

City of Newark and United States of America Agreement in Principle

This is an agreement in principle of the terms to be included in a formal, judicially enforceable agreement (“the Agreement”) to be negotiated between the City of Newark, New Jersey, (“the City”) and the United States of America, (collectively, “the Parties”) in connection with the Department of Justice’s investigation of the Newark Police Department (“NPD”), pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. 14141, the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3789d, and Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d. The United States and the City have been working cooperatively and the Agreement is intended to ensure that NPD engages in practices that comply with the Constitution and laws of the United States, implements best practices to make it a national model of policing, and to increase the community’s confidence in its police department.

The Agreement will include:

1. Civilian Review and Community Engagement

- a. The City is establishing and will fund a civilian oversight entity for the NPD to assist NPD in adhering to the Agreement and to foster positive relations between NPD and the Newark community. The City will establish a mechanism through which it will work with the community to determine the appropriate form and scope of oversight, within the parameters set forth in the Agreement. The Independent Monitor of the Agreement will evaluate and report on the City’s establishment and ongoing implementation of a civilian oversight entity.
- b. NPD will continue to develop mechanisms for effective community engagement beyond the civilian oversight. The intent of these community engagement measures will be to increase cooperation and trust between NPD and the community to whom it provides police services. NPD will provide direction and training to officers on the benefits of and means to achieve effective community engagement and will update these directives and training as needed.
- c. The Parties will engage the community on an ongoing basis to seek input on and reaction to the Agreement’s implementation.
- d. NPD will continue to increase its transparency by making available more information about its practices to the public. NPD will, to the extent permissible by law, make its policies publicly available, and shall regularly report information regarding officer use of force; handling of misconduct complaints; and stop/search/arrest data.

2. Policy Review/Revision

NPD will continue to review and revise policies, including, but not limited to, all general orders, rules and regulations, to ensure they comport with the Agreement. All requirements of

the Agreement shall be reflected in NPD policy. The Monitor and DOJ will review any new policy provisions purporting to incorporate requirements of the Agreement. In addition, NPD will conduct annual reviews to ensure its policies remain consistent with the Agreement and current developments in law and police practice. NPD policies will be readily accessible to all NPD personnel.

3. Training

NPD will enhance its annual training so that it is sufficient in duration and scope that all officers can consistently and effectively carry out NPD directives. In addition, NPD will provide sufficient training on any new or revised policies implemented as a result of the Agreement. NPD will provide updated training as necessary to reflect changes in the law, or to address other identified needs. In addition, NPD shall continue to improve its recordkeeping system and will ensure that complete and consistent training records are maintained for all officers.

4. Use of Force

NPD will continue to review and revise as necessary its use of force policies and training to ensure that officers have the necessary guidance to determine when and what force is reasonable. The policy and training shall be consistent with modern defensive techniques and best practices, and will provide instruction in alternatives to the use of force, such as disengagement and de-escalation.

5. Documenting and Reviewing Use of Force

NPD shall continue to review and revise its policies to establish a clear threshold for reportable uses of force and provide clear direction to officers and supervisors on reporting and reviewing force. NPD policy shall be consistent with law and best practices. NPD will ensure that all information related to a use of force, including the narrative, is tracked and maintained together for purposes of review, investigation, and data collection. NPD will ensure that when force is used, a narrative will describe the details surrounding the use of force, including the nature and level of resistance encountered, and a detailed description of the force.

All NPD officers who are involved in or witness a reportable use of force shall document their own accounts of the incident, describing in detail the sequence of events surrounding the use of force, including the resistance encountered, the force used in response, and whether the force was effective in obtaining compliance from the subject.

NPD will require officers to promptly notify a supervisor upon engaging in a reportable use of force. Reportable uses of force will include any use of force greater than unresisted handcuffing. Absent exigent circumstances, a supervisor who was not involved in using or directing the force will respond to the scene of a use of force to conduct an initial evaluation of the incident, including directing the collection of evidence, and identifying and obtaining statements from witnesses. Supervisors shall be held accountable for appropriately reviewing officer use of force.

All uses of force shall be assessed by an uninvolved supervisor. The uninvolved supervisor will document in writing his or her assessment of the incident, including any apparent policy violations, policy failures or tactical concerns. In conducting their assessments, supervisors will make appropriate assessments based on the evidence available, with no automatic preference for either the police officers' or any other person's account of events.

NPD has established an internal multi-disciplinary Use of Force Review Board responsible for reviewing more serious uses of force. NPD will enhance this Use of Force Review Board as needed to meet the objectives of the Agreement. This Use of Force Review Board will determine whether the use of force was consistent with policy and whether the incident raises any additional training, equipment, tactical, or other concerns.

NPD will equip all marked patrol cars with video cameras, and require all officers, except certain officers engaged in only administrative or management duties, to wear body cameras and microphones with which to record all enforcement activity. NPD will develop a policy to designate cars and officers that will not be equipped with video cameras, or that will be equipped with concealed cameras, because the visibility of a camera might compromise undercover work or other appropriate and lawful clandestine police activity. NPD will develop a policy to designate the categories of officers who will not wear body cameras because they are only engaged in administrative or management duties.

NPD's policy regarding video and audio recording shall address retention, privacy issues, the use of recordings as evidence in force and complaint reviews, and the use of recordings for other criminal justice purposes (such as evidence in prosecutions), among other issues.

6. Internal Affairs ("IA")

NPD asserts that it has required and provided training for IA investigators, focusing on IA investigative skills, objective analysis of evidence, and other topics to ensure fair, objective and thorough investigations. NPD agrees to enhance this training, of IA investigators and supervisors as necessary to ensure that investigations are thorough and complete, and that investigators' conclusions and recommendations that are not adequately supported by the evidence will not be approved or accepted. NPD agrees to continue and update training as needed. Training will be provided upon an officer's assignment to IA, with refresher training at periodic intervals.

To the extent permitted by law, NPD agrees that it will revise its policies and practices as necessary to ensure effective complaint intake, and to ensure objective and complete investigations of misconduct. Areas addressed by new or revised policies will include prohibiting practices that discourage complainants from coming forward (e.g., policies prohibiting use of criminal histories alone to determine credibility, and forbidding the use of Miranda warnings during non-custodial interviews). NPD policy will ensure that IA investigators consider patterns in officer behavior based upon disciplinary history and other information in NPD's early warning system. Similarly, NPD policy will provide appropriate guidance regarding when a civilian's criminal history may be considered. NPD shall conduct administrative investigations of all civilian and departmental complaints alleging officer

misconduct, including incidents that are also referred for review or investigation by a prosecutor. The purpose of the administrative investigation shall not be to determine whether the officer's conduct was criminal but rather to determine whether the conduct was consistent with NPD policy or raises training, policy, equipment, or tactical concerns. Some components of the administrative investigation may be temporarily halted where, after consultation with the prosecutor, the NPD director determines that a criminal prosecution is viable, and failing to postpone part or all of the administrative investigation would impede the criminal investigation/prosecution.

NPD supervisors (or commanders) will conduct periodic assessments of complaints against officers to identify and assess potential problematic patterns and trends.

7. Discipline

The City of Newark and NPD are committed to ensuring that disciplinary actions are applied fairly and consistently. Towards that end, the NPD will review and revise its policies, as necessary, to establish clear standards of proof and appropriate roles for advocates and finders of fact in disciplinary hearings.

To the extent permitted by law, including civil service rules and the collective bargaining agreement, the NPD will also develop written requirements that establish clear penalty ranges for violations of departmental policy. The disciplinary requirements will include provisions that allow for the consideration of mitigating and aggravating factors in determining appropriate discipline.

The City will continue to confer with all relevant collective bargaining units that represent sworn members of the NPD, and will confer with other criminal justice and community stakeholders to determine the appropriate presumptive penalty ranges and mitigating and aggravating factors. The requirements will provide for progressive discipline as appropriate. NPD policy and practice shall require that any deviation from the presumptive disciplinary range, including the application of mitigating and aggravating factors, be documented and explained in writing. NPD will conduct annual reviews of its disciplinary process, which will include an analysis of progressive discipline's effects and the application of mitigating and aggravating factors in meting out discipline.

8. Stops, Searches, and Arrests

NPD will ensure that its policies, training and practices are consistent with current law and professional police practice and will revise any such policy, training and practice as needed to ensure that that stops, arrests, and searches by NPD officers are consistently conducted in accordance with law. NPD shall also develop and implement accountability and supervisory practices to ensure that any unlawful stops, searches, and arrests are detected and effectively addressed. NPD shall ensure that supervisors are held accountable for appropriately reviewing reports and documentation related to stops, searches, and arrests.

NPD will review and revise its policies and training as needed to ensure that officers have proper guidance regarding individuals' exercise of their First Amendment rights, including the acts of observing, recording and questioning police actions. The policy will require officers to properly document reasonable suspicion and probable cause when completing incident and arrest reports. NPD supervisors will review all incident and arrest reports for completeness relevant to these requirements.

NPD will continue to provide initial and annual training on its policies and the relevant legal standards for stops, searches, and arrests and promoting positive community relationships.

9. Bias Free Policing

NPD will continue to collect and begin to analyze race, ethnicity and gender data for stops and arrests to identify any trends and issues that may lead to violations of law or policy. To help assess this data, the City and NPD will consult with experts in the field. The NPD will collect and preserve in an accessible manner the age, race, ethnicity, gender, location, time of day, reason for stop, post-stop activity, duration, and result or outcome of each encounter.

NPD will regularly analyze the collected data to detect and address any issue. NPD will conduct comprehensive annual reviews of the data, and take appropriate steps in response to any trends or issues that are identified. In addition, NPD will make efforts to incorporate regular analysis of this data into its routine operational decisions.

NPD will provide to all employees initial and annual training that sufficiently addresses the prevention of bias based on race, ethnicity, national origin, sexual orientation, gender and gender identity. The curriculum will include discussion of the causes of bias, as well as strategies to avoid and mitigate its effects. The training will not focus solely on the effects of bias on the subjects of law enforcement activity, but will also address officers' interactions with victims of crime, such as the potential impacts of bias in the response to and in the investigation of sexual assaults.

10. Theft

NPD will ensure periodic review of the disciplinary histories of its officers, especially those in specialized units, and the use of periodic integrity tests. To the extent permitted by law, the policy will require the transfer of officers with any sustained complaint, or multiple not sustained or unfounded complaints, of theft from positions where those officers have access to money, property, and evidence. Officers' disciplinary histories will be considered in making decisions regarding reassignment, promotions, and similar decisions. NPD will report all theft allegations to the New Jersey Attorney General's Office Department of Law and Public Safety, and continue to report same to the Essex County Prosecutor, indicating each officer who has been the subject of multiple theft allegations.

NPD has reviewed and revised where appropriate all procedures for the intake, storage, and release of all property from arrestees to ensure the protection of all property under its control and custody. NPD will ensure that the inventory of all cash and other property taken from

people in custody is conducted by at least two officers. NPD will specifically prohibit officers from allowing a detainee to sign a blank property form. NPD's policy will provide appropriate guidance for how property is to be packaged and labeled. The policy will require that all property is to be stored in a secure property room, to which access will be limited to specifically designated personnel. Property room doors will be secured with mechanisms that automatically lock upon closing. NPD will install and maintain working video cameras in areas where property is stored, and shall establish a video retention policy that maintains recordings as necessary to support investigations of allegations of theft. Additional security precautions shall be taken to effectively secure all money, precious metals, jewelry or other items of value.

An itemized inventory of all property taken from detainees and held by NPD shall be maintained in a computerized database. NPD will conduct periodic audits and inspections of the property room.

11. Early Warning System

To the extent permitted by law, NPD will enhance its comprehensive early warning system ("EWS") to support the effective supervision and management of NPD officers. NPD will use the EWS to promote constitutional policing and professional police practices. The EWS will use a relational database to track and analyze information regarding the activities of all NPD personnel. The City shall ensure that NPD continues to be sufficiently funded to implement and maintain the EWS, including its ongoing hardware and support requirements.

NPD will implement a protocol dictating what information is to be entered into and maintained in the EWS. At a minimum, the EWS will include all relevant information, including the results of any investigation or supervisory review related to:

- use of force incidents and allegations of use of force;
- all injuries to individuals in the custody or control of an NPD officer or injured as a result of an officer's actions;
- all allegations of unlawful arrest;
- all allegations of unlawful search or seizure;
- all allegations of theft, missing property, or planting evidence;
- all complaints of misconduct against officers;
- all arrests for disorderly conduct, resisting arrest, and assaulting a police officer;
- all disciplinary action taken against an officer;
- all non-disciplinary or corrective action taken, including actions taken pursuant to the operation of the EWS; and
- officer rank, assignment, and training history.

NPD will revise its protocol for the operation of the EWS to ensure that EWS is used as an effective supervisory tool. The EWS will use comparative data analysis and peer group analysis to identify patterns of activity by officers and groups of officers for supervisory review and intervention. The protocol shall require supervisors to conduct a comprehensive written review of officers and groups of officers identified for review and shall provide an array of individualized alternatives for resolving any problems identified during the review, such as

counseling, training, additional supervision or monitoring, and action plans for modifying future behavior.

Additionally, the protocol will require commanders/supervisors to conduct periodic reviews of all officers and groups under their command to identify potential trends. The EWS shall produce reports for supervisors to use in these reviews. The purpose of these evaluations shall not be disciplinary, but rather to provide officers necessary support to police effectively and constitutionally and to prevent negative practices from developing or continuing.

NPD will make reasonable efforts to ensure that the EWS makes use of available technologies, including the electronic transfer of information from other data systems, to maximize efficiency. The United States will advise NPD of other agencies with functioning EWS for ideas and technical assistance.

NPD will continue to use its current IAPro software's alert and warning features to identify officers for intervention while further developing and continuing to implement an EWS that is fully consistent with the Parties' agreement.

12. Record Management System Improvement

The City/NPD will revise its use and analysis of the RMS so that it can more efficiently and effectively process and analyze the data it contains, and better interface with other technology systems. These improvements will include the use of automation for transferring data between systems (specifically, the EWS) and the development or implementation of reporting modules that allow more flexible queries of the police records and data contained in NPD's systems. The City shall ensure that NPD is provided sufficient funds to implement and maintain the RMS, including its ongoing hardware and support requirements.

13. Judicial Enforceability and Independent Monitoring

The United States and the City of Newark will seek entry of the Agreement as a judicially enforceable order. The Parties will agree to the selection of an Independent Monitor who will act as an agent of the Court in assessing whether the Agreement is being implemented. The Independent Monitor will be required to assess all substantive provisions of the Parties' Agreement. The Independent Monitor will conduct periodic reviews of NPD's compliance with the Agreement and will report publicly on the City's implementation of the Agreement. The Independent Monitor also will conduct and report on assessments to determine whether the intended results of the Agreement are being achieved, including the outcome assessments discussed below. The Independent Monitor's reviews will include on-site observations, review of records and incidents, and frequent communication with NPD and DOJ personnel. Additionally, the Independent Monitor may offer technical assistance to NPD in furtherance of the City's and NPD's compliance with the Agreement. The City shall bear responsibility for all agreed-upon costs related to the Independent Monitor.

Nothing in this Agreement shall be interpreted to require the City of Newark to violate any law, collective bargaining agreement, civil service rules, or New Jersey Attorney General Guidelines.

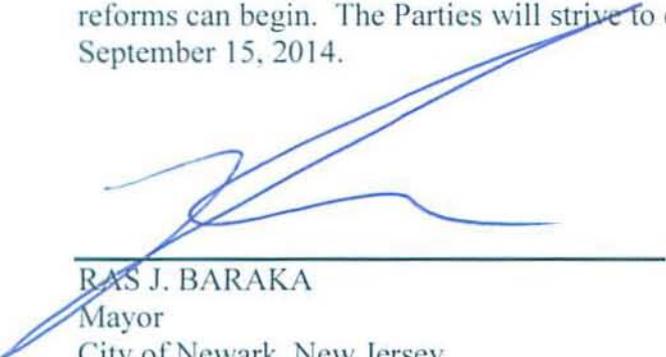
14. Baseline Measures and Outcome Studies

The Parties will agree on a set of objective outcome measures to assess whether this Agreement is having the effect intended by the Parties of ensuring constitutional policing, promoting best practice in policing, and increasing community trust.

As part of these outcome assessments, NPD will establish baseline measurements in agreed-upon areas. Among other baseline measurements, NPD shall conduct a representative, methodologically sound survey of community members and police officer perspectives regarding NPD and NPD activities. NPD will periodically gather and assess data, including periodic surveys, to measure changes over time in the areas assessed.

15. Timing

The United States and the City agree to reach a final agreement and seek court approval as expeditiously as possible, so that the important work of implementing the above-described reforms can begin. The Parties will strive to complete negotiations on the Agreement by September 15, 2014.



RAS J. BARAKA
Mayor
City of Newark, New Jersey

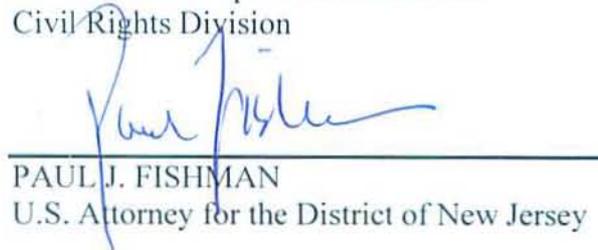


KAREN BROWN
Corporation Counsel
City of Newark, New Jersey

Date:



JOCELYN SAMUELS
Acting Assistant Attorney General
United States Department of Justice
Civil Rights Division



PAUL J. FISHMAN
U.S. Attorney for the District of New Jersey

Date: 7/22/14