners, and/or between domestic partners and spouses of such employees.

The following contractors are subject to the EBO: Entities which enter into a "contract" with the City for an amount of twenty-five thousand dollars (\$25,000.00) or more for, among other things, goods or services to be purchased at the expense of the City or to be paid out of moneys deposited in the treasury or out of trust moneys under the control of or collected by the City.

The EBO only applies to those portions of a contractor's operations that occur (1) within the City of Oakland; (2) on real property outside the City if the property is owned by the City or if the City has a right to occupy the property, and if the contractor's presence at that location is connected to a contract with the City; and (3) elsewhere in the United States where work related to a city contract is being performed. The requirements of the EBO shall not apply to subcontracts or subcontractors of any contractor

The EBO requires, among other things, submission of a completed **Schedule N-1**, Equal Benefits-Declaration of Nondiscrimination, which shall be attached hereto and incorporated herein.

29. City of Oakland Campaign Contribution Limits

This Agreement, if it requires Council approval, is subject to the City's Campaign Reform Act, Title 3, Chapter 3.12 of the Oakland Municipal Code, and its implementing regulations. The City of Oakland Campaign Reform Act prohibits contractors that are doing business or seeking to do business with the City of Oakland from making campaign contributions to Oakland candidates between commencement of negotiations and either 180 days after completion of, or termination of, contract negotiations. Further, if this Agreement is subject to the Campaign Reform Act, Counsel must complete and submit **Schedule O**,

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Acknowledgment of Campaign Contribution Limits, which shall be attached hereto and incorporated herein.

30. Nuclear Free Zone Disclosure

Counsel represents that Counsel is in compliance with the City's restrictions on doing business with service providers considered nuclear weapons makers. Contractor must complete and submit **Schedule P**, Nuclear Free Zone Disclosure Form, which shall be attached hereto and incorporated herein.

31. Political Prohibition

Subject to applicable State and Federal laws, Counsel agrees that moneys paid pursuant to this Agreement shall not be used for political purposes, sponsoring or conducting candidate's meetings, engaging in voter registration activity, nor for publicity or propaganda purposes designed to support or defeat legislation pending before federal, state or local government.

32. Religious Prohibition

Counsel agrees that there shall be no religious worship, instruction, or proselytization as part of, or in connection with the performance of this Agreement.

33. Business Tax Certificate

Counsel shall obtain and provide proof of a valid City business tax certificate. Said certificate must remain valid during the duration of this Agreement.

34. Validity of Contracts

This Agreement shall not be binding or of any force or effect until it is: a) approved by the Oakland Police Commission as required by the Oakland City Charter and Oakland Municipal Code, and b) approved as to form and legality by the Office of the City Attorney.

35. Governing Law

This Agreement shall be governed by the laws of the State of California.

36. Notice

If either party shall desire or be required to give notice to the other, such notice shall be given in writing, via facsimile and concurrently by prepaid U.S. certified or registered mail, addressed to recipient as follows:

(City of Oakland)

Oakland Police Commission Chief of Staff
City Hall
1 Frank H. Ogawa Plaza
Oakland, California 94612

Conor Kennedy

Garcia Hernandez Sawhney, LLP
2490 Mariner Square Loop, Suite 140
Alameda, CA 94501

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Any party to this Agreement may change the name or address of representatives for purpose of this Notice Section by providing written notice to all other parties ten (10) business days before the change is deemed effective.

37. Entire Agreement of the Parties

This Agreement supersedes any and all agreements, either oral or written, between the parties with respect to the rendering of services by Counsel for the City and contains all of the representations, covenants and agreements between the parties with respect to the rendering of those services. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any parties, which are not contained in this Agreement, and that no other agreement, statement or promise not contained in this Agreement will be valid or binding.

38. Modification

Any modification of this Agreement will be effective only if it is in a writing signed by all parties to this Agreement.

39. Severability/Partial Invalidity

If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, shall be finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then notwithstanding such determination, such term or provision shall remain in force and effect to the extent allowed by such ruling and all other terms and provisions of this Agreement or the application of this Agreement to other situation shall remain in full force and effect.

Notwithstanding the foregoing, if any material term or provision of this Agreement or the application of such material term or condition to a particular situation is finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then the Parties hereto agree to work in good faith and fully cooperate with each other to amend this Agreement to carry out its intent.

40. Time of the Essence

Counsel agrees that time is of the essence in the performance of this Agreement.

41. Commencement, Completion and Close out

It shall be the responsibility of Counsel to coordinate and schedule the work to be performed so that commencement and completion take place in accordance with the provisions of this Agreement.

Any time extension granted to Counsel to enable Counsel to complete the work must be in writing by the City and shall not constitute a waiver of rights the City may have under this Agreement.

If Counsel fails to complete the work by the scheduled date or by an extended date, the City shall be released from all of its obligations under this Agreement.

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Within thirty (30) days of completion of the performance under this Agreement, Counsel shall make a determination of any and all final costs due under this Agreement and shall submit a requisition to the City for such final and complete payment (including without limitations any and all claims relating to or arising from this Agreement). Counsel's failure to timely submit a complete and accurate requisition for final payment shall relieve the City of any further obligations under this Agreement, including, without limitation, any obligation for payment of work performed or payment of claims by Counsel.

42. Counterpart Signatures.

This Contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same Contract. The parties shall be entitled to electronically sign and transmit this Contract (whether by facsimile, PDF or other email transmission), which signature shall be binding on the signing party or the party on whose behalf the document has been signed. Any party providing an electronic signature agrees to promptly execute and deliver to the other parties an original signed Contract upon request.

43. Authority

The persons signing below represent and warrant that they have authority to bind their respective party, and all necessary approvals to sign on behalf of their respective party have been obtained.

44. Inconsistency

If there is any inconsistency between this Agreement and the attachments/exhibits hereto, the text of this main Agreement shall prevail.

[SIGNATURES ON NEXT PAGE]

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City:
CITY OF OAKLAND,
a California municipal corporation

COUNSEL
GARCIA HERNANDEZ SAWHNEY, LLP
a California Limited Liability Partnership

City Administrator's Office (Date)

Signature (Date)

Department Head (Date)

Print Name

Title

Approved for form and legality:

City Attorney's Office (Date)

Police Commission Res.

Account No.: _____

Business License No. : _____

END OF PROFESSIONAL SERVICES AGREEMENT